



Communicated on 13 October 2014

## FIRST SECTION

Application no. 16694/13  
Andrey Feritovich ASAINOV  
against Russia  
lodged on 22 February 2013

### STATEMENT OF FACTS

The applicant, Mr Andrey Feritovich Asainov, is a Russian national, who was born in 1968 and lives in Moscow. He is represented before the Court by Mr Konstantin Terekhov and Mr Aleksey Navalnyy, lawyers practising in Moscow.

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

The applicant claims that on 6 May 2012 he arrived at Bolotnaya Square to take part in the peaceful demonstration, however, the authorities altered the originally authorised layout of the meeting and reduced the venue, causing stampede. At about 5.30 p.m. the police declared the early closure of the meeting and began to disperse the participants.

At about 8.30 p.m. the applicant was arrested. The time, the place and the circumstances of his arrest were in dispute in the domestic proceedings. According to the applicant, before his arrest he has not committed any breach of public order or other offences and has not received any orders from the police.

On 8 May 2012 the Justice of the Peace of the circuit no. 100 of the Yakimanka District examined the administrative charges against the applicant. On the basis of the statements of two police officers the court established that the applicant had pushed through the police cordon and disobeyed the lawful order of the police to stop, and that he had resisted the arrest. The applicant was found guilty of having disobeyed the lawful order of the police and was sentenced under Article 19.3 of the Code of Administrative Offences to a fine of 500 roubles.

The applicant appealed. On 7 July 2012 the applicant submitted written statements by an eye-witness to the court.

On 2 May 2012 the Zamoskvoretskiy District Court of Moscow adjourned the appeal hearing having dispensed with the examination of the defense witnesses present at the courthouse.

On 16 July 2012 the same court examined and partly granted the applicant's request to exclude the written statements of the policemen as inadmissible evidence. The court summoned the same policemen to be examined at the hearing.

The next hearing was fixed for 23 August 2012. On 22 August 2012 the applicant sent a cable message to the court asking to adjourn the hearing on the grounds that he was away for family reasons.

On 23 August 2012 the same court held a hearing in the absence of the applicant and his lawyer. The court examined the two policemen and upheld the first-instance judgment. The appeal decision contained no mention of the witness statement of the eye-witness submitted by the applicant.

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 prosecutor's office, and the courts themselves discharged this function.

## COMPLAINTS

The applicant complains, in essence, about a violation of the right to peaceful assembly by the security measures implemented by the authorities in relation to the authorised and peaceful political rally on Bolotnaya Square on 6 May 2012 that, in his view, had disrupted the demonstration. He alleges that his arrest and the ensuing conviction of the administrative offence have been arbitrary. These complaints fall to be examined under Article 11 of the Convention.

Furthermore, the applicant alleges that the administrative proceedings in his case fell short of guarantees of fair hearing, in particular the principles of equality of arms, adversarial proceedings, independence and impartiality of the tribunal. He complains, in particular, that the prosecution was not represented in the proceedings and that the courts have discharged the function of the prosecution. He also complains that the appeal proceedings were conducted in his absence and that he therefore had no opportunity to cross-examine the two police officers who were the only witnesses against him. He was also deprived of an opportunity to have the defence witnesses examined or to have the statement of the eye-witness admitted as evidence. These complaints fall under Article 6 §§ 1, 2 and 3(d) of the Convention.

### **QUESTIONS TO THE PARTIES**

1. Having regard to the applicant's allegations in respect of the administrative proceedings, in particular as regards the courts discharging the function of the prosecution, as regards the appeal hearing conducted in his and his lawyer's absence and as regards his inability to examine the prosecution witnesses or to call the defense witnesses, did he receive a fair hearing by an independent and impartial tribunal in accordance with Article 6 §§ 1, 2 and 3 (d) of the Convention?

2. Having regard to the applicant's arrest and the ensuing administrative charges, 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?

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