



Judgments of 26 January 2016

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

five Chamber judgments are summarised below; for two others, in the cases of *İasir v. Belgium* (application no. 21614/12) and *Alpar v. Turkey* (no. 22643/07), separate press releases have been issued;

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

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

Balakin v. the Republic of Moldova (application no. 59474/11)

The applicant, Alexandr Balakin, is a Moldovan national who was born in 1962 and lives in Chişinău. The case concerned his complaint that his detention on remand had been unlawful.

On 21 August 2009, Mr Balakin was arrested and charged with the offence of producing and putting into circulation counterfeit money. He was remanded in custody pending the criminal investigation and trial. His detention was initially prolonged every month and later every three months on the basis that he had been accused of a serious offence, that the case was complex and that, if released, he might interfere with the investigation, collude with other co-accused, abscond or re-offend. Mr Balakin was held in pre-trial detention until 30 January 2012 when he was convicted and sentenced to seven years' imprisonment.

Relying in particular on Article 5 § 3 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial) of the European Convention on Human Rights, Mr Balakin complained that his length of detention on remand had been excessive and that it had not been based on relevant and sufficient grounds. He also complained under Article 34 (right of individual petition) that he was subjected to pressure from the State authorities in order to oblige him to withdraw his application from the Court.

Violation of Article 5 § 3

No violation of Article 34

Just satisfaction: The applicant did not submit a claim for just satisfaction within the time-limit allowed.

Cîrnici v. Romania (no. 35030/14)*

The applicant, Vasile Cîrnici, is a Romanian national who was born in 1980 and is currently held in Brălia Prison (Romania).

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

The case concerned Mr Cîrnici's conditions of detention in, successively, police premises and various prisons.

Placed in detention on 21 May 2013, then sentenced to four years' imprisonment for theft, Mr Cîrnici was initially held in the premises of the Galați General Inspectorate of Police, where he alleges that he was placed with five other detainees in a cell measuring 18 m², which had an open toilet and insufficient natural light.

In June 2013 Mr Cîrnici was transferred to Galați Prison. He alleges that his cell, measuring 30 m², held 14 other detainees and that hot water was available for only two 30-minute periods per week. In November 2013 Mr Cîrnici was moved to Satu Mare Prison and placed in a cell measuring 42 m², with 16 other prisoners. He complains, in particular, about the lack of hygiene and of space, alleges that he had to queue to obtain access to the WC and that the prisoners had hot water only twice a week, for one hour. In July 2014 Mr Cîrnici was again transferred to Brălia Prison, where the prisoners were sometimes obliged to sleep two to a bed or had to remain lying down on the bed, since it was too close to the ceiling for them to sit up. He asked for a vegetarian diet, but the authorities had not replied to his request. In addition, he was allegedly placed in a cell for smokers although he does not smoke.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Cîrnici complained in particular of the poor conditions of detention in the various establishments in which he had been placed and alleged that he continued to suffer from such conditions in Brălia Prison.

Violation of Article 3 – on account of prison overcrowding

Just satisfaction: 4,800 euros (EUR) (non-pecuniary damage)

Muncaciu v. Romania (no. 12433/11)*

The applicant, Sava-Dafinel Muncaciu, is a Romanian national who was born in 1976 and lives in Cluj-Napoca (Romania).

The case concerned civil proceedings during which the other party's pleadings had not been communicated to Mr Muncaciu and the fact that the latter had been unable to attend the only hearing held by the court, his request for an adjournment having been disregarded.

In October 2015 Mr Muncaciu lent three hundred thousand euros to the spouses Mr and Ms G., with whom he contracted a loan agreement that was authenticated by a notary and secured by two buildings which had been entered in the land register. Not having received payment when the debt fell due, Mr Muncaciu applied for enforcement of the contract. An auction was organised and the two buildings were awarded to Mr Muncaciu. A few days later the public finance authorities challenged the enforcement procedure, requesting that all of the measures taken, and the property-based security for the loan, be set aside. On the basis of a final decision by the court, the authorities also applied for the suspension of the loan agreement, on the ground that Mr and Ms G. had lost their title to the two buildings. The court granted that request.

Mr Muncaciu lodged an appeal with the Cluj County Court, which scheduled a hearing for 1 September 2010. The respondent party submitted its pleadings, asking that the case be heard in their absence; these pleadings were not communicated to Mr Muncaciu. In the meantime, Mr Muncaciu had requested that the hearing be postponed, on health grounds and to allow him to change the lawyer who was representing him. However, the hearing was held on the date initially scheduled, and in the absence of both parties. On the same date a final judgment was issued, dismissing Mr Muncaciu's appeal. He was subsequently informed that his request for adjournment did not bear the court's registration stamp and that it had merely been stapled to the front of the case file.

Relying on Article 6 § 1 (right to a fair hearing), Mr Muncaciu complained in particular that the court had failed to communicate to him the other party's pleadings before it reached its decision.

Violation of Article 6 § 1

Just satisfaction: EUR 900 (non-pecuniary damage) and 5,396 Swiss Francs (CHF) and 300 Romanian Lei (RON) (costs and expenses)

R. v. Russia (no. 11916/15)

The applicant, Mr R., is a Kyrgyzstani national who was born in 1991. He is currently detained in a special facility for temporary detention of foreign nationals in Moscow. The case essentially concerned his threatened expulsion to Kyrgyzstan.

Mr R. is an ethnic Uzbek who lived in Jalal-Abad Region, Kyrgyzstan, until fleeing to Russia in June 2010 following mass disorders and inter-ethnic clashes between ethnic Uzbeks and Kyrgyz. During the rioting he had been wounded by a Molotov cocktail and spent almost two weeks in hospital on account of severe burns. In 2012 the Kyrgyzstan authorities opened a criminal case against Mr R. charging him with a number of violent crimes allegedly committed in the course of the riots in June 2010. His detention was ordered in his absence.

In January 2015 Mr R. was arrested in Moscow for not carrying an identity document and, placed in a detention centre for aliens, was subsequently found guilty of an administrative offence. His detention was ordered until his administrative removal from Russia. He appealed in February 2015 arguing that he would be subjected to ill-treatment in Kyrgyzstan like many other ethnic Uzbeks. His appeal was ultimately dismissed by the domestic courts on 20 March 2015. Mr R.'s expulsion was, however, stayed 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 to Kyrgyzstan whilst the Court was considering his case.

In parallel proceedings brought by Mr R. he applied for refugee status, arguing that he would face persecution in Kyrgyzstan based on his ethnic origin. His request was refused in March 2015.

Meanwhile, on 24 February 2015 Mr R. alleged that officers in the detention centre severely beat him with rubber-truncheons on his back, buttocks and heels. On 26 February 2015 his lawyers reported the beatings, emphasising that the medical staff of the detention centre had refused to log his injuries. The complaint was forwarded to the investigation department, but it appears that to date no investigation has been instituted.

Relying on Article 3 (prohibition of torture and of inhuman or degrading treatment), Mr R. complained that, should he be expelled to Kyrgyzstan, he would face a serious risk of ill-treatment due to his Uzbek ethnic origin and that he had been beaten by police officers at the detention centre on 24 February 2015. Also relying on Article 5 § 1 (f) (right to liberty and security) and Article 5 § 4 (right to have lawfulness of detention decided speedily by a court), Mr R. complained that there had been no time-limit on his detention pending administrative removal or legal avenues to obtain judicial review of its lawfulness.

Violation of Article 3 – in the event of Mr R.'s removal to Kyrgyzstan

Violation of Article 3 (treatment)

Violation of Article 3 (investigation)

Violation of Article 5 § 4

Violation of Article 5 § 1

Interim measure (Rule 39 of the Rules of Court) – not to expel or otherwise remove Mr R. to Kyrgyzstan or another country – still in force until judgment becomes final or until further order.

Just satisfaction: EUR 26,000 (non-pecuniary damage) and EUR 5,300 (costs and expenses)

Salikhova and Magomedova v. Russia (no. 63689/13)

The applicants, Ruzmay Salikhova and Rapiyat Magomedova, are Russian nationals who were born in 1962 and 1994 respectively and live in Makhachkala (Republic of Dagestan, Russia). The case notably concerned the applicants' allegations that their son and husband, Sakhrab Abakargadzhiev (born in 1990), had been abducted by the security forces in Dagestan and had subsequently disappeared.

On 20 May 2013 Sakhrab Abakargadzhiev, driving to visit relatives, was stopped in the street and was abducted by a group of eight armed men dressed in civilian clothes and driving civilian vehicles. The applicants have had no news of their relative since his abduction. A burnt male corpse was subsequently found in July 2013 and identified by the authorities as being the applicants' relative. The applicants disputed that conclusion, Ms Salikhova stating that, when asked to identify the corpse, she had only been shown a photograph of the body which she did not recognise as being that of her son.

The applicants, immediately alerted about the abduction, informed the authorities and gave statements to the police who inspected the crime scene on 3 June 2013 and took fingerprints from Mr Abakargadzhiev's car on 6 June 2013. A criminal case was thus opened on 14 June 2013. Throughout the ensuing investigation the applicants consistently alleged that Dagestani law-enforcement officers were responsible for the abduction, stating that they had been following their relative, who they suspected of illegal activities, for about 18 months prior to his disappearance. A number of steps were taken: notably, both applicants were questioned on a number of occasions, a local resident – who had filmed the abduction from his balcony – was questioned on 21 June 2013 and an on-duty police officer who had been called to examine the crime scene was also questioned on 28 October 2013. In addition, the video footage of the abduction was seized but, following a voice analysis of what was thought to be one of the abductors (allegedly a law-enforcement officer), experts concluded that the voice was not fit for identification. An internal police inquiry carried out in November 2013 into the applicants' allegation of law-enforcement agents' involvement in the disappearance concluded that it was impossible to clarify the situation as there were significant discrepancies in the statements obtained. Most recently, the investigation was resumed in January 2014 after having been suspended for a few months. The proceedings are currently still pending.

Relying in particular on Article 2 (right to life), the applicants complained that their relative had disappeared after having been detained by the security forces and that the domestic authorities' ensuing investigation had been ineffective.

No violation of Article 2 (right to life) – in respect of Sakhrab Abakargadzhiev

Violation of Article 2 (investigation)

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