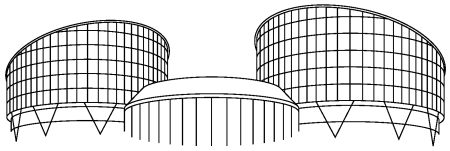

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF ANGIROV AND OTHERS v. RUSSIA

(Application no. 30395/06)

JUDGMENT

STRASBOURG

17 April 2018

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

In the case of Angirov and Others v. Russia,

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

Helen Keller, *President,*
Pere Pastor Vilanova,
María Elósegui, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 27 March 2018,

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

PROCEDURE

1. The case originated in an application (no. 30395/06) 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 twenty-four Russian nationals, whose names and dates of birth are listed in the Appendix, on 8 July 2006.

2. The applicants were represented by Mr D. Agranovskiy, a lawyer practising in the Moscow Region. 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. On 25 November 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Events leading to the applicants' arrest and prosecution

4. The applicants were members of the National Bolsheviks Party.

5. On 14 December 2004 a group of about forty Party members, including the applicants, entered the waiting area of the President's Administration building in Moscow and locked themselves in an office on the ground floor.

6. They asked for a meeting with the President, the deputy head of the President's Administration Mr Surkov, and the President's economic advisor Mr Illarionov. They waved placards with "Putin, resign!" («Путин, уйди!») written on them through the window and distributed leaflets with a printed

address to the President that listed ten aspects in which he failed to respect the Russian Constitution, and a call for his resignation.

7. The intruders stayed in the office for one hour and a half until the police broke through the door and arrested them.

B. Criminal proceedings against the applicants

8. On 16 December 2004 the Khamovnicheskiy District Court of Moscow ordered the applicants' custody.

9. On 15 and 16 February 2005 the applicants were charged with participation in mass disorders, an offence under Article 212 § 2 of the Criminal Code. According to the statement of the charges, at 12.30 p.m. on 14 December 2004 forty Party members had effected an unauthorised entry into the reception area of the Administration of the President of the Russian Federation. They had pushed away the guards at the entrance, knocked over two metal detectors and occupied room no. 14 on the ground floor. They had locked themselves in and blocked the door with a heavy safe. Until the arrival of the police, the Party members, including the applicants, had waved anti-President placards through the office window, thrown out leaflets and chanted slogans calling for the President's resignation. They had stayed in the office for approximately one hour, destroyed office furniture and equipment and damaged the walls and the ceiling.

10. On 20 June 2005 thirty-nine persons, including the applicants, were committed for trial before the Tverskoy District Court of Moscow.

11. On 30 June 2005 the Tverskoy District Court held a preliminary hearing. The court ordered, in particular, that all defendants should remain in custody pending trial.

12. The trial started on 8 July 2005. Hearings were held on 11, 14, 27 and 29 July, 1, 3, 10, 12, 15, 19, 22, 23, 29 and 31 August, 1, 2, 5, 6, 7, 9, 12, 14, 16, 19, 20, 21, 23, 27 and 30 September, 3, 4, 6, 7, 10, 12, 17 and 24 October and 15, 16, 17, 18, 21 and 22 November 2005. Hearings often continued until late in the evening.

13. According to the applicants, the fast pace of the trial, coupled with the remand centre regulations prohibiting visits on weekends and allowing counsel to see no more than one client per day, prevented them from having a sufficient number of consultations with their counsel. On 1, 2 and 5 September 2005 the applicants asked the court that hearings be held less frequently. They complained that they were tired because on the hearing days they had to get up early. They could not consult a doctor as they left for the courthouse before the facility doctor's opening hours. They also often left the detention facility before breakfast and returned after supper. They did not therefore receive regular food. Nor could they have a walk in the exercise yard. Finally, they did not have sufficient time for meetings with counsel or relatives. The court rejected their requests and continued to schedule hearings almost every day.

14. On 19 September 2005 counsel unsuccessfully complained, relying on Article 6 § 3 (b) of the Convention, that because of the frequent hearings they did not have sufficient time to meet with the defendants and prepare their defence.

15. While in the courtroom the defendants were held in four metal cages. Counsel tables were placed at a distance of about 1.5 to 2 m from the cages. Police guards were stationed between the cages and the counsel tables. The applicants submitted a courtroom plan and photographs confirming that arrangement.

16. According to the applicants, in the courtroom they could confer with their counsel only during short (two to five minutes) breaks in the hearings. The guards allowed only two counsel to approach the cages at the same time. Given that there were thirty-nine defendants and twenty-four counsel, the defendants could not effectively discuss the case with their counsel. The guards remained near the cages all the time and could hear the applicants' consultations with their counsel.

17. The defendants asked the judge that conditions be provided in the courtroom for their confidential consultations with counsel. The prosecutor objected, claiming that the defendants could meet their counsel in private in the detention facility. The judge rejected the defendants' request, finding that the courtroom was not designed for confidential consultations with counsel. The defendants' meeting with counsel could be held in "some other places".

18. During the trial the applicants and their co-defendants stated that they had taken part in a peaceful protest against President Putin's politics. They had come to the President's Administration to meet the officials and hand over a petition that listed the President's ten failures to comply with the Constitution and contained a call for his resignation. They had entered the waiting area and, as the guards had attempted to stop them and had threatened them with violence, had locked themselves in an office on the ground floor. They had chanted slogans and distributed leaflets thereby expressing their opinion about important political issues. They denied destroying any furniture or offering resistance to the police. They claimed that the furniture had been destroyed by the guards and the police officers who had arrested them.

19. The guards and the police officers testified that the defendants had forced their passage into the building by knocking down two metal detectors and had locked themselves up in one of the offices. They had resisted the attempts to force the door. After the door had been forced, the witnesses had seen that the furniture in the office had been damaged. As the defendants had refused to leave the office, they had been dragged out by force.

20. Counsel for the defendants asked the guards questions about the names and positions of the persons who had given orders during the arrest operation, the number of persons involved in the arrest operation, the witnesses' exact positions and duties and about the substance of the orders they had received

from their superiors. The witnesses refused to reply referring to the confidential nature of that information.

21. Counsel asked the judge to take measures provided by law, such as a fine, in order to compel the witnesses to reply to the questions. They also asked that the questioning be continued in camera, given that confidential information was to be discussed. They argued that the questions were relevant and important for the defence because it was necessary to understand whether the police and the guards had acted within their powers. The judge rejected their requests, finding that there was no reason to believe that State secrets would be revealed during the questioning of the witnesses. In any event, the questions put by the defence were irrelevant.

22. On 8 December 2005 the Tverskoy District Court found the applicants and their co-defendants guilty of participation in mass disorders. It held as follows:

> "[The defendants], acting in conspiracy, committed serious breaches of public safety and order by disregarding established norms of conduct and showing manifest disrespect for society ... They effected an unauthorised entry into the reception area of the President of the Russian Federation's Administration building and took over office no. 14 on the ground floor... They then blocked the door with a heavy metal safe and conducted an unauthorised meeting, during which they waved the National Bolsheviks Party flag and placards, threw anti-[Putin] leaflets out [of windows] and issued an unlawful ultimatum by calling for the President's resignation, thereby destabilising the normal functioning of the President's Administration and preventing its reception personnel from performing their service duties, namely ... reception of members of the public and examination of applications from citizens of the Russian Federation ...
>
> While performing the above disorderly acts [the defendants] ... destroyed and damaged property in the offices of the reception area of the President's Administration building ..."

23. Given that the defendants had voluntary compensated the pecuniary damage caused by their actions and taking into account their positive references, the court sentenced the majority of them to various terms of imprisonment (ranging from one year and six months to three years) conditional on two or three years' probation. They were immediately released. Eight defendants, including five applicants (Mr Osnach, Mr Reznichenko, Ms Ryabtseva, Mr Tonkikh and Ms Chernova), were sentenced to terms of imprisonment ranging from two years to three years and six months without remission. The court found that those defendants could not be released on probation, taking into account their active role in the commission of the offence, negative references and the fact that some of them had been earlier charged with administrative or criminal offences which however did not result in convictions.

24. The applicants appealed. They complained, in particular, that their defence rights had been substantially curtailed. They also submitted that when determining the sentences the trial court had unlawfully taken into account the defendants' respective roles in the commission of the imputed offence, given

that the charges brought against them were identically phrased and that the role and actions of each defendant had not been detailed.

25. On 29 March 2006 the Moscow City Court upheld the conviction on appeal, finding that the charges had been brought in accordance with the procedure provided by law and the defence rights had been respected.

II. RELEVANT DOMESTIC LAW

26. Participation in mass disorder accompanied by violence, riots, arson, destruction of property, use of firearms or explosives or armed resistance to the authorities is punishable by three to eight years' imprisonment (Article 212 § 2 of the Criminal Code).

THE LAW

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

27. The applicants complained that their arrest, the detention pending trial and the sentence imposed on them at the end of the criminal proceedings had violated their right to freedom of expression under Article 10 of the Convention and their right to freedom of assembly under Article 11 of the Convention. These Articles 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."

A. Admissibility

28. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

29. The applicants submitted that their protest action had been a peaceful one. The participants had entered the President's Administration building with the aim of handing over a petition addressed to the President's Advisor and of drawing his attention to human rights violations in Russia. They had not destroyed any property; the property had been in fact damaged by the arresting police officers. The participants in the protest had moreover compensated the damage in full. In those circumstances, their arrest, remand in custody for a year and the sentences imposed on them had been disproportionate to any legitimate aim. They had been persecuted for their political opinion and their membership of an opposition association.

30. The Government submitted that the applicants, together with other members of the National Bolsheviks Party, had effected a forcible and unauthorised entry into the premises of the President's Administration, had held an unauthorised assembly there, had voiced unlawful demands for the President's resignation, had hampered the normal functioning of the President's Administration and had destroyed State property there. Their protest had not been peaceful and had amounted to a criminal offence of mass disorder. They had been therefore lawfully prosecuted for participation in mass disorder involving destruction of State property. Their arrest, detention and conviction had pursued the legitimate aim of investigating criminal offences and punishing those responsible and had been necessary in a democratic society.

31. The Court notes that it has already examined the case of the applicants' co-protestor and co-defendant Ms Taranenko and found that her pre-trial detention and the penalty imposed on her at the end of it amounted to an interference with her rights under Article 10 of the Convention interpreted in the light of Article 11 and that that interference was not necessary in a democratic society. In particular, the Court found that the actions of the police in arresting the protesters and removing them from the President's Administration's premises might be considered as justified by the demands of

the protection of public order. However, bearing in mind the length of the detention pending trial and the exceptional seriousness of the penalty imposed on Mr Taranenko, the pre-trial detention and the sanction were not proportionate to the legitimate aim pursued (see *Taranenko v. Russia*, no. 19554/05, §§ 68-97, 15 May 2014).

32. The Court sees no reason to reach a different conclusion in the present case. For the reasons stated in detail in *Taranenko* (cited above, §§ 76-79), it finds that the arrest of the protesters, including the applicants, and their removal from the President's Administration's premises by the police may be considered as answering a "pressing social need". On the other hand, for the reasons also stated in *Taranenko* (cited above, §§ 90-97), the Court finds that, although a sanction for the applicants' actions might have been warranted by the demands of public order, the lengthy period of detention pending trial and the long prison sentences imposed on them were not proportionate to the legitimate aim pursued. Indeed, like Ms Taranenko, the applicants in the present case were also remanded in custody for a year and were convicted either to long suspended prison sentences or to long prison sentences without remission which were actually served. It is significant in this connection that none of the applicants was accused of any use or threat of violence against individuals or infliction of any bodily harm to anyone. Nor did the domestic courts establish whether any of the applicants had personally participated in damaging State property or had committed any other reprehensible act. It is also significant that before the end of the trial the defendants compensated all the pecuniary damage caused by their protest action.

33. In view of the above, and especially bearing in mind the length of the pre-trial detention and the exceptional seriousness of the sanctions involved, the Court finds that the interference in question was not necessary in a democratic society.

34. There has therefore been a violation of Article 10 of the Convention interpreted in the light of Article 11 in respect of each applicant.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

35. The applicants submitted a number of complaints under Article 6 of the Convention referring to various aspects of their trial. They relied on Article 6 §§ 1 and 3 (a) – (d) of the Convention, which reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
>
> (b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him ...”

A. Admissibility

36. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

37. The applicants complained that the proceedings in their criminal case had fallen short of important guarantees of a fair hearing. They referred, in particular, to their confinement in metal cages during the court hearings and the intensive schedule of those hearings, and alleged that they had not had adequate time and facilities for the preparation of their defence and for confidential consultations with their counsel. They also complained that they had not been informed in sufficient detail about the nature and cause of the accusations against them as the charges had been identically phrased and the role and actions of each defendant had not been detailed. They further complained that their relatives and members of Parliament had not been permitted to represent them during the trial. The also alleged that the trial court had not taken measures to make witnesses reply to the questions put to them by the applicants’ counsel. Lastly, the applicants complained that the assessment of evidence by the domestic courts had been biased.

38. The Government submitted that the charges against all the defendants had been worded identically because they had been charged with participating in mass disorders. They had acted concertedly and with premeditation to achieve a common result. The role and personality of each of them had been however taken into account in the different sentences imposed on them. The Government further argued that the applicants’ complaints about the lack of adequate time and facilities for the preparation of their defence and for confidential consultations with their counsel had been unsubstantiated. The schedule of the court hearings had not been excessively intensive and there had been spare days when the applicants could rest, meet with their counsel and prepare their defence. The applicants had engaged professional counsel; they were not entitled under the domestic law to be represented by a relative or a member of Parliament in addition to being represented by a professional lawyer. The witnesses had been informed of their obligation to give testimony

and about the legal provisions imposing liability for false testimony or refusal to testify.

39. The Court reiterates that an accused's right to communicate with his lawyer without the risk of being overheard by a third party is one of the basic requirements of a fair trial in a democratic society; otherwise legal assistance would lose much of its usefulness (see *Sakhnovskiy v. Russia*, no. 21272/03, § 97, 5 February 2009, with further references).

40. The Court notes that the courtroom security arrangements used in the present case were similar to those which the Court had criticised in the cases of *Khodorkovskiy and Lebedev v. Russia* (nos. 11082/06 and 13772/05, §§ 646-47, 25 July 2013) and *Yaroslav Belousov v. Russia* (nos. 2653/13 and 60980/14, §§ 145-54, 4 October 2016). Like in those two cases, the courtroom arrangements in the present case (see paragraphs 15 to 17 above) made it impossible for the applicants to have confidential exchanges with their legal counsel, to whom they could only speak during short breaks and in close proximity to the police guards. It is significant that the use of the security installation was not warranted by any specific security risks or courtroom order issues but was a matter of routine. The trial court did not seem to recognise the impact of those courtroom arrangements on the applicants' defence rights, and did not take any measures to compensate for those limitations. Such circumstances prevailed for the entire duration of the first-instance hearing, which lasted for five months and during which most of the communication between the applicants and their lawyers took place in the courtroom (see paragraphs 12 to 14 above).

41. It follows that during the first-instance hearing the applicants suffered from unnecessary restrictions of their right to confidential communication with their lawyers, and that the secrecy of their communications was interfered with in a manner incompatible with Article 6 § 3 (c) of the Convention. There was therefore a breach of Article 6 §§ 1 and 3 (c) of the Convention on that account.

42. In view of this finding, the Court does not consider it necessary to address the remainder of the applicants' complaints under Article 6 §§ 1 and 3 of the Convention (see *Yaroslav Belousov*, cited above, § 154).

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

43. Lastly, the applicants complained under Article 3 of the Convention that they had been exhausted by the fast pace of the first-instance hearing. In particular, because of the busy hearing schedule they had not had enough sleep, regular food or outdoor exercise, had been unable to consult a doctor or meet relatives. Article 3 reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

44. The Court notes that first-instance hearing ended on 8 December 2005. The applicants lodged their application with the Court on 8 July 2006, that is to say more than six months later. The Court considers that the applicants did not comply with the six-month time-limit. It follows that this complaint has been introduced out of time and must be rejected, in accordance with Article 35 §§ 1 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicants claimed 1,000,000 euros (EUR) each in respect of non-pecuniary damage.

47. The Government submitted that the claims were excessive.

48. The Court awards the applicants EUR 12,500 each in respect of non-pecuniary damage.

49. Furthermore, the Court refers to its settled case-law to the effect that when an applicant has suffered an infringement of his rights guaranteed by Article 6 of the Convention, he should, as far as possible, be put in the position in which he would have been had the requirements of that provision not been disregarded, and that the most appropriate form of redress would, in principle, be the reopening of the proceedings, if requested (see, *mutatis mutandis*, *Öcalan v. Turkey* [GC], no. 46221/99, § 210 *in fine*, ECHR 2005-IV, and *Sakhnovskiy*, cited above, § 112). This applies to the applicant in the present case. The Court notes, in this connection, that Article 413 of the Code of Criminal Procedure provides a basis for the reopening of the proceedings if the Court finds a violation of the Convention.

B. Costs and expenses

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

C. Default interest

51. 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 concerning the alleged violations of the right to fair trial and alleged interference with the applicants' rights to freedom of expression and freedom of assembly admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of a violation of Article 10 of the Convention interpreted in the light of Article 11 of the Convention;

3. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention;

4. *Holds* that there is no need to examine the remaining complaints under Article 6 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay each applicant, within three months, EUR 12,500 (twelve 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 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 17 April 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Helen Keller
Deputy Registrar	President

APPENDIX

No.	Name	Year of birth	Place of residence
1.	Mr Vladimir Valeryevich Angirov	1985	Volgograd
2.	Mr Aleksey Vladimirovich Kolunov	1983	Moscow
3.	Mr Kirill Viktorovich Manulin	1985	Moscow
4.	Mr Sergey Yevgenyevich Reznichenko	1982	Moscow
5.	Ms Natalya Yuryevna Chernova	1980	Moscow
6.	Mr Ivan Stanislavovich Korolev	1982	Moscow
7.	Mr Semen Viktorovich Vyatkin	1984	Yekaterinburg
8.	Mr Aleksey Sergeyevich Zentsov	1982	Novosibirsk
9.	Ms Lira Nikolayevna Guskova	1982	Kazan
10.	Mr Ivan Fedorovich Drozdov	1984	the Moscow Region
11.	Mr Vladimir Yaapovich Lind	1981	St Petersburg
12.	Mr Mikhail Michaylovich Gangan	1986	Samara
13.	Mr Damir Safayevich Valeyev	1983	Moscow
14.	Mr Aleksey Petrovich Devyatkin	1987	Nizhny Novgorod
15.	Mr Yevgeniy Aleksandrovich Korolev	1985	Moscow
16.	Mr Denis Leonidovich Kumirov	1984	Samara
17.	Ms Yelena Michaylovna Mironycheva	1982	Nizhny Novgorod
18.	Mr Denis Sergeyevich Osnach	1982	the Kaliningrad Region
19.	Mr Yulian Sergeyevich Ryabtsev	1983	Nizhniy Novgorod
20.	Mr Yuriy Viktorovich Staroverov	1982	Nizhniy Novgorod
21.	Mr Aleksey Konstantinovich Tonkikh	1973	Orenburg
22.	Mr Vladimir Konstantinovich Tyurin	1984	Moscow
23.	Mr Maksim Leonidovich Fedorovykh	1980	the Sverdlovskiy Region
24.	Mr Sergey Yuryevich Ryzhikov	1983	Moscow