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“Prisoners of Bolotnaya”: Maksim Panfilov, the latest victim of a politically-motivated prosecution

Almost four years after the Bolotnaya Square demonstration in Moscow on 6 May 2012, criminal investigations against protesters are still open and new arrests continue to be made. On 7 April 2016, Maksim Panfilov, a 30 year-old resident of Astrakhan was detained on charges of participation in a mass riot, and of using “force not dangerous to life or health” against a police officer for which he could face a maximum prison sentence of eight and five years for each alleged crime respectively. He was flown immediately to Moscow, and the following day a judge at Moscow Basmanny District Court ordered his detention until 7 June.

Amnesty International considers the charges of participation in mass riot in connection with the Bolotnaya Square demonstration on 6 May 2012 to be politically motivated, and is concerned that Maksim Panfilov’s right to a fair trial has been violated. He was denied a lawyer during the first crucial interrogation while in detention, and he has been remanded in custody without due consideration of alternative measures despite concerns for his health in violation of Russian law and international human rights law and standards. Furthermore, Maksim Panfilov has been deprived of his regular medication following his arrest, which may amount to cruel, inhuman or degrading treatment.

Politically motivated charges

Amnesty International has previously expressed concern that the prosecutions in the Bolotnaya case are politically motivated, and are intended to deter people from taking part in public protests or oppositional activity.¹ Most of the violence that occurred during the protest was at the hands of the police who used excessive force against mostly peaceful protesters, or resulted from the failure of the police to effectively conduct those wishing to enter the square in accordance with arrangements previously agreed with the organisers. Nonetheless, not a single police officer has been investigated for abusive use of force.

¹ *Russia: Anatomy of injustice: The Bolotnaya Square Trial*, Amnesty International, 10 December 2013, Index Number EUR 46/055/2013, <https://www.amnesty.org/en/documents/eur46/055/2013/en>

The authorities have insisted on classifying the events of 6 May 2012 as a “mass riot”, whereas it is clear from witnesses and expert analysis that the event was a peaceful protest during which isolated incidents of occasionally serious violence took place.

Amnesty International considers the current proceedings against protesters in connection with the Bolotnaya events to be politically-motivated. The charges against them stem from the classification of the events as a “mass riot”, contrary to the facts and are in contravention of their right to peaceful assembly.

Interrogation without a lawyer

In violation of the Russian Criminal Procedural Code and international fair trial standards, Maksim Panfilov has asserted that a state appointed lawyer who was assigned to him was not present for the whole of the interrogation, and only turned up at the end. His chosen lawyer was prevented from being present at the interrogation. She arrived at the detention centre to see him on the night of 7 April but was turned away by the prison director on the grounds that it was too late to see a client. Maksim Panfilov only saw his chosen lawyer in the court room. The prosecution stated in court that he partially admitted his guilt during the interrogation. On 8 April, Maksim Panfilov’s chosen lawyer disputed this and told the press that Maksim Panfilov had only admitted to being present on Bolotnaya Square at the time, and to having “held a policeman’s helmet” (helmets lost by policemen were being passed around by protesters in Bolotnaya), but not of using violence. The lawyer expressed concern that Maksim Panfilov may have been misled by the state appointed lawyer.²

Violation of the presumption of innocence

As is the practice in Russian court rooms, Maksim Panfilov was placed in a metal cage during the hearing. His lawyer asked for him to be removed from the cage, but the request was not granted. The European Court of Human Rights has found that the practice of placing people in cages in courtrooms “has a strong theatrical dimension, staging a ritual of humiliation,” and that it is not compatible with fair trial guarantees.³ The placing of a suspect in a cage creates an impression of guilt that is not compatible with the presumption of innocence and may have an impact on the impartiality of the tribunal.

Health concerns

Maksim Panfilov suffers from Tourettes Syndrome and requires daily doses of a tranquilizer to enable him to function and to sleep properly. Following his unexpected arrest in Astrakhan, he was transferred to Moscow without being given a chance to prepare for detention, including to take his

² <https://www.youtube.com/watch?v=XM7SXknENZs>

³ CASE OF SVINARENKO AND SLYADNEV v. RUSSIA, Judgment (Merits and Just Satisfaction) , Published On 17/07/2014, <http://hudoc.echr.coe.int/eng-press?i=001-145817>

prescribed medicines with him. During the hearing in Basmany District Court, observers commented that he was unable to concentrate, and had difficulty in answering questions, which appears to be the direct result of failing to take his regular medication. At one point his lawyer asked for a break in the proceedings and then continued to answer the questions from the judge on his client's behalf. Denying him access to his medication and failure to provide access to adequate health care while in detention may amount to cruel, inhuman or degrading treatment and a violation to the right to health.

Decision on remand taken in violation of Russian law and international human rights standards

At the remand hearing, the judge promptly approved the investigator's request for Maksim Panfilov's arrest, stating in her decision that there were "no grounds for choosing non-custodial restraining measure".

International human rights standards require that detention should only be used as a last resort and only when there is a substantial risk of flight, harm to others or interference with the evidence or investigation. Russian law places the onus on the judge to explore and identify the need for remand, and not the absence of grounds for applying non-custodial measures, and mandates the judge to use non-custodial measures. Under Article 100 of the Criminal Procedure Code of the Russian Federation, restraining measures are applied in "exceptional cases", while under Article 108, custodial restraining measure is only applied "when it is impossible to apply other, less harsh restraining measure". Besides, the law compels the judge to examine and indicate "specific, factual circumstances" that justify the detention. Nonetheless, pre-trial remand is extremely common in Russia, and, like in Maksim Panfilov's case, judges are quick to approve the investigation's requests for detention without exploring alternative measures nor justifying the necessity and proportionality of the measure.

Background

On 6 May 2012, tens of thousands of people marched through the centre of Moscow and sought to gather in Bolotnaya Square in protest against the disputed results of the election in which Vladimir Putin had been re-elected Russia's President. Most never got that far.

Ignoring arrangements agreed with the protest organisers, the police sealed off two of the three entrances to the square and narrowed the remaining one. The pressure on the police cordon inevitably grew. When it was eventually breached, with isolated acts of violence, the police proceeded to violently disperse the protest. Over the course of the next few hours, police used excessive and often arbitrary force to restrain and detain for the most part peaceful protesters. Isolated and, on occasion, serious acts of violence were committed by a small number of protesters, resulting in a number of police officers sustaining injuries. Hundreds were arrested at the scene of the protest, the majority of whom were released without charge.

The Presidential Human Rights Committee has analysed videos of the events of 6 May and came to the conclusion that the events were not a mass riot, and that the confrontation between police and demonstrators had been provoked by police actions. .

The European Court of Human Rights found in the case of *Frumkin v. Russia* that in suppressing the

demonstration on Bolotnaya Square the authorities had violated the right to freedom of peaceful assembly. It further found that it was the actions of the authorities in failing to communicate adequately with the event organizers which led to the break down in order rather than the actions of the demonstrators.

So far, 11 individuals have served and completed prison sentences and six people are still in prison. Many of these were peaceful participants in the Bolotnaya protest and should have never stood trial in the first place. Two of the current "Bolotnaya prisoners", political activists Sergei Udaltsov and Leonid Razvozhayev, did not attend the protest on 6 May 2012 but have been convicted of organising violent protest. A further two men are currently in pre-trial detention. One of them is Maksim Panfilov. The other, Dmitry Buchenkov, accused of participation in the Bolotnaya violence was arrested in Moscow on 3 December 2015 but denies that he had taken part in the Bolotnaya protest on 6 May 2012 at all. Several more individuals charged with Bolotnaya-related events spent months in detention or under house arrest in 2012-2013 before being amnestied pre-conviction. On 22 December 2015, 25 year old Ivan Nepomnyashchikh was sentenced to two and a half years' imprisonment for participation in mass riot. He was accused of having hit a policeman with an umbrella, although video evidence presented in court showed him without an umbrella fending off blows from a police truncheon.