



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

THIRD SECTION

CASE OF NAVALNY AND GUNKO v. RUSSIA

(Application no. 75186/12)

JUDGMENT

Art 3 (substantive) • Degrading treatment • Unnecessary force used during public police arrest in absence of visible resistance

Art 5 § 1 • Lawful arrest or detention • Unjustified and arbitrary administrative detention for approximately eighteen and twenty hours respectively

Art 6 § 1 (administrative) • Fair hearing • Convictions for an administrative offence based exclusively on standardised documents submitted by the police • Failure to use every reasonable opportunity to check police incriminating statements • Lawfulness of police order not considered

Art 11 • Freedom of peaceful assembly • Failure to discharge positive obligation to ensure peaceful conduct at Bolotnaya Square assembly • Arrest and conviction for administrative offences • Measures not necessary in a democratic society

STRASBOURG

10 November 2020

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Navalnyy and Gunko v. Russia,

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

Paul Lemmens, *President*,

Georgios A. Serghides,

Helen Keller,

Dmitry Dedov,

María Elósegui,

Anja Seibert-Fohr,

Peeter Roosma, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 75186/12) 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 two Russian nationals, Mr Aleksey Anatolyevich Navalnyy and Vadim Borisovich Gunko (“the applicants”), on 25 October 2012;

the decision of 28 August 2014 to give notice to the Russian Government (“the Government”) of the application;

the parties’ observations;

Having deliberated in private on 13 October 2020,

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

INTRODUCTION

1. The application concerns the applicants’ arrest at a political rally at Bolotnaya Square on 6 May 2012, followed by their overnight detention at a police station and their administrative conviction for disobeying lawful orders of the police. During the arrest of the first applicant, a police officer allegedly applied excessive physical force.

THE FACTS

2. The first applicant (Mr Navalnyy) was born in 1976. The second applicant (Mr Gunko) was born in 1960. They both live in Moscow. The applicants were represented by Mr K. Terekhov, a lawyer practising in Moscow.

3. The Russian Government (“the Government”) were represented initially 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.

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

I. DEMONSTRATION ON 6 MAY 2012

5. The background facts relating to the planning, conduct and dispersal of the demonstration at Bolotnaya Square are set out in more detail in *Frumkin v. Russia* (no. 74568/12, §§ 7-65, 5 January 2016); *Yaroslav Belousov v. Russia* (nos. 2653/13 and 60980/14, §§ 7-33, 4 October 2016); and *Razvozzhayev v. Russia and Ukraine and Udaltsov v. Russia* (nos. 75734/12 and 2 others, §§ 8-31, 19 November 2019). The parties' submissions on the circumstances directly relevant to the present case are set out below.

6. On 6 May 2012 a public demonstration entitled the "March of Millions" was held in central Moscow to protest against the allegedly rigged presidential elections. The event had been approved by the city authorities in the form of a march followed by a meeting at Bolotnaya Square which was supposed to end at 7.30 p.m. The march was peaceful and took place without any disruptions, but when the marchers arrived at Bolotnaya Square it became apparent that barriers installed by the police had narrowed the entrance to the meeting venue, allegedly restricting the space allocated for the meeting. To control the crowd, a police cordon forced the protesters to remain within the barriers. There were numerous clashes between the police and protesters. At 5.30 p.m. the police ordered that the meeting finish early and began to disperse the participants. It took them about two hours to clear the protesters from the square.

7. The applicants took part in the demonstration on 6 May 2012 at Bolotnaya Square. They were arrested at the venue of the event and taken to police stations, where they were charged with an administrative offence. After an overnight detention the applicants were brought before justices of the peace and convicted as charged.

II. THE APPLICANTS' ARREST, DETENTION AND CONVICTION FOR AN ADMINISTRATIVE OFFENCE

A. The first applicant (Mr Navalnyy)

1. *The first applicant's arrest, detention and conviction*

8. The first applicant was one of the leaders who began a sit-in during the demonstration (for a detailed account see *Razvozzhayev and Udaltsov*, cited above, §§ 18-31). According to him, he was arrested soon after 6 p.m. on his way to the stage as he intended to address the meeting with a speech. The first applicant alleged that before his arrest he had not received any warning or orders from the police. During the arrest a police officer forced his arm behind his back, causing pain and pushing him to bend forwards, although the first applicant did not resist the arrest. The police officer pushed the first applicant all the way to the police station while twisting his

arm and forcing him to bend forwards. The first applicant provided a video-recording and a link to a YouTube video showing his arrest. The Government in their observations confirmed that the domestic courts had seen the same video.

9. The YouTube video contains the following scenes, in so far as the events complained of are concerned.

(i) The first applicant walks towards the stage at Bolotnaya Square while the protesters are shouting “We shall not leave!” When he approaches the stage he sees a group of police officers taking someone from the stage. The first applicant is taking hold of a megaphone when two police officers approach him. The first applicant is heard saying: “Where are you taking me? I have not done anything yet.” He tries to get on the stage and at that moment several police officers pull him back and take him away. After that he shouts several times: “Do not leave! Everyone, stay here!”

(ii) After being apprehended, the first applicant is taken from the area adjacent to the stage to a police station. In the next shot the first applicant is carried out from that area by several police officers. One of the police officers asks the first applicant whether he will continue walking by himself and as the answer is positive, the first applicant is put on his feet and is led to walk half-bent with two police officers twisting his arms behind his back. A few seconds later, one of the police officers says: “Brother, stay still, or I will break your arm.” To that the first applicant replies: “I will put you in jail then” and turns left to look at the police officer. After that the police officer twists the first applicant’s left arm with such force as to make him scream: “You are breaking it!” The first applicant continues to walk in the same position and a few seconds later he screams again as his arm is suddenly forced up. Then he asks the police officer to ease the pressure on his arm a bit. Just before they enter the police station, the police officer tells the first applicant to bend lower. From the moment when the first applicant is put on the ground and starts walking himself until his entry into the police station, no other responses by the police officers or visible resistance by the first applicant can be heard or seen in the video-recording. The video-recording ends when the first applicant is taken inside the 1st Functional Battalion of the traffic police on the special highway (“*1 Специализированный Батальон ДПС ГИБДД на спецтрассе*”).

10. At 6.40 p.m. the first applicant was taken to Yakimanka district police station in Moscow, where an on-duty officer drew up a record of his transfer for the purpose of compiling an administrative file and ordered his administrative detention.

11. At the police station an on-duty officer also drew up an administrative-offence record on the basis of statements of two police officers, D.S. and V.S., who had allegedly arrested the first applicant. He was charged with having disobeyed a lawful order of the police, an offence under Article 19.3 § 1 of the Code of Administrative Offences. An

attachment was enclosed with the administrative-offence record. It stated that on 6 May 2012 at 6.30 p.m. the first applicant, “acting as a participant in the public assembly – the meeting at Bolotnaya Square ... with approximately 8,000 participants ... – called on the protesters to disobey the authorities, not to leave the venue after the assembly and to ignore the orders of the police. The police officers D.S. and V.S. approached [the first applicant], introduced themselves and requested that he stop his actions. [The first applicant] refused in reply and continued attracting the attention of the public and the media. In response to the officers’ lawful request to follow them to the police van to draw up an administrative-offence record [the first applicant] shouted ‘Russia without Putin!’ ... [and] pushed them away”. The first applicant was detained pending the examination of the administrative case.

12. On 7 May 2012 at 3 p.m. the first applicant was brought before the Justice of the Peace of circuit no. 100 of the Yakimanka District. The Justice of the Peace examined the video-recording submitted by the first applicant and found that despite having been prohibited from doing so by the police, the first applicant had attempted to go up on the stage, and that by doing so and by shouting to the participants not to leave the venue, he had resisted the police. Referring to the records of the administrative offence, transfer and detention, as well as the reports and written explanations submitted by the police officers D.S. and V.S., the Justice of the Peace established that the applicant had disobeyed a lawful order of the police, in breach of Article 19.3 § 1 of the Code of Administrative Offences. The first applicant was sentenced to a fine of 1,000 Russian roubles (RUB, equivalent to about 20 euros at the material time).

13. The first applicant appealed, arguing, *inter alia*, that the administrative-offence record and the reports submitted by D.S. and V.S. had been false, and that the police had not given any orders before apprehending him. The first applicant further argued that the conclusions drawn by the court contradicted the available evidence, in particular the video-recording.

14. In the appeal proceedings the first applicant’s lawyer requested that D.S. and V.S. be questioned. He disputed that those particular police officers had arrested the first applicant. He explained that the video-recording of the first applicant’s arrest also showed that Mr Udaltsov had been escorted to the police station approximately thirty seconds before Mr Navalnyy’s arrest. According to the administrative file on Mr Udaltsov’s case, he had been arrested by the same officers, D.S. and V.S. The representative argued that it was practically impossible that the same police officers who had arrested Mr Udaltsov had returned to the stage to arrest the first applicant.

15. On 19 July 2012 the Zamoskvoretskiy District Court by a separate ruling dismissed the applicant’s request to question the police officers,

finding that the video-recording of the arrest did not contain the date and time when it had been made, and that the faces of the police officers who had arrested the man referred to as Mr Udaltsov could not be seen.

16. On 19 July 2012 the Zamoskvoretskiy District Court upheld the first-instance judgment. In respect of the video-recording, the court held that it could not attest to a lack of an offence in the acts of the first applicant on 6 May 2012 as the recording contained no indication of the date and the place when and where it had been made. At the same time, the court noted that the Justice of the Peace had examined the recording and had made an assessment of it in the first-instance judgment.

2. Investigation into the alleged ill-treatment of the first applicant during his arrest

17. On 17 May 2012 the first applicant complained to the investigating authorities that, *inter alia*, during his arrest on 6 May 2012 an unidentified police officer had used excessive force by twisting his arm, causing him severe physical pain. The first applicant submitted that, as a result of that treatment, he had suffered abrasions on his body. He provided a video-recording showing the manner in which force had been applied in respect of him.

18. On 24 May 2012 the first applicant received a reply stating that, in so far as the alleged ill-treatment was concerned, a copy of his complaint had been forwarded to the Internal Affairs Unit of the relevant Department of the Interior for an internal check.

19. On 27 June 2012 the first applicant lodged a complaint in accordance with Article 125 of the Code of Criminal Procedure as regards the above-mentioned reply.

20. On 19 September 2012 the Zamoskvoretskiy District Court terminated the proceedings, having established that the first applicant's request to investigate the alleged ill-treatment had been registered by the investigation authorities, and a pre-investigation check had been initiated.

21. On 20 September 2012 the investigator refused to open a criminal case in respect of the applicant's allegation of ill-treatment.

22. On 20 March 2013, in another procedure, the investigator decided not to instigate criminal proceedings following several complaints by participants in the public assembly of 6 May 2012, including the first applicant. The investigator concluded that during the event the police had acted lawfully and that physical force had been legitimately used in respect of those protesters who had demonstrated resistance while being arrested. The decision did not address the first applicant's specific case and the allegations that his arrest and the acts of the police in respect of him had been unlawful.

23. On 25 November 2014 the Zamoskvoretskiy District Court dismissed the applicant's complaint in accordance with Article 125 of the Code of Criminal Procedure in respect of the refusal of 20 September 2012.

24. On 16 February 2015 the Moscow City Court upheld on appeal the decision of the District Court.

B. The second applicant (Mr Gunko)

25. The second applicant was arrested at about 7 p.m. because, according to the police, he was obstructing the traffic. However, the second applicant asserted that the venue had been cordoned off by the police and that there had been no traffic.

26. At 8.45 p.m. the second applicant was transferred to Zamoskvorechye District police station in Moscow, where an on-duty officer drew up a record of the administrative transfer for the purpose of compiling an administrative-offence record and ordered his administrative detention.

27. On the same day, an administrative-offence record was drawn up on the basis of statements by two police officers who had allegedly arrested the second applicant. He was charged with having disobeyed a lawful order of the police, an offence under Article 19.3 of the Code of Administrative Offences.

28. On 7 May 2012 at 3 p.m. the second applicant was brought before the Justice of the Peace of circuit no. 396 of the Yakimanka District. The judge examined the charges. The second applicant submitted that he had participated in the authorised public assembly and had intended to go home after it had ended, but he had not managed to leave because of the large numbers of people present and the fact that the area had been cordoned off. On the basis of the records of the administrative offence, transfer and detention, as well as the reports and explanations submitted by the police officers, the second applicant was found to have attempted to break through the cordon, acted aggressively, shouted slogans, and attempted to enter the traffic area, thereby obstructing the traffic. The second applicant, according to the judge, had disobeyed the lawful order of the police to stop those acts. He was found guilty under Article 19.3 § 1 of the Code of Administrative Offences, and was sentenced to twenty-four hours' administrative imprisonment, with effect from 8.45 p.m. on 6 May 2012.

29. The second applicant appealed, arguing that his conviction was unlawful. In particular, he maintained that the police had not made any orders in respect of him, nor had he shown any resistance prior to the arrest. He also alleged that the police officer who had arrested him had not introduced himself, and that the police officers' reports had been drawn up using a template without an individual description of his offence.

30. On 17 May 2012 the Zamoskvoretskiy District Court examined the second applicant's appeal and upheld the first-instance judgment.

RELEVANT LEGAL FRAMEWORK

31. For a summary of the relevant domestic law, see *Frumkin*, cited above, §§ 77-79.

THE LAW

I. PRELIMINARY REMARKS

32. In his observations dated 12 March 2015 the first applicant complained that no effective investigation had been carried out into his allegations that he had been ill-treated during the arrest on 6 May 2012 and that he had no effective remedy. He referred to the procedural obligations under Article 3 of the Convention and Article 13 of the Convention in conjunction with Article 3. He argued that this was an elaboration of his initial complaint under Article 3.

33. The Court has held that the scope of a case "referred to" it in the exercise of the right of individual application is determined by the applicant's complaint or "claim". Allegations made after notice of the application has been given to the respondent Government can only be examined by the Court if they constitute an elaboration of the applicant's original complaint (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 108-09 and 120-22, 20 March 2018, and *Ēcis v. Latvia*, no. 12879/09, § 68, 10 January 2019).

34. The Court observes that in his application lodged on 25 October 2012, the first applicant complained that he had been subjected to ill-treatment contrary to Article 3 of the Convention. In view of the above, and being the master of the characterisation to be given in law to the facts of a case (see *Radomilja and Others*, cited above, § 126, and *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 83, 25 June 2019), the Court takes the view that in so far as the allegations relating to the lack of an investigation into the first applicant's complaint of ill-treatment constitute an elaboration of his complaint under the substantive limb of Article 3 of the Convention, they will be taken into account under this head.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RESPECT OF THE FIRST APPLICANT

35. The first applicant (Mr Navalnyy) complained that by using force during his arrest the police had subjected him to treatment prohibited by Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. Admissibility

36. The Government argued that the first applicant had not raised his complaint of ill-treatment with the domestic authorities prior to lodging the application with the Court. They referred to the domestic court’s ruling of 20 March 2013, from which it could be seen that the first applicant’s complaint had been limited to the alleged unlawfulness of the arrest.

37. The Court observes that on 17 May 2012 the first applicant complained to the investigation authorities about, *inter alia*, the police officers’ acts during his arrest. He asked for a criminal investigation to be conducted. On 20 September 2012 the investigator refused to start a criminal investigation. The first applicant’s complaint about the refusal was dismissed on 25 November 2014 and, at final instance, on 16 February 2015 (see paragraphs 17-24 above). In these circumstances the Court finds that the first applicant has exhausted the domestic remedies as regards his complaint of ill-treatment during his arrest, and dismisses the Government’s objection.

38. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties’ submissions

39. The first applicant argued that during his transfer to the police station one of the police officers had forcefully twisted his arm behind his back with the sole aim of causing him physical pain. The pain had been severe and amounted to degrading treatment. He reiterated that he had not committed any offence and asserted that his arrest had been unlawful as the police had had no reason to apprehend him and take him to the police station. He also submitted that he had not shown any resistance justifying the use of force. He referred to the video-recording of his arrest in support of his arguments.

40. The Government argued that the first applicant’s treatment had been justified and had not reached the minimum level of severity necessary for Article 3 of the Convention to come into play. They also submitted observations with regard to the content of the video-recording of the first applicant’s arrest. In particular, they stated that the video showed that the first applicant had physically resisted the police when they had prevented him from going on the stage and that the remarks made by the police officers during the transfer to the police station revealed that he had refused

to follow them. According to the Government, at those moments his arms had been pulled higher. Otherwise, they did not contest the content of the video-recording as described above (see paragraph 9 above).

2. *The Court's assessment*

(a) **General principles**

41. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). In respect of a person who is deprived of his or her liberty, or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by his or her own conduct diminishes human dignity and is an infringement of the right set forth in Article 3 (see *Bouyid v. Belgium* [GC], no. 23380/09, §§ 100-01, 28 September 2015). In respect of recourse to physical force during an arrest, Article 3 does not prohibit the use of force for effecting a lawful arrest (see *Annenkov and Others v. Russia*, no. 31475/10, § 79, 25 July 2017). However, such force may be used only if indispensable and must not be excessive (see *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 63, 12 April 2007). The burden to prove that this was the case rests on the Government (see *Rehbock v. Slovenia*, no. 29462/95, § 72, ECHR 2000-XII, and *Boris Kostadinov v. Bulgaria*, no. 61701/11, § 53, 21 January 2016).

42. In assessing the evidence on which to base the decision as to whether there has been a violation of Article 3, the Court has generally applied the standard of proof "beyond reasonable doubt". Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX).

(b) **Application of the principles to the present case**

43. The Court notes that the parties agreed that during the first applicant's arrest and transfer to the police station, one of the police officers had forcefully twisted his arm with such force as to make him scream. However, the parties disagreed as to whether this had been necessary. The first applicant submitted that it had not been justified as he had not been resisting the police and argued that the only aim pursued by the police officer had been to inflict physical pain on him. Referring to the video-recording, the Government argued that the police officers' comments indicated that the first applicant's arms had been pulled higher when he had resisted following the police. They did not consider such use of force excessive.

44. It follows from its case-law cited above that the Court has to determine whether the use of physical force was “strictly necessary”, having regard to the applicant’s own conduct.

45. The Court observes that the relevant part of the video-recording, as described in paragraph 9 above, reveals that when the first applicant was transferred to the police station he did not put up any visible resistance. From the moment when he was put on his feet until he entered the police station, the police officers’ interaction with him consisted in asking whether he would start walking by himself, demanding that he stay still, and threatening to break his arm. At that moment several police officers and the first applicant were away from the crowd, and nobody could be seen on the footage apart from them. Nothing in the video-recording suggests that this manner of restraining the first applicant was indispensable for bringing him to the police station. It does not appear from the material available to the Court that the circumstances surrounding the use of force during the first applicant’s arrest were established and analysed during the pre-investigation check conducted as a result of his complaint (see paragraphs 17-24 above). The authorities limited themselves to conducting that check and refused to investigate the alleged ill-treatment in criminal proceedings.

46. In view of the above, the Court has no basis for accepting the Government’s submission that the first applicant’s resistance to the police had made it necessary to manoeuvre him in a painful way on the way to the police station.

47. The Court further observes that the first applicant’s arrest was carried out by a group of well-equipped police officers. While they transferred the first applicant, who was alone as they left the venue, he did not offer any visible resistance to the police, according to the video footage.

48. In view of the foregoing considerations, the Court concludes that it has not been convincingly shown that the recourse to physical force by the police was made strictly necessary by the first applicant’s own conduct. Such use of force diminished the first applicant’s human dignity and amounted to degrading treatment (see *Bouyid*, cited above, §§ 88 and 100). Moreover, the treatment in question took place in public in the presence of a large number of people and was reported in the media (see *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, § 115, ECHR 2014 (extracts); *Raninen v. Finland*, 16 December 1997, § 55, *Reports of Judgments and Decisions* 1997-VIII; and *Erdoğan Yağız v. Turkey*, no. 27473/02, § 37, 6 March 2007).

49. There has accordingly been a violation of Article 3 of the Convention in respect of the first applicant.

III. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

50. The applicants complained that their arrest on 6 May 2012, followed by overnight detention at a police station, had been unlawful and arbitrary. They relied on Article 5 § 1, which, in so far as relevant, reads 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; ...”

A. Admissibility

51. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

52. The applicants submitted that instead of being released three hours after their arrest on 6 May 2012, they had been remanded in police custody. This preventive measure had been applied to secure their attendance at a hearing before the Justice of the Peace the next day. However, neither the Government nor the domestic authorities had provided justification for such a measure. There had been no reason to believe that the applicants would abscond or otherwise obstruct the course of justice; in any event, the authorities had failed to demonstrate such a risk.

53. The Government contended that the applicants had been transferred to the police stations within two hours of their arrest, a period which had not been “manifestly unreasonable”. The legal basis for their transfer had been Article 27.2 of the Code of Administrative Offences, which empowered the police to take individuals to a police station for the purpose of drawing up an administrative-offence record. Once the applicants had been issued with the administrative-offence records, they had been placed in administrative detention (Article 27.3 of the Code). The term of such detention had to be calculated from the time the person concerned had been brought to a police

station and should not have exceeded forty-eight hours, in accordance with Article 27.5 of the Code. Both the applicants had spent fourteen hours at the police stations, which had not exceeded the statutory limit. Overall, the Government contended that the applicants' deprivation of liberty had complied with domestic law and with the requirements of Article 5 § 1 of the Convention.

2. *The Court's assessment*

54. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 of the Convention essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. However, the "lawfulness" of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent individuals from being deprived of their liberty in an arbitrary fashion. Furthermore, the list of exceptions to the right to liberty secured in Article 5 § 1 of the Convention is an exhaustive one, and only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely to ensure that no one is arbitrarily deprived of his or her liberty (see *Giulia Manzoni v. Italy*, 1 July 1997, § 25, *Reports* 1997-IV; and *S., V. and A. v. Denmark* [GC], nos. 35553/12 and 2 others, §§ 73-76, 22 October 2018).

55. The Court observes that both applicants were first taken to the police station in accordance with Article 27.2 of the Code of Administrative Offences and then, once at the police station, placed in administrative detention in accordance with Article 27.3 of the Code (see paragraphs 10 and 26 above). The applicants were then remanded at the police station for approximately eighteen hours (Mr Gunko) and twenty hours (Mr Navalnyy) before being brought before a court.

56. Both applicants were taken to the police station for the purpose of drawing up an administrative-offence record in accordance with Article 27.2 of the Code of Administrative Offences, which provides for this possibility when the record cannot not be drawn up at the place where the offence was discovered. Even though the Government have not argued that in each case that was impossible, the Court is ready to accept that in the context of the general commotion which was happening at Bolotnaya Square, the police could hardly draw up the records on the spot (see *Frumkin v. Russia*, no. 74568/12, § 148, 5 January 2016; contrast with *Novikova and Others v. Russia*, nos. 25501/07 and 4 others, §§ 182-83, 26 April 2016).

57. The Court further notes that once the administrative-offence records had been drawn up, the objective of bringing the applicants to the police stations had been met and they could have been discharged. However, none of them was released on that day; both applicants were formally remanded

in custody to secure their attendance at a hearing before the Justice of the Peace the next day. The Government argued that the term of the applicants' detention had remained within the forty-eight-hour time-limit provided for by Article 27.5 of the Code of Administrative Offences. However, neither the Government nor the domestic authorities provided any justification as required by Article 27.3 of the Code, namely that it was an "exceptional case" or that it was "necessary for the prompt and proper examination of the administrative case and to secure the enforcement of any penalty to be imposed". In the absence of any explicit reasons given by the authorities for not releasing the applicants, the Court considers that their administrative detention for approximately eighteen and twenty hours respectively was unjustified and arbitrary (see, for similar reasoning, *Navalnyy and Yashin v. Russia*, no. 76204/11, § 96, 4 December 2014).

58. There has accordingly been a violation of Article 5 § 1 of the Convention in respect of each of the applicants.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

59. The applicants complained that the administrative proceedings in their cases had fallen short of the guarantees of a fair hearing, in particular the principles of equality of arms and independence and impartiality of the tribunal. They relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

"In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

A. Admissibility

60. The Government submitted that Article 6 of the Convention was not applicable to the contested proceedings, because the applicants had been charged with an administrative rather than a criminal offence.

61. The Court has previously found that Article 6 of the Convention was applicable under its criminal limb to proceedings involving offences under Article 19.3 of the Code of Administrative Offences that were punishable by a fine or administrative imprisonment (see *Frumkin*, cited above, § 155; *Mikhaylova v. Russia*, no. 46998/08, §§ 71-74, 19 November 2015; *Navalnyy and Yashin*, cited above, § 78; and *Nemtsov v. Russia*, no. 1774/11, § 83, 31 July 2014). The Court sees no reason to reach a different conclusion in the present case and considers that the proceedings in question fall to be examined under the criminal limb of Article 6 of the Convention.

62. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

63. The applicants submitted that in the absence of a prosecuting party, the trial judges had taken on the role of the prosecution. The court had therefore not been “independent and impartial” within the meaning of Article 6 of the Convention. They also complained that they had not been given a fair hearing as the domestic courts had accepted the submissions of the police and dismissed all evidence in the applicants’ favour without verification of key facts. The first applicant (Mr Navalnyy) argued that the domestic courts had based their decisions on the allegedly false information reported by police officers D.S. and V.S., who in fact had not arrested him. He argued that the video-recording submitted by him proved that the submissions of the police officers in question were false. In particular, he argued that the same video-recording capturing his arrest also showed that less than a minute before his arrest, two police officers had been transferring Mr Udaltsov to a police station. According to Mr Udaltsov’s administrative case file, he had been arrested on that day by the same police officers, D.S. and V.S., who had also drafted reports and provided explanations in his case. Thus, it was practically impossible that D.S. and V.S. in only a few seconds had managed to deliver Mr Udaltsov to the police station and to return to the stage to arrest the first applicant. The second applicant (Mr Gunko) argued before the domestic courts that he had not been given any orders prior to his arrest, that the area was still closed for traffic and that he was unable to leave the venue because of the police cordon. He complained that his submissions had been rejected by the courts on the basis that they had contradicted the police reports, in violation of equality of arms.

64. The Government argued that the Code of Administrative Offences did not provide for mandatory participation of a public prosecutor in each case concerning an administrative offence. Their submissions in that connection were similar to those made in *Karelin v. Russia* (no. 926/08, §§ 45-48, 20 September 2016). The Government further submitted that the applicants had been given a fair opportunity to argue their cases before the domestic courts; in the case of the first applicant the courts had examined the video submitted by the defence.

2. *The Court's assessment*

65. As regards the first applicant's complaint concerning the lack of a fair hearing, the Court observes that his conviction for the administrative offence of disobeying lawful police orders was based on the written version of events put forward by the police officers, D.S. and V.S. It further notes that their reports were drawn up using a template and contained no individualised information except the first applicant's name and the names and titles of the police officers. During the domestic proceedings the applicant contested that he had been arrested by D.S. and V.S., referring to the video-recording available in the administrative case file. The first applicant also claimed that the information provided by the police was inaccurate. In particular, he argued that prior to his arrest, no orders had been made by the police that he could have disobeyed. He requested the court to summon and question D.S. and V.S. (see paragraphs 13-15 above).

66. The courts refused to call and examine the two police officers as witnesses (see paragraph 14 above). The courts examined the video-recording submitted by the first applicant and dismissed his allegations based on it. They noted that the recording did not contain the date and time when it had been made, and took the view that it showed disobedience on the first applicant's part *vis-à-vis* the police when they had not let him go on the stage (see paragraphs 12 and 15 above).

67. In view of the foregoing, it appears that the main evidence against the first applicant, namely the written statements by the police officers and the records, was not tested in the judicial proceedings. The courts based their judgment exclusively on standardised documents submitted by the police and refused to accept additional evidence or to summon the police officers.

68. The Court considers that given the dispute over the key facts underlying the charge, where the only evidence against the first applicant came from the police officers who had played an active role in the contested events, it was indispensable for the courts to use every reasonable opportunity to check their incriminating statements (see *Kasparov and Others v. Russia*, no. 21613/07, § 64, 3 October 2013). Their failure to do so ran counter to the fundamental principles of criminal law, particularly *in dubio pro reo* (see *Frumkin*, cited above, § 166, and the cases cited therein). Moreover, the courts did not require the police to justify the interference with the right to freedom of assembly, which included a reasonable opportunity to disperse when such an order was given (*ibid.*).

69. In the second applicant's case, likewise, the courts based their judgment exclusively on standardised documents submitted by the police and refused to verify the applicant's explanation that there was no traffic, that the area was still cordoned off by the police and that he was unable to leave the venue. Moreover, the courts limited the scope of the administrative case to the applicant's alleged disobedience, having omitted

to consider the “lawfulness” of the police order (see *Frumkin*, cited above, § 166; *Nemtsov*, cited above, § 93; and *Navalny and Yashin*, cited above, § 84).

70. The foregoing considerations are sufficient to enable the Court to conclude that the administrative proceedings against the applicants, taken as a whole, were conducted in violation of their right to a fair hearing guaranteed by Article 6 § 1 of the Convention.

71. In view of these findings, the Court does not consider it necessary to address the remainder of the applicants’ complaints under Article 6 § 1 of the Convention concerning the alleged breach of the objective impartiality requirement.

V. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

72. The applicants alleged a violation of their right to peaceful assembly. They complained, in particular, of disruptive security measures implemented at the site of the meeting at Bolotnaya Square, the early termination of the protest and their arrest followed by their conviction for administrative offences. Mr Navalny also complained that he had been prevented from making his speech during the assembly. They relied on Article 11 of the Convention, which, in so far as relevant, reads as follows:

“1. Everyone has the right to freedom of peaceful assembly ...

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others ...”

A. Admissibility

73. The Court has previously held that the assembly at Bolotnaya Square on 6 May 2012 fell within the scope of Article 11 of the Convention (see *Yaroslav Belousov v. Russia*, nos. 2653/13 and 60980/14, §§ 168-71, 4 October 2016).

74. As to whether the applicants personally could rely on the provisions of Article 11, the Court reiterates that peaceful participants in a demonstration tarnished by isolated acts of violence committed by other participants do not cease to enjoy the right to peaceful assembly (see *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 94, ECHR 2015, and *Ziliberberg v. Moldova* (dec.), no. 61821/00, 4 May 2004). It does not appear from any material submitted to the Court that the applicants were among those responsible for the initial acts of aggression which contributed to the deterioration of the assembly’s originally peaceful character. In particular, as regards the first applicant, his taking part in the sit-in and the

calls to the protesters to stay on the site of the cancelled meeting did not demonstrate any violent intentions on his part (see *Razvozzhayev v. Russia and Ukraine and Udaltsov v. Russia*, nos. 75734/12 and 2 others, § 285, 19 November 2019).

75. The second applicant was accused of acting aggressively, shouting slogans, trying to enter the traffic area and breaking through the light metal constructions that had been put in place to protect public order during the event. As far as breaking through the police cordon is concerned, the Court has previously found that this resulted partly from the pressure of the crowd which had built up because of the unexpected and unannounced change of the venue layout by the authorities, and partly from a coordinated attempt by a group of individuals to force the cordon open (see *Frumkin*, cited above, §§ 113-16 and 132, and *Razvozzhayev and Udaltsov*, cited above, § 284). It must be stressed that the second applicant was not accused of having acted within that group, and even if he found himself outside the cordon after it was broken, there is no evidence that he had contributed to breaking it. Shouting slogans and entering the traffic area (which had been closed to traffic at the material time) could not be regarded as proof of any violent intentions on his part (see *Yaroslav Belousov*, cited above, § 171). Therefore, the Court considers that the behaviour of both applicants remained strictly peaceful and that they thus enjoyed the protection of Article 11 of the Convention.

76. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

77. The first applicant submitted that his arrest had not been lawful and that the domestic courts had based their decisions on false information. In particular, he submitted that the authorities had provided no reasons for his apprehension and that he had in fact been convicted for resisting the arrest rather than for any act committed prior to that. The first applicant further argued that his arrest while he had been peacefully walking to address the audience as planned had not been necessary in a democratic society.

78. The second applicant submitted that he had been arrested when he was on the way home after the meeting, but had been prevented from leaving as the area had been cordoned off. He pointed out that he could not have obstructed the traffic, as alleged by the authorities, since the area had not been in use as a road and it had been cordoned off at the material time. He also maintained that his conviction had been unlawful.

79. Both applicants submitted that the police had had no power to give them orders because they had not committed any administrative or criminal offence. They argued that the authorities had failed to effectively inform the demonstrators of the termination of the assembly and of the order to disperse. The applicants had been unaware of their decision to end the meeting. They pointed out that pursuant to domestic law; the police had been required to suspend the assembly first, and to give the organisers time to remedy any breach before they had terminated it. However, in the present case no time had been given either to the organisers or to the participants to rectify their alleged breach of the rules, or subsequently to comply with the police instructions to disperse.

80. Overall, the applicants contended that the dispersal of the demonstration, their arrest and their ensuing conviction had not been “necessary in a democratic society”.

(b) The Government

81. The Government’s submissions as regards the general measures implemented at Bolotnaya Square were identical to those in *Frumkin* (cited above, §§ 83-85). As regards the particular circumstances of the case, they alleged that the applicants had incurred sanctions for failing to obey police orders to leave the site of the public protest at the end of the authorised meeting. The charges brought against the applicants had stemmed from a specific act of disobedience committed after the end of the authorised meeting, rather than from their disagreement with the decision to terminate the meeting earlier.

82. The Government submitted that there had been no interference with the exercise of the applicants’ rights to peaceful assembly, and that in any event the penalty imposed on them, that is to say twenty-four hours’ administrative imprisonment and a fine of RUB 1,000 respectively, had not been disproportionate. They concluded that both the general measures taken in relation to the protest as a whole and the individual measures taken against the applicants personally had been justified under Article 11 § 2 of the Convention. They contended that those measures had complied with domestic law, had been necessary “for the prevention of disorder or crime” and “for the protection of the rights and freedoms of others”, and had remained strictly proportionate.

2. The Court’s assessment

(a) Obligation to ensure the peaceful conduct of the assembly

83. As regards the complaint that disruptive security measures had been implemented at the site of the meeting at Bolotnaya Square, leading to the early termination of the meeting, the Court observes that it has examined this issue in *Frumkin* (cited above). It found, in particular, that the domestic

authorities had failed to discharge their positive obligation to ensure the peaceful conduct of the assembly at Bolotnaya Square (*ibid.*, §§ 100-30 and 133-34). The Government's submissions in the present case were identical to those in *Frumkin* and the Court sees no reason to reach a different conclusion on the same point.

(b) The applicants' arrest and conviction

84. Turning to the applicants' complaints about their arrest and conviction for administrative offences, the Court reiterates that measures taken by the authorities during a rally, such as its dispersal or the arrest of participants, and penalties imposed for having taken part in a rally amount to an interference (see *Kasparov and Others*, cited above, § 84, with further references). It therefore considers that the applicants' arrest at the venue of the event and their conviction for administrative offences constituted an interference with their right to freedom of peaceful assembly.

(i) Whether the interference was justified in respect of the first applicant

85. The Court has found above that the first applicant was arrested at the venue of the demonstration during its dispersal on account of his alleged failure to comply with the lawful orders of the police, and was taken to the police station for the purpose of drawing up an administrative-offence record; it has found that his subsequent detention was arbitrary and unjustified (see paragraphs 54-58 above). Moreover, the Court has concluded that during his arrest the first applicant was subjected to degrading treatment in violation of Article 3 of the Convention (see paragraphs 43-49 above).

86. The Court has further found that the domestic courts failed to establish key facts in the administrative proceedings against the first applicant, in particular whether he had received any orders from the police before his arrest (see paragraphs 65-68 above). In the context of his complaint under Article 11 it must be stressed that none of the bodies dealing with the administrative proceedings examined the lawfulness of the termination of the assembly, an issue which was directly relevant to the lawfulness of the actions taken by the police in relation to the first applicant. He was one of the active participants and speakers at the assembly and he was on his way to address the public gathered at the meeting venue when he was apprehended. It appears that the police prevented him from going on the stage and arrested him in an attempt to implement their decision to terminate the assembly. However, most of those present at the assembly venue were not aware of its early termination, or of the official order to disperse (see *Frumkin*, cited above, § 36), and therefore it cannot be conclusively established that the first applicant had received the order by way of a general announcement. It was incumbent on the domestic courts to

establish these essential elements in order to justify the first applicant's conviction for the administrative offence.

87. In view of the foregoing, the Court considers that even assuming that the first applicant's arrest, detention and sentence in the form of a fine complied with the domestic law and pursued one of the legitimate aims listed in Article 11 § 2 of the Convention – presumably, public safety – the authorities failed to demonstrate that these measures corresponded to a “pressing social need” and were thus “necessary in a democratic society”.

88. Furthermore, the first applicant's brutal arrest, as well as his subsequent administrative conviction, had a chilling effect, discouraging him and others from attending protest rallies or indeed from engaging actively in opposition politics.

89. There has accordingly been a violation of Article 11 of the Convention in respect of the first applicant.

(ii) Whether the interference was justified in respect of the second applicant

90. The circumstances of the second applicant's arrest and conviction are similar to those in *Frumkin* (cited above, §§ 137-42). The Court has found above that the second applicant's subsequent detention was unjustified and arbitrary (see paragraphs 54-58 above).

91. The Court further observes that during the administrative proceedings the second applicant explained that he had participated in the authorised public assembly and had intended to go home after it had ended, but he had not managed to leave because of the presence of many people and the fact that the area had been cordoned off. However, the courts did not address those explanations while endorsing the reports drafted by the police without any further examination of the events, for example establishing their chronology. In this regard, the Court also notes that the police reports were almost identical, having been produced using certain templates with only the date, time and the personal details of the police officers and of the second applicant being handwritten. Furthermore, the Court observes that the domestic courts' findings are contradictory. In particular, the courts established that the second applicant had disrupted the traffic and at the same time mentioned that the area had been closed to traffic (see paragraphs 28 and 69 above).

92. In view of the foregoing, the Court considers that the measures taken against the second applicant were not necessary in a democratic society. Moreover, the dispersal of the demonstration, giving rise to the second applicant's arrest, detention and sentence in the form of administrative imprisonment, albeit for a short duration, had a chilling effect, discouraging him and others from participating in protest rallies or from engaging actively in opposition politics.

93. There has accordingly been a violation of Article 11 of the Convention in respect of the second applicant.

VI. ALLEGED VIOLATION OF ARTICLE 18 OF THE CONVENTION

94. Lastly, the applicants complained that the termination of their participation in a public protest, their arrest, their detention and their conviction for administrative offences had pursued the aim of undermining their right to liberty and freedom of assembly. They complained of a violation of Article 18 of the Convention, which reads as follows:

“The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.”

95. In their submissions under this head the parties reiterated their arguments as regards the alleged interference with the right to freedom of assembly, the reasons for the applicants’ deprivation of liberty and the guarantees of a fair hearing in the administrative proceedings.

96. The Court notes that this complaint is linked to the complaints examined above under Articles 5 and 11 and must therefore likewise be declared admissible.

97. The Court has already found that the applicants’ arrest, detention and administrative conviction were not justified, and that this had the effect of preventing or discouraging them and others from participating in protest rallies and engaging actively in opposition politics (see paragraphs 57, 88 and 92 above).

98. Having regard to those findings, the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 18 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

99. 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

100. Each applicant claimed 11,000 euros (EUR) in respect of non-pecuniary damage. The first applicant also claimed EUR 19,000 in respect of non-pecuniary damage caused by his alleged ill-treatment during the arrest on 6 May 2012.

101. The Government submitted that if the Court were to find a violation of the Convention in the present case, this finding would constitute in itself sufficient just satisfaction. They stated that any award to be made by the Court should in any event take into account each applicant’s individual

circumstances, in particular the length of his deprivation of liberty and the gravity of the penalty.

102. The Court has found a violation of Articles 5, 6 and 11 of the Convention in respect of each applicant, and a violation of Article 3 of the Convention in respect of the first applicant. Making its assessment on an equitable basis, it awards the first applicant EUR 8,500 and the second applicant EUR 7,500 in respect of non-pecuniary damage.

B. Costs and expenses

103. The applicants also claimed 5,400 in respect of legal fees incurred in the proceedings before the Court.

104. The Government contested the claims on the grounds that there was no proof that the costs and expenses had actually been incurred.

105. 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. The Court notes that the applicants submitted no documentary proof, such as legal-services contracts with their representative, payment receipts or invoices, to show that they had a legally enforceable obligation to pay for the lawyer's services or that they had in fact paid for them. Regard being had to these considerations and to its case-law, the Court rejects the applicants' claim for costs and expenses (see *Novikova and Others*, cited above, § 235).

C. Default interest

106. 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 application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention in respect of the first applicant;
3. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of each applicant;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the fairness of the administrative proceedings in respect of each applicant;

5. *Holds* that it is not necessary to examine the applicants' complaint under Article 6 § 1 of the Convention on account of the objective impartiality requirement ;
6. *Holds* that there has been a violation of Article 11 of the Convention in respect of each applicant;
7. *Holds* that there is no need to examine the complaint under Article 18 of the Convention;
8. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 8,500 (eight thousand five hundred euros), plus any tax that may be chargeable, to the first applicant (Mr Navalnyy) in respect of non-pecuniary damage;
 - (ii) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, to the second applicant (Mr Gunko) in respect of non-pecuniary damage;
 - (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;
9. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 10 November 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Paul Lemmens
President