



## Journalist's arrest at an anti-globalisation protest in St Petersburg breached the European Convention

In today's Chamber judgment<sup>1</sup> in the case of [Butkevich v. Russia](#) (application no. 5865/07) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights,**

**two violations of Article 6 § 1 (right to a fair trial by an impartial tribunal) of the European Convention, and**

**a violation of Article 10 (freedom of expression).**

The case concerned a journalist's arrest during an "anti-globalisation" protest on 16 July 2006 in St Petersburg. Taken to a local police station, he had administrative-offence proceedings brought against him for disobeying a lawful order of the police. The case was examined in an expedited procedure, and he was heard by a judge and convicted as charged the same evening. He was sentenced to three days' detention. On 18 July 2006 the appeal court reduced this sentence to two days and ordered his release, with immediate effect.

The Court found in particular that neither the domestic courts nor the Russian Government had justified Mr Butkevich's arrest or a six-hour delay in releasing him on 18 July 2006. Furthermore, the proceedings in which he had been convicted were in breach of the requirement of objective impartiality on account of the lack of the prosecuting party at the court hearing on his case. Those proceedings were also unfair because the police officers who had arrested him and produced the pre-trial reports on which his conviction had been based were not questioned during that hearing. Lastly, the Court found that the domestic decisions had not weighed in the balance Mr Butkevich's right to freedom of expression against the prevention of disorder, ignoring his argument that he had been acting as a journalist and not examining adequately whether the demonstration had been peaceful or not.

### Principal facts

The applicant, Maksim Butkevich, is a Ukrainian national who was born in 1977 and lives in Kyiv.

Mr Butkevich, a journalist, was arrested during an "anti-globalisation" protest in the morning of 16 July 2006 in St Petersburg. According to him, he was arrested even though he had not been taking part in the protest and had complied with a police order to switch off his camera.

He was then taken by force to a police station, where an offence report was drawn up. Charged with the administrative offence of disobeying a lawful order of the police (under Article 19.3 of the Code of Administrative Offences), he was brought before a judge the same evening. The judge heard representations from Mr Butkevich, who pleaded not guilty, and his lawyer. The judge also granted the defence's request and examined a witness. No adverse witnesses or public officials were heard.

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](http://www.coe.int/t/dghl/monitoring/execution).

Nor was there a prosecuting party in the case. He was convicted as charged and sentenced to three days' detention. In convicting him, the court essentially relied on the administrative-offence report and the pre-trial reports drawn up by the police officers who had arrested him.

Following an appeal hearing on his case on 18 July 2006, his conviction was upheld but his sentence reduced to two days, with immediate effect. The parties dispute the time of his release. The Government submit that he served his sentence as amended on appeal and was released at 10 a.m.. Mr Butkevich claims that he was only released at 4 p.m., when the court order had reached the detention facility.

## Complaints, procedure and composition of the Court

Relying on Article 5 § 1 (right to liberty and security), Mr Butkevich alleged that his arrest had been unlawful and that there had been a six-hour delay in releasing him on 18 July 2006. Further relying on Article 6 § 1 (right to a fair trial by an impartial tribunal), he alleged that the administrative-offence proceedings had not been impartial and lacked procedural safeguards and guarantees. Lastly, he complained under Article 10 (freedom of expression) that he had been arrested, detained and convicted despite the fact that he had repeatedly told the police that he was a journalist. He alleged that that had breached his freedom to cover a large event organised by the Government, including the related protests.

The application was lodged with the European Court of Human Rights on 17 January 2007.

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

Helena **Jäderblom** (Sweden), *President*,  
Branko **Lubarda** (Serbia),  
Luis **López Guerra** (Spain),  
Helen **Keller** (Switzerland),  
Dmitry **Dedov** (Russia),  
Pere **Pastor Vilanova** (Andorra),  
Alena **Poláčková** (Slovakia),

and also Stephen **Phillips**, *Section Registrar*.

## Decision of the Court

### [Article 5 § 1 \(arrest and delayed release\)](#)

The Court noted that under Russian law an administrative arrest had to be justified by “exceptional circumstances” and/or by the necessity “for the prompt and proper examination of the administrative case and to secure the enforcement of any penalty to be imposed”. However, neither the domestic authorities nor the Russian Government had provided any justification for Mr Butkevich’s arrest. Mr Butkevich’s arrest had not therefore complied with Russian law and had not been lawful within the meaning of Article 5 § 1.

Furthermore, the Government had failed to provide a detailed report on Mr Butkevich’s administrative detention and the time of his release. The Court therefore considered that he had remained in detention until 4 p.m. on 18 July 2006, as submitted by Mr Butkevich. Yet his detention had no longer been justifiable under Article 5 of the Convention after 10 a.m. on that day, the time at which his sentence was deemed to have been fully served. There was no justification for this six-hour delay in releasing him as there was nothing to suggest that there had been particular difficulties to ensure his immediate release, as required by the appeal court.

There had therefore been a violation of Article 5 § 1 of the Convention.

### Article 6 (objective impartiality and fairness of the administrative-offence proceedings)

The Court observed that it had already found a violation of the requirement of objective impartiality under Article 6 § 1 in the leading case of *Karelin v. Russia* on account of the lack of the prosecuting party at court hearings at which administrative charges are determined. The Court saw no reason to depart from that judgment in deciding on Mr Butkevich's case where the factual and legal elements were similar. There had therefore been a violation of Article 6 § 1 as concerned Mr Butkevich's complaint with regard to the lack of impartiality of the administrative-offence proceedings.

As concerned the complaint about the lack of procedural safeguards and guarantees, the Court examined Mr Butkevich's central argument about the use of the pre-trial reports produced by the two arresting officers to convict him and the lack of an opportunity to question them. It went on to find that there had been no good reason for those police officers' absence from the trial, when their adverse testimony had been decisive in his conviction. In particular, the officers had been at the origin of the proceedings, belonged to the authority initiating the case and had been eyewitnesses to Mr Butkevich's alleged participation in an unlawful public event as well as his alleged refusal to comply with a police order. His conviction had therefore been based on what amounted to untested evidence. The questioning of one witness at Mr Butkevich's trial had not been sufficient to counterbalance such a shortcoming. Referring to previous similar cases concerning administrative proceedings, the Court reiterated that it was indispensable for the Russian courts to use every reasonable opportunity to verify incriminating statements by police officers who produced the main adverse evidence which was then the foundation for convicting the defendant. There had therefore been a further violation of Article 6 § 1 as regards Mr Butkevich's right to a fair hearing.

### Article 10 (freedom of expression)

Mr Butkevich's arrest, prosecution and the sentence of administrative detention had amounted to an "interference" with his freedom as a journalist to gather information on a public event and to publish photographs. The Court was not satisfied that the reasons given by the national authorities for such an interference had been sufficient to justify sentencing him to two days' detention. The domestic decisions had not assessed Mr Butkevich's argument that he had been acting as a journalist. Nor had there been any scrutiny of whether the demonstration had been peaceful or not. Moreover, the court decisions had not balanced the interference with Mr Butkevich's freedom of expression against a legitimate aim such as preventing disorder, if indeed he had taken part as a demonstrator in an unlawful event, as claimed by the authorities and the Government. The Court therefore concluded that there had been a violation of Article 10.

### Article 41 (just satisfaction)

The Court held that Russia was to pay Mr Butkevich 7,000 euros (EUR) in respect of non-pecuniary damage, and EUR 2,000 for 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.