



Judgments and decisions of 11 February 2016

The European Court of Human Rights has today notified in writing eight judgments¹ and 32 decisions² :

six Chamber judgments are listed below; for one other, in the case of *Dallas v. the United Kingdom* (application no. 38395/12), a separate press release has been issued;

one Committee judgment, which concerns issues which have already been submitted to the Court, and the 32 decisions, can be consulted on [Hudoc](#) and do not appear in this press release.

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

Huseynli and Others v. Azerbaijan (applications nos. 67360/11, 67964/11 and 69379/11)

The applicants, İlham Gasham oğlu Hüseynli, Elçin Mugarib oğlu Salimov, and İbrahim Zabit oğlu Ahmadzade, are Azerbaijani nationals who were born in 1965, 1984, and 1975 respectively and live in Baku (Mr Huseynli) and Sumgait, Azerbaijan (Mr Salimov and Mr Ahmadzade). The case concerned the applicants' arrests and convictions for administrative offences allegedly to prevent them from participating in a demonstration.

The year 2011 was marked by an increased number of opposition demonstrations in Azerbaijan, mainly in Baku. The applicants, who were all members of the main opposition parties or groups in the country, participated in a number of such demonstrations and were arrested and convicted of administrative offences. According to the applicants they had planned to attend a demonstration, also to be held in Baku, on 2 April 2011.

The first applicant, Mr Huseynli, alleges that on 31 March 2011 he was stopped by the police and requested to follow them to the police station, which he did. On arrival he was informed that he was being detained in connection with the upcoming demonstration and at around 2 p.m. he learned that he would not be released. He was then questioned about his intention to participate in the demonstration and about politics in the country in general. The second applicant, Mr Salimov alleges that on 31 March 2011, when he was still in bed, three police officers entered his apartment without an arrest warrant. He was taken to the police station and questioned about his political activities. The third applicant, Mr Ahmadzade, alleges that around 11 a.m. on 31 March 2011 he was arrested for allegedly swearing loudly without addressing anyone in particular. According to the official records, all three men were arrested for disobeying a lawful order of a police officer and/or minor hooliganism.

All three men were brought before the court that same day. They allege that their hearings were very brief and that they were prevented from being represented by lawyers of their choice. The only witnesses to testify were police officers. All three applicants were found guilty of the alleged

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.

offences and each sentenced to seven days' "administrative" detention. The appeal courts dismissed their appeals on 5 April, 19 April and 15 April 2011 respectively.

Relying on Article 11 (freedom of assembly and association) of the European Convention on Human Rights, the applicants complained that their arrests and convictions had been measures used by the authorities to punish them for their political activities and to prevent them from attending the demonstration of 2 April 2011. Furthermore, relying on Article 6 §§ 1 and 3 (right to a fair trial / right to adequate time and facilities for preparation of defence / right to legal assistance of own choosing) and Article 5 § 1 (right to liberty and security / right to be informed of the reasons for arrest) of the Convention, the applicants complained that the guarantees of a fair hearing had not been respected in the administrative proceedings against them and that their arrests and convictions had been unlawful. They alleged in particular that the institution of administrative proceedings and related detention had been an arbitrary practice in Azerbaijan, aimed at preventing or discouraging opposition activists from participating in political rallies.

Violation of Article 11 – on account of the applicants' arrest and conviction

Violation of Article 6 §§ 1 and 3 – in respect of all three applicants

Violation of Article 5 § 1 – in respect of all three applicants

Just satisfaction: 12,000 euros (EUR) to each of the three applicants in respect of non-pecuniary damage, and EUR 2,500 to Mr Huseynli and EUR 3,500 jointly to Mr Salimov and Mr Ahmadzade in respect of costs and expenses

Ibrahimov and Others v. Azerbaijan (nos. 69234/11, 69252/11, and 69335/11)

The applicants, Agasif Shakir oglu Ibrahimov, Emin Mehdi oglu Farhadi, and Jamil Malik oglu Hajiyev, are Azerbaijani nationals who were born in 1988, 1989, and 1977 respectively and live in Baku (Mr Ibrahimov and Mr Hajiyev) and Khirdalan, Azerbaijan (Mr Farhadi). The case concerned the applicants' arrests and convictions for participation in an unauthorised peaceful demonstration.

The youth group "Committee for Protection of Rights of Young Political Prisoners" decided to hold a demonstration on 22 May 2011 in Baku. They did not notify their plan to the relevant authority. The applicants attended the demonstration and, shortly after it had begun, the police started to disperse it. The applicants submit that when they saw the police approaching they attempted to run away but they were caught, arrested and taken to the police station and questioned. The official reports state that the applicants had deliberately failed to comply with the lawful order of the police and that the applicants were released on the same day. The applicants, on the other hand, all allege that they were held in custody overnight and that they were not served with copies of the administrative offence reports or given access to a lawyer while in police custody.

The applicants were all brought before the court on 23 May 2011, the day following their arrests. They allege that their hearings were very brief, that they were not given the opportunity to hire lawyers of their choice and members of the public, including human rights defenders and journalists, were not allowed to attend the hearings even though the court had not taken a formal decision to close the hearing to the public. The only witness heard was a police officer who gave a similar statement in all three cases. The court found that the applicants had failed to stop participating in the unauthorised demonstration and sentenced them to seven (Mr Ibrahimov and Mr Hajiyev) and eight (Mr Farhadi) days' administrative detention. On 31 May 2011 the Court of Appeal dismissed their appeals and upheld the decisions of the first instance court.

Relying in particular on Article 11 (freedom of assembly and association), the applicants complained about the dispersal of the demonstration in which they had participated and their resulting arrests and detentions. Furthermore, relying notably on Article 6 §§ 1 and 3 (right to a fair trial / right to adequate time and facilities for preparation of defence / right to legal assistance of own choosing), and Article 5 § 1 (right to liberty and security), they complained that the administrative proceedings

against them had fallen short of the guarantees of a fair hearing, and that their arrests and convictions had been arbitrary as they had not disobeyed any police officer's order.

Violation of Article 11 – on account of the dispersal of the demonstration and the applicants' arrest and conviction

Violation of Article 6 §§ 1 and 3 – in respect of all three applicants

Violation of Article 5 – in respect of all three applicants

Just satisfaction: EUR 12,000 to each of the three applicants in respect of non-pecuniary damage, and EUR 5,600 to the applicants jointly in respect of costs and expenses

R.T. v. Greece (no. 5124/11)*

The applicant, R.T., is an Iranian national who was born in 1976. The case concerned the conditions of his detention at the Tycherio border post.

On 29 October 2010 R.T. was arrested by the police in Alexandroupoli for illegal entry into Greek territory. On the same day he was transferred to the Tycherio border post, where he was placed in detention. His return to Turkey was ordered and then postponed because of the Turkish authorities' opposition. The Director of the Alexandroupoli police department ordered the expulsion and the continued detention of R.T. for a maximum of six months. On 25 November 2010 the authorities registered an asylum application lodged by R.T. On 10 January 2011 R.T. was expelled to Turkey and placed in detention in Edirne. R.T. was subsequently returned to Greece from Turkey and placed in detention at the Tycherio border post.

On 27 January 2011 he signed a solemn declaration expressing his wish to withdraw his asylum application in respect of Greece and to "return to his home country". On 1 February 2011 he requested the cancellation of the decision ordering his detention and expulsion, and expressed his desire to return to Iraq in order to attend the funeral of his five-year-old son. He affirmed that, were he to be expelled to Iran, he was liable to be persecuted for political reasons. The President of the Administrative Court acceded to his request and ordered his release from detention, inviting him to leave Greece within 30 days.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), R.T. complained of his conditions of detention at the Tycherio border post. Relying on Article 3 and Article 13 (right to an effective remedy) he notably complained of the shortcomings in the authorities' system for considering his asylum application. Relying on Article 5 § 1 (right to liberty and security), he complained in particular about his arbitrary detention, which he considered to be the result of the authorities' initial refusal to register his asylum application, continuing even after the registration of the application when expulsion had been no longer possible. Lastly, relying on Article 5 § 4 (right to a speedy decision by a court on the lawfulness of his detention), he complained of the ineffective judicial review of his detention.

Violation of Article 3 – as concerns the conditions of detention at the Tycherio border post

Violation of Article 13 in conjunction with Article 3 – as concerns the shortcomings in the asylum procedure

No violation of Article 5 § 1

Violation of Article 5 § 4

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

Mitrova and Savik v. “The former Yugoslav Republic of Macedonia” (no. 42534/09)

The applicants, Spaska Mitrova and Suzana Savik, mother and daughter, are Macedonian nationals who were born in 1983 and 2007 respectively and live in Gevgelija (‘The former Yugoslav Republic of Macedonia’). Ms Mitrova is also a Bulgarian national.

The complaint relates to several decisions (administrative, criminal, and civil) regulating the contact and custody rights of Suzana Savik, the second applicant. Following her parents’ divorce in May 2007, Suzana, four months old at the time, was placed in her mother’s custody. The contact rights of her father were determined by administrative decisions issued by a social welfare centre. Following the mother’s repeated refusals to allow the father to meet their child despite those decisions, she was convicted in two separate sets of proceedings in July and December 2007. In both proceedings, she was given a suspended prison term. After that, the welfare centre issued further decisions ordering increased contact between father and child. However, the mother continued to prevent the father from seeing his daughter and, as a result, she was prosecuted and convicted in July 2008 for a third time. Having regard to the fact that the earlier suspended prison terms had not deterred her from reoffending, she was sentenced to three months’ imprisonment. The child was placed with the father from 30 July 2009, when the mother started serving her prison sentence. Following her release on 8 October 2009, the welfare centre decided on arrangements for her contact with the child and they met each other for the first time on 19 February 2010. The welfare centre gradually increased the amount of contact until the mother eventually regained custody after February 2011 when the father’s custody claim before the civil courts – launched in August 2008 – was finally dismissed. In March 2012 the Supreme Court, however, overturned the lower courts’ judgments, the decisive reason being the mother’s refusal to allow the father to see the child between May 2007 and December 2008 and that it was in the child’s best interests if the father were to be given custody. Most recently, following that judgment, the welfare centre has determined new living arrangements based on an agreement between the parents, under which the daughter lives with her mother during the week and her father at the weekend. This agreement is still currently in force.

Relying on Article 8 (right to respect for private and family life), the applicants complained about the mother’s custodial sentence, the welfare centre’s failure to determine the mother’s contact rights for several months during and immediately after her imprisonment, and the Supreme Court’s judgment revoking custody of her daughter.

No violation of Article 8

Karpylenko v. Ukraine (no. 15509/12)

The applicant, Zoya Karpylenko, is a Ukrainian national who was born in 1957 and lives in Kyiv.

The case concerned the death of Ms Karpylenko’s 27-year-old son of HIV-related illnesses in detention and an allegation that he had been ill-treated.

Ms Karpylenko’s son, K., was arrested in December 2009 on suspicion of robbery and placed in custody pending trial. He tested positive for HIV in May 2010 and, X-rayed in April 2011, was found to be suffering from pulmonary tuberculosis, the most widespread AIDS-related disease in Ukraine. Following deterioration in his health in October 2011, K. was urgently hospitalised. He died on 7 November 2011. The day after, the police inspected K.’s body, concluding that there was no sign of a violent death. The autopsy subsequently established that K. had died of HIV-related diseases.

Ms Karpylenko lodged a complaint with the prosecuting authorities about her son’s death and requested an investigation. In November and December 2011, the authorities refused to open an investigation, concluding that there was nothing to show that her son had been the victim of a criminal offence. Ms Karpylenko subsequently complained about the ineffectiveness of the

investigation, submitting that it had at no point assessed whether the medical care provided to her son had been adequate. Most recently, in August 2012, the prosecuting authorities decided that there were no grounds for opening a criminal case.

Ms Karpynenko also complained to the prosecuting authorities that her son had been ill-treated on 8 April 2010 during his detention and, having sustained serious injuries, had had to be hospitalised and have surgery to remove his spleen. The authorities refused to institute criminal proceedings against police officers for ill-treating K. on two occasions due to lack of evidence, before eventually opening a criminal case against unidentified individuals in March 2011. The investigation, apparently stalled from 2012 onwards before being formally relaunched in March 2014, has so far failed to establish what happened to Ms Karpynenko's son.

Relying in particular on Article 2 (right to life) and Article 3 (prohibition of inhuman or degrading treatment), Ms Karpynenko blamed the authorities for her son's death, submitting that he had not been provided with adequate medical care in detention, and alleged that he had been ill-treated in custody. She also alleged that the respective investigations into her son's ill-treatment and death had been inadequate.

Violation of Article 2 (right to life) – in respect of K.

Violation of Article 2 (investigation)

Violation of Article 3 (treatment) – in respect of K.'s ill-treatment in detention

Violation of Article 3 (investigation)

Just satisfaction: EUR 8,000 (non-pecuniary damage) and EUR 2,000 (costs and expenses)

Pomilyayko v. Ukraine (no. 60426/11)

The applicant, Svitlana Pomilyayko, is a Ukrainian national who was born in 1968 and lives in Kharkiv (Ukraine). The case concerned her alleged torture by police officers while in custody and the failure of the domestic authorities to effectively investigate her complaints about her ill-treatment.

On 8 November 2008 Ms Pomilyayko voluntarily attended the police station to be questioned regarding an alleged theft. She alleges that at the police station she was taken into an office by a senior detective officer who pushed her inside, twisted her arms behind her back and handcuffed her. She was then intimidated by three male officers. When she failed to confess to the theft, the officers made her sit on a chair, put a plastic bag over her head and strangled her. They struck her on her head, face and mouth so that she could not bite through the bag. Ms Pomilyayko fainted several times and urinated involuntarily.

On 9 November 2009, following her release from custody, Ms Pomilyayko was admitted to hospital and underwent in-patient hospital treatment for, amongst other things, a closed head injury, concussion, soft tissue contusions on the head, upper and lower limbs and bruising of the abdominal wall. Ms Pomilyayko was discharged from hospital on 27 November 2008 and remained on sick leave until 19 December 2008.

On 9 November 2009 the hospital authorities informed the police about Ms Pomilyayko's injuries and on 10 November she complained herself. On 12 December 2008 a criminal case was opened. A forensic medical expert evaluation was carried out between 27 November 2008 and 26 January 2009 which noted Ms Pomilyayko's injuries but stated that it was impossible to establish when they had been inflicted. The expert also dismissed the original doctors' diagnosis of closed head injury and concussion as being a personal opinion and not supported by clinical data. On 4 February 2010 the investigator closed the criminal case against the police officers citing a lack of proof. This decision was quashed by the court on 21 December and subsequently upheld by the Court of Appeal on 13 January 2011. In March and May 2011 Ms Pomilyayko enquired about the progress of the investigation. She has not received a response.

Relying on Article 3 (prohibition of torture and of inhuman or degrading treatment), Ms Pomilyayko complained that her ill-treatment at the police station had amounted to torture and that there had been no effective investigation into her complaint.

Violation of Article 3 (torture)

Violation of Article 3 (investigation)

Just satisfaction: EUR 20,000 (non-pecuniary damage) and EUR 850 (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.