THIRD SECTION

**CASE OF RYABININA AND OTHERS v. RUSSIA**

*(Applications nos. 50271/06 and 8 others – see appended list)*

JUDGMENT

STRASBOURG

2 July 2019

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

In the case of Ryabinina and Others v. Russia,

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

 Paulo Pinto de Albuquerque, *President,* Helen Keller, María Elósegui, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 11 June 2019,

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

PROCEDURE

1.  The case originated in nine applications (nos. 50271/06, 4718/07, 24121/07, 7624/08, 53088/08, 64311/10, 6737/11, 74971/11 and 64746/13) 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 eleven Russian nationals, whose names and dates of birth are listed in the Appendix, on various dates listed in the Appendix.

2.  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. Some of the applicants were represented by lawyers, whose names are listed in the Appendix.

3.  The applicants complained, in particular, of a breach of their rights to freedom of expression and freedom of assembly. Some of the applicants also alleged the lack of an effective remedy in that respect or unlawful arrest.

4.  Between 11 March 2010 and 8 July 2014 notice of the above complaints were given to the Government and the remainder of the applications nos. 6737/11, 74971/11 and 64746/13 was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

5.  The list of applicants and the relevant details of the applications are set out in the appended table.

6.  The applicants complained of various restrictions imposed by the authorities on the location, time or manner of conduct of public events. Some applicants also alleged the lack of an effective remedy in that respect or unlawful arrest.

THE LAW

I.  JOINDER OF THE APPLICATIONS

7.  Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. LOCUS STANDI

8.  The Court notes that one of the applicants, Ms Yelena Zusyevna Ryabinina (application no. 50271/06), died and that her daughter, Ms Olga Mikhaylovna Ryabinina, expressed a wish to continue with the application.

9.  The Government submitted that the applicant’s daughter could not claim to be a victim of a violation of her mother’s rights under Articles 10 and 11 of the Convention, as those rights were non-transferable.

10.  The Court reiterates that where an applicant dies during the examination of a case his or her heirs may in principle pursue the application on his or her behalf (see *Jėčius v. Lithuania*, no. 34578/97, § 41, ECHR 2000‑IX). In a number of cases in which an applicant died in the course of the proceedings the Court has taken into account the statements of the applicant’s heirs or of close family members expressing the wish to pursue the proceedings before the Court (see, for instance, *Dalban v. Romania* [GC], no. 28114/95, § 39, ECHR 1999‑VI; *Hanbayat v. Turkey*, no. 18378/02, §§ 19-21, 17 July 2007; and *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, §§ 97-101, ECHR 2013). Furthermore, the Court recognised the right of the relatives of the deceased applicant to pursue the application concerning the exercise of the right to freedom of assembly (see *Szerdahelyi v. Hungary*, no. 30385/07, §§ 19-22, 17 January 2012, and *Nosov and Others v. Russia*, nos. 9117/04 and 10441/04, §§ 28‑30, 20 February 2014).

11.  In the present case the successor submitted documents confirming that she was the applicant’s close relative and heir. In these circumstances, the Court considers that the applicant’s daughter has a legitimate interest in pursuing the application in place of her late relative.

III.  ALLEGED VIOLATIONS OF ARTICLES 10 AND 11 OF THE CONVENTION

12.  The applicants complained of the restrictions imposed by the authorities on the location, time or manner of conduct of public events. They relied, expressly or in substance, on Article 11 of the Convention. Some applicants also invoked Article 10, however, this complaint falls to be examined under Article 11 (see *Lashmankin and Others v. Russia*, nos. 57818/09 and 14 others, §§ 363-365, 7 February 2017). Article 11 reads as follows:

“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

13.  In their additional observations in application no. 24121/07, the Government argued for the first time that the applicants had not exhausted the domestic remedies as they had not lodged a civil claim for compensation after their judicial review complaint against the refusal to approve the public event had been allowed and the refusal had been declared unlawful.

14.  The Court notes that the Government did not raise that objection in their initial observations on the admissibility and merits, and the question of the applicants’ failure to lodge a civil claim for compensation was raised only in their additional observations and submissions on just satisfaction. The Government did not indicate any impediment by which they had been prevented from referring, in their initial observations on the admissibility and merits of the case, to a failure by the applicants to lodge a civil claim. It follows that the Government are estopped from relying on a failure to exhaust domestic remedies (see *Khlaifia and Others v. Italy* [GC], no. 16483/12, §§ 51-54, 15 December 2016).

15.  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

16.  The applicants maintained their claims.

17.  The Government contested their arguments.

18.  The Court refers to the principles established in its case‑law regarding freedom of assembly (see *Kudrevičius* *and Others v. Lithuania* [GC], no. 37553/05, ECHR 2015, with further references).

19.  In the leading case of *Lashmankin and Others* (cited above, §§ 402‑78), the Court found a violation in respect of issues similar to those in the present case.

20.  Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the interference with the applicants’ freedom of assembly was based on legal provisions which did not meet the Convention’s “quality of law” requirements, and was moreover not “necessary in a democratic society”.

21.  There has therefore been a violation of Article 11 of the Convention in respect of each applicant.

IV.  ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

22.  The applicants in applications nos. 24121/07, 6737/11, 74971/11 and 64746/13 complained under Article 13 of the Convention in conjunction with Article 11 of the Convention that they did not have an effective remedy against the alleged violations of their freedom of assembly. Article 13 of the Convention reads:

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

23.  The Government contested that argument.

A.  Admissibility

24.  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

25.  In the recent case of *Lashmankin* *and Others* (cited above, §§ 342‑61) the Court found that the applicants had not had at their disposal an effective remedy to challenge refusals to approve the location or time of a public event or the manner in which it was to be conducted.

26.  The Court does not see any reason to reach a different conclusion in the present case. It therefore finds that the applicants did not have at their disposal an effective remedy in respect of their complaint under Article 11 of the Convention.

27.  There has accordingly been a violation of Article 13 in applications nos. 24121/07, 6737/11, 74971/11 and 64746/13.

V.  ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

28.  The applicants in applications nos. 6737/11 and 74971/11 complained that their arrest had been arbitrary and unlawful. They relied on Article 5 § 1, which reads:

“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:

(a)  the lawful detention of a person after conviction by a competent court;

(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;

(d)  the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e)  the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f)  the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.”

A.  Admissibility

29.  The Government submitted that Mr Kostyrin (application no. 74971/11) had lost victim status as the domestic courts had acknowledged a violation of his rights and had awarded him compensation. They argued that the amount of compensation was comparable to the amounts awarded by the Court in cases concerning short lengths of detention (they referred to *Sergey Solovyev v. Russia*, no. 22152/05, 25 September 2012, and *Tarakanov v. Russia*, no. 20403/05, 28 November 2013).

30.  The Court observes that Mr Kostyrin was detained from 9 p.m. on 18 March 2010 to 5.30 p.m. on 19 March 2010, that is for a little less than nineteen hours. The domestic courts then acknowledged that his detention had been unlawful and awarded him 20,000 Russian roubles (about 500 euros (EUR)). Having regard to the short duration of Mr Kostyrin’s detention, the Court considers that the amount awarded to him was not manifestly unreasonable in comparison to what the Court would have awarded in a similar case (see *Fortalnov and Others v. Russia*, nos. 7077/06 and 12 others, 26 June 2018). In the circumstances of the case, the Court considers that such a redress was sufficient and adequate, having the effect of rendering the applicant “no longer a victim” of the alleged violation.

31.  It follows that Mr Kostyrin’s complaint must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

32.  As regards Mr Khayrullin, the Court notes that his 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

33.  The Government submitted that Mr Khayrullin had been escorted to the police station under Article 27.2 of the Code of Administrative Offence because he had not had any identity documents on him and it had been therefore impossible to draw up the administrative offence report at the place where the offence had been discovered.

34.  The applicant maintained his claim.

35.  It has not been disputed that Mr Khayrullin was deprived of his liberty within the meaning of Article 5 § 1 of the Convention from 10.30 to 5.30 p.m. on 20 March 2010. The administrative offence report stated that he had been escorted to the police station for the purpose of drawing up an administrative offence report. Article 27.2 of the Code of Administrative Offences provides that a suspected offender could be escorted to a police station for the purpose of drawing up an administrative offence report only if such a report could not be drawn up at the place where the offence had been discovered. The Court is not convinced by the Government’s assertion that in the applicant’s case it was impossible because he did not have identity documents because that assertion is refuted by the documents in the case file. Indeed, none of the official documents mentions the alleged lack of identity documents or explain why it was not possible to draw the administrative report on the spot. The police report states that the applicant was brought to the police station after his identity documents had been checked; the administrative offence report indicates the applicant’s passport details; and the release certificate mentions that the applicant’s driving license was given back to him upon release. No obstacles to drawing up the report on the spot may be therefore discerned from the documents in the case file.

36.  It follows that the facts of the present case are similar to those in *Navalnyy and Yashin* *v. Russia* (no. 76204/11, §§ 68 and 93, 4 December 2014) and *Lashmankin and Others* (cited above, §§ 486-92), where a violation of Article 5 § 1 was found. The Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

37.  The Court finds that the escorting of the applicant to the police station did not comply with Russian law and was therefore not “lawful” within the meaning of Article 5 § 1.

38.  There has therefore been a violation of Article 5 § 1 of the Convention in application no. 6737/11.

VI.  OTHER ALLEGED VIOLATIONS OF THE CONVENTION

39.  Lastly, the Court has examined the other complaints submitted by the applicants in applications nos. 24121/07 and 53088/08 having regard to all the material in its possession and in so far as the complaints fall within the Court’s competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

VII.  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 applicants claimed various amounts in respect of non-pecuniary damage. Some applicants also claimed pecuniary damage in the amount of the fines they had paid.

42.  The Government submitted that the claims for non-pecuniary damage were excessive. As regards the claim for pecuniary damage, they submitted that the fines had been lawfully imposed on the applicants for administrative offences.

43.  The Court considers that there is a direct causal link between the violation of Article 11 found and the fines some of the applicants had paid following their conviction for the administrative offence (see, for similar reasoning, *Lashmankin and Others,* cited above, § 515). Regard being had to the documents in its possession, the Court considers it reasonable to award the sums indicated in the appended table in respect of pecuniary damage, plus any tax that may be chargeable.

44.  Further, having regard to the nature of the violations found in respect of each applicant, to the principle *ne ultra petitum*, and to its case‑law (see *Lashmankin and Others,* cited above, § 516), the Court awards the amounts indicated in the appended table in respect of non-pecuniary damage, plus any tax that may be chargeable.

B.  Costs and expenses

45.  Some applicants also claimed costs and expenses incurred before the domestic courts and/or those incurred before the Court, in particular legal and translation fees and postal expenses.

46.  The Government contested the claims.

47.  Regard being had to the documents in its possession and to its case‑law, the Court awards the applicants the amounts detailed in the appended table, plus any tax that may be chargeable to them on those amounts. The awards in applications nos. 4718/07, 24121/07 and 6737/11 are to be paid into the representatives’ bank accounts, as requested by the applicants.

C.  Default interest

48.  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.  *Decides* to join the applications;

2.  *Declares* the complaints about the alleged breach of the applicants’ rights to freedom of assembly, the lack of an effective remedy in that respect and the alleged unlawfulness of Mr Khayrullin’s taking to the police station admissible and the remainder of the applications inadmissible;

3.  *Holds* that there has been a violation of Article 11 of the Convention in all applications;

4.  *Holds* that there has been a violation of Article 13 of the Convention in applications nos. 24121/07, 6737/11, 74971/11 and 64746/13;

5.  *Holds* that has been a violation of Article 5 § 1 of the Convention in application no. 6737/11;

6.  *Holds*

(a)  that the respondent State is to pay the applicants, within three months, the amounts indicated in the appended table, plus any tax that may be chargeable to the applicants, to be converted intothe currency of the respondent State at the rate applicable at the date of settlement;

(b) that the award in respect of Ms Yelena Zusyevna Ryabinina should be paid to her heir Ms Olga Mikhaylovna Ryabinina. The awards in respect of costs and expenses in application nos. 4718/07, 24121/07 and 6737/11 are to be paid into the representatives’ bank accounts as indicated by the applicants;

(c)  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;

7.  *Dismisses* the remainder of the applicants’ claim for just satisfaction.

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

 Fatoş Aracı Paulo Pinto de Albuquerque
 Deputy Registrar President

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| No. | Application no. | Lodged on | ApplicantDate of birthPlace of residence | Represented by | LocationDate of the public event planned | Restrictions applied | Other measures applied | Final domestic decision (type of procedure)DateName of the court | Amount awarded for pecuniary damage per applicant(in euros)[[1]](#footnote-1) | Amount awarded for non‑pecuniary damageper applicant (in euros)[[2]](#footnote-2) | Amount awarded for costs and expensesper application(in euros)[[3]](#footnote-3) |
| 1. | 50271/06 | 20/11/2006 | **Yelena Zusyevna RYABININA**14/01/1955Moscow | Lawyers from the Memorial Human Rights Centre | In front of the Federal Security Service building in Moscow01/02/2006 | Proposal to change the location | Dispersal, arrest and conviction of an administrative offence (sentenced to a fine ofRUB 500) | Notification procedure:30/05/2006Moscow City Court;Administrative Offence Proceedings:06/06/2006Meshchanskiy District Court of Moscow | EUR 15, to be paid to the applicant’s heir,Ms Olga Mikhaylovna Ryabinina | EUR 5,000, to be paid to the applicant’s heir, Ms Olga Mikhaylovna Ryabinina | EUR 5,800, to be paid to the applicant’s heir, Ms Olga Mikhaylovna Ryabinina |
| 2. | 4718/07 | 28/11/2006 | **Lev Aleksandrovich PONOMAREV**02/09/1941Moscow**Mikhail Aleksandrovich KRIGER**23/02/1960Moscow**Mikhail Yakovlevich SHNEYDER**19/09/1948Moscow | Ms O. Mikhaylova, Mr V. Prokhorov, andMr V. Shukhardin | In front of the Federal Security Service building in Moscow01/02/2006 | Proposal to change the location | Dispersal and arrest; administrative offence proceedings were brought but later discontinued  | Notification procedure:30/05/2006Moscow City Court;Administrative Offence Proceedings:19/05/2006Meshchanskiy District Court of Moscow |  | EUR 7,500 to each applicant | EUR 5,000 to be paid to the representatives jointly |
| 3. | 24121/07 | 27/03/2007 | **Lev Aleksandrovich PONOMAREV**02/09/1941Moscow**Yuriy Vadimovich SAMODUROV**27/09/1951Moscow**Mikhail Aleksandrovich KRIGER**23/02/1960Moscow**Mikhail Yakovlevich SHNEYDER**19/09/1948Moscow | Ms K. Moskalenko, Ms A. Stavitskaya, Ms S. Davydova andMr V. Shukhardin | Solovetskiy Stone Memorial in central Moscow03/09/2006 | Proposal to change the date | Dispersal, arrest and conviction of administrative offences(Mr Ponomarev was sentenced to a fine of RUB 2,000 and three days’ administrative detention; Mr Samodurov and Mr Kriger were sentenced to fines of RUB 500 each; andMr Schneider was sentenced to a fine of RUB 1,000)  | Notification procedure:20/11/2006Taganskiy District Court of Moscow;Administrative Offence Proceedings:28/09/2006; 17/10/2006 and 07/11/2006Tverskoy District Court of Moscow | Not claimed | EUR 7,500 to each applicant | EUR 5,000 to be paid to the representatives jointly |
| 4. | 7624/08 | 19/12/2007 | **Aleksey Ivanovich KANURIN**03/12/1954Moscow |  | Centre of Moscow04/11/2006 | Refusal to approve the event |  | Notification procedure:21/06/2007Moscow City Court | Not claimed | Not claimed | Not claimed |
| 5. | 53088/08 | 19/09/2008 | **Mikhail Nikolayevich SHARABANOV**23/03/1988Nizhniy Novgorod | Mr S. Shimovolos | Lenin Square in Nizhniy Novgorod10/11/2007 | Proposal to change the date | Escorting to the police station, administrative offence proceedings were brought but later discontinued | Notification procedure:25/03/2008Nizhniy Novgorod regional Court;Administrative Offence Proceedings:17/01/2008Kanavinskiy District Court of Nizhniy Novgorod | Not claimed | Not claimed | Not claimed |
| 6. | 64311/10 | 07/10/2010 | **Natalya Andreyevna PELETSKAYA**12/02/1990Moscow | Mr K. Terekhov | Centre of Moscow20/03/2010 | Proposal to change the location | Dispersal, arrest and conviction of an administrative offence (sentenced to a fine ofRUB 500) | Notification procedure:12/11/2010The Moscow City CourtAdministrative Offence Proceedings:24/05/2010Tverskoy District Court of Moscow | Not claimed | EUR 7,500 | EUR 2,500 |
| 7. | 6737/11 | 03/12/2010 | **Vadim Vilyevich KHAYRULLIN**27/01/1972Kaliningrad | Mr E. Markov | Centre of Kaliningrad20/03/2010 | Proposal to change the location or date | Escorting to the police station and conviction of an administrative offence (sentenced to RUB 1,000  | Administrative Offence Proceedings:20/08/2010Leningradskiy District Court of KaliningradCivil claim against the refusal to approve the event and the arrest:18/05/2011The Kaliningrad Regional Court | EUR 26 | EUR 10,000 | EUR 3,700  |
| 8. | 74971/11 | 01/11/2011 | **Aleksandr Vladimirovich KOSTYRIN**24/12/1944Svetlogorsk |  | Centre of Kaliningrad20/03/2010 | Proposal to change the location or date | arrest | Civil claim against the refusal to approve the event and the arrest:08/06/2011The Kaliningrad Regional Court | Not claimed | Not claimed | Not claimed |
| 9. | 64746/13 | 10/11/2010 | **Yevgeniy Nikolayevich LABUDIN**09/03/1962Kalinigrad |  | Centre of Kaliningrad20/03/2010 | Proposal to change the location or date | Arrest and conviction of an administrative offence  | Administrative Offence Proceedings:19/07/2010Leningradskiy District Court of Kaliningrad | Not claimed | Not claimed | Not claimed |

1. .  Plus any tax that may be chargeable. [↑](#footnote-ref-1)
2. .  Plus any tax that may be chargeable to the applicants. [↑](#footnote-ref-2)
3. .  Plus any tax that may be chargeable to the applicants. [↑](#footnote-ref-3)