



Extended questioning of Garri Kasparov at Russian airport was not justified

In today's **Chamber judgment**¹ in the case of [Kasparov v. Russia](#) (application no. 53659/07) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 5 § 1 (liberty and security of the person) of the European Convention on Human Rights, and

a violation of Article 11 (freedom of assembly) of the European Convention.

The case concerned the Russian authorities' detention of Mr Kasparov at Sheremetyevo Airport in Moscow in May 2007, which had prevented him from attending an opposition political demonstration scheduled to be held at an EU-Russia summit in Samara.

The Court found that Mr Kasparov had had his ticket and passport confiscated, had been taken to a police office and questioned for five hours about whether his ticket had been forged, and had been prohibited from leaving the office. While he had not been formally arrested, the Court found that in reality, Mr Kasparov had been unable to leave. The door had been constantly guarded by an armed officer and Mr Kasparov's passport had been confiscated. He had therefore been deprived of his liberty. That deprivation of his liberty was found not to be justified for any lawful purpose. While the authorities claimed they had been investigating Mr Kasparov for committing the crime of forgery, there was no evidence that any forgery had taken place, let alone that the authorities had had a reasonable suspicion that he had committed that offence.

Furthermore, having been denied access to the Samara flight at such short notice, Mr Kasparov had inevitably missed attending the demonstration. Given that his detention had not been lawful or justified, the Court held that he had therefore also been unlawfully prevented from attending the rally.

Principal facts

The applicant is Garri Kasparov, the chess player, writer and political activist. He is a Russian national who was born in 1963.

On 18 May 2007, Mr Kasparov was travelling to Samara to take part in an opposition rally, which had been planned to coincide with an EU-Russia summit. He alleged that when he attempted to check-in at Sheremetyevo airport, his ticket and passport were seized and he was asked to follow a police officer from the check-in hall to a separate room at the airport where, prevented from leaving by an armed guard, he was questioned and searched until 1.30 p.m. Mr Kasparov submitted two official records on which he had written notes by hand corroborating his version of events, as well as a note written by Mr Kasparov and five other activists (who were also travelling to the rally) declaring that the police had categorically forbade them to leave the room where they had been taken for questioning in the airport.

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 Government denied that Mr Kasparov's passport was seized or that he was questioned for five hours. They maintained that the police had been carrying out an operation into alleged forged tickets and that 22 people, including Mr Kasparov and his fellow activists, had simply had their aeroplane tickets confiscated and were free to leave.

Mr Kasparov complained to the transport prosecuting authorities about having been unlawfully detained by the police. However, in June 2007, the prosecutor decided not to open criminal proceedings against the policemen. The prosecutor based his decision on evidence from a police officer stating that he had received intelligence about forged tickets on the eve of Mr Kasparov's flight, as well as from the Ministry of the Interior authorities, according to whom forged aeroplane tickets had apparently been discovered during the EU-Russia summit in the context of a police operation to identify persons of an extremist nature.

Mr Kasparov also brought court proceedings, which were examined and rejected in July 2007 by the Golovinskiy District Court of Moscow. He brought a cassation appeal which was also examined and dismissed in August 2007.

Complaints, procedure and composition of the Court

Relying in particular on Article 5 §§ 1, 2 and 4 (right to liberty and security/right to be informed promptly of the reasons for arrest/right to have lawfulness of detention decided speedily by a court) and Article 11 (freedom of assembly and association), Mr Kasparov complained in particular about his arrest and detention at Sheremetyevo airport, which had prevented him from taking part in an opposition rally. He also relied upon Article 18 (limitation on use of restrictions on rights) and Article 2 of Protocol No. 4 (freedom of movement).

The application was lodged with the European Court of Human Rights on 14 November 2007.

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

Luis **López Guerra** (Spain), *President*,
Helena **Jäderblom** (Sweden),
Helen **Keller** (Switzerland),
Dmitry **Dedov** (Russia),
Pere **Pastor Vilanova** (Andorra),
Alena **Poláčková** (Slovakia),
Georgios A. **Serghides** (Cyprus),

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

Decision of the Court

[Article 5 § 1 \(right to liberty and security of the person\)](#)

The Court began by addressing the dispute between the parties about the facts. The Court noted that much of Mr Kasparov's account had not been denied by the Government. For example, the Government had not denied that a police officer had stopped Mr Kasparov and confiscated his ticket; that the officer had directed Mr Kasparov to move to an office for questioning; or that an armed guard had been present at all times. Indeed, Mr Kasparov submitted detailed and compelling documentary evidence to support his account. This included meticulous notes and recordings made on the relevant day indicating that his passport had been confiscated with his ticket; that he had been confined in the office without receiving any information about his detention until 12.50pm; and that the authorities had prohibited him from leaving the office. On the other hand, the Government provided no evidence to support their claims that Mr Kasparov had been free to leave,

that his passport had not been taken and that the questioning had not lasted until 1.30pm. In particular, they provided no evidence from police officers at the airport on the relevant day. Nor did they provide any written evidence to support its claim that Mr Kasparov had been detained as part of a wider investigation into ticket forgery. This disparity in evidence led the Court to accept Mr Kaspirov's account of events, finding it more credible.

It followed that Mr Kasparov had been under the control of the police from 8.30 a.m. to 1.30 p.m. on 18 May 2007. The Court considered that this had gone beyond a formality ordinarily associated with airport travel and had amounted to a deprivation of liberty under Article 5 § 1 of the European Convention. This was for four main reasons. First, Mr Kasparov had little practical choice but to obey the police officer who had asked him to move to an office for questioning. Secondly, he had effectively been prevented from leaving the office by the constant presence of an armed guard by the door. Thirdly, the fact that he had not been formally arrested did not mean he had not been deprived of his liberty in substance. Fourthly, Mr Kasparov's treatment had gone beyond a mere inspection of his ticket, which a traveller might reasonably expect, to begin an investigation into the crime of forgery.

The Court then held that this deprivation of liberty had not been justified. In particular, the deprivation had not been justified under Article 5 § 1 (c), which permits authorities to detain people for the purpose of bringing them before a competent authority on the suspicion that they have committed a crime, and/or where it is reasonably necessary to prevent them from committing a crime or evading arrest. The Government had not provided any written evidence to show that a forgery (or any other crime) might have been committed at all, let alone that the authorities had, at the relevant time, a reasonable suspicion that Mr Kasparov might have committed that crime. Moreover, contradictory evidence had been given about exactly when the authorities' concerns about forgeries had arisen during the domestic proceedings before the Russian transport prosecuting authorities. One witness – the police officer – had notably stated that the intelligence about forgeries had been before Mr Kasparov's flight, whereas another witness – from the Ministry of the Interior – had testified that concerns about potential forgeries had only arisen during the EU-Russia summit, in the context of checks for persons of an extremist nature. Finally, the Court noted that the authorities had not formally recorded Mr Kasparov's detention.

The Court therefore concluded that Mr Kasparov's arrest and detention had not had any legitimate purpose and had not been lawful, in violation of Article 5 § 1 of the Convention.

Article 11 (freedom of assembly and association)

There was no doubt that if Mr Kasparov had attended the political demonstration in Samara, he would have exercised his right to freedom of assembly. Having been denied access to the Samara flight at such notice, he had inevitably missed attending the demonstration. His arrest and detention had therefore prevented him from attending the rally and this had therefore amounted to an interference with his right to freedom of assembly. Given that Mr Kasparov's detention had not been lawful or justified, the Court therefore held that the interference with his right to freedom of assembly – his being prevented from attending the rally – had also been unlawful.

Other Articles

Given the findings above, the Court held, unanimously, that it was not necessary to examine Mr Kasparov's complaints under Article 2 of Protocol No. 4 concerning an interference with his freedom of movement. Similarly, it also held, by six votes to one, that it was not necessary to examine his complaint under Article 18 that there had been ulterior motives for his arrest and detention.

Article 41 (just satisfaction)

The Court held that no just satisfaction was to be awarded to Mr Kasparov as he had not submitted any such claim.

Separate opinion

Judge Keller expressed a partly dissenting opinion. This opinion is 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.