



Arrest and prosecution for breaches of public assembly rules following one-person demonstrations violated activists' freedom of expression

In today's **Chamber judgment**¹ in the case of **Novikova and others v. Russia** (application nos. 25501/07, 57569/11, 80153/12, 5790/13 and 35015/13) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 10 (freedom of expression) of the European Convention on Human Rights in respect of all five applicants.

The case concerned the complaints by five people, lodged separately, about the authorities' response to demonstrations held by each of them, notably their arrest and retention at a police station for several hours and, in respect of three of the applicants, their conviction of an administrative offence.

The Court concluded that the authorities' actions, for which they had not given relevant and sufficient reasons, had constituted a disproportionate interference with the applicants' right to freedom of expression. In particular, the applicants had merely voiced their opinion in a non-violent manner.

Principal facts

The applicants, Marina Novikova, Yuriy Matsnev, Viktor Savchenko, Aleksandr Kirpichev, and Valeriy Romakhin, are Russian nationals who were born in 1972, 1937, 1967, 1984, and 1965 respectively and live in Moscow, Kaliningrad, the village of Platonovo-Petrovka in the Rostov Region, and Astrakhan (all in Russia).

Ms Novikova staged a demonstration in front of the State Duma in Moscow in November 2006, holding a poster that read "Psychiatry kills our children on our taxes". According to her, it was a "solo static demonstration", within the meaning of the applicable legislation on public assemblies in force at the time, and did not require prior notification to the authorities. After ten minutes she was approached by the police and taken to a police station, where she remained for three hours before being released. According to the submissions of the Russian Government, five other people had been present in front of the Duma apart from Ms Novikova, holding posters with similar slogans. A district court subsequently convicted her of an administrative offence, namely of breaching the statutory procedure for the running of a group public event, and ordered her to pay a fine. The judge considered that she had participated in a demonstration without prior notification.

Mr Kirpichev was taken to a police station after having staged a solo demonstration in Astrakhan in July 2012, holding a poster which read "The Kremlin is not for sale – it is a piece of architecture!" According to the Government, Mr Kirpichev had staged a public meeting, calling passers-by to discuss with him. He was subsequently convicted of breaching the statutory procedure for the running of a public event and ordered to pay a fine; the judgment was upheld on appeal.

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.

Mr Romakhin staged a solo demonstration in November 2012 in front of the Maritime University in Astrakhan to express his disagreement with a recent decision to close the university, holding a poster which read "To close the university is to commit a crime". Another person was holding a demonstration on the other side of the street, making similar claims. Mr Romakhin was taken to a police station, from where he was released after several hours. He was subsequently convicted of the administrative offence of holding a public event without prior notification and ordered to pay a fine.

Mr Matsnev was arrested and taken to a police station after having staged a solo demonstration in front of the Kaliningrad Regional Administration building in July 2010, holding a poster which called for officials suspected of corruption to be held accountable. He was released after two hours. He subsequently brought civil proceedings seeking compensation for the authorities' actions and was awarded the equivalent of 150 euros.

Mr Savchenko was taken to a police station after having staged a demonstration during a visit of President Putin to the village of Peshkovo in the Rostov region in June 2011, holding a poster which stated that in the Rostov region the President's decree on social assistance to families was being disregarded. Mr Savchenko was released after three hours at the police station. He was subsequently found guilty of the administrative offence of "minor hooliganism" but then the case was discontinued.

Complaints, procedure and composition of the Court

The applicants complained that the authorities' actions had constituted a violation of their rights under Article 10 (freedom of expression) and/or Article 11 (freedom of assembly and association). Some of the applicants further alleged violations of Article 5 (right to liberty and security) and of Article 2 of Protocol 4 to the Convention (freedom of movement).

The applications were lodged with the European Court of Human Rights on 27 April 2007, 26 August 2011, 10 November 2012, 30 November 2012 and 20 May 2013 respectively.

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

Luis **López Guerra** (Spain), *President*,
George **Nicolaou** (Cyprus),
Helen **Keller** (Switzerland),
Johannes **Silvis** (the Netherlands),
Dmitry **Dedov** (Russia),
Pere **Pastor Vilanova** (Andorra),
Alena **Poláčková** (Slovakia),

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

Decision of the Court

Article 10

Given that the applicants argued that the authorities' actions related to their "solo demonstrations" rather than any peaceful assembly with others, the Court found it appropriate to examine the case under Article 10 (freedom of expression), taking into account the principles of its case-law under Article 11 (freedom of assembly and association).

The Court accepted to proceed with its examination of the case on the assumption that the termination of the demonstrations and the applicants' being taken to police stations had a basis in domestic law, namely the relevant provisions of the Public Assemblies Act and of the Code of

Administrative Offences. While the Court had some doubts whether any of the legitimate aims for restrictions of the right to freedom of expression listed under Article 10 § 2 had been pursued by the measures in question, the Court considered that the aims of “prevention of crime” and “prevention of disorder” were to be taken into consideration for its assessment of whether the measures had been proportionate to the aims pursued.

All applicants had chosen “solo static demonstrations” to express their opinion, because that was the only form of public event which did not require prior notification to the authorities. According to the definition under domestic law, such a demonstration was a public expression of opinion that did not involve movement or the use of loudspeaker equipment and it consisted of one or more citizens with posters or other means of visual expression assembling near the place which was the object of the picketing. The applicants had used posters displaying slogans and the events staged by them had been non-violent and had not obstructed traffic. Furthermore, it was undisputed between the parties that the events concerned matters of public interest. The Court considered that the demonstrations had constituted a form of political expression.

Although the applicants had chosen the form of “solo demonstrations” to express their opinions, the authorities had dealt with the situations of Ms Novikova, Mr Kirpichev and Mr Romakhin as matters falling within the ambit of the regulations concerning public group events and thus requiring prior notification.

The Court was not satisfied that relevant and sufficient reasons had been given at national level for the swift termination of the demonstrations. Given the number of participants of a maximum of six people – if the submission of the Russian Government was to be accepted, there had been six participants in Ms Novikova’s and Mr Kirpichev’s cases –, prior notification of the event had not been necessary to enable the authorities to take measures to minimise any disruption of traffic or other security measures. The police orders to swiftly terminate the demonstrations had adversely affected the applicants’ right to freedom of expression. Having regard to those considerations and to the fact that the demonstrations had been non-violent, the Court found that the authorities should have showed a degree of tolerance towards the demonstrators, for example by letting the applicants complete their demonstrations.

Similar considerations applied concerning the proportionality of the applicants’ being taken to police stations. The main – if not the only – reason for that measure given by the police had been that the applicants had committed an administrative offence by violating the notification requirement for a public event. Since the situation had not given rise to particular public safety concerns and the demonstrations had been non-violent without any obstruction to the traffic, there had been no compelling reasons for their arrest.

Furthermore, the Court was not satisfied that the applicants’ right to exercise their freedom of expression had been duly taken into consideration in the examination of the administrative-offence charges against them. As regards the applicable legislation in force before 2012 – which had been pertinent in Ms Novikova’s case – the Court considered that it had not been sufficiently foreseeable as to what conduct or omission could be classified as an offence for breaching the notification requirement under the Public Assemblies Act, where there was a doubt as to whether the event in question was a group event, several simultaneous solo demonstrations or merely one solo demonstration.

A 2012 amendment to the Public Assemblies Act had introduced the requirement that a certain distance be observed between unrelated solo demonstrators and it had empowered the domestic courts to decide whether a public event was a “group event” or a solo static demonstration. As regards the competence to reclassify an event, after the fact, as a “group event” rather than a solo demonstration, the Court could not see what legitimate aim, under Article 10, the authorities sought to achieve. The Court did not see sufficient reasons for convicting demonstrators for the non-observance of the notification requirement who had merely been standing in a peaceful, non-

disruptive manner at a distance of some fifty metres from each other. No compelling consideration relating to public safety, prevention of disorder or protection of the rights of others was at stake.

The aim of the amended legislation could have been achieved by a reasonable application of the distance requirement, without there being a pressing need for the reclassification rule or for the notification requirement, which interfered with the freedom of expression exercised by solo demonstrators. Those findings could be demonstrated, in particular, by the circumstances in Mr Romakhin's case, who had been convicted based on the conclusion that the event in question had been a group event rather than two simultaneous solo demonstrations. The Court considered that his prosecution, together with the unjustified measures of swiftly terminating his demonstration and taking him to the police station, had constituted a disproportionate reaction to the situation.

The Court agreed with the Russian Constitutional Court's finding – in a 2013 judgment assessing the 2012 amendment to the Public Assemblies Act – that a solo demonstration should not be classified as an assembly merely because it had attracted attention from the public. The domestic courts had adopted a formalistic approach in Mr Kirpichev's case, in particular, in finding that he had held a public meeting. There had been nothing to suggest that he had planned his event as an assembly and thus should have complied with the notification requirement. With due regard to the presumption of innocence, where the authorities suspected intentional actions aimed at evading the notification requirement, they should have borne the burden of proving the relevant facts, which they had failed to do.

Finally, the Court noted that the fines for breaches of the procedure for organising or running a public event had been increased ten-fold in 2012, which, in the Court's view was capable of creating a deterrent effect on legitimate recourse to protest. In Mr Kirpichev's case, for instance, a fine of the equivalent of around 500 euros had been imposed, which was the minimum fine for the administrative offence of which he had been convicted.

The Court concluded that the swift termination of the events followed by the applicants' being taken to police stations and their prosecution for an administrative offence – the latter in the cases of Ms Novikova, Mr Kirpichev and Mr Romakhin – had constituted a disproportionate interference with the applicants' right to freedom of expression, in violation of Article 10.

Other articles

Having regard to its findings relating to Article 10, the Court did not consider it necessary to examine the complaints separately under Article 5 of the Convention or Article 2 of Protocol 4 to the Convention.

Just satisfaction (Article 41)

The Court held that Russia was to pay, in respect of non-pecuniary damage, 7,500 euros (EUR) each to Ms Novikova, Mr Kirpichev and Mr Romakhin, and EUR 6,000 to Mr Savchenko. Furthermore, Russia was to pay EUR 120 to Mr Kirpichev in respect of pecuniary damage and EUR 6,000 to Mr Kirpichev or Mr Romakhin in respect of costs and expenses.

Separate opinion

Judge Pastor Vilanova 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.