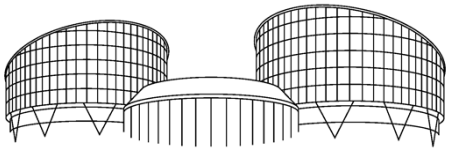

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF YARTSEV v. RUSSIA

(Application no. 16683/17)

JUDGMENT

Art 10 • Freedom of expression • No legal basis for applicant's conviction for shouting slogans not corresponding to the declared aims of a lawful public event

STRASBOURG

20 July 2021

FINAL

20/10/2021

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Yartsev v. Russia,

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

Paul Lemmens, *President,*
Dmitry Dedov,
Georges Ravarani,
Darian Pavli,
Anja Seibert-Fohr,
Peeter Roosma,
Andreas Zünd, *judges,*
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 16683/17) 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 Dmitriy Sergeyevich Yartsev ("the applicant"), on 25 February 2017;

the decision to give notice to the Russian Government ("the Government") of the complaints of violations of the right to freedom of expression and assembly and the right to a fair trial and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 29 June 2021,

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

INTRODUCTION

1. The case concerns the applicant's conviction for an administrative offence for shouting slogans during a lawful public assembly that did not correspond to the declared aims of that assembly.

THE FACTS

2. The applicant was born in 1988 and lives in Moscow. He was represented by Ms T. Glushkova, a lawyer practising in Moscow.

3. The Government were represented initially by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr A. Fedorov.

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

5. On 26 April 2016 a deputy mayor of Moscow approved a march from Samotechnaya Square to Suvorovskaya Square and a meeting in Suvorovskaya Square to be held on 1 May 2016 from 5.30 to 7.30 p.m., with 400 people expected to take part. The aim of the public event was "to

draw the attention of Russian workers to the need to show solidarity and fight for labour rights on Spring and Labour Day".

6. On the same day the organisers of the event posted on Facebook an invitation to all "left, anarchist, feminist and LGBT groups" to join the event.

7. On 1 May 2016 the applicant, an LGBT activist, joined the public event as the coordinator of the LGBT column. According to him, he chanted anti-discrimination slogans such as "No discrimination on grounds of sex and sexual orientation", "Labour rights for all" and others through a loudspeaker.

8. At 7 p.m., after the end of the public event, the applicant was taken to a police station, where he remained until 8.30 p.m.

9. Police reports dated 1 May 2016 stated that the applicant had participated in a public event that had not received official approval. He had been part of a group of about six people chanting "Stop abuse by cops" and "Down with the police State". He had not complied with repeated requests by the police to stop and had continued to attract people's attention with his behaviour.

10. On the same day the applicant was charged with a breach of the established rules for the conduct of public events, an offence under Article 20.2 § 5 of the Code of Administrative Offences CAO (hereafter "the CAO").

11. On 30 June 2016 the Meshchanskiy District Court of Moscow convicted the applicant as charged and fined him 10,000 Russian roubles (RUB, about 140 euros). The court held as follows:

> "It appears from the material in the case file that at about 7 p.m. on 1 May 2016 [the applicant] took part in a public event in the form of a meeting in Suvorovskaya Square in Moscow. The meeting had not been notified to or received the approval of the executive authorities of the city of Moscow. He did not comply with repeated requests by the police to stop the event. He therefore breached [the Public Events Act].
>
> ...
>
> The arguments by [the applicant] and his counsel that the march and the meeting of 1 May 2016 in Suvorovskaya Square had received the official approval of the executive authorities are unconvincing. It appears from a letter from [the Moscow authorities] that the executive authorities had approved a march from Samotechnaya Square ... to Suvorovskaya Square from 5.30 to 6.30 p.m. on 1 May 2016 and a meeting in Suvorovskaya Square from 6 to 7 p.m. The declared aim of that public event was "to draw the attention of Russian workers to the need to show solidarity and fight for labour rights on Spring and Labour Day". [The applicant's] slogans did not correspond to the aim of the notified public event.
>
> It clearly follows ... that [the applicant] participated in a public event in the form of a meeting that had not received official approval ...
>
> In such circumstances, the court concludes that [the applicant's] guilt in committing an administrative offence under Article 20.2 § 5 [of the CAO] has been established and proven."

12. The applicant appealed. In his submissions, he argued, in particular, that he had taken part in a public event that had received official approval. The police had not proved that he had chanted slogans that had not corresponded to the aims of the approved event. He asserted that he had not chanted any slogans. The organisers of the event had not made any complaints against him.

13. On 26 August 2016 the Moscow City Court upheld the conviction on appeal. It held as follows:

> "It appears from the material in the case file that at about 7 p.m. on 1 May 2016 [the applicant], as part of a group of six people, took part in a meeting [in Suvorovskaya Square] that had received the approval of the Moscow government and that was held with the aim of drawing the attention of Russian workers to the need to show solidarity and fight for labour rights on Spring and Labour Day. During the meeting he chanted the extraneous slogans "Stop abuse by cops" and "Down with the police State".
>
> ...
>
> [The applicant's] actions have been correctly characterised as falling under Article 20.2 § 5 of [the CAO].
>
> ... The organisers of the public event of 1 May 2016 in Suvorovskaya Square in which [the applicant] took part complied with the statutory notification requirement ... the Moscow government approved a march from Samotechnaya Square ... to Suvorovskaya Square from 5.30 to 6.30 p.m. on 1 May 2016 and a meeting on Suvorovskaya Square from 6.30 to 7.30 p.m., with 400 people expected to take part and with the declared aim of "drawing the attention of Russian workers to the need to show solidarity and fight for labour rights on Spring and Labour Day".
>
> Although the District Court judge incorrectly applied the substantive law, that error did not lead to the taking of a decision that was incorrect in substance. It was certainly established during the judicial proceedings that during the meeting [the applicant] had chanted slogans that had not corresponded to its aims as approved by the Moscow government. He therefore breached the requirements of section 6(2) [of the Public Events Act] and his actions are punishable under Article 20.2 § 5 of [the CAO]."

RELEVANT LEGAL FRAMEWORK

14. For a complete summary of the domestic provisions on the rules for the notification and conduct of public events, relevant judicial review procedures and liability for breaches committed in the course of public events, see *Lashmankin and Others v. Russia* (nos. 57818/09 and 14 others, §§ 216-312, 7 February 2017).

15. The following legal provisions are of particular relevance to the present case.

16. The Federal Law on Gatherings, Meetings, Demonstrations, Processions and Pickets, no. FZ-54 of 19 June 2004 ("the Public Events Act") provides that no earlier than fifteen days and no later than ten days before the intended public event, its organisers must notify the competent regional or municipal authorities of the date, time, location or itinerary and

purposes of the event, its type, the expected number of participants, and the names of the organisers. No notification is required for a "solo" demonstration involving one person (section 5(4)(1) and section 7(1) and (3)).

17. It is prohibited to hold a public event if no notification was submitted within the time-limits established by the Act (section 5(5)).

18. The participants in the public event are entitled to:

(1) participate in discussions, decision-making and other collective actions in accordance with the aims of the event;

(2) use during the event various banners and other means of public expression of personal or common opinion, as well as campaign material not banned by the law of the Russian Federation (section 6(2)).

19. The participants in the public event must:

(1) comply with lawful instructions of the organisers, representatives of the competent regional or municipal authorities, and law-enforcement officials;

(2) maintain public order and follow the programme of the public event (section 6(3)).

20. In its Ruling no. 3089-O of 26 November 2018, adopted after the facts of the present case, the Constitutional Court held that the obligation to maintain public order established by section 6(3) of the Public Events Act may be breached, in particular, if the participants of public events use banners or other means of public expression of opinion or campaign material banned by the law of the Russian Federation. Banners or other means of public expression of opinion may not be found to be in breach of the law of the Russian Federation on the sole ground that they do not correspond to the declared aims of the public event.

21. Article 20.2 § 5 of the Code of Administrative Offences ("the CAO") provides that a breach of the established rules for the conduct of public events committed by a participant is punishable by a fine of RUB 10,000 to 20,000 or up to forty hours of community work.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 10 AND 11 OF THE CONVENTION

22. The applicant complained that he had been fined for expressing his opinion during a public event. He alleged a violation of his right to freedom of expression and peaceful assembly, guaranteed by Articles 10 and 11 of the Convention respectively. The relevant provisions read as follows:

Article 10

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Article 11

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

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. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

23. The Court will examine the applicant's complaints under Article 10 of the Convention, taking into account, where appropriate, the general principles it has established in the context of Article 11 of the Convention (see *Fáber v. Hungary*, no. 40721/08, § 19, 24 July 2012).

A. Admissibility

24. 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. Submissions by the parties

25. The applicant submitted that the interference with his right to freedom of expression and assembly had not been prescribed by law. Firstly, the Public Events Act did not contain a prohibition on shouting slogans that did not correspond to the declared aims of the public event. The interpretation given to the Public Events Act by the courts in the present case had been unforeseeable. Moreover, domestic law did not give the

police the power to assess whether a certain slogan corresponded to the declared aims of a public event. Secondly, the applicant argued that if shouting slogans that had not corresponded to the declared aims of the event had made him a participant in another public event – as found by the District Court – his public event had been a solo demonstration that did not require prior notification.

26. The applicant further submitted that the interference had not been proportionate to the legitimate aims pursued. The domestic courts had not made an assessment of proportionality while examining his case. The only reason for his arrest and conviction had been the allegation that the slogans he had shouted had not corresponded to the declared aims of the public event. The domestic authorities and the Government had never claimed that he had presented any danger to public order or caused any disturbances. He had taken part in a public event that had been duly notified to the authorities and approved, so they had been warned in advance and prepared to maintain public order. While denying having shouted "Stop abuse by cops" and "Down with the police State", the applicant submitted that the Government had not explained why those slogans were inacceptable in a democratic society. They were an opinion on a matter of public interest and did not contain any incitement to violence or discrimination.

27. The Government submitted that the interference with the applicant's right to freedom of expression and assembly had been prescribed by law, had pursued a legitimate aim and had been necessary in a democratic society. While taking part in a public event that had received official approval, the applicant had chanted slogans that had not corresponded to the declared aims of that event. He had thereby simultaneously taken part in another (unlawful) public event which had differed by its aims from the approved event and which had not been notified to the authorities. He had not complied with the order of the police to respect the programme of the approved public event and stop the unlawful public event. He had therefore breached the obligations of the participants in public events specified in section 6(3) of the Public Events Act (see paragraph 19 above). Given that he had been convicted of an administrative offence for a breach of the established rules for the conduct of public events rather than for the content of his slogans, there had been no violation of his right to freedom of expression.

2. The Court's assessment

(a) Existence of an interference

28. The Court notes at the outset that the applicant, while acknowledging his participation in the public event in question and that he had shouted slogans, denied shouting the specific slogans "Stop abuse by cops" and "Down with the police State". The domestic courts established on

the basis of the available evidence that he had shouted those slogans. In the present case, the Court does not see any reason to question the factual findings of the domestic courts. There was therefore a link between the measures taken against the applicant and his exercise of the right to freedom of expression and assembly (see *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 109, 15 November 2018, and contrast *Kasparov and Others v. Russia*, no. 21613/07, § 72, 3 October 2013). The Court finds that the applicant's conviction for an administrative offence for shouting those slogans must be regarded as constituting an interference with the exercise of his right to freedom of expression (compare *Zülküf Murat Kahraman v. Turkey*, no. 65808/10, § 45, 16 July 2019; *Müdür Duman v. Turkey*, no. 15450/03, § 30, 6 October 2015; and *Stojanović v. Croatia*, no. 23160/09, § 39, 19 September 2013).

29. The Court therefore concludes, and it has not been disputed between the parties, that the applicant's conviction for an administrative offence amounted to an interference with his right to freedom of expression interpreted in the light of his right to freedom of assembly.

30. Such interference will constitute a breach of Article 10 unless it is "prescribed by law", pursues one or more of the legitimate aims referred to in Article 10 § 2 and is "necessary in a democratic society" to achieve those aims.

(b) "Prescribed by law"

31. The Court takes note of the applicant's argument that the interference with his right to freedom of expression had not been "prescribed by law". It reiterates that the expression "prescribed by law" in the second paragraph of Article 10 requires that the impugned measure should have a legal basis in domestic law. It also refers to the quality of the law in question, which should be accessible to the person concerned and foreseeable as to its effects (see *Delfi AS v. Estonia* [GC], no. 64569/09, § 120, ECHR 2015).

32. The Court notes that the applicant was convicted of an administrative offence under Article 20.2 § 5 of the CAO, which punishes breaches of the established rules for the conduct of public events committed by a participant. That provision uses the "blanket reference" technique in so far as the constituent elements of the offence are determined by reference to the Public Events Act, which establishes the rules for the conduct of public events.

33. The applicant argued that the Public Events Act did not contain any prohibition on shouting slogans that did not correspond to the declared aims of a public event. In so far as the Government argued that applicant's conviction had been lawful because, by shouting slogans that had not corresponded to the declared aims of the approved public event, he had participated in a separate public event that had not received official

approval, the Court notes that the District Court's findings to that effect (see paragraph 11 above) were rejected by the City Court. The City Court found that the District Court had incorrectly applied domestic law and that the applicant had taken part in a public event that had received official approval (see paragraph 13 above). It follows that the legal provisions prohibiting participation in public events that had not been notified or had not received official approval could not serve as a legal basis for the applicant's conviction.

34. The City Court referred to section 6(2) of the Public Events Act, which allows participants to use any banners or other means of expression not prohibited by law (see paragraphs 13 and 18 above). The Court notes that the City Court did not explain why it considered that the slogans "Stop abuse by cops" and "Down with the police State" chanted by the applicant were prohibited by law. Nor did it refer to any domestic legal provision prohibiting such slogans or, more generally, prohibiting participants from chanting slogans that did not correspond to the declared aims of a public event. The domestic courts did not therefore convincingly demonstrate that by shouting the slogans in question the applicant had committed a breach of the established rules for the conduct of public events punishable under Article 20.2 of the CAO.

35. The Court also observes that the Government have not submitted any evidence of established domestic practice interpreting the prohibition contained in section 6(2) of the Public Events Act as covering slogans that did not correspond to the declared aims of a lawful public event. The Court notes in this connection that in its later Ruling of 26 November 2018 the Constitutional Court explained that banners or other means of public expression of opinion could not be found to be in breach of the law of the Russian Federation on the sole ground that they did not correspond to the declared aims of a public event (see paragraph 20 above).

36. Lastly, in so far as the Government argued that the applicant's conviction had been lawful because he had breached the requirements of section 6(3) of the Public Events Act (see paragraph 19 above), the Court notes that the domestic courts did not rely on section 6(3) in their judgments. In such circumstances, the Court does not take the additional, *ex post facto* justifications offered by the Government into consideration (compare *Fáber,* cited above, § 49).

37. The Court concludes from the above that the applicant's conviction for shouting slogans that did not correspond to the declared aims of the lawful public event in which he participated did not have a basis in domestic law.

38. The Court finds that the interference with the applicant's right to freedom of expression and assembly was not "prescribed by law" and that there has therefore been a violation of Article 10 of the Convention interpreted in the light of Article 11.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

39. The applicant complained under Article 6 of the Convention that the administrative-offence proceedings against him had been unfair because there had been no prosecuting party. Having regard to the facts of the case, the submissions of the parties and its findings under Article 10, the Court considers that there is no need to give a separate ruling on the admissibility and the merits of the complaint under Article 6 (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant asked for compensation in respect of non-pecuniary damage, and left it to the Court to determine the amount.

42. The Government submitted that the claim was unsubstantiated.

43. The Court awards the applicant 7,500 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

44. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

45. 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 complaint concerning the applicant's conviction for shouting slogans during an assembly admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds* that there is no need to examine the complaint under Article 6 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 20 July 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Paul Lemmens
President