EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
issued by the Registrar of the Court

ECHR 322 (2015)
15.10.2015

Judgments and decisions of 15 October 2015

The European Court of Human Rights has today notified in writing 16 judgments[1] and 52 decisions[2]:

six Chamber judgments are summarised below; for one, in the case of *L.M. and Others v. Russia (applications nos. 40081/14, 40088/14, and 40127/14)*, a separate press release has been issued.

nine Committee judgments, concerning issues which have already been submitted to the Court, including excessive length of proceedings, and the 52 decisions can be consulted on Hudoc and do not appear in this press release.

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

Gafgaz Mammadov v. Azerbaijan (application no. 60259/11)

The applicant, Gafgaz Suleyman oglu Mammadov, is an Azerbaijani national who was born in 1953 and lives in Baku.

The case concerned Mr Mammadov's arrest, conviction and detention for five days for participating in a political rally.

On 19 June 2011 Mr Mammadov attended a demonstration in central Baku organised by the opposition group *Ictimai Palata*. The participants notably demanded free and fair elections, democratic reforms and the release of certain people arrested during previous rallies. The authorities, informed beforehand about the demonstration by the organisers, had refused to give their authorisation. Shortly after the start of the rally, the police therefore started to disperse the participants. Mr Mammadov was arrested in the early evening and taken to a police station for questioning. An administrative-offence report was drawn up for his failing to comply with the lawful order of the police during a demonstration. According to Mr Mammadov, he was never served with a copy of this report and was not given access to a lawyer after his arrest or while in police custody. After spending the night in custody, he was brought before a court which sentenced him the same day to five days' administrative detention for refusing to stop participating in an unlawful demonstration. At the hearing, which was very brief and not open to the public, Mr Mammadov was represented by a State-appointed lawyer despite his request to hire a lawyer of his own choice. In their decision the first-instance court principally relied on the police administrative-offence report and on the statement made by one of the arresting police officers, the sole witness at the hearing. Mr Mammadov's appeal against his conviction was dismissed on 24 June 2011.

Relying on Article 5 (right to liberty and security) and Article 11 (freedom of assembly and association) of the European Convention on Human Rights, Mr Mammadov complained about the police's dispersal of the demonstration and his arrest, conviction and ensuing detention for five days. He also alleged that, in the administrative proceedings against him on account of his participation in the rally, he had not had a fair or public hearing. He relied on Article 6 §§ 1 and 3

[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

[2] Committee judgments, as well as inadmissibility and strike-out decisions, are final.

(right to a fair trial/ right to adequate time and facilities for preparation of defence and right to legal assistance of own choosing).

Violation of Article 11 – on account of the dispersal of the demonstration and Mr Mammadov's arrest and conviction
Violation of Article 6 §§ 1 and 3
Violation of Article 5

Just satisfaction: 15,600 euros (EUR) (non-pecuniary damage) and EUR 2,450 (costs and expenses)

Karambelas v. Greece (no. 50369/14)*

The applicant, Theodoros Karambelas, is a Greek national who was born in 1967 and lives in Athens.

The case concerned Mr Karambelas' placement in pre-trial detention on 10 January 2014, on suspicion of committing a number of offences as part of a gang, after he had been diagnosed in 2013 with lung cancer requiring chemotherapy.

Mr Karambelas sought the lifting of the detention measure or conditional release, but the investigating judge refused. His appeal was also dismissed.

He then filed with the indictments division a medical report certifying that he was in the terminal phase of his illness and required perfect conditions of hygiene, avoiding close contact with others – conditions which were not satisfied in a prison. The indictments division extended his pre-trial detention, finding that he could be treated in the prison hospital or, should his state of health so require, in a public hospital. It also observed that Mr Karambelas had pursued his criminal activity when he had been granted conditional release in the past and that his presence was necessary for an investigation into new offences.

Mr Karambelas applied for the lifting of his detention measure or its replacement by less restrictive measures, attaching a certificate attesting to his 85% degree of disability. The investigating judge decided to grant Mr Karambelas conditional release, ordering 150,000 euros in bail and house arrest. The applicant appealed as he could not afford the bail, but the indictments division claimed that he was concealing his income.

Mr Karambelas applied again for conditional release, based on his state of health, the poor conditions of his detention and his inability to pay the bail. On 17 March 2015 the indictments division ordered that he be placed under house arrest with a prohibition on leaving the country; he was thus released on the same day.

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention, Mr Karambelas complained about the authorities' refusal to provide him with treatment and the necessary care, in view of the terminal phase of his illness.

No violation of Article 3

Abakarova v. Russia (no. 16664/07)

The applicant, Taisa Abakarova, is a Russian national who was born in 1991 and lives in Zakan-Yurt, Chechnya (Russia). The case concerned an aerial attack by the Russian military on a village in Chechnya in February 2000 which had killed Ms Abakarova's family and left her injured.

Together with her family, Ms Abakarova, eight years old at the time, attempted to leave Katyr-Yurt, after there had been airstrikes on that village. The family's car was hit by shelling. Ms Abakarova sustained a number of injuries; she lost consciousness and was taken to hospital. Only a month after the incident did she learn that her entire family – her parents, two brothers and one sister – had died as a result of the attack.

A criminal investigation into the attack was opened in September 2000. Two applications had already been considered by the European Court of Human Rights concerning the airstrike of February 2000 and the inefficiency of the criminal investigation (*Isayeva v.* Russia, no. 57950/00, Chamber judgment of 24 February 2005 and *Abuyeva and Others v. Russia*, no. 27065/05, Chamber judgment of 2 December 2010). The investigation was terminated on several occasions, on the basis of the conclusions that the airstrikes had been absolutely necessary and proportionate to the resistance of insurgent fighters, and then reopened pursuant to the victims' complaints.

In 2006 Ms Abakarova, who was being brought up by her grandmothers, learned that a criminal investigation had been opened into the attack. She informed the military prosecutor of the deaths of her five family members and of the injuries she had suffered. A minor at the time, she was then questioned and granted victim status. Ms Abakarova was not informed of the 2007 decision to close the case. The investigation was reopened in 2012, but closed again in March 2013. A summary of an expert report included in the case file concluded that the measures, which had resulted in civilian casualties, had been absolutely necessary. A list of 47 individuals killed by the airstrike contained in the document did not include the names of Ms Abakarova's family members. The appeals by another victim against the decision to close the case were ultimately unsuccessful.

Ms Abakarova complained that there had been a violation of Article 2 (right to life), in respect of herself and of her relatives who had died as a result of the attack, and on account of the ineffectiveness of the investigation. She also complained, in particular, that she had not had an effective remedy in respect of those violations, in breach of Article 13 (right to an effective remedy).

Violation of Article 2 (right to life) – in respect of Ms Abakarova and her five deceased relatives
Violation of Article 2 (investigation) – in respect of the failure to conduct an effective investigation into the use of lethal force by State agents
Violation of Article 13 in conjunction with Article 2
Just satisfaction: EUR 12,600 EUR (pecuniary damage), EUR 300,000 (non-pecuniary damage) and EUR 2,175 (costs and expenses).

Belozorov v. Russia and Ukraine (no. 43611/02)

The applicant, Aleksandr Belozorov, is a Ukrainian national who was born in 1967 and lives in the town of Feodosiya (Crimea, Ukraine). The case concerned his arrest in Ukraine and his subsequent detention and forced transfer to Russia in 2000.

Mr Belozorov was arrested at his apartment in Feodosiya, Ukraine, on 3 November 2000 by a Ukrainian and two Russian police officers in the context of a criminal investigation in Russia into the murder of a businessman. Mr Belozorov was handcuffed and his apartment was searched. According to Mr Belozorov's submissions, he then remained in the custody of the Ukrainian and Russian police, who on the next day escorted him to a local airport, where the Russian officers took the next flight to Moscow together with him. On arrival, he was formally arrested and detained on suspicion of murder. According to the Russian Government, Mr Belozorov had been taken to the Ukrainian police after the search of his apartment and released shortly after. On the next day he had bought a ticket and taken a flight to Moscow. The two Russian police officers had been tipped off about his plans and had taken the same flight; they had then arrested him at the airport in Moscow.

Mr Belozorov's detention was authorised by a decision of the district prosecutor's office in Moscow on 7 November 2000, referring to the charges of murder against him. His detention pending investigation, and later pending trial, was subsequently extended on numerous occasions. In January 2003 he was convicted of conspiracy to murder and sentenced to eight years and six months' imprisonment, the judgment being upheld on appeal in November 2003.

Following his arrest, Mr Belozorov's parents lodged complaints with various Ukrainian authorities, alleging, in particular, abuse of power and the unlawfulness of the search, arrest and detention. In

response, the prosecutor brought administrative proceedings against the officials involved, and the Ukrainian police officer who had been involved in arresting Mr Belozorov was reprimanded. However, no criminal proceedings were opened. Following a similar complaint by Mr Belozorov, the Russian prosecutor's office decided not to open criminal proceedings on the grounds that Mr Belozorov had travelled to Moscow of his own free will. His appeals were unsuccessful.

Relying on Article 5 § 1 (c) and (f) (right to liberty and security), Mr Belozorov complained that his arrest in Feodosiya, his subsequent detention and forced transfer to Moscow had been unlawful and arbitrary. Further relying on Article 8 (right to respect for private and family life and the home), he complained of the search of his apartment. He also complained under Article 5 § 3 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial) about the length of his pre-trial detention in Russia; and, under Article 5 § 4 (right to have lawfulness of detention decided speedily by a court), that he had been unable to attend two hearings concerning his detention and that there had been significant delays in examining his appeals against two of the detention orders.

Violation of Article 5 § 1 by Ukraine
Violation of Article 8 by Ukraine
Violation of Article 5 § 3 by Russia
Violation of Article 5 § 4 by Russia

Just satisfaction:

- sum to be paid by **Ukraine**: EUR 12,500 (non-pecuniary damage);

- sum to be paid by **Russia**: EUR 5,000 (non-pecuniary damage).

Nabid Abdullayev v. Russia (no. 8474/14)

The applicant, Nabid Mamadzhanovich Abdullayev, is a Kyrgyz national who was born in 1961 and lives in the town of Artyom (Primorye Region, Russia). The case concerned his complaint that his extradition to Kyrgyzstan would expose him to the risk of ill-treatment.

Mr Abdullayev, who is of Uzbek ethnic origin, left Kyrgyzstan for Russia in March 2012 and, after obtaining a work permit, started to work in the Primorye Region. According to Mr Abdullayev, he had been considered a leader of the local Uzbek community while living in Kyrgyzstan. Following inter-ethnic clashes in the region of Osh in June 2010 he was charged, in June 2011, with violent crimes. According to his submissions, law-enforcement officers started to extort money from him, threatening him with imprisonment.

In March 2013 Mr Abdullayev was arrested in Russia and placed in detention with a view to his extradition to Kyrgyzstan where an arrest warrant had been issued in the criminal proceedings against him. His appeal against the Russian authorities' extradition order was rejected in November 2013 by the regional court. The decision referred in particular to assurances by the Prosecutor General of Kyrgyzstan to the effect that Mr Abdullayev would not be subjected to torture or inhuman or degrading treatment or punishment. The decision was upheld on appeal by the Russian Supreme Court in January 2014. However, in the meantime the European Court of Human Rights had applied an interim measure, under Rule 39 of its Rules of Court, indicating to the Russian Government that Mr Abdullayev should not be extradited for the duration of the proceedings before the Court.

The order for Mr Abdullayev's detention of March 2013 was extended twice and his appeals against those orders were rejected. He was released in March 2014 in view of the interim measure applied by the European Court of Human Rights.

In parallel, Mr Abdullayev lodged a request for refugee status with the Russian Federal Migration Service in April 2013, which was rejected and his appeal eventually dismissed in May 2014. However,

he was granted temporary asylum in Russia in view of the interim measure applied by the European Court of Human Rights.

Relying on Article 3 (prohibition of torture and of inhuman or degrading treatment), Mr Abdullayev complained that, if extradited to Kyrgyzstan, he would be subjected to torture or inhuman or degrading treatment or punishment because he belonged to the Uzbek ethnic minority. He further complained, under Article 5 § 4 (right to have lawfulness of detention decided speedily by a court), that his appeals against two of the detention orders had not been examined "speedily" and that there had been no effective procedure by which he could have challenged his detention.

Violation of Article 3 – in the event of Mr Abdullayev's extradition to Kyrgyzstan
Violation of Article 5 § 4 – on account of the length of the proceedings in the appeal against the detention order of 13 September 2013
No violation of Article 5 § 4 – on account of the inability to obtain a review of the detention pending extradition after 30 January 2014

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

Just satisfaction: EUR 2,800 (costs and expenses)

Mitkova v. "the former Yugoslav Republic of Macedonia" (no. 48386/09)

The applicant, Maja Mitkova, is a Macedonian national who was born in 1954 and lives in Ohrid ("The former Yugoslav Republic of Macedonia").

The case concerned the reimbursement of Ms Mitkova's medical expenses for treatment she had received abroad for multiple sclerosis.

Ms Mitkova underwent medical treatment for multiple sclerosis in a hospital in the United States from May to June 1994. The medical expenses were covered by a bank, which had been authorised by the Ministry of Health to transfer – from the foreign currency savings account of Ms Mitkova's father – 20,000 United States dollars to the hospital in the US on the basis of a medical report issued by a clinic in Skopje stating that all possibilities for Ms Mitkova's treatment in her own country had been exhausted.

On returning to "The former Yugoslav Republic of Macedonia" after her treatment, Ms Mitkova brought two sets of administrative proceedings concerning both her request for referral for treatment abroad (which had been dismissed by the Health Insurance Fund in December 1994) and reimbursement of her medical expenses (which the insurance fund had ordered in part in September 1995). Those proceedings were joined in November 2000. After several remittals of the case by the Supreme Court due to contradictory evidence as to whether Ms Mitkova could have been treated in "The former Yugoslav Republic of Macedonia", the Administrative Court ultimately – in January 2009 – examined her case and dismissed her claim. It found that she had gone for treatment abroad without having obtained a decision from the insurance fund; and that expert medical reports from the Skopje clinic had made a proposal, not a decision on her referral. It further pointed out that she had not obtained the right to be treated abroad, as the insurance fund had found that her condition was treatable in her own country.

Relying in particular on Article 6 § 1 (right to a fair trial within a reasonable time), Ms Mitkova alleged that the administrative proceedings concerning her medical expenses abroad had been excessively long – almost 14 years – and unfair, notably because no oral hearing had been held in her case.

Violation of Article 6 – as regards the length of the proceedings
Violation of Article 6 – on account of the lack of an oral hearing

Just satisfaction: EUR 5,000 (non-pecuniary damage) and EUR 850 (costs and expenses)

Press contacts
echrpress@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)