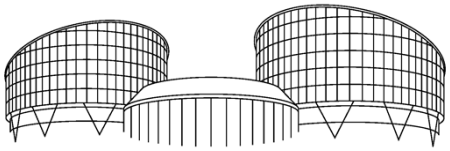

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF KALYAPIN v. RUSSIA

(Application no. 6095/09)

JUDGMENT

STRASBOURG

23 July 2019

This judgment is final but it may be subject to editorial revision.

In the case of Kalyapin v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Alena Poláčková, *President,*
Dmitry Dedov,
Gilberto Felici, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 2 July 2019,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 6095/09) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Igor Aleksandrovich Kalyapin ("the applicant"), on 24 December 2008.

2. The applicant was represented by Ms O. Sadovskaya, a lawyer practising in Nizhniy Novgorod. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. The applicant alleged, in particular, that his escorting to a police station had been unlawful and arbitrary and that he had had no enforceable right to compensation or effective remedies in this connection.

4. On 16 May 2012 notice of the application was given to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background information and context

5. The applicant was born in 1967 and lives in Nizhniy Novgorod.

6. The applicant is the head of the Committee against Torture, a non-governmental organisation situated in Nizhniy Novgorod, which assists victims of torture, inhuman or degrading treatment by carrying out independent investigations, and monitors human rights violations involving

ill-treatment in Russia, particularly in situations where there is a high risk of torture being used on individuals.

B. Events of 24 March 2007

7. On 9 March 2007 three people lodged a notification with Nizhniy Novgorod city hall stating that they intended to hold a march and rally, collectively called the "Dissenters' March", at certain venues (one of them being Gorkiy Square) on 24 March 2007. On 12 March 2007 the city hall replied stating that it was not possible to hold the public event at those venues, and suggested another venue. One of the event organisers sought a judicial review of the city hall's reply. On 22 March 2007 a district court judge upheld the reply. On 19 and 23 March 2007 the organisers received written documents from a prosecutor's office warning them that they could be breaking the law in the event that the rally was held as planned.

8. According to the applicant, at some point he found out that the local opposition had informed the city hall of their intention to hold a protest rally, the "Dissenters' March", on 24 March 2007, and that the city hall had opposed it. Neither he nor any other staff members of the Committee against Torture took any part in organising or running the rally. The applicant knew that the event would take place at Gorkiy Square even without the authority's approval, and supposed that the authorities would take measures to impede the rally by using police intervention, which might lead to human rights violations. In the applicant's submission, he therefore decided to go to the venue of the protest as an "observer" so that he would be on hand to assist any individuals who might become victims of such violations. According to the applicant, he told the public relations unit of the regional office of the Ministry of the Interior of his plans.

9. On his arrival at the square where the rally was being held, the applicant saw a group of around twenty participants, several journalists, dozens of police officers, the Special Force squad (*OMOH*) and other law-enforcement officials sealing off the square. He filmed the event. Several members of his staff were also present at the rally venue.

10. As soon as the protesters started shouting slogans, including those opposing "Putin's regime", and as soon as the journalists approached them, they were all surrounded by police officers who started forcibly taking demonstrators and journalists to buses parked nearby. When the buses started to become overcrowded, the police released certain journalists.

11. The applicant submitted several pieces of video footage recorded from different angles and taken from a video-recording made, *inter alia*, by the police. They show, *inter alia*, what may appear to be (i) several squad officers escorting a person past the applicant, who is extending his hand towards the arrestee; and (ii) the applicant talking on a mobile telephone and being apprehended by officers who then twist his arms behind his back,

momentarily causing him fall to the ground. Some pieces of footage show a police officer with a loudspeaker reading a text and/or giving a speech representing a public announcement relating to the illegality of the rally and breach of the Public Events Act ("the PEA").

12. The applicant intended to leave but was forced onto one of the buses by a police officer. Apparently, shortly before that he approached one of his colleagues, who was being apprehended. According to the applicant, he merely wanted to take a camera from him that belonged to the Committee and for which he was responsible.

13. According to the applicant, he was placed in a bus at around 12.30 p.m. After approximately half an hour, the bus arrived at the Avtozavodskiy District Office of the Interior ("the police station"). The applicant was taken inside the police station, where he was kept for several hours. It does not appear that any procedural measures were taken in respect of him. He was released later that day. According to the applicant, he spent approximately four hours in detention, from the time he had been apprehended at the place of the rally until the time he was released.

14. Immediately thereafter the applicant registered a written complaint with the chief of the Avtozavodskiy police station, indicating, *inter alia*, that he had been deprived of his liberty at 12.05 p.m. He was interviewed in relation to this complaint between 2.30 and 3.30 p.m. the same day.

C. The applicant's complaints to the national authorities

1. Criminal complaint and related judicial review

15. On 24 March 2007, further to his complaint to the chief of the police station, the applicant also complained to the prosecutor's office of the Nizhniy Novgorod Region ("the regional prosecutor's office") about his detention earlier that day. He stated that he had not been an organiser or active participant of the rally, just an observer who had not taken any action in breach of the law. Moreover, he had had his identity documents with him, but had nevertheless been forcibly taken to a police station and held there for some time. The applicant also complained that he had not been informed of the reasons for his detention or any charges against him, and that no formal record of his detention had been drawn up.

(a) The applicant's criminal complaint and pre-investigation inquiry under Articles 144 and 145 of the Code of Criminal Procedure

16. On 26 March 2007 the regional prosecutor's office instructed the Nizhegorodskiy district prosecutor's office of Nizhniy Novgorod ("the district prosecutor's office") to carry out a pre-investigation inquiry into the applicant's allegations.

17. In a decision of 4 April 2007 the district prosecutor's office refused to institute criminal proceedings in connection with the applicant's complaint owing to the absence of any evidence that a crime had been committed. The decision referred to an explanation given by the applicant during the inquiry, where he had described the events of 24 March 2007 in detail. It then stated that to date no reply had been received to enquiries sent by that prosecutor's office to medical facilities as to whether the applicant had sought any medical assistance on the date in question. The decision then concluded that the applicant's allegations had not been confirmed during the inquiry and that there was no evidence that the police officers had committed a crime punishable under Article 286 of the Russian Criminal Code (abuse of power by a public official).

18. On 18 April 2007 a supervising prosecutor set aside the decision of 4 April 2007 as unfounded, stating that the inquiry was incomplete. He ordered that a number of steps be taken during an additional inquiry. In particular, it was necessary to verify whether any report or record of the applicant's detention had been drawn up, to receive a reply to the enquiries sent to the medical expert body, and to take other necessary steps.

19. On 24 April 2007 the district prosecutor's office again decided to dispense with criminal proceedings with reference to the absence of any evidence of a crime. The decision again referred to the applicant's description of the events of 24 March 2007 given during the inquiry. It went on to note that, as was established, the applicant had not applied for any medical assistance during the relevant period. The decision also referred to an information note submitted by the police station, which stated that on 24 March 2007 he had been taken to that station without any accompanying documents, and that the identity of the arresting officers who had escorted him was unknown, with the result that it had been impossible to interview them in connection with the events in question. The decision then concluded that the applicant's allegations had not been confirmed during the pre-investigation inquiry and that there was no evidence that any police officers had committed a crime punishable under Article 286 of the Criminal Code.

20. On 26 April 2007 a supervising prosecutor quashed the decision of 24 April 2007, stating that the inquiry was incomplete. He instructed the investigator in charge to conduct an additional inquiry and to take a number of steps, including examining a video-recording of the demonstration of 24 March 2007 and interviewing the applicants and officers in command of the police units who had been deployed to ensure crowd safety.

21. By a decision of 27 April 2007 the district prosecutor's office refused to institute criminal proceedings for the same reasons as those invoked in its two previous decisions. It further referred to the absence of a crime (*отсутствие события преступления*) under Article 286 of the Criminal Code. The decision also referred to the applicant's description of

the events of 24 March 2007 which he had made previously, replies from medical facilities that he had not applied for any medical assistance, and the information report of the police station stating that on the date in question he had been brought to the station without any accompanying documents. In addition, the decision referred to explanations from some police officers, without providing their names, who had stated that they had taken part in apprehending participants of the unauthorised demonstration on 24 March 2007 and taking them to police buses. They denied applying any physical force to those apprehended or receiving any complaints from them. The decision also referred to a video-recording of the demonstration and stated that it could be seen that the applicant had shown resistance when being apprehended, and, in particular, had attempted to tear himself away from the police officers holding him. According to the decision, it was also clear from the video-recording that the police officers had not administered any blows to the applicant. The decision thus concluded that the applicant's allegations had not been confirmed during the inquiry and that there was no evidence that the police officers had committed a crime under Article 286 of the Criminal Code.

(b) Judicial review under Article 125 of the Code of Criminal Procedure

22. The applicant's lawyer challenged the decision of 27 April 2007 before the Nizhegorodskiy District Court of Nizhniy Novgorod ("the District Court"). He reiterated that there had been no reason to detain the applicant on 24 March 2007 and that he had never been charged with an offence or had any proceedings brought against him in connection with the events that day. The applicant's detention had therefore been unlawful and arbitrary, in breach of Article 5 of the Convention. He also complained that the applicant had no effective remedies available to him in connection with his complaint concerning his detention, in breach of Article 13 of the Convention.

23. In a decision of 18 March 2008 the District Court rejected the applicant's lawyer's complaint, holding that the decision of 27 April 2007 had been lawful, well-founded and reasoned, and that the inquiry into the applicant's allegations had been thorough. Those allegations had been carefully examined and found to be unsubstantiated, so the investigating authorities had been justified in concluding that there was no evidence of illegal conduct or abuse of power on the part of the police officers.

24. The applicant's lawyer appealed against the first-instance court's decision, complaining, *inter alia*, that the court had failed to address his arguments concerning the unlawful deprivation of the applicant's liberty on 24 March 2007.

25. On 6 May 2008 the Nizhniy Novgorod Regional Court ("the Regional Court") quashed the decision of 18 March 2008 and ordered that the case be examined anew.

26. By a decision of 20 May 2008 the District Court dismissed the applicant's lawyer's complaint against the decision of 27 April 2007, stating that it had been lawful, well-founded and well-reasoned and had met the relevant requirements of the law. It further stated that the inquiry into the applicant's allegations had been comprehensive and that all his arguments had been examined. The court also examined the video-recording of the events of 24 March 2007 and stated that it was clear that the applicant had not been assaulted while being apprehended by the police; moreover, he had never sought any medical assistance. The court thus confirmed that the conclusion of the investigating authorities concerning the absence of any evidence that a crime had been committed had been correct, as it had not been established during the inquiry that the police officers had used any physical violence against the applicant.

27. The applicant's lawyer appealed against the first-instance judgment. He complained, in particular, that the court had not assessed his arguments concerning a violation of the applicant's right to liberty by the police on account of his unlawful deprivation of liberty on 24 March 2007.

28. On 4 July 2008 the Regional Court dismissed the applicant's lawyer's appeal and upheld the decision of 20 May 2008, largely relying on the District Court's reasoning. In particular, the court mentioned that the police had acted in compliance with the Police Act, particularly sections 10 and 11 thereof (see paragraphs 35 below). The Regional Court made no further findings relating to the applicant's argument pertaining to his deprivation of liberty on 24 March 2007.

2. Civil court proceedings for compensation

29. In 2012 the applicant brought civil proceedings before the Nizhegorodskiy District Court of Nizhniy Novgorod, seeking compensation in respect of non-pecuniary damage caused by the unlawful deprivation of his liberty on 24 March 2007. He claimed 1,000 Russian roubles (RUB – equivalent to 30 euros at the time).

30. By a judgment of 28 November 2012 the applicant's claim was dismissed. Referring to Article 61 of the Code of Civil Procedure ("the CCP"), the court relied on the decision of 27 April 2007 as upheld on judicial review (see paragraph 21 above) as regards the circumstances already established by an earlier final judgment. Relying on Articles 1069 and 1070 § 2 of the Civil Code (see paragraph 33 below) and Articles 55 and 56 of the CCP, the court concluded that the applicant had not adduced any evidence to show that any moral or physical suffering had been caused to him by any of the actions of the police officers. Lastly, the court noted that Article 1100 of the Civil Code contained a list of situations allowing for compensation in respect of non-pecuniary damage, without the need to prove any guilt; the present case did not fall within the scope of those situations.

31. The applicant allegedly received a copy of the judgment in February 2013 after several unsuccessful requests for a copy to be sent to him by mail. He appealed in March 2013 with a request that the time-limit for appealing be reset. On 17 April 2013 the District Court refused to reset the time-limit, and did not process the appeal before the Nizhniy Novgorod Regional Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Causes of action under Russian law

1. Judicial review under Chapter 25 of the Code of Civil Procedure (CCP)

32. Until 15 September 2015 the procedure for examining complaints about decisions, acts or omissions of State and municipal authorities and officials was governed by Chapter 25 of the CCP and the Judicial Review Act (Law no. 4866-1 of 27 April 1993 on the judicial review of decisions and acts violating citizens' rights and freedoms). They both provided that a citizen could lodge a complaint with a court about an act or decision by any State or municipal authority or official if he considered that the act or decision had violated his rights and freedoms (Article 254 of the CCP and section 1 of the Judicial Review Act). The complaint could concern any decision, act or omission which had violated the citizen's rights or freedoms, impeded the exercise of his rights or freedoms or imposed a duty or liability on him (Article 255 of the CCP and section 2 of the Judicial Review Act). For a more detailed description of the Chapter 25 procedure, see *Roman Zakharov v. Russia* ([GC], no. 47143/06, §§ 92-100, ECHR 2015), and *Lashmankin and Others v. Russia* (nos. 57818/09 and 14 others, §§ 280-85, 7 February 2017).

2. Tort actions under the Civil Code of the Russian Federation

33. Damage caused to a person or property of a citizen must be compensated in full by the tortfeasor. The tortfeasor is not liable for damage if he or she proves that the damage has been caused through no fault of his or her own (Article 1064 §§ 1 and 2 of the Civil Code). State and municipal bodies and officials are liable for damage caused to a citizen by their unlawful actions or omissions (Article 1069 of the Civil Code). Irrespective of any fault on the part of State officials, the State or regional treasury is liable for damage sustained by a citizen on account of (i) an unlawful criminal conviction or prosecution; (ii) an unlawful application of a preventive measure, and (iii) an unlawful sentence of administrative detention (Article 1070 § 1 of the Civil Code).

34. A court may impose on the tortfeasor an obligation to compensate non-pecuniary damage (physical or mental suffering). Compensation for non-pecuniary damage is unrelated to any award in respect of pecuniary damage (Articles 151 § 1 and 1099 of the Civil Code). The amount of compensation is determined by reference to the degree of fault on the part of the tortfeasor and other significant circumstances. The court also takes into account the extent of physical or mental suffering in relation to the victim's individual characteristics (Article 151 § 2 and Article 1101 of the Civil Code). Irrespective of the tortfeasor's fault, non-pecuniary damage must be compensated if the damage was caused (i) by a hazardous device; (ii) in the event of an unlawful conviction or prosecution, unlawful application of a preventive measure or unlawful sentence of administrative detention, and (iii) through dissemination of information damaging to honour, dignity or reputation (Article 1100 of the Civil Code).

B. Police powers

35. Pursuant to section 10 of the Police Act 1991 (Federal Law no. 1026-1 of 18 April 1991), in force at the material time, the police had a duty to prevent and put an end to crimes and administrative offences, identify the circumstances in which they were committed, and escort (*конвоировать*) and detain arrestees and those remanded in custody. Section 11 of the Police Act provided that the police were empowered to require a person to end the administrative offence and to carry out administrative arrests or other measures prescribed by the legislation relating to administrative offences. An application could be lodged with a senior police officer, prosecutor or court to complain that the actions of a police officer had led to a violation of a citizen's rights or freedoms (section 39).

36. It is pertinent to take into account the statutory conditions, aims and grounds for taking a person to a police station (for instance, by way of administrative escorting), as well as the specific circumstances of a given situation when it is applied. Thus, such a measure should not be arbitrary and should "take account of the proportionality as regards the scope of limitations on one's rights (for instance, as the case may be, freedom of expression or freedom of assembly) *vis-à-vis* the actual necessity arising from the circumstances as well as the practicability of attaining the aim pursued by the measure" (Ruling no. 8-P of 17 March 2017 by the Russian Constitutional Court in relation to section 13(13) of the Police Act 2011). After an escort record has been compiled and if the grounds for escorting are no longer compelling, the person must be released without delay. Continued detention of the person in that case may become arbitrary, thus violating his or her right to liberty and personal security as protected by

Article 22 of the Constitution and Article 5 of the Convention. Individuals have the right to challenge the escort measure applied to them (ibid.).

C. Administrative escorting to a police station and administrative arrest

37. Article 27.1 of the Code of Administrative Offences ("the CAO") provides for a number of measures, including administrative escorting (*административное доставление*) of a suspect to a police station and administrative arrest (*административное задержание*). Such measures may be used for the purpose of putting an end to an administrative offence, to establish an offender's identity, to compile an administrative-offence record where this cannot be done on the spot, to ensure timely and correct examination of a case, and to enforce a decision taken in a case.

38. Article 27.2 of the CAO defines the procedure of escorting someone to a police station as where an offender is compelled to follow the relevant officer for the purposes of compiling an administrative-offence record when it cannot be done on the spot.

39. The Constitutional Court has held that this measure of compulsion, which amounts to a temporary restriction of a person's freedom of movement, should be applied only when it is necessary and within short time frames (Decision no. 149-O-O of 17 January 2012). Subsequently, the Constitutional Court stated that both administrative escorting and administrative arrest amounted to "restrictions imposed on [a person's] liberty" (see, for instance, Ruling no. 14-P of 23 May 2017).

40. Pursuant to Article 27.3 of the CAO, in exceptional cases (*в исключительных случаях*) relating to the need (*необходимо для*) for proper and expedient examination of an administrative case or for securing the execution of any sentence imposed for an administrative offence, the person concerned may be placed under administrative arrest.

41. In Ruling no. 2 of 10 February 2009 the Plenary Supreme Court of Russia (paragraph 7) stated that the procedure under Chapter 25 of the CCP was not applicable to challenges against actions, omissions or decisions for which the CAO did not provide for a review procedure and which, being intrinsically linked to a given case of administrative-offence charges, was not amenable to a separate review (evidence in a case such as the record of certain measures, for instance an escort record or arrest record in administrative-offence cases). In such circumstances, arguments relating to the inadmissibility of a piece of evidence or a measure could be presented during examination of the administrative-offence case or on appeal against a decision in such a case. However, where CAO proceedings were discontinued, any actions taken during such proceedings could then be challenged under Chapter 25 of the CCP, if such actions impinged upon the person's rights or freedoms, created obstacles to their being exercised, or

unlawfully imposed liability. The same approach was applicable where no CAO proceedings were instituted. This Ruling ceased to be applicable in September 2016.

42. The Constitutional Court held that the special rules contained in Articles 1070 and 1100 of the Civil Code (concerning State liability, without the need to prove a public official's guilt) had to be interpreted as affording individuals the opportunity to claim compensation for being placed under administrative arrest in the context of offences punishable by administrative detention or administrative removal (that is where Article 27.5 § 3, allowing the police to hold an arrested person for up to forty-eight hours, was applicable) (Ruling no. 9-P of 16 June 2009). The courts must assess both the formal lawfulness of the measure and the reasons for it, in terms of its fairness and proportionality (Decision no. 149-O-O of 17 January 2012). With regard to the reasons cited in the administrative-arrest record, the courts must ascertain whether arrest was the only acceptable measure in the circumstances (Decision no. 1049-O of 2 July 2013).

43. The Ministry of the Interior Decree no. 444 of 2 June 2005 listed law enforcement officers who had statutory authority to compile an offence record on the spot, in particular for offences under Article 20.2 of the CAO (section 5.9 of the Appendix to the Decree).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 5 AND 13 OF THE CONVENTION

44. The applicant complained under Article 5 § 1 of the Convention that he had been unlawfully and arbitrarily deprived of his liberty on 24 March 2007. Referring to Article 5 § 5 and Article 13 of the Convention, the applicant also alleged that no compensatory remedy had been available and, first and foremost, that the criminal-complaint procedure, including the judicial-review stage in respect of refusal to prosecute, had not afforded him an effective remedy in respect of the administrative escorting since the related inquiry had not been carried out thoroughly enough.

45. The relevant parts of Article 5 of the Convention read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

46. Article 13 of the Convention reads as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

1. The Government

(a) Deprivation of liberty

47. Firstly, the Government argued that the situation complained of had not amounted to a "deprivation of liberty" under Article 5 of the Convention. The applicant had merely been subjected to the escort procedure in the framework of the legislation on administrative offences rather than criminal law and procedure, specifically in relation to what had merely been an offence punishable by a fine of up to RUB 1,000 at the time (equivalent to 30 euros). The applicant had not been handcuffed – physical force had only been used to take him to a bus. The entire situation complained of had lasted for less than three hours (see paragraph 52 below), the applicant having been released from the police station immediately after identification. He had not been brought to account for an administrative or other offence. No bodily injuries had been recorded. Having regard to the applicable criteria (*Guzzardi v. Italy*, 6 November 1980, §§ 92-93, Series A no. 39, and *Engel and Others v. the Netherlands*, 8 June 1976, § 59, Series A no. 22), in the situation complained of the restriction the applicant's freedom of movement had been lawful and justified.

48. In any event, the situation complained of concerned an administrative offence. However, it did not fall within the scope of Article 5 § 1 (c) of the Convention because it only concerned measures relating to criminal law and procedure. The other sub-paragraphs of Article 5 § 1 were manifestly irrelevant.

(b) Compliance with domestic law and procedure

49. The Government submitted that the applicant had remained close to or in the immediate vicinity of the rally participants and had not left the rally venue, despite the repeated warnings made through loudspeakers indicating that the rally was being held without the agreement of the local authorities. Moreover, as could be seen on the video (paragraph 11 above), the applicant had attempted to interfere with the arrest of one of his colleagues. He had not produced any documents to the police officers proving that he was an observer from a non-governmental organisation. Hence, the police officer had reasonably considered him to be a rally participant and had had reason to suspect that his continuous conduct amounted to an offence under Article 20.2 of the CAO. The rally at Gorkiy Square violated section 5(5) of the PEA (see paragraph 7 above). The applicant confirmed that he had been aware of that; during the rally the police had explained that the rally was illegal, also making a public warning about the possible consequences of disobeying lawful orders of the police (see paragraph 11 above). Noting that the rally participants had not dispersed voluntarily, the police had started carrying out arrests. Hence, the police officer in question had reasonably considered him to be a rally participant and had had reason to suspect that his continuous conduct amounted to participation in a public event, which had been unlawful without the city hall's approval. Such conduct amounted to an offence under Article 20.2 § 2 of the CAO.

50. Thus, in compliance with sections 10 and 11(5) of the Police Act (see paragraph 35 above), a decision was taken to apply the escort measure in respect of him, that is, his forced transfer to a police station. The escort measure could be lawfully applied for one or several of the following statutory purposes: compiling an administrative-offence record (when it could be done on the spot), preventing an administrative offence, identifying offenders or for a timely and correct examination of an administrative-offence case. The applicant's escorting was not rendered unlawful by the mere fact that he had not been subsequently prosecuted.

51. As indicated above, the police officers had acted within their statutory competence and had had sufficient reasons to apply the escort measure. The absence of a written document, an escort record, in breach of Article 27.2 § 3 of the CAO amounted to partial non-compliance with the procedure prescribed by law.

52. The exact timing of the escort measure in respect of the applicant and his release had not been recorded in any documents. However, as could be established from the available material (see paragraphs 13-14 above), the restriction on the applicant's freedom of movement had started at 12.05 p.m. at the earliest and had ended at 2.30 p.m. at the latest.

(c) Domestic remedies

53. The Government submitted that the applicant could have lodged a complaint within the police hierarchy or to a prosecutor under the Prosecutors Act 1992. Furthermore, section 39 of the Police Act provided that unlawful actions on the part of the police could be challenged before a court. In the Government's view, such judicial procedure could be the judicial-review procedure under Chapter 25 of the Code of Civil Procedure (see paragraph 32 above). Instead, the applicant had used another remedy (a criminal-complaint procedure), which had been "less appropriate", and had focused on the allegedly inappropriate manner in which he had been apprehended and taken to the police vehicle. The Government concluded by stating that the applicant had not exhausted domestic remedies.

54. Lastly, in reply to the Court's question about monetary remedies in relation to Article 5 § 5 of the Convention, the Government referred to Article 27.1 of the CAO, stating that compensation in respect of damage caused by recourse to the escort procedure could be sought by way of a civil tort claim, which, in the Government's submission, meant a claim under Articles 1069 and 1070 § 2 of the Civil Code.

2. The applicant

(a) Deprivation of liberty

55. The applicant stated that he had been immobilised by the police and had then continuously remained under police control, without any ability to leave the vehicle and that later, in the police station, he had been under the constant guard of the officers. The circumstances of the case clearly showed that he had been deprived of his liberty for over three hours.

(b) Compliance with domestic law and procedure

56. The applicant argued that the police had made no effort to ensure that they had been arresting the actual participants of the protest rally. The applicant had not been waving any flags or placards, had not uttered any slogans or claims (such as those corresponding to the message of the protest). At the same time, he had taken care to distance himself from the protesters, had joined the journalists present at the venue and had been recording the protest on his camera, thereby gathering information about the protest rather participating in it.

57. The city hall's opposition to the rally had not amounted to a declaration of illegality of the rally and had not given a *carte blanche* to the police for arresting its organisers. Had the police proceeded on the basis of the standards laid down in the Court's case-law, their major focus in the context of this non-approved rally would have been on ensuring the safety of all those present (participants, journalists, observers or passers-by). In so far as the applicant's alleged close proximity to the protesters had served as

a basis for his arrest (see paragraph 49 above), the course of action taken by the police was indicative of their indiscriminate approach toward arresting people present at or around the venue.

58. Recourse to the escort procedure under Article 27.2 of the CAO was to be linked to the suspicion of someone committing or having committed an administrative offence. The specific context of such a relevant offence would be under Article 20.2 of the CAO (violation of the regulations on public events by an event organiser or participant). The police had had no prima facie reason to consider him a "participant" of the rally.

59. At no time in the domestic proceedings had the applicant been notified of any suspicion against him as regards any specific offence. Such suspicion had first been mentioned in the Government's observations to the Court (see paragraph 49 above).

60. As conceded by the Government (see paragraph 51 above), his escorting to the police station and detention there had not been recorded in writing, in violation of the requirements of the CAO. The absence of a written record had not been a minor omission, as it had deprived him of the opportunity to seek redress or had at least seriously undermined it. In particular, this had complicated the establishment of the relevant facts, such as the timing of the deprivation of liberty. Furthermore, as affirmed by the Government (see paragraph 48 above), the situation complained of could not be justified under any of the sub-paragraphs of Article 5 § 1 of the Convention. Consequently, there had been a violation of that provision.

(c) Domestic remedies

61. As to domestic remedies, the applicant submitted that the domestic authorities had been made aware of at least one defect relating to the absence of any record in respect of his escorting. Thus, they had had ample opportunity to rectify this shortcoming but had chosen not to do it.

62. Lastly, as regards Article 5 § 5 of the Convention, the applicant submitted that his tort action had been dismissed for lack of proof that the police had acted unlawfully. The applicant had then had difficulties in obtaining a copy of this judgment and seeking a review thereof (see paragraph 29 above), which in any event would have been futile.

B. The Court's assessment

1. Article 5 of the Convention

(a) Admissibility

(i) Deprivation of liberty

63. The Court considers that the applicant's placement and detention on a bus, the ensuing escorting to and his presence at the police station on

24 March 2007 amounted to a "deprivation of liberty" (see *Navalnyy and Yashin v. Russia*, no. 76204/11, § 92, 4 December 2014; *Rozhkov v. Russia (no. 2)*, no. 38898/04, § 79, 31 January 2017; and *Khayrullina v. Russia*, no. 29729/09, § 94, 19 December 2017). Nothing suggests that, as a matter of fact and/or given the requirements of Russian law, on 24 March 2007 the applicant could have freely decided not to follow the police officers to the station or, once there, leave at any moment without incurring adverse consequences (compare *Creangă v. Romania* [GC], no. 29226/03, §§ 94-98, 23 February 2012). The applicant was physically compelled by the police and could not leave the bus and then the station without being permitted to do so.

64. The Court considers that throughout the events that day there was an element of coercion which, notwithstanding the short duration of the procedure, was indicative of a deprivation of liberty within the meaning of Article 5 § 1 (see *Shimovolos v. Russia*, no. 30194/09, § 50, 21 June 2011, and *Ursulet v. France* (dec.), no. 56825/13, §§ 36-37, 8 March 2016).

(ii) Exhaustion and six-month requirements

65. The Court has taken note of Ruling no. 2 of 10 February 2009 in which the Plenary Supreme Court of Russia stated that where CAO proceedings against a person were discontinued or never pursued, as in the present case, any actions taken during such proceedings could then be challenged under Chapter 25 of the Code of Civil Procedure (the "Chapter 25 remedy"), if such actions impinged upon the person's rights or freedoms, created obstacles to their being exercised, or unlawfully imposed liability. Indeed, possibly, recourse to the escort measure could amount to such "actions" "impinging upon" the applicant's personal liberty (see paragraphs 32 and 41 above).

66. However, this position was taken by the Supreme Court nearly two years after the facts of the present case in March 2007 and also while the applicant had already been pursuing another remedy, namely, a criminal-complaint procedure. The Government have not suggested that the Chapter 25 action was a new remedy which the applicant should have used in respect of his application then already pending before this Court. Nor have they specified that it remained available to the applicant after the 2009 ruling.

67. In any event, it remains that the applicant made use of another domestic remedy, a criminal-complaint procedure. While indicating that this remedy was less appropriate, the Government have not affirmed that this remedy was manifestly ineffective or devoid of any prospect of success. For its part, the Court has no reason to doubt the relevance of the criminal-complaint procedure in the context of allegedly unlawful use of force and deprivation of liberty (see, among other authorities, *Annenkov and Others v. Russia*, no. 31475/10, § 106, 25 July 2017, with the cases cited

therein) and that it was reasonable for the applicant to await the results of the resumed inquiry and seeking a judicial review under the Code of Criminal Procedure before applying to the Court.

68. The Court also observes that, because of the short duration of the deprivation of liberty on 24 March 2007, the applicant would not have had time to "take proceedings" by which his release could be ordered, within the meaning of Article 5 § 4 of the Convention. Thus, the Chapter 25 remedy and the compensatory remedy in relation to the escort procedure for a non-custodial offence being uncertain at the time (see paragraph 83 below), the applicant made a reasonable effort to first raise his grievances at domestic level by way of the criminal complaint before lodging a complaint with the Court.

69. Thus, the Court concludes that the exhaustion requirement has been complied with as regards the applicant's complaint under Article 5 § 1 of the Convention.

70. It has not been suggested, and the Court does not find, that the applicant has not complied with the six-month rule under Article 35 § 1 of the Convention (compare *Raush v. Russia* (dec.), no. 17767/06, § 60, 22 March 2016).

(iii) Conclusion

71. The Government have not made any specific submissions as regards the admissibility of the complaint under Article 5 § 5 of the Convention.

72. The Court notes that the complaints under Article 5 §§ 1 and 5 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

(b) Merits

(i) Article 5 § 1 of the Convention

73. It appears established that at the start of the rally the applicant took some care to avoid to be mistaken for a rally participant, for instance by positioning himself together with a group of journalists. It is also clear that the police were made aware of the rally in advance and that a group of police officers was present at the rally venue. Taking this into account and also given the relatively small size of the rally and its peaceful pace without any major level of agitation or, even less, violence (compare *Kasparov and Others v. Russia (no. 2)*, no. 51988/07, § 31, 13 December 2016), the Court considers that the police were in a position to take informed decisions in order to distinguish between rally participants and others.

74. Also, in the Court's view, the rally could reasonably be perceived as a "public event" under the Public Events Act, possibly in breach of its prior notification requirement (compare *Kasparov and Others (no. 2)*, cited

above, § 39). The police therefore had prima facie formal grounds, under Russian legislation, for suspecting the event organisers or participants of an offence under Article 20.2 of the CAO.

75. The Court also agrees with the Government that the Police Act 1991 did provide a legal basis for the police's use of measures such as taking a person to a police station (see paragraph 35 above). However, it appears that this could only be done in a specific context and/or for a specific purpose, for instance, to ascertain a person's identity or, as indicated in Articles 27.1 and 27.2 of the CAO, to compile a record of administrative offence when "it [could] not be done on the spot".

76. Nothing suggests that the police officers had no authority to compile an offence record on the spot (see paragraph 43 above) and, foremost, that without escorting the applicant to the police station it was "impossible" "to detect the offence, to establish [his] identity, to ensure proper and timely examination of the case and execution of a resulting court decision" (see paragraph 37 above). Moreover, as acknowledged by the Government, in breach of Article 27.2 § 3 of the CAO the use of the escort measure was not properly documented (see, in the same vein, *Denisenko v. Russia* [Committee], no. 18322/05, 14 February 2017). The above considerations appeared to be among the essential elements pertaining to the legality of this type of measure under Russian law (see *Butkevich v. Russia*, no. 5865/07, § 63, 13 February 2018, and *Rozhkov (no. 2)*, § 80, cited above). Furthermore, there is no evidence that the applicant was informed of any (reasonable suspicion of) administrative charge against him or the reasons for his arrest.

77. In so far as Article 5 § 1 (c) of the Convention is concerned, the authorities should have borne in mind that the measure was applied in the context of an administrative offence for which the maximum statutory penalty was a fine of EUR 30. Article 5 § 1 of the Convention requires that for deprivation of liberty to be considered free from arbitrariness, it does not suffice that this measure is taken and executed in conformity with national law; it must also be necessary in the circumstances and proportionate (see *Butkevich*, cited above, § 64, and *François v. France*, no. 26690/11, §§ 52-56, 23 April 2015; see also *S., V. and A. v. Denmark* [GC], nos. 35553/12 and 2 others, § 77, 22 October 2018). Where the aim was "to prevent [a person from] committing an offence", it was incumbent on the domestic authorities to ascertain, *inter alia*, that the deprivation of liberty was "reasonably considered necessary" to reach that aim in the circumstances of the case. The available material does not disclose that the above requirements were complied with.

78. In view of the above considerations, the Court concludes that the escort procedure did not comply with Articles 27.1 to 27.2 of the CAO and, both consequently and complementarily, Article 5 § 1 (c) of the Convention.

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

(ii) Article 5 § 5 of the Convention

80. First, as to the general tort remedy under Article 1070 § 2 in conjunction with Articles 1069 and 1100 of the Civil Code, as suggested by the Government, the Court has no reason to consider that it was available or appropriate in the circumstances of the case (see, in the same vein, *Tsvetkova and Others v. Russia*, nos. 54381/08 and 5 others, § 97, 10 April 2018, compare *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 113-14 and 229, 10 January 2012).

81. Second, it has not been claimed that the applicant has not exhausted domestic remedies for his complaint under Article 5 § 1 or § 5 of the Convention by omitting to pursue his appeal against the judgment of 28 November 2012 or the decision of 17 April 2013 (see paragraph 29 above). For its part, the Court finds it sufficient to note that the findings made in the above judgment appeared to be in line with the approach indicated by the Russian Constitutional Court (see paragraph 42 above).

82. As to a claim based on Article 1070 § 1 and Article 1100 of the Civil Code, having examined the available material, the Court is not convinced that there would have been any prospect of success for this course of action in so far as concerned compensation on account of non-pecuniary damage caused by recourse to the escort procedure and, *a fortiori*, where such escorting was related to an offence which was not punishable by administrative detention (see paragraph 42 above; see, in the same vein, *Tsvetkova and Others*, cited above, § 97).

83. Therefore, at the material time (that is between March 2007 and December 2008) as well as until 2012 (when he tried a civil claim action) the applicant did not have an enforceable right to compensation in relation to the administrative escorting applied in the context of an offence not punishable by detention.

84. There has accordingly been a violation of Article 5 § 5 of the Convention.

2. Article 13 of the Convention

85. Given the scope of the applicant's complaint and its power to decide on the characterisation to be given in law to the facts of the complaint (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018), the Court observes that, because of the short duration of the deprivation of liberty on 24 March 2007, the applicant would not have had time to "take proceedings" by which his release could be ordered, within the meaning of Article 5 § 4 of the Convention. In addition, the Court has examined the part of the complaint relating to the compensatory remedy under Article 5 § 5 of the Convention in the present case.

86. In view of this finding, the findings relating to domestic remedies in paragraphs 65-68 above and the narrow scope of the parties' observations on this aspect, the Court considers that in the present case it is not necessary to examine separately the admissibility and merits of the complaint under Article 13.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

87. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

88. The applicant claimed compensation in respect of non-pecuniary damage in relation to Article 5 § 1 of the Convention, leaving the amount to the Court's discretion.

89. The Government considered that the finding of a violation would be sufficient.

90. The Court awards the applicant 1,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

91. The applicant also claimed EUR 2,600 for the costs and expenses incurred before the Court.

92. The Government considered that the claim was excessive.

93. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court grants the claim, plus any tax that may be chargeable to the applicant.

C. Default interest

94. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY,

1. *Declares* the complaints Article 5 §§ 1 and 5 of the Convention admissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 5 of the Convention;

4. *Holds* that it is not necessary to examine separately the admissibility and the merits of the complaint under Article 13 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, at the rate applicable at the date of settlement:
      (i) EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,600 (two thousand six hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 23 July 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Alena Poláčková
Deputy Registrar	President