Open Society Justice Initiative

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CASE DIGESTS

Abuse of Detainees: Article 2 and Article 3 cases before the ECHR

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This briefing presents summaries of decisions relating to the right to life (Article 2) and the prohibition of torture and degrading treatment (Article 3) delivered by the European Court of Human Rights between January 2013 and October 2014.

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2014

Tirean v. Romania, No. 47603/10, Judgment of 28 October 2014
Mocanu and Others v Romania, GC, Judgment of 17 September 2014
Al Nashiri v. Poland, Judgment of 24 July 2014
Husayn (Abu Zubaydah) v. Poland, Judgment of 24 July 2014
Lyapin v. Russia, Judgment of 24 July 2014
Svinarenko and Slyadnev v. Russia, GC, Judgment of 17 July 2014
Bouyid v. Belgium, Judgment of 21 November 2013
Semikhvostov v. Russia, Judgment of 6 February 2014
Tali v. Estonia, Judgment of 13 February 2014
Shchiborshch and Kuzmina v. Russia, Judgment of 16 January 2014
Lindström and Mässeli v. Finland, Judgment of 14 January 2014
Jones and Others v. the United Kingdom, Judgment of 14 January 2014

2013

D. F. v. Latvia, Judgment of 29 October 2013
Keller v. Russia, Judgment of 15 October 2013
Vinter and Others v. the United Kingdom, GC, Judgment of 9 July 2013
Turluyeva v. Russia, Judgment of 20 June 2013
Salakhov and Islyamova v. Ukraine, Judgment of 14 March 2013
Gülay Çetin v. Turkey, Judgment of 5 March 2013
Karabet and Others v. Ukraine, Judgment of 17 January 2013

Cases denoted with GC have been decided by the Grand Chamber of the European Court of Human Rights. Facts on each case are gathered from the European Court of Human Rights' press releases or case summaries.

2014

Tirean v. Romania

28 October 2014, Application no. 47603/10

Violation of Article 3 – serious lack of space in prison cells amount to degrading treatment

Facts. The case mainly concerns the applicant's complaint about the conditions of his detention while serving a four-year prison sentence in Timişoara Prison (Romania) following conviction for aggravated fraud and organising a criminal group. The applicant complained of overcrowding in several prisons in which was held; no segregation of smokers and non-smokers; and poor transport conditions during transfer between facilities. He further alleged he was beaten up by police officers during the criminal investigation against him and that the medical care during his pre-trial detention was inadequate.

Reasoning. The Court concluded that the physical conditions of the applicant's detention caused him suffering that exceeded the unavoidable level of suffering inherent in detention and that attained the threshold of degrading treatment prescribed by Article 3 of the Convention. A serious lack of space in a prison cell weighs heavily as a factor to be taken into account for the purpose of establishing whether the detention conditions described are "degrading" from the point of view of Article 3. The Court found the remainder of the applicant's complaint inadmissible, however, mainly on the ground of lacking evidence.

Link to full judgment

Mocanu and Others v. Romania

17 September 2014, GC, Applications nos. 10865/09, 45886/07 and 32431/08

Violation of Article 2, Article 3 and Article 6 § 1 - The investigation into the crackdown on demonstrations in Bucharest in June 199 was defective and inadequate

Facts. The case concerned the investigation and the length of the proceedings following a violent crackdown on anti-government demonstrations in Bucharest. In June 1990 the Romanian Government undertook to end the occupation of University Square by protesters of the regime. On 13 June 1990 the security forces intervened and arrested numerous demonstrators; ultimately intensifying the demonstrations. While the army was sent into the most sensitive areas, shots were fired from inside the Ministry of the Interior, which was surrounded by demonstrators. Mr Mocanu, the first applicant's husband, was struck in the head and died. During the same evening, the second applicant, Mr Stoica, was arrested and ill-treated by uniformed police officers and men in civilian clothing inside the headquarters of the State television service. The criminal investigation into this crackdown began in 1990 with a very large number of individual files, which were subsequently joined and transferred to the military prosecutor's office in 1997.

On 18 June 2001, over eleven years after the events complained of, Mr Stoica filed a criminal complaint with a prosecutor at the military section of the prosecutor's office at the Supreme Court of Justice. An investigation was opened, but subsequently closed by a decision not to bring a prosecution. The criminal proceedings into the unlawful killing of the first applicant's husband were still pending when the European Court's judgment was delivered.

Reasoning. The Court found that the authorities responsible for the investigation had not taken all the measures which could have led to the identification and punishment of those responsible for the violent events and that the applicants had not had the benefit of an effective investigation for the purposes of the Convention. While acknowledging that the case was indisputably complex, the Court considered that the importance of the political stakes for Romanian society should have led the Romanian authorities to deal with the case promptly and without delay in order to avoid any appearance of collusion in or tolerance of unlawful acts.

The Court accepted that, in exceptional circumstances, the psychological consequences of ill-treatment inflicted by State agents could undermine victims' capacity to complain about treatment inflicted on them and could constitute a significant impediment to their right to redress. Mr Stoica, like the majority of the victims, had found the courage to lodge a complaint only several years after the events, when the investigation which had already been opened of the authorities' own motion seemed to be making progress. The Court therefore accepted Mr Stoica's explanation for the fact that he had not lodged a complaint until 2001, more than ten years after the events.

The Court held, by a majority, that there had been a violation of the procedural aspect of Article 2 (right to life - investigation) of the Convention in respect of Ms Mocanu, and a violation of the procedural aspect of Article 3 (prohibition of inhuman and degrading treatment -investigation) of the Convention in respect of Mr Stoica. The Court further held, unanimously, that there had been a violation of Article 6 § 1 (right to a fair hearing within a reasonable time) in respect of the Association "21 December 1989".

Link to full judgment

Al Nashiri v. Poland and Husayn (Abu Zubaydah) v. Poland

24 July 2014, Application no. 28761/11 and Application no. 7511/13

Facts. The facts of these cases are broadly similar. Abu Zubaydah is a Palestinian stateless, and Al Nashiri is a Saudi Arabian of Yemeni descent. Both men are suspected terrorists, and currently detained in the Internment Facility at the US Guantanamo Bay Naval Base in Cuba.

Both applicants alleged they had been apprehended by the US Central Intelligence Agency (the CIA) and transferred to a secret detention site in Poland, with the knowledge of the Polish authorities. A top report released by the US authorities in 2009 shows both applicants fell into the category of "High Value Detainees" (HVD); terrorist suspects likely to be able to provide information about current terrorist threats against the United States – against whom "enhanced interrogation techniques" (EITs) were being used.

Mr Al Nashiri's and Mr Husayn's complaints before the European Court of Human Rights related to three principal issues: their torture, ill-treatment and incommunicado detention in Poland while in US custody; their transfer from Poland; and Poland's failure to conduct an effective investigation into those events. They maintained in particular that Poland had knowingly and intentionally enabled the CIA to hold them in secret detention in the Stare Kiejkuty facility, for six and nine months respectively, without any legal basis or review and without any contact with their families. They complained that Poland had knowingly and intentionally enabled their transfer from Polish territory despite the real risk of further ill-treatment and incommunicado

detention, allowing them to be transferred to a jurisdiction where they would be denied a fair trial. Finally, they complained that Poland had failed to conduct an effective investigation into the circumstances surrounding their ill-treatment, detention and transfer from the Polish territory.

Reasoning. The Court found the allegations that they had been detained in Poland sufficiently convincing. The Court also found that Poland and had known of the nature and purpose of the CIA's activities on its territory and had cooperated with their operations. The Court found a violation of Article 3 in both the procedural and substantive aspect. Firstly, the criminal investigation in Poland had failed to fulfil the relevant requirements under Article 3. Secondly, the treatment to which the applicants had been subjected by the CIA during their detention in Poland had amounted to torture. Under Article 1 of the Convention, taken together with Article 3, Poland had been required to take measures to ensure that individuals within its jurisdiction were not subjected to torture or inhuman or degrading treatment or punishment. Therefore, it did not matter that the ill-treatment of the applicants had been administered by the CIA, and not Polish officials. Furthermore, Poland had been aware that the transfer of the applicants to and from its territory was effected by means of "extraordinary rendition". Consequently, by enabling the CIA to transfer the applicants to its other secret detention facilities, the Polish authorities exposed them to a foreseeable serious risk of further ill-treatment and conditions of detention in breach of Article 3.

The Court also found a violation of Articles 5, 8, 13, and 6 § 1. The latter was found because Poland had known that any terrorist suspect would be tried before a military commission in Guantanamo in a procedure which did not meet the standard of a "fair trial".

In the case of Mr Al Nashiri, the Court found that Poland had also violated of Articles 2 and 3 of the Convention taken together with Article 1 of Protocol No. 6 by having enabled the CIA to transfer him to the jurisdiction of the military commission and thus exposing him to a foreseeable serious risk that he could be subjected to the death penalty following his trial.

Both applicants have lodged separate complaints against two other European states, Romania and Lithuania, both cases are still pending. See their complaints here (*Al Nashiri v. Romania*) and here (*Abu Zubaydah v. Lithuania*).

Link to full judgments here (Al Nashiri) and here (Abu Zubaydah)

Svinarenko and Slyadnev v. Russia

17 July 2014, Applications nos. 32541/08 and 43441/08

Violation of Article 3 and Article 6 § 1 - Keeping remand prisoners in a metal cage during court hearings amounted to degrading treatment

Facts. Both applicants were charged with criminal offences including robbery. In a series of court appearances during the trial proceedings, they were confined in a caged enclosure measuring about 1.5 by 2.5 metres and formed by metal rods on four sides and a wire ceiling, as a security measure. Armed guards remained beside the cage.

Reasoning. The Court found that holding the applicants in a metal cage during court hearings on their case was a degrading treatment for which there could be no justification. Such treatment constituted in itself an affront to human dignity in breach of Article 3. As regards the security grounds, the Court did not find this sufficient justification, partly due to the availability of

alternative, less intrusive measures. The Court held, unanimously, that there had been a violation of Article 3 (prohibition of torture and of inhuman or degrading treatment or punishment) of the Convention; and, a violation of Article 6 § 1 (right to a fair trial within a reasonable time).

Link to full judgment

Lyapin v. Russia

24 July 2014, Application no. 46956/09

Violation of Article 3 –for acts of torture as well as failing to investigate

Facts. In April 2008 the applicant was arrested in connection with an investigation into a series of thefts. He alleged that while in police custody he was gagged, tied up with a rope, punched, kicked and subjected to electric shocks for almost 12 hours. Although an investigative committee carried out a pre-investigation inquiry into his injuries it repeatedly refused to open a criminal case, thus not allowing investigators to use the full range of investigative measures available. The applicant's appeal against the committee's tenth refusal in December 2009 was dismissed by the domestic courts, which considered that the pre-investigation inquiry had been thorough and the decision lawful and reasoned.

Reasoning. The Court concluded that the Russian investigative authorities' refusal to open a criminal case and conduct an investigation into credible allegations of torture at the hands of the police amounted to a failure to carry out an effective investigation, as required by Article 3. Such refusals can only foster a sense of impunity in police officers. A proper response by the authorities to investigate such allegations in compliance with Convention standards is essential to maintain public confidence in the authorities' adherence to the rule of law and to prevent any appearance of collusion or tolerance of unlawful acts. The Court held, unanimously, that there had been a violation of Article 3 (prohibition of torture and inhuman or degrading treatment) of the Convention on two grounds. Firstly, the police torture of Mr Lyapin, and secondly, the lack of an effective investigation into his allegations.

Link to full judgment

Bouyid v. Belgium

21 November 2013, Application no. 23380/09, referred to the Grand Chamber 24 March 2014

No violation of Article 3 – slap by police officers

Facts. The applicants, Saïd and Mohamed Bouyid, are brothers and Belgian nationals. Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), they complained of being slapped in the face by police officers, one on 8 December 2003, the other on 23 February 2004, when they were in the Saint-Josse-ten-Noode police station. They pointed out that these incidents had occurred in a context of tense relations between their family and certain police officers in that station. The brothers live next door to the police station, and alleged the tense relations with the police had started several years ago, after an altercation between a police officer from the station and one of their brothers.

Held. In the Chamber decision, the Court found no violation of Article 3, holding that the treatment in question did not reach the threshold of severity required to be considered a violation of Article 3. The case was referred to the Grand chamber in March 2014 upon the applicants' request.

Link to full judgment

Semikhvostov v. Russia

6 February 2014, Application no. 2689/12

Violation of Article 3 and Article 13 – failure to treat prisoner in manner consistent with his disability

Facts. The applicant was convicted of torture and manslaughter and sentenced to 13 and a half years' imprisonment. After having initially served his sentence in other facilities, he was transferred to a correctional facility, where he stayed for three years. Being paralysed from the waist down and confined to a wheelchair, Mr Semikhvostov alleged that the premises of that facility were unsuitable for his condition. In particular, the toilets were not accessible for disabled people; he needed assistance to use the bathhouse; and during the last year of his detention he could not take exercise outside, as he could not get into his wheelchair without assistance. Further, during this latter period his wheelchair had been taken away from him in the dormitory for security reasons. He complained that the conditions of his detention had been in breach of Article 3 (prohibition of inhuman or degrading treatment) of the Convention. Relying on Article 13 (right to an effective remedy), he further complained that he did not have an effective remedy at national level in respect of those complaints.

Reasoning. The Court found the domestic authorities had failed to treat the applicant in a safe and appropriate manner consistent with his disability. In sum, the conditions of the applicant's detention and, in particular, his lack of independent access to parts of the facility and the lack of any organised assistance with his mobility, must have caused the applicant unnecessary and avoidable mental and physical suffering amounting to inhuman and degrading treatment. The Court found there had been a violation of Article 13 and Article 3 (inhuman and degrading treatment) of the Convention.

Link to full judgment

Tali v. Estonia

13 February 2014, Application no. 66393/10

Violation of Article 3 - Use of pepper spray against prisoner in a cell was unjustified and amounted to inhuman treatment

Facts. The applicant complained of having been ill-treated by prison officers when he refused to comply with their orders. While serving a prison sentence, the applicant refused to comply with the orders of prison officers. Pepper spray, physical force and a telescopic baton were used against him in order to overcome his resistance. He was then handcuffed and later confined in a restraint bed for three hours and forty minutes. As a result he sustained a number of injuries, including haematomas and blood in his urine. Criminal proceedings against the prison guards were discontinued following a finding that the use of force had been lawful as the applicant had not

complied with their orders and had behaved aggressively. A claim for compensation filed by the applicant was dismissed.

Reasoning. The Court underlined that pepper spray is a potentially dangerous substance and should not be used in confined spaces. If by exception it needs to be used in open spaces, there should be clearly defined safeguards in place, and pepper spray should never be deployed against a prisoner who is already brought under control. Considering the potentially serious effects of its use, and the alternative equipment at the disposal of the prison guards, the use of pepper spray had not been justified in this case.

As regards the use of the restraint bed, his situation had been assessed on an hourly basis and he had also been checked on by medical staff. Nonetheless, as the measure had been used as a means of punishment, rather than to avoid self-harm or harm to others, it could not be justified. It had not been convincingly shown that after the confrontation with the prison officers had ended the applicant – who had been locked in a single-occupancy disciplinary cell – had posed a threat to himself or others. Furthermore, the period for which he had been strapped to the restraint bed was by no means negligible and his prolonged immobilisation must have caused him distress and physical discomfort. Considering the cumulative effect of those measures, the applicant had been subjected to inhuman and degrading treatment.

The Court held, unanimously, that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention.

Link to full judgment

Schiborshch and Kuzmina v. Russia

16 January 2014, Application no. 5269/08

Violation of Article 2 – lacking degree of caution in police operation

Facts. The applicants' son, who suffered from a psychiatric disorder, died in hospital in 2006 after having been severely wounded when resisting a police attempt to take him to a psychiatric hospital. His father had obtained a referral for his son's in-patient treatment and had asked the police for assistance with his placement in the hospital. On the day of Kirill Shchiborshch' death the authorities ordered a forensic examination of his body and a criminal investigation was opened in August 2006. It was closed in April 2010 on the grounds that there was insufficient evidence to hold the police responsible for his death.

Relying in particular on Article 2 (right to life), the applicants complained that the police had been responsible for their son's death, in particular because they had not been trained for the situation. Further, the investigation into the death had been ineffective. They further complained under Article 13 (right to an effective remedy) that they had not had any effective remedy in respect of their complaints.

Reasoning. The Court found there had been a violation of Article 2 both on account of the lack of planning and control of the involuntary hospitalisation operation in respect of Kirill Shchiborshch and on account of the failure to conduct an effective investigation into the events that led to his death. Even assuming that the lethal injuries were the consequence of the applicants' son's own actions, the Court considered that to be the result of the uncontrolled and unconsidered manner in which the police operation had been carried out. The measures taken by

the police had lacked the degree of caution to be expected from law-enforcement officers in a democratic society. The operation had not been organised so as to minimise to the greatest extent possible any risk to the life of the applicants' son. The Court also found a violation of Article 13, the right to an effective remedy.

Link to full judgment

Lindström and Mässeli v. Finland

14 January 2014, Application no. 24630/10

No violation of Article 3 – Violation of Article 8

Facts. The case concerned overalls the applicants were forced to wear in prison when they were placed in isolation on suspicion of attempting to smuggle drugs into prison. While in isolation, they were obliged to wear overalls covering them from feet to neck, 'sealed' by prison staff with plastic strips. They claimed that, because prison guards had not been able to escort them to a supervised toilet quickly enough, they had been forced to defecate in their overalls; and had not been allowed to change them afterwards, or to wash during the entirety of their isolation. After reporting this to the police, the Finnish authorities pressed charges against the prison director. However the charges were dismissed by the Finnish courts and the applicants' attempts to appeal the dismissal failed.

Relying on Article 3 (prohibition of inhuman or degrading treatment) and Article 8 (right to respect for private life) of the Convention, the applicants complained that the use of the overalls had been degrading - particularly after they had been made dirty. They alleged in particular that the use of overalls had had no legal basis in Finnish law but had only been a practice adopted by a few prisons.

Reasoning. Maintaining order and security in prisons and guaranteeing prisoners' well-being could be proper grounds for introducing a system of closed overalls to be used while prisoners were held in isolation. Moreover, the measures were designed to protect prisoners' health and there was no intention to humiliate. Nevertheless, such a practice could be assessed differently if it led, in concrete circumstances, to situations contrary to Article 3. In the instant case, the domestic courts had found that it had not been intended that the prisoners should defecate in their overalls and that there was no evidence that the guards had delayed their response to the applicants' calls to use the toilet. Nor had it been shown that the applicants had not had an appropriate possibility to wash whenever necessary or had had to continue wearing dirty overalls. Where there were convincing security needs, the practice of using closed overalls during a relatively short period of isolation could not, in itself, reach the threshold of Article 3. This was especially so in the applicants' case, given that they were unable to produce any evidence to support their allegations concerning the possibly humiliating elements of their treatment.

The Court found there had been a violation of Article 8 (right to respect for private life) of the Convention but no violation of Article 3 (prohibition of inhuman or degrading treatment).

Link to full judgment

Jones and Others v. the United Kingdom

14 January 2014, Applications nos. 34356/06 and 40528/06

No violation of Article 6(1)

Facts. The case concerned four British nationals who alleged that they had been tortured while in custody in Saudi Arabia by Saudi State officials. The first applicant (Mr Jones) subsequently commenced civil proceedings in the English High Court against the Kingdom, the Saudi Ministry of Interior and an individual officer. The other three applicants issued proceedings against four individuals: two police officers, a deputy prison governor and the Saudi Minister of the Interior. The High Court ruled that all the defendants were entitled to immunity under the State Immunity Act 1978 and refused the applicants permission to serve the proceedings outside the jurisdiction. On appeal, the Court of Appeal drew a distinction between immunity ratione personae (which applied to the State, the serving head of State and diplomats) and immunity ratione materiae (which applied to ordinary officials, former heads of State and former diplomats). It upheld the High Court's decision in respect of the Kingdom and the Ministry, but allowed the applicants' appeal in respect of the individual defendants. The issue then went to the House of Lords, which agreed with the High Court that all the defendants were entitled to immunity, even where the allegation against them was one of torture. In their application to the European Court, the applicants complained of a violation of their right of access to court.

Reasoning. The Court found that the granting of immunity to Saudi Arabia and its State officials in the applicants' civil cases had reflected generally recognised current rules of public international law and had not therefore amounted to an unjustified restriction on the applicants' access to court. In particular, while there was some emerging support at the international level in favour of a special rule or exception in public international law in cases concerning civil claims for torture lodged against foreign State officials, the weight of authority suggested that the State's right to immunity could not be circumvented by suing named officials instead. The House of Lords had considered the applicants' arguments in detail and dismissed them by reference to the relevant international law principles and case-law. However, in light of the current developments in this area of public international law, this was a matter which needed to be kept under review by Contracting States.

The Court held, by six votes to one , that there had been no violation of Article 6 § 1 (right of access to court) of the Convention either as concerned Mr Jones' claim against the Kingdom of Saudi Arabia or as concerned all four applicants' claims against named Saudi Arabian officials.

Link to full judgment

2013

D.F. v. Latvia

29 October 2013, Application no. 11160/07

Violation of Article 3 – failure to protect prisoner from risk

Facts. The case concerned D.F.'s complaint that, as a former paid police informant and a sex offender, he was at constant risk of violence from his co-prisoners when held in Daugavpils prison between 2005 and 2006, and that the Latvian authorities failed to transfer him to a safer place of detention. The applicant was convicted in 2006 of rape and indecent assault on minors and sentenced to thirteen years' imprisonment. He was kept in Daugavpils Prison for over a year where he was allegedly subjected to violence by other inmates because they knew he had acted as a police informant and was a sex offender. The prison administration frequently moved him from one cell to another, exposing him to a large number of other prisoners. He made numerous applications to be moved to a special prison with a section for detainees who had worked for or collaborated with the authorities. However, his requests were repeatedly rejected because the Prisons Administration did not find it established that he had been a police informant. He was eventually transferred to the special prison.

Reasoning. The court held that, owing to the authorities' failure to coordinate effectively, D.F. had been exposed to the fear of imminent risk of ill-treatment for over a year, despite the authorities being aware that such a risk existed. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) had found that prisoners charged with sexual offences were exposed to a heightened risk of violence by other prisoners. It had also repeatedly expressed particular concern about such violence in Daugavpils Prison. The prison authorities had clearly been aware of the nature of the charges against the applicant and the risk they entailed. In addition, there was information within the State apparatus about the applicant's past collaboration with the police but such information had not been systematically passed on between the relevant authorities.

The Court held, unanimously, that there had been a violation of Article 3 (prohibition of inhuman and degrading treatment) of the Convention.

Link to full judgment

Keller v. Russia

17 October 2013, Application no. 26824/04

Violation of Article 2 on lack of safeguard but not on procedure – Violation of Article 3 on procedure but not on ill-treatment

Facts. The case concerned the death of the applicant's son while detained in police custody on suspicion of having stolen a bicycle. The ensuing investigation concluded that he had jumped from a window into the courtyard of the police station and that there had been no coercion.

Relying in particular on Article 2 (right to life), Ms Keller complained that the authorities failed to safeguard the life of her son and that there was no effective investigation into the circumstances of his death. She also complained, under Article 3 (prohibition of inhuman or degrading treatment), that her son had been ill-treated before his death, as bruises had been found on his body, and that the investigation had been unable to explain the origins of those injuries.

Reasoning. As to whether the State had complied with its duty to protect V.K.'s life, the Court reiterated that the obligation to protect the health and well-being of persons in detention clearly encompassed an obligation to protect the life of arrested and detained persons from a foreseeable danger. Although there was insufficient evidence to show that the authorities knew or ought to have known that there was a risk that V.K. might attempt to escape by jumping out of a third-floor window, police officers should be expected to take basic precautions in respect of persons held in detention so as to minimise any potential risk of attempts to escape. While it would be excessive to request States to put bars on every window at a police station, this did not relieve them of their duty under Article 2 to protect the life of arrested and detained persons from foreseeable danger. In sum, the State authorities had failed to provide V.K. with sufficient and reasonable protection.

The Court found there had been a violation of Article 2 (right to life) in respect of the authorities' failure to safeguard the life of the applicant's son. The Court found no violation of Article 2 (procedure) as regards the applicant's allegations that the investigation into the circumstances of her son's death had not been effective. The Court further found a violation of Article 3 (procedure) in respect of the authorities' failure to conduct an effective investigation into the origins of the bruises found on the applicant's son's body, but no violation of Article 3 (treatment) as regards the bruises found on the applicant's son's body.

The government's request for referral to the Grand Chamber was rejected on 18 February 2014.

Link to full judgment

Vinter and Others v. the United Kingdom

9 July 2014, GC, Applications nos. 66069/09 and 3896/10

Violation of Article 3 - Whole life orders should include the possibility of review

Facts. In England and Wales murder carries a mandatory life sentence. Since the entry into force of the Criminal Justice Act 2003, the power to set tariff periods for the minimum term prisoners must serve before becoming eligible for early release is left with the trial judge - prior to the Act, this power was left with the Secretary of State.

In this case, all three applicants were given "whole life orders" following convictions for murder. The whole life order in the case of the first applicant, Mr Vinter, was made by the trial judge under the 2003 Act and upheld by the Court of Appeal on the grounds that Mr Vinter already had a previous conviction for murder. The whole life order in the cases of the second and third applicants had been made by the Secretary of State under the previous practice, confirmed on a review by the High Court under the 2003 Act.

In their applications to the European Court, the applicants complained that the imposition of whole life orders meant their sentences were, in effect, irreducible, in violation of Article 3 of the Convention, and that the imposition of whole life orders without the possibility of regular review by the domestic courts violated Article 5 § 4. The second and third applicants also alleged a violation of Article 7 in that the whole life orders in their cases had been made not by the trial judge, but subsequently by the High Court, according to principles which they maintained reflected a harsher sentencing regime than had been in place when their offences were committed

Reasoning. The Court found in particular that, for a life sentence to remain compatible with Article 3 there had to be both a possibility of release and a possibility of review. It noted that there was clear support in European and international law and practice for those principles, with the large majority of Convention Contracting States not actually imposing life sentences at all or, if they did, providing for a review of life sentences after a set period (usually 25 years' imprisonment). The Court held, by 16 votes to one, that there had been a violation of Article 3 (prohibition of inhuman and degrading treatment) of the Convention.

Link to full judgment

Turluyeva v. Russia

20 June 2013, Application no. 63638/09

No violation of Article 2 – Violation of Article 3, 5, and 13 in conjunction with Article 2.

Facts. The case concerned the disappearance of a young man after last having been seen at the premises of a police regiment in Grozny (Chechnya). In October 2009 the applicant's son was detained in Grozny by the police following an armed skirmish. He was last seen by his uncle at the police headquarters with signs of beatings on his face. The family have had no news of him since. The applicant lodged a complaint, but it was not until some weeks later that proceedings were opened by a district investigative committee in Grozny on suspicion of murder and the proceedings were still pending at the date of the Court's judgment. The Government confirmed that the applicant's son had been taken to the police headquarters, but claimed he had been released a few hours later. No records of the son's detention, questioning or release were drawn up. According to the applicant, the boy's uncle was harassed and threatened by the local head of police after she lodged her complaint.

Reasoning. The Court underlined that the Russian authorities were sufficiently aware of the gravity of the problem of enforced disappearances in the North Caucasus and its life-threatening implications, and that they had lately taken a number of steps to make investigations of this type of crime more efficient. The Court therefore found, in particular, that the authorities should have taken, but had failed to take, appropriate measures to protect the life of Ms Turluyeva's son once they had learned of his disappearance.

The Court held, unanimously, that there had been three violations of Article 2 (right to life), firstly on account of Sayd-Salekh Ibragimov's presumed death, secondly on account of the state's failure to protect life and thirdly for the failure to conduct an effective investigation into his disappearance.

Further, the Court held there had been a violation of Article 3 (prohibition of torture and of inhuman or degrading treatment), on account of Ms Turluyeva's suffering resulting from her inability to find out about what happened to her son, a violation of Article 5 (right to liberty and security), on account of Sayd-Salekh Ibragimov's unlawful detention, and, a violation of Article 13 (right to an effective remedy) in conjunction with Article 2.

Link to full judgment

Salakhov and Islyamova v. Ukraine

14 March 2013, Application no. 28005/08

Violation of Article 2 and Article 3 – failure to fulfil obligations under Article 34

Facts. The second applicant is the mother of the first applicant, who died in August 2008. The first applicant was arrested in November 2007 on suspicion of theft of a mobile phone and placed in pre-trial detention. He had been HIV positive since 2005 and his health sharply deteriorated in March 2008 with constant fever and serious digestive problems. An ambulance was called on several occasions. According to the Government, the authorities only learned of the HIV infection in early June 2008 after a hospital examination. A specialist diagnosed the first applicant with pneumonia and candidosis and concluded that the HIV infection was at the fourth clinical stage, but that there was no urgent need for hospitalisation. On 17 June 2008 the European Court issued an interim measure under Rule 39 of its Rules requiring the first applicant's immediate transfer to hospital for treatment. He was only transferred three days later and was kept under constant guard by police officers and, according to his mother, was continuously handcuffed to his bed. On 4 July 2008 he was found guilty of acquiring the mobile phone by fraud and sentenced to a fine. He remained in detention for two weeks after the verdict as a preventive measure, despite his critical condition. Following his release on 18 July 2008 his health deteriorated and he died on 2 August 2008.

The second applicant subsequently complained to the prosecution authorities that her son had not received timely and adequate medical care in detention and that this had led to his death. In March 2009 a commission set up by the Ministry of Public Health concluded that the hospital bore no responsibility for the first applicant's death. The investigation was subsequently closed and reopened several times. In 2010 a forensic investigation ordered by the prosecutor found, in particular, that at the time of his examination in June 2008 the first applicant had required urgent hospitalisation and in-patient medical treatment. A criminal investigation into the hospital's liability was opened in December 2010.

Reasoning. In sum, a number of factors taken together indicated that the second applicant's rights under Article 3 had been violated: the parent-child bond between her and the first applicant; her active efforts to save his life or at least alleviate his suffering; the cynical, indifferent and cruel attitude demonstrated by the authorities both before the death and during the subsequent investigation; the fact that the second applicant had had to witness her son's slow death without being able to help him in any way; and, lastly, the duration of her suffering (about three months). The second applicant had therefore been a victim of inhuman treatment.

The Court further concluded unanimously that there had been violations of Article 3 in respect of the inadequate medical assistance that had been provided to the first applicant in the detention facilities and the hospital and of his handcuffing in the hospital. It unanimously found violations of Article 2 in respect of the authorities' failure to protect the first applicant's life and to conduct an effective investigation into the circumstances of his death.

As for Article 34, despite becoming aware at the latest on the evening of 17 June 2008 of the interim measure issued by the Court, the authorities had waited for one day and that no urgent hospitalisation was required. In other words, instead of complying with the indicated interim measure, they had decided to re-evaluate its soundness. And, as they had later acknowledged themselves, that re-evaluation had been erroneous. It was only on 20 June 2008 that the domestic authorities had transferred the first applicant to hospital. The interim measure had thus not been

complied with for a period of three days, without any acceptable explanation. The State had therefore failed to meet its obligations under Article 34.

Link to full judgment

Karabet and Others v. Ukraine

17 January 2013, Applications nos. 38906/07 and 52025/07

Violation of Article 3 both for ill-treatment and for failure to investigate – Violation of Article 1 of Protocol No. 1

Facts. The case concerned the treatment of a group of detainees during and after a search and security operation conducted in January 2007 in Izyaslav Prison. The applicants alleged that, during and/or following the operation: they were brutally beaten by masked security officers and by prison guards - to the point of fainting in the case of some of them. They had been tightly handcuffed, ordered to strip naked and adopt humiliating poses; and were transported in an overcrowded van. Further, they were deprived of access to water or food and exposed to a low temperature without adequate clothing; and, no adequate medical assistance was provided to them.

Relying on Article 3, the applicants complained of having been ill-treated during and after the security operation. They further complained under Article 13 (right to an effective remedy), that the investigation into these allegations was ineffective. Finally, relying on Article 1 of Protocol No. 1, they complained that their personal belongings had not all been returned to them following their hasty transfer to different detention facilities.

Reasoning. On the procedural aspect of Article 3, the Court found the investigation had been inadequate. On Article 3 and the treatment of the prisoners, the Court had no doubt that the authorities' brutal action had been grossly disproportionate given that there had been no transgressions by the applicants. The violence had been intended to crush a protest movement, to punish the prisoners for their peaceful hunger strike and to discourage any further complaints. In those circumstances, the Court found that the applicants had been subjected to treatment which could only be described as torture. There had accordingly been a violation of Article 3 on that account.

The Court also observed that the hasty manner in which the applicants had been transferred from Izyaslav Prison to the two other detention centres, without any chance to collect their personal belongings, was corroborated by sufficient evidence. In the absence of any evidence provided by the Government to prove that the applicants had eventually received their property, the Court concluded that at least some of it had to have been lost. That interference with the applicants' rights was not lawful and had not pursued any legitimate aim. Accordingly, the Court found a violation of Article 1 of Protocol No. 1.

Link to full judgment