



Chamber judgments concerning Austria and Russia

The European Court of Human Rights has today notified in writing the following three Chamber judgments¹, none of which is final. These judgments are available only in English.

Safai v. Austria (application no. 44689/09)

The applicant, Hanif Safai, is an Afghan national who was born in 1983. His current place of residence is unknown. The case concerned his transfer from Austria to Greece. Having travelled from Afghanistan via Iran to Greece, Mr Safai arrived in Austria with his wife in August 2008 and applied for asylum. He stated that the couple had stayed for a few months in Greece, spending part of the time in public parks. He had attempted to apply for asylum but had been beaten by police when queuing to submit an application. He further submitted that he was threatened in Afghanistan by the Taliban, who had kidnapped two of his brothers. In October 2008, the Austrian Federal Asylum Office rejected Mr Safai's asylum application and ordered his transfer back to Greece, on the grounds that under Austrian and European Union law (the "Dublin II Regulation"), Greece was responsible for examining his asylum application as it was the first EU state that he had entered. The office did not consider credible his account of his treatment in Greece. Mr Safai's appeal against the decision was dismissed by the Asylum Court and the Constitutional Court refused to deal with his complaint. On 8 April 2009 he was expelled to Greece. Mr Safai complained in particular that his transfer to Greece had exposed him to treatment contrary to Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, as the country was unable to deal properly with asylum requests and provided inadequate conditions for asylum seekers.

No violation of Article 3

Nizamov and Others v. Russia (nos. 22636/13, 24034/13, 24334/13 and 24528/13)

The applicants, Avazbek Nizamov, Khakim Dzhalalbayev, Rakhmatullo Mukhamedkhodzhayev, and Olim Dzhalalbayev, are Uzbekistani nationals who were born in 1992, 1983, 1989 and 1979 respectively and are currently detained in Moscow. The case concerned their complaint that, if returned to Uzbekistan, they would risk being subjected to ill-treatment. Having moved from Uzbekistan to Russia in 2011 and 2012 to seek employment, they were arrested in Moscow in November 2012 and placed in detention pending extradition to Uzbekistan, where they had been charged, in October 2012, with participation in an extremist religious group. The Russian General Prosecutor refused the Uzbek authorities' request for the applicants' extradition, but following their release from detention in March and April 2013, respectively, they were immediately re-arrested as illegal aliens. The district court examining their cases subsequently ordered their expulsion to Uzbekistan, the order being upheld on appeal in May 2013. In parallel proceedings, the applicants' asylum applications were rejected in February, March and April 2013, respectively. Their expulsion

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

was suspended following an interim measure applied by the European Court of Human Rights, under Rule 39 of its Rules of Court, in April 2013, indicating to the Russian Government not to expel them until further notice. Relying on Article 3 (prohibition of torture and inhuman or degrading treatment) of the Convention, the applicants complained that their removal to Uzbekistan would expose them to a risk of ill-treatment, stating in particular that the ill-treatment of prisoners, who, like themselves, were charged with membership in an extremist religious organisation, was a pervasive and enduring problem in Uzbekistan.

Violation of Article 3 – in the event of the applicants’ being removed to Uzbekistan

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

Just satisfaction: The Court held that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage the applicants might have sustained and dismissed their claim for just satisfaction.

Sergey Chebotarev v. Russia (no. 61510/09)

The applicant, Sergey Chebotarev, is a Russian national who was born in 1987 and lives in Orenburg (Russia). The case concerned his pre-trial detention and the conditions of his detention. He was initially convicted of aggravated disorderly conduct in March 2009. His case was then retried in supervisory review proceedings, during which his remand in custody was ordered on 31 August 2009. By a judgment of 5 November 2009, eventually upheld on 22 December 2009, he was convicted of the same offence and sentenced to two years’ imprisonment. Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), he alleged that the conditions in the detention facility in Orenburg, where he had been kept between September 2009 and January 2010 had been inhuman. In particular he complained: of severe overcrowding, with less than two square metres of personal space afforded to him; of the fact that the light was turned on day and night; and, of deplorable sanitary conditions, the cells being infested with insects. Further relying on Article 5 § 1 (right to liberty and security), he complained that his detention from 31 August to 5 November 2009 had been unlawful, as the trial court had not given any reasons for keeping him in custody and had failed to set a time-limit for his detention.

No violation of Article 3

Violation of Article 5 § 1

Just satisfaction: EUR 7,500 (non-pecuniary damage) and EUR 2,000 (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.