



Violation of the right to be presumed innocent on account of wording used in a decision not to prosecute

In today's Chamber judgment¹ in the case of [Stirmanov v. Russia](#) (application no. 31816/08) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 2 (presumption of innocence) of the European Convention on Human Rights.

The case concerned the applicant's complaint that his right to be presumed innocent had been breached in a decision to discontinue criminal proceedings because the offence was statute-barred.

The applicant had not been convicted of the offence in question. The Court noted, however, that the terms in which the prosecutor's decision of 24 April 2006 had been drafted did not leave any doubt about his opinion that the applicant was guilty. The prosecutor had unequivocally stated on several occasions that the applicant had "committed the offence under Article 33 § 1 of the Code of Criminal Procedure". The Court found that the terms used went clearly beyond a statement of mere suspicion as to the applicant's guilt.

Principal facts

The applicant, Mr Robert Stirmanov, is a Russian national who was born in 1937 and lives in Arkhangelsk (Russia).

In April 2005 L., director of a State company, lodged a criminal complaint against Mr Stirmanov, who at the time chaired the company's disputes board, accusing him of having overstepped his duties. L. claimed that in May 2003 Mr Stirmanov had taken a decision concerning salary arrears in breach of the applicable procedure. L. asked the public prosecutor to open a criminal investigation against the applicant for "arbitrary unlawful acts".

On 4 August 2005 the prosecutor refused to initiate an investigation on the grounds that the criminal offence had become statute-barred. On 11 October 2005 the District Court set aside the prosecutor's decision on the grounds that criminal proceedings could be discontinued under the statute of limitations only with the agreement of the person to be investigated. On 24 November 2005 the prosecutor questioned Mr Stirmanov, who refused to testify on the merits of the evidence against him but disagreed with the discontinuance of the proceedings. The prosecutor once again refused to initiate a criminal investigation and Mr Stirmanov appealed against that decision. On 24 April 2006 the prosecutor gave a fresh decision refusing to initiate a criminal investigation. The applicant was not notified of that decision. In a letter of 10 January 2008 the prosecutor informed the applicant that the law did not require the prosecuting authorities to inform the person to be investigated of a refusal to initiate a criminal investigation which had been decided as a result of a preliminary examination procedure.

Mr Stirmanov applied to the courts to have the prosecutor's decision set aside. That application having been dismissed, Mr Stirmanov appealed on the grounds, *inter alia*, that he had been found

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.

guilty of an offence in a non-judicial procedure in which he had been unable to exercise his defence rights. The Arkhangelsk Regional Court dismissed his appeal.

Complaints, procedure and composition of the Court

Relying on Article 6 § 2 (presumption of innocence), the applicant complained of a violation of the principle of the presumption of innocence having regard to the decision given by the prosecutor on 24 April 2006. He also complained about the reasoning of the decision in question, and argued that the courts adjudicating on his request to set aside that decision had failed to remedy the alleged violation.

The application was lodged with the European Court of Human Rights on 4 June 2008.

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

Vincent A. **De Gaetano** (Malta), *President*,
Branko **Lubarda** (Serbia),
Dmitry **Dedov** (Russia),
Pere **Pastor Vilanova** (Andorra),
Alena **Poláčková** (Slovakia),
Jolien **Schukking** (the Netherlands),
María **Elósegui** (Spain),

and also Fatoş **Aracı**, *Deputy Section Registrar*.

Decision of the Court

Article 6 § 2

The Court observed that Mr Stirmanov had not been convicted of the offence under Article 330 § 1 of the Code of Criminal Procedure. There had been no presentation of evidence to a court or any hearings to enable the court to adjudicate on the merits of the case.

The Court noted, however, that the terms in which the prosecutor's decision of 24 April 2006 had been drafted did not leave any doubt about his opinion that the applicant was guilty. The prosecutor had unequivocally stated on several occasions that the applicant had "committed the offence under Article 33 § 1 of the Code of Criminal Procedure". The Court found that the terms used went clearly beyond a statement of mere suspicion as to the applicant's guilt.

The District Court and the Arkhangelsk Regional Court had both rejected Mr Stirmanov's appeals without disapproving the decision of 24 April 2006, even though he had complained of a breach of his right to be presumed innocent.

Mr Stirmanov alleged that the employees of the company in which he was chair of the disputes board had been informed of the decision of 24 April 2006, and that this had damaged his reputation. That evidence was sufficient for the Court to conclude that the reasoning in the decision of 24 April 2006, as confirmed by the domestic courts, had breached the principle of the presumption of innocence.

Just satisfaction (Article 41)

The Court held that Russia was to pay the applicant 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 500 in costs and expenses.

The judgment is available only in French.

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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.