

Press release issued by the Registrar

**CHAMBER JUDGMENT
TIMISHEV v. RUSSIA**

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Timishev v. Russia* (applications nos. 55762/00 and 55974/00).

The Court held unanimously that there had been:

- a **violation of Article 2 of Protocol No. 4** (freedom of movement) to the European Convention on Human Rights;
- a **violation of Article 14** (prohibition of discrimination) of the Convention taken in conjunction with **Article 2 of Protocol No. 4**;
- a **violation of Article 2 of Protocol No. 1** (right to education).

Under Article 41 (just satisfaction), the Court awarded the applicant 5,000 euros (EUR) for non-pecuniary damage and EUR 950 for costs and expenses. (The judgment is available only in English.)

1. Principal facts

The applicant, Ilyas Yakubovich Timishev, is a Russian national of Chechen ethnic origin, who was born in the Chechen Republic in 1950. Since 15 August 1996 he has been living in Nalchik, in the Kabardino-Balkaria Republic of Russia, as a forced migrant.

On 19 June 1999 Mr Timishev and his driver were travelling by car from Nazran, in the Ingushetia Republic (Russia), to Nalchik.

The parties submitted different versions of the subsequent events.

According to the applicant, their car was stopped at the Uruk checkpoint on the administrative border between Ingushetia and Kabardino-Balkaria. Officers from the Kabardino-Balkaria State Inspectorate for Road Safety refused him entry, referring to an oral instruction from the Ministry of the Interior of Kabardino-Balkaria not to admit anyone of Chechen ethnic origin.

According to the Russian Government, the applicant attempted to jump the queue of cars waiting to pass through the checkpoint and then left, after being refused priority treatment.

¹ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

The applicant complained to a court about the actions of the police officers and claimed compensation for non-pecuniary damage. His claim was dismissed and he appealed unsuccessfully.

The applicant also complained to the Russian Prosecutor General.

On 1 February 2000 the applicant was informed that, following an inquiry, the prosecutor's office had ordered the Ministry of the Interior of Kabardino-Balkaria to rectify the police officers' actions – which were in violation of Article 27 of the Russian Constitution – and to take measures to avoid similar violations in the future. On 3 March 2000 the Minister of the Interior of the Kabardino-Balkaria Republic informed the Prosecutor General's Office that the order to rectify the violation could not be implemented because the courts had found that no violation had occurred. He also provided a summary of the findings of an internal inquiry, which stated that the officer who stopped the applicant had received oral instructions not to allow people of Chechen ethnic origin travelling by private cars from the Chechen Republic to enter the Kabardino-Balkaria Republic and that the instructions had come from his shift commander, who claimed he had received the same instruction from the deputy head of the public safety police of the Ministry of the Interior.

On 1 September 2000 the applicant's nine-year-old son and seven-year-old daughter were refused admission to their school in Nalchik – which they had attended from September 1998 to May 2000 – because the applicant could not produce his migrant's card, a local document confirming his residence in Nalchik and his status as a forced migrant from Chechnya. The applicant had had to give in his migrant's card in exchange for compensation, received on 24 December 1999, for the property he lost in the Chechen Republic. The headmaster agreed to admit the children informally, but advised the applicant that the children would be immediately suspended if the education department discovered the arrangement.

The applicant complained unsuccessfully about the refusal to admit his children to the school.

2. Procedure and composition of the Court

The case originated in two applications lodged with the European Court of Human Rights in February and March 2000. On 8 July 2003 the Court joined the applications and declared them partially inadmissible. On 30 March 2004 the Court declared the applications partly admissible.

Judgment was given by a Chamber of seven judges, composed as follows:

András **Baka** (Hungarian), *President*,
Ireneu **Cabral Barreto** (Portuguese),
Volodymyr **Butkevych** (Ukrainian),
Mindia **Ugrekheldze** (Georgian),
Anatoli **Kovler** (Russian),
Antonella **Mularoni** (San Marinese),
Elisabet **Fura-Sandström** (Swedish), *judges*,

and also Sally **Dollé**, *Section Registrar*.

3. Summary of the judgment¹

Complaints

The applicant complained that he was refused permission to enter Kabardino-Balkaria because of his Chechen ethnic origin and about the refusal to admit his children to their school. He relied on Article 2 of Protocol No. 4, Article 14 and Article 2 of Protocol No. 1 to the Convention.

Decision of the Court

Article 2 of Protocol No. 4

The Court noted that the applicant's version of events had been corroborated by independent inquiries carried out by the prosecution and police authorities. It found that the traffic police at the Urukh checkpoint prevented the applicant from crossing the administrative border between two Russian regions, Ingushetia and Kabardino-Balkaria. There had therefore been a restriction on the applicant's right to liberty of movement within Russian territory, within the meaning of Article 2 § 1 of Protocol No. 4.

The inquiries carried out by the prosecutor's office and by the Kabardino-Balkaria Ministry of the Interior established that the restriction at issue had been imposed by an oral order from the deputy head of the public safety police of the Kabardino-Balkaria Ministry of the Interior. It appeared that the order was not properly formalised or recorded in some other traceable way, enabling the Court to carry out an assessment of its contents, scope and legal basis. In any event, in the opinion of the prosecutor's office, the order amounted to a violation of the constitutional right to liberty of movement enshrined in Article 27 of the Russian Constitution. Finding that the restriction on the applicant's liberty of movement was not in accordance with the law, the Court held, unanimously, that there had been a violation of Article 2 of Protocol No. 4.

Article 14

The Court noted that the Kabardino-Balkarian senior police officer ordered traffic police officers not to admit "Chechens". As a person's ethnic origin is not listed anywhere in Russian identity documents, the order barred the passage not only of anyone of Chechen ethnicity, but also those who were merely perceived as belonging to that ethnic group. It had not been claimed that representatives of other ethnic groups were subject to similar restrictions. In the Court's view, that represented a clear inequality of treatment regarding the right to liberty of movement on account of one's ethnic origin. A differential treatment of people in relevant, similar situations, without an objective and reasonable justification, constituted discrimination. Discrimination on account of one's actual or perceived ethnicity was a form of racial discrimination. Racial discrimination was a particularly invidious kind of discrimination and, in view of its perilous consequences, required from the authorities special vigilance and a vigorous reaction. It was for that reason that the authorities had to use all available means to combat racism, thereby reinforcing democracy's vision of a society in which diversity was not perceived as a threat but as a source of enrichment.

Once the applicant had shown that there had been a difference in treatment, it was for the Russian Government to show that the difference in treatment could be justified. The

¹ This summary by the Registry does not bind the Court.

Government did not offer any justification for the difference in treatment between people of Chechen and non-Chechen ethnic origin in the enjoyment of their right to liberty of movement. In any event, the Court considered that no difference in treatment which was based exclusively or to a decisive extent on a person's ethnic origin was capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures.

In conclusion, since the applicant's right to liberty of movement was restricted solely on the ground of his ethnic origin, that difference in treatment constituted racial discrimination within the meaning of Article 14. There had therefore been a violation of Article 14 taken in conjunction with Article 2 of Protocol No. 4.

Article 2 of Protocol No. 1

The Court observed that the applicant's children were refused admission to the school which they had attended for the previous two years. The Government did not contest the applicant's submission that the true reason for the refusal had been that the applicant had surrendered his migrant's card and had thereby forfeited his registration as a resident in the town of Nalchik.

The Russian Government confirmed that Russian law did not allow children's right to an education to be made conditional on the registration of their parents' residence. The applicant's children were therefore denied the right to education provided for by domestic law. There had therefore been a violation of Article 2 of Protocol No. 1.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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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. Since 1 November 1998 it has sat as a full-time Court composed of an equal number of judges to that of the States party to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in Chambers of 7 judges or, in exceptional cases, as a Grand Chamber of 17 judges. The Committee of Ministers of the Council of Europe supervises the execution of the Court's judgments.