



## Russian authorities repeatedly violated Aleksey Navalnyy's human rights with arbitrary arrests, unlawful deprivations of liberty, and unfair trials

In today's **Chamber** judgment<sup>1</sup> in the case of [Navalnyy v. Russia](#) (application nos. 29580/12, 36847/12, 11252/13, 12317/13 and 43746/14) the European Court of Human Rights held that there had been:

**violations of Articles 5 (right to liberty), 6 (right to a fair trial) and 11 (right to freedom of assembly) of the European Convention on Human Rights**

The case concerned the arrest of Aleksey Navalnyy on seven occasions at different public gatherings, and his subsequent prosecution for administrative offences. Mr Navalnyy complained that these measures had been politically motivated and had violated his human rights.

The Court found that all of the arrests had been disproportionate reactions to peaceful political gatherings, undertaken without any assessment of whether they were justified, and that they had violated Mr Navalnyy's right to freedom of assembly. Taken together with other cases, they suggest the existence of a practice whereby police would interrupt an unnotified but peaceful gathering and arrest the participants as a matter of routine. The seven occasions when Mr Navalnyy had been arrested - and the two occasions when he had also been held in pre-trial detention - had all been arbitrary deprivations of his liberty, as no reason had been given as to why they were necessary in the circumstances. Finally, six of the seven proceedings for administrative offences had been unfair. The courts had based their judgments solely on the versions of events put forward by the police, whilst systematically failing to check their allegations, refusing Mr Navalnyy's requests for the court to examine evidence, and automatically presuming bias on behalf of all witnesses who had testified in his favour.

### Principal facts

The applicant, Aleksey Anatolyevich Navalnyy, is a Russian national who was born in 1976 and lives in Moscow (Russia). He is a political activist, opposition leader, anti-corruption campaigner and popular blogger.

On the evening of 5 March 2012, Mr Navalnyy was arrested during a meeting held in Moscow's Pushkinskaya Square involving around 500 people, which was devoted to the allegedly rigged Russian presidential elections. During an overnight "walkabout" in Moscow on 8 May 2012, where activists met to discuss the inauguration of President Putin the previous day, Mr Navalnyy was arrested without warning on two occasions: firstly in the early hours of the morning whilst walking down Lubyanskiy Proyezd accompanied by about 170 people; and secondly between 11p.m. and midnight, whilst walking down Bolshaya Nikitskaya Street in a group of around 50 people. At 6 a.m. on 9 May 2012 Mr Navalnyy was arrested in Kudrinskaya Square in Moscow whilst in a gathering of 50 to 100 people discussing current affairs. On 27 October 2012 Mr Navalnyy had picketed the Russian Investigation Committee to protest against "repressions and torture" in co-ordination with around 30 others, and was arrested - according to him, whilst walking away from the event. Finally,

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 Navalnyy was arrested twice on 24 February 2014: first when attending Zamoskvoretskiy District Court for the delivery of the judgment in a case concerning Bolotnaya Square protestors; and second when attending a public gathering of around 150 participants in Tverkaya Street later that evening.

Following each of the arrests, Mr Navalnyy was taken to a police station for several hours, while an offence report was drawn up. He was then charged with an administrative offence, of either breaching the established procedure for conducting public events (under Article 20.2 of the Code of Administrative Offences); or disobeying a lawful order of the police (under Article 19.3 of the Code). On two of the occasions, after being arrested and charged he was kept in pre-trial detention (for a number of hours on 9 May 2012; and overnight on the evening of 24 February 2014). All of the charges led to a hearing, in which Mr Navalnyy was duly convicted of an offence. On five occasions he was sentenced to a fine, ranging from 1,000 to 30,000 Russian roubles; and on two occasions he was sentenced administrative detention (fifteen and seven days' long). All of Mr Navalnyy's appeals against the judgments were dismissed.

## Complaints, procedure and composition of the Court

Relying on Article 11 (right to freedom of assembly), Mr Navalnyy complained that the authorities had repeatedly interrupted peaceful, non-violent gatherings, by arresting, prosecuting and eventually convicting him. Relying on Article 5 (right to liberty), he complained that the seven arrests (and two instances of pre-trial detention) had been unlawful and arbitrary deprivations of his liberty. Relying on Article 6 (right to a fair trial), he complained that the subsequent proceedings against him had all been unfair. Finally, Mr Navalnyy relied on Article 14 (prohibition of discrimination), as well as Article 18 (limitation on the restriction of rights) taken in conjunction with Articles 5 and 11, to complain that the authorities' actions had been politically motivated.

The applications were lodged with the European Court of Human Rights on 14 May 2012, 28 May 2012, 30 November 2012, 14 January 2013 and 6 June 2014.

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),  
Branko **Lubarda** (Serbia),  
Pere **Pastor Vilanova** (Andorra),  
Alena **Poláčková** (Slovakia),

and also Fatoş **Aracı**, *Deputy Section Registrar*.

## Decision of the Court

### [Article 11 \(right to freedom of assembly\)](#)

Breaking up a demonstration is not necessarily justified, simply because there was no prior authorisation for it. In order to safeguard the right to freedom of assembly public authorities must show a certain degree of tolerance to such irregular meetings, when the gathering does not involve violence. Whether any measures are taken by the authorities must depend primarily on whether any nuisance is being caused, and its seriousness.

In this case, the gatherings and the conduct of Mr Navalnyy had been undeniably peaceful. Nevertheless, the meetings were dispersed, Mr Navalnyy was arrested, and he was convicted of administrative offences – without any assessment of the disturbance the gatherings had caused.

These events were identical to those in several other cases that have come before the Court,<sup>i</sup> suggesting the existence of a routine practice whereby the police would interrupt a gathering and arrest the participants.

In this case, even if the actions of the authorities had been carried out lawfully and in pursuit of a legitimate aim (which the Court did not address), the Court found that in the circumstances the measures had been disproportionate. Furthermore, the Court noted that the measures had a serious potential to have a chilling effect, by deterring future attendance at public gatherings, and preventing an open political debate – an effect amplified by the fact that a well-known public figure had been targeted, who was bound to attract wide media coverage. The Court therefore held that there had been a violation of Article 11 on account of all seven episodes.

#### Article 5 (right to liberty and security)

It was undisputed that on seven occasions Mr Navalnyy was deprived of his liberty from the time of his arrest and until his release, or, on two occasions, until his transfer to court. The Government submitted that this had been for the purpose of bringing him before the competent legal authority on suspicion of an administrative offence, and had therefore been lawful. However, under Article 27.2 of the Code of Administrative Offences, suspects could only be escorted to a police station for the purpose of drawing up an administrative offence, if the reports could not be drawn up at the place where the offence was discovered. For the seven occasions when Mr Navalnyy was arrested, there was no reason why the report could not have been drawn up on the spot. The Court therefore found that these arrests had been an arbitrary and unlawful deprivation of liberty.

Once the reports had been drawn up at the police station, further remand in custody prior to a judicial hearing would have required special justification. No such justification was provided by the domestic authorities for the two occasions when Mr Navalnyy had been detained before his case was heard by a judge. The Court therefore held that these detentions had been unjustified and arbitrary.

Accordingly, there had been a violation of Article 5 § 1 on account of Mr Navalnyy's arrest on seven occasions and his pre-trial detention on two occasions.

#### Article 6 (right to a fair trial)

In regard to the proceedings concerning the events of 5 March 2012, the appeal court had obtained the evidence of an independent private individual to corroborate the police reports, and had also examined a video recording submitted by Mr Navalnyy. On the basis of all the evidence, the appeal court had found in the prosecution's favour. Given these considerations, the Court held that the appeal court's assessment was neither arbitrary nor unreasonable, and that the proceedings on that occasion had been compliant with Article 6 § 1.

In contrast, the courts in the other six sets of proceedings had based their judgments solely on the versions of events put forward by the police. Furthermore, they had systematically failed to check the police's factual allegations, refused Mr Navalnyy's requests to adduce evidence, and automatically presumed bias on behalf of all witnesses who testified in his favour. These decisions were therefore not based on an acceptable assessment of the relevant facts, in violation of the right to a fair hearing.

#### Other articles

The Court held that, given its findings under the other heads of complaint, it was not necessary to examine Mr Navalnyy's claims under Article 18 in conjunction with Articles 5 and 11, or those made under Article 14.

### Just satisfaction (Article 41)

The Court held that Russia was to pay Mr Navalnyy 1,025 euros (EUR) in respect of pecuniary damage, EUR 50,000 in respect of non-pecuniary damage and EUR 12,653 in respect of costs and expenses.

### Separate opinions

Judges Lopez Guerra, Keller and Pastor Vilanova expressed a joint partly dissenting opinion. Judge Keller also expressed a partly dissenting opinion alone. These opinions are 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.

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<sup>i</sup> *Malofeyeva v. Russia*, no. 36673/04, §§ 136-39, 30 May 2013; *Kasparov and Others v. Russia* (no. 21613/07, § 95, 3 October 2013; *Navalnyy and Yashin v. Russia* (no. 76204/11, §§ 65, 4 December 2014), and *Novikova and Others v. Russia* (nos. 25501/07, 57569/11, 80153/12, 5790/13 and 35015/13, 26 April 2016)