



Bolotnaya Square demonstration: Russian authorities failed to ensure the peaceful conduct of the assembly

The case of [Frumkin v. Russia](#) (application no. 74568/12) concerned a political rally at Bolotnaya Square in Moscow on 6 May 2012, held to protest against “abuses and falsifications” in the elections to the State Duma and the presidential elections.

In today’s **Chamber** judgment¹ in the case the European Court of Human Rights held, unanimously, that there had been:

violations of Article 11 (freedom of assembly and association) of the European Convention on Human Rights both on account of the authorities’ failure to ensure the peaceful conduct of the assembly and on account of Mr Frumkin’s arrest, pre-trial detention and administrative sentence;

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

a violation of Article 6 §§ 1 and 3 (d).

The Court found in particular that the authorities had not complied with the minimum requirements in their duty to communicate with the leaders of the rally, which had been an essential part of their obligation to ensure the peaceful conduct of the assembly, to prevent disorder and to secure the safety of all citizens involved. Mr Frumkin’s arrest, detention and administrative conviction had been grossly disproportionate to the aims pursued; those measures must have had the effect of discouraging him and others from participating in protest rallies or more generally from engaging actively in opposition politics.

Principal facts

The applicant, Yevgeniy Frumkin, is a Russian national who was born in 1962 and lives in Moscow. On 6 May 2012 he participated in a political rally at Bolotnaya Square in Moscow whose aim was to protest against “abuses and falsifications” in the 2011 elections to the State Duma and the presidential elections held earlier in 2012. The event began peacefully, but ended up in clashes between the police and protesters, resulting in numerous arrests.

The rally was authorised by the Moscow authorities. After the Department of Regional Security had rejected the route initially proposed by the organisers, it approved an alternative route a few days before the event. According to Mr Frumkin, at a working meeting two days before the event the organisers and the authorities agreed that the assembly layout and security arrangements would be identical to a previous public event organised by the same group of opposition activists in February 2012. On that occasion, the venue of the meeting had included a park at Bolotnaya Square. A map of the area designated for the meeting in May 2012, published on the website of the Moscow Department of the Interior on the day before the event, also included the park. The district prosecutor's office issued a warning that the declared number of participants was not to be exceeded and that no camping tents were to be set up at the venue, an intention which the organisers had allegedly expressed. An internal security plan of the Moscow police, submitted to the

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.

Court by the Russian Government, provided for a crowd-control task force of more than 8,000, comprising police and military, to control the city centre and to prevent unauthorised public gatherings.

According to the authorities, around 8,000 people participated in the event, whereas the organisers considered that there were about 25,000. After a peaceful march, the demonstrators reached Bolotnaya Square at about 5 p.m. on 6 May 2012, finding that, contrary to what was expected, the park was excluded from the meeting venue and access to it was barred by a cordon of riot police. The venue was limited to Bolotnaya embankment, where the organisers had set up a stage. According to the protesters, they were taken aback by the change to the expected layout and therefore demanded that the police cordon be moved to allow sufficient space for participants to assemble. According to the authorities, protesters intended to break the cordon, either to proceed towards the nearby bridge across Moskva River and then to the Kremlin, or to stir the crowd into disorder. It is common ground that the officers forming the cordon did not enter into any discussion with the protest leaders and no senior officer was delegated to negotiate.

After unsuccessfully trying to negotiate with the police, four of the march leaders announced a “sit-down strike” and sat on the ground; between 20 and 50 people followed their call and joined them. The crowd built up, and some time later the police cordon was broken by protesters in one place and the police immediately restored the cordon. At 6 p.m. one of the police colonels in charge told one of the organisers to make an announcement that the meeting was closed. She did so, but most demonstrators and media reporters did not hear the message. Subsequently the riot police began dispersing the demonstration and arresting some activists, including several of the march leaders.

A criminal investigation into suspected mass disorder and violent acts against the police was opened on the day of the event; it was later joined with another investigation into the offence of organising mass disorder. Following the event, several human rights activists filed complaints about the conduct of the police and repression against those arrested and prosecuted. In March 2013 the authorities dismissed several of the complaints concerning the allegedly unlawful acts by the police, including the excessive use of force and arbitrary arrests. Further complaints against the police were dismissed in the criminal proceedings against some of the participants of the protest.

In February 2014 eight persons were convicted of participation in the mass disorder and of violent acts against police officers during the demonstration of 6 May 2012. They received prison sentences of between two and a half and four years. In June 2014 Moscow City Court upheld the judgment. In another criminal case, another four persons were convicted of the same offences, receiving prison sentences of between two and a half and three and a half years. Moscow City Court upheld the judgment in November 2014. In July 2014 Moscow City Court convicted two persons, including one of the organisers, of the offence of organising mass disorder and sentenced them to four and a half years’ imprisonment. The judgment was upheld by the Supreme Court in March 2015.

According to Mr Frumkin, during the event of 6 May 2012 between 6 and 7 p.m. the area around him remained peaceful. He maintains that he was arbitrarily arrested at 7 p.m., having heard police orders to disperse but being unable to immediately leave the area in the general commotion and having received no warning before being arrested. According to the Russian Government, he was arrested at 8.30 p.m. at Bolotnaya Square because he was obstructing the traffic and had disregarded the police order to move away. He was taken to a police station and, charged with the administrative offence of obstructing the traffic and disobeying lawful police orders, remained in police custody until, on 8 May 2012, he was found guilty as charged and sentenced to 15 days’ administrative detention. His appeals were rejected.

Complaints, procedure and composition of the Court

Relying on Article 11 (freedom of assembly and association), Mr Frumkin maintained that he had been prevented from taking part in an authorised public assembly, complaining, in particular, of disruptive security measures at Bolotnaya Square, of the early termination of the assembly and about his arrest followed by his conviction of an administrative offence. He further complained of violations of Article 5 § 1 (right to liberty and security) and of Article 6 §§ 1 and 3 (d), maintaining that his arrest and detention pending the administrative proceedings had been arbitrary and unlawful, and that the administrative proceedings had not been fair. Finally, he alleged a violation of, in particular, Article 18 (limitation on use of restrictions on rights).

The application was lodged with the European Court of Human Rights on 9 November 2012.

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

Luis **López Guerra** (Spain), *President*,
Helena **Jäderblom** (Sweden),
George **Nicolaou** (Cyprus),
Helen **Keller** (Switzerland),
Johannes **Silvis** (the Netherlands),
Dmitry **Dedov** (Russia),
Branko **Lubarda** (Serbia),

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

Decision of the Court

Article 11

The **first part** of Mr Frumkin's complaints under Article 11 concerned the crowd-control measures by the police at Bolotnaya Square. He alleged that those measures had provoked a confrontation between protesters and police, which the police had then used as a pretext for the early termination of the meeting.

On the basis of the material in the case file, the Court observed that the authorities had prepared an elaborate security operation in order to safeguard public order on 6 May 2012. It was common ground between the parties that the enhanced security had been due to anticipated unauthorised street protests. According to the Government's submissions, the authorities had been faced with a situation of mass disorder, as the leaders of the demonstration had intended to take the march outside the designated area, to set up a protest campsite and possibly to hold an unauthorised assembly near the Kremlin. As was evidenced by the testimonies of several high police officials during the trial of two persons charged with organising mass disorders, the authorities had suspected the opposition activists of plotting a popular uprising, starting with campsites possibly inspired by the "Occupy" movement. The protest organisers, on the other hand, denied that it had been their original intention to march beyond the designated area of the event. They maintained that the "sit-down strike" had been a reaction to the authorities' unilateral change of the meeting layout.

The Court found that the decision to close the park to the rally did not in itself appear hostile vis-à-vis the organisers, given that the remaining area at Bolotnaya Square was large enough to accommodate more people than the actual number of participants in the event. However, the organisers had objected above all to discovering a last-minute alteration of the venue layout, which allegedly led to misunderstanding and disruption. The Court came to the conclusion that there had been at least a tacit agreement beforehand that the park would be part of the meeting venue. Even if it was true – as some officials had stated in their testimonies before the domestic courts – that no

express agreement had been reached before the event as regards the park, it had not been unreasonable for the organisers to assume that the park was included in the layout. First, the official boundary of Bolotnaya Square comprised the park, and second, the park had been included in the protest venue on a previous occasion, as had been confirmed by official sources. Moreover, a map of the venue which included the park had been published on the website of the Moscow Department of the Interior. Even if the map had been based on information submitted by the organisers, as established in the domestic proceedings, its publication by the authority had implied some sort of official endorsement.

As regards the significance of the “sit-down strike”, the Court found it impossible to establish whether its leaders had indeed demanded access to the bridge towards the Kremlin, as some police officials maintained, because no witnesses other than the police had heard that demand. On the basis of the available evidence the Court found that the sit-in leaders had demanded to have the park opened up for the assembly and that they had made that demand known to the police. Moreover, as evidenced by video footage submitted by the parties and confirmed by witness accounts, only 20 to 50 people had sat on the ground, leaving sufficient space for those wishing to pass. Finally, the sit-in had remained strictly peaceful.

When faced with the request to move the police cordon back, it would have been crucial for the police to openly, clearly and promptly communicate their position to the sit-in leaders – whether to accept or reject the request, or to seek a compromise solution. However, the Court came to the conclusion that – as evidenced by the witness accounts – the authorities had made insufficient efforts to communicate with the organisers in order to resolve the tension caused by the confusion about the venue layout. In particular, the police security plan had not assigned an officer to liaise with the organisers, a striking omission, given the general thoroughness of the security preparations. Furthermore, the authorities had failed to respond to the alarming developments in a constructive manner. Initially, no official had taken any interest in speaking to the assembly leaders distressed by the police cordon. Eventually, when faced with the sit-in, they had sent the Russian Ombudsman with a message asking participants to stand up and move on, which provided no answer to their concerns. The authorities’ failure to take simple and obvious steps at the first signs of the conflict allowed it to escalate, leading to the disruption of the previously peaceful assembly.

The Court considered that the authorities had not complied with even the minimum requirements in their duty to communicate with the assembly leaders, which had been an essential part of their obligation to ensure the peaceful conduct of the assembly, to prevent disorder and to secure the safety of all the citizens involved.

There had accordingly been a **violation of Article 11** on account of the authorities’ failure to ensure the peaceful conduct of the assembly.

The **second part** of Mr Frumkin’s complaints under Article 11 concerned his own arrest, pre-trial detention and conviction of an administrative offence. On the basis of the evidence, the Court observed that he had remained within the cordoned-off area and that his behaviour had remained strictly peaceful.

While being mindful of the fact that the crackdown against those charged with offences committed on 6 May 2012 at Bolotnaya Square had been motivated by the authorities’ fear of illegal campsites, it pointed out that Mr Frumkin had not been arrested and sanctioned for breaching the rules on public assembly. According to the Russian Government’s submissions and the judgments of the domestic courts, he had been arrested, detained and sentenced to 15 days’ imprisonment for obstructing traffic and disobeying lawful police orders to stop doing that. Those judgments had not explained his motives for walking on the road and obstructing the traffic; his explanation that he had simply not been quick enough to leave the venue in the general confusion following the demonstration had not been contested or ruled out. Therefore, even assuming that his arrest, pre-trial detention and administrative sentence had complied with domestic law and had pursued one of

the legitimate aims under Article 11 § 2 – presumably, public safety – the measures taken against him had been grossly disproportionate to the aim pursued.

Moreover, his arrest, the detention and the ensuing administrative conviction had to have had the effect of discouraging him and others from participating in protest rallies or indeed from engaging actively in opposition politics.

There had accordingly been a **violation of Article 11** on account of Mr Frumkin's arrest, pre-trial detention and administrative penalty.

Article 5

It had not been disputed that from the time of his arrest, at the latest at 8.30 p.m. on 6 May 2012, to his transfer to court in the morning of 8 May 2012 Mr Frumkin had been deprived of his liberty within the meaning of Article 5 § 1. Once the administrative offence report had been drawn up on the evening of his arrest, the objective of escorting him to the police station had been met and he could have been discharged. However, neither the Government nor any other domestic authorities had provided any justification for his remaining in custody. In the absence of any explanation given by the authorities for not releasing him, the 36-hour detention pending trial had been unjustified and arbitrary. There had accordingly been a violation of Article 5 § 1.

Article 6

The Court found a violation of Article 6 §§ 1 and 3 (d), concluding that the administrative proceedings against Mr Frumkin, taken as a whole, had been conducted in breach of his right to a fair hearing. It noted in particular that the only evidence against him had not been tested in the judicial proceedings. The courts had based their judgment exclusively on standardised documents submitted by the police and had refused to accept additional evidence.

Other articles

In view of its findings under Articles 11, 5 and 6, the Court did not consider it necessary to examine the complaints separately under Article 18 of the Convention.

Just satisfaction (Article 41)

The Court held that Russia was to pay Mr Frumkin 25,000 euros (EUR) in respect of non-pecuniary damage and EUR 7,000 in respect of costs and expenses.

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.