

Press release issued by the Registrar

**CHAMBER JUDGMENT
LEBEDEV v. RUSSIA**

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Lebedev v. Russia* (application no. 4493/04).

The Court has found five violations of Article 5 (right to liberty and security) of the European Convention on Human Rights concerning the detention of Platon Lebedev, a former top manager of Yukos – Russia’s largest oil company – which was declared bankrupt in 2006.

The Court held:

- unanimously, that there had been a **violation of Article 5 § 1 (c)** concerning Mr Lebedev’s unauthorised detention between 31 March and 6 April 2004;
- by four votes to three, that there had been a **violation of Article 5 § 3** (right to be brought promptly before a judge) concerning the absence of Mr Lebedev’s lawyers at a hearing on 3 July 2003;
- by five votes to two, that there had been a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) concerning delays in the review of the detention order of 26 December 2003;
- unanimously, that there had been a **violation of Article 5 § 4** concerning delays in the review of the detention order of 6 April 2004;
- unanimously, that there had been a **violation of Article 5 § 4** concerning Mr Lebedev’s absence from the detention hearing on 8 June 2004; and,
- unanimously, that there had been **no failure to comply with Article 34** (right of individual petition).

Under Article 41 (just satisfaction) of the Convention, the Court awarded Mr Lebedev 3,000 euros (EUR) in respect of non-pecuniary damage and EUR 7,000 for legal costs. (The judgment is available only in English.)

1. Principal facts

The applicant, Platon Lebedev, is a Russian national who was born in 1956 and is currently serving a prison sentence in *FGU IK-3*, a prison in Kharp (Russia). At the time of the events, he was a senior manager of Yukos.

¹ Under Article 43 of the Convention, 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.

On 20 June 2003 an investigation was opened into suspected fraud committed in the course of the privatisation of Yukos in 1994. Various top managers were arrested, including Mikhail Khodorkovskiy¹, the former head of Yukos.

On 2 July 2003 Mr Lebedev was admitted to hospital. The same day, he was arrested as a suspect in the Yukos case and taken to a pre-trial detention centre.

On 3 July 2003 he was charged with fraud and non-compliance with a court order. The prosecution asserted that in 1994 Mr Lebedev had bought a stake in a large mining company at a privatisation tender, but had not made a return investment in the company even though that was an obligation for the winning bidder. He had also later disobeyed a judgment ordering him to return the stake in the company to the State.

The same day, the prosecution requested that Basmanniy District Court of Moscow remand the applicant in custody. The applicant asked the court to adjourn the hearing to allow his lawyers to participate. The court refused, on the ground that the lawyers had been properly informed about the detention hearing two hours before and had failed to appear in time. The court decided to hear the detention request in private. According to the applicant's lawyers, they heard about the hearing only one hour and forty minutes before it began. When they arrived at the courthouse they could not participate, because the judge had locked the room and refused to open it. The district court decided to detain the applicant, without specifying the period of detention. The applicant appealed unsuccessfully.

On 28 August 2003 the district court extended Mr Lebedev's detention until 30 October 2003 and subsequently extended it again until 30 December 2003. The applicant's lawyers appealed unsuccessfully on each occasion.

On 26 December 2003 the court extended Mr Lebedev's detention until 30 March 2004 at a private hearing. The applicant and his lawyers appealed. It was not until 14 January 2004 that the applicant's lawyers obtained a copy of the records of the hearing. On 23 January 2004 the applicant's lawyer, and on 5 February 2004 the applicant himself, lodged reasoned appeals against the decision of 26 December 2003. The appeals were rejected on 9 February 2004 by Moscow City Court.

On 6 April 2004 the district court decided that Mr Lebedev should stay in pre-trial detention. As no reasons had been cited for his detention, his lawyer appealed; his appeal was received by the relevant court on 22 April. He also requested Mr Lebedev's immediate release, as there was no court decision authorising his detention from 30 March 2004 to 6 April 2004. On 15 April 2004 the court concerned rejected that request and decided that the applicant should remain in detention during the trial. The applicant's lawyer appealed. Mr Lebedev's detention was further confirmed by the district court at a hearing on 8 June 2004, which the applicant did not attend.

On 9 June 2004 Moscow City Court rejected the applicant's appeals against the decisions of 6 and 15 April 2004. On 29 July 2004 Moscow City Court also rejected the appeal against the decision of 8 June 2004.

¹ Mr Khodorkovskiy has two cases pending before the European Court of Human Rights, application no.s 11082/06 and 5829/04.

The applicant's detention was subsequently prolonged on several occasions and, on 16 May 2005, he was convicted and sentenced to nine years' imprisonment.

On 22 March 2004 Ms Liptser, one of the applicant's lawyers, was appointed to represent him before the European Court. On 23 March 2004 she tried to visit the applicant in prison. However, the prison administration refused the visit because she had no authority to represent the applicant before the domestic courts. In the following days she was denied access to her client; however, he had meetings with his other lawyers. In particular, Mr Baru visited him on 30 March, 1 and 2 April 2004, and 5 to 9 April 2004. On 12 April 2004 Ms Liptser was allowed to visit the applicant. Within the period under consideration, they met about 20 times.

On 22 March 2005 the Russian Constitutional Court of the Russian Federation adopted Ruling no. 4-P on the complaint lodged by a group of individuals, including the applicant, concerning the de facto extension of their detention after their case files had been sent by the prosecution authorities to the respective trial courts. The Constitutional Court held that "if the term of detention, as defined in the court order, expires, the court must decide on the extension of the detention, otherwise the accused person must be released".

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 22 January 2004 and, on 6 April 2004, the Court decided to grant priority to the case under Rule 41 of the Rules of Court. The case was declared partly admissible on 18 May 2006.

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

Christos **Rozakis** (Greek), *President*,
Loukis **Loucaides** (Cypriot),
Nina **Vajić** (Croatian),
Anatoli **Kovler** (Russian),
Elisabeth **Steiner** (Austrian),
Khanlar **Hajiyev** (Azerbaijani),
Sverre Erik **Jebens** (Norwegian), *judges*,

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

3. Summary of the judgment¹

Complaints

Relying on Article 5 §§ 1, 3 and 4 and Article 34, Mr Lebedev complained that his detention on remand was not lawful, and that between 22 March and 12 April 2003 the prison authorities had not allowed his lawyer to meet him.

Decision of the Court

Article 5 § 1 (c)

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

The Court noted that several days after the prosecution had submitted the applicant's case for trial, his pre-trial detention expired. Nevertheless, it was not until one week later that the court ruled that he should remain in prison during his trial.

The Court reiterated that detention without a court order or other clear legal ground was incompatible with the standard of "lawfulness", enshrined in Article 5 § 1, even though, according to the Russian Government's interpretation of Article 227 § 3 of the Code of Criminal Procedure, the unsanctioned detention could not have lasted more than two weeks. The Court had already found that during that time "the applicant was in a legal vacuum that was not covered by any domestic legal provision". The Russian Constitutional Court had also condemned that practice as unconstitutional.

The Court concluded that the applicant's detention between 30 March and 6 April 2004 was therefore "unlawful", in violation of Article 5 § 1.

Article 5 §§ 3 and 4

3 July - 28 August 2003

The Court found that the exclusion of the applicant's lawyers from the detention hearing of 3 July 2003 adversely affected his ability to present his case and was not justified. His detention between 3 July and 28 August 2003 was therefore ordered as a result of a procedure which did not offer the minimum procedural guarantees, in violation of Article 5 § 3.

26 December 2003 - 30 March 2004

The Court found that the Russian authorities were responsible for at least 27 days out of the overall duration of the appeal proceedings. The Government had not pleaded that complex issues had been involved in the determination of the lawfulness of the applicant's detention. Even if the courts had spent the whole of that period dealing with the case file, they would not be exempted from the obligation to examine the appeal quickly. The appeal proceedings were not therefore conducted sufficiently quickly, in violation of Article 5 § 4.

6 April 2004 to 8 June 2004

The Court found that the Russian authorities were responsible for the delay in dealing with the applicant's appeal against detention from 22 April 2004 until 9 June 2004 (one month and 17 days). It reiterated that there was a special need for a swift decision determining the lawfulness of detention in cases where a trial was pending. The Court concluded that the time spent on examination of the appeal against the detention order of 6 April 2004 was excessive, in violation of Article 5 § 4.

8 June to 10 September 2004

The Court reiterated that, as a general rule, a detainee should have a right to participate in a hearing where his detention was discussed. The Court noted that the decision of 8 June 2004 contained no reasoning in support of the court's decision to extend the applicant's detention on remand. The matters discussed at the hearing of 8 June 2004 therefore required the presence of Mr Lebedev and his lawyers. However, the applicant was absent from the hearings at both levels of jurisdiction, and his lawyers were present only before the court of appeal. Furthermore, the appeal was examined 50 days after the hearing of 8 June 2004. The Court concluded that the presence of the applicant's lawyers in the court of appeal was not

sufficient to ensure an effective review of the lawfulness of the applicant's continued detention. There had therefore been a violation of Article 5 § 4.

Article 34

The Court noted that the requirement that one of the applicant's lawyers obtain additional authorisation to be able to meet him appeared to be simply a question of domestic formalities. The problem was also resolved easily. Furthermore, within the period under consideration the applicant had several meetings with his other lawyers, in particular, with Mr Baru, who also represented him in the proceedings before the Court. The problem lasted less than three weeks, and nothing suggested that it had any negative effects, theoretical or practical, on the proceedings before the Court. In such circumstances the Court concluded that there had been no violation of Article 34.

Judges Kovler, Hajiyeu and Jebens expressed a partly dissenting opinion, and Judges Kovler and Jebens also expressed a second partly dissenting opinion. Both opinions are annexed to the judgment.

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.