

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

THIRD SECTION

CASE OF BUTKEVICH v. RUSSIA

(Application no. 5865/07)

JUDGMENT

STRASBOURG

13 February 2018

FINAL

02/07/2018

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



In the case of Butkevich v. Russia,

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

Helena Jäderblom, *President,*
Branko Lubarda,
Luis López Guerra,
Helen Keller,
Dmitry Dedov,
Pere Pastor Vilanova,
Alena Poláčková, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 23 January 2018,

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

PROCEDURE

1. The case originated in an application (no. 5865/07) 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 Ukrainian national, Mr Maksim Aleksandrovich Butkevich[1] ("the applicant"), on 17 January 2007.

2. The applicant was represented by Mr D. Makarov, a lawyer practising in Voronezh, Russia. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that post, Mr M. Galperin.

3. The applicant alleged, in particular, that his administrative arrest and delayed release from detention had been unlawful; that he had not been given a fair trial by an impartial court, and that his freedom of expression had been interfered with in an unlawful and disproportionate manner.

4. On 7 September 2015 the complaints were communicated to the Government under Article 5 § 1, and Articles 6 and 10 of the Convention and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

5. The Government of Ukraine exercised their right, under Article 36 § 1 of the Convention and Rule 44 of the Rules of Court, to intervene in the present case.

6. The President of the Section granted leave, under Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court, to make joint third-party submissions to the Media Legal Defence Initiative, ARTICLE 19: Global

[1] "Maksym Oleksandrovych Butkevych" according to the transcription of names in cases concerning Ukraine.

Campaign for Free Expression (hereinafter "ARTICLE 19"), and the Mass Media Defence Centre.

7. The Russian Government and the applicant were then allowed to comment on the third parties' submissions.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1977 and lives in Kiev, Ukraine.

A. Background information and the events on 16 July 2006

9. In his application to the Court the applicant stated that at the relevant time he had been employed as a journalist by a Ukrainian television channel. In July 2006 he had volunteered to cover the G8 Summit, which was being held in the St Petersburg region, for Libertarian Information and News Collective (LINC), disseminating press-releases and information on the Internet about protests, connecting journalists and protesters, and providing coverage about the issues raised by activists. In his comments on the third-party submissions before the Court, the applicant added that at the time he had been "involved with" the Independent Media Centre (*Indymedia*); prior to the G8 summit, he had taken leave from his television assignments and had "focused on media work" in the framework of LINC.

10. According to the applicant, at 8.30 a.m. on 16 July 2006 he happened to "be around" when a so-called "anti-globalism" march was taking place in Nevskiy Avenue in St Petersburg (see also paragraphs 19 and 20 below). He was not wearing any distinctive clothing or insignia to designate him as a journalist. He did not take part in the protest; rather, his actions were limited to observing people and taking photographs, including when the police started to disperse the gathering and to arrest some of the participants. One of the police officers spotted him taking pictures and ordered him to switch off the camera. According to the applicant, he complied and no further order was given to him; he did not show any resistance to the police. In his observations before the Court the applicant said that he had presented his press-card issued by the International Federation of Journalists, and explained his presence at the venue.

11. It follows from the identical reports of two police officers that they approached the applicant and ordered him to cease his "unlawful actions"; despite several warnings, the applicant refused; he was then ordered to follow them to the police vehicle in order to be taken to the police station.

Despite several warnings, he refused, grabbed their uniforms, behaved defiantly and shouted. He was then taken to the police vehicle by force.

B. Prosecution for an administrative offence

12. A record of administrative escorting was drawn up under Article 27.2 of the Federal Code of Administrative Offences (hereinafter "the CAO"). The record contained no reasoning.

13. The applicant was then subjected to the procedure of administrative arrest under Article 27.3 of the CAO. The following pre-typed text was underlined in the record: "arrested in order to put an end to the offence, to compile the record of administrative offence, to examine the case and so on, as required by the CAO". According to the record, the applicant was not subjected to the procedure involving a personal search or an examination of his belongings.

14. According to the Government, when the applicant was arrested and held in the police station, he was in possession of an immigration card indicating "a private visit" to Mr T. residing in Moscow as the aim of his presence in Russia, as well as photocopies of his Ukrainian passport and Shengen visa. The applicant was then interviewed and said that he was a journalist and worked as an editor for the Studio1+1 television channel. The Government pointed out, in this connection, that the administrative case file contained no photocopies of any document confirming the applicant's status as a professional journalist.

15. Apparently, the applicant managed to contact a lawyer. In the applicant's submission, the lawyer arrived at the police station at 9.15 a.m. but was not allowed to see him until 2 p.m.

16. At around that time, the applicant was allowed access to the administrative-offence record. The record compiled by Officer F. indicated that the applicant had been arrested because of his "participation in a non-authorised demonstration in Nevskiy Avenue, thus creating a risk of accident threatening his own and others' lives and limb". The record also stated:

> "A police officer approached [the applicant], introduced himself and asked [the applicant] to cease his unlawful actions. Despite repeated and lawful orders to cease unlawful actions, [the applicant] refused. Despite repeated and lawful orders to get into the police vehicle, he also refused while grabbing the police officers' clothes and shouting. Physical force had to be used against him to make him get into the vehicle."

The record also had the following pre-typed line with added handwritten text:

> "Witnesses, attesting witnesses, victims: Go., [address]; So., [address] ..."

17. Several hours later, a new administrative-offence record was compiled by Officer D. The applicant read and signed it at around 7 p.m.

According to the record, the applicant was arrested because he had "disobeyed a lawful order from a police officer". The record also had the following pre-typed line with added handwritten text:

> "Witnesses, attesting witnesses, victims: Bo., [address]; Ka., [address] ..."

18. At around 8.30 p.m. the applicant was brought before a justice of the peace. He was accused of disobeying two orders from the police: (i) to cease his participation in the non-authorised demonstration; and (ii) to get, "voluntarily", into the police vehicle, as stated in the judgment of the justice of the peace.

19. The applicant stated before the court that while having a walk with his friend, Ms K., he had seen people running along Nevskiy Avenue with banners and posters; he had followed them to take some photographs.

20. The applicant's lawyer pointed out that the second record drawn up by the police was substantially different from the initial one. His efforts to have it admitted to the file, however, were unsuccessful. The judge heard Ms K., who stated that she had been taking a walk together with the applicant at 8.30 a.m. on 16 July 2006 when they had seen people running along Nevskiy Avenue; the applicant had started to follow them; she had lost sight of him and had eventually caught up with him when he had been placed in a police vehicle; at that point, he had not been showing any resistance to the police.

21. According to the applicant, the court refused to hear the officers who had arrested him ("the arresting officers"), the officers who had compiled the initial and the amended administrative-offence records or anyone mentioned in the record (see paragraphs 16-17 above). According to the Government, the applicant made no request to have the arresting officers examined at the trial.

22. On the same evening, the justice of the peace convicted the applicant under Article 19.3 of the CAO and sentenced him to three days of detention, to be counted from 10 a.m. on the same day.

23. The court relied on (i) the (second) administrative-offence record, compiled by the authority initiating prosecution against the applicant, and (ii) the written statements made by the arresting officers prior to the trial.

24. The applicant was held in a police cell for a night and then transferred to a special detention facility to serve the sentence.

25. Although the trial judgment was amenable to appeal within ten days, the applicant chose to lodge an appeal without delay. He also made a written statement, which read:

> "Acting as a journalist, on 16 July 2006 I took photographs during a public event. I did not think I was breaching any law. If I did so unknowingly, I am sorry about that. On the same day I was sentenced to three days' detention. I ask the appeal court, when examining my appeal, to grant it as regards my release. I would ask you to examine the appeal in my absence but with the participation of my counsel and a representative from the Ukrainian Consulate."

26. On 18 July 2006 the applicant was visited by an official from the Ukrainian Consulate and signed a document authorising the Consul to represent him on appeal.

27. The Consul asked the appeal court to examine the appeal without delay.

28. On 18 July 2006 the Kuybyshevskiy District Court of St Petersburg heard the representative, upheld the conviction but reduced the sentence to two days' detention. The appeal court held as follows:

> "[The applicant] argued in his statement of appeal that the trial court had not taken into account that as a journalist he had not taken part in the so-called "anti-globalist" protest; the trial court had not examined prosecution witnesses while the judgment was solely based on the written reports made by the police officers who had arrested him ...
>
> The trial judge gave a proper assessment of the officers' reports and testimonies, including the testimony by K. who had been examined at the defendant's request. It followed from K.'s statement that she had not observed the moment of the defendant's arrest. This court has no reasons to doubt the officers' reports because they had not been previously acquainted with the defendant and had no reason to commit perjury."

The appeal court indicated that its decision was "subject to immediate enforcement".

29. According to the applicant, he was released at 4 p.m. on the same day. Referring to a logbook of detainees (a copy of the relevant extract from which has not been submitted to this Court), the Government submitted that the applicant had been released at 10 a.m. on 18 July 2006.

30. The applicant sought a supervisory review of the judgments before the City Court. He argued, *inter alia*, that he had been refused an opportunity to examine the arresting officers whose pre-trial reports had constituted the main adverse evidence. On 13 November 2006 the deputy President of the City Court upheld the conviction in a summary manner.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Journalists and public events

31. Section 6 of the Public Events Act of 2004 defines participants in a public event as people who voluntarily take part in the event, and requires them to respect public safety. In 2014 section 6 was amended to specify that journalists should be in possession of a document confirming their "competencies as a journalist"; each journalist should wear a clear distinctive sign, indicating the media outlet that he or she represents.

32. The Mass Media Act of 1991 defines a journalist as a person who (1) is employed by, or has a contractual relationship with, a registered media outlet or who acts on their instructions; and (2) edits, creates and collects information and data for a registered media outlet (section 2). A journalist

has the right to be present at gatherings or during demonstrations and to take photographs or make audio and video recordings there (section 47). When on duty, a journalist must show his identity document and documents confirming his status as a journalist (section 49).

B. Administrative escorting and administrative arrest

33. The CAO authorises the competent authorities to compel a person to follow a competent officer, for instance to a police station, for the purposes of compiling an administrative-offence record when it cannot be done on the spot (Articles 27.1 and 27.2 of the CAO on administrative escorting (*административное доставление*)). The Constitutional Court has held that this measure of compulsion, which amounts to a temporary restriction of a person's freedom of movement, should be applied only when it is necessary and within short time frames. Referring to the notion of "deprivation of liberty" under Article 5 of the Convention, the Constitutional Court has ruled that the relevant criteria relating to Article 5 of the Convention are "fully applicable" to the measure (Decision no. 149-O-O of 17 January 2012).

34. In exceptional circumstances relating to the need for a proper and expedient examination of an administrative case, the person concerned may be placed under administrative arrest (*административное задержание*) (Article 27.3 of the CAO). The arrestee should be informed of his rights and obligations; this notification should be mentioned in the arrest record. The duration of such administrative arrest must not normally exceed three hours. Administrative arrest for a longer period, not exceeding forty-eight hours, is permissible only for persons subject to administrative proceedings concerning an offence punishable by administrative detention or offences involving unlawful crossing of the Russian border. This term starts to run as soon as the person has been escorted to the police station, in accordance with Article 27.2 of the Code (Article 27.5 of the Code). The Constitutional Court has ruled that such arrest amounts to "deprivation of liberty" as it is understood by the European Court of Human Rights within the meaning of Article 5 § 1 (c) of the Convention (Ruling no. 9-P of 16 June 2009).

35. Administrative arrest must be effected in compliance with the goals listed in Article 5 § 1 (c) of the European Convention, 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 when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so (Ruling no. 9-P of 16 June 2009 by the Constitutional Court). Assessment of the lawfulness of an arrest requires an assessment of the essential features affecting such "lawfulness", including 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 applied. Administrative arrest is considered lawful if it can be justified on account of the nature of the offence and is necessary for ensuring enforcement of a judgment in an administrative-offence case (decision no. 1049-O of 2 July 2013 by the Constitutional Court). Assessment of the reasons/grounds listed in the administrative-arrest record (as relevant, in respect of a claim for compensation relating to such arrest) includes an assessment of whether the arrest was the only possible measure in respect of the defendant (ibid.).

36. Under the Police Act (Federal Law no. 1036-I of 18 April 1991) the police were empowered to carry out administrative arrest (section 11(1)(5)).

C. Prosecution for an administrative offence

37. The Constitutional Court stated that Articles 118 § 2 and 123 § 3 of the Russian Constitution provided that equality of arms and adversarial procedure should apply in court proceedings, including under the CAO (Decision no. 630-O of 23 April 2013).

38. Article 25.1 § 4 of the CAO provides that anyone prosecuted under the CAO is entitled to study the case-file materials, to make representations, to adduce evidence, to lodge motions and challenges, and to have legal assistance. The Constitutional Court considered that the above guarantees enabled the person concerned to refute, in the course of court proceedings, the information contained in the case file, for instance in the record of administrative offence (*протокол об административном правонарушении*), thereby exercising his or her right to judicial protection based on the principle of adversarial procedure (Decision no. 925-O-O of 17 June 2010).

39. Article 28.1 of the CAO provides that administrative-offence proceedings may be initiated by a competent public official such as a police officer or a prosecutor.

40. Chapter 25 of the CAO contains provisions regarding "participants in administrative-offence proceedings", namely the defendant, the victim, their representatives and counsel, witnesses, attesting witnesses, specialists and experts, translators and prosecutors. In particular, Article 25.11 provides a public prosecutor with the power to institute administrative-offence proceedings; to take part in the examination of the case, adduce evidence, lodge motions and issue reports on matters arising during the examination of the case; and to appeal against the decision taken in the case, irrespective of whether he or she participated in the case.

41. The official who compiled the administrative-offence record and the official/non-judicial authority who issued a decision in the case are not considered as "participants" in the proceedings mentioned in Chapter 25 of the CAO. Thus they cannot lodge motions but can be called to attend a

hearing in order "to provide clarifications" (Ruling no. 5 of 25 March 2005 by the Plenary Supreme Court of Russia).

42. Concerning the role of a judge in an administrative case, the Constitutional Court stated that in order to comply with the statutory requirement of a "full and objective" examination of the case, a judge has statutory powers to hear participants in the case, to examine evidence, as well as to "carry out other necessary procedural measures aimed at verifying the admissibility and authenticity of evidence, in particular by way of calling *proprio motu* a witness, including the official who compiled the administrative-offence record or other related record". This is aimed at further examining the available evidence (the record), rather than at collecting new evidence. The above-mentioned power cannot be considered as incompatible with the judicial function and fully complies with the constitutional principle of adversarial procedure under the CAO (Decision no. 1086-O of 6 July 2010; decision no. 884-O of 29 May 2012; and Decision no. 1817-O of 18 September 2014 and separate opinion by judge Aranovskiy).

43. Article 29.6 of the CAO provides that cases should be examined within fifteen days of the judge's receiving the administrative-offence record or other material. However, cases punishable by administrative detention must be examined on the same day as the record or other material has been received; where the measure of administrative arrest has been applied, the case must be examined within forty-eight hours of the defendant being apprehended.

D. Proof in a CAO case

44. Article 1.5 of the CAO provides for the presumption of innocence. The official or court dealing with the administrative-offence case should establish whether the person concerned is guilty or innocent (Ruling no. 5 of 24 March 2005 by the Plenary Supreme Court of Russia).

45. Article 26.1 of the CAO provides that the following circumstances should be ascertained during examination of a case: the existence of an event that constitutes an administrative offence; the person who committed the unlawful action or inaction that is punishable under the Code; whether the person is guilty of committing the offence; whether there were any mitigating or aggravating circumstances; the nature and amount of damage caused by the offence; whether there are any circumstances barring the examination of the case; other circumstances that may be pertinent for the correct examination of the case; as well as the reasons for the offence and the conditions in which it was committed.

46. Article 26.2 of the CAO defines proof/evidence in a CAO case as any factual data which can serve for ascertaining whether an offence has been committed, whether the defendant is guilty, or other circumstances that

may be important for the correct examination of the case. The above-mentioned factual data are determined on the basis of (*устанавливается*) the record of administrative offence, another record compiled under the CAO, physical evidence, statements from a victim, a witness or an expert, or on the basis of other documents.

47. "Other documents" may be video or audio recordings, or photographs (Jurisprudential Review 1(2014) of 24 December 2014 by the Presidium of the Supreme Court of Russia).

48. Article 26.7 provides that documents may be admitted as evidence if the data contained in them (as certified by the relevant organisations, officials or citizens) are relevant for the case.

THE LAW

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

49. The applicant complained under Article 5 § 1 of the Convention that his administrative arrest had been unlawful and disproportionate, and that there had been no lawful basis for his detention after 10 a.m. on 18 July 2006.

50. Article 5 § 1 of the Convention reads 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 applicant

51. The applicant alleged that there had been no exceptional circumstances, as required under Article 27.3 of the CAO, which might justify his administrative arrest.

52. In his observations before the Court the applicant specified that as well as having to have a formal basis in a legal provision, deprivation of liberty also had to be consistent with the purpose of Article 5 of the Convention to prevent arbitrary or unjustified deprivations of liberty. The taking of the applicant to the police station and his retention there had been arbitrary and effected in bad faith for the following reasons.

First, the legal classification of the charges had been chosen deliberately to justify a prolonged pre-trial detention and to facilitate the police work. It was clearly specified in the pre-trial documents that the applicant had been arrested for participation in a "non-authorised public event". The related offence falling under Article 20.2 of the CAO could justify the applicant's retention for no longer than three hours. However, the police had not been able to bring him before a judge promptly enough, so they had charged him with disobedience to the police, an offence punishable under Article 19.3 of the CAO and allowing pre-trial detention for up to forty-eight hours. The applicant had been informed of this legal classification more than five hours after his arrest by way of a new and amended administrative-offence record.

Secondly, the arbitrary nature of the arrest was confirmed by the fact that the charges were not justified by the circumstances but were intended to have a chilling effect on the participants of the public event and on observers. Conduct relating to public events was primarily punishable under Article 20.2 of the CAO, which at the time prescribed more lenient penalties in the way of fines than Article 19.3 and did not provide for the longer period of pre-trial detention or the sentence of detention prescribed by Article 19.3. At the time, the authorities preferred prosecution under Article 19.3 alone or even in combination with Article 20.2 for what were, in substance, the very same factual circumstances.

53. Lastly, the applicant submitted that he had been released at around 4 p.m. on 18 July 2006, which was apparently around the time when the court order had reached the detention facility, while his amended sentence was deemed to have been fully served at 10 a.m. the same day.

2. The Government

54. The Government submitted that the applicant had been arrested following his refusal, despite repeated orders from a police officer, to stop participating in an unlawful public event and his refusal to "accompany voluntarily" a police officer to the police station. Those refusals amounted to disobedience to a lawful order from a police officer, which was an offence under Article 19.3 of the CAO. The commission of that offence by the applicant constituted the basis for his administrative arrest. In addition, the applicant had also/then resisted by grabbing the officers' uniforms and shouting. Thus, the police officers had had to use force and to place him in the police vehicle and to then take him to the station. The purpose of that action had been to facilitate the compiling of documents relating to the offence and for submitting the matter to a court. The taking of the applicant to the police station had been in compliance with sections 10 and 11 of the Police Act of 1991 (see paragraph 36 above).

55. When the applicant was arrested and held at the police station he had been in possession of an immigration card indicating "a private visit" to Mr T. residing in Moscow as the aim of his presence in Russia, as well as

photocopies of his Ukrainian passport and a Schengen visa. The applicant had then been interviewed and had said that he was a journalist and was working as an editor for the Studio1+1 television channel; he had not been taking part in the public event in Nevskiy Avenue but had been taking photographs. The Government pointed out, in this connection, that the administrative case file presently contained no photocopies of any document which would confirm the applicant's status as a professional journalist.

56. The Government explained that administrative escorting and administrative arrest under the Russian CAO were aimed at putting an end to an administrative offence, confirming an individual's identity, compiling an administrative-offence record if it was not practicable to do so on the spot, as well as at facilitating the timely and correct examination of a case and at facilitating enforcement of the resulting judgment. The administrative arrest of the applicant had pursued the aims listed in Article 5 § 1 (c) of the Convention, namely bringing him before the competent legal authority on reasonable suspicion of having committed an (administrative) offence. As to the Russian legislation, the aim of administrative arrest was to facilitate the proceedings in an administrative-offence case.

57. The appeal court had reduced the penalty of detention to two days, taking into account the applicant's passive role in the unlawful public event, as well as his admission of guilt. It appeared from a logbook of detainees that the applicant had been released at 10 a.m. on 18 July 2006. Thus, he had served the sentence as amended on appeal and there had been no delay in his release. The details of each arrested person, including the date and time of arrival and release, would be recorded in a personal file compiled on each occasion. However, the applicant's file had been destroyed on 22 July 2010 along with others relating to the same period, after expiry of the statutory period for keeping such records.

B. The Court's assessment

1. Admissibility and scope of the complaints

58. The Court observes that the applicant's initial complaint, which was raised on 17 January 2007 and communicated to the respondent Government, concerned the requirement under Article 27.3 of the CAO that there should be "exceptional circumstances" in order for administrative arrest to be lawful.

59. In his observations the applicant raised arguments relating to arbitrary deprivation of liberty effected in bad faith and on spurious grounds (see paragraph 52 above). This aspect does not constitute an elaboration of the initial complaint and is thus belated in being raised in 2016. Accordingly, this new complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

60. As to the initial complaint as well as the matter of belated release, the Court notes that these 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.

2. Merits

(a) Administrative arrest

61. The Court observes that the applicant was first taken to the police station, through recourse to the escort procedure under Article 27.2 of the CAO and then, once at the police station, he was subjected to the procedure of administrative arrest under Article 27.3 of the CAO. No particular reason was given in the record of administrative escorting for subjecting the applicant to compulsion under that procedure.

62. Article 27.2 provides that a suspected offender may be escorted to a police station for the purpose of drawing up an administrative-offence record only if such a report cannot be drawn up at the place where the offence has been discovered. The applicant has not alleged that the above-mentioned proviso was not complied with in the present case (compare *Lashmankin and Others v. Russia*, nos. 57818/09 and 14 others, § 489, 7 February 2017).

63. At the same time, neither the domestic authorities nor the respondent Government provided any justification, as required by Article 27.3 of the Code, for the administrative arrest, namely that there were "exceptional circumstances" and/or that it was "necessary for the prompt and proper examination of the administrative case and to secure the enforcement of any penalty to be imposed". Having regard to the interpretation given by the Russian Constitutional Court (see paragraph 35 above), the above considerations were essential elements pertaining to the legality of the deprivation of liberty (see *Lashmankin and Others*, cited above, § 490; compare, albeit in different contexts; *Gusinskiy v. Russia*, no. 70276/01, §§ 63-65, ECHR 2004-IV; and *Volchkova and Mironov v. Russia*, nos. 45668/05 and 2292/06, § 106, 28 March 2017).

64. It was incumbent on the domestic authorities to ascertain that the deprivation of liberty was "reasonably considered necessary" in the circumstances of the case "to prevent [a person from] committing an offence or fleeing after having done so". At the same time, the authorities should have borne in mind that the measure had been applied in the context of an administrative offence and, possibly, in the context of the exercise of a fundamental right or freedom, such as freedom of expression or freedom of peaceful assembly. Article 5 § 1 of the Convention requires that for deprivation of liberty to be considered free from arbitrariness, it does not suffice that this measure is taken and executed in conformity with national

law; it must also be necessary in the circumstances (see *Nešťák v. Slovakia*, no. 65559/01, § 74, 27 February 2007). Detention pursuant to Article 5 § 1 (c) must embody a proportionality requirement (see *Ladent v. Poland*, no. 11036/03, § 55, 18 March 2008), which implies a reasoned decision balancing relevant arguments for and against release (see *Taran v. Ukraine*, no. 31898/06, § 68, 17 October 2013).

65. For these reasons, the Court is not satisfied that the applicant's administrative arrest complied with Russian law so as also to be "lawful" within the meaning of Article 5 § 1 (c) of the Convention. It follows that there has been a violation of Article 5 § 1.

(b) Delayed release

66. It is incumbent on the Government to provide, with reference to satisfactory and convincing written evidence, a detailed report on the applicant's administrative detention and to account for the time of his release (see *Creangă v. Romania* [GC], no. 29226/03, § 90, 23 February 2012). This has not been done in the present case. In particular, the Government have not submitted an extract from the logbook to which they referred. In these circumstances, the Court considers that the applicant remained deprived of his liberty until 4 p.m. on 18 July 2006 (compare *Boris Popov v. Russia*, no. 23284/04, § 75, 28 October 2010). It is uncontested that his sentence was deemed to have been fully served at 10 a.m. on the same day. After that time, his detention was no longer justifiable under Article 5 § 1 (a) of the Convention.

67. The Court reiterates in this connection that some delay in implementing a decision to release a detainee is understandable, and often inevitable, in view of practical considerations relating to the running of the courts and the observance of particular formalities. However, the national authorities must attempt to keep this to a minimum (see *Ruslan Yakovenko v. Ukraine*, no. 5425/11, § 68, ECHR 2015, with further references). Administrative formalities connected with release cannot justify a delay of more than a few hours (ibid.; see also *Quinn v. France*, 22 March 1995, §§ 39-43, Series A no. 311, in which the Court found that a delay of eleven hours in executing a decision to release the applicant "forthwith" was incompatible with Article 5 § 1 of the Convention). In the present case the Court finds no justification for the six-hour delay. There is nothing to suggest that there were any particular difficulties in securing the applicant's immediate release as required by the appeal court (see paragraph 28 above), which was located in the same city as the detention facility (see, in a similar context, *Bivolaru v. Romania*, no. 28796/04, §§ 103-07, 28 February 2017).

68. There has therefore been a violation of Article 5 § 1 of the Convention in this respect too.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

69. The applicant complained of a violation of Article 6 of the Convention because he had not been given a fair trial by an impartial tribunal in the administrative-offence proceedings against him.

The relevant parts of Article 6 of the Convention read:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
>
> (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; ..."

A. Admissibility

70. 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.

B. Merits

1. The parties' submissions

(a) The Government

71. The Government submitted that the applicant had been apprised of his procedural rights, had authorised the Ukrainian Consul to represent him at the appeal hearing and had cross-examined witnesses B. and K. He had therefore been given adequate opportunity to challenge the adverse information contained in the administrative-offence record and the police officers' reports.

72. Officers who compile administrative-offence records or submit the case file to a court were not treated as parties to proceedings and were not allowed to lodge motions. At the same time, they could be heard by the court, if necessary, in order to provide clarifications.

73. The applicant had not applied to the court to have an arresting officer or arresting officers heard at the trial.

74. The information contained in the police officers' reports constituted written evidence. They did not amount to "witness statements" because they had not been drawn up following a warning against providing false testimony. However, such reports could be used for establishing the pertinent factual and legal elements of a case, as well as a defendant's guilt. The officers' reports were "documents" that could amount to evidence in a CAO case (see paragraphs 46-48 above).

75. The trial court had properly examined the evidence presented to it and had not taken active measures, for instance, by way of collecting new evidence.

(b) The applicant

76. The applicant argued that he had been refused an opportunity to examine the officers who had laid the basis for his prosecution (namely, those who had allegedly modified the administrative-offence record); the officers who had arrested him, whose written reports had formed the foundation for his conviction; or the people indicated in the record. Prior to the trial he had not been informed of the exact charge against him.

77. The administrative-offence record compiled by the police had been treated as a piece of evidence. As confirmed by the court decisions and the Government's submissions, it was considered that the applicant's guilt had been established on the basis of that record and the police officers' reports.

78. In view of the lack of a prosecuting party in the CAO case, the proceedings had not been conducted in compliance with the principle of equality of arms and the requirement of adversarial procedure; the trial court had not met the requirements of independence and impartiality. Moreover, the trial judge was biased because he had already issued judgments on the same day, declaring guilty several people who had been arrested in relation to the same public event; those judgments had been based on statements by police officers that were identical to the officers' reports examined in the applicant's own case.

79. The appeal and review proceedings had not remedied any defects arising at the trial. The appeal court had also refused to hear Ms B. as a witness.

80. The police officers' reports had not been drawn up under oath and had not been treated as witness testimonies. Nevertheless, they had laid the foundation for convicting the applicant and had been given, without justification, more weight than the only actual witness statement.

2. The Court's assessment

81. The applicant has raised two separate but intertwined matters: (i) the alleged violation of his right to a "fair hearing" on account of various procedural defects and violation of the minimum rights listed in paragraph 3 of Article 6, as well as on account of the lack of a prosecuting party in the

CAO case; he referred in particular to the principle of equality of arms and the requirement of adversarial procedure; and (ii) the alleged violation of the requirement of impartiality on account of the lack of a prosecuting party in the CAO case.

(a) Impartiality

82. First, the Court dismisses as unsubstantiated the applicant's allegation that the requirement of subjective impartiality was violated because the judge had already issued judgments on the same day, declaring guilty several people who had been arrested in relation to the same public event, and that those judgments had been based on statements by police officers that were identical to the officers' reports examined in the applicant's own case.

83. 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). The Court notes that the essential factual and legal elements of the present case and the case of *Karelin* (ibid., §§ 59-68) are similar. The parties' submissions in the present case disclose no reason for the Court to depart from its earlier judgment.

84. There has therefore been a violation of Article 6 § 1 of the Convention on account of the requirement of objective impartiality.

(b) Fairness

85. The Court will next examine the applicant's primary grievance related to the alleged non-observance of the fairness requirement (see paragraphs 76-80 above).

(i) General principles

86. The right to a fair trial under Article 6 § 1 is an unqualified right. However, what constitutes a fair trial cannot be the subject of a single unvarying rule but must depend on the circumstances of the particular case (see *O'Halloran and Francis v. the United Kingdom* [GC], nos. 15809/02 and 25624/02, § 53, ECHR 2007-III). As regards compliance with Article 6 of the Convention, the primary concern is to evaluate the overall fairness of the criminal proceedings (see, among many other authorities, *Taxquet v. Belgium* [GC], no. 926/05, § 84, ECHR 2010; *Schatschaschwili v. Germany* [GC], no. 9154/10, § 101, ECHR 2015; and *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, § 250, ECHR 2016).

87. Compliance with the requirements of a fair trial must be examined in each case having regard to the development of the proceedings as a whole

and not on the basis of an isolated consideration of one particular aspect or one particular incident, although it cannot be excluded that a specific factor may be so decisive as to enable the fairness of the trial to be assessed at an earlier stage in the proceedings. In evaluating the overall fairness of the proceedings, the Court will take into account, if appropriate, the minimum rights listed in Article 6 § 3, which exemplify the requirements of a fair trial in respect of typical procedural situations which arise in criminal cases (see *Ibrahim and Others*, cited above, § 251). They can be viewed, therefore, as specific aspects of the concept of a fair trial in criminal proceedings in Article 6 § 1 (ibid., with further references). However, those minimum rights are not aims in themselves: their intrinsic aim is always to contribute to ensuring the fairness of the criminal proceedings as a whole (ibid., § 251).

88. The general requirements of fairness contained in Article 6 apply to all criminal proceedings, irrespective of the type of offence in issue. There can be no question of watering down fair trial rights for the sole reason that the individuals in question are suspected of involvement in terrorism (see *Ibrahim and Others*, cited above, § 252). Nevertheless, when determining whether the proceedings as a whole have been fair, the weight of the public interest in the investigation and punishment of the particular offence in issue may be taken into consideration (see *Jalloh v. Germany* [GC], no. 54810/00, § 97, ECHR 2006-IX).

89. Notwithstanding the consideration that a certain gravity attaches to criminal proceedings, which are concerned with the allocation of criminal responsibility and the imposition of a punitive and deterrent sanction, it is self-evident that there are criminal cases which do not carry any significant degree of stigma. There are clearly "criminal charges" of differing weight. What is more, the autonomous interpretation adopted by the Court of the notion of a "criminal charge" has underpinned a gradual broadening of the criminal head to cases not strictly belonging to the traditional categories of the criminal law, for example administrative penalties, prison disciplinary proceedings, customs law, competition law, and penalties imposed by a court with jurisdiction in financial matters (see *Jussila v. Finland* [GC], no. 73053/01, § 43, ECHR 2006-XIV).

90. The following principles are relevant as regards the matter of challenging adverse evidence, including "witness evidence":

(a) Article 6 § 3 (d) enshrines the principle that, before an accused can be convicted, all evidence against him must normally be produced in his presence at a public hearing with a view to adversarial argument. Exceptions to this principle are possible but must not infringe the rights of the defence, which, as a rule, require that the accused should be given an adequate and proper opportunity to challenge and question a witness against him, either when that witness makes his statement or at a later stage of the proceedings (see *Blokhin v. Russia* [GC], no. 47152/06, § 200, ECHR

2016). Moreover, having regard to the Court's case-law (see *Schatschaschwili v. Germany* ([GC], no. 9154/10, § 111-31, ECHR 2015), firstly, there must be a good reason for the non-attendance of a witness at the trial and, secondly, when a conviction is based solely or to a decisive degree on depositions that have been made by a person whom the accused has had no opportunity to examine or to have examined, whether during the investigation or at the trial, the rights of the defence may have been restricted to an extent that is incompatible with the guarantees provided by Article 6. Where a conviction is based solely or decisively on the evidence of absent witnesses, the Court must subject the proceedings to the most searching scrutiny. The question in each case is whether there are sufficient counterbalancing factors in place, including measures that permit a fair and proper assessment of the reliability of that evidence to take place. This would permit a conviction to be based on such evidence only if it is sufficiently reliable given its importance in the case.

(b) The absence of good reason for the non-attendance of a witness does not of itself render a trial unfair, although it remains a very important factor to be weighed in the balance when assessing the overall fairness of a trial, and one which could tip the balance in favour of a breach of Article 6 §§ 1 and 3 (d). Furthermore, given that the concern is to ascertain whether the proceedings as a whole were fair, the Court must review the existence of sufficient counterbalancing factors not only in cases in which the evidence given by an absent witness was the sole or the decisive basis for the accused's conviction. It must also do so in those cases where it finds it unclear whether the evidence in question was the sole or decisive basis but is nevertheless satisfied that it carried significant weight and that its admission may have handicapped the defence. The extent of the counterbalancing factors necessary in order for a trial to be considered fair will depend on the weight of the evidence of the absent witness. The more important that evidence, the more weight the counterbalancing factors will have to carry in order for the proceedings as a whole to be considered fair (see *Seton v. the United Kingdom*, no. 55287/10, § 59, 12 September 2016).

(c) The notion of "witness" is to be interpreted autonomously from its meaning in the domestic law of the Contracting States. Although the wording of Article 6 § 3 (d) refers to "witnesses" and not experts, the guarantees in paragraph 3 are inherent aspects of the right to a fair trial enshrined in paragraph 1 of Article 6.

Thus, as regards challenges against expert evidence and related examination of experts, the Court has concluded that the right of a person charged with a criminal offence to examine experts is protected by the general principle set forth in Article 6 § 1 and is to be examined under that paragraph, "whilst having due regard to the guarantees of paragraph 3" (see, as a recent authority, *Constantinides v. Greece*, no. 76438/12, § 37, 6 October 2016, with further references). The opinion of an expert

appointed by the competent court to address the questions raised by the case is liable to have a significant impact on that court's assessment of the case. If a court decides that an expert assessment is needed, the defence should have the opportunity to put questions to the experts, to challenge their findings and to examine them directly at the trial (ibid., § 38, also with further references).

For instance, as regards challenges concerning wire-tapping evidence, the Court observed that a person whose statement had been recorded could perhaps not be described as a "prosecution witness" in the same sense that the absent witnesses in cases such as *Schatschaschwili* (cited above) were considered to be prosecution witnesses. Nevertheless, as his evidence was being used by the prosecution to rebut the only defence advanced by the applicant at trial, the Court concluded that the principles established in those cases applied equally to the facts of the case at issue (see *Seton*, cited above, § 60).

(ii) Application of the principles to the present case

91. The Court notes that the pre-trial procedure in the applicant's case lasted from 10 a.m. to 8 p.m. The administrative-offence record, which was compiled by the police and signed by the applicant during that period of time, indicated that he had committed an offence under Article 19.3 of the CAO. The police chose to bring the case before a judge the same evening. On that same evening, the first-instance court found the applicant guilty. The case was examined in an expedited procedure under the CAO: in cases concerning an administrative charge for an offence punishable by administrative detention, the police were to transmit the administrative-offence file to a court immediately after having compiled it, and the court was to examine the case on the same day or within forty-eight hours of the defendant's arrest. It appears that no adjournment was possible (see paragraph 43 above).

92. The Court reiterates in this connection that recourse to that procedure when a "criminal charge" must be determined is not in itself contrary to Article 6 of the Convention as long as the procedure provides the necessary safeguards and guarantees (see *Malofeyeva v. Russia*, no. 36673/04, § 115, 30 May 2013, and *Borisova v. Bulgaria*, no. 56891/00, § 40, 21 December 2006).

93. Turning to the question of procedural safeguards and guarantees, first of all, it has not been substantiated that the police delayed a meeting between the applicant and a lawyer (see paragraph 15 above). As to the trial proceedings, it is noted that there was an oral hearing at which the applicant was assisted by his lawyer. The justice of the peace heard representations from the applicant, who pleaded not guilty, and from his lawyer. The court also granted the defence's request and examined a witness who was present in the courtroom (see paragraph 20 above). No adverse witnesses or public

officials were heard. As indicated above, there was no prosecuting party in the case. As to the appeal proceedings, which were held swiftly after the trial, the applicant chose not to participate in the appeal hearing but was represented in court by the Ukrainian Consul. It is unclear whether in the appeal proceedings the applicant changed his plea to guilty and merely sought a reduction of the sentence (compare *Gafgaz Mammadov v. Azerbaijan*, no. 60259/11, § 86, 15 October 2015). It appears, however, that the applicant's submissions (see paragraph 25 above) were misinterpreted by the appeal court. Nonetheless, it is uncontested that his submissions to the appeal court were essentially limited to seeking a reduction of the sentence. Lastly, it is noted that the higher court reviewed the lower courts' decisions on the basis of the case file.

94. The Court notes that the applicant was found guilty, essentially, with reference to the administrative-offence record and the pre-trial reports drawn up by the police officers who had arrested him. As regards the administrative-offence record the Court notes that it was also compiled by the police who had initiated the proceedings against the applicant and brought the case before the trial court. It appears that in substance, the administrative-offence record amounted to a bill of indictment, as it set out the charges that were then to be determined by a trial court. The other documents in the file, such as the records of administrative escorting and administrative arrest, did not appear to have any particular probative evidentiary value in respect of the matter of the defendant's guilt.

95. As regards the police officers who compiled the administrative-offence record (see paragraphs 16-17 above), it is uncontested that the defence made an unsuccessful request to examine them at the trial. The applicant explained, before both the national courts and this Court, that their oral testimony could have shed light on the circumstances in which the administrative-offence record, which set out the grounds for the examination of the charge, had been compiled. It cannot be said that their testimony on that specific aspect of the case would have been decisive for the charge against the applicant: he was prosecuted on the basis of the record that was actually submitted to the court for adjudication. The applicant had access to that record and was able to build his defence around it.

96. At the same time, the absence of those police officers from the oral hearing was not conducive to affording the defence an adequate opportunity to put forward a case in adversarial proceedings (see, in the same vein, *Gafgaz Mammadov*, cited above, § 81).

97. The applicant's central argument concerns the use of the pre-trial reports produced by two arresting officers and the lack of an opportunity to question them. The Government mentioned in this connection, without putting forward any specific legal argument, that those officers were not examined at the trial because the defence had not requested their

examination. There is no evidence to corroborate the applicant's argument that the defence sought, albeit to no avail, to have the arresting officers examined at the trial. Although he did not seek examination of the officers at the appeal hearing, the applicant consistently continued to raise this matter in his statement of appeal and then in his review application. He argued that he had had no opportunity to examine them or have them examined prior to or during the trial (see, in the same vein, *Craxi v. Italy (no. 1)*, no. 34896/97, §§ 90-93, 5 December 2002). Furthermore, while insisting that the reports did not amount to "witness evidence" under the CAO (because they did not amount to testimony given to a competent official and had not been drawn up under oath), the Government have omitted to clarify whether it was at all permissible under the CAO to assert a right to examine arresting officers in open court in relation to such reports. It is noted in this connection that the Supreme Court's ruling of 2005 envisages such a possibility in relation to officials who compile the administrative-offence record, but does not mention arresting officers (see paragraph 41 above).

98. The Court has taken note of the Government's submission that those officers were neither witnesses nor victims of the offence in terms of the CAO. However, in so far as the notion of "witness" under Article 6 § 3 (d) of the Convention is concerned, they should be regarded as "witnesses", namely "witnesses against [the defendant]". The Court considers that there is no material difference between a deposition by a "witness", as taken down by an investigator in a criminal case, for instance, and a report issued by a police officer for the attention of his superior (compare *Sharkunov and Mezentsev v. Russia*, no. 75330/01, § 111, 10 June 2010, and *Mirilashvili v. Russia*, no. 6293/04, § 159, 11 December 2008).

99. The Court considers that there was no good reason for the non-attendance at the trial of the police officers who had arrested the applicant. Their adverse testimony was, at the very least, decisive. Those officers were at the origin of the proceedings against the applicant and belonged to the authority which initiated them. They were eyewitnesses to the applicant's alleged participation in an unlawful public event and his alleged refusal to comply with their related orders.

100. The Court has taken note of the Government's submission that the officers produced their reports by themselves without any prior warning from a third party against giving false testimony (see paragraph 74 above; compare with the approach relating to incriminating statements made by co-defendants in criminal cases, *Pichugin v. Russia*, no. 38623/03, § 199, 23 October 2012). While there is no reason to presume that the public officials acted in bad faith, a degree of caution appears to be appropriate in respect of the evidence thus obtained. At the same time, it does not appear that the production and assessment of such reports as evidence under the

CAO was subject to any particular rules or regulations (compare *Seton*, cited above, §§ 65-66).

101. The Court is not satisfied that, in the circumstances of the present case, the applicant's conviction was a result of a fair hearing, in so far as it was based on untested evidence, which had been produced by the police officers who had been at the origin of the proceedings and who belonged to the authority initiating the case. The counterbalancing factors (namely, the questioning of Ms K. at the defence's request at the trial) were not sufficient in the context of the present case.

102. The Court has previously examined applications in respect of Russia concerning administrative proceedings against people charged with breaching rules of conduct of public events or with failing to obey police orders to disperse. In those proceedings the trial courts had accepted the submissions of the police readily and unequivocally and had denied the applicants any possibility of adducing any proof to the contrary. The Court held that in the dispute over the key facts underlying the charges where the only adverse witnesses were the police officers who had played an active role in the contested events, it was indispensable for the courts to use every reasonable opportunity to verify their incriminating statements (see *Kasparov and Others v. Russia (no. 2)*, no. 51988/07, § 48, 13 December 2016 and the cases cited therein).

103. The Court concludes that there has been a violation of Article 6 § 1 of the Convention as regards the applicant's right to a fair hearing.

III. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

104. The applicant complained that his freedom of expression had been interfered with in an unlawful and disproportionate manner, in breach of Article 10 of the Convention, the relevant parts of which read as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority ...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime ..."

A. Admissibility

105. 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.

B. Merits

1. The parties' submissions

(a) The Government

106. The Government submitted that no prior notification had been made to the competent authority about a march planned for 16 July 2006 along Nevskiy Avenue. The absence of such notification had rendered the march unlawful. Certain demonstrators had behaved in a "destructive manner", thus manifestly breaching order and creating a real threat to their own and others' safety. They had not stopped their unlawful actions and had not dispersed, despite the interference by the police. Moreover, they had shown active resistance to the police. Some forty people had been arrested.

107. The unlawfulness of the demonstration had not directly influenced the administrative arrest of the applicant and his ensuing prosecution for an offence. Neither the pre-trial documents nor the court decisions had indicated the unlawfulness of the demonstration as the main reason for taking the applicant to the police station, for holding him there or for imposing a sentence. Moreover, the appeal court had expressly taken into account as a mitigating circumstance the applicant's "passive role" during the unlawful demonstration. The courts had assessed the lawfulness of the event in so far as it was pertinent for assessing the lawfulness of orders given to the applicant by the police. The police's actions in taking the applicant to the police station had been in compliance with sections 5 and 11 of the Police Act.

108. The Government submitted that the circumstances of the case had not disclosed any interference with the applicant's freedom of expression. The applicant had been arrested and then prosecuted for disobeying a lawful order from the police and not in relation to his exercise of the freedom to impart or receive information. The applicant, "who considered himself as a journalist", should have foreseen the consequences of his presence in the immediate proximity to an unlawful public event and the consequences of active resistance to the police.

109. Even assuming that there was interference under Article 10 of the Convention, the Government still maintained that the national authorities had acted lawfully and pursued the legitimate aim of maintaining order in a proportionate manner. The courts had given due consideration to the circumstances of the case, including the applicant's arrival in Russia and his presence close to the venue of the event. Moreover, the court had given sufficient reasons for imposing the penalty of detention for two days.

(b) The applicant

110. The applicant submitted that a large event organised by government and protests relating to it were of significant public interest. The freedom to

cover such matters could not be limited to accredited journalists or mainstream media. While accreditation or a specific identification card could provide access to certain events or give certain privileges, it was in no way a precondition for carrying out journalistic work or seeking, receiving and imparting information.

111. The Government had admitted that the unlawfulness of the demonstration had not directly influenced the lawfulness of the applicant's arrest, retention and conviction. Notably, the appeal court had noted the "passive role" of the applicant during the event. So, the actual reason for the above measures against the applicant had been his activity during the event as a journalist seeking, receiving and intending to impart information. He had been taking photographs and had continuously made an effort to distinguish himself (from others) as a journalist. When being arrested he had informed the police officers (and thereafter the officers in the police vehicle and the police station, and subsequently the courts) that he was a journalist covering the protests. "Whenever it was physically possible", he had presented his international press card issued by the International Federation of Journalists. Subsequently, his representative and the Ukrainian Consul had also confirmed his status as a journalist.

112. In his comments in reply to the third-party submissions before the Court, the applicant also added that at the time, he had been "involved with" the Independent Media Centre (*Indymedia*). Prior to the G8 summit, he had taken leave from his television assignments and had focused on media work in the framework of LINK, the Russian abbreviation for Libertarian Information and News Collective, disseminating press releases and information on the Internet about protests, connecting journalists and protesters, and providing coverage about the issues raised by activists. Although at the time of his arrest the applicant had not been wearing any distinctive clothing or insignia to designate him as a journalist, he had not taken part in the protest. The realities of reporting on protests did not always allow a journalist to distinguish himself in a high-risk environment.

113. Relying on the third-party submissions in the present case, the applicant argued that journalists play a key role in gathering and imparting information, especially during protests, and are entitled to specific protection under Article 10 of the Convention, regardless of whether journalistic activity comes from mainstream media or from the evolving phenomenon of "citizen journalists".

114. Even admitting that it might be difficult to make a distinction between demonstrators and other people present on the spot (by-standers or reporters), it remained incumbent on the authorities, including the courts, to establish and assess the circumstances of a given case and to make the requisite distinction. In the present case, the authorities had consistently disregarded the evidence confirming his status and functions. The authorities in the applicant's case had disregarded their obligation to

specifically protect journalists and their right to seek and receive information, including in situations of risk.

115. Critical reporting in the context of the G8 summit was of additional value, given the little focus that the mainstream media had given to both the protests and the issues that protesters had wanted to address. The G8 summit had been characterised by massive human-rights violations as reported by various organisations. The applicant's arrest and detention were aimed at preventing both the coverage of the specific public event, thus infringing the public's right to be informed. The disproportionate measures taken against the applicant, followed by his expulsion from Russia, had had a certain chilling effect. The effect had then been reinforced by the extension of the repressive character of the Russian legislation on public events.

2. The third parties' submissions

(a) The Government of Ukraine

116. Acting as the State of the applicant's nationality, the Ukrainian Government cited the Court's case-law indicating the crucial role of the media in providing information on the authorities' handling of public demonstrations and the containment of disorder. It was also reiterated that the "watchdog" role of the media assumed particular importance in such contexts, since their presence was a guarantee that the authorities could be held to account for their conduct *vis-à-vis* demonstrators and the public at large when it came to the policing of large gatherings, including the methods used to control or disperse protesters. Any attempt to remove journalists from the scene of demonstrations must therefore be subject to strict scrutiny (*Pentikäinen v. Finland* [GC], no. 11882/10, § 89, ECHR 2015).

117. In this context, matters relating to authorisation of demonstrations should not have an impact on the question of a journalist's access to cover such demonstrations. Prohibition on observing and covering such a "non-authorised" demonstration deprived a journalist of an opportunity to fulfill his professional function. When a journalist was removed from the venue of a public event, a fair balance should be struck between public interests relating to the prevention of disorder and the journalist's freedom of expression, without diminishing the "watchdog" role of the media.

(b) Joint submissions by the Media Legal Defence Initiative, ARTICLE 19 and the Mass Media Defence Centre

118. The intervenors submitted that the scope of protection afforded under Article 10 of the Convention should be interpreted in the light of evolving national and international norms on press freedom and news gathering to ensure that journalists can carry out their essential watchdog

function in an effective and real manner, particularly in the context of protests.

119. The case of *Pentikäinen*, which had been decided by the Court with reference to the particular set of circumstances arising in that case, should be interpreted in a manner which would not have an unintended "chilling effect" on journalists covering protests and, in fact, place media personnel in serious danger. In particular, any generalised requirement to wear clothing to distinguish them from protestors and to clearly show press badges during protests would fail to take into account the evolving concept of "journalism" and the realities of reporting on protests in different contexts. The intervenors went on to stress that "journalism" was no longer seen as a "profession" but was now seen as a "function". Under international standards, mandatory licensing or registration of journalists was incompatible with the right to freedom of expression; if needed, accreditation schemes must be specific, fair and reasonable, and their application must be transparent.

120. In certain circumstances a requirement to wear distinctive clothing could threaten journalists' rights under Articles 2, 3 and 10 of the Convention.

3. The Court's assessment

(a) Existence and scope of "interference by public authority"

121. It is noted that the applicant was prosecuted and convicted under Article 19.3 of the Code, which was not specifically related to violation of the procedures for public events or to the exercise of the freedom of assembly. Both in the domestic proceedings and before the Court the applicant consistently asserted that there had been an allegedly unlawful and disproportionate "interference" with his freedom to receive and impart information, and consistently denied that he had taken part in the demonstration.

122. The Court reiterates that in cases relating to public events, there is a close link between the freedoms protected by Articles 10 and 11 of the Convention. In the context of this particular case, the Court finds it appropriate to examine this part of the application under Article 10 of the Convention, taking into account, in so far as appropriate, the general principles it has established in the context of Article 11.

123. It is undeniable that the applicant attempted to take photographs of the demonstration, thus collecting "information", and that he intended to "impart" that information by way of processing the photographs for dissemination (see paragraph 9 above). The Court considers that the authorities' actions in respect of the applicant (his arrest, detention and prosecution) amounted to "interference" under Article 10 of the Convention. The gathering of information is an essential preparatory step in journalism

and an inherent, protected part of press freedom (see *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 128, 27 June 2017). Freedom of expression includes the publication of photographs (see *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, § 103, ECHR 2012).

124. The question of whether the applicant identified himself as a journalist in a timely and adequately manner during the demonstration and in the subsequent proceedings may be pertinent in assessing the justification for the "interference".

(b) Justification of the interference

125. The impugned measures entail a violation of Article 10 of the Convention unless they are prescribed by law, sought to pursue at least one of the legitimate aims mentioned in Article 10 § 2 and were "necessary in a democratic society".

126. The Court will proceed to ascertain whether that lawfulness, legitimate aim and pressing social need justifying the "interference" were present throughout all the stages of it, namely the applicant's removal from the venue of the demonstration, his retention in the police station and his sentence to administrative detention.

(i) Whether the interference was "prescribed by law"

127. The Court notes that the Public Events Act (section 16) sets out the grounds and the procedure for the termination of a public event, including the possibility for a law-enforcement officer to take the necessary measures for that purpose. As the applicant has not submitted any particular argument in respect of the legality of the police actions relating to the dispersal of the demonstration, the Court need not make any findings in this respect in the present case. As regards the retention of the applicant in the police station, having regard to its findings in paragraph 65 above in respect of Article 5 § 1 of the Convention, the Court concludes that this aspect of interference was not "prescribed by law" within the meaning of Article 10 of the Convention.

128. It is also noted that the applicant was prosecuted, found guilty and sentenced under Article 19.3 of the CAO. No particular argument has been raised in the present case as regards the legality of such prosecution. Having regard to the applicant's submissions, the Court prefers to take up the relevant matters within the assessment below.

(ii) Whether the applicant's prosecution for an administrative offence pursued a "legitimate aim" and was "necessary in a democratic society"

129. The Court notes that the main thrust of the applicant's complaint before the Court was related to his prosecution and the sentence of administrative detention. Thus, it is relevant to discern the aims underlying

the prosecution for an administrative offence, as well as the aims underlying the regulations, the non-observance of which was indirectly related to *corpus delicti* of the relevant offence. The Court notes that the offence under Article 19.3 of the CAO belongs to the chapter of the CAO concerning offences against rules of government. In the specific context of the present case, the alleged disobedience to official orders took place in the context of a public event which was deemed unlawful as it had not been notified to the authorities in advance. The Court accepts that prosecution could be aimed at prevention of disorder.

130. In *Pentikäinen* (cited above, § 89), while emphasising the essential function the media fulfil in a democratic society, for instance in providing information on the authorities' handling of public demonstrations and the containment of disorder, the Court stated that any attempt to remove journalists from the scene of demonstrations must be subject to "strict scrutiny" (see also *Selmani and Others v. the former Yugoslav Republic of Macedonia*, no. 67259/14, § 75, 9 February 2017). In the Court's view, the same "strict scrutiny" approach is applicable to related ensuing measures such as prosecution for an alleged offence in relation to a demonstration.

131. It has not been challenged at the domestic level or before the Court that at the material time the applicant was a "journalist", at least as regards the definition of this term in Russian law (see paragraph 32 above). It is uncontested that on the morning of 16 July 2006 the applicant was not acting on a journalistic assignment from any media outlet (compare with *Pentikäinen*, cited above, §§ 10 and 92, and *Emin Huseynov v. Azerbaijan*, no. 59135/09, §§ 87 and 90, 7 May 2015; see also *Selmani and Others*, cited above, §§ 5, 61 and 73). However, the Court has no reason to doubt that the applicant, acting as a journalist, intended to collect information and photographic material relating to the public event and to impart them to the public via means of mass communication (see paragraph 9 above).

132. Accordingly, in the Court's view, the applicant could rely on the protection afforded to the press under Article 10 of the Convention.

133. In this connection, it should have already become pertinent for the authorities at the pre-trial stage of the proceedings and, *a fortiori*, during the examination of the case against the applicant, to delve into whether his alleged actions were excusable or otherwise mitigated, given his argument that he had been acting as a journalist. Nevertheless, the domestic decisions do not contain an adequate assessment of this aspect of the case.

134. For its part, the Court discerns no relevant and sufficient reasons justifying the orders given by the police to the applicant. There is nothing in the case file confirming that the demonstration was not peaceful or that it turned violent, as vaguely implied by the respondent Government, albeit without any substantiation (see paragraph 106 above; see, by contrast, *Pentikäinen*, cited above, §§ 93 and 96). None of the material presented to the Court suggests that any such circumstances were subjected to adequate

scrutiny at the domestic level, for instance during the administrative-offence proceedings in respect of the applicant. Nor did the parties make any specific submissions before the Court on the above matters.

135. The Court notes that the legitimate aim of preventing disorder weighed heavily in *Pentikäinen* (cited above, § 94). The present case is different in this respect.

136. The Court has taken note of the Government's submission that the unlawfulness of the demonstration did not directly influence the administrative arrest of the applicant and his ensuing prosecution for an offence. The Government have also stated that neither the pre-trial documents nor the court decisions indicated the unlawfulness of the demonstration as the main reason for imposing the sentence. Moreover, the appeal court expressly took into account as a mitigating circumstance the applicant's "passive role" during the demonstration.

137. Contrary to the Government's submission, the Court does not discern from the domestic decisions that the courts assessed the lawfulness of the event, particularly in so far as it was pertinent for assessing the lawfulness of the orders given to the applicant by the police. The court decisions contain no assessment relating to the proportionality of the interference with the applicant's freedom of expression or his freedom of peaceful assembly, should it be accepted that he took part as a demonstrator in an unlawful event, as claimed by the authorities and the respondent Government before the Court.

138. The applicant placed particular emphasis on the deficiencies of the reasoning adduced by the domestic authorities. Both parties have asked the Court to re-examine the proportionality of the "interference", although they disagree about certain circumstances having significance for such an assessment. The Court, for its part, is not satisfied that the reasons adduced by the national authorities to justify the "interference" under Article 10 of the Convention were sufficient for sentencing the applicant to two days' detention. Faced with the domestic courts' failure to give reasons that would be both relevant and sufficient to justify the interference, the Court finds that the domestic courts cannot be said to have applied standards which were in conformity with the principles embodied in Article 10 or to have based themselves on an acceptable assessment of the relevant facts (see, for a similar approach, *Terentyev v. Russia*, no. 25147/09, § 24, 26 January 2017, and *Annenkov and Others v. Russia*, no. 31475/10, § 139, 25 July 2017).

139. The foregoing considerations relating to the applicant's prosecution and conviction, as well as the Court's conclusion in paragraph 127 above as regards the pre-trial deprivation of his liberty in the police station, are sufficient in the present case for the Court to conclude that there has been a violation of Article 10 of the Convention.

140. The Court considers that it is not necessary in the present case to make further findings concerning the applicant's removal from the venue of the demonstration.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

141. 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."

A. Damage

142. The applicant claimed 7,000 euros (EUR) in respect of non-pecuniary damage.

143. The Government made no specific comment.

144. The Court awards the applicant the sum claimed, plus any tax that may be chargeable.

B. Costs and expenses

145. The applicant also claimed 75,000 Ukrainian Hryvnas for the costs and expenses incurred before the Russian courts and this Court.

146. The Government made no specific comment.

147. 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. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

C. Default interest

148. 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 Articles 5 § 1, 6 and 10 of 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 there has been a violation of Article 6 § 1 of the Convention as regards the fairness requirement;

5. *Holds* that there has been a violation of Article 10 of 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, at the rate applicable at the date of settlement:
      (i) EUR 7,000 (seven thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (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 13 February 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Helena Jäderblom President