



European Court rules on two cases against Russia concerning well-known human rights activists

Today's **Chamber** judgments¹ in the cases of [Kutayev v. Russia](#) (application no. 17912/15) and [Svetova and Others v. Russia](#) (no. 54714/17) were both brought by well-known human rights activists and their family members.

Mr Kutayev alleged that he had been arrested, tortured and tried on drug charges after refusing a summons to attend a meeting with the Chechen President Ramzan Kadyrov about a conference to commemorate the 70th anniversary of the deportation of the Chechen population. Ms Svetova, her husband and three children complained of the police's indiscriminate seizure of personal belongings during a search of their flat in the context of a criminal investigation into the financial dealings of well-known businessman Mikhail Khodorkovskiy and his associates.

The European Court of Human Rights held, unanimously:

in the *Kutayev* case that there had been a **violation of Articles 3 (prohibition of torture/investigation), 5 § 1 (right to liberty and security), 6 (right to a fair trial) and 18 (limitation on use of restrictions on rights) in conjunction with Article 5; and,**

in the *Svetova and Others* case, that there had been a **violation of Articles 8 (right to respect for home), 10 (freedom of expression) and 13 (right to an effective remedy).**

A legal summary of these cases will be available in the Court's database HUDOC ([link](#))

Principal facts

Kutayev v. Russia

The applicant, Ruslan Kutayev, is a Russian national who was born in 1957 and lives in Chechnya (Russia).

He is a politician and human-rights activist. On 18 February 2014 he organised a conference in Grozny to commemorate the 70th anniversary of the deportation of the Chechen population. The exile of half a million Chechen and Ingush people is seen by many as a tragedy and has been named as an act of genocide by the European Parliament.

He was summoned the next day to a meeting with the President of Chechnya Ramzan Kadyrov. He refused to go. Others summoned – who did attend – were admonished by the President for the conference date, which they were told should have been on 10 May, decreed by Kadyrov as the Day of Remembrance and Sorrow of the Chechen People.

Fearing for his safety Mr Kutayev went to stay with a relative in the village of Gekhi. He alleges that a group of armed men in camouflage uniform came to his relative's house on 20 February 2014 and took him away to an undisclosed location where he was beaten by two men he recognised as the

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.

Deputy Minister of the Interior of Chechnya and an official from the Chechnya President's Administration. He was also subjected to electric shocks.

The Government dispute Mr Kutayev's account, submitting that he was arrested after drugs were found on him during a random identity check on the street in Gekhi.

Mr Kutayev was subsequently convicted of possessing heroin and sentenced to four years' imprisonment. His conviction was partly based on statements he had made on 21 and 22 February confessing to the drugs offences.

During his trial Mr Kutayev had retracted that confession, saying that it had been made under duress.

The authorities refused to open a criminal investigation into his allegations of ill-treatment. The investigating authorities dismissed the case as unfounded in April 2014, concluding that the applicant, a suspect in a criminal case, had complained of ill-treatment to evade justice. This decision was subsequently upheld by the courts.

Svetova and Others

The applicants are a family of journalists: Zoya Svetova, born in 1959, who is also a human rights defender; her husband, Viktor Dzyadko, born in 1955 and died in 2020, who was an artist and Soviet dissident; and their sons, Filipp Dzyadko, born in 1982, Timofey Dzyadko, born in 1985, and Tikhon Dzyadko, born in 1987, who all work in the media. They are or were Russian nationals and live or lived in Moscow.

On 28 February 2017 in the morning the police turned up at the applicants' Moscow flat with a search warrant. The applicants allege that they only found out that the warrant was related to a 2003 criminal investigation against Mikhail Khodorkovskiy, formerly one of Russia's wealthiest businessmen, and his associates when their lawyers arrived a few hours later.

Ms Svetova had previously worked with the Open Russia Foundation, a non-profit organisation founded by Mikhail Khodorkovskiy.

During the search the police seized electronic devices as well as other personal belongings, which have not been returned since. They also downloaded information from Ms Svetova's computer, including her journalistic work.

The applicants attempted unsuccessfully to bring a complaint in the courts about the search. The Basmannyy District Court notably held that the complaint could only be examined at some point in the future during a criminal trial.

Complaints, procedure and composition of the Court

Relying on Articles 3 (prohibition of torture/investigation) and 5 § 1 (right to liberty and security), Mr Kutayev complained about his arrest, unlawful detention, ill-treatment and inadequate investigation into his allegations of that ill-treatment. Also relying on Article 6 (right to a fair trial), he alleged that his conviction had been unfair as it had been based on a confession obtained under duress. Lastly, he maintained that the real reason for his arrest and conviction had been for organising the conference on a date other than the official Day of Remembrance and Sorrow of the Chechen people, in breach of Articles 5 and 18 (limitation on use of restrictions on rights).

Relying on Article 8 (right to respect for home) and Article 13 (right to an effective remedy), the applicants in the second case complained of the search and seizure of their personal belongings without their being able to obtain a judicial review as they had no procedural status in the criminal proceedings. Relying on Article 10 (freedom of expression), Ms Svetova also alleged that the

downloading of information from her computer during the search had interfered with her right to protect her journalistic sources.

The applications were lodged with the European Court of Human Rights on 10 April 2015 and 27 July 2017.

In both applications the Court addressed the issue of appointment of an *ad hoc* judge in Russian cases after 16 September 2022, the date on which Russia ceased to be a member of the Council of Europe (see the Committee of Ministers of the Council of Europe's Resolution [CM/Res\(2022\)2](#) of 16 March 2022).

It reiterated that it had stated, in plenary sessions on 22 March and 5 September 2022, that Russia would cease to be a High Contracting Party to the Convention on 16 September 2022 (see its [Resolution of 22 March 2022](#)) and that the office of judge in respect of Russia would also cease to exist after that date (see its [Resolution of 5 September 2022](#)). There was, accordingly, after that date, no valid list of *ad hoc* judges from Russia.

The parties in the two cases at hand were informed that the Court intended to appoint one of its sitting judges to act as an *ad hoc* judge for the examination of their applications and to apply the same approach in respect of other applications against Russia that the Court remained competent to deal with. The Government were invited to comment on that arrangement but they did not submit any comments.

Accordingly, the President of the Chamber decided to appoint an *ad hoc* judge from among the members of the composition, applying by analogy Rule 29 § 2 (b).

Judgments were given by a Chamber of seven judges, composed as follows:

Kutayev:

Pere Pastor Vilanova (Andorra), *President*,
Georgios A. Serghides (Cyprus),
Yonko Grozev (Bulgaria),
Darian Pavli (Albania),
Peeter Roosma (Estonia),
Ioannis Ktistakis (Greece),
Andreas Zünd (Switzerland),

Svetova:

Pere Pastor Vilanova (Andorra), *President*,
Yonko Grozev (Bulgaria),
Jolien Schukking (the Netherlands),
Darian Pavli (Albania),
Peeter Roosma (Estonia),
Ioannis Ktistakis (Greece),
Andreas Zünd (Switzerland),

And, in both cases, also Olga Chernishova, *Deputy Section Registrar*.

Decision of the Court

Firstly, the Court looked at the issue of its jurisdiction following 16 September 2022². Referring to the wording of Article 58 (§§ 2 and 3) of the Convention and its above-mentioned Resolution of 22 March 2022, the Court established that it had jurisdiction to deal with both cases, as the facts giving rise to the alleged violations of the Convention had taken place before 16 September 2022.

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The Court held that there had been a violation of Article 3 as concerned the applicant's allegation of ill-treatment and the related investigation. He had provided a detailed and consistent account, backing it up with sufficient evidence. The Government, on the other hand, had failed to provide a plausible explanation for the injuries. The Court concluded that the applicant had clearly been caused severe physical pain with the intention of extracting a confession, and that that had amounted to torture.

² The Court ruled on this issue for the first time in its Grand Chamber judgment [Fedotova and Others v. Russia](#) [GC], of 17 January 2023.

It also held that there had been a violation of Article 6 as the national courts had used the applicant's confession obtained as a result of torture to convict him, making his trial unfair.

Next, it held that there had been a violation of Article 5 because the applicant's arrest and detention on 20 February 2014 had not had any legitimate purpose. The allegation that he had been arrested because drugs had been found on him during a random identity check was neither sufficient nor credible. The applicant had had no history of prior drugs offences, while even President Kadyrov himself had said at an official meeting after the arrest that the applicant had "conducted a conference timed for 23 February – that is why he was arrested."

Indeed, that public statement, together with a number of other elements – the date and topic of the conference the applicant had organised, his arbitrary arrest, the use of torture against him to obtain a confession, the direct involvement of high-ranking officials in his case – seen against the backdrop of the general crackdown on human rights activists in Chechnya in recent years, pointed to there having been an ulterior motive behind the authorities' actions. The Court concluded that the real reason for the applicant's arrest had been to punish him for arranging the commemoration event on a date other than 10 May and for his refusal to attend the meeting with President Kadyrov, in violation of Article 18 taken in conjunction with Article 5 § 1.

Svetova and Others

Firstly, the Court addressed the consequences of the Government's failure to participate in the proceedings on the case. It reiterated that States were obliged to cooperate with the Court and to provide all necessary facilities for a proper and effective examination of applications (Articles 34 and 38 of the Convention and Rule 44A). The cessation of a Contracting Party's membership of the Council of Europe did not release it from that duty.

The Court then referred to Rule 44C § 2, which stipulated that "a respondent Contracting Party's failure or refusal to participate effectively in the proceedings shall not, in itself, be a reason for the Chamber to discontinue the examination of an application." In the past it had considered that a State's failure to participate in at least some stages of the proceedings had amounted to a waiver of their right to participate, which did not prevent the Court from examining the application.

Concerning such a waiver and the implications for the burden of proof, the Court stated that a party's failure to effectively participate should not automatically lead to the applicants' claims being accepted. The Court had to be satisfied by the evidence available that the claim was well-founded in fact and law.

In the case at hand, the Court carried out its examination on the basis of the applicants' submissions, which were presumed to be accurate where supported by the evidence available.

Turning next to the core of the allegations, the Court noted that the applicants had not been charged with or suspected of any criminal offence. The warrant to search their flat had concerned a criminal case opened 14 years earlier in which they had had no procedural status. Indeed, the warrant had been phrased in such broad terms that the police had had unrestricted discretion to decide which items and documents could be seized. Such indiscriminate seizure could not be considered "necessary in a democratic society", in breach of Article 8.

Moreover, it could not be ruled out that such broad and vague measures had not intended to uncover Ms Svetova's journalistic sources. There had therefore been an interference with her journalistic work which had not been "necessary in a democratic society", in breach of Article 10.

Lastly, the applicants could not obtain an effective review of the legality and manner in which the search and seizure had been carried out. All five applicants had therefore been denied an effective remedy, in breach of Article 13 in conjunction with Article 8.

Just satisfaction (Article 41)

In respect of non-pecuniary damage, the Court held that Russia was to pay Mr Kutayev 52,000 euros (EUR); while it was to pay Ms Svetova EUR 10,000, Anna Dzyadko (Viktor Dzyadko's heir) EUR 7,000 and Filipp Dzyadko, Timofey Dzyadko and Tikhon Dzyadko EUR 4,000 each.

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.