



Unlawful detention but no breach of right to privacy in case involving two Russian men charged with various serious crimes

In today's Chamber judgment¹ in [Mityanin and Leonov v. Russia](#) (applications nos. 11436/06 and 22912/06) the European Court of Human Rights held, **by a majority**, that there had been:

a violation of Article 5 § 1 (lawfulness of detention), Article 5 § 3 (trial within a reasonable time), and Article 5 § 5 (enforceable right to compensation) of the European Convention on Human Rights in respect of both applicants, and a violation of Article 5 § 4 (right to have lawfulness of detention determined) in respect of the first applicant.

It held **unanimously** that there had been:

a violation of Article 6 § 1 (fair hearing by a tribunal) in respect of the second applicant owing to his absence from court hearings. It rejected a complaint by the first applicant under Article 6 § 2 (presumption of innocence) as manifestly ill-founded.

It found, **by a majority**, that there had been **no violation of Article 8 (right to respect for privacy and family life)** in respect of the first applicant in relation to a newspaper article and photograph.

The Court found in particular that the article he had complained about had made it clear that he was merely a suspect and one of several people accused of involvement in a criminal community. Overall the State had not failed in its duty under this provision.

Principal facts

The applicants, Aleksandr Mityanin and Mikhail Leonov, are two Russian nationals who were born in 1971 and 1976 respectively. They are currently in prison in Kharp (Russia).

Mr Mityanin was arrested in July 2003 and subsequently placed in detention, with one order being applied by the Syktyvkar Town Court until 19 February 2004. On 18 February 2004 the prosecuting authorities completed their pre-trial investigation and sent the case for trial. On 10 March 2004 the Syktyvkar Town Court extended the detention order.

He was convicted in December 2006 of armed robbery as part of a group. He brought a civil claim that there had been no valid court decision on his detention from 20 February until 10 March 2004, but his action was dismissed in 2012.

In January 2008 the authorities opened criminal proceedings against both applicants and others over the creation and functioning of a "criminal community". A newspaper article that month mentioned Mr Mityanin as a suspect and published a photograph of him and others had been arrested. He brought defamation proceedings against the newspaper, but his claim was dismissed. In June 2014 he was convicted of various offences and sentenced to life imprisonment.

Mr Leonov was arrested and placed in detention on suspicion of armed robbery in December 2003. On 29 January 2004 his detention was extended until 19 February 2004. The prosecutor completed

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.

the investigation and sent the case for trial. On 21 April 2004 the judge returned the case to the prosecutor, and held that the preventive measure of detention should remain unchanged.

He was convicted of a number of offences in December 2006. In 2012 he lodged complaints about the lawfulness of his detention from 19 February to 29 April 2004 but the courts dismissed them.

Complaints, procedure and composition of the Court

Both applicants complained under Article 5 (right to liberty and security) of the European Convention, referring to the lawfulness of periods of their detention, a lack of diligence in the criminal proceedings, and the domestic judgments on unlawful detention.

The second applicant complained under Article 6 § 1 (right to a fair hearing) about being absent from hearings, while the first applicant alleged that the newspaper article and photograph had undermined his rights under Article 6 § 2 (presumption of innocence) and, in substance, under Article 8 (right to respect for private and family life).

The applications were lodged on 1 February 2006 and 10 May 2006 respectively. Further complaints were raised between 2006 and 2013.

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

Vincent A. **De Gaetano** (Malta), *President*,
 Branko **Lubarda** (Serbia),
 Helen **Keller** (Switzerland),
 Dmitry **Dedov** (Russia),
 Pere **Pastor Vilanova** (Andorra),
 Alena **Poláčková** (Slovakia),
 María **Elósegui** (Spain),

and also Stephen **Phillips**, *Section Registrar*.

Decision of the Court

Article 5

The Court found violations of both men's Article 5 § 1 rights owing to periods of detention that had not been authorised by a court order. For Mr Mityanin that period had run from 20 February to 10 March 2004 while for Mr Leonov it had been from 20 February to 21 April 2004.

It found a breach of Article 5 § 3, noting that the Government had acknowledged a violation of that provision, itself finding omissions in the proceedings. It also upheld the first applicant's complaint under Article 5 § 4 owing to the courts' refusal to examine an appeal against a February 2006 rejection of his request for release. Lastly, it held that the 2012 court decisions to reject their claims of unlawful detention had led to a violation of their Article 5 § 5 compensation rights.

Article 6 § 1

Mr Leonov complained about being absent from the hearings in September and December 2012 which had determined his two civil cases for wrongful detention. The Government acknowledged a violation over the December 2012 hearings. Given that acknowledgment and its case-law, the Court found a violation of his rights in relation to both sets of proceedings, taken as a whole.

Article 6 § 2

Mr Mityanin argued that the newspaper article and photograph which had covered the bringing of charges against various men for being in a “criminal community” had been based on information from a public official and had amounted to a statement of his being guilty. The courts in turn had failed to protect his right to be presumed innocent.

The Court found that although the article had been based on information provided by the regional department of the Federal Security Service, it was not possible to say that the text which had stated that the accused, including the applicant, were part of a “gang” had come from that official source.

The article might have given the impression that the applicant was guilty, but it was not possible from the available material to confirm that the State should be held responsible for that under Article 6 § 2. This part of the complaint was thus inadmissible as manifestly ill-founded.

Article 8

The Court limited its examination of Mr Mityanin’s complaint about a violation of his right to privacy to how the courts had dealt with his defamation claim, focussing on whether they had struck a proper balance.

It accepted the courts’ stance that the publication of the photograph, without obtaining the required consent, had been justified on public interest grounds as a way to gather further information about the alleged crimes and to prompt eyewitnesses to come forward.

The Court noted that the applicant’s main complaint about the article was that it had stated that he was a member of a criminal gang and it accepted that such wording could have caused him concern as he had been accused of a related crime.

However, the article had made clear that the people who had been arrested had been “accused” of running a criminal community and that they were suspects. As a whole it was possible to read the article as saying that the applicant was merely suspected of an offence related to membership of a criminal gang. The Court also agreed with the domestic courts’ assessment that the journalist had relied in good faith on an official source for parts of the article.

The Court found that the respondent State had not failed in its duty under Article 8 as regards the publication of the photograph or article. The applicant had not provided other arguments on the balancing of his rights and the newspaper’s, or on a failure by the courts to properly apply Article 8 and Article 10 (freedom of expression). It thus found that there had been no violation of Article 8.

Just satisfaction (Article 41)

The Court held by a majority that Russia was to pay each applicant 12,700 euros (EUR) in respect of non-pecuniary damage and EUR 1,000 each in respect of costs and expenses.

Separate opinions

Judges de Gaetano and Dedov expressed partly dissenting opinions which are annexed to the judgment.

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.