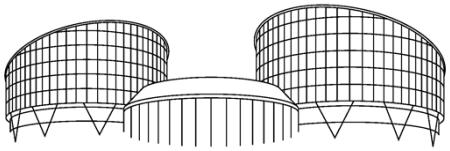

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF YEZHOV AND OTHERS v. RUSSIA

(Application no. 22051/05)

JUDGMENT

Art 10 • Freedom of expression • Animus toward anti-government views in judgment imposing prison sentences, without individualised assessment, on protestors who occupied and damaged ministry premises

STRASBOURG

29 June 2021

FINAL

29/09/2021

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

In the case of Yezhov and Others v. Russia,

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

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

Having regard to:

the application (no. 22051/05) 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 three Russian nationals, Mr Sergey Aleksandrovich Yezhov, Mr Oleg Aleksandrovich Bespalov and Mr Grigoriy Anatolyevich Tishin ("the applicants"), on 18 May 2005;

the parties' observations;

Having deliberated in private on 16 March 2021 and 1 June 2021,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The main issue in the present case is whether the applicants' prosecution and conviction resulting from their participation in a protest action breached their rights under Articles 10 and 11 of the Convention. In 2004 the applicants, who were at that time members of an association (the National Bolshevik Party), participated in a public protest against the introduction of a new law replacing social benefits in kind with a meagre amount of monetary compensation. They were prosecuted and convicted for taking over the offices of the Ministry of Health and Social Development in Moscow during the protest.

THE FACTS

2. The applicants were born in 1985, 1977 and 1986 respectively. They were represented, respectively, by Mr D.V. Agranovskiy, Mr V.V. Varivoda and Mr D.V. Sirozhidinov, lawyers practising in Moscow.

3. The Government were represented initially by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and, most recently, by Mr A. Fedorov, Head of the Office of the

Representative of the Russian Federation to the European Court of Human Rights.

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

I. BACKGROUND INFORMATION

A. Events in issue

5. In 2004, at the time of the events leading to their conviction, the applicants were members of the association, National Bolshevik Party ("the NBP").

6. On 2 August 2004 a group of about thirty members of the NBP gathered in front of the Ministry of Health and Social Development ("the Ministry") to protest against the introduction of a law, prepared by the Ministry transforming social benefits in kind (including free use of public transport, significant discounts on residential utilities, free local telephone service, free medication, free annual treatment at sanatoriums and health resorts, free prosthetic devices and wheelchairs for people with disabilities, guaranteed employment for people with disabilities, and a variety of other services) received by pensioners, war veterans, people with disabilities, victims of Soviet-era political repression, survivors of the Second World War siege of Leningrad, and Chernobyl clean-up workers (representing in total approximately 27% of the population at the relevant time) into monetary compensation ranging from 300 to 1,550 Russian roubles (RUB) a month (approximately 8 to 45 euros at the 2004 exchange rate). The draft law had been prepared by the Ministry and was at that time being debated in the Russian Parliament.

7. The NBP members were dressed in emergency-services uniforms. They pushed the security guard out of the way and forced entry into the building of the Ministry, ran up to the second and third floors and occupied four offices, telling the employees who were working in them to leave because "emergency services training exercises" were taking place. They then nailed the doors shut from the inside using nail guns and blocked them with office furniture. They subsequently waved NBP flags out of the office windows, threw out leaflets and chanted slogans calling for the resignation of the Minister for Health at that time. They also set off firecrackers and threw a portrait of the President of Russia out of the window. The intruders stayed in the office for about an hour until the police broke through the doors and arrested them.

B. Criminal proceedings against the applicants

8. On 5 August 2004 the applicants were charged with a gross breach of public order committed by an organised group and involving the use of weapons, an offence under Article 213 § 2 of the Criminal Code. On the same date the Zamoskvoretskiy District Court of Moscow ordered their detention on the grounds that they were suspected of an especially serious offence and might abscond, obstruct the investigation of the criminal case or reoffend.

9. On 10 and 11 August 2004 the applicants were additionally charged with intentional destruction and degradation of others' property in public places (Article 167 § 2 of the Criminal Code).

10. During the trial, the applicants stated that they had taken part in a peaceful protest against the abolition of social benefits. They stated that they had not intended to cause disorder; rather, they had pursued political and social goals and had only resorted to extravagant measures to draw attention to their cause. They denied destroying any furniture or using or threatening violence against Ministry employees.

11. The court read out the testimony of a security guard at the Ministry which stated that he had been scared as he had thought that an armed siege of the building was taking place. The applicants had pushed him when he had tried to stop them; they had run past the reception area and up to the higher floors. The superintendent of the Ministry building testified that she had called the police after learning that a group of young people in respirators were trespassing in the building. Six Ministry employees and a visitor to the Ministry that day, Mr D., testified about the manner in which the applicants had occupied the building. Two of the employees and Mr D. stated that they had been frightened because they had thought that terrorists were taking over the building. Four other employees testified that they had left their offices when the applicants told them that emergency services training exercises were taking place. None of the witnesses reported having been injured.

12. On 20 December 2004 the Tverskoy District Court of Moscow ("the District Court") found the applicants guilty of disorderly acts (gross breach of public order) and intentional destruction and degradation of others' property in public places. It held as follows:

> "... In the end of July - early August 2004 the unidentified "leaders" of unofficial NBP movement decided to hold an unauthorised protest action in front of the Ministry of Health in connection with introduction of a law transforming social benefits in kind and under pretence of expressing protests against social reforms and abolition of benefits.
>
> ...
>
> According to their plan, in order to force their way unlawfully into the government building and hold the above protest action [the applicants] had purchased and

prepared camouflage and other work uniforms with the insignia of the Ministry of Emergency Situations of the Russian Federation, respirators, two nail guns with at least twenty pellets and dowels, iron brackets, sticks, flagpoles, firecrackers, flags and anti-government leaflets

...

The accused Yezhov testified that.... they had been throwing leaflets out of the windows, chanted slogans showing their negative attitude to the leaders of the State and also against the Minister of Health, "Zurabov – the enemy of people", "Lay off Zurabov". ... He further testified that the protest was spontaneous, he had not received any instruction from anyone as to what had to be done inside of the Ministry's building.

...

Through their actions the defendants ... seriously breached public order and significantly harmed the public interest by destabilising the work of a public institution for an extended period of time and by chanting anti-government slogans. They showed a manifest lack of respect for society and State authority by forcing employees of the Ministry of Health and Social Development out of their offices and by throwing a portrait of the President of the Russian Federation out of the window of a public institution ... They used nail guns, which might have caused bodily injuries [to Ministry employees] and threw firecrackers out of the windows, creating a risk of physical harm to the citizens and cars in the street. Therefore, the court concludes that the defendants committed disorderly acts.

The defendants committed criminal acts as an organised criminal group which was highly structured, consisting of a large number of members and supporters of an unofficial National Bolshevik movement, who gathered together to commit the crimes in question ...

... the defendants' arguments that they had no intention of causing disorder and that their unlawful actions were motivated by their resentment towards the draft law under discussion and by their political views are unsubstantiated. The defendants, who are members of an organised criminal group, armed themselves with nail guns, nails, firecrackers and other objects, forcibly entered the building of the Ministry and ... deliberately damaged and destroyed property. This shows that they had the intention of causing disorder.

The court is not convinced by the defendants' argument that the doors of offices nos. 270 and 318 were damaged by [the police] and that the defendants were not responsible for that damage. It has been established that the doors had already been damaged before the arrival of the police ... as the defendants had nailed them shut ... Moreover, [the police] had to break open the doors to stop the unlawful actions of the members of the organised criminal group ..."

13. The District Court sentenced each applicant to five years' imprisonment. It also ordered the applicants to pay RUB 147,317 (approximately 4,000 euros at that time) to the Ministry in compensation for the damage sustained.

14. The applicants appealed. In particular, they complained that they had been convicted for taking part in a peaceful protest against the abolition of social benefits in Russia. They had not shown a lack of respect for society. Nor had they used or threatened violence. The third applicant also argued

that nail guns could not be regarded as weapons. They had been used to nail the doors shut rather than to injure or threaten people. The second applicant referred to Article 29 (freedom of expression) and Article 30 (freedom of peaceful assembly) of the Constitution.

15. On 29 March 2005 the Moscow City Court ("the appeal court") upheld the judgment on appeal. The relevant part of the judgment reads as follows:

> "[The defendants' arguments] that they did not intend to cause disorder and that they participated in a peaceful political protest action are unfounded and cannot exempt them from responsibility for [their] disorderly acts. By choosing to use such methods to express themselves, the participants in the protest action understood that their actions were breaching the established rules of conduct in society, disturbing citizens' peace and the work of a public institution ... Therefore, the appeal court agrees with the findings of [the District Court] that the defendants seriously breached public order and showed a manifest lack of respect for society."

16. The appeal court also upheld the District Court's conclusions that nail guns and firecrackers could be regarded as weapons, that the defendants rather than the police had been responsible for the damage to property and that their actions, in addition to destabilising the work of the Ministry, had resulted in significant pecuniary losses for it.

17. The appeal court found, however, that the sentence handed down was too severe. The District Court had not taken into account that the first applicant (Mr Yezhov) was of frail health and studied at a university, that the third applicant (Mr Tishin) was a minor, that none of the defendants had a criminal record, or that all of them had good references. It reduced the first and third applicants' sentences to two years and six months' imprisonment, and the second applicant's sentence to three years' imprisonment, which also included four months of the applicants' detention on remand (between 2 August and 20 December 2004).

II. RELEVANT LEGAL FRAMEWORK

A. Code of Criminal Procedure of the Russian Federation

18. Article 91 (Grounds for apprehension arrest of a suspect) of the Code of Criminal Procedure, as in force at the material time, provided as follows:

> "1. An officer involved in a pre-investigation inquiry or an investigator is empowered to arrest a person under suspicion of a criminal offence punishable by a prison term in the following circumstances:
>
> (1) where the person has been apprehended during or immediately after committing the offence ..."

B. Criminal Code of the Russian Federation

19. Article 213 of the Criminal Code, as in force at the material time, provided as follows:

> "1. Hooliganism, that is, a gross breach of public order manifested in clear contempt of society and committed with the use of weapons or articles used as weapons ...
>
> 2. The same offence committed by a group of persons by previous agreement, or by an organised group, or in connection with resistance to a representative of authority or to any other person who fulfils the duty of protecting public order or suppressing a breach of public order shall be punishable by deprivation of liberty for a term of up to seven years."

20. Article 167 as in force at the material time provided as follows:

> "1. Deliberate destruction of property or infliction of damage on property, if these actions caused significant damage ...
>
> 2. The same acts committed in the course of breaching public order, by way of arson, explosion or in any other dangerous manner ..., shall be punishable by compulsory labour for a term of up to five years or by deprivation of liberty for the same term."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

21. The applicants complained that their prosecution and conviction for expressing of their opinion against the abolition of social benefits had violated Article 10 of the Convention, which 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.

A. Admissibility

22. The Court further 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

1. Submissions by the parties

23. The applicants contended that the detention on remand of Mr Yezhov had interfered with, *inter alia*, his rights under Article 10 and that it had not been justified, as it had been based solely on the fact that he did not have a permanent place of residence in Moscow. Furthermore, the applicants submitted that their detention on remand had not been justified because their case had not been particularly complex, they had not been members of a "mafia-type" organised criminal group, they had not resisted arrest and there had been no evidence that they would pursue criminal activities were they not to be detained. The applicants furthermore submitted that their chanting of non-offensive anti-government slogans should not have constituted a criminal offence and that the right to express opinion was provided for in the Russian Constitution. They pointed out that the repetitive reference in the domestic judgments to their acts as presenting inherent danger for the public had exposed bias of the authorities in respect of them and indicated that they had been persecuted for their political views. The applicants also argued that their punishment had been highly disproportionate to the severity of their crime, had had an adverse impact on the development of the civil society in Russia and had had a chilling effect on persons who had supported political opposition.

24. The Government submitted that the prosecution of the applicants for that criminal offence had not interfered with their freedom of expression and assembly. They further argued that the applicants had not been prosecuted for their political opinions or demands. They had been prosecuted for participating in mass disorder involving the destruction of State property. Their arrest, detention on remand, criminal prosecution and conviction had been prescribed by the domestic law and had pursued the legitimate aims of protecting public order, resuming the normal functioning of the Ministry of Health and Social Development and punishing those responsible. The sanctions imposed on them had been proportionate to the aims pursued.

2. The Court's assessment

25. The Court must determine whether there has been an interference with the applicants' right to freedom of expression and if so, whether it was "prescribed by law", pursued one or more of the legitimate aims set out in paragraph 2 of Article 10 of the Convention and whether it was "necessary in a democratic society" in order to achieve those aims.

(a) Whether there has been an interference with the exercise of the right to freedom of expression

26. The Court has previously held that protests can constitute expressions of opinion within the meaning of Article 10. Thus, protests against hunting involving physical disruption of the hunt or a protest against the extension of a motorway involving a forcible entry into the construction site and climbing into the trees to be felled and onto machinery in order to impede the construction works were found to constitute expressions of opinion protected by Article 10 (see *Steel and Others v. the United Kingdom*, 23 September 1998, § 92, Reports of Judgments and Decisions 1998-VII, and *Hashman and Harrup v. the United Kingdom* [GC], no. 25594/94, § 28, ECHR 1999-VIII). The arrest and detention of protesters therefore constituted an interference with the right to freedom of expression (ibid.). The arrest of students who, during an official ceremony at a university, shouted slogans and raised banners and placards protesting against various practices of the university administration which they considered to be anti-democratic also constituted an interference with the right to freedom of expression (see *Açık and Others v. Turkey*, no. 31451/03, § 40, 13 January 2009).

27. The applicants in the present case were arrested at the scene of a protest action against the government policies. They were part of a group of about thirty people who forced their way through identity and security checks into the Ministry of Health building and locked themselves in some of its offices, where they started to chant slogans and to distribute leaflets out of the windows. They were charged with participation in mass disorder in connection with their taking part in the protest action and remanded in custody for almost four months, at the end of which time they were convicted as charged and sentenced to two years and six months' (Mr Yezhov and Mr Tishin) and to three years' imprisonment (Mr Bespalov).

28. The Court considers that their arrest, detention and conviction constituted interference with the right to freedom of expression.

(b) Prescribed by law

29. The applicants did not contest that their arrest and subsequent criminal prosecution and conviction were "prescribed by law", in particular, by Article 91 of the Code of Criminal Procedure (see paragraph 18 above) and Articles 213 and 167 of the Criminal Code (see paragraphs 19 and 20 above). The Court will thus proceed on this basis.

(c) Legitimate aim

30. The Court notes that the applicants' protest disrupted the ordinary activities of Ministry employees and resulted in damage to State property. It

therefore finds that the arrest of the applicants, their detention on remand, criminal conviction and committal to prison pursued the legitimate aims of preventing disorder and protecting the rights of others (see *Steel and Others*, cited above, § 97).

(d) Necessary in a democratic society

31. The test of "necessity in a democratic society" requires the Court to determine whether the interference complained of corresponded to a "pressing social need". The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, and the Court looks at the interference complained of in the light of the case as a whole, including the content of the statement held against the applicant and its context. In particular, the Court must determine whether the reasons adduced by the national authorities to justify the interference were "relevant and sufficient", and whether the measure taken was "proportionate to the legitimate aims pursued" (see *Tatár and Fáber v. Hungary*, nos. 26005/08 and 26160/08, §§ 33-34, 12 June 2012, with further references).

32. As to whether the measures in issue corresponded to a "pressing social need", the Court notes that the applicants' protest concerned a topic of public interest, that is, the pending introduction of a controversial law and that they wished to draw the attention of their fellow citizens and public officials to their disapproval of it. The Court however considers that they did not have a right to enter a publicly owned property, such as the office building of the Ministry, in the manner that they did, to express their opinion (see, for similar reasoning, *Taranenko v. Russia*, no. 19554/05, §§ 77-78, 15 May 2014). The police were therefore justified in arresting the applicants and removing them from the premises of the Ministry, with a view to the protection of public order and the resumption of the Ministry's functions, and those actions appear proportionate to the aim pursued. Whether their criminal convictions also met a pressing social need will depend on the reasons provided by the national courts and the proportionality of the sentences.

33. The Court further notes that the applicants were convicted of a gross breach of public order as a result of their conduct during the protest. The District Court condemned the methods employed by them as being proscribed by the law (using nail guns to block the doors, throwing firecrackers onto the street, forcing Ministry's employees out of their offices and damaging the property). The prosecution and conviction of the applicants were therefore justified by the need to attribute responsibility for committing such acts and to deter similar crime. However, as it follows from the text of the domestic judgment, similarly to the domestic court in the case of *Taranenko* (cited above, § 92), the District Court in the present case did not seek to establish, to the extent possible, the individual role of

each of the applicants during the protest, the extent of their involvement and their individual acts during the protest, having thus deprived them of opportunity to contest the concrete reasons for limiting their freedom of expression (see *Gülcü v. Turkey*, no. 17526/10, §§ 113-14, 19 January 2016). By failing to make an individual assessment of facts in respect of each of the applicants, the District Court denied them an important procedural safeguard against arbitrary interference with the rights protected under Article 10 of the Convention (ibid., § 114; *Hakobyan and Others v. Armenia*, no. 34320/04, § 99, 10 April 2012).

34. Furthermore, the District Court condemned, in rather clear terms, not only the criminal acts imputed to the applicants but also the content and the form of the message conveyed by them ("prepared ... anti-government leaflets", "chanting anti-government slogans", "showing manifest lack of respect for ... State authority by ... throwing the portrait of the President of the Russian Federation out of the window") and penalised them for that political message (see, for similar reasoning, *Stepan Zimin v. Russia*, nos. 63686/13 and 60894/14, § 76, 30 January 2018). By doing so, the District Court showed a degree of animus towards the applicants' political views that is difficult to reconcile with the Article 10 duty on national authorities to remain neutral with respect to legitimate political viewpoints and not to dissuade others from criticising government policies altogether. The District Court considered the applicants' anti-government rhetoric as unacceptable or even criminal, thus going beyond the narrow margin of appreciation afforded to the domestic authorities under Article 10 in respect of political speech, matters of public interest and criticism of the government, all of which enjoy a high level of protection from State interference (see *Bédat v. Switzerland* [GC], no. 56925/08, § 49, 29 March 2016, with further references; see also *Incal v. Turkey*, 9 June 1998, § 54, *Reports of Judgments and Decisions* 1998-IV).

35. Therefore, considering the lack of any individualised assessment of each of the applicants' role in the protest and the adverse attitude of the District Court towards their political message, the Court is not convinced that the reasons given in support of the applicants' conviction were "relevant and sufficient" for the purposes of Article 10 § 2 of the Convention.

36. Turning to the sanction imposed on the applicants, the Court observes that they were initially sentenced to five years' imprisonment and that sentence was reduced to two years and six months' imprisonment for the first and third applicants and to three years' imprisonment for the second applicant. In this respect, the Court reiterates that it examines with particular scrutiny the cases where sanctions imposed by the national authorities for protest-related conduct involve a prison sentence (see *Taranenko*, cited above, § 87). The Court does not consider that the sanction imposed on the applicants in the present case was proportionate to the aim of the

punishment of their criminal conduct, in the light of its case-law on the matter (ibid., §§ 81-89, for an overview by the Court of sanctions imposed by the domestic authorities in different countries for similar offences). Even considering that the behaviour of the applicants in the present case was more disruptive (mostly owing to the nailing of the doors) than the actions of the applicant in the case of *Taranenko* (cited above), the sanctions imposed on the current applicants (at first four months in detention on remand that was then calculated as part of the custodial sentence between two and a half and three years) were nevertheless significantly more severe than the sanction in *Taranenko* (detention on remand for a year and three years' imprisonment, suspended for three years), which suggests a generally repressive attitude of the national authorities towards the members of this political movement (see paragraph 35 above).

37. The foregoing considerations are sufficient to enable the Court to conclude that the interference in question was not necessary in a democratic society.

38. There has accordingly been a violation of Article 10 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

39. The applicants further complained that their prosecution and conviction for participating in a peaceful protest had violated Article 11 of the Convention.

40. However, having regard to the facts of the case, the submissions of the parties and its above findings under Article 10 of the Convention (see paragraphs 25-38 above), the Court considers that that there is no need to examine separately this complaint (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014, with further references).

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

41. Finally, the Court has examined the other complaints lodged by the applicants under Articles 3, 5, 6, 9, 14 and 18 of the Convention and, having regard to all the material in its possession and in so far as they fall within the Court's competence, finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicants claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

44. The Government submitted that the finding of a violation would constitute sufficient just satisfaction in the present case. They further submitted that the applicants' claim in respect of non-pecuniary damage was excessive and unsubstantiated.

45. The Court considers that the applicants have suffered non-pecuniary damage as a result of the violation found. The damage cannot be sufficiently compensated for by a finding of a violation alone. Making its assessment on an equitable basis, the Court awards the applicants EUR 7,500 each in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

46. The applicants did not submit a claim in respect of costs and expenses. Accordingly, the Court makes no award under this head.

C. Default interest

47. 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

1. *Declares*, unanimously, the complaint concerning the interference with the applicants' right to freedom of expression admissible;

2. *Holds*, by six votes to one, that there has been a violation of Article 10 of the Convention;

3. *Holds*, by six votes to one, that there is no need to examine separately the complaint under Article 11 of the Convention;

4. *Declares*, unanimously, the remainder of the application inadmissible;

5. *Holds*, by six votes to one,
   (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, EUR 7,500 (seven thousand five hundred euros) each, 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;

6. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 29 June 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško	Paul Lemmens
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Dedov is annexed to this judgment.

P.L.
M.B.

DISSENTING OPINION OF JUDGE DEDOV

1. I regret that I cannot agree with the majority that there has been a violation of Article 10 of the Convention. The Court considered that the applicants did not have the right to enter a public building and that their arrest by the police was justified; however, their criminal convictions did not meet a pressing social need because the reasons given in support of the applicants' conviction were not "relevant and sufficient" for the purposes of Article 10 § 2 of the Convention (see paragraph 35). Therefore, the emphasis was laid on the adequacy of the authorities' reaction. In the view of the Court, the reaction was proportionate in the beginning but not proportionate at the end of the proceedings, as the sanction imposed on the applicants in the present case was not proportionate to the aim of punishing their criminal conduct, and the interference in question was even "not necessary in a democratic society".

2. The majority paid little attention to the manner in which the applicants expressed their opinion; they limited this factor to the initial stage of interference (apprehension) and made no legal assessment of those factual circumstances. The domestic courts, by contrast, concentrated on the applicants' behaviour, which played a central role for the legal characterisation of the situation as a mass disorder. The Court accepted that the applicants' behaviour had been disruptive, but the severity of the sanction prevented the Court from supporting the conclusion of the domestic courts.

3. The severity of the sanction – two and a half years of imprisonment – is a borderline issue in the present case, thus the domestic authorities should enjoy a certain margin of appreciation. However, when striking a balance between the individual rights and the public interests, the Court attaches particular weight to freedom of speech. I certainly agree with this approach. However, we should not forget that this approach is theoretical and even idealistic, so it depends on certain criteria. An ideal situation, under which freedom of speech would be at its maximum, is when the issue raised is of public importance for sustainable development and social progress; when the opinion is expressed in a polite, respectful manner which could be shocking and provocative, but not insulting, aggressive or violent; and when the opinion consists of rational arguments eligible for commencing a public debate.

4. In the present case the applicants' behaviour did not meet any of the above criteria and ultimately undermined the importance of this individual right within the fair balance analysis. The applicants manifested their opinion on a very controversial issue of social benefits, which were poorly structured, covered almost half of the population, were difficult to manage and highly burdensome for the State budget. Obviously, the reforms in question were necessary at that time. The applicants expressed their opinion

irrationally and in a very aggressive manner, destroying property, frightening innocent people by referring to an emergency situation, carrying nail guns which could accidentally injure other people, and using firecrackers which could have started a fire. They seized a State building ("an armed siege of the building was taking place" according to witnesses), an act that has been considered "internal terrorism" in the USA. The history of the "National Bolshevik Party" counts sixteen takeovers of public buildings, so the "chilling effect", in my view, had been necessary in the present case.

5. According to the Convention, freedom of speech is not absolute. However, the liberal approach makes it almost absolute since it allows a negative reaction in the case of violence only, and tolerates actions that are dangerous, aggressive, destructive, threatening, scary, but not actually violent. Freedom of speech was born when there was no more strength left to endure injustice and inhuman treatment.

6. Now the moral situation has changed to the opposite: inequality and unfairness have significantly reduced, but the manner in which opinions are expressed have become hard to endure. This is the result of a radical liberal approach which supports a vision of freedom of speech that departs far from rational debate and becomes indistinguishable from hooliganism. This situation inevitably requires a holistic approach on the part of the Court.