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

Press Release
issued by the Registrar of the Court

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Judgments of 19 January 2016

The European Court of Human Rights has today notified in writing nine judgments[1]:

six Chamber judgments are listed below; for three others, in the cases of *Kalda v. Estonia* (application no. 17429/10), *Görmüş and Others v. Turkey* (no. 49085/07) and *Gülcü v. Turkey* (no. 17526/10), separate press releases have been issued.

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

M.D. and M.A. v. Belgium (application no. 58689/12)*

The applicants, M.D. and M.A., are two Russian nationals who were born in 1974 and 1976 respectively and live in Belgium.

The case concerned proceedings for the removal of a Russian couple of Chechen origin to the Russian Federation.

According to M.D., his father was murdered by supporters of a Chechen leader. In order to avenge the murder M.D.'s elder brother killed a member of that leader's family. Two months later M.D. and his wife M.A. were attacked during a birthday party, whereupon they fled to Ingushetia. They were informed by M.D.'s mother and sister that some men were looking for him, and the couple therefore left Russia. Their brother-in-law, who had remained in Chechnya, was murdered after their departure.

On their arrival in Belgium M.D. and M.A. lodged their first asylum application. The Aliens Department declared the application inadmissible on the ground, among other things, that a personal vendetta did not constitute a reason for granting asylum. The Commissioner General for Refugees and Stateless Persons upheld the refusal, finding that M.D.'s and M.A.'s account of events lacked credibility. The *Conseil d'État* dismissed their application for judicial review as both M.D. and M.A. had failed to attend a hearing. They were served with an order to leave the country. Subsequently, M.D. and M.A. submitted three further applications, in support of which they produced various notices published in the local press in which a reward for information on the whereabouts of M.D. had been offered, and also produced the brother-in-law's death certificate and a summons from the Grozny police department for M.D. to appear on suspicion of bearing illegal arms and belonging to an unlawful armed organisation. Those applications were likewise dismissed. They were served with an order to leave the country, together with an order for their detention at a designated place pending their removal; their subsequent request for a stay of execution under the extremely urgent procedure was dismissed. On 11 September 2012 the Court, having received a request for an interim measure, decided to indicate to the Belgian Government that M.D. and M.A. should not be expelled to the Russian Federation for the duration of the proceedings before the Court. Following that measure, the Ghent Court of Appeal ordered their release.

[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

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, M.D. and M.A. complained that their removal to Russia would expose them to the risk of ill-treatment.

Violation of Article 3 – were M.D. and M.A. to be returned to Russia without the Belgian authorities having first re-examined the risk they face in the light of the documents submitted in support of their fourth asylum request.

Interim measure (Rule 39 of the Rules of Court) – not to expel M.D. and M.A. to Russia – 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 the non-pecuniary damage sustained by the applicants.

Sow v. Belgium (no. 27081/13)*

The applicant, Oumou Fadil Sow, is a Guinean national who was born in 1987 and lives in Brussels (Belgium).

The case concerned the risk of Ms Sow being subjected to a further excision procedure in the event of her removal to her country of origin.

Following the death of Ms Sow's father, her mother married her paternal uncle. The latter forced Ms Sow and her sisters to undergo excision (female genital cutting). Ms Sow put up a struggle during the excision and so was only partly excised. Her uncle also forced Ms Sow to marry her cousin. Three days after the marriage she escaped. On her arrival in Belgium Ms Sow lodged an asylum application, claiming, among other things, that she had had to leave Guinea because of her forced marriage. The Commissioner General for Refugees and Stateless Persons (CGRA) denied her refugee status and subsidiary protection. The Aliens Litigation Council (CCE) upheld that decision. A few days later Ms Sow lodged a second asylum application based on the same facts and supported by new documents. Her application was once again rejected by the CGRA. The CCE upheld the latter's decision. Ms Sow was served with two orders to leave the country and on the same day was placed in a detention centre. She lodged a third asylum application, concentrating this time on her fears of being subjected once again to excision, but the Aliens Department served her with a fresh order to leave the country, refusing to consider her asylum application on the ground that the evidence provided at that stage should have been submitted together with one of her previous asylum applications. Her subsequent request for a stay of execution under the extremely urgent procedure was dismissed. Ms Sow lodged a request for an interim measure with the Court, which invited the Belgian Government not to remove her to Guinea for the duration of the proceedings before it. Ms Sow was released.

Relying on Article 3 (prohibition of inhuman or degrading treatment) and Article 13 (right to an effective remedy) of the Convention, Ms Sow complained that she risked being subjected to a further excision procedure in the event of her removal to Guinea and that no effective remedy had been available to her in respect of her complaint.

No violation of Article 3 – in the event of Ms Sow's removal to Guinea
No violation of Article 13 in conjunction with Article 3

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

Albrechtas v. Lithuania (no. 1886/06)

The applicant, Alvydas Albrechtas, is a Lithuanian national who was born in 1962. The case concerned his complaint that, in court proceedings for his detention on remand, he had not been given access to the criminal investigation file.

Mr Albrechtas was arrested in 2005 in connection with a murder. The murder had taken place ten years earlier in the heart of Vilnius and had involved the contract killing of a businessman using a car bomb. 21 members of an armed gang were subsequently convicted in October 2001 of 13 murders and 12 attempted murders: three of the armed gang were notably convicted of the car bombing and murder of the businessman. One of those men, G.B., later identified the applicant, Mr Albrechtas, as the person who had put out the contract on the businessman. In September 2002 a search for Mr Albrechtas was ordered. Following Mr Albrechtas' arrest in 2005, the courts ordered his detention pending trial, noting that the grounds for detention were the fact that he had been in hiding for over two years necessitating a search having to be carried out for him and that he had been charged with a serious crime. His pre-trial detention was subsequently extended on a number of occasions. Mr Albrechtas was ultimately found guilty in May 2012 of having put out a contract for the businessman's murder so that he would not have to repay debts he owed and was sentenced to eight years' imprisonment. He was released from prison in January 2015.

Relying in particular on Article 5 § 4 (right to have lawfulness of detention decided speedily by a court), Mr Albrechtas complained that he and his lawyer had been denied access to information regarding the grounds for placing him in pre-trial detention in May 2005. He submitted that, without access to the investigation file – in particular statements made by the main prosecution witness against him, G.B., as well as documents concerning the search for him – he could not effectively challenge the grounds for his detention. He further submitted that he had not been in hiding (there being proof to show that he had, among other things, renewed identity documents and paid taxes prior to his arrest) and questioned the credibility of the main prosecution witness, who he alleged had testified against him in order to have a reduction in his own prison sentence.

Violation of Article 5 § 4

Just satisfaction: The Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by Mr Albrechtas; it further awarded him EUR 826 in respect of costs and expenses.

G.B. v. Lithuania (no. 36137/13)

The applicant, Ms G.B., is a Lithuanian national who was born in 1975 and lives in Meckenheim (Germany).

The case concerned custody proceedings in Lithuania for her two daughters, who had been subsequently placed with their German father.

Ms G.B. married a German citizen in 2001 and they had two daughters together, in 2002 and 2003. They all lived in Lithuania. In January 2010 Ms G.B. filed for a divorce, requesting permission that her daughters reside permanently with her. Throughout the ensuing divorce and custody proceedings the parents, having a tense relationship, submitted numerous claims and counterclaims against each other concerning the place of residence of their children.

In May 2010 the courts allowed Ms G.B.'s request for a temporary protective measure, meaning that her daughters were to stay with her until the end of the custody proceedings. In June 2010 however, Ms G.B. contacted the police to complain that the girls' father had not returned them to her following a visit in Kaunas. The police established that the girls were with the father in Marijampolé. A month later the Marijampolé District Court ordered the father to return the girls to their mother. The bailiffs then made three unsuccessful attempts to enforce this decision, the third and last

attempt failing in February 2011 because the girls themselves refused to leave with their mother. The father was convicted in March 2011 for failing to comply with the court order to return his daughters to their mother and given a fine.

Ultimately, the Lithuanian courts established that after the divorce – granted in November 2011 – the two girls should reside with their father, as this was considered to be in the children's best interests. This was also the wish of the daughters, who were heard in court. Furthermore, the courts, relying on evidence from child care authorities, psychologists, the Ombudsperson for children's rights and representatives from the girls' school, also took into account that the father took proper care of his daughters, whereas the mother's contact with them was episodic even though her contact rights had not been restricted.

Relying in particular on Article 8 (right to respect for private and family life), Ms G.B. submitted that the Lithuanian authorities' failure to enforce the court decisions awarding her temporary custody had resulted in her being alienated from her daughters and eventually losing her custody rights altogether.

No violation of Article 8

Cazanbaev v. the Republic of Moldova (no. 32510/09)*

The applicant, Iurie Cazanbaev, was a Moldovan national who was born in 1957 and died in 2014. At the relevant time he lived in Chişinău (Republic of Moldova).

The case concerned allegations of ill-treatment inflicted on Mr Cazanbaev during his arrest and detention and the absence of an effective investigation.

In August 2005, under the influence of alcohol, Mr Cazanbaev threatened his next-door neighbour with a firearm and fired shots at the wall. On their arrival the police forcibly entered Mr Cazanbaev's flat and arrested him. During the search of the flat a handgun and a hunting rifle were seized. Mr Cazanbaev submitted that during his arrest the police officers had beaten him with their guns and kicked and punched him, causing vomiting and bleeding from his face and head. Mr Cazanbaev claimed that he had continued to be ill-treated at the police station and had lost consciousness. He was examined by a doctor on the day in question and was treated by an emergency medical team in the police station the next day. He attempted to commit suicide while in pre-trial detention. He was examined by a panel of forensic psychiatrists a few days later and was admitted to a psychiatric clinic, where he complained of having experienced a short psychotic episode in prison caused by the ill-treatment inflicted on him by the police officers. A neurologist diagnosed acute cranial trauma. Mr Cazanbaev had meanwhile been convicted by a court of "threatening to kill or occasion actual bodily harm". Subsequently Mr Cazanbaev lodged a complaint alleging ill-treatment. Following six decisions not to prosecute, his complaint eventually resulted in a final discontinuance order issued by an investigating judge.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), Mr Cazanbaev complained that he had been subjected to ill-treatment by police officers during his arrest and while in pre-trial detention, and that no effective investigation had been conducted into the matter.

Violation of Article 3 (ill-treatment)
Violation of Article 3 (investigation)

Just satisfaction: EUR 12,000 (non-pecuniary damage) and EUR 1,500 (costs and expenses)

Aurelian Oprea v. Romania (no. 12138/08)

The applicant, Aurelian Oprea, is a Romanian national who was born in 1943 and lives in Bucharest.

The case concerned proceedings brought against Mr Oprea for defaming the deputy rector of a State university at a press conference.

On 3 August 2005 Mr Oprea, an associate professor at the University of Agronomical Sciences and Veterinary Medicine, delivered a speech at a press conference concerning corruption in Romanian universities. The conference was organised by the European Association of University Teaching Staff in Romania of which Mr Oprea was the secretary-general. Mr Oprea talked about shortcomings in his own university, a State-financed establishment, criticising specifically his university's deputy rector for encouraging a plagiarised book, for his management of a programme of publicly funded scientific research and for accumulating too many management positions. Most of Mr Oprea's statements were subsequently repeated in an article published by the weekly newspaper *Impact în Argeş*.

As a result, in November 2005 the deputy rector lodged a joint criminal and civil complaint against Mr Oprea for defamation. The civil complaint was left unresolved. The criminal complaint was dismissed at first-instance in April 2006, the domestic courts considering that Mr Oprea had been convinced that he was revealing a case of corruption and had not intentionally wanted to damage the deputy rector's reputation. The parties lodged appeals on points of law against this decision, which were subsequently also dismissed as a direct consequence of an amendment made to the Criminal Code regarding the decriminalisation of defamation.

In a separate civil action for compensation, however, Mr Oprea was held liable for the way in which he had presented his accusations about the deputy director to journalists. The domestic courts thus ordered Mr Oprea to pay the deputy director 27,877 Romanian lei (approximately 7,470 euros) in compensation and legal expenses.

Relying on Article 10 (freedom of expression), Mr Oprea alleged that his freedom to express his concerns about education standards in Romanian universities had been breached.

Violation of Article 10

Just satisfaction: EUR 7,470 (pecuniary damage), EUR 4,500 (non-pecuniary damage) and EUR 720 (costs and expenses)

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