



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF KORNEYEVA v. RUSSIA

(Application no. 72051/17)

JUDGMENT

STRASBOURG

8 October 2019

FINAL

24/02/2020

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Korneyeva v. Russia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Vincent A. De Gaetano, *President*,

Paulo Pinto de Albuquerque,

Dmitry Dedov,

Branko Lubarda,

Alena Poláčková,

María Elósegui,

Gilberto Felici, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 10 September 2019,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 72051/17) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Ms Katerina Olegovna Korneyeva (“the applicant”), on 21 September 2017.

2. The applicant was represented by Mr Aleksandr Dmitriyevich Peredruk, a lawyer practising in St Petersburg, Russia. The Russian Government (“the Government”) were represented by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights.

3. The applicant alleged, in particular, that her administrative escorting and arrest had been unlawful, that she had not been given a fair hearing by an impartial tribunal and that there had been a violation of the *ne bis in idem* principle.

4. On 23 February 2018 the Government were given notice of the complaints under Article 5 § 1 and Article 6 §§ 1 and 3 of the Convention and Article 4 § 1 of Protocol No. 7 to the Convention and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1996 and lives in St Petersburg, Russia.

6. On 12 June 2017 a protest rally (involving some 1,000 people) was held at the Marsovo Pole in St Petersburg. The applicant was present at the venue with a friend but, according to her, did not take part in the rally (see paragraph 12 below).

A. The applicant's arrest and pre-trial proceedings

7. According to the applicant, she was deprived of her liberty at 2.10 p.m., when the police and the National Guard surrounded the people gathered at the Marsovo Pole by way of a "kettling technique". The applicant was "trapped" within the circle and could not leave.

8. The applicant was then apprehended and placed in a bus. At 2.50 p.m. she was escorted to the police station by police officer K., who then compiled an escort record. It indicated that the applicant had been escorted to the police station "in order to compile an offence record". The escort record also stated as follows:

"[The applicant] was voluntarily present among some 1,000 people, with the aim of publicly expressing her opinion and influencing others in relation to acute political issues of public interest concerning 'total intolerance toward corruption' ... She was a participant in a public event which had not been approved by the authorities ... Together with other participants standing less than ten metres from her, she uttered the slogans 'Putin is a thief' or 'We are fed up with Putin', thereby taking part in a non-notified rally ... Officer S. repeatedly informed the participants, including the applicant, via loudspeaker that [they] were violating section 6(3) of the Public Events Act and ordered them to stop the rally and disperse ... Being afforded no less than five minutes, [the applicant] did not comply with those lawful orders ..."

9. Officer K. also compiled a report (*panopm*) to his superior officer. This report was worded in a way that was similar to the wording used by Officer K. Nearly identical reports were submitted by Officers A. and S. All three officers were interviewed by another official; the written record of their interviews was worded in terms that were similar or identical to those in the above-mentioned reports.

10. A record of offences under Articles 19.3 § 1 (failure to comply with a lawful order of an official in connection with the exercise of his duties) and 20.2 § 5 (violation by a participant of the procedure for a public event) of the Federal Code of Administrative Offences ("the CAO") was compiled and the applicant had access to it at 9.55 p.m. Before or after that, a record of administrative arrest was compiled in relation to the offence under

Article 19.3 of the CAO, indicating that the arrest had been necessary in order to ensure “the correct and expedient examination of the case”.

11. The applicant spent the night in the police station. It appears that at around 6 p.m. the next day she was taken to the Vasileostrovskiy District Court of St Petersburg. However, a judge adjourned the case. According to a note in the arrest record, the applicant was released at 7.54 p.m. on 13 June 2017.

B. Trials on 16 June 2017

12. On 16 June 2017 judge K. of the Vasileostrovskiy District Court of St Petersburg examined, in turn, two cases against the applicant. The applicant and her lawyer were present at the trial hearings and made oral submissions to the courts. The applicant pleaded not guilty. According to her, on 12 June 2017 (which was Russia Day, an official holiday) she had been having a walk with a friend at the Marsovo Pole; she had not been in possession of any banners, flags or the like, and had not uttered any slogans; she had seen some people with flags, at a distance from her; she had not heard any order to disperse.

13. The trial court dismissed an application lodged by the defence to have a public prosecutor summoned to the hearing in order to support the charge against the applicant.

14. By two separate judgments of 16 June 2017 judge K. found the applicant guilty of the offences under Articles 19.3 § 1, and fined her 500 Russian roubles (RUB), and 20.2 § 5 of the CAO and fined her RUB 10,000 (EUR 7 and 140 at the time when the fines were due (29 June 2017)).

C. Appeal hearings on 29 June 2017

15. The applicant appealed to the St Petersburg City Court. She argued, *inter alia*, that the alleged disobedience to the order to stop her participation in the rally might be an aggravating circumstance to weigh within the offence under Article 20.2 of the CAO. However, it could not amount to a separate offence, without violating the principle of *ne bis in idem*. In her appeal relating to Article 20.2 of the CAO, the applicant argued that the overall set of facts held against her in both cases was identical; the offence record for both offences was worded in identical terms, too.

16. The applicant also argued that the trial proceedings had been unfair in that her conviction had been based on the pre-trial statements given by the police officers, whereas the defence had been afforded no opportunity to examine them; the trial court had adduced no reasons confirming that the reliance on the written testimony without providing the defence with a possibility of contesting it in open court had been a measure of last resort.

17. Both cases were assigned to Judge L. of the City Court. On 29 June 2017 that judge examined the cases in turn. It is, however, unclear in which order the two cases were examined. The appeal court upheld the judgments of 16 June 2017.

18. The appeal decision in the case relating to Article 20.2 of the CAO dismissed the *ne bis in idem* argument, indicating that that Article concerned liability for violating regulations on public events, whereas Article 19.3 of the CAO concerned liability for disobedience to lawful orders from a public official. As to the arguments relating to the refusal to summon the police officers, the appeal court held as follows:

“The trial court took cognisance of the evidence adduced by the defence, namely a photograph and a video recording. Having assessed them, the court rightly concluded that they did not rebut the other evidence and did not plead in favour of the defendant’s innocence because they disclosed that the defendant had been present in the group of other people and had been apprehended by the police ...

The defence argued that the trial court had relied on the documentary evidence while refusing to summon and examine the police officers ... Those arguments do not disclose a violation of the defendant’s right to a fair judgment. It was within the trial judge’s competence to determine the scope of evidence that was needed for determining the charge. The trial judge examined all the available evidence; there were no reasons for seeking additional evidence, the available evidence being sufficient for establishing all the relevant circumstances of the case.”

19. The appeal decision relating to Article 19.3 of the CAO reads as follows:

“There are no grounds to consider that the defendant was tried twice, under Article 20.2 and Article 19.3 of the CAO, for the same actions. Article 20.2 provides for liability in relation to breaching the regulations relating to public events, whereas Article 19.3 of the CAO concerns liability for disobedience to lawful orders from a public official ...

As to the arguments relating to the non-compliance with the European Convention on human rights and fundamental freedoms in relation to recourse to the arrest procedure, it is noted that Article 27.1 of the CAO provides for certain measures that could be applied to put an end to an offence, identifying a perpetrator, compiling an offence record, ensuring timely and correct examination of a case, or ensuring execution of a decision taken in that case. Administrative arrest is listed as one such measure ... It follows from the meaning of Article 27.3 § 1 of the CAO that it is possible to use administrative arrest, *inter alia*, for the purpose of ensuring the correct and expedient examination of a case. Thus, the defendant’s administrative arrest was in compliance with the CAO and international law ...”

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Provisions relating to public events

20. Section 6(3) of the Public Events Act provides that during the public event its participants must comply with lawful orders of the organisers of

the public event, representatives of the competent regional or municipal authorities, and law-enforcement officials; maintain public order and follow the schedule of the public event.

21. Section 6(4) of the Act provides that during the public event the participants are not allowed to hide their faces by way of using masks or other means for impeding their identification; to possess firearms or other objects that may be used as weapons; to be intoxicated.

B. Provisions relating to double jeopardy

22. Pursuant to Article 4.1 § 5 of the CAO, no one must be found administratively liable twice for the “same administrative offence”. Under Article 24.5 § 1 proceedings under the CAO should not be initiated or, if initiated, should be discontinued where there is no *corpus delicti* (subparagraph 2) or where there is a decision to impose a sentence or to discontinue the proceedings on account of the very same fact of unlawful actions by the same person, in so far as the offence is proscribed by the very same Article(s) of the CAO (subparagraph 7).

23. Where there are several records of administrative offences in respect of the same person, each record is submitted to a court to be examined separately. A court issues a separate judgment in respect of each related offence (Article 4.4 § 1 of the CAO and Ruling No. 5 of 24 March 2005 by the Plenary Supreme Court of Russia (paragraph 4(8))). Where one (in)action on the part of the defendant concerns several offences under different Articles of the CAO and which fall within the jurisdiction of the same court, an administrative sentence is imposed with reference to the strictest statutory penalty. Where there are grounds for imposing a sentence in accordance with the rule set out in Article 4.4 § 2, the cases should be joined and examined in one set of proceedings resulting in a single judgment (paragraph 4(9) of the Ruling).

24. Article 19.3 § 1 of the CAO provides that the following conduct is punishable with a fine of from RUB 500 to 1,000 or administrative detention for up to fifteen days: (i) non-compliance with a lawful order or request made by a police officer, a military officer, a detention facility officer or a National Guard officer, in connection with the exercise of his or her duties relating to securing public order and public safety; (ii) resistance to those officers in the exercise of their official duties.

25. Article 20.2 § 5 of the CAO provides that the following conduct is punishable with a fine of from RUB 10,000 to RUB 20,000 or up to forty hours of community work: violation by a participant in a public event of the established procedure for running (*порядок проведения*) a public event. As specified in paragraph 33 of Ruling No. 28 of 26 June 2018 by the Plenary Supreme Court of Russia, the above-mentioned violation requires the court to establish that the demonstrator did not comply with (or violated) one of

the obligations (or prohibitions) incumbent on demonstrators under section 6(3) and (4) of the Public Events Act (see paragraphs 20 and 21 above). For instance, one such obligation requires compliance with all legal orders made by the police, military officers or National Guard officers. The Plenary Supreme Court indicated that a demonstrator's non-compliance with such orders or resistance to those officers in the exercise of their official duties in the course of a public event falls within the ambit of an offence under Article 20.2 § 5 of the CAO. "In this specific context" this provision is *lex specialis vis-à-vis* Article 19.3 § 1 of the CAO.

26. Applying the above interpretation in a review decision issued under Article 30.12 of the CAO on 29 June 2018 in case no. 78-AD18-5, a judge of the Supreme Court of Russia stated:

"[The defendant] was prosecuted on the grounds that as a participant in a non-notified public event, she had not complied with lawful orders of a police officer requiring her to cease her participation in that public event ... In the present case [Article 20.2 § 5 of the CAO] is *lex specialis vis-à-vis* Article 19.3 § 1 of the CAO ... Thus, the [defendant's] conduct does not constitute *corpus delicti* under that provision ... At the same time, it is not possible in the present case to reclassify the defendant's actions for the following reasons ... Reclassification from one Article of the CAO to another is possible when the type of object protected by those provisions (*единый родовый объект посягательства*) is the same and where a new sentence would not worsen the position of the defendant ... Articles 19.3 and 20.2 are contained in different Chapters of the CAO ... and protect different types of objects ... Article 20.2 § 5 provides for a stricter sentence than Article 19.3 § 1 ... Pursuant to Article 4.1 § 5 of the CAO, no one should be found liable more than once for the same administrative offence ..."

C. Administrative arrest

27. The Constitutional Court of Russia has ruled that administrative arrest must be effected in compliance with the goals listed in subparagraph (c) of Article 5 § 1, that is it must be effected for the purpose of bringing an individual before the competent legal authority on reasonable suspicion of having committed an offence or if it is reasonably considered necessary to prevent him or her from committing an offence or fleeing after having done so (Ruling No. 9-P of 16 June 2009). For an arrest to be lawful, an assessment must be made of the essential features affecting "lawfulness", which includes assessment of whether the measure was justified (*обоснованной*) in view of the goals pursued and whether it was necessary and reasonable (*разумной*) in the specific circumstances of the situation in which it was carried out. Administrative arrest is lawful if it can be justified on account of the nature of the offence and is necessary for ensuring the execution of a judgment in an administrative-offence case (Decision No. 1049-O of 2 July 2013 by the Constitutional Court). The assessment of the reasons and grounds listed in the record of administrative arrest (in so far as it was relevant in the context of a claim for compensation relating to

such arrest) includes an assessment of whether arrest was the only possible measure in respect of the defendant (*ibid*).

28. For other relevant provisions of domestic law and judicial practice, see *Tsvetkova and Others v. Russia*, nos. 54381/08 and 5 others, §§ 66-75, 10 April 2018.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

29. The applicant complained that the administrative escorting and administrative arrest procedures against her had breached Article 5 § 1 of the Convention, the relevant parts of which read as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ...”

A. The parties' submissions

1. The Government

30. The Government argued that the applicant had not exhausted domestic remedies by way of instituting “separate proceedings”, since the matter of administrative arrest was not inseparably linked to the main court decision in proceedings on the administrative charge. As to the legality of her deprivation of liberty, the Government stated that section 13 of the Police Act of 2011 contained the statutory basis on which the police drew up reports relating to administrative offences under Articles 19.3 and 20.2 of the CAO. Article 27.1 of the CAO was the legal provision empowering the police to take a person to a police station in circumstances where it was necessary in order to put an end to an offence. Article 27.2 of the CAO allowed the police to escort a person to a police station where it was not possible to compile an offence record at the place where the offence had been discovered. The police had had no opportunity to compile a report on the spot because “the place had been full of other participants of the rally”. Moreover, in view of the applicant’s active conduct during the rally, the compiling of an offence record on the spot would not have resulted in suppressing the offence. Under Article 27.5 § 3 of the CAO a defendant

could be kept for up to forty-eight hours in relation to an offence punishable by detention, such as the offence under Article 19.3 § 1 of the CAO.

2. The applicant

31. The applicant submitted that the public event had been peaceful and that its participants had behaved in a peaceful manner. She argued that since the police had chosen to place arrestees in buses parked at the rally venue, it had been feasible for them to proceed with the compiling of an offence record on the spot, without waiting until the buses had departed, being full or at the end of the rally. As to the aim of putting an end to an offence, the escort record only referred to the statutory aim of compiling an offence record (see paragraph 8 above). The examination of the case in a correct and expedient manner was indicated as the statutory aim of the applicant's administrative arrest (see paragraph 10 above). However, neither any domestic authority nor the Government before the Court put forward any justification as to why the case had been considered "exceptional" within the meaning of Article 27.3 of the CAO, in order to justify the arrest procedure, in particular after the offence record had been compiled at around 8 p.m. on 12 June 2017. Notably, by that time the rally had been fully dispersed. Overall, the Government's new arguments, first put forward before the Court, could not make up for the lack of reasoning that the domestic authorities should have provided.

B. The Court's assessment

1. Admissibility

32. As to the exhaustion of remedies, the Government have not specified what specific course of action the applicant ought to have taken in 2017 following her conviction and the CAO courts' findings relating to the legality of her administrative arrest (see paragraph 19 above) and whether it offered any prospect of success. Thus the Government's argument is dismissed as unsubstantiated.

33. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

34. The Court notes that recourse to the escort procedure is lawful under Russian law (namely, Article 27.2 § 1 of the CAO) where it was not possible to compile an offence record at the place where the offence had been discovered. None of the documents drawn up at domestic level (for instance, the escort record, the reports by the police officers, the offence

record or any judicial decision) clarify the factual and legal elements which could explain why an offence record could not be drawn up on the spot. The Government's submissions before the Court shed no light on those elements, beyond a reference to the rally venue being "full of other participants" or to the applicant's active conduct during the rally. There is nothing to doubt that the applicant's conduct was peaceful or to contest her submission that the rally was peaceful (compare with *Kasparov and Others v. Russia* (no. 2), no. 51988/07, § 39, 13 December 2016, and *Frumkin v. Russia*, no. 74568/12, § 148, 5 January 2016). Furthermore, despite the Government's argument before the Court, it is noted that the escort record did not refer to any (arguably, statutory) aim which might have justified under Russian law recourse to the escort procedure for putting an end to any ongoing offence, instead of the primary statutory aim of this procedure, that is for compiling an offence record (see paragraphs 8 and 30 above).

35. As to recourse to the arrest procedure after the applicant's arrival at the police station, the Court notes that the aim of compiling an offence record no longer justified, in terms of Russian law, the continued deprivation of liberty once that aim had been achieved. As to the aim of the "timely and correct examination of the case" referred to in the arrest record (see paragraph 10 above), it remains the case that the CAO required the measure to be justified with reference to "exceptional" circumstances. No such circumstances, beyond mere convenience, were adduced at the domestic level or, at the latest, before the Court. Nothing in the file suggests that there was a risk of the applicant reoffending, tampering with evidence, influencing witnesses or fleeing justice, which would plead in favour of her continued detention. Even if those considerations could be considered to constitute an "exceptional case" referred to in Article 27.3 § 1 of the CAO as part of the rationale for avoiding excessive and abusive recourse to the administrative-arrest procedure, there is nothing in the file that could lead the Court to conclude that such considerations had been weighed and justified the applicant's deprivation of liberty after 10 p.m. on 12 June 2017 until her release at around 8 p.m. on 13 June 2017 (see *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, §§ 71-72, 15 November 2018, and *Butkevich v. Russia*, no. 5865/07, § 123, 13 February 2018; see also *S., V. and A. v. Denmark* [GC], nos. 35553/12 and 2 others, § 77, 22 October 2018).

36. There has accordingly been a violation of Article 5 § 1 of the Convention, at least, after 2.50 p.m. on 12 June 2017 until the applicant's release around 8 p.m. on 13 June 2017.

II. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

37. The applicant complained of violations of Article 6 of the Convention in both cases against her, on account of the lack of a

prosecuting party at the trial hearings and the restrictions on the defence's ability to contest the adverse written evidence, in particular by way of examining three police officers.

38. The relevant parts of Article 6 of the Convention read as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ...”

39. The Government submitted that the defence had been afforded an opportunity to contest the adverse evidence, as well as to study the case file, lodge applications and put forward a defence.

40. The applicant maintained her complaints.

A. Admissibility

41. The Court notes that the complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

42. As regards the requirement of objective impartiality, the Court has previously examined this matter and has found a violation of Article 6 § 1 of the Convention on account of the lack of a prosecuting party in the context of oral hearings resulting in the determination of administrative charges (see *Karelin v. Russia*, no. 926/08, §§ 69-84, 20 September 2016, and *Butkevich*, §§ 82-84, cited above; see also *Mikhaylova v. Ukraine*, no. 10644/08, §§ 62-67, 6 March 2018). The Court notes that the essential factual and legal elements of the present case and the case of *Karelin* (cited above, §§ 59-68) are similar. The factual circumstances or the parties' submissions in the present case disclose no reason for the Court to depart from its earlier judgments. There has therefore been a violation of Article 6 § 1 of the Convention on account of the requirement of objective impartiality as regards the trial hearings in two cases against the applicant.

43. In view of the above finding in respect of both sets of proceedings and the nature and scope of the findings under Article 4 § 1 of Protocol No. 7 to the Convention below in respect of one set of those proceedings, the Court finds it possible, in the particular context of the

present case, to dispense with a separate examination of the merits of the remaining complaints relating to the overall fairness of the proceedings.

III. ALLEGED VIOLATION OF ARTICLE 4 OF PROTOCOL No. 7 TO THE CONVENTION

44. The applicant argued that her conviction for two offences disclosed a violation of Article 4 § 1 of Protocol No. 7 to the Convention, the relevant part of which reads as follows:

“1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State ...”

A. The parties' submissions

45. The Government argued that the *actus reus* differed as regards Article 19.3 and Article 20.2 of the CAO: the first one punished disobedience to a lawful order by a public official, the second punished a breach of the established procedure for public events. Moreover, the offences were placed in different chapters of the CAO, the first one under the heading of offences against the rules relating to government, and the second one in relation to preventing disorder and ensuring public safety. In any event, on the facts of the present case the applicant had been charged with different offences: in the first case she had been accused of disobedience to a police order to cease her participation in an unlawful rally, and in the second case she had been charged with participation in that unlawful rally.

46. The applicant argued that she had been prosecuted and sentenced twice in relation to the same facts. The wording of the offence record for each case and the adverse reports issued by the police officers and then used in evidence against her had been worded in identical terms. Her position in the present case had been recently confirmed by the Plenary Supreme Court in June 2018 and in at least one follow-up case (see paragraphs 25 and 26 above).

B. The Court's assessment

1. Admissibility

(a) Preliminary considerations

47. The applicant was convicted of two offences in two separate sets of proceedings on the same date. On a later date, her appeals were examined

consecutively in two separate sets of appeal hearings, as required by the CAO (see paragraphs 17 and 23 above).

48. The Court reiterates that the guarantee enshrined in Article 4 § 1 of Protocol No. 7 to the Convention is activated *vis-à-vis* a new or another prosecution, where a prior acquittal or conviction has already acquired the force of *res judicata*. Thus, prior to delving into admissibility issues, the Court finds it pertinent to determine the point of such finality, with reference to the applicable Russian law. Judgments “entered into force” within the meaning of the Russian CAO after expiry of the period for an appeal or following delivery of an appeal decision on the merits of the charge. The applicant appealed and the appellate courts issued decisions on the appeals. Those decisions had the force of *res judicata* under the CAO, so the issue under Article 4 § 1 of Protocol No. 7 should be determined with reference to them as a starting point in the present case.

49. The Court observes that the two sets of proceedings were initiated and then pursued, up to the appeal stage, in parallel. The object of Article 4 of Protocol No. 7 is to prevent the injustice of a person’s being prosecuted or punished twice for the same criminalised conduct. It does not, however, outlaw legal systems which take an “integrated” approach to the social wrongdoing in question, and in particular an approach involving parallel stages of legal response to the wrongdoing by different authorities and for different purposes (see *A and B v. Norway* [GC], nos. 24130/11 and 29758/11, § 23, 15 November 2016). However, in the present case, the second set of proceedings continued after the delivery of the appeal decision in the first set of proceedings on 29 June 2017, albeit for a relatively short period (see paragraph 17 above).

(b) Six-month rule

50. In so far as it falls within its jurisdiction, the Court will now examine whether the applicant has complied with the six-month rule under Article 35 § 1 of the Convention.

51. Article 4 § 1 of Protocol No. 7 to the Convention applies when a final judgment in one of two cases was already obtained (for instance, on account of the delivery of an appeal decision in that case upholding the conviction as a whole or in part, or discontinuing the proceedings), while the proceedings in the second case continue. Thus, a related complaint should be lodged before this Court, at the latest, within six months of the date on which a final judgment has been obtained in the second case or when the applicant first became aware of it.

52. In the present case, a final judgment in the first case was obtained on 29 June 2017, immediately prior to the appeal hearing in the second case that resulted in an appeal decision on the same date. The applicant then lodged a complaint before the Court on 21 September 2017. Thus, she has complied with the six-month rule.

(c) Compatibility *ratione materiae*

53. In so far as Article 4 § 1 of Protocol No. 7 to the Convention is concerned, the Court has previously considered, in view of the so-called *Engel* criteria, that proceedings relating to charges under the CAO, namely those under its Articles 20.2 or 19.3, were “criminal charges” within the meaning of Article 6 § 1 of the Convention (see *Navalnyy*, cited above, §§ 77-80, with the references cited therein). “Criminal proceedings” for the purposes of Article 4 § 1 of Protocol No. 7 to the Convention are interpreted in the same way (see *A and B v. Norway* [GC], nos. 24130/11 and 29758/11, §§ 107 and 136, 15 November 2016). The Court finds that both sets of proceedings against the applicant were “criminal proceedings” within the meaning of that provision.

(d) Other admissibility criteria and conclusion

54. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) General principles and the applicable approach

55. Article 4 of Protocol No. 7 is understood as prohibiting the prosecution or trial of a second “offence” in so far as it arose from identical facts or facts which were substantially the same (see *Marguš v. Croatia* [GC], no. 4455/10, § 114, ECHR 2014 (extracts)).

56. States should be able legitimately to choose complementary legal responses to socially offensive conduct (such as non-compliance with road-traffic regulations or non-payment/evasion of taxes) through different procedures forming a coherent whole so as to address different aspects of the social problem involved, provided that the accumulated legal responses do not represent an excessive burden for the individual concerned (see *A and B v. Norway*, cited above, § 121). In cases raising an issue under Article 4 of Protocol No. 7, it should be determined whether the specific national measure complained of entails, in substance or in effect, double jeopardy to the detriment of the individual or whether, in contrast, it is the product of an integrated system enabling different aspects of the wrongdoing to be addressed in a foreseeable and proportionate manner forming a coherent whole, so that the individual concerned is not thereby subjected to injustice (*ibid.*, § 122). The object of Article 4 of Protocol No. 7 is to prevent the injustice of a person’s being prosecuted or punished twice for the same criminalised conduct. It does not, however, outlaw legal systems which take an “integrated” approach to the social

wrongdoing in question, in particular an approach involving parallel stages of legal response to the wrongdoing by different authorities and for different purposes (*ibid.*, § 123).

57. Article 4 of Protocol No. 7 does not exclude the conduct of dual proceedings, provided that certain conditions are fulfilled. In particular, for the Court to be satisfied that there is no duplication of trial or punishment (*bis*) as proscribed by Article 4 of Protocol No. 7, the respondent State must demonstrate convincingly that the dual proceedings in question were “sufficiently closely connected in substance and in time”. In other words, it must be shown that they were combined in an integrated manner so as to form a coherent whole. This implies not only that the purposes pursued and the means used to achieve them should in essence be complementary and linked in time, but also that the possible consequences of organising the legal treatment of the conduct concerned in such a manner should be proportionate and foreseeable for the persons affected (*ibid.*, § 130). As regards the conditions to be satisfied in order for dual criminal and administrative proceedings to be regarded as sufficiently connected in substance and in time and thus compatible with the *bis* criterion in Article 4 of Protocol No. 7, the material factors for determining whether there was a sufficiently close connection in substance include:

- whether the different proceedings pursue complementary purposes and thus addressed, not only *in abstracto* but also *in concreto*, different aspects of the social misconduct involved;
- whether the duality of proceedings concerned was a foreseeable consequence, both in law and in practice, of the same impugned conduct (*idem*);
- whether the relevant sets of proceedings were conducted in such a manner as to avoid as far as possible any duplication in the collection as well as the assessment of the evidence, notably through adequate interaction between the various competent authorities to bring about that the establishment of facts in one set is also used in the other set;
- and, above all, whether the sanction imposed in the proceedings which became final first was taken into account in those which became final last, so as to prevent the individual concerned from being in the end made to bear an excessive burden; this latter risk is least likely to be present where there is in place an offsetting mechanism designed to ensure that the overall amount of any penalties imposed is proportionate (*ibid.*, §§ 130-31).

(b) Application of the principles in the present case

58. Firstly, it has not been argued, and the Court does not find it established, that two sets of proceedings under Articles 20.2 § 5 and 19.3 § 1 of the CAO should be regarded as forming an integrated legal response to the applicant’s conduct and, even less, that the conditions mentioned in paragraph 57 have been met. Indeed, the above conclusion is confirmed by

the Plenary Supreme Court's approach in which it held that one set of proceedings was a *lex specialis vis-à-vis* the other one (see paragraph 25 above). Thus, the Court finds it necessary to go further into the issue of the finality of the first set of proceedings and the duplication of prosecution (see by contrast, *A and B v. Norway*, cited above, § 142).

59. The Court notes in this connection that under the Russian CAO, no one must be found administratively liable twice for the same administrative offence. Proceedings under the CAO should not be initiated or, if initiated, should be discontinued where there is no *corpus delicti* or where a decision is made to impose a sentence or to discontinue the proceedings on account of the same unlawful acts by the same person, in so far as the offence is proscribed by the same Article(s) of the CAO (see paragraph 22 above). The present case concerns prosecution under two different Articles of the CAO.

60. The Court has taken note of the position adopted in June 2018 by the Plenary Supreme Court of Russia in relation to dual charges brought under Articles 20.2 § 5 and 19.3 § 1 of the CAO against a demonstrator on account of participation in a public event and non-compliance with a police order to cease such participation (and disperse). Relying on the *lex specialis* rule, the Supreme Court stated that in this specific context, only prosecution under Article 20.2 § 5 would be lawful under Russian law (see paragraph 25 above). The Plenary Supreme Court did not rely on the *ne bis in idem* principle in that connection. However, in at least one subsequent decision, a reviewing court relied on the above ruling and also mentioned, albeit without any further detail, the CAO provision relating to the ban on the duplication of prosecution under the CAO (see paragraph 26 above for an example of a case in which conviction was quashed by way of the review procedure under Article 30.12 of the CAO).

61. The Court has taken note of those recent developments in the domestic case-law. It notes, however, that the above legal position was first articulated in June 2018, that is after the appeal decisions in the applicant's cases in June 2017 and after her lodging an application before this Court in September 2017.

62. As to the merits of the issue, the Court reiterates that Article 4 § 1 of Protocol No. 7 prohibits the prosecution or trial of a second "offence" in so far as it arises from identical facts or facts which are substantially the same (see *A and B v. Norway*, cited above, § 108, and *Sergey Zolotukhin v. Russia* [GC], no. 14939/03, § 82, ECHR 2009). The Court has also held that an approach which emphasises the legal characterisation of the two offences is too restrictive on the rights of the individual and risks undermining the guarantee enshrined in Article 4 § 1 of Protocol No. 7 (see *Sergey Zolotukhin*, cited above, § 81, and *Boman v. Finland*, no. 41604/11, § 33, 17 February 2015). Accordingly, it cannot accept the Government's argument (see paragraph 45 above) that the duplication of proceedings in the present case was justified by the distinct types or areas of protection

pertaining to each offence (see, *mutatis mutandis*, *Šimkus v. Lithuania*, no. 41788/11, § 48, 13 June 2017, and *Rivard v. Switzerland*, no. 21563/12, § 26, 4 October 2016). What matters is that there is an overlap of the facts constituting the basis for the defendant's prosecution in the second set of proceedings with facts that are substantially the same in the first set of proceedings. The Court notes that in each set of proceedings the applicant was accused in relation to participating in an unlawful rally, namely, of (i) refusing to comply with a police officer's order to cease her participation in it (Article 19.3 § 1 of the CAO) and (ii) failing to comply with her statutory obligation under the Public Events Act to comply with police orders, in the present case, the order to cease her participation in the event (Article 20.2 § 5 of the CAO read with section 6(3) of the Public Events Act). As acknowledged in substance by the Plenary Supreme Court, such accusations are intertwined and entailing a conclusion, in terms of Russian law, that only a charge under Article 20.2 § 5 of the CAO was permissible (see paragraph 25 above).

63. Having regard to its own case-law under Article 4 § 1 of Protocol No. 7 to the Convention, the Court concludes that the applicant became "liable to be tried or punished again" once a final judgment in one of the two cases had been obtained, in this instance, once the appeal decision in that case had been delivered in relation to the facts that were substantially the same to those at the heart of the first proceedings.

64. The Court concludes that the applicant was tried and punished twice for the same "offence".

65. There has therefore been a violation of Article 4 § 1 of Protocol No. 7 to the Convention.

IV. APPLICATION OF ARTICLES 41 AND 46 OF THE CONVENTION

A. Article 46 of the Convention

66. Article 46 of the Convention reads as follows:

"1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

67. Under Article 46 of the Convention the Contracting Parties have undertaken to abide by the final judgments of the Court in cases to which they are parties, execution being supervised by the Committee of Ministers. It follows, *inter alia*, that a judgment in which the Court finds a violation of the Convention or the Protocols thereto imposes on the respondent State the legal obligation not just to pay those concerned the sums awarded by way of just satisfaction pursuant to Article 41 of the Convention but also to choose,

subject to supervision by the Committee of Ministers, the general and/or, if necessary, individual measures which it considers appropriate to incorporate into domestic law in order to put an end to the violation found by the Court and to redress as far as possible the effects. It is primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used under its domestic law to comply with that obligation. However, with a view to helping the respondent State in that task, the Court may seek to indicate the type of individual and/or general measures that might be taken in order to put an end to the situation it has found to exist (see, as a recent authority, *Navalnyy*, cited above, § 182).

68. As to Article 4 § 1 of Protocol No. 7 to the Convention, the Court notes that there are over one hundred applications pending before it which raise similar issues, mostly, in an identical legal context or in relation to other paragraphs of Articles 19.3 and 20.2 of the CAO or other Articles of the CAO.

69. In the present case the Court has found violations of, *inter alia*, Article 4 § 1 of Protocol No. 7 to the Convention on account of the duplication of prosecution in two sets of proceedings, under Article 20.2 § 5 and Article 19.3 § 1 of the CAO. The Court notes in this connection that unlike the other procedural codes of the Russian Federation, the CAO contains no specific provision setting out grounds and a procedure for re-examining the relevant court decisions (reopening the relevant proceedings) on account of this Court's finding of a violation of the Convention or the Protocols thereto (see also *Bukreyev v. Russia* [Committee], no. 60646/13, §§ 38-39, 1 October 2019). There is nothing before the Court to confirm, to the requisite degree of certainty, that the procedure under Article 30.12 of the CAO, normally applicable for review of final court decisions issued under that Code, may serve that purpose for such "reopening" or "retrial" within the meaning of Article 46 of the Convention, if the applicant requests it. The Court is therefore not satisfied in the present case that there are clear grounds and procedures, as well as a consistent and established practice of applying them, for any such "reopening" or "retrial" under the CAO.

70. Nevertheless, it appears that the Plenary Supreme Court's approach in June 2018 about the prosecution to be limited to Article 20.2 § 5 of the CAO is applicable to cases finally decided prior to June 2018 (see paragraph 26 above). It is noted that in the present case, for instance, no review under Article 30.12 of the CAO has been carried out at a regional level and then before the Supreme Court of Russia (if need be), with reference to the Plenary Supreme Court's approach, so that one of the convictions would be set aside and any persisting consequences of the related prosecution and punishment would be eliminated too (for instance, by way of reimbursement of the fine already paid and/or by way of another adequate redress, in particular as regard other types of penalties already served) (see, *mutatis*

mutandis, *Sergey Zolotukhin*, cited above, § 83; see also paragraph 26 above).

71. This being said, as regards cases finally decided domestically prior to June 2018 like the present case, it remains open to the respondent Government to make appropriate use of the available legal avenues which might yield the result mentioned above, namely where it was a conviction under Article 19.3 § 1 of the CAO that gave rise to the *ne bis in idem* issue.

72. More generally, it remains for the respondent Government, together with the Council of Europe Committee of Ministers, to consider what measures may be appropriate to facilitate the rapid and effective suppression of a malfunction in the national system of human-rights protection, for instance, by way of further clarifying the scope of the *ne bis in idem* principle in CAO cases in a manner compatible with the Court's approach in paragraphs 59, 62 and 63 above and ensuring its practical application within the applicable domestic remedies.

B. Article 41 of the Convention

73. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

1. Damage

74. The applicant claimed 10,000 euros (EUR) and 10,500 roubles (RUB) in respect of non-pecuniary damage and pecuniary damage (on account of the two fines she had paid) respectively.

75. The Government made no specific comment.

76. The Court has discerned no causal link between the fines and the only violation under Article 6 of the Convention as established by the Court in the present case (compare *Mikhaylova v. Russia*, no. 46998/08, § 106, 19 November 2015, and *Morice v. France* [GC], no. 29369/10, § 182, ECHR 2015). As to Article 4 § 1 of Protocol No. 7, since it remains unclear in which order the two sets of appeal proceedings were conducted on 29 June 2017, no causal link has been substantiated in the specific context of the present case between the violation of that Article and any of the fines.

77. The Court reiterates that its primary role in respect of applications lodged under Article 34 of the Convention is to render justice in individual cases by way of recognising violations of an injured party's rights and freedoms under the Convention and Protocols thereto and, if necessary, by way of affording just satisfaction (see *Nagmetov v. Russia* [GC], no. 35589/08, § 64, 30 March 2017). A judgment in which the Court finds a

breach of the Convention imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (*ibid.*, § 65).

78. The Court considers that the finding of a violation is not sufficient to constitute in itself sufficient just satisfaction for any non-pecuniary damage which the applicant may have suffered in relation to Articles 5 § 1 and 6 § 1 of the Convention and Article 4 of Protocol No. 7. Having regard to the nature and scope of the violations found and making its assessment on an equitable basis, the Court awards the applicant EUR 3,250 in respect of non-pecuniary damage, plus any tax that may be chargeable.

2. Costs and expenses

79. The applicant claimed EUR 3,750 for the costs and expenses incurred before the domestic authorities and the Court.

80. The Government have made no specific comment.

81. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Regard being had to the documents in its possession and the above criteria (in particular, the straightforward nature of certain issues raised under the Convention) and in so far as the expenses are related to the violations found by the Court, the Court considers it reasonable to award EUR 2,500 covering costs under all heads, to be paid directly to Mr A.D. Peredruk as requested.

3. Default interest

82. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 5 § 1 and Article 6 §§ 1 and 3 (d) of the Convention and Article 4 § 1 of Protocol No. 7 to the Convention admissible;
2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the requirement of objective impartiality;

4. *Holds* that it is not necessary to examine separately the remaining issues under Article 6 of the Convention;
5. *Holds* that there has been a violation of Article 4 § 1 of Protocol No. 7 to the Convention;
6. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 3,250 (three thousand two hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid to Mr A.D. Peredruk;
 - (b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Vincent A. De Gaetano
President