



## ECHR finds multiple violations of the European Convention in case concerning Russian tax adviser Magnitskiy

The case of [Magnitskiy and Others v. Russia](#) (applications nos. 32631/09 and 53799/12) concerned Sergei Magnitskiy, an auditor charged with organised tax evasion who died in pre-trial detention in November 2009. He was later convicted posthumously.

In today's **Chamber** judgment<sup>1</sup> the European Court of Human Rights held, unanimously, that there had been:

**a violation of the substantive and procedural limbs of Article 2 (right to life) of the European Convention on Human Rights, and,**

**a violation of Article 3 (prohibition of ill-treatment) owing to the conditions of Mr Magnitskiy's detention, and,**

**a violation of Article 3 owing to Mr Magnitskiy's ill-treatment by prison guards and the lack of an effective investigation into that issue, and,**

**a violation of Article 5 § 3 (right to liberty and security) owing to the length of his detention, and,**

**a violation of Article 6 §§ 1 and 2 (right to a fair trial and presumption of innocence) owing to the posthumous proceedings and his conviction.**

The Court rejected a complaint under Article 5 § 1 about Mr Magnitskiy's arrest and detention as ill-founded.

The Court found in particular that the medical care given to Mr Magnitskiy in prison had been inadequate and had led to his death and that the subsequent investigation had been lacking. He had also been held in over-crowded conditions and had been ill-treated shortly before dying.

The Court held that the authorities had had reasonable grounds to suspect Mr Magnitskiy of being involved in tax evasion so a complaint by the applicants on that ground was inadmissible. However, that suspicion had not warranted his being held in prison for more than a year and the authorities had not provided sufficient reasons for keeping him detained for such a long period of time.

Furthermore, the proceedings for his conviction after his death had been inherently unfair.

### Principal facts

The first application (no. 32631/09) was lodged by Sergei Leonodovich Magnitskiy, born in 1972. After his death, the second applicant, his wife Nataliya Valeryevna Zharikova, also born in 1972, continued the proceedings. The second application (no. 53799/12) was lodged by Nataliya Nikolayevna Magnitskaya, Mr Magnitskiy's mother, the third applicant.

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).

Mr Magnitskiy was the head of tax at the Moscow legal and audit firm Firestone Duncan. Its clients included the Russian subsidiaries of the Hermitage Fund, at the time the largest foreign investment fund in Russia. Hermitage's Moscow office was headed by a US national, William Browder.

In 2007 a court order authorised a change in ownership of three Hermitage subsidiaries, with the new owners then applying for and being paid a tax refund of some 5.4 billion Russian roubles (about 145 million euros). Hermitage found out about this process through lawyers' letters.

Lawyers for the three subsidiaries accused officials from the investigation department of the Ministry of the Interior of fraud. They were alleged to have appropriated the subsidiaries' company seals and other documents during a separate tax investigation into a Hermitage client, Kameya, and to have carried out a fraudulent re-registration of the subsidiaries.

In February 2008 a special investigator of the Investigative Committee of the Prosecutor General's Office began looking into Hermitage's allegation about the theft of the three companies. In June 2008 Mr Magnitskiy spoke to the investigator about the ownership change and tax refund, including alleged criminal misconduct and abuse of office by investigation department officials.

In July 2008 the head of the Investigative Committee of the Ministry of the Interior joined the Kameya case with three other cases of suspected tax evasion committed by a criminal group. Mr Magnitskiy was placed under arrest in November 2008 and was charged with two counts of aggravated tax evasion committed in conspiracy with Mr Browder.

Mr Magnitskiy was placed in pre-trial detention, which was extended several times, and was still in a remand prison when he died on 16 November 2009.

Prior to his death he had complained many times of ill-health. A prison hospital surgeon diagnosed cholelithiasis and chronic cholecystopancreatitis and prescribed drugs, an ultrasound examination and surgery. However, Mr Magnitskiy was moved to another remand prison, which, according to the applicants, did not have the necessary medical facilities and which repeatedly ignored his requests for treatment despite his being in severe pain.

Owing to a worsening in his condition, Mr Magnitskiy was ordered to be transferred to another facility, remand prison no. 77/1, for treatment, although the move was delayed for several hours. He was finally examined there but while the doctor was writing her notes she found that he had begun to behave in an aggressive fashion. He was placed in handcuffs and an official report later stated that a rubber truncheon had been used. A civilian emergency psychiatric team was called out, but by the time they had been admitted into the prison Mr Magnitskiy had died.

The authorities carried out investigations which did not result in any criminal liability being established in respect of persons responsible for Mr Magnitskiy's detention and treatment.

The authorities pursued their investigation of Mr Magnitskiy after his death. In July 2013 he was found guilty in a posthumous conviction of leading tax evasion. The criminal proceedings against him were then discontinued and no sentence was imposed on him.

## Complaints, procedure and composition of the Court

The second and third applicants complained under Article 2 (right to life) and Article 3 (prohibition of inhuman or degrading treatment) that the authorities had failed to provide medical care to Mr Magnitskiy and had been responsible for his death. The third applicant complained that the investigation into his death had not met Convention requirements.

Under Article 3, the applicants alleged that the conditions of Mr Magnitskiy's detention in remand prison no. 77/5 from 2 December 2008 to 28 April 2009 had been appalling. Under the same provision, the third applicant alleged that Mr Magnitskiy had been ill-treated by prison guards in remand prison no. 77/1 on the day of his death and there had been no effective investigation.

The applicants complained about Mr Magnitskiy's detention under Article 5 §§ 1 (c) and 3 (right to liberty and security), in particular that there had been no reasonable suspicion of a criminal offence and that the length of his detention had breached the reasonable time requirement.

The second and third applicants alleged that the criminal proceedings against Mr Magnitskiy and his posthumous conviction had breached Article 6 § 1 (right to a fair trial). The third applicant complained that the conviction had violated the presumption of innocence principle in Article 6 § 2.

The applications were lodged on 11 June 2009 and 21 August 2012 respectively.

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

Vincent A. **De Gaetano** (Malta), *President*,  
Georgios A. **Serghides** (Cyprus),  
Helen Keller (Switzerland),  
Dmitry **Dedov** (Russia),  
María **Elósegui** (Spain),  
Gilberto **Felici** (San Marino),  
Erik **Wennerström** (Sweden),

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

## Decision of the Court

### Article 2

The Court found a number of shortcomings in the medical treatment given to Mr Magnitskiy while he was in detention. In particular, the authorities had failed to carry out a number of diagnostic measures or to allow him to see a surgeon, who could have decided on an operation. It was possible that the lack of such a consultation had contributed significantly to his death.

The prison where he was being held at the time had not had the necessary facilities to treat him and the measures taken on the day of his death to handle the emergency situation that had arisen were particularly inadequate. While the authorities had decided to transfer him to a prison which had the necessary facilities in the morning, he had not actually been moved until the late afternoon. The Government had not provided explanations for that situation and the Court held that such delays in a serious medical emergency appeared to have been unreasonably long and manifestly inadequate.

The Court found that the authorities had deprived Mr Magnitskiy of important medical care and had failed to comply with their duty to protect his life under Article 2.

As for the duty of an effective investigation, which is also incumbent on States under this provision of the Convention, the Court noted that the authorities had acted quickly to secure evidence and had opened a criminal case within eight days of the death.

However, the autopsy had not been thorough and the CCTV footage from the prison where he had died had not been obtained until 2011. The official decision of March 2013 to close the case on his death had been perfunctory, not addressing key issues. The prosecution of one of the doctors was time-barred which by itself showed the investigation's lack of effectiveness.

The authorities had thus failed to carry out an effective criminal investigation into alleged medical negligence as the cause of Mr Magnitskiy's death, violating the procedural obligation of Article 2.

### Article 3

#### *Conditions of detention*

The Court noted that the Government and the applicants differed on the conditions of Mr Magnitskiy's detention in remand prison no. 77/5 from 2 December 2008 to 28 April 2009, with the Government stating that he had had around four square metres of individual space and the applicants stating that this submission was groundless as there was no evidence for it.

The Court took note of the Government's statement that the relevant records, the facility's logbook and its population register, had been destroyed as the time-limit for keeping them had passed. On the other hand, the Government had provided little other evidence to back up its submission.

The Court thus relied on previous cases concerning that particular prison and evidence supplied by the first applicant. It found that he had shared cells of between 20 and 30 square metres with eight to 15 other inmates and had not had an individual sleeping place. Overall he had been held in conditions of severe overcrowding and had thus suffered a violation of his rights under Article 3.

#### *Ill-treatment in prison and investigation*

The Government submitted that Mr Magnitskiy had been handcuffed on the evening of his death owing to aggressive behaviour caused by toxic psychosis but that no equipment such as a rubber truncheon had been used on him. The third applicant alleged that Mr Magnitskiy had been handcuffed and beaten with such a truncheon several hours before his death.

Given the domestic medical expert findings that Mr Magnitskiy had had bruises and abrasions on his wrists, hands and left leg, and that it had not been ruled out that he could have been hit with a police truncheon, the Court considered that his injuries could arguably have been caused by his being beaten by prison officers. Those circumstances gave rise to a presumption in favour of the third applicant's version of events and satisfied the Court that her allegation was credible.

The Court noted that the authorities had begun a preliminary enquiry without undue delay after the death. The investigating authority had not addressed concerns about the use of force on him after the on-site examination and autopsy had found injuries on his body. Nor had it tried to clarify discrepancies between a prison guard's statement of a rubber truncheon being used on Mr Magnitskiy and the investigator's finding in the case that only handcuffs had been applied.

In addition, the domestic authorities had concluded that the injuries had been self-inflicted but no witnesses had seen him inflicting those injuries himself.

The Court concluded that the investigation into Mr Magnitskiy's death had not been thorough or effective and had not met the requirements of the procedural limb of Article 3 of the Convention. It also accepted the third applicant's submissions that Mr Magnitskiy had suffered ill-treatment and that there had thus also been a violation of the substantive limb of that provision.

#### [Article 5 § 1](#)

The applicants argued that Mr Magnitskiy's arrest had not been based on a reasonable suspicion of a crime and that the authorities had lacked impartiality as they had actually wanted to force him to retract his allegations of corruption by State officials. The Government argued that there had been ample evidence of tax evasion and that Mr Magnitskiy had been a flight risk.

The Court reiterated the general principles on arbitrary detention, which could arise if the authorities had complied with the letter of the law but had acted with bad faith or deception. It found no such elements in this case: the enquiry into alleged tax evasion which had led to Mr Magnitskiy's arrest had begun long before he had complained of fraud by officials. The decision to arrest him had only been made after investigators had learned that he had previously applied for a UK visa, had booked tickets to Kyiv, and had not been residing at his registered address.

Furthermore, the evidence against him, including witness testimony, had been enough to satisfy an objective observer that he might have committed the offence in question. The list of reasons given by the domestic court to justify his subsequent detention had been specific and sufficiently detailed.

The Court thus rejected the applicants' complaint about Mr Magnitskiy's arrest and subsequent detention as being manifestly ill-founded.

### Article 5 § 3

The Court noted that Mr Magnitskiy had been detained from 24 November 2008 to his death in prison on 16 November 2009. Weighty reasons were required to justify such a long period of detention, which the authorities had given as the seriousness of the alleged crime and the possibility of his absconding or influencing witnesses.

However, the Court found that such reasons had not been sufficient. In particular, the fear of his absconding had been based on the fact that before his arrest he had been preparing to leave Russia and had applied for a UK visa. That concern might have been relevant at the initial stage of his detention, but had become increasingly irrelevant with time.

As for the concern about his influencing witnesses, the domestic courts should have analysed other pertinent factors, such as progress in the investigation or judicial proceedings and his character. In fact, the authorities had inverted the presumption in favour of release, holding that he should continue to be detained in the absence of new information warranting his release.

The Court held that there had been a violation of Article 5 § 3 as the authorities had extended his detention on grounds which could not be regarded as sufficient to justify its duration.

### Article 6 §§ 1 and 2

The applicants submitted that the posthumous proceedings that had led to Mr Magnitskiy being found guilty of tax evasion had been carried out against their will. They argued that the investigation and trial had been unfair and noted that the Constitutional Court had found that such proceedings should only be held if they led to rehabilitation at the request of a suspect's family.

The Government argued that the criminal proceedings had protected the interests of the second and third applicants, who had not consented to the case being discontinued. The family's rights had been secured by the appointment of a lawyer by the court.

The Court noted that fundamental aspects of the right to a fair trial were that criminal proceedings had to be adversarial and that an accused should be able to appear at trial – the trial of a dead person inevitably ran counter to such principles.

It took note of the Government's arguments about the necessity for the trial, but noted that it had not concerned rehabilitation, which could be a reason for posthumous proceedings. The key issue for the Court was that judicial examinations had to be free of any risk of the posthumous conviction of someone whose guilt had not been established in court when the person was still alive.

The Court concluded that the posthumous proceedings which had ended in Mr Magnitskiy's conviction had breached Article 6 § 1 of the Convention owing to their inherent unfairness.

It also observed that a fundamental rule of criminal law was that criminal liability did not survive the person who committed the criminal act, a rule which guaranteed the presumption of innocence. That rule had been breached as Mr Magnitskiy had not stood trial and had been convicted posthumously and there had thus been a violation of Article 6 § 2 of the Convention.

### Just satisfaction (Article 41)

The Court held that Russia was to pay the two applicants 34,000 euros (EUR) jointly in respect of non-pecuniary damage.

*The judgment is available only in English.*

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