

Criminal conviction for peaceful protests was breach of freedom of assembly

In today's Chamber judgment¹ in the case of [Kotov v. Russia](#) (applications nos. 49282/19 and 50346/19) the European Court of Human Rights held, unanimously, that there had been:

a violation of Articles 10 (freedom of expression) and 11 (freedom of assembly and association) of the European Convention on Human Rights, as regards Mr Kotov's administrative convictions,

a violation of Article 11 as regards his criminal conviction, and

violations of Articles 5 (right to liberty and security), 6 (right to a fair trial) and 8 (right to respect for private and family life) of the Convention, and Article 1 of Protocol No. 1 (protection of property).

The case concerned the convictions under administrative and criminal law of Mr Kotov for public protests and for encouraging others online to attend such events, for which he had received a prison sentence.

The Court found, in particular, that the punishment under criminal law given to Mr Kotov had been entirely disproportionate, and that he had been punished for actions, such as chanting anti-Government slogans, which were protected under the Convention.

Principal facts

The applicant, Konstantin Aleksandrovich Kotov, is a Russian national who was born in 1985 and lives in Moscow.

Between March and August 2019 Mr Kotov participated in several "unauthorised public events", which were political in nature, in the Moscow area, or made calls online for people to protest and participate in such events. He was, as a result, convicted under administrative law, and fined or sentenced to short periods of detention. Those judgments when appealed against, were upheld.

On 12 August 2019 Mr Kotov was arrested on suspicion of repeated violations of the procedure for organising or conducting public events. On 5 September 2019 the Tverskoy District Court of Moscow, in a decision upheld on appeal by the Moscow City Court, convicted the applicant as charged under Article 212.1 of the Criminal Code and sentenced him to four years' imprisonment.

Mr Kotov lodged a constitutional complaint, which led to a retrial. In that second set of proceedings, the Moscow City Court convicted Mr Kotov as charged on 20 April 2020. It added that Mr Kotov had ignored the lawful orders of the police officers to disperse at protests. The court sentenced him to one year and six months' imprisonment, holding that it was "unlikely that his behaviour would change without social isolation".

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.

Complaints, procedure and composition of the Court

Relying on Articles 10 (freedom of expression) and 11 (freedom of assembly and association) Mr Kotov complained, in particular, of his convictions for taking part in demonstrations and calling on the public to demonstrate.

Mr Kotov also made complaints under Articles 5 (right to liberty and security), 6 (right to a fair trial) and 8 (right to respect for private and family life) of the Convention, and Article 1 of Protocol No. 1 (protection of property).

The applications were lodged with the European Court of Human Rights on 7 and 9 September 2019.

The Court's procedure for processing of applications against Russia can be found [here](#).

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

Jolien **Schukking** (the Netherlands), *President*,
Georgios A. **Serghides** (Cyprus),
Darian **Pavli** (Albania),
Peeter **Roosma** (Estonia),
Ioannis **Ktistakis** (Greece),
Andreas **Zünd** (Switzerland),
Diana **Kovatcheva** (Bulgaria),

and also Milan **Blaško**, *Section Registrar*.

Decision of the Court

The Court decided that it had jurisdiction to deal with the case, as the facts giving rise to the alleged violations of the Convention had taken place before 16 September 2022, the date on which Russia ceased to be a party to the European Convention.

Article 10 and 11

In line with its case-law, the Court held that Mr Kotov's **criminal conviction** for participation in unauthorised public events had amounted to an interference with his right to freedom of assembly. As to whether that interference had been lawful, the national courts had then interpreted the relevant provisions – Article 212.1 of the Criminal Code and Article 20.2 of the CAO – very broadly without considering the individual situation, and had not acknowledged that some of the actions imputed to Mr Kotov had fallen under the aegis of Articles 10 and 11 of the Convention. Orders to stop those actions would have required strong justification in order to be lawful. Given this, it was doubtful that Mr Kotov's case could have foreseen how the relevant Criminal Code provisions would be applied in his case.

Although Mr Kotov's actions do not appear to have been violent (blocking traffic was cited by the national courts, for example), and the Russian Constitutional Court had held that imprisonment had been reserved for non-peaceful protests, the lower courts had nevertheless provided no justification for the prison sentence, stating flatly that "isolation" had been "necessary".

Moreover, Mr Kotov's arrest, detention and ensuing criminal conviction for repeated violations of the procedure for organising and conducting public events had discouraged him and others from participating in open political debate, all the more so since he had already been convicted and punished under administrative law for the same events. Therefore, that sanction had been disproportionate.

Even accepting that maintaining a flow of traffic had been a legitimate aim, the punishment given to Mr Kotov had been entirely disproportionate to that aim. The Court reiterated that it doubted the

criminal conviction could have been foreseen, given the failure of the national courts to follow the guidelines given by the Constitutional Court. Above all, Mr Kotov, whose interests the Russian courts had failed to take into account, had been punished for actions which were protected under the Convention.

There had therefore been a **violation of Article 11**.

As regards Mr Kotov's **administrative convictions**, the national courts had neither provided any reasons as to why the demonstrations in question should have been considered violent nor properly analysed Mr Kotov's conduct during those events. In addition, the courts had not sufficiently explained why the applicant should be punished for making calls to take part in a peaceful assembly.

The European Court therefore found a **violation of Articles 10 and 11** of the Convention.

Other articles

The Court also found multiple violations under Articles 5, 6 and 8 of the Convention, and Article 1 of Protocol No. 1 under its well-established case-law procedure. The details are set out in an annex to the judgment.

Just satisfaction (Article 41)

The Court held that Russia was to pay the applicant 9,750 euros (EUR) in respect of non-pecuniary damage and EUR 18,500 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.