



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

Communicated on 28 August 2014

FIRST SECTION

Application no. 29580/12
Aleksey Anatolyevich NAVALNY against Russia
and 4 other applications
(see list appended)

STATEMENT OF FACTS

The applicant, Mr Aleksey Anatolyevich Navalnyy, is a Russian national, who was born in 1976 and lives in Moscow. He is represented before the Court by Mr K. Terekhov and Ms O. Mikhaylova, lawyers practising in Moscow.

The facts of the cases, as submitted by the applicant, may be summarised as follows.

The applicant is a political activist, opposition leader, anti-corruption campaigner and popular blogger. He regularly participates in opposition rallies. In the present applications he complains about the restrictions imposed on these rallies and the measures taken against him, in particular arrest, detention and the administrative charges.

Application no. 29580/12 (lodged on 14 May 2012)

This application concerns the applicant's arrest on 9 May 2012.

On 9 May 2012 the applicant arrived at 5 a.m. to Kudrinskaya Square in Moscow. He alleges that he intended to take part in an informal meeting with an MP and to attend the public festivities. He was among 50 to 100 people "walking about" and discussing the current affairs. He claims that this gathering was neither a demonstration, nor a public meeting within the meaning of the law on public gatherings. There had been no banners, no noise, no one was chanting any slogans or addressed the crowd.

At 6 a.m. the riot police arrived at the site of the meeting and arrested the applicant without any orders or warning. The applicant submitted a video recording of his arrest.

The applicant was taken to the Strogino District police station where a report on administrative offence was drawn several hours later.

On the same day the applicant was brought before the Justice of the Peace of the Circuit no. 375 of the Presnenskiy District of Moscow. On the

basis of the statement of two policemen the court established that the applicant had taken part in an unauthorised meeting and had disobeyed the lawful order of the police to disperse. It also found that the applicant had chanted slogans “Russia without Putin!” and “Putin is a thief!” and had refused to leave the square which had to be cleared for the preparation of the Victory Day festivities. The Justice of the Peace has rejected the testimonies of three eye-witnesses contending that the police had not given the applicant any orders or warnings before proceeding to his arrest. The applicant was found guilty of having disobeyed the lawful order of the police, in breach of Article 19.3 of the Code of Administrative Offences, and was sentenced to a 15-days’ administrative detention.

On 10 May 2012 the applicant lodged an appeal.

On 12 December 2011 the Presnenskiy District Court of Moscow examined the appeal. The applicant requested to cross-examine the policemen on whose reports and testimonies the Justice of the Peace had based the judgment, as well as eight eye-witnesses, and to admit the video recording of the arrest. The court dismissed these motions and upheld the judgment of 9 May 2012.

The applicant alleges that the court hearings both before the Justice of the Peace and the district court have been conducted in the absence of the party for the prosecution, because the administrative procedure does not require that the charges be presented by the prosecution, and the courts themselves discharged this function.

Application no. 36847/12 (lodged on 28 May 2012)

This application concerns the applicant’s arrest on 5 March 2012.

On 5 March 2012 the applicant took part in an authorised public meeting at Pushkinskaya Square, Moscow, which began at 7 p.m. It was devoted to the allegedly rigged presidential elections in Russia.

At 9 p.m. Mr P., State Duma Deputy, addressed the participants suggesting that after the meeting he would hold informal deputy consultations with the public and invited everyone to stay on for these consultations. At about 9.30 p.m. the applicant among some 500 people took part in the meeting with the deputy. They stayed within the pedestrian area of the square and did not obstruct the traffic or the passage.

Shortly after the beginning of the meeting the police arrived and arrested the applicant, among many others. He was put in the police bus and taken to the Tverskoy District police station. The applicant submitted a video recording of his arrest.

On the same night two policemen drew a report on the administrative offence, stating that the applicant had been arrested at 10.45 p.m. “in a fountain” at Pushkinskaya Square; that he had taken part in an unauthorised public gathering and had ignored the police orders. The applicant was charged with having breached the procedure for holding a public gathering, an offence under Article 20.2 of the Code of Administrative Offences.

The applicant claims that the policemen who drew the report were not the same officers who had arrested him.

On 15 March 2012 the Justice of the Peace of the Circuit no. 369 of the Tverskoy District examined the administrative charges against the applicant. The applicant challenged the Justice of the Peace on the grounds of her

alleged partiality, unsuccessfully. He also requested that the case be transferred to the court which had territorial jurisdiction at his registered address; that the verbatim record of the hearing be kept; that Mr P. be called and examined as witness. The Justice of the Peace rejected these requests. On the basis of statements by two policemen she found the applicant guilty of having taken part in a meeting conducted in breach of regulations and convicted the applicant under Article 20.2 of the Code of Administrative Offences to a fine of 1,000 roubles (RUB), an equivalent of about 25 euros (EUR).

On 10 April 2012 the Tverskoy District court of Moscow upheld the judgment of 15 March 2012.

Application no. 11252/13 (lodged on 30 November 2012)

This application concerns two arrests of the applicant on 8 May 2012.

On 8 May 2012 the applicant took part in a “walkabout” gathering whereby several dozens of fellow activists spontaneously met at a public venue to discuss current affairs. In this case, the occasion was the recent inauguration of Mr Putin as Russian President. On that day some areas of central Moscow were restricted for traffic and pedestrians due to the inauguration and the Victory Day festivities.

At 5.40 a.m. the applicant was walking down Lubyanskiy Proyezd, accompanied by about 170 people. At one stage he took a photograph of this group on the stairs of a public building and then was arrested by the riot police. He was taken to a police station where a report on administrative offence was drawn.

At about 11 p.m. on the same day the applicant was walking down Bolshaya Nikitskaya Street in a cluster of about 50 people. He claims that they had no banners, no sound equipment, were walking on the pedestrian sidewalk and caused no nuisance. They were surrounded by the riot police and the applicant was arrested without any order or warning. On 9 May 2012 the police drew a report on the administrative offence. He was accused of having taken part in an unauthorised meeting and had disobeyed the lawful order of the police to disperse it, an offence under Article 20.2 of the Code of Administrative Offences.

On 30 May 2012 the Justice of the Peace of the Circuit no. 387 of the Basmannyy District examined the charges concerning the applicant’s administrative offence at Lubyanskiy Proyezd. The applicant was absent in the proceedings, but his counsels were present. On the basis of statements by two policemen the Justice of the Peace found the applicant guilty of having taken part in a meeting conducted in breach of regulations and convicted him under Article 20.2 of the Code of Administrative Offences to a fine of RUB 1,000. This judgment was delivered in full on 1 June 2012. It was upheld on 6 July 2012 by the Basmannyy District Court of Moscow.

On 1 June 2012 the Justice of the Peace of the Circuit no. 380 of the Presnenskiy District examined the administrative charges concerning the applicant’s administrative offence at Bolshaya Nikitskaya Street. The Justice of the Peace questioned the policeman who had arrested the applicant and three eye-witnesses. The policeman testified that he had arrested the applicant because he was walking in a big group of people, obstructed the traffic and chanted political slogans, and that that

demonstration had not been authorised. The Justice of the Peace found the applicant guilty of having taken part in a meeting conducted in breach of regulations and convicted him under Article 20.2 of the Code of Administrative Offences to a fine of RUB 1,000. This judgment was upheld on 25 June 2012 by the Presnenskiy District Court of Moscow.

The applicant alleges that in both sets of administrative proceedings he had requested the courts to admit video evidence and to examine certain eye-witnesses, but the courts refused to do so. They also refused to keep the verbatim records of the hearings.

Application no. 12317/13 (lodged on 14 January 2013)

This application concerns the applicant's arrest on 27 October 2012.

On 27 October 2012 the applicant held a solo picket which was a part of series of solo pickets held in Moscow, in front of the Investigative Committee of Russia to protest "against repressions and torture". He claims that it had not been necessary to notify the authorities about the intention to hold solo pickets.

At 3.30 p.m. the police arrested the applicant. According to the applicant, at the moment of arrest he was walking down the street on pedestrian sidewalk keeping silent and not holding any banners. The applicant was taken to the police station. He was charged with having breached the procedure for holding a public gathering, an offence under Article 20.2 of the Code of Administrative Offences.

On 30 October 2012 the Justice of the Peace of the Circuit no. 387 of Basmannyy District examined the charges. She examined three eye-witnesses called at the applicant's request, but his request to call and examine the policemen who had arrested the applicant was rejected. The applicant's request to admit a video recording of the relevant events as evidence was also rejected, and so was the request to admit a written report of an NGO that had observed the series of the solo pickets. On the basis of the written reports by two policemen the Justice of the Peace found the applicant guilty of having taken part in a meeting conducted in breach of regulations and convicted the applicant under Article 20.2 of the Code of Administrative Offences to a fine of RUB 30,000 (an equivalent of about EUR 740). She dismissed the witness testimonies in the applicant's favour on the grounds that they contradicted the materials in the case file.

On 7 December 2012 the Basmannyy District Court upheld the judgment of 30 October 2012.

The applicant alleges that the court hearings both before the Justice of the Peace and the district court have been conducted in the absence of the party for the prosecution, because the administrative procedure does not require that the charges be presented by the prosecution, and the courts themselves discharged this function.

Application no. 43746/14 (lodged on 6 June 2014)

This application concerns two arrests of the applicant on 24 February 2014.

On 24 February 2014 at noon the applicant came to the Zamoskvoretskiy District Court of Moscow to attend the hearing of the activists facing

criminal charges following the mass disorders at Bolotnaya Square in Moscow on 6 May 2012. On that day the judgment was to be delivered at a public hearing. The courthouse was cordoned off by the police, and the applicant could not get in. He therefore remained outside among other members of the public aspiring to attend the hearing. He alleges that he had been arrested without any order, warning or pretext.

The applicant was taken to the police station where he was detained and searched. On the same day he was brought before the Justice of the Peace who examined the charges brought under Article 20.2 of the Code of Administrative Offences. The Justice of the Peace found that the police had incorrectly drawn the report on the administrative offence and adjourned the proceedings. The applicant was released at 3 p.m. on the same day.

Later on that day, at about 7.45 p.m., the applicant took part in a spontaneous public gathering following the conviction of the activists as charged. The meeting took place at Tverskaya Street, and the applicant was arrested while he was standing peacefully on the pavement, talking to a journalist. The applicant claims that he received no order or warning and did not resist the police.

At 8.20 p.m. the applicant was brought to the Tverskoy District police station where a report on administrative offence was drawn. The applicant was charged with having disobeyed a lawful order of the police, an offence under Article 19.3 of the Code of Administrative Offences. He was detained on remand.

On 25 February 2014 the applicant was brought before the judge of the Tverskoy District Court who examined the charges under Article 19.3 of the Code. The applicant challenged the judge, requested to transfer the case to the district court which had the jurisdiction at his registered address; requested to examine two eye-witnesses present at the courthouse; and to keep the verbatim records of the hearing. These requests were dismissed. The court admitted and examined the video recording of the contested events and questioned the two policemen on whose reports the charges were based. On the basis of the statement of two policemen the court established that the applicant had taken part in an unauthorised meeting and had disobeyed the lawful order of the police to disperse. It has rejected the testimonies of two eye-witnesses contending that the police had not given the applicant any orders or warnings before proceeding to his arrest. The applicant was found guilty of having disobeyed the lawful order of the police, in breach of Article 19.3 of the Code of Administrative Offences, and was sentenced to a 7-days' administrative detention.

On 7 March 2014 the Zamoskvoretskiy District Court examined the charges relating to the applicant's alleged participation on 24 February 2014 in an unauthorised public gathering in front of the court. The applicant requested to transfer the case to the district court which had the jurisdiction on the basis of his registered address; to examine two eye-witnesses present at the courthouse and the two policemen on whose reports the charges were based; and to keep the verbatim records of the hearing. These requests were dismissed. The court admitted a video recording of the contested events, but decided not to take cognisance of its content because it had no date and had not reproduced a full sequence of events. On the basis of the written reports by two policemen the judge found the applicant guilty of having taken part

in a meeting conducted in breach of regulations and convicted him under Article 20.2 of the Code of Administrative Offences to a fine of RUB 10,000 (an equivalent of about EUR 200).

On 24 March 2014 the Moscow City Court upheld the judgment of 25 February 2014.

On 22 May 2014 the Moscow City Court upheld the judgment of 7 March 2014.

COMPLAINTS

Application no. 29580/12

The applicant complains under Articles 5 and 18 of the Convention that his arrest has been unlawful and arbitrary.

He further complains under Article 6 §§ 1, 2 and 3 (d) of the Convention that the proceedings in which he was convicted of an administrative offence fell short of the guarantees of a fair hearing, in particular the principles of equality of arms, adversarial proceedings, independence and impartiality of the tribunal and the presumption of innocence.

Under Article 11 of the Convention the applicant complains that his arrest, detention and conviction had been unlawful, arbitrary and not necessary in a democratic society.

Application no. 36847/12

The applicant complains under Articles 5 and 18 of the Convention that his arrest has been unlawful and arbitrary.

He further complains under Article 6 §§ 1, 2 and 3 (d) of the Convention that the proceedings in which he was convicted of an administrative offence fell short of the guarantees of a fair hearing, in particular the principles of equality of arms, adversarial proceedings, independence and impartiality of the tribunal and the presumption of innocence.

Under Article 11 of the Convention the applicant complains that the dispersal of the meeting and his arrest and detention had been unlawful, arbitrary and not necessary in a democratic society.

He also alleges a violation of Article 14 in conjunction with Article 11 of the Convention on the grounds that the authorities showed less tolerance to the opposition rallies than to other public gatherings, particularly the pro-Government ones.

Application no. 11252/13

Under Article 11 of the Convention the applicant complains that the dispersal of the two “walkabout” meetings on 8 May 2012 and his arrest both occasions had been unlawful, arbitrary and not necessary in a democratic society.

He further complains under Article 6 of the Convention that both sets of proceedings in which he was convicted of administrative offences fell short of the guarantees of a fair hearing, in particular the principles of equality of

arms, adversarial proceedings, independence and impartiality of the tribunal and the presumption of innocence.

Application no. 12317/13

The applicant complains that his arrest on 27 October 2012 during the solo picket and his conviction of an administrative offence had been unlawful, arbitrary and not necessary in a democratic society, in breach of Article 11 of the Convention.

He further complains under Article 6 §§ 1 and 3 (d) of the Convention that the proceedings in which he was convicted of an administrative offence fell short of the guarantees of a fair hearing, in particular the principles of equality of arms, adversarial proceedings, independence and impartiality of the tribunal and the presumption of innocence.

Application no. 43746/14

The applicant complains under Articles 5 of the Convention that his arrest on two occasions on 24 February 2014 has been unlawful and arbitrary. He also complains that his detention pending the administrative proceedings has been arbitrary and not based on the relevant and sufficient reasons.

He further complains under Article 6 §§ 1 and 3 (c) and (d) of the Convention that both sets of proceedings in which he was convicted of the administrative offences fell short of the guarantees of a fair hearing, in particular the principles of equality of arms, adversarial proceedings, independence and impartiality of the tribunal.

As regards both incidents on 24 February 2014 the applicant complains that his arrest, detention and his conviction of administrative offences had been unlawful, arbitrary and not necessary in a democratic society, in violation of Articles 10 and 11 of the Convention. These complaints fall to be examined under Article 11 of the Convention.

QUESTIONS TO THE PARTIES

As regards each of the seven episodes referred to in these five applications the Government are invited to answer the following questions:

1. Having regard to the applicant's specific allegations in respect of his arrest and, where applicable, detention on remand, was the applicant's deprivation of liberty compatible with the requirements of Article 5 § 1 of the Convention?
2. Having regard to the applicant's specific allegations in respect of the administrative proceedings, did he receive a fair hearing by an independent and impartial tribunal in accordance with Article 6 §§ 1, 2 and 3 (b), (c) and (d) of the Convention?
3. Having regard to the applicant's specific allegations in respect of the dispersal of the public gathering, the applicant's arrest and the administrative charges against him, has there been an interference with the applicant's 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?
4. Has the applicant suffered discrimination on the ground of his political views, contrary to Article 14 read in conjunction with Articles 5 and 11 of the Convention?
5. Was the applicants' liberty restricted for the purpose of undermining his 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)?

The parties are invited to submit the relevant arrest warrants and the detention orders and the video materials, except for those already submitted by the applicant.

APPENDIX

No	Application No	Lodged on	Applicant Date of birth / Place of residence / Nationality	Represented by
1.	29580/12	14/05/2012	Aleksey Anatolyevich NAVALNYY 04/06/1976 Moscow Russian	Konstantin Ilyich TEREKHOV
2.	36847/12	28/05/2012	Aleksey Anatolyevich NAVALNYY 04/06/1976 Moscow Russian	Konstantin Ilyich TEREKHOV
3.	11252/13	30/11/2012	Aleksey Anatolyevich NAVALNYY 04/06/1976 Moscow Russian	Konstantin Ilyich TEREKHOV
4.	12317/13	14/01/2013	Aleksey Anatolyevich NAVALNYY 04/06/1976 Moscow Russian	Konstantin Ilyich TEREKHOV
5.	43746/14	06/06/2014	Aleksey Anatolyevich NAVALNYY 04/06/1976 Moscow Russian	Olga Olegovna MIKHAYLOVA