



Judgments and decisions of 9 July 2015

The European Court of Human Rights has today notified in writing seven judgments¹ and 42 decisions²:

six Chamber judgments are summarised below; for one other, in the case of *Martzaklis and Others v. Greece* (application no. 20378/13), a separate press release has been issued;

the 42 decisions can be consulted on [Hudoc](#) and do not appear in this press release.

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

Mafalani v. Croatia (application no. 32325/13)

The applicant, Amir Mafalani, is a Croatian national who was born in 1982 and is currently serving a 16-year prison sentence in Lepoglava (Croatia).

The case concerned his complaint of having been ill-treated by the police.

In November 2010 Mr Mafalani was convicted of having aided and abetted the murder of a journalist and another person who had both been killed by a car bomb in October 2008. His conviction was upheld in February 2012.

According to Mr Mafalani's submissions, when arrested in his flat by an antiterrorist team of the special police on 29 October 2008 the officers threw him on the floor and punched his head and body. Following his arrest he was blindfolded and taken to a remote place where he was again beaten and his head was immersed in water, which forced him into confessing to the murder. During his subsequent detention at a police station until the following evening he was tightly constrained, beaten and threatened into not complaining about his injuries – contusion and haematoma – which had been recorded by the emergency service when they came to the police station.

According to the Croatian Government, the police's antiterrorist team had ordered Mr Mafalani to lie down when they arrested him and they had applied a 'foot sweep' technique when he resisted, causing him to fall and hit his head on a table. Following his arrest he was put in a minivan and taken to the police station, where he was kept in an office, not handcuffed except just after his arrival.

Mr Mafalani lodged a criminal complaint against unidentified persons alleging ill-treatment during his arrest and detention at the police station, which was eventually rejected in March 2014 for lack of a reasonable suspicion that a criminal offence had been committed. Civil proceedings brought by Mr Mafalani against the State claiming damages in connection with his alleged ill-treatment are still pending.

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

² Inadmissibility and strike-out decisions are final.

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, Mr Mafalani complained of ill-treatment by the police and of the lack of an effective investigation in that respect.

Violation of Article 3 (investigation)

Violation of Article 3 (ill-treatment)

Just satisfaction: 16,500 euros (EUR) (non-pecuniary damage) and EUR 2,500 (costs and expenses)

Tolmachev v. Estonia (no. 73748/13)

The applicant, Kirill Tolmachev, is an Estonian national who was born in 1990 and lives in Narva (Estonia).

The case concerned the national courts' refusal to examine his complaint against a misdemeanour fine as he was absent from the hearing.

Mr Tolmachev was fined 80 euros (EUR) by a police officer in September 2012 for a breach of public order after having allegedly broken the glass panel of a bus shelter. Mr Tolmachev contested the decision to fine him before the county court, but did not appear at the court hearing held in March 2013, as he was living abroad. His counsel was present and asked the court to examine the matter in Mr Tolmachev's absence, which the court refused. Mr Tolmachev's appeal against that decision was dismissed in May 2013.

Mr Tolmachev complained that his complaint had not been examined by the court because of his absence, in breach of his right to defend himself through counsel under Article 6 §§ 1 and 3 (c) (right to a fair trial and right to legal assistance of own choosing).

Violation of Article 6 §§ 1 and 3 (c)

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 Tolmachev.

R.K. v. France (no. 61264/11)

The applicant is a Russian national. He was born in 1985 and lives in Mesnil Amelot.

The case concerned a procedure for returning a Russian of Chechen origin to the Federation of Russia.

R.K. lived in Grozny, where the Russian authorities had suspected three of his cousins of having participated or collaborated in numerous attacks in Chechnya. The authorities considered that R.K. had himself also helped his cousins. In 2002 two of them had disappeared. In 2003 R.K. was arrested and violently interrogated by the police on his activities and links with his cousins. He had been struck in the face and body. R.K. also stated that he had been struck and interrogated once again for four days in March 2004. He had then been released after his father had paid a ransom. He had left Chechnya once at the beginning of summer 2004 and then again in November 2006, arriving in France.

R.K. applied for asylum on 26 June 2007, but the French Office for the Protection of Refugees and Stateless Persons (OFPRA) rejected his application. On 21 January 2010 the Prefect of the Bas-Rhin Department served him with a refusal of residence and an order to leave French territory. On 28 February 2011 the Prefect of the Val-de-Marne Department served him with a removal order, fixing the Russian Federation as the country of destination. However, on 5 October 2011 the European Court of Human Rights decided to indicate – under Rule 39 of its rules of Court (interim measures) – to the French Government not to remove R.K. to the Russian Federation for the duration of proceedings before the Court.

Relying on Article 3 (prohibition of torture and inhuman or degrading treatment), the applicant alleged that returning him to the Russian Federation would expose him to a risk of treatment contrary to the provisions of that Article.

Violation of Article 3 – in the event of R.K.’s removal to the Russian Federation

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

Just satisfaction: The applicant did not submit a claim for just satisfaction.

El Khoury v. Germany (nos. 8824/09 and 42836/12)

The applicant, Boutros Yaacoub El Khoury, is a Lebanese national who was born in 1977. At the time of lodging his applications he was detained in Berlin’s Moabit prison.

The case concerned his detention on remand and the criminal proceedings against him.

Mr El Khoury was arrested in Portugal in August 2006 and extradited to Germany in September 2006 where arrest warrants had been issued against him on suspicion of two counts of drug trafficking and forgery of documents. He was remanded in custody where he was mostly kept in isolation from other prisoners. His detention on remand was subsequently extended on several occasions on the ground that there was a high risk of absconding. His requests to lift the arrest warrant were rejected. In September 2009 he was convicted as charged and sentenced to six years’ imprisonment. His appeal against that judgment was rejected and the Federal Constitutional Court eventually declined to consider his constitutional complaint in January 2012.

Relying on Article 5 § 3 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial), Mr El Khoury complained that the length of his detention on remand had been excessive. He further complained, under Article 6 § 1 (right to a fair trial within a reasonable time) and Article 6 §§ 1 and 3 (d) (right to a fair trial and right to obtain attendance and examination of witnesses), that the length of the criminal proceedings against him had been unreasonable and that the proceedings had been unfair as neither he nor his representative had had the opportunity to question the main witness against him at any stage of the proceedings.

Violation of Article 5 § 3

No violation of Article 6 § 1 (length of proceedings)

No violation of Article 6 §§ 1 and 3 (d)

Just satisfaction: EUR 6,000 (non-pecuniary damage) and EUR 4,000 (costs and expenses)

“Home of Macedonian Civilisation” v. Greece (no. 1295/10)

The applicants are an association called “Home of Macedonian Civilisation” and seven Greek nationals representing the association.

The case concerned the Greek authorities’ refusal to officially register the existence of the association “Home of Macedonian Civilisation”, whose primary purpose is to promote and develop Macedonian civilisation and its traditions.

On 12 June 1990 the members of the association’s provisional board of management applied to the Florina Regional Court to register their association in accordance with Article 79 of the Civil Code. This application was dismissed in a decision which was upheld by the Thessaloniki Court of Appeal and the Court of Cassation. The facts of this case are set out in the [Sidiropoulos and Others v. Grèce judgment](#) of 10 July 1998. In that judgment the Court found a violation of Article 11 of the Convention on the grounds of the refusal to register the association.

On 19 June 2003 two of the applicants decided to re-establish the “Home of Macedonian Civilisation” association, together with other persons, basing it in Florina.

On 24 July 2003 the association applied with the Florina Regional Court for registration. On 19 December 2003 that court dismissed the application on the grounds that the expression “Macedonian civilisation” used in the association’s statutes was liable to cause confusion. The court held that the word “Macedonian” could only be used in an historic or geographical sense. The court considered that there was a risk to public order because the existence of the association might be exploited by persons wishing to promote the creation of a Macedonian nation, which had never existed historically.

On 15 September 2004 the association appealed, alleging that the decision had flouted the *Sidiropoulos and Others* judgment cited above. On 16 December 2005 the Court of Appeal upheld that decision. The latter court considered that the applicants had raised questions devoid of purpose on “the Macedonian civilisation and language”. The use of the word “Macedonian” and the purpose proclaimed in the association’s statutes were at variance with public order and jeopardised the harmonious coexistence of the population of the Florina region and public law and order in Greece. The Court of Cassation dismissed the applicants’ appeal on points of law.

Relying in particular on Article 11 (freedom of assembly and association), the applicants complained of the dismissal of their application for registration.

Violation of Article 11

Just satisfaction: EUR 10,000 (non-pecuniary damage) and EUR 2,000 (costs and expenses) to the applicants jointly

A.K. v. Liechtenstein (no. 38191/12)

The applicant, A.K., is a German national who was born in 1970 and lives in St. Gallenkappel, Switzerland.

The case concerned his complaint that the judges of the Liechtenstein Constitutional Court who decided on his case had not been impartial.

Since 2004 A.K. had been involved in legal disputes with another person, F.H., concerning the property rights in shares in two companies registered in Liechtenstein. In December 2009 the regional court issued an interim injunction following a request by F.H., prohibiting the Real Property and Commercial Registry from registering certain changes concerning one of the companies which had been decided upon in an extraordinary shareholders’ meeting. Notably, at that meeting F.H. had been voted out of his office as a member of the supervisory board and A.K. had been elected managing director of the company. After the injunction had been quashed by the appeal court, the regional court issued a fresh identical interim injunction in July 2010. A.K.’s second appeal against the order was dismissed.

A.K. lodged a constitutional complaint against that decision in October 2010. In November 2011 he was informed that five judges of the Constitutional Court would deliberate on his complaint in private. A.K. then lodged motions for bias against all five judges on numerous grounds. He alleged in particular that some of the judges had in the past taken decisions to his disadvantage in related proceedings, had delayed the assignment of his case and had discriminated against German nationals. Ten days after A.K.’s submissions, on 28 November 2011, his motions for bias were dismissed by the Constitutional Court, composed of the five judges against whom the motions had been directed. In December 2011 the Constitutional Court allowed A.K.’s constitutional complaint in so far as he had complained about the unreasonable length of the proceedings and dismissed the remainder of the complaint.

Relying on Article 6 § 1 (right to a fair trial), A.K. complained that the five judges who had been called upon to decide his case had not been impartial for the reasons he had set out before the Liechtenstein Constitutional Court and because each of the challenged judges had taken part in the decisions on the motions for bias against the respective other four judges.

Violation of Article 6 § 1 – on account of the procedure that court had chosen in order to reject the applicant’s motions for bias

Just satisfaction: EUR 1,520 (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.