



Judgments and decisions of 16 April 2015

The European Court of Human Rights has today notified in writing seven judgments¹ and 46 decisions²:

six Chamber judgments are summarised below; for one other, in the case of *Mezhiyeva v. Russia* (application no. 44297/06), a separate press release has been issued;

for two decisions, in the cases of *Smaltini v. Italy* (no. 43961/09) and *Viviani and Others v. Italy* (no. 9713/13), separate press releases have also been issued;

the remaining 44 decisions can be consulted on [Hudoc](#) and do not appear in this press release.

The judgments in French below are indicated with an asterisk ().*

Armellini and Others v. Austria (application no. 14134/07)

The applicants in this case are Harald Armellini and Frank Andres, Austrian nationals who were born in 1961 and 1968 and live in Hard and Bregenz (Austria) respectively, and Zeitungs- und Verlags GmbH, a publishing company for which the first two applicants work as journalists.

The case concerned an article by Mr Armellini and Mr Andres, published in February 2005 in the regional newspaper *Neue Vorarlberger Tageszeitung* about a football betting scandal. The article reported in particular the suspicion that three football players of the club Casino SW Bregenz had been bribed by the betting mafia in order to let three matches end with a particular result. Following the publication of the article, the three players filed a private prosecution leading to criminal proceedings against the applicants on charges of defamation. In December 2005 Mr Armellini and Mr Andres were convicted of defamation and sentenced to fines, which were suspended on probation. The publishing company was ordered to pay compensation, the amount of which was reduced on appeal, in April 2006, to 12,000 euros for each plaintiff. At the same time, the appeal court dismissed Mr Armellini's and Mr Andres' appeal against their conviction.

The applicants complained that their conviction for defamation and the order to pay compensation had violated their rights under Article 10 (freedom of expression) of the European Convention on Human Rights.

No violation of Article 10

Papastavrou v. Greece (no. 63054/13)*

The applicant, Stavros Papastavrou, is a Greek national who was born in 1970 and is currently detained in Korydallos Prison.

The case concerned his application for a stay of execution of his sentence in order to enable him to be treated in a public hospital.

¹ Under Articles 43 and 44 of the Convention, Chamber judgments are not final. During the three-month period following a Chamber 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 Inadmissibility and strike-out decisions are final.

Mr Papastavrou began serving lengthy prison sentences in Khalkida Prison, imposed between 2008 and 2011 for, among other offences, attempted murder, fraud and theft. Suffering from a serious cardio-vascular disease, he underwent myocardial revascularization surgery at the Evangelismos Hospital in Athens on 10 May 2011. Following his surgery, the applicant was transferred to the same hospital and to other establishments on numerous occasions between 2012 to 2014 for the purpose of undergoing tests and receiving treatment. In parallel, he submitted an application for a stay of execution of his sentence to the Piraeus Criminal Court on 16 October 2012, arguing that there was a risk of irreversible deterioration in his health. On 9 January 2013 the court ordered a stay of execution of his sentence for five months, subject to the condition that Mr Papastavrou be hospitalised in the Evangelismos Hospital. However, that decision was never executed by the authorities. On 31 January 2013 Mr Papastavrou applied for an immediate transfer to the Evangelimos Hospital, but subsequently withdrew his request.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), Mr Papastavrou notably complained that the failure to execute the criminal court's decision of 9 January 2013 endangered his life and amounted to inhuman and degrading treatment.

No violation of Article 3

Khamrakulov v. Russia (no. 68894/13)

The applicant, Abdilaziz Khamrakulov, is a Kyrgyz national of Uzbek ethnic origin who was born in 1994 and lives in Moscow. The case concerned the risk of his being persecuted and ill-treated if extradited from Russia to Kyrgyzstan, where he alleged widespread and routine use of torture and ill-treatment by the authorities against the Uzbek community.

Following the mass disorder and inter-ethnic clashes in Kyrgyzstan in June 2010, Mr Khamrakulov left the country to study in Russia. In February 2011 the Kyrgyz authorities charged Mr Khamrakulov, in his absence, with participating in the events of June 2010, namely mass rioting, kidnapping, destruction of and damage to property, and put him on a wanted list. As a result, he was arrested in Russia in January 2013 and placed in detention with a view to his extradition.

He challenged his extradition before the courts, but in September 2013 the extradition order against him was upheld by the Moscow City Court. The first-instance court found that there were no reasons to refuse his extradition, especially in view of the Kyrgyz authorities' assurances that Mr Khamrakulov would not be subjected to any form of torture or inhuman or degrading treatment on his return to the country. The Supreme Court of Russia, endorsing the reasoning of the first-instance court, dismissed Mr Khamrakulov's appeal in November 2013. Mr Khamrakulov's extradition was however 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 extradited to Kyrgyzstan whilst the Court is considering his case.

Mr Khamrakulov's application for refugee status was rejected by the Russian migration authorities, which found that he was not eligible for refugee status because there was no evidence that he was at risk of persecution in Kyrgyzstan on the grounds of his Uzbek ethnic origin, that his relatives who had remained in Kyrgyzstan were being persecuted or that the accusations against him were politically motivated. That finding was ultimately upheld by the domestic courts in May 2014.

Mr Khamrakulov remained in detention pending extradition, despite his appeals to the Russian courts, until 22 January 2014. He was released from custody on the basis of the European Court's decision to grant interim measures.

Relying on Article 3 (prohibition of torture and of inhuman or degrading treatment), Mr Khamrakulov alleged that, despite diplomatic assurances to the contrary, he would be at real risk of ill-treatment if removed to Kyrgyzstan on account of his Uzbek ethnic origin. He argued in

particular that he belonged to an ethnic group which was systematically tortured by the Kyrgyz authorities and was convicted in connection with the June 2010 mass disorder. Further relying on Article 5 § 4 (right to have lawfulness of detention decided speedily by a court), he also complained that the judicial review of his detention had been slow and ineffective.

Violation of Article 3 – in the event of Mr Khamrakulov's extradition to Kyrgyzstan

Violation of Article 5 § 4 – on account of the length of the proceedings in Mr Khamrakulov's appeals against the detention orders of 19 March, 21 May, 23 July and 23 September 2013)

Interim measure (Rule 39 of the Rules of Court) – not to extradite Mr Khamrakulov to Kyrgyzstan – still in force until judgment becomes final or until further order.

Just satisfaction: 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 3,100 in respect of costs and expenses

Zayev v. Russia (no. 36552/05)*

The applicant, Valeriy Zayev, is a Russian national who was born in 1970 and lives in Kholmsk.

The case concerned the ill-treatment to which he had allegedly been subjected while he was in the hands of the police.

On 25 January 2002 Mr Zayev, a suspect in the burglary of a shop, was arrested by police officers and taken to the Aniva district police station. The applicant submits that he was severely beaten by police officers in the police premises with a view to extracting a confession. He also submits that he did not have access to a lawyer after his arrest. He was then placed in pre-trial detention. On 28 January 2002 the applicant lodged a complaint with the Aniva district prosecutor, alleging that he had been beaten by police officers during his arrest and while in police custody. He asked for a forensic report. During the criminal investigation, an initial medical examination was carried out, in which the doctor noted injuries on Mr Zayev's body, followed by a second examination finding that those injuries were compatible with the applicant's allegations. Witnesses were also questioned. Finally, following several decisions, the Aniva district prosecutor ended the criminal investigation on 24 April 2005, concluding that the injuries had been caused, firstly, by the police officers in the face of Mr Zayev's resistance to his arrest and, secondly, by Mr Zayev himself, for the sole purpose of compromising the police officers.

On 6 May 2002 the applicant was convicted of burglary and sentenced to nine years and six months' imprisonment. He appealed to the Sakhalin Regional Court, without success.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), Mr Zayev complained about the ill-treatment to which he had allegedly been subjected after his arrest, and the lack of an effective investigation into this allegation.

Violation of Article 3 (inhuman and degrading treatment)

Violation of Article 3 (investigation)

Just satisfaction: EUR 9,750 (non-pecuniary damage) and EUR 3,650 (costs and expenses)

Mitovi v. "The former Yugoslav Republic of Macedonia" (no. 53565/13)

The applicants, Marjan Mitov, born in 1972, and his parents, Cveta Mitova and Denčo Mitov, born in 1949 and 1950 respectively, all have Macedonian and Bulgarian nationality. Marjan Mitov lives in Sydney (Australia) and his parents live in Skopje ("The former Yugoslav Republic of Macedonia").

The case concerned the applicants' complaint of being prevented from having contact with Marjan Mitov's daughter, born in 2010 in Australia. Marjan Mitov and his wife were divorced in May 2012, after his wife had returned to "the former Yugoslav Republic of Macedonia" from Australia, where

the couple had been living together. A social care centre subsequently set up contact schedules regulating all three applicants' access rights to the child, with which Marjan Mitov's former wife repeatedly refused to comply. Marjan Mitov's request to obtain temporary custody of the child was dismissed by the courts. In criminal proceedings regarding her refusal to comply with the contact orders, his former wife was convicted of child abduction in December 2014 and sentenced to three months' imprisonment, suspended.

Relying in particular on Article 8 (right to respect for family life) and Article 13 (right to an effective remedy), the applicants complained that the national authorities had failed to enforce the social care centre's decisions on their right to have contact with the child and that they had had no effective remedy in respect of that complaint.

Violation of Article 8

Violation of Article 13 taken together with Article 8

Just satisfaction: EUR 13,000 to Marjan Mitov and EUR 7,000 jointly to Cveta Mitova and Denčo Mitov (non-pecuniary damage), and EUR 850 jointly to Marjan Mitov, Cveta Mitova and Denčo Mitov (costs and expenses)

Gal v. Ukraine (no. 6759/11)

The applicant, Oleksandr Gal, is a Ukrainian national who was born in 1961 and lives in Poltava (Ukraine). The case concerned his pre-trial detention.

Mr Gal, who is an entrepreneur in the food supply sector, was arrested in November 2010 after criminal proceedings had been brought against him on suspicion of having unlawfully increased food supply prices. According to his submissions, he was initially remanded in custody for more than 72 hours – the maximum time permitted under national law – without a court decision. His pre-trial detention was subsequently extended several times by the courts, referring in particular to the gravity of the charges and a risk of interference with the investigation, until his release in March 2011. His lawyer's complaints about the alleged unlawfulness of his detention were dismissed.

Relying in particular on Article 5 §§ 1, 3 and 4 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial / right to have lawfulness of detention decided speedily by a court), Mr Gal complained that his detention had been unlawful and unreasonable; that he had not been brought promptly before a court after his arrest; and that the complaint about the unlawfulness of his detention had not been examined promptly.

Violation of Article 5 §§ 1 and 3 – in respect of the initial period of the Mr Gal's detention

Violation of Article 5 § 1 – in respect of Mr Gal's detention from 8 November through 29 December 2010 and between 5 February and 25 March 2011

No violation of Article 5 § 4

Just satisfaction: EUR 4,500 (non-pecuniary damage) and EUR 2,032 (costs and expenses)

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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.