



Arrest of Garri Kasparov and other demonstrators during 2007 opposition meeting in Moscow was unjustified

In today's Chamber judgment in the case of [Kasparov and Others v. Russia](#) (application no. 21613/07), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights, and

a violation of Article 11 (freedom of assembly and association).

The case concerned the arrest of a group of people ahead of an anti-government demonstration in April 2007, which had been authorised in a limited area, and their ensuing conviction of having breached the regulations on demonstrations.

The Court found that the applicants' defence rights had been limited in a manner incompatible with the guarantees of a fair trial, as their request to examine eyewitnesses had been refused. Their arrest had been disproportionate to the aim of maintaining public order.

Principal facts

The applicants, Garri Kasparov, Aleksey Tarasov, Nikolay Kharlamov, Nikolay Kalashnikov, Andrey Toropov, Aleksandr Stelmakh, Yuriy Orel, Vyacheslav Melikhov, and Oksana Chelysheva, are Russian nationals who live in Moscow, the Moscow region and Nizhniy Novgorod (Russia), respectively.

Eight of the applicants were arrested on 14 April 2007 ahead of an anti-government demonstration which was to take place in Moscow on that day. While the organisers had intended to march along several streets in the centre, the authorities had only permitted a meeting between 12 and 1.30 p.m. at the foot of a monument at a different location in central Moscow. Four of the applicants – Mr Kasparov, Mr Tarasov, Mr Toropov and Ms Chelysheva – were planning to take part in the authorised demonstration, and the first three of them were arrested at 1 p.m. while on their way to the monument. The remaining five applicants submitted that they happened to be in the area, but had no intention of participating in the demonstration, when they were arrested and taken to a police station. Ms Chelysheva alleges that she was kicked by a police officer while she was on her way to the demonstration and hurt so badly that she was unable to attend.

On the same day, the first eight applicants were convicted of an administrative offence for having breached the regulations on holding demonstrations and were ordered to pay a fine. The judge concluded that they had attempted to take part in an unauthorised demonstration in the street where they were arrested. During their respective hearings all applicants contested the police testimonies as regards the time and place of their arrest and requested the court to call and examine other eyewitnesses, but their requests were rejected by the judge, who found the facts to be

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its 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.

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

sufficiently established. In the case of Mr Toropov, the hearing was held in his and his lawyer's absence. All applicants' appeals were unsuccessful.

Complaints, procedure and composition of the Court

Eight of the applicants complained of a violation of Article 6 § 1 (right to a fair trial), alleging in particular that witnesses in their defence had not been called. All nine applicants complained that the authorities' conduct on 14 April 2007 had violated their rights under Article 10 (freedom of expression) and Article 11 (freedom of assembly and association).

The application was lodged with the European Court of Human Rights on 24 May 2007.

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

Isabelle **Berro-Lefèvre** (Monaco), *President*,
Mirjana **Lazarova Trajkovska** ("The former Yugoslav Republic of Macedonia"),
Julia **Laffranque** (Estonia),
Linos-Alexandre **Sicilianos** (Greece),
Erik **Møse** (Norway),
Ksenija **Turković** (Croatia),
Dmitry **Dedov** (Russia),

and also Søren **Nielsen**, *Section Registrar*.

Decision of the Court

Article 6

The Court observed that the circumstances of the applicants' arrest were in dispute between the parties. In particular, in the proceedings before the Russian courts, Mr Kasparov had contended that he had been walking with a small group of people towards the venue of the authorised demonstration. The police, on the other hand, had alleged that he had been taking part in an unauthorised march after the authorised event at the monument was over. They contested the applicants' assertion that they had been arrested at 1 p.m., that is, while the authorised event was still taking place. Nevertheless the Russian Government partly confirmed to the Court the timeframe alleged by the applicants. Furthermore, according to the police, the applicants had been arrested when the demonstration threatened to spill over into Red Square, a designated high-security area. Mr Kasparov, in contrast, insisted that he had been arrested at a considerable distance from Red Square. The accounts of the other applicants were similarly at odds with the police testimony.

Given that the applicants' conviction had been based primarily on the assumption of their being in a particular place at a particular time, their right to a fair trial implied that they should have been given a reasonable opportunity to effectively challenge that assumption. However, the Russian courts had rejected Mr Kasparov's attempts to clarify the time and place of his arrest. Although calling the eyewitnesses – whose names were known – would have been a straightforward matter, the judge had considered it superfluous to the proceedings and had readily accepted the submissions of the police. The other applicants' trials had all been conducted in a virtually identical manner, without any possibility for them to provide evidence in support of their version of events. In the case of Mr Toropov, the situation had further been aggravated by the fact that the trial court did not consider his or his lawyer's presence at the hearing necessary.

The Court concluded that the applicants' defence rights had been limited in a manner incompatible with the guarantees of a fair trial. There had accordingly been a violation of Article 6.

Article 11

The Court declared the complaints under Article 10 and Article 11 admissible only as regards Mr Kasparov, Mr Tarasov and Mr Toropov.

While their complaint under Article 11 had to be considered also in the light of their right to freedom of expression, the Court found it unnecessary to consider it separately under Article 10. It was undisputed that their arrest and the ensuing administrative charges had constituted an interference with their right to peaceful assembly. Given that the Court did not have sufficient factual material to resolve the controversy between the parties as to the exact time and place of the applicants' arrest, it was unable to accept either party's version as a basis for deciding whether the authorities had acted lawfully.

The Court was prepared to accept that the applicants' arrest and conviction had pursued the legitimate aim of maintaining public order, as the Government had maintained. The Government had argued that the arrest had taken place because of the risk of the demonstration spilling over into the security area of the Red Square, and these reasons had also been cited by the policemen who gave testimony. The Court noted, however, that the police reports of the event itself did not mention any such risk. Moreover, the place of arrest indicated in the judgment was about 1.4 km away from Red Square. The Court was therefore not persuaded that the threat of the marchers penetrating the security area had been imminent.

According to the material submitted to the Court, police officers who took part in the riot control operation had received clear instructions, and reinforcements of the riot police had been brought to Moscow from a number of regions across Russia in view of the expected demonstration. The Court could therefore not accept the Russian Government's argument that the police had resorted to arresting the protesters because they had been overwhelmed by the demonstration and would otherwise have been unable to cope with it.

It followed that the applicants had been arrested and charged for the sole reason that the authorities had perceived their demonstration to be unauthorised. The Court concluded that the forceful intervention had been disproportionate and had not been necessary for the prevention of disorder, in violation of Article 11.

Just satisfaction (Article 41)

The court held that Russia was to pay Mr Kasparov, Mr Tarasov and Mr Toropov each 10,000 euros (EUR) and Nikolay Kharlamov, Nikolay Kalashnikov Aleksandr Stelmakh, Yuriy Orel and Vyacheslav Melikhov EUR 4,000 each in respect of non-pecuniary damage and an aggregate amount of EUR 10,500 in respect of costs and expenses related to the fees of three lawyers representing five applicants.

The judgment is available only in English.

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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.