



Judgments and decisions of 23 April 2015

The European Court of Human Rights has today notified in writing six judgments¹ and 47 decisions²: five chamber judgments are summarised below; for one other, in the case of *François v. France* (no. 26690/11), a separate press release has been issued; for one decision, in the case of *Veselský v. the Czech Republic* (no. 30020/11), a separate press release has also been issued; the remaining 46 decisions can be consulted on [Hudoc](#) and do not appear in this press release. *The judgments below are available only in English..*

Nagiyev v. Azerbaijan (application no. 16499/09)

The applicant, Asif Najaf oglu Nagiyev, is an Azerbaijani national who was born in 1980 and lives in Baku. The case concerned his detention between 18 September 2008 and 10 March 2009.

Mr Nagiyev – who had been charged in Russia with unlawful possession of explosive materials and in respect of whom an arrest warrant had been issued by the Russian authorities – was arrested in Azerbaijan and placed in detention. According to his submissions, the arrest took place on 18 September 2008; he was initially not allowed to contact his family or a lawyer and his arrest was not documented. His family, who had in the meantime lodged a criminal complaint about his disappearance, was informed of his arrest four days later. A lawyer appointed by his family was not allowed to meet with Mr Nagiyev, and the lawyer was not informed of a court hearing which took place on 27 September 2008. Mr Nagiyev was represented by a State-appointed lawyer during that hearing.

According to the Government of Azerbaijan, Mr Nagiyev was arrested on 27 September 2008, following which it was established that he had been charged in Russia and an arrest warrant had been issued in his respect.

During the hearing on 27 September 2008, a district court ordered Mr Nagiyev's detention on remand, stating in particular that there was a risk he might obstruct the investigation by absconding, if released. His detention was extended on several occasions and several of his appeals against the detention orders were unsuccessful, until his appeal was granted on 10 March 2009 and he was released.

Relying in particular on Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights, Mr Nagiyev complained that his detention had been unlawful and that he had had no effective remedy in that respect.

Violation of Article 5 § 1

Just satisfaction: 12,000 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 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.

Khan v. Germany (no. 38030/12)

The applicant, Farida Khan, is a Pakistani national who was born in 1963 in Pakistan and currently lives in Germany. The case concerned her imminent expulsion to Pakistan after having committed manslaughter in Germany in a state of mental incapacity.

Ms Khan had arrived in Germany in 1991 together with her husband, who was granted refugee status. The couple later had a son, and in 2001 Ms Khan was granted a permanent residence permit. In 2004 she lost her job as a cleaner due to behavioural issues; in the same year she and her husband, who had lived separately for several years, divorced. In May 2004 Ms Khan killed a neighbour by strangling her and pushing her down a staircase. She was subsequently placed in pre-trial detention and later committed to a psychiatric hospital. In July 2005 a regional court established that she had committed manslaughter in a state of mental incapacity. It ordered her continuous stay in a psychiatric hospital and appointed a legal guardian for her. She remained in the hospital until being released on probation and placed in sheltered accommodation in November 2011, while continuing to work for the hospital's laundry.

In June 2009 the regional authorities ordered Ms Khan's expulsion, relying on German residence legislation, referring to the offence she had committed and concluding that she posed a danger to public safety. Her appeals against the expulsion order were dismissed by the courts and her constitutional complaint was not admitted by the Federal Constitutional Court in December 2011.

Ms Khan complained in particular that her expulsion to Pakistan would be in violation of Article 8 (right to respect for private and family life) of the European Convention. She submitted in particular that, thanks to the treatment she was being given, her behaviour was now balanced, and maintained that the withdrawal of social and medical services would lead to a deterioration of her mental state. She also stated that her removal from Germany would disrupt her close relationship with her son.

No violation of Article 8 – in the event of Ms Khan's expulsion to Pakistan

Kagirov v. Russia (no. 36367/09)

Khava Aziyeva and Others v. Russia (no. 30237/10)

Both cases concerned alleged abductions in Chechnya.

The applicant in the first case, Ziyavdi Kagirov, is a Russian national who was born in 1976 and lives in Zakan-Yurt, the Chechen Republic (Russia).

He alleged that he had witnessed his 30-year-old brother, Rustam Kagirov, being forced by three armed men in black uniforms into the back seat of a civilian car on 17 May 2009 near their family home in Zakan-Yurt. He and a friend got into their car and followed the abductors but were stopped when they reached a roadblock set up due to increased security measures that day for the passage of the President of the Chechen Republic on the Kavkaz motorway; the abductors' car, on the other hand, was let through the roadblock without having their identities checked and headed in the direction of Grozny. The applicant told the police officers manning the roadblock that his brother had been abducted but the officers, who were equipped with portable radio sets and mobile phones and could have alerted their colleagues of the abduction, ignored him and carried on checking other vehicles. He has had no news of his brother since.

The Government submitted that Mr Kagirov's brother had been abducted by unidentified armed men who could have been criminals or members of illegal armed groups. Nor had there been any evidence – apart from the applicant's and his friend's statement – of increased security measures on the motorway on the day of the abduction or that the abductors had been let through the roadblock.

A criminal investigation was opened into the abduction on 19 June 2009 and, suspended on at least six occasions with instructions from the investigators' supervisors to take vital steps to identify and punish those responsible for the disappearance of Mr Kagirot's brother, is currently still pending without any tangible results.

The applicants in the second case, Khava Aziyeva, Aysha Aziyeva, and Abdurrahman Aziyev, are Russian nationals who were born in 1983, 2008, and 2010 respectively and live in Grozny, the Chechen Republic (Russia). They are the sister and children of Rizvan Aziyev, born in 1979, who has not been seen since he was taken away from the family home in Grozny on 31 October 2009 by a large group of armed men in military camouflage uniforms. The men had arrived in at least ten civilian vehicles, cordoning off the streets around the house, and spoke Chechen and Russian. Khava Aziyeva was made to telephone her brother, who was not at home, and tell him to come immediately. Locked in the house by the group of men, she did not see her brother subsequently being taken away; his arrest was witnessed by the applicants' neighbours, who lived opposite and were preparing for a wedding as well as by a number of their wedding guests. In the following days the applicants and their relatives complained about the abduction to a number of local law-enforcement agencies, without finding out who was responsible for arresting and detaining their relative.

The Government submitted that Mr Aziyev was abducted by unidentified armed individuals, whose appearance and arms were common among ordinary criminals, that the witnesses' description of the abductors had not been precise enough and that it had not even been for certain that Mr Aziyev was dead as his body had never been found.

A criminal investigation was opened on 11 November 2009, and suspended very soon after on 11 February 2010. The investigation is currently still pending without, in particular, any steps having been taken to check whether there was a connection between Mr Aziyev's abduction and the killing on the same day of his sister's husband, who was wanted by the authorities for being a member of an illegal armed group, during a special operation carried out by the authorities in Grozny.

Relying on Article 2 (right to life), Article 5 (right to liberty and security) and Article 13 (right to an effective remedy), all the applicants alleged that their relatives had been abducted and killed by Russian servicemen and that the authorities' ensuing investigations had been inadequate. In the first case, Mr Kagirot also alleged under Article 2 that the policemen at the roadblock had failed to take measures to protect his brother's life. Also relying on Article 3 (prohibition of inhuman or degrading treatment), the applicants alleged that the disappearances of their close relatives had caused them mental suffering. Lastly, Mr Kagirot complained under Article 38 (obligation to furnish necessary facilities for the examination of the case) that the Government had refused to disclose the entire contents of the investigation file on the abduction of his brother.

- Kagirot case:

No violation of Article 2 (right to life) – in respect of Rustam Kagirot

Violation of Article 2 (investigation) – in respect of the authorities' failure to conduct an effective investigation into the circumstances in which Rustam Kagirot disappeared

No violation of Article 3 – in respect of Ziyavdi Kagirot

No violation of Article 5 – in respect of Rustam Kagirot

No violation of Article 38

Just satisfaction: EUR 20,000 (non-pecuniary damage) and EUR 1,000 (costs and expenses)

- Khava Aziyeva and Others case:

Violation of Article 2 (right to life) – in respect of Rizvan Aziyev

Violation of Article 2 (investigation) – in respect of the authorities' failure to conduct an effective investigation into the circumstances in which Mr Rizvan Aziyev disappeared

Violation of Article 3 – in respect of the mental suffering caused to Khava Aziyeva and Aysha Aziyeva

No violation of Article 3 – in respect of Abdurrahman Aziyev

Violation of Article 5 – in respect of Rizvan Aziyev

Violation of Article 13 in conjunction with Article 2

Just satisfaction: EUR 6,000 each to Aysha Aziyeva and Abdurrahman Aziyev (pecuniary damage), EUR 60,000 to all three applicants jointly (non-pecuniary damage), and EUR 2,000 to all three applicants jointly (costs and expenses)

Mikhailchuk v. Russia (no. 33803/04)

The applicant, Aleksey Mikhailchuk, is a Russian national who was born in 1969 and lives in Moscow. The case concerned his prolonged pre-trial detention and his complaint of having been ill-treated by the police.

Mr Mikhailchuk was arrested on 17 April 2003 on suspicion of robbery and extortion. According to his submissions, he was beaten by police officers at a Moscow police station to make him confess, and he then wrote a self-incriminating statement. Subsequently criminal proceedings were opened against him. When questioned in the presence of a lawyer, Mr Mikhailchuk stated that he had confessed after having been beaten by the police. On 28 April 2003 he was placed in pre-trial detention, which the trial court authorised on the grounds that he might reoffend and interfere with the proceedings. In the course of the proceedings, a forensic expert appointed by the investigator found that Mr Mikhailchuk had several bruises but concluded that it was impossible to ascertain the date on which he had sustained them. In July 2004 Mr Mikhailchuk was convicted of several offences, including robbery and extortion, and sentenced to ten years' imprisonment. The judgment was upheld on appeal in October 2004.

Relying in particular, on Article 5 § 3 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial), Mr Mikhailchuk notably complained that his pre-trial detention had not been based on relevant and sufficient reasons.

Violation of Article 5 § 3 – on account of the length of Mr Mikhailchuk's pre-trial detention between 28 April 2003 and 14 July 2004

Just satisfaction: EUR 1,200 (non-pecuniary damage)

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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.