



Disproportionate sanction against Russian opposition activists for participating in spontaneous demonstration

In today's **Chamber** judgment¹ in the case of [Navalnyy and Yashin v. Russia](#) (application no. 76204/11) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 11 (freedom of assembly and association) of the European Convention on Human Rights;

a violation of Article 6 § 1 (right to a fair trial);

a violation of Article 5 § 1 (right to liberty and security); and

a violation of Article 3 (prohibition of inhuman or degrading treatment) alone and in conjunction with Article 13 (right to an effective remedy).

The case concerned the arrest of two well-known opposition leaders at a demonstration in December 2011, their subsequent detention and their conviction of an administrative offence.

The Court found in particular that the applicants' arrest, detention and conviction had been disproportionate to the offence they had allegedly committed, namely their participation in a spontaneous nonviolent demonstration in defiance of a police order. Their punishment – for acts protected by Articles 10 and 11 of the Convention – had the potential to deter others from attending demonstrations or participating in open political debate.

Principal facts

The applicants, Aleksey Navalnyy and Ilya Yashin, are Russian nationals who were born in 1976 and 1983 respectively and live in Moscow. Both applicants are political activists and opposition leaders. Mr Navalnyy is also a well-known anti-corruption campaigner and a popular blogger. Mr Yashin is a leader of the political movement "Solidarnost".

Both applicants were arrested following their participation in an authorised demonstration on 5 December 2011 to protest against the allegedly rigged elections of the State Duma, which had taken place the previous day. The applicants allege that they were arrested while on their way back to Mr Navalnyy's car and that they did not put up any resistance against the police. According to the Government's submissions, Mr Yashin called on the participants to march to the office of the Central Electoral Commission; the marchers shouted slogans, obstructed the traffic and ignored repeated demands by the police to stop, upon which they were arrested.

The applicants were subsequently placed in police detention – consecutively in three different police stations – until being brought to court the following day. On that day, both applicants were sentenced to 15 days' administrative detention for having disobeyed a lawful order of the police. Their appeals were dismissed on 7 December 2011.

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.

According to the applicants' submissions, they were not given any food or water during their transfer between the police stations; in the third police station, where they stayed the night, there was no sanitary equipment, bed or bedding in the cell.

Complaints, procedure and composition of the Court

The applicants complained that their arrest and detention had violated their rights under Article 10 (freedom of expression) and Article 11 (freedom of assembly and association). They further maintained that the administrative proceedings had been in breach of Article 6 § 1 (right to a fair trial), in particular because video recordings of their arrest had not been admitted as evidence and witnesses they had requested had not been examined. Relying on Article 5 § 1 (right to liberty and security), they complained that their arrest and police detention had been arbitrary and unlawful. They also complained of the poor conditions of their detention and of the lack of legal remedies in that respect, relying on Article 3 (prohibition of inhuman or degrading treatment) and Article 13 (right to an effective remedy). Finally, they alleged that their arrest, detention and the administrative charges against them had been in violation of Article 18 (limitation on use of restrictions on rights).

The application was lodged with the European Court of Human Rights on 11 December 2011.

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

Isabelle **Berro-Lefèvre** (Monaco), *President*,
Elisabeth **Steiner** (Austria),
Paulo **Pinto de Albuquerque** (Portugal),
Linos-Alexandre **Sicilianos** (Greece),
Erik **Møse** (Norway),
Ksenija **Turković** (Croatia),
Dmitry **Dedov** (Russia),

and also **Søren Nielsen**, *Section Registrar*.

Decision of the Court

[Article 11](#)

The Court considered it adequate, in the circumstances of the case, to examine the applicants' complaint under Article 11 in the light of Article 10. Notwithstanding the disagreement between the parties about the facts, there was a clearly acknowledged link between the exercise of their freedom of assembly and the measures taken against them. Their arrest, detention and the ensuing administrative charges against them had thus constituted an interference with their right guaranteed by Article 11.

It was clear from the description of both parties that the applicants had walked, after the end of the authorised demonstration, some distance together with a certain number of people. Irrespective of whether they had walked on the road or the pavement and whether they had shouted slogans, it had not been unreasonable for the authorities to take the crowd for a spontaneous march. The Court therefore accepted that the applicants' arrest and their conviction for an administrative offence had pursued the legitimate aim of maintaining public order.

However, the Court observed that the march – or the perceived march – had only lasted for 15 minutes, according to both parties' accounts; it had been peaceful and the number of participants, one hundred at the most, could not have been difficult for the police to contain. Therefore, the police had intercepted the applicants for the sole reason that the march as such had

not been authorised. Subsequently, the courts had not made any attempt to verify whether it had been necessary to stop them. The Court therefore considered that the forceful intervention by the police had been disproportionate and had not been necessary for the prevention of disorder.

On the basis of the materials in the case file the Court was unable to establish whether the police had given any orders to the applicants before their arrest, as maintained by the Government but contested by the applicants. In any event, under national law, the applicants could only have been escorted to a police station if the administrative offence report – which the police had to draw up believing that the applicants were committing such an offence – could not be drawn up on the spot. The Russian Government had not argued that there had been any obstacles to draw up the report right away; and such a report had not even been drawn up in the police bus but only hours later at the third police station. Moreover, the Russian courts had not addressed the applicants' argument that it had been unnecessary to escort them to the police station. The Court, for its part, could not discern any reasons for applying those coercive measures in the circumstances of the case.

Finally, the Court considered that the sanction imposed on the applicants, 15 days administrative detention, was disproportionate to the offence, which – if there had been any – had been rather trivial.

The Court observed that the Russian courts had expressly acknowledged that the applicants had been punished for holding a spontaneous peaceful demonstration and chanting anti-government slogans, acts protected by Articles 10 and 11 of the Convention. Those measures could only have had the effect of discouraging them from participating in protest rallies or any opposition politics. Moreover the measures had a serious potential to also deter others from attending demonstrations or participating in open political debate, all the more so since the applicants were well-known public figures whose arrest and detention were bound to attract media coverage.

The Court concluded that there had been a violation of Article 11.

Article 6

The Court observed that the circumstances of the applicants' confrontation with the police were in dispute between the parties. However, in the administrative proceedings, the Russian courts had decided to base their judgment exclusively on the version put forward by the police and they had refused to accept additional evidence, such as video recordings, or to call other witnesses. The Court underlined that, in a dispute over key facts underlying the charges where the only witnesses for the prosecution were police officers who had played an active role in the events in question, the failure to exhaust all possibilities to verify the officers' incriminating statements ran contrary to the basic requirements of criminal law, which were also applicable to the administrative proceedings in the present case. Moreover, the Russian courts had limited the scope of the case to the applicants' alleged disobedience, without examining whether the police had acted lawfully.

Those considerations were sufficient for the Court to conclude that the administrative proceedings against the applicants, taken as a whole, had been in violation of the applicants' right to a fair hearing under Article 6 § 1.

Article 5

The Court found that the applicants' arrest and detention on 5 and 6 December 2011 had been unlawful and arbitrary, in violation of Article 5 § 1.

In particular, the Court had already noted that escorting the applicants to the police station had been unjustified in the circumstances. Moreover, their transfer – via two police stations – before being detained in the third police station had lasted for nearly six hours, without any record, which constituted a period of unacknowledged detention. Finally, after the administrative offence reports had been drawn up, in the early morning of 6 December, they had not been released but had

remained in detention to secure their attendance at the court hearing, without any justification – such as the risk that they would abscond – being given for that measure.

Article 3 and 13

The Russian Government had accepted the applicants' account as regards their transfer between police stations, namely the fact that it had lasted nearly six hours and that they had not received any food during that time. The Government had also acknowledged the essential facts relating to the conditions of the applicants' detention at the third police station. The Government had submitted a photo of the cell – where one applicant had been kept for twelve, the other for seven hours – which showed that it had no window, no sanitary equipment and no furniture except for two benches, and no mattresses. Having regard to the cumulative effect of the long late-night transfer and the condition of the applicants' police detention, the Court considered that their detention conditions had diminished their dignity and had caused them distress of an intensity exceeding the unavoidable level of suffering inherent in detention. There had accordingly been a violation of Article 3.

The Court moreover found that there had been a violation of Article 13 in conjunction with Article 3, noting that the applicants had not had any effective legal remedy available at national level to complain about the conditions of their transfer and detention.

Article 18

In view of its findings under Articles 5, 6 and 11, the Court did not consider it necessary to examine separately whether there had been a violation of Article 18.

Just satisfaction (Article 41)

The Court held that Russia was to pay each of the applicants 26,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,500 to Mr Navalnyy in respect of costs and expenses.

Separate opinion

Judge **Pinto de Albuquerque** expressed a concurring opinion which 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.