



Judgments concerning Belgium, France, Germany, Greece, Russia and Ukraine

The European Court of Human Rights has today notified in writing the following ten Chamber judgments¹ none of which is final. The judgments in French are indicated with an asterisk (*).

The Court has also delivered today judgments in the cases of Brosa v. Germany (application no. 5709/09) and Mladina d.d. Ljubljana v. Slovenia (no. 20981/10), for which separate press releases have been issued.

Paposhvili v. Belgium (application no. 41738/10)*

The applicant, Georgie Paposhvili, is a Georgian national who was born in 1958 and lives in Brussels. The case concerned a decision to return the applicant to Georgia and ban him from re-entering Belgian territory. Mr Paposhvili arrived in Belgium on 25 November 1998, accompanied by his wife and the latter's six-year-old child. The couple subsequently had a child in August 1999 and another one in July 2006. Between 1998 and 2007 Mr Paposhvili was convicted of a number of offences, including robbery and participation in a criminal organisation. While serving his various prison sentences, Mr Paposhvili was diagnosed with a number of serious medical conditions, including chronic lymphocytic leukaemia and tuberculosis, for which he was treated in hospital. In addition, he submitted several unsuccessful applications for regularisation of his administrative status on exceptional or medical grounds. In August 2007 the Minister for the Interior issued an order for Mr Paposhvili's expulsion from Belgian territory and barred him from re-entering the country for ten years on account of the danger he posed to public order. The order became enforceable once Mr Paposhvili completed his sentence but was not in fact enforced, as he was still undergoing medical treatment. On 7 July 2010 the Aliens Office issued an order for him to leave the country, together with an order for his detention. He was transferred to a secure facility for illegal immigrants with a view to his return to Georgia and a laissez-passer was issued for that purpose. On 23 July 2010 Mr Paposhvili applied to the European Court of Human Rights for an interim measure under Rule 39 of its Rules of Court suspending his removal; the request was granted. He was subsequently released. The order for him to leave Belgian territory was postponed several times. In November 2009 his wife and her three children were granted indefinite leave to remain. Relying on Articles 2 (right to life) and 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, the applicant alleged that, if deported to Georgia, he would face a risk of premature death as well as a real risk of being subjected to inhuman or degrading treatment or punishment on the ground that the medical treatment he needed did not exist or was unavailable in the country. Lastly, under Article 8 (right to respect for private and family life) of the Convention, he complained that his return to Georgia and exclusion from Belgium for 10 years would result in separation from the rest of his family, who had been granted leave to remain in Belgium.

No violation of Article 2 or Article 3 – in the event of the applicant's being removed to Georgia

No violation of Article 8

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

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

Guerdner and Others v. France (no. 68780/10)*

The applicants are twelve French nationals who were born between 1958 and 2007 and belong to the Traveller community. The case concerned the death of Joseph Guerdner, a member of the applicants' family, who had been taken into police custody and was killed by a gendarme while attempting to escape. In May 2008 Joseph Guerdner was arrested and taken into custody at Brignoles gendarmerie station following an investigation into offences of armed robbery, kidnapping and false imprisonment, committed as part of a gang. At the end of a police interview, he managed to open a window and jump out of the building where he was being held. A gendarme fired several shots in his direction. Joseph Guerdner died of gunshot wounds shortly afterwards. In a judgment of 17 September 2010 the Assize Court acquitted the gendarme on the grounds that his actions had been prescribed or authorised by legislation or regulations. Relying on Article 2 (right to life), the applicants alleged that their relative had been killed without any justification and that no independent investigation or impartial trial had taken place to establish the circumstances of the death.

No violation of Article 2 (right to life) – with regard to the domestic legislative framework governing the use of force

Violation of Article 2 (right to life) – on account of the use of lethal force

No violation of Article 2 (investigation)

Just satisfaction: The Court awarded 50,000 euros (EUR) jointly to Joseph Guerdner's wife and three children, EUR 10,000 to his mother, EUR 5,000 to each of his brothers and sisters, and EUR 2,500 to his aunt, in respect of non-pecuniary damage, and EUR 15,000 to all applicants jointly in respect of costs and expenses.

Schatschaschwili v. Germany (no. 9154/10)

The applicant, Swiadi Schatschaschwili, is a Georgian national who was born in 1978 and lives in Georgia. In April 2008 he was convicted by a German court of two counts of aggravated robbery in conjunction with aggravated extortion by means of coercion – committed with others in October 2006 in Kassel and in February 2007 in Göttingen – and sentenced to nine years and six months' imprisonment. As regards the offence allegedly committed in Göttingen, the trial court relied in particular on the witness statements by the two victims of the crime in the course of police interrogations at the pre-trial stage, which were read out during the trial. Shortly after their examination, the witnesses had left Germany and subsequently refused to testify at Mr Schatschaschwili's trial, stating that they were traumatised by the crime. Finally, in October 2009 the Federal Constitutional Court declined to consider Mr Schatschaschwili's constitutional complaint. Relying on Article 6 §§ 1 and 3 (d) (right to a fair trial and right to obtain attendance and examination of witnesses), he complained that his trial had been unfair as neither he nor his counsel had had an opportunity at any stage of the proceedings to question the only direct witnesses of the crime allegedly committed in February 2007.

No violation of Article 6 § 1 read in conjunction with Article 6 § 3 (d)

Adamantidis v. Greece (no. 10587/10)*

The applicant, Athanasios Adamantidis, is a Greek national who was born in 1984 and lives in Salonika (Greece). The case concerned the conditions of detention at Lefkos Pyrgos police station and the Salonika police headquarters. In October 2009, criminal proceedings were instituted against Mr Adamantidis for attempted robbery. The judge ordered his detention pending trial. He was detained at Lefkos Pyrgos police station until 16 November 2009, before being transferred to the Salonika police headquarters, where he remained until 29 January 2010. The applicant alleged that

the conditions of detention at Lefkos Pyrgos police station and the Salonika police headquarters had been in breach of Article 3 (prohibition of inhuman or degrading treatment).

Violation of Article 3 – as regards the applicant’s conditions of detention

Just satisfaction: EUR 6,500 (non-pecuniary damage) and EUR 1,500 (costs and expenses)

Kavouris and Others v. Greece (no. 73237/12)*

The applicants are seven Greek nationals, a Bulgarian national and a Romanian national, who were born between 1948 and 1989 and were all prosecuted for various criminal offences. The case concerned the conditions of detention at the Salonika prisoner transfers department. On various occasions the applicants lodged complaints with the public prosecutor under Article 572 of the Code of Criminal Procedure on account of the conditions of their detention. No action was taken on their complaints. The applicants complained that the conditions of their detention breached Article 3 (prohibition of inhuman or degrading treatment). They further complained, under Article 13 (right to an effective remedy), that the domestic legal system had not afforded them an effective remedy in respect of the conditions of their detention.

Violation of Article 3 – as regards the applicant’s conditions of detention

Violation of Article 13

Just satisfaction: EUR 5,000 to each applicant (non-pecuniary damage), and EUR 1,500 to all applicants jointly (costs and expenses)

Lici v. Greece (no. 69881/12)*

The applicant, Albert Lici, is an Albanian national who was born in 1984 and is currently being held in Salonika Prison. The case concerned the conditions of detention at the police headquarters and the Aliens Directorate premises in Salonika. Mr Lici was arrested on 24 April 2012 on suspicion of involvement in thefts carried out as part of a gang and possession of drugs, and was placed in pre-trial detention at the Salonika police headquarters. He was held there from 24 April to 11 June 2012, and later from 1 August to 12 November 2012. In between these two periods he was detained at the Aliens Directorate premises in Salonika Prison for lack of space. On 4 September 2012 he lodged a complaint with the public prosecutor concerning the conditions of his detention and asked to be transferred to a prison. He received no reply. He was transferred to Salonika Prison on 12 November 2012. Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Lici complained about the conditions of detention at the police headquarters and the Aliens Directorate premises in Salonika. He further complained, under Article 13 (right to an effective remedy), that the domestic legal system had not afforded him an effective remedy.

Violation of Article 3 – as regards the applicant’s conditions of detention

Violation of Article 13

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

Gayratbek Saliyev v. Russia (no. 39093/13)

The applicant, Gayratbek Saliyev, is a Kyrgyz national and an ethnic Uzbek who was born in 1988 and is currently staying in the Moscow Region, Russia. The case concerned proceedings for his extradition to Kyrgyzstan. Having arrived in Russia in July 2010, he was arrested by the Russian police in March 2012, as he was wanted in Kyrgyzstan for a number of violent offences allegedly committed during inter-ethnic riots in southern Kyrgyzstan in June 2010. He was subsequently remanded in detention pending extradition, which was extended on several occasions until his release in September 2013. Mr Saliyev’s application for refugee status in Russia was refused and his appeal

against the order for his extradition was rejected by a decision eventually upheld in June 2013. His extradition was stayed following an interim measure applied by the European Court of Human Rights under Rule 39 of its Rules of Court, indicating to the Russian Government that Mr Saliyev should not be extradited until further notice. Mr Saliyev complained in particular that his extradition to Kyrgyzstan would expose him to a real risk of treatment in violation of Article 3 (prohibition of torture or inhuman or degrading treatment), notably because he belonged to a group – of ethnic Uzbeks suspected of involvement in the violence of June 2010 – who was systematically being tortured by the Kyrgyz authorities. Further relying on Article 5 § 4 (right to have lawfulness of detention decided speedily by a court), he complained in particular of the length of the appeal proceedings he had brought against two of the orders for his detention.

Violation of Article 3 – in the event of the applicant's being extradited to Kyrgyzstan

Violation of Article 5 § 4 – on account of the length of the proceedings in the applicant's appeals against the two detention orders

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

Just satisfaction: EUR 5,000 (non-pecuniary damage) and EUR 6,100 (costs and expenses)

Ismailov v. Russia (no. 20110/13)

The applicant, Khamidullo Ismailov, is an Uzbek national who was born in 1980. He is currently detained in a special detention facility in Balakhna, in the Nizhniy Novgorod Region (Russia). He arrived in Russia in April 2011 to look for employment. He was arrested in September 2012 by the Russian authorities in the Nizhniy Novgorod Region at the request of the authorities in Uzbekistan, where he was wanted on suspicion of membership in an extremist organisation and a terrorist organisation. He was placed in detention pending extradition, released in March 2013, only to be re-arrested shortly afterwards. On the day of his re-arrest, a court found that Mr Ismailov had been residing in Russia in breach of the immigration laws. The court ordered his administrative removal, which was suspended following an interim measure applied on 22 March 2013 by the European Court of Human Rights under Rule 39 of its Rules of Court. The extradition proceedings were discontinued at a later date following the Russian Prosecutor General's refusal to grant the extradition request. In parallel proceedings, Mr Ismailov's application for refugee status in Russia was rejected by a decision of December 2012, eventually upheld in October 2013. He remains in detention pending administrative removal. Mr Ismailov complained, in particular, that his removal to Uzbekistan would expose him to a real risk of treatment in breach of Article 3 (prohibition of torture or inhuman or degrading treatment). Relying on Article 5 § 4 (right to have lawfulness of detention decided speedily by a court), and Article 5 § 1 (f) (right to liberty and security), he further complained that there was no effective procedure by which he could challenge his continued detention and maintained that his detention since 13 March 2013 – when he was re-arrested – had been unlawful.

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

Violation of Article 5 § 4 – on account of the unavailability of any procedure for a judicial review of the lawfulness of the applicant's detention pending administrative removal

Violation of Article 5 § 1 (f) – on account of the applicant's detention pending administrative removal

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

Just satisfaction: EUR 5,000 (non-pecuniary damage) and EUR 7,750 (costs and expenses)

Lyubov Stetsenko v. Russia (no. 26216/07)

The applicant, Lyubov Stetsenko, is a Russian national who was born in 1923 and lives in Voronezh (Russia). The case concerned the non-enforcement for more than 15 years of a judgment of March 1995 ordering the local town council to provide Ms Stetsenko, a disabled war veteran, with social housing. Relying in particular on Article 6 § 1 (right to a fair hearing within a reasonable time), Ms Stetsenko alleged notably that the judgment of March 1995 had never been fully enforced as the four-room flat she had eventually been allocated was smaller than what she was entitled to and that, before moving into that flat, she had had to live for more than six years with four other members of her family in a 31 square metre flat.

Violation of Article 6 § 1

Just satisfaction: EUR 6,000 (non-pecuniary damage)

Anatoliy Rudenko v. Ukraine (no. 50264/08)

The applicant, Anatoliy Rudenko, is a Ukrainian national who was born in 1955 and lives in Kryvyi Rig (Ukraine). The case concerned his pre-trial detention and ensuing involuntary psychiatric confinement. Mr Rudenko was arrested in June 2007 and placed in pre-trial detention pending two sets of criminal proceedings against him on suspicion of interfering with gas pipeline repairs and of extortion of a local politician. The national courts ultimately discontinued the proceedings against him in April 2011 on account of his mental health and ordered his psychiatric internment. He was transferred to a hospital in Geykivka, in the Dnipropetrovsk region, where he remained until being discharged in October 2012. Mr Rudenko made a number of complaints under, in particular, Article 5 §§ 1 (c) and (e), 3 and 4 (right to liberty and security), alleging that part of his pre-trial detention – from 17 August to 17 September 2007 – had been unlawful and without judicial review, that his total pre-trial detention – lasting more than three years – had been excessively long and that his confinement in a psychiatric hospital had been unnecessary and ordered by the authorities so as to punish him for his political activities.

Violation of Article 5 § 1 (c)

Violation of Article 5 § 1 (e) – on account of the applicant's admission to the Geykivska Hospital and his detention there

Violation of Article 5 § 3

Violation of Article 5 § 4

Just satisfaction: EUR 18,000 (non-pecuniary damage) and EUR 2,150 (costs and expenses)

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Press contacts

echrpess@echr.coe.int | tel: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

Jean Conte (tel: + 33 3 90 21 58 77)

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.