



## Public humiliation of soldier was not justified by the need to maintain military discipline

In today's **Chamber** judgment<sup>1</sup> in the case of [Lyalyakin v. Russia](#) (application no. 31305/09) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 3 (prohibition of inhuman or degrading treatment)** of the European Convention on Human Rights, both on account of Mr Lyalyakin's treatment and on account of the authorities' failure to conduct an effective investigation into his complaints.

The case concerned a complaint by a conscript about degrading treatment when he was caught trying to escape from the army, including appearing undressed in front of other soldiers.

The Court, whilst recognising the need to maintain military discipline within the army, found that the conscript's public humiliation had been unnecessary and could not be justified merely as a means of preventing his escape from the unit.

### Principal facts

The applicant, Mikhail Lyalyakin, is a Russian national who was born in 1988 and lives in the town of Nizhniy Novgorod (Russia).

Mr Lyalyakin was conscripted into the Russian Army in December 2006. After six months preparation in Kovrov, he was sent to Military Unit no. 34605 in Volgograd. He says that he found the atmosphere within the unit to be tense and violent, and as a result he panicked and decided to escape.

He made his first attempt to escape on 4 June 2007, accompanied by a fellow junior sergeant. They were apprehended the next day and taken back to the camp. Mr Lyalyakin alleges that the two officers who found them threatened to kill them on their return to the base. Mr Lyalyakin therefore made another attempt to escape during the journey. He was caught and both junior sergeants were forced to undress, allegedly to prevent any further escape attempts.

On 6 June they were both brought before the other servicemen on the parade ground and publically reprimanded by the battalion commander. Mr Lyalyakin claims that they were made to stand naked in front of the other servicemen. This claim is disputed by the military authorities who state that although undressed, the two conscripts were presented wearing military briefs.

Mr Lyalyakin claims that he was repeatedly subjected to humiliating and abusive treatment by his fellow soldiers following his return to the camp. He therefore escaped again on 7 June and reached his family in Nizhniy Novgorod, never returning to the unit in Volgograd.

Soon after, Mr Lyalyakin submitted a complaint about his ill-treatment to the Military Prosecutor's Office in Nizhniy Novgorod, who opened a preliminary inquiry. The case was sent to the Volgograd Military Prosecutor's Office for investigation. This office initially refused to open a criminal case, a decision rejected by the Prosecutor's Office of the North Caucasus Military Circuit. The investigators

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](http://www.coe.int/t/dghl/monitoring/execution).

conducted five rounds of investigation; each time they decided against opening a criminal case and each time the decision was quashed by higher authorities and the case was sent back for further investigation.

## Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment) and Article 13 (right to an effective remedy), Mr Lyalyakin complained that servicemen from his unit had ill-treated him and that the authorities had failed to conduct a proper investigation into his allegations.

The application was lodged with the European Court of Human Rights on 29 May 2009.

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

Isabelle **Berro** (Monaco), *President*,  
Julia **Laffranque** (Estonia),  
Paulo **Pinto de Albuquerque** (Portugal),  
Linos-Alexandre **Sicilianos** (Greece),  
Erik **Møse** (Norway),  
Ksenija **Turković** (Croatia),  
Dmitry **Dedov** (Russia),

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

## Decision of the Court

### Article 3 (prohibition of inhuman or degrading treatment)

The Court reiterated that Article 3 prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour. The severity of the ill-treatment had to be assessed to determine whether it fell within the scope of Article 3. The Court was mindful that a degree of suffering might be inevitable in certain contexts, including during military service and therefore recognised that the threshold for suffering, humiliation or ill treatment might be higher in a military context than a civilian one. This higher threshold could be justified where it contributed to the specific mission of the armed forces and the need to maintain discipline in a military unit.

The Court noted that it was uncontested that Mr Lyalyakin had been undressed and had remained in his military briefs on two occasions. The authorities had explained that this treatment was used on the first occasion to prevent Mr Lyalyakin from making another attempt to escape whilst travelling back to the military base. However, the Court found that neither the investigating authorities nor the government in its response to the Court had examined whether it had been necessary to use those measures, nor had they offered an explanation as to why it Mr Lyalyakin was made to stand in front of the battalion wearing only military briefs once he was back at the military base and was once again under the control of the military authorities. Notwithstanding the need to maintain military discipline, the Court found that the need for or appropriateness of using such a measure had not been adequately justified.

The Court therefore considered that the public undressing of Mr Lyalyakin, who was just 19 at the time, had had the effect of humiliating him and had thus constituted degrading treatment.

### Article 3 (lack of effective investigation)

The Court found that the authorities' refusal to open a criminal case following Mr Lyalyakin's credible complaint of ill-treatment had amounted to a failure to carry out an effective investigation.

Such failure by the authorities fostered a sense of impunity amongst military officers. The Court deemed that proper investigations of such allegations were essential if the State sought to avoid the appearance of collusion or tolerance of unlawful acts. There had accordingly been a violation of Article 3 on account of the authorities' failure to conduct an effective investigation into Mr Lyalyakin's complaints.

#### Other articles

Having found a violation of Article 3, the Court found there was no need to examine Mr Lyalyakin's other allegations of ill-treatment or to examine whether there had been a violation of Article 13 (right to an effective remedy).

#### Article 41 (just satisfaction)

The Court held that Russia was to pay Mr Lyalyakin 15,000 euros (EUR) in respect of non-pecuniary damage and EUR 825.72 in respect of costs and expenses.

*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.