



Judgments concerning Greece, Malta, Russia, and Ukraine

The European Court of Human Rights has today notified in writing the following 12 judgments, of which five (in italics) are Committee judgments and are final. The others are Chamber judgments¹ and are not final.

Repetitive cases² and length-of-proceedings cases, with the Court's main finding indicated, can be found at the end of the press release. The judgments in French are indicated with an asterisk (*).

The Court has also delivered today judgments in the cases of Hanzelkovi v. the Czech Republic (application no. 43643/10) and Dubská and Krejzová v. the Czech Republic (nos. 28859/11 and 28473/12), for which separate press releases have been issued.

Al. K. v. Greece (application no. 63542/11)*

The applicant, Al.K. is an Iranian national who was born in 1977. He is an asylum-seeker in Greece.

The case concerned in particular the conditions of his detention on the premises of the Soufli and Ferres border posts, together with his living conditions after release.

On 13 November 2010 Al.K. arrived in Greece and was apprehended the next day by border guards. Al.K. claims that he filed an asylum application which was not registered by the authorities. On 17 November 2010 the head of the local police force ordered that he be taken into custody pending a removal decision. Al.K. was then held at the Ferres border post. On 20 November 2010 the police chief ordered his removal and an extension of his custody in the meantime on the ground that he might abscond. On 25 November 2010 the applicant was transferred to Alexandroupoli. He filed a written asylum application. He was transferred to the border post of Soufli. In a decision of 5 March 2011 the police authority dismissed his asylum application.

On 20 April 2011 Al.K. lodged an appeal with the Appeals Board; this procedure was still pending at the time when the applicant filed his observations with the Court. He was released on 16 May 2011, two days before the expiration of the 6-month maximum period of detention without trial. Al.K. received an asylum-seeker's temporary residence permit and since his release has been living in conditions of poverty and destitution as a homeless person.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, Al.K. complained about the conditions of his detention at the border posts of Soufli and Ferres, together with his situation of total destitution since his release.

Violation of Article 3 (inhuman and degrading treatment) – as regards the applicant's conditions of detention

Violation of Article 3 (degrading treatment) – as regards the applicant's living conditions after his release

Just satisfaction: 6,500 euros (EUR) (non-pecuniary damage)

¹ Under Articles 43 and 44 of the Convention, Chamber judgments are not final. During the three-month period following a judgment's delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Under Article 28 of the Convention, judgments delivered by a Committee are final.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

² In which the Court has reached the same findings as in similar cases raising the same issues under the Convention.

Mohamad v. Greece (no. 70586/11)*

The applicant, Husein Mohamad is an Iraqi national who was born in 1993 and lives in Greece.

The case concerned the conditions and lawfulness of the detention of Mr Mohamad, who was an unaccompanied minor at the time of his arrest, at the Soufli border post, pending his removal.

On 15 November 2010 Mr Mohamad was arrested in the region of Soufli for illegally entering Greece. He was examined by an officer of the European Agency for the Management of Operational Cooperation at the External Borders of the member States of the European Union (FRONTEX). The file showed that Mr Mohamad was born on 1 January 1990. On 17 November 2010 the head of the local police force ordered his removal to Turkey, a country through which he had passed, to be returned from there to his country of origin, Iraq, and he was to be held in custody pending the removal directions. The removal could not be executed because the Turkish authorities refused to receive him. On 19 November 2010 the Greek Council for Refugees informed the head of the local police force that Mr Mohamad's age had been wrongly transcribed, as his date of birth was given as 1 January 1990 whereas he was really born in 1993. On 17 December 2010, rectifying this error, the authorities granted Mr Mohamad the status of unaccompanied minor and discontinued the removal procedure. The Soufli border post, where he was being held, requested his transfer to a centre for minors. On 5 February 2011 Mr Mohamad attained the age of majority and, without having been transferred to a centre for minors in the meantime, his detention at Soufli was extended. On 4 May 2011 the President of the Administrative Court ordered his release, on the ground that Mr Mohamad claimed to have a brother in Germany and intended to go there. On the same day the police chief granted him 30 days within which to leave Greece.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention, Mr Mohamad complained that his status as minor had not been taken into account when he had been held at the Soufli border post. He also complained about his conditions of detention there. Relying on Article 3, taken together with Article 13 (right to an effective remedy), he complained about the lack of a remedy by which to complain about those conditions. Under Article 5 § 1 (right to liberty and security), he complained that he had been arrested and detained in disregard of his status as unaccompanied minor and that when he had reached the age of majority the authorities had extended his detention without taking any steps with a view to his removal.

Violation of Article 3 (inhuman and degrading treatment)

Violation of Article 3 taken together with Article 13

Violation of Article 5 § 1

Just satisfaction: EUR 8,500 (non-pecuniary damage)

Anthony Aquilina v. Malta (no. 3851/12)

The applicant, Anthony Aquilina, is a Maltese national who was born in 1948, and, at the time of lodging the application, lived in Canada. The case concerned his complaint about amendments to housing legislation which had allegedly breach his property rights.

Mr Aquilina owns a maisonette apartment which he inherited from his parents and which has been rented to the same tenants since 1970. In 2005 he brought constitutional redress proceedings, complaining about amendments of 1979 to the Housing Ordinance which prohibited landlords from refusing to renew existing leases or from raising the rent, arguing that it breached his property rights. His complaint was dismissed. In 2010 he brought new constitutional redress proceedings, complaining that new amendments introduced in 2009 – aimed at gradually eliminating restrictive rental regimes – had not improved his situation and that therefore the 1979 amendments continued to breach his property rights. His complaint was dismissed by a decision eventually upheld in June 2011.

Relying on Article 1 of Protocol No. 1 (protection of property), Mr Aquilina complained of a violation of his property rights, alleging that the legislation in force denied him a realistic possibility of resuming possession of his property and that he was unable to charge rent at market value.

Violation of Article 1 of Protocol No. 1

Just satisfaction: EUR 11,550 (pecuniary damage), EUR 2,500 (non-pecuniary damage) and EUR 7,500 (costs and expenses)

Hromadka and Hromadkova v. Russia (no. 22909/10)

The applicants are Zdenek Hromadka, a Czech national who was born in 1970, and his daughter, Anna Valerie Hromadkova, a Czech and Russian national who was born in 2005 and on whose behalf he lodged the application. Mr Hromadka lives in Prague and his daughter lives in Russia with her mother, a Russian national, O.H.

The case concerned a cross-border family dispute. Mr Hromadka's wife O.H., with whom he had been living in Prague, filed for divorce in 2007. Both parents sought custody of their daughter. While the proceedings were pending, O.H. left the Czech Republic with the child in April 2008 and did not return. She obtained Russian citizenship for the child in May 2008 and settled in St Petersburg. Mr Hromadka obtained an interim decision by a Czech court granting him temporary custody of the child in July 2008 and a final judgment in June 2011 by which custody was granted to him. However, both judgments remained unenforced, as O.H. hindered his contact with the child, and the place of her residence with the child has remained unknown since May 2011. Mr Hromadka unsuccessfully tried to have the custody decisions enforced before the Russian courts: his first request was rejected on the ground that the 2008 decision, being only an interim measure, was not enforceable in Russia. The second request was rejected because O.H. had not participated in the hearing. Mr Hromadka's application challenging the decision which granted his daughter Russian citizenship was also dismissed by the Russian courts.

Relying in particular on Article 8 (right to respect for private and family life), Mr Hromadka complained that the Russian authorities had failed to take appropriate steps to assist him in re-establishing contact with his daughter. He submitted in particular that the provisions of Russian law on the attribution of citizenship to foreign children without the second parent's consent had had the effect of legalising the child's abduction by the mother. As regards the refusal by the Russian courts to recognise the final custody judgment in his favour, he argued that O.H. had not been denied the opportunity to participate in the relevant proceedings.

Violation of Article 8

Just satisfaction: EUR 12,500 (non-pecuniary damage) and EUR 3,375 (costs and expenses) to Mr Hromadka

Khismatullin v. Russia (no. 33469/06)

The applicant, Eduard Khismatullin, is a Russian national who was born in 1974 and is currently serving a prison sentence in a medical penal institution in the Sverdlovsk Region (Russia). The case concerned, in particular, his alleged ill-treatment in police detention.

Mr Khismatullin was arrested on suspicion of murder in April 2005 and taken to a police station, where he was allegedly ill-treated by police officers and confessed to the murder. An X-ray examination a few days after his arrest showed that he had a breastbone fracture. In November 2005, he was convicted of intentional infliction of grievous bodily harm causing the victim's death. The conviction was finally upheld on appeal in April 2011 and he was eventually sentenced to ten years and six months' imprisonment. He complained in December 2005 of the alleged ill-treatment,

but the prosecutor refused to open criminal proceedings against the police officers on several occasions, the decision eventually being upheld by the courts in June 2008.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), Mr Khismatullin complained that he had sustained the breastbone fracture at the hands of the police and that the investigation into his complaints in this regard had been ineffective.

Violation of Article 3 (procedure)

No violation of Article 3 (treatment)

Just satisfaction: EUR 5,000 (non-pecuniary damage)

Fozil Nazarov v. Russia (no. 74759/13)

The case concerned an extradition or forced return from Russia of an Uzbek national.

The applicant, Fozil Nazarov, is an Uzbek national who was born in 1986 and is currently in detention in the Moscow region pending administrative removal to Uzbekistan.

Mr Nazarov arrived in Russia from Uzbekistan in 2010. Having been placed on a wanted listed by the Uzbek authorities on charges of being a member of a religious extremist organisation and terrorism, he was arrested in the Moscow region in October 2013. Instead of proceeding to extradite Mr Nazarov, the Russian authorities ordered his administrative removal to Uzbekistan on the ground that he had infringed immigration regulations. Shortly after that, Mr Nazarov made an application for refugee status, which was eventually rejected in January 2014. He has since lodged an application for temporary asylum and those proceedings are currently pending.

In the meantime, in November 2013, Mr Nazarov's removal was suspended on the basis of an interim measure granted by the European Court of Human Rights under Rule 39 of its Rules of Court, which indicated to the Russian Government that he should not be expelled or forcibly removed for the duration of the proceedings before the European Court.

Relying on Article 3 (prohibition of torture and inhuman or degrading treatment), Mr Nazarov complained that his extradition or administrative removal to Uzbekistan, if enforced, would expose him to a real risk of torture and ill-treatment on account of the nature of the charges against him in his country of origin.

Violation of Article 3 – in the event of the applicant's forced return to Uzbekistan

Interim measure (Rule 39 of the Rules of Court) – not to expel or otherwise involuntarily remove the applicant to Uzbekistan or another country – still in force until judgment becomes final or until further decision by the Court.

Just satisfaction: The Court held that the finding of a violation of the Convention in the event of the applicant's forced return constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by him.

Kushnir v. Ukraine (no. 42184/09)

The case concerned an allegation of inadequate conditions of detention and medical care for an inmate suffering from HIV and tuberculosis. The applicant, Dmytro Kushnir, is a Ukrainian national who was born in 1983.

On 3 July 2009 Mr Kushnir was summoned to his local police station in connection with a mobile phone robbery. According to Mr Kushnir, who was at liberty pending another set of criminal proceedings against him, he was immediately arrested on his arrival at the police station without any explanation and was subjected to a severe beating by the police. He was held in the police station

overnight and questioned the next day as a suspect in the robbery. Subsequently he was remanded in custody given his previous criminal record and the severity of the alleged offence. Ultimately he was convicted as charged in March 2012 and sentenced to six years' imprisonment. In October 2012 he was released from detention on the ground of his poor health.

In August 2009 the prosecuting authorities refused, due to lack of evidence, to institute criminal proceedings into Mr Kushnir's complaint about his ill-treatment when arrested.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment) Mr Kushnir notably alleged appalling conditions of detention when held in Kyiv Pre-Trial Detention Centre from July 2009 to July 2012, on account of severe overcrowding, and inadequate medical care for a number of serious health problems, including HIV and tuberculosis. Under Article 5 § 1, he complained in particular about the unlawfulness of his arrest on 3 July 2009.

Violation of Article 3 (inhuman and degrading treatment) – concerning the physical conditions of the applicant's detention in the Kyiv Pre-Trial Detention Centre

Violation of Article 3 – concerning the inadequate medical care

Violation of Article 5 § 1 – on account of the applicant's arrest on 3 July 2009 and detention until 4 July 2009

Just satisfaction: The applicant did not submit a claim for just satisfaction.

Repetitive cases

The following cases raised issues which had already been submitted to the Court.

Biryuchenko and Others v. Russia (nos. 1253/04, 25902/05, and 40116/08)

Relying on Article 5 § 1 (c) (right to liberty and security), all the applicants complained about the unlawfulness of their pre-trial detention on various criminal charges such as membership of an organised criminal group, extortion by threat, theft and causing grave bodily injury. The applicants in applications nos. 1253/04 and 40116/08 also complained, relying on Article 5 §§ 3 and 4 (entitlement to trial within a reasonable time or to release pending trial / right to have lawfulness of detention decided speedily by a court), that the length of their detention had been excessive and that there had been deficiencies in the judicial review of their detention. The applicants in application no. 25902/05 further complained, relying on Article 6 § 2 (presumption of innocence), that the domestic courts, in decisions extending their detention, had stated that they had committed the offences of which they stood accused.

Violation of Article 5 § 1 – as regards all the applications

Violation of Article 5 § 3 – as regards applications nos. 1253/04 and 40116/08

Violation of Article 5 § 4 – as regards applications nos. 1253/04 and 40116/08

Violation of Article 6 § 2 – as regards application no. 25902/05, in respect of Mr Leontyev and Mr Ponomarev

Padura v. Ukraine (no. 48229/10)

The applicant in this case complained that the criminal investigation into the death of her husband, who had died of a head injury after being beaten by a group of men in the street, had been ineffective. She relied in particular on Article 2 (right to life).

Violation of Article 2 (procedure)

Pankratyev v. Ukraine (no. 49900/11)

The applicant in this case complained that his pre-trial detention on charges of murder, of which he was later convicted, had been unlawful, and that he had not had an effective remedy to challenge

the lawfulness of his detention. He relied in particular on Article 5 §§ 1 (c) and 4 (right to liberty and security / right to have lawfulness of detention decided speedily by a court).

Violation of Article 5 § 1 (c)

Violation of Article 5 § 4

Length-of-proceedings cases

In the following case, the applicants complained in particular, under Article 6 § 1 (right to a fair trial within a reasonable time, about the excessive length of civil proceedings.

Dotas and Others v. Greece (nos. 33983/13, 33989/13, 33994/13, 34000/13, 34005/13, 34950/13, 35169/13, 35174/13, 35784/13, 35843/13, and 36097/13)*

Violation of Article 6 § 1

Violation of Article 13

In the following case, the applicant complained in particular, under Article 6 § 1 (right to a fair trial within a reasonable time), about the excessive length of two sets of proceedings – one civil and one criminal.

Prifti v. Greece (no. 13251/07)*

Violation of Article 6 § 1

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.