



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

FIRST SECTION

Application no. 76204/11
Aleksey Anatolyevich NAVALNYY and Ilya Valeryevich YASHIN
against Russia
lodged on 11 December 2011

STATEMENT OF FACTS

THE FACTS

The applicants, Mr Aleksey Anatolyevich Navalnyy and Mr Ilya Valeryevich Yashin, are Russian nationals who were born in 1976 and 1983 respectively and live in Moscow. They are represented before the Court by, respectively, Ms O. Mikhaylova and Mr V. Prokhorov, lawyers practising in Moscow.

The facts of the case, as submitted by the applicants, may be summarised as follows.

A. The applicant's arrest and detention

On 4 December 2011 general elections of the State Duma took place in Russia.

On 5 December 2011 the applicants took part in a public manifestation (a meeting) at Chistyye Prudy, Moscow. The meeting's objectives were defined by the event organisers as a protest against the allegedly rigged elections. The manifestation had been duly authorised by the Moscow Mayor.

The second applicant was conducting the meeting. The first applicant made a speech calling for fresh, fair elections and labelling the United Russia, the election frontrunner, "a party of thieves and crooks". The number of participants at the meeting was estimated between 5,000 and 10,000.

At the end of the meeting the applicants, among other people, headed towards the metro station Kuznetskiy Most where the first applicant had left his car. They walked on the pedestrian sidewalk, leaving the road clear for traffic. Suddenly their way was blocked by the riot police (*сотрудники*

внутренних войск и ОМОХ). Without any introduction or demand, they surrounded a group of protesters, including the applicants, pressing them against a wall of a building. The surrounded group chanted “One for all, and all for one!”. The riot police then began to arrest the protesters. No one put any resistance, obeyed the police and followed them to the police vehicles. The applicants were arrested at about 8.45 p.m. and were taken to a bus parked nearby. Reportedly, about 300 people were arrested at the same time.

At about 9.40 p.m. the applicants were brought to the Severnoye Izmaylovo District Police Station, Moscow. At 11.40 p.m. the first applicant was subjected to a body search, which lasted until 00.15 a.m. His personal affairs, including the mobile phone, his barrister certificate, watch, money, credit cards, driving licence, and some items of clothing were seized. The second applicant was searched as well, and his mobile phone, his belt, watch, a whistle and a badge reading “Against the Party of Thieves and Crooks” were seized.

The list of the seized objects was recorded in the search report, but these objects were not attached to the case file, and the applicants do not know of their destiny.

The applicants requested that their lawyers, who had arrived at the police station and had presented their authority, be allowed to see them, but this was refused. The applicants were not allowed to make a phone call to their families either.

Both applicants filed complaints at the police station alleging violations of their rights during their arrest and detention.

At about 00.45 on 6 December 2011 they were taken out of the Severnoye Izmaylovo police station and were transferred to the Vostochnyy District Police Station, Moscow. They arrived at the latter station at about 1.45 a.m. on the same day. They requested to see a lawyer and to make a phone call, but this was refused again. The first applicant filed a complaint about the refusal.

On the same day, at about 2 a.m. the applicants were transferred to the Kitay-Gorod District Police Station. At 2.30 a.m. police reports were drawn in respect of each of the applicants stating that they had been taken to the police station. At 2.40 a.m. further police reports were drawn stating that the applicants were under administrative arrest. Then reports on administrative charges were issued in respect of each applicant, stating that they had refused to comply with a lawful order of the police, an offence under Article 19.3 of the Administrative Code. The reports on the administrative charges were based on the statements of two policemen, I. and F., who alleged that they had demanded the applicants to follow them to the police bus to make statement on an administrative offence but the applicants had pushed them away and had to be arrested.

At the Kitay-Gorod police station the applicants requested to be allowed to see their lawyers and to make a phone call to their families, but these requests were refused.

The applicants claim that the conditions of detention at the Kitay-Gorod police station were inhuman and degrading. In particular, they were placed in cells that consisted of metal cages with concrete floor, no windows and no furniture, apart from two narrow wooden benches. There was no sanitary equipment, bed or beddings. The applicants did not receive any food or

water, until later in the day they were allowed to receive a parcel from their families containing drinking water and crackers.

The first applicant remained in this cell until 3 p.m. on 6 December 2011, and the second applicant – until 10 a.m. on that day.

The applicants were then transferred to the court to have their charges examined by the justice of the peace of the circuit no. 370 of Tverskoy District of Moscow. Before the hearing the applicants were allowed to meet their counsels for the first time.

B. The applicants' trials on administrative charges

According to the applicants, the access way to the court was blocked by the police, and no public was allowed to the hearings of their cases.

The second applicant's case was examined first, and then the first applicant's case.

1. Hearing of the administrative case against Mr Yashin

The case was examined by the justice of the peace B. At the beginning of the hearing Mr Yashin challenged the judge alleging the lack of impartiality because she had previously found him guilty of an administrative offence and sentenced him, on 2 January 2011, to a 5-day administrative arrest. Mr Yashin had filed numerous complaints about judge B. on account of the alleged violation of his rights in those proceedings and had campaigned against her in on-line blogs. The justice of the peace dismissed the challenge against her.

Mr Yashin then requested to call and examine five witnesses, including the two policemen who had filed the arrest reports, I. and F., and the first applicant. The request was granted in respect of three witnesses, including both policemen and B., a defence witness, and rejected as regards the first applicant and the officer who was on duty at the Kitay-Gorod police station when the applicants were brought there.

Mr Yashin also filed a complaint with the court concerning the acts and omissions of the officers at the Severnoye Izmaylovo police station, but this complaint was not examined.

The justice of the peace questioned the police officers I. and F. and witness B. The police officers stated that after the public meeting Mr Yashin had participated, among some 60 people, in an unauthorised march passing by Chistoprudnyy Boulevard, Bolshaya Lubyanka Street, Kuznetskiy Most Street and then Rozhdestvenka Street, chanting slogans; that the march was obstructing the traffic and that the police demands made on the loudspeaker to stop the march were disregarded; that Mr Yashin had been required by the police to follow them to the police vehicle to draw a statement on an administrative offence, but he was refusing to do so and was pushing the police officers, I. and F., away. Mr Yashin himself and B., on the contrary, denied having heard any demands from the police and maintained that the applicant had been arrested without any warning.

According to the applicant, after the justice of the peace had retired to the deliberation room she was giving orders, through the court bailiff, to the persons in the hearing room to ban them from filming. Apparently she had

learned from the Internet that someone present in the room was secretly filming and broadcasting the hearing.

In her judgment, held on the same day, the justice of the peace accepted the version of events put forward by the policemen and found Mr Yashin guilty of having disobeyed the lawful order of the police. She sentenced him to a 15-days' administrative arrest.

2. Hearing of the administrative case against Mr Navalnyy

The first applicant's case was examined after the end of the second applicant's trial by the same justice of the peace B. In the interval between the two hearings Mr Navalnyy's counsel could briefly access the case file of Mr Yashin and to meet the Mr Navalnyy for the first time.

The proceedings in Mr Navalnyy's case began in the absence of public who were prevented from entering the hearing room. Many were barred from approaching the courthouse which was cordoned off by the police. Later, during the proceedings, eight journalists were allowed in at the applicant's insistent requests.

At the beginning of the trial Mr Navalnyy filed the following motions. He requested to transfer the case, according to the jurisdiction rules, to a court at the place of his residence, to adjourn the hearing in order to give him time to prepare his defence, to have the hearing verbatim records kept and to obtain copies of his complaints filed at the police stations on the previous night.

The justice of the peace dismissed all the above motions.

Mr Navalnyy then challenged the justice of the peace, but the challenge was rejected by her. He then requested to call and examine five eye witnesses of his arrest, including the second applicant. The motion was granted in respect of two witnesses, T. and A., and rejected as regards the rest.

Witnesses T. and A. testified that on the way from the meeting they saw a group of people on the pedestrian walkway, that the police announced in the loudspeaker "Your actions are unlawful" while surrounding them and arresting Mr Navalnyy, and that the latter had not resisted the arrest. The police officers I. and F., when questioned, gave testimonies similar to those in the second applicant's case.

Mr Navalnyy filed a motion to examine the video recordings shot by witnesses T. and A. and to include them in the case file. He also requested to obtain and examine the video recordings that the police had in their disposal. However, the motions were rejected. According to Mr Navalnyy, most questions he had addressed to the witnesses were disallowed by the justice of the peace. She also refused to act on his complaints concerning the violation of his right to access to a lawyer and of his right to make a phone call after the arrest, about the allegedly unlawful detention during the first six hours after the arrest, about the seizure of his possessions and about the inhuman and degrading conditions of his detention at the Kitay-Gorod police station.

Like in the second applicants' case, the justice of the peace accepted the version of events put forward by the policemen and found the Mr Navalnyy guilty of having disobeyed the lawful order of the police. He was also sentenced to a 15-days' administrative arrest.

3. *Appeal proceedings*

On 6 December 2011 both applicants filed appeals against their convictions of an administrative offence.

On 7 December 2011 the Tverskoy District of Moscow examined the appeals in separate proceedings. In both cases the court dismissed the complaints about the refusal to hear witnesses and to join the evidence referred to by the applicants to the case file. It also rejected the applicants' motions to have those witnesses and the video recordings examined by court. It further dismissed the argument that the confidentiality of the deliberations room had been breached by the justice of the peace in the second applicant's case. On the same day it dismissed the appeal and upheld the first-instance judgment.

COMPLAINTS

The applicants complain under Article 3 of the Convention about the allegedly poor conditions at the Kitay-Gorod police station and about their transfers between the detention facilities. They also allege that they did not have an effective domestic remedy, as required by Article 13 of the Convention, in respect of their Article 3 complaint.

The applicants complain under Article 5 of the Convention about their arrest and detention alleging that it was arbitrary, had no legal grounds and lacked judicial authorisation.

They further complain under Article 6 §§ 1 and 3 (b), (c) and (d) that the proceedings in which they were convicted of an administrative offence fell short of the guarantees of a fair and public hearing. They complain, in particular, that the hearing was not open to the public, and that their right to defence was violated and that they were not given adequate time to prepare their defence. They also claim that having spent the night in three different detention facilities and in transfer, and then in appalling conditions at the Kitay-Gorod police station, they were not fit to stand the trial on the following day. Furthermore, they claim that the court refused to examine video recordings of their arrest shot by the media and by the police. They also complain about the refusal to call and examine the witnesses they requested and allege that most questions they addressed to the prosecution witnesses were disallowed by the court. Finally, they claim that the court did not respect the equality of arms principle in that it declined to call certain defence witnesses and to take into account testimonies of those who were allowed, while giving weight to the testimonies of two policemen.

Under Articles 10 and 11 of the Convention the applicants complain that their arrest and detention were a reprisal for their participation in an opposition rally at Chistyye Prudy on 5 December 2011.

Finally, they rely on Article 18 of the Convention claiming that the limitations on his Convention rights under Articles 5, 10 and 11 of the Convention were not applied for a legitimate purpose, but for a political revenge.

QUESTIONS TO THE PARTIES

1. Were the conditions of the applicant's transfer between the detention facilities and the conditions of detention at the Kitay-Gorod police station on 6 December 2011 compatible with Article 3 of the Convention? In particular:

- (a) Were the applicants given water and food in the first six hours after their arrest and during their transfer?
- (b) At the Kitay-Gorod police station, what was the size of the cells in which the applicants were detained?
- (c) Did they have adequate access to natural and artificial light?
- (d) Did their cells have ventilation?
- (e) Were the applicants provided with a sleeping place and beddings?
- (f) What were sanitary arrangements?
- (g) Were the applicants provided with food and drinking water by the detention facility?

2. Did the applicants have at their disposal an effective domestic remedy in respect of the above complaint under Article 3 of the Convention, as required by Article 13 of the Convention?

3. Was the applicants' deprivation of liberty in the period from 8.45 p.m. on 5 December 2011 and until 10 a.m. (the second applicant) and 3 p.m. (the first applicant) on 6 January 2011 compatible with the requirements of Article 5 § 1 of the Convention? In particular:

- (a) What were the legal grounds for the applicants' arrest and detention on 5 December 2011?
- (b) Did it pursue any aim enumerated in Article 5 § 1 of the Convention?

4. Was Article 6 § 1 of the Convention applicable to the administrative proceedings in the present case? If so, did the applicants have a fair hearing, in accordance with Article 6 §§ 1 and 3 (b), (c) and (d) of the Convention? As regards each applicant's trial:

- (a) Has the principle of equality of arms been respected, in particular as regards the admission and the assessment of evidence by the courts?
- (b) Has there been a public hearing, as required by Article 6 § 1 of the Convention?
- (c) Were the applicants able to participate in the proceedings effectively, as required by Article 6 § 3 (b) of the Convention, with regard to the allegation that they were not given adequate time and facilities to prepare their defence and were not fit to stand the trial after a night spent at various police stations in appalling conditions?
- (d) With regard to the allegation that the applicants were not given access to a lawyer during the detention and until immediately before the trial, were they able to defend themselves, as required by Article 6 § 3 (c) of the Convention?
- (e) Were the applicants able to examine witnesses against them and to obtain the attendance of witnesses on their behalf under the same

conditions as witnesses against them, as required by Article 6 § 3 (d) of the Convention?

5. Has there been an interference with the applicants' freedom of expression, within the meaning of Article 10 § 1 of the Convention? If so, was that interference prescribed by law and necessary in terms of Article 10 § 2?

6. Has there been an interference with the applicants' freedom of peaceful assembly, within the meaning of Article 11 § 1 of the Convention? If so, was that interference prescribed by law and necessary in terms of Article 11 § 2?

7. Was the applicants' liberty restricted for the purpose of undermining their rights to freedom of assembly and expression, in breach of Article 18 of the Convention (see *Gusinskiy v. Russia*, no. 70276/01, ECHR 2004-IV)?