



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

THIRD SECTION

**CASE OF FRUMKIN v. RUSSIA**

*(Application no. 74568/12)*

JUDGMENT

STRASBOURG

5 January 2016

**FINAL**

**06/06/2016**

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



**In the case of Frumkin v. Russia,**

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

Luis López Guerra, *President*,

Helena Jäderblom,

George Nicolaou,

Helen Keller,

Johannes Silvis,

Dmitry Dedov,

Branko Lubarda, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 8 December 2015,

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

## PROCEDURE

1. The case originated in an application (no. 74568/12) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Yevgeniy Vladimirovich Frumkin (“the applicant”), on 9 November 2012.

2. The applicant was represented by lawyers of the EHRAC/Memorial Human Rights Centre, NGOs with offices in Moscow and London. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

3. The applicant alleged a violation of his rights to peaceful assembly, freedom of expression and liberty. He also alleged that the administrative proceedings before the domestic courts had fallen short of the guarantees of a fair hearing.

4. On 29 August 2014 the application was communicated to the Government.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1962 and lives in Moscow.

6. On 6 May 2012 the applicant was arrested during the dispersal of a political rally at Bolotnaya Square in Moscow. He was detained at the

police station for at least thirty-six hours pending administrative proceedings in which he was found guilty of failure to obey lawful police orders, an offence under Article 19.3 of the Code of Administrative Offences, and sentenced to fifteen days' administrative detention. The parties' submissions on the circumstances surrounding the public assembly and its dispersal are set out in part A, and the specific facts relating to the applicant are set out in part B below.

## **A. The public assembly of 6 May 2012**

### *1. The planning of the assembly*

7. On 23 April 2012 five individuals (Mr I. Bakirov, Mr S. Davidis, Ms Y. Lukyanova, Ms N. Mityushkina and Mr S. Udaltsov) submitted notice of a public demonstration to the mayor of Moscow. The march, with an estimated 5,000 participants, was to begin at 4 p.m. on 6 May 2012 from Triumfalnaya Square followed by a meeting at Manezhnaya Square, which was to end at 8 p.m. The aim of the demonstration was "to protest against abuses and falsifications in the course of the elections to the State Duma and of the President of the Russian Federation, and to demand fair elections, respect for human rights, the rule of law and the international obligations of the Russian Federation".

8. On 26 April 2012 the Head of the Moscow Department of Regional Security, Mr A. Mayorov, informed the organisers that the requested route could not be allocated because of preparations for the Victory Day parade on 9 May 2012. They proposed that the organisers hold the march between Luzhniki Street and Frunzenskaya embankment.

9. On 27 April 2012 the organisers declined the proposal and requested an alternative route from Kaluzhskaya Square, down Bolshaya Yakimanka Street and Bolshaya Polyanka Street, followed by a meeting at Bolotnaya Square. The march was to begin at 4 p.m., and the meeting had to finish by 7.30 p.m. The number of participants was indicated as 5,000.

10. On 3 May 2012 the Moscow Department of Regional Security approved the alternative route, having noted that the organisers had provided a detailed plan of the proposed events.

11. On 3 May 2012 the Moscow Department of Regional Security informed the Chief of the Moscow Department of the Interior, Mr V. Kolokoltsev, that a different group of organisers had submitted notification of another public event – a meeting at Manezhnaya Square – which the Moscow authorities had rejected. The organisers of that event had expressed their intention to proceed in defiance of the ban and to squat on the square from 6 to 10 May 2012, ready to resist the police if necessary. The Department of the Interior was therefore requested to safeguard public order in Moscow.

12. At 8 p.m. on 4 May 2012 the First Deputy Head of the Moscow Department of Regional Security, Mr V. Oleynik, held a working meeting with the organisers of the demonstration at Bolotnaya Square, at which they discussed the security issues. The Deputy Chief of the Public Order Directorate of the Moscow Department of the Interior, Police Colonel D. Deynichenko, took part in the meeting. The organisers stated at the meeting that the turnout could significantly exceed the expected 5,000 participants. They were warned that exceeding the number originally declared would be unacceptable. According to the applicant, during that meeting the organisers and the authorities agreed that since there was insufficient time for an on-the-spot reconnaissance, which would otherwise have been carried out, the assembly layout and the security arrangements would be identical to the previous public event organised by the same group of opposition activists on 4 February 2012. On that occasion, the march had proceeded down Yakimanka Street, followed by a meeting at Bolotnaya Square, and the venue of the meeting had included the park at Bolotnaya Square (in some documents referred to as “Repin park”) and the Bolotnaya embankment.

13. On the same day the deputy mayor of Moscow, Mr A. Gorbenko, instructed the Tsentralnyy district prefect to assist the organisers in maintaining public order and security during the event. He ordered the Moscow Department of Regional Security to inform the organisers that their assembly notice had been accepted and to monitor its implementation. Other public agencies were assigned the duties of street cleaning, traffic control and ensuring the presence of ambulances at the site of the assembly.

14. On 5 May 2012 the Moscow Department of Regional Security requested the Moscow City Prosecutor’s Office to issue a warning to the organisers against exceeding the notified number of participants and against erecting camping tents at the meeting venue, an intention allegedly expressed by the organisers at the working meeting. The Moscow Department of Regional Security also referred to information found on the Internet that the demonstrators would go to Manezhnaya Square after the meeting. On the same day the Tsentralnyy District Prosecutor’s Office issued the relevant warning to two of the organisers, Mr Davidis and Mr Udaltsov.

15. On the same day the Moscow Department of the Interior published on its website the official information about the forthcoming demonstration on 6 May 2012, including a map. The map indicated the route of the march, the traffic restrictions and an access plan to Bolotnaya Square; it delineated the area allotted to the meeting, which included the park at Bolotnaya Square. Access to the meeting was marked through the park.

16. On the same day the Police Chief of the Moscow Department of the Interior, Police Major-General V. Golovanov, adopted a plan for safeguarding public order in Moscow on 6 May 2012 (the “security plan”).

The ninety-nine-page security plan was an internal document which had not been disclosed to the public or to the organisers. In view of the forthcoming authorised demonstration at Bolotnaya Square and anticipated attempts by other opposition groups to hold unauthorised public gatherings, it provided for security measures in Moscow city centre and set up operational headquarters to implement them.

17. Thirty-two high-ranking police officers, including eight major-generals, two military commanders and one emergency-relief official, were appointed to the operational headquarters. The Deputy Police Chief of the Moscow Department of the Interior, Police Major-General V. Kozlov, was appointed as head of the operational headquarters; the Chief of the Special-Purpose Operational Centre of the Moscow Department of the Interior, Police Major-General V. Khaustov, and the Deputy Chief of the Public Order Directorate of the Moscow Department of the Interior, Police Colonel D. Deynichenko, were appointed as deputy heads of the operational headquarters.

18. The security plan provided for an 8,094-strong crowd-control taskforce, comprising the police and the military, to police the designated security areas and to prevent unauthorised public gatherings and terrorist attacks. The main contingent was the police squad charged with cordon and riot-control duties in accordance with a structured and detailed action plan for each operational unit. Furthermore, it provided for a 785-strong police unit assigned to operational posts across the city centre, with responsibility for apprehending offenders, escorting them to police stations and drawing up administrative offence reports. They were instructed, in particular, to prepare templates for the administrative offence reports and to have at least forty printed copies of them at every police station. The security plan also provided for a 350-strong police unit for intercepting and apprehending organisers and instigators of unauthorised gatherings. The squad had to be equipped with full protection gear and police batons. Each unit had to ensure effective radio communication within the chain of command. They were instructed to keep loudspeakers, metal detectors, handcuffs, fire extinguishers and wire clippers in the police vehicles.

19. The security plan set out in detail the allocation and deployment of police vehicles, police buses, interception and monitoring vehicles and equipment, dog-handling teams, fire-fighting and rescue equipment, ambulances and a helicopter. It also made provision for a 1,815-strong reserve unit equipped with gas masks, aerosol grenades (“*Dreif*”), flash grenades (“*Zarya-2*”), bang grenades (“*Fakel*” and “*Fakel-C*”), a 40-mm hand-held grenade launcher (“*Gvozd*” 6Г-30), and a 43-mm hand-held grenade launcher (ГМ-94); tubeless pistols (ПБ-4СII) with 23-mm rubber bullets and propelling cartridges, and rifles (КС-23). Two water-cannon vehicles were ordered to be on standby, ready to be used against persistent offenders.

20. All units were instructed to be vigilant and thorough in detecting and eliminating security threats and to be polite and tactful in their conduct *vis-à-vis* citizens, engaging in a lawful dialogue with them without responding to provocations. If faced with an unauthorised gathering they were instructed to give a warning through a loudspeaker, to arrest the most active participants and to record video footage of those incidents. The police chiefs were instructed to place plain-clothes officers among the protesters in order to monitor the threat of violence and terrorist attacks within the crowd and to take measures, where appropriate, to prevent and mitigate the damage and to pursue the perpetrators.

21. The Chief of the Interior Department of the Tsentralnyy Administrative District of Moscow, Police Major-General V. Paukov, was required, among other tasks, to prepare, together with the organisers, the text of the public announcement to be made if the situation deteriorated. The head of the press communication service of the Moscow Department of the Interior, Internal Service Lieutenant-Colonel Y. Alekseyeva, was in charge of communication with the press. The head of the Department for Liaison with Civil Society of the Moscow Department of the Interior, Internal Service Colonel V. Biryukov, had to ensure “coordination with the representatives of public organisations and also coordination and information flow with other services of the Moscow Department of the Interior”.

22. The units assigned to police the march and the meeting belonged to “Zone no. 8” (Kaluzhskaya Square, Bolotnaya Square and the adjacent territory). The zone commander was the Chief of the Riot Police of the Moscow Department of the Interior, Police Colonel P. Smirnov, with nine high-ranking police officers (Police Colonel P. Saprykin, Police Colonel A. Zdorenko, Police Lieutenant-Colonel A. Tsukernik, Police Colonel A. Kuznetsov, Police Colonel V. Yermakov, Police Colonel A. Kasatkin, Police Colonel A. Dvoynos, Police Captain R. Bautdinov and Internal Service Lieutenant-Colonel D. Bystrikov) as his deputies.

23. The units assigned to Zone no. 8 comprised 2,400 riot police officers, of whom 1,158 were on duty at Bolotnaya Square. They were instructed, in particular, to search the demonstrators to prevent them from taking camping tents to the site of the meeting and to obstruct access to Bolshoy Kamenyy bridge, diverting the marchers to Bolotnaya embankment, the site of the meeting. The adjacent park at Bolotnaya Square had to be cordoned off, and the only entrance to Bolotnaya embankment – from Malyy Kamenny bridge – had to be equipped with fourteen metal detectors, which were to be removed just before the march approached the site of the meeting. An exception was made for the organisers and the technical staff, who were allowed access behind the stage through two additional metal detectors. Further arrangements were made for access of the press.

24. Lastly, the command of Zone no. 8, in particular Police Colonels Smirnov and Saprykin, were under orders to meet the organisers in person at the beginning of the event to remind them of their responsibilities and to have them sign an undertaking. The organisers would undertake to ensure the lawful and safe conduct of the event, and to refrain from any calls for forced change of the constitutional order and from hate speech and propaganda in favour of violence or war. They would also undertake to be present at the venue until the end of the assembly and the departure of the participants. A video recording of the briefing and the signing of the undertaking had to be made.

*2. Dispersal of the meeting at Bolotnaya Square*

25. At about 1.30 p.m. on 6 May 2012 the organisers were allowed access to Bolotnaya Square to set up the stage and sound equipment. The police searched the vehicles delivering the equipment and seized three tents found amid the gear. They arrested several people for bringing the tents, and the installation of the equipment was delayed. During that time communication between the organisers setting up the stage and those leading the march was sporadic.

26. At the beginning of the march, Police Colonel A. Makhonin met the organisers at Kaluzhskaya Square to clarify any outstanding organisational matters and to have them sign the undertaking to ensure public order during the demonstration. He specifically asked Mr Udaltsov to ensure that no tents were placed on Bolotnaya Square and that the participants complied with the limits on the place and time allocated for the assembly. The organisers gave their assurances on those issues and signed the undertaking.

27. The march began at 4.30 p.m. at Kaluzhskaya Square. It went down Yakimanka Street peacefully and without disruption. The turnout exceeded expectations, but there is no consensus as to the exact numbers. The official estimate was that there were 8,000 participants, whereas the organisers considered that there had been about 25,000. The media reported different numbers, some significantly exceeding the above estimates.

28. At about 5 p.m. the march approached Bolotnaya Square. The leaders found that the layout of the meeting and the placement of the police cordon did not correspond to what they had anticipated. Unlike on 4 February 2012, the park at Bolotnaya Square was excluded from the meeting venue, which was limited to Bolotnaya embankment. The cordon of riot police in full protection gear barred access to the park and continued along the whole perimeter of the meeting area, channelling the demonstration to Bolotnaya embankment. Further down the embankment there was a row of metal detectors at the entrance to the meeting venue. By that time the stage had been erected at the far end of Bolotnaya embankment and a considerable number of people had already accumulated in front of it.



29. Faced with the police cordon and unable to access the park, the leaders of the march – Mr S. Udaltsov, Mr A. Navalnyy, Mr B. Nemtsov and Mr I. Yashin – stopped and demanded that the police open access to the park. According to the protesters, they were taken aback by the alteration of the expected layout and were unwilling to turn towards Bolotnaya embankment; they therefore demanded that the police officers at the cordon move the cordon back to allow sufficient space for the protesters to pass and to assemble for the meeting. According to the official version, the protesters were not interested in proceeding to the meeting venue; they stopped because they had either intended to break the cordon in order to proceed towards Bolshoy Kamennyy bridge and then to the Kremlin, or to stir up the crowd to incite disorder. It is common ground that the cordon officers did not enter into any discussion with the protest leaders and no senior officer was delegated to negotiate. After about fifteen minutes of attempting to engage with the cordon officers, at 5.16 p.m. the four leaders announced that they were going on a “sit-down strike” and sat on the ground. The people behind them stopped, although some people continued to go past them towards the stage. The leaders of the sit-in called on other demonstrators to follow their example and sit down, but only a few of their entourage did so (between approximately twenty and fifty people in total).

30. Between 5.20 p.m. and 5.45 p.m. two State Duma deputies, Mr G. Gudkov and Mr D. Gudkov, contacted unidentified senior police officers to negotiate the enlargement of the restricted area by moving the police cordon behind the park along the lines expected by the organisers. At the same time Mr V. Lukin, the Ombudsman of the Russian Federation, at the request of Police Colonel Biryukov, attempted to convince the leaders of the sit-in to resume the procession and to head towards the meeting venue at Bolotnaya embankment, where the stage had been set up. During that time no senior police officers or municipal officials came to the site of the sit-down protest, and there was no direct communication between the authorities and the leaders of the sit-in.

31. At 5.40 p.m. one of the meeting participants announced from the stage that the leaders were calling on the demonstrators to support their protest. Some people waiting in front of the stage headed back to Malyy Kamennyy bridge, either to support the sit-down protest or to leave the meeting. The area in front of the stage almost emptied.

32. At 5.43 p.m. the media reported that Mr Udaltsov had demanded that the protesters be given airtime on Russia’s main television channels, that the presidential inauguration of Mr Putin be cancelled and that new elections be called.

33. At 5.50 p.m. the crowd around the sit-down protest built up, which caused some congestion, and the leaders abandoned the protest and headed towards the stage, followed by the crowd.

34. At 5.55 p.m. the media reported that the police authorities were regarding the strike as a provocation of mass disorder and were considering prosecuting those responsible for it.

35. At the same time a commotion arose near the police cordon at the place vacated by the sit-down protest, and the police cordon was broken in several places. A crowd of about 100 people spilled over to the empty space beyond the cordon. Within seconds the police restored the cordon, which was reinforced by an additional riot police force. Those who found themselves outside the cordon wandered around, uncertain what to do next. Several people were apprehended, others were pushed back inside the cordon, and some continued to loiter outside or walked towards the park. The police cordon began to push the crowd into the restricted area and advanced by several metres, pressing it inwards.

36. At 6 p.m. Police Colonel Makhonin told Ms Mityushkina to make an announcement from the stage that the meeting was closed. She did so, but apparently her message was not heard by most of the demonstrators or the media reporters broadcasting from the spot. The live television footage provided by the parties contained no mention of her announcement.

37. At the same time a Molotov cocktail was launched from the crowd at the corner of Malyy Kamenny bridge over the restored police cordon. It landed outside the cordon and the trousers of a passer-by caught fire. The fire was promptly extinguished by the police.

38. At 6.15 p.m. at the same corner of Malyy Kamenny bridge the riot police began breaking into the demonstration to split the crowd. Running in tight formations, they pushed the crowd apart, arrested some people, confronted others and formed new cordons to isolate sections of the crowd. Some protesters held up metal barriers and aligned them so as to resist the police, threw various objects at the police, shouted and chanted “Shame!” and other slogans, and whenever the police apprehended anyone from among the protesters they attempted to pull them back. The police applied combat techniques and used truncheons.

39. At 6.20 p.m. Mr Udaltsov climbed onto the stage at the opposite end of the square to address the meeting. At that time many people were assembled in front of the stage, but, as it turned out, the sound equipment had been disconnected. Mr Udaltsov took a loudspeaker and shouted:

“Dear friends! Unfortunately we have no proper sound, but we will carry on our action, we are not going away because our comrades have been arrested, because tomorrow is the coronation of an illegitimate president. We shall begin an indefinite protest action. You agree? We shall not leave until our comrades are released, until the inauguration is cancelled and until we are given airtime on the central television channels. You agree? We are power here! Dear friends, [if] we came out in December [2011] and in March [2012], it was not to put up with the stolen elections, ... it was not to see the chief crook and thief on the throne. Today we have no choice – stay here or give the country to crooks and thieves for another six years. I consider that we shall not leave today. We shall not leave!”

40. At this point, at 6.21 p.m., several police officers arrested Mr Udaltsov and took him away. Mr Navalnyy attempted to go up onto the stage, but he was also arrested at the stairs and taken away. As he was pushed out by the police officers he turned to the crowd shouting “Nobody shall leave!”

41. At 6.25 p.m. the police arrested Mr Nemtsov, who had also attempted to address people from the stage.

42. Meanwhile, at the Malyy Kamenny bridge the police continued dividing the crowd and began pushing some sections away from the venue. Through the loudspeakers they requested the participants to leave for the metro station. The dispersal continued for at least another hour until the venue was fully cleared of all protesters.

*3. The reports of the events of 6 May 2012 and the investigation of the “mass disorder” case*

43. On 6 May 2012 Police Colonel Deynichenko drew up a report summarising the security measures taken on that day in Moscow. The report stated that the march, in which about 8,000 people had participated, had begun at 4.15 p.m. and had followed the route to Bolotnaya Square. It listed the groups and organisations represented, the number of participants in each group, the number and colours of their flags and the number and content of their banners. It further stated as follows:

“... at 5.04 p.m. the organised column ... arrived at the [cordon] and expressed the intention to proceed straight to Bolshoy Kamenny bridge and [to cross it] to Borovitskaya Square. The police ... ordered them to proceed to Bolotnaya Square, the venue of the meeting. However, the leaders at the head of the column – [Mr Udaltsov, Mr Nemtsov and Mr Navalnyy] – ... called on the marchers through the loudspeaker not to move. Together with some thirty protesters they sat on the ground. Another group of about twenty, called by [their leaders], sat as well. The police ... repeatedly warned them against holding an unauthorised public gathering and required them to proceed to the venue of the meeting or to leave. Besides that, two State Duma deputies, Gennadiy Gudkov and Dmitriy Gudkov, the Ombudsman of the Russian Federation, Vladimir Lukin, and a member of the Civic Chamber, Nikolay Svanidze, talked to them, but those sitting on the ground did not react and continued chanting slogans ... From 5.58 p.m. to 7 p.m. persons on Malyy Kamenny bridge and Bolotnaya embankment made attempts to break the cordon, and threw empty glass bottles, fireworks, chunks of tarmac and portable metal barriers at the police officers. From 5 to 6 p.m. music was playing on the stage ... At 5.20 p.m. ... a deputy of the Vologda Regional Duma called on the participants to head to the Malyy Kamenny bridge to support those sitting on the ground ... At 6 p.m. one of the organisers, Ms Mityushkina ..., went on the stage and declared the meeting closed. At 6.20 p.m. Mr Udaltsov went on the stage and called on the people to take part in an indefinite protest action.

At 7 p.m. a group of about 20 individuals including Ms Mityushkina ... attempted to put up three one-sleeper camping tents on Bolotnaya embankment.

...

From 6 p.m. to 9 p.m. necessary measures were taken to push the citizens away from Malyy Kamennyy bridge, Bolotnaya embankment and Bolotnaya Street and to arrest the most actively resisting ones ..., during which twenty-eight police officers and military servicemen [sustained injuries] of various gravity, four of whom have been hospitalised.

In total, 656 people were detained in Moscow to prevent public disorder and unauthorised demonstrations ...

...

The total number of troops deployed for public order and security duties in Moscow was 12,759 servicemen, including 7,609 police officers, 100 traffic police officers, 4,650 military servicemen and 400 members of voluntary brigades.

As a result of the measures taken by the Moscow Department of the Interior the tasks of maintaining public order and security have been fully discharged, and no emergency incidents have been allowed to occur.”

44. On the same day the Investigative Committee of the Russian Federation opened a criminal investigation into suspected offences of mass disorder and violent acts against the police (Article 212 § 2 and Article 318 § 1 of the Criminal Code).

45. On 28 May 2012 an investigation was also launched into the criminal offence of organising mass disorder (Article 212 § 1 of the Criminal Code). The two criminal cases were joined on the same day.

46. On 22 June 2012 the Investigative Committee set up a group of twenty-seven investigators and put them in charge of the criminal file concerning the events of 6 May 2012.

47. On an unspecified date two human-rights activists filed a request with the Investigative Committee to open a criminal investigation into the conduct of the police in the same events; they complained, in particular, of the suppression of a lawful public assembly. Another petition was filed, also on an unspecified date, by forty-four human-rights activists and members of NGOs, calling for the curbing of repression against those who had been arrested and prosecuted in relation to the events of 6 May 2012 and denying that mass riots had taken place at Bolotnaya Square.

48. Following an enquiry from the Investigative Committee about publication of the maps of the assembly of 6 May 2012, on 13 August 2012 the Moscow Department of the Interior replied as follows:

“... on 5 May 2012 the Moscow Department of the Interior published on its official website ... a notice on ‘Safeguarding public order in Moscow during the public events on 6 May’. The notice included information about the route, the map of traffic restrictions and information about the location of the socio-political events, which a large number of participants were expected to attend, the security measures and the warning against any unlawful acts during the events.

The decision to publish this notice was taken by the head of the Department on Liaison with the Mass Media of the Moscow Department of the Interior with the aim of ensuring the security of citizens and media representatives planning to take part in the event.

The pictures contained in the notice were schematic and showed the approximate route of the [march] as well as the reference place of the meeting – ‘Bolotnaya Square’ – indicated in the ‘Plan for Safeguarding Public Order in Moscow on 6 May 2012’.

On 4 May 2012 a working meeting took place at the Moscow Department of Regional Security with participants from among [the organisers and the Department of the Interior], where they discussed the arrangements for the march ..., the placement of metal detectors, the stage set-up and other organisational matters.

After the meeting ... the [Moscow Department of the Interior] prepared a [security plan] and map providing for the park at Bolotnaya Square to be cordoned off with metal barriers [and] for the participants in the meeting to be accommodated on the road at the Bolotnaya embankment.

Given that the agreement on the route of the demonstration and the meeting venue had been reached at the aforementioned working meeting at 9 p.m. on 4 May 2012, the [security plan] and the security maps were prepared at extremely short notice (during the night of 4 to 5 May 2012 and the day of 5 May 2012), to be approved afterwards, on 5 May 2012, by senior officials at the Moscow Department of the Interior.

The Department of the Interior did not discuss the security maps and [security plan] with the organisers. Those documents were not published as they were for internal use, showing the placement of the police forces ... and setting out their tasks.”

49. On an unspecified date eight prominent international NGOs set up an international expert commission to evaluate the events at Bolotnaya Square on 6 May 2012 (“the Expert Commission”). The Expert Commission comprised six international experts whose objective was to provide an independent fact-finding and legal assessment of the circumstances in which the demonstration at Bolotnaya Square had been dispersed. In 2013 the Expert Commission produced a fifty-three-page report containing the chronology and an assessment of the events of May 6 2012. It identified the sources used for the report as follows:

“The work of the Commission was based on the following materials:

- evidence from the official investigation, reports and statements made by the relevant authorities and any other official information available on the case;
- information from public investigations and observations gathered by human rights defenders, journalists and others; and
- reports by observers and journalists, witness testimony and video materials.

...

In order to provide an objective and complete picture of the events, the Commission developed a series of questions that it distributed to the city administration of Moscow, the Investigative Committee of the Russian Federation, police authorities in Moscow, the Ombudsman of the Russian Federation and event organisers. Unfortunately the Commission did not receive replies from the city administration, police authorities or Investigative Committee. As a result, the analysis contained in this report is based on information from open sources, including materials presented by the event organisers, observers and non-governmental organisations, materials

from public investigations and information provided by defence attorneys engaged in the so-called ‘Bolotnaya case’. These materials include: eyewitnesses’ testimony, videos from the media and private actors, documents and some open data about the Bolotnaya criminal case. The experts analysed more than 50 hours of video-records and 200 documents related to the Bolotnaya events. In addition, they met organisers, participants and observers of the events and attended several court hearings of the Bolotnaya case.”

50. Concerning the way the assembly of 6 May 2012 had been organised, the Expert Commission noted the following:

“... the Moscow Department of Regional Security announced on 4 May [2012] that the event would follow a similar route to the previous rally on 4 February [2012]. The participants were to assemble at Kaluzhskaya Square, set off at 4 p.m. along Bolshaya Yakimanka and Bolshaya Polyanka for a rally in Bolotnaya Square, and disperse at 7.30 p.m. The official notification of approval was issued on 4 May 2012 – just two days before the beginning of the event.

That same day, the [Moscow Department of the Interior] published a plan on its website indicating that all of Bolotnaya Square, including the public gardens, would be given over to the rally, while the Bolshoy Kamenny bridge would be closed to vehicles but would remain open to pedestrians. This was the same procedure [the] authorities had adopted for the two previous rallies on Bolotnaya Square on 10 December 2011 and 4 February 2012.

...

On the evening of [5 May 2012], the police cordoned off the [park] of Bolotnaya Square. According to Colonel Yuri Zdorenko, who was responsible for security at the location, this was done ‘in order to prevent the participants from setting up a camp and from [carrying out] other [illegal] acts.’ [The] authorities received information [that] the protesters might attempt to establish a protest camp at the site, causing them to decide that the rally should be confined to only the Bolotnaya waterfront area – a much smaller area than had been originally allocated for the assembly.

...

The police did not, however, inform the organisers of the changes they had decided upon, and they only became aware of the police-imposed changes to the event when they arrived at the site on the afternoon of 6 May [2012].

The City Council did not send out a written announcement that a special representative from the city authorities would be present at the event, nor did the chairman of the Moscow local department of the [Interior], Vladimir Kolokoltsev, issue any special orders on sending a special representative of the Ministry to the event.

...

The organisers requested 12 hours to set up a stage and sound equipment for the rally; however, on the morning of 6 May, the authorities only allocated six hours of advance access. Furthermore, at 1.30 p.m., the police did not allow vehicles with stage equipment onto the site until they had been searched. The searches revealed a small number of tents, and [the] authorities detained a number of people as a result. The police finally allowed the truck with the stage equipment onto Bolotnaya Square at 2.50 p.m., just 70 minutes before the march was due to begin.”

51. As regards the circumstances in which the assembly was dispersed, the Expert Commission's report stated as follows:

“As the march approached Bolotnaya Square, [the] demonstrators found that a police cordon was blocking off most of the square, leaving only a narrow stretch along the waterfront for the rally. The police established a triple cordon of officers on Bolshoy Kammenyy bridge, which prevented any movement in the direction of the Kremlin. The first cordon was positioned close to the junction of Malyy Kamenny bridge and the Bolotnaya waterfront. Students from the Police College and officers of the Patrol Guard Service (without any protective equipment) made up this line. Behind them were two rows of OMON [riot police – *ОМОП*], a line of voluntary citizen patrol (*druzhinniki*), and another cordon of the OMON [the riot police]. A number of water cannons were visible between the second and third cordons.

[The report contained two photographs comparing the police cordon on 4 February 2012, a thin line of police officers without protection gear, and the one on 6 May 2012, multiple ranks of riot police with full protection gear backed up by heavy vehicles.]

The police cordons, which blocked off movement in the direction of the Kremlin, created a bottleneck that slowed the march's progress to such an extent that it came to a virtual stop as demonstrators attempted to cross the bridge. Moreover, just beyond Luzhkov bridge, the marchers had to go through a second set of metal detectors, where progress was very slow since there were only 14 detectors.

By 5.15 p.m., the majority of the march was immobile. A number of leaders, including Sergey Udaltsov, Alexey Navalnyy and Ilya Yashin, encouraged demonstrators to sit down on the road in front of the 'Udarnik' cinema facing the police cordon to protest [against] the inability of the march to continue and to demand that they be given access to the originally allocated space for the rally on Bolotnaya Square. An estimated 50-200 people joined the sit-down protest. The leaders stressed the need to maintain a peaceful protest and appealed to demonstrators to remain calm. Participants chanted: 'We will not go away' and 'Police together with the people'. The leaders attempted to address the crowds using loudspeakers, but those behind the sit-down protest could not hear or see events as they transpired. The sit-down protest did not completely block the road, but it did restrict the movement of those approaching the police lines and the bottleneck caused by the police cordon. As a result, the crowd grew denser as more demonstrators arrived from Bolshaya Yakimanka Street.

At 5.42 p.m., the chief of the [Moscow Department of the Interior] issued a statement: 'The organizers of the rally and other participants refuse to proceed to the agreed place of the rally (to Bolotnaya Square). They [have] stopped on the roadway near the 'Udarnik' theatre. Some of them [have] sat on the ground and thus blocked the movement of the column. Despite repeated warnings on the part of the police to proceed to the place of the rally, they won't move thereby creating a real threat of a jam and trauma for the participants. An inquiry commission is working on the spot to document their actions related to appeals to commit mass public disorder with a view to further consider the issue of instituting criminal proceedings.'

Some demonstrators appeared to become frustrated with standing and waiting and began to walk away. Some tried to pass through the police cordon to leave the area, but the police refused to let them through. Instead, they were directed to go back through the crowd to Bolshaya Polyanka Street, even though this was practically impossible.

The police used loud speakers to inform demonstrators of the rally location. They asked participants to pass directly to Bolotnaya Square and not stop at the bridge, despite the fact that the major part of the square was closed to demonstrators. They announced that all actions on the bridge could be considered illegal. However, given the poor quality of the sound equipment, only those nearest the police could hear this information; the majority of protesters did not hear the police instructions.

...

From the moment difficulties first arose for demonstrators attempting to cross Malyy Kammenyy bridge, demonstrators made repeated attempts to negotiate with the police over moving their cordons to allow protesters onto Bolotnaya Square.

Dmitry Oreshkin, a member of the Presidential Human Rights Council, and Member of Parliament Gennady Gudkov tried to talk to the police authorities at around 5.30 p.m., but there was no response. Shortly after participants broke through the police cordon at 6.20 p.m., a group of human rights activists spoke to Colonel Birukov, head of the [Moscow Department of the Interior]'s press service. At 7 p.m., Member of Parliament Ilya Ponomarev tried to stop violence during the clashes on the embankment by speaking to the authorities, but he did not get a positive response.

Many of those involved in organising the event stated that they tried to engage with [the] police throughout the day to ensure the event took place in a peaceful manner.

Nadezhda Mityushkina: 'I tried unsuccessfully to find the responsible people in the Ministry of the [Interior] in order to solve the organisational problems. I knew whom to contact in case we needed help when issues arose ... Only at 6 – 6.30 p.m. did a police officer approach me. I knew from previous demonstrations that he was a senior officer responsible for communication with event organisers ... and he told me that the authorities had suspended the demonstration. He told me, as one of the rally organizers, to announce from the stage that the event was over, which I did following our conversation.'

Igor Bakirov: 'A police officer in a colonel's uniform contacted me only once, and I showed him the documents [confirming] my credentials as an event organiser. Later clashes with the police erupted, I couldn't find anyone with whom to communicate and cooperate.'

Sergey Davidis: 'I personally did not meet nor have time to get into contact with the authorities regarding the fences set up around the perimeter of the rally. I assumed some other organisers had already spoken to the authorities regarding this issue or were speaking with them at that time. There was no one to contact and nothing to talk about. I only saw the OMON officers who behaved aggressively and were not predisposed to get into a conversation.'

...'

At 5.55 p.m., as people tried to move through the narrow gap between the police cordon and the waterfront to reach Bolotnaya Square, the police line moved two steps forward, further pressing the crowd. This in turn generated a counter response from the crowd, and protesters began pushing back. In several places, the police cordon broke, and a few dozen people found themselves in the empty space behind the first police line. It is impossible to determine whether the breaking of the cordon was the result of conscious action by sections of the crowd or if the police cordon simply broke due to the pressure from such a large number of people. Some of those who made it past the police lines were young men, but there were also many elderly citizens and others who did not resemble street fighters. Those who found themselves



behind the police cordon did not act in an aggressive manner but appeared to move towards the entrance to the Bolotnaya [park], the supposed rally point.

Different demonstrators reacted very differently to the breaking of the police line. Some tried to move away, others called for people to break the cordon, while some tried to restrain the crowd from [trampling on] those who were still taking part in the sit-down protest. As pressure and tension grew, the sit-down protesters stood up rather than risk being trampled. There was a high degree of confusion, and people were not clear on what was happening.

Just after the breaking of the police cordon at approximately at 6 p.m., a single Molotov cocktail was thrown from the crowd. It landed behind the police ranks and ignited the trousers of ... a 74-year-old demonstrator who had passed through the cordon. The police used their fire extinguishers to put out the fire. This was the only such incident recorded during the day ...

...

Soon after the cordons were broken, the authorities began to detain those who remained behind the police lines, taking them to special holding areas. The police also arrested some protesters at the front of the crowd who had not tried to break the cordon. The police cordon was fully restored after about four minutes.

...

At 6.10 p.m., Sergey Udaltsov, Alexey Navalnyy and Boris Nemtsov managed to walk from the Udarnik cinema to the stage at the waterfront followed by a large number of people. A police cordon blocked access to the stage, but they were allowed through. As they tried to start the rally, the police intervened ... the OMON officers then detained Sergey Udaltsov on stage and shortly afterwards detained Boris Nemtsov and Alexey Navalnyy as well. By 6.50 p.m. the organizers began to disassemble the stage.

...

In the two hours between 6 p.m. and 8 p.m., the demonstration was marked by two distinct types of activity. For much of the time, demonstrators and the police stood face to face without much happening. These moments were interspersed with periods when the police advanced and the crowd moved back. There does not appear to have been any clear reason for the police decision to advance other than to divide the crowd up into smaller sections. More than anything, the police advances served to raise tensions and provoke some members of the crowd to push back. There is little evidence that demonstrators initiated the violence. Rather, they appear to have become aggressive only in response to the authorities' advances.

During these interchanges some protesters threw objects at the police, and the police used their batons freely. The crowd threw plastic bottles, shoes and umbrellas ...

At around 6.20 p.m. the police announced that the rally was cancelled and asked protesters to disperse. The police used a loudspeaker to state, 'Dear citizens, we earnestly ask you not to disturb public order! Otherwise, in accordance with the law, we will have to use force! Please, leave here, and do not stop. Go to the metro.' Although the police used a loudspeaker, the announcement was not loud enough to reach the majority of the crowd. It is likely that only those nearest to the loudspeakers could have heard the call to disperse.

There was confusion over the police demands because at the same time ... Colonel Birukov, head of the Moscow [Department of the Interior]'s press service, told a

group of human rights defenders (including Vladimir Lukin, Dmitri Oreshkin, Victor Davydov and Nikolai Svanidze) that the demonstrators could continue to Bolotnaya Square to take part in the rally.

...

By 6.30 p.m. the crowd at the corner of Malyy Kamenny bridge and the waterfront was cut in two. Those on Malyy Kamenny bridge were pushed in the direction of Bolshaya Polyanka Street, while those on the waterfront were cut off from both Bolshoy and Malyy Kamenny bridges.

Around 6.54 p.m., the police cordon that acted as a barrier along the waterfront near the Luzhkov bridge was removed, and demonstrators were able to move freely along the Bolotnaya waterfront. Approximately 15 minutes later, some 200 police officers in protective equipment who had formed a cordon at the Luzhkov Bridge began pushing protesters in the direction of Lavrushinsky Lane, which runs from Bolotnaya Square to the Tretyakovskaya metro station. At the same time, police began to push people back along the Bolotnaya waterfront from the Luzhkov bridge towards the Udarnik cinema. Those who remained on the waterfront linked arms in passive resistance. The police pushed forward, divided the crowd and began to detain demonstrators.

At about 7.47 p.m. ... authorities created a corridor to allow demonstrators to leave the Bolotnaya area.

...

At 7.53 p.m. a group of OMON officers appeared from the bushes of Bolotnaya Gardens and divided those demonstrators that remained on the square. Those on one side were able to move towards Malyy Kamenny bridge, while those on the other remain[ed] totally blocked between the police lines.

At 8.08 p.m. the last groups of people slowly left the waterfront along a corridor formed by the policemen. The police also began to move people away from the Kadashevskaya waterfront on the other side of the Obvondoy Channel. Some people were detained, while others were pushed along Bolshaya Polyanka Street in the direction of the Lavrushinsky Lane.

Between 9 and 10 p.m. around two thousand demonstrators moved along Bolshaya Ordynka Street chanting slogans ... and the OMON officers began to detain people and actively disperse the column.”

52. On 20 March 2013 the Zamoskvoretskiy branch of the Investigative Committee dismissed ten individual complaints and two official enquiries made in relation to the matter, one by Mr Ponomarev, a deputy of the State Duma, and another one by Mr A. Babushkin, President of the Public Supervisory Committee of Moscow. The complaints and enquiries concerned the allegedly unlawful acts of the police in dispersing the rally on 6 May 2012, including excessive use of force and arbitrary arrests. The Investigative Committee interviewed one of the ten individuals who had lodged the complaints and four police officers deployed in the cordon around Bolotnaya Square, including squadron and regiment commanders. They stated, in particular, that they had been acting under orders to maintain public safety and to identify and arrest the most active instigators of unrest; only those resisting the demands of the police had been arrested and no

force had been used unnecessarily. The police officers stated that when the police had had to intervene, they had used combat manoeuvres and truncheons but not tear gas or other exceptional means of restraint. Squadron Commander S. explained that he had been deployed in the sector adjacent to the stage and that there had been no incidents or disorder in that sector; no one had been arrested. The decision listed thirteen other internal inquiries carried out following individual complaints and medical reports; in six cases the allegations of abuse had been found to be unsubstantiated and in seven cases the police conduct had been found to be lawful. As regards the substance of the complaints at hand, the Investigative Committee found as follows:

“... having crossed Malyy Kamenny bridge, the column leaders stopped. Many participants in the march bypassed the organisers and proceeded to Bolotnaya Square towards the stage ... When the march participants had filled nearly all of Bolotnaya embankment, limited by the police cordon on one side and by the stage on the other side, the organisers were still at the point between Malyy Kamenny bridge, Bolotnaya Square, [the park] and the Udamnik cinema ...

At this time the organisers demanded that the police officers let them pass through to the Kremlin. The police told them that they would not let anyone pass through to the Kremlin because the event was authorised to take place at Bolotnaya Square, where the stage had been specially set up, and they were told to proceed. After that, the organisers decided to call a sit-down protest and called upon those present to disobey the lawful orders of the police. After that, the meeting participants congregated opposite the Udamnik cinema, where after a while they attempted to break the cordon, which [the police] did not manage to prevent. Therefore the police began arresting those who had been most actively involved in breaking the cordon; they were put in a police van and then taken to police stations in Moscow. After the confrontation had been localised, the police officers slightly dispersed the crowd, having apprehended the most active perpetrators. From the very beginning of the sit-down protest the police requested the participants through loudspeakers to proceed to the stage, not to act on provocation and not to commit unlawful acts, but these requests had no effect and therefore [it was clear that] the breaking of the cordon had been organised. In suppressing it the police officers acted in coordination and concert. They did not apply force or special means of restraint. However, the work of the officers charged with apprehending offenders did involve the use of force and special means of restraint, in so far as necessary, against persons putting up resistance.

Later on, in the area of Malyy Kamenny bridge and at the [park] corner some localised confrontations took place ... force and special means of restraint were used. All those detained at Bolotnaya Square were taken to the police stations ... Administrative offence reports were then submitted to the Justices of the Peace for consideration on the merits.

...

In accordance with Article 42 of the Criminal Code, any acts of a public official connected with the use of his or her official powers which have caused damage to interests protected by law may not be classified as a criminal offence if they were committed pursuant to a binding order or instruction.

...

After the organisers had decided to call a sit-down protest ... [they] provoked mass disorder, during which the participants threw various objects at the police, thus causing injuries to some of them. Because of this turn of events the police officers detained those participating in the mass disorder with justifiable use of force, and by special means of restraint against those who resisted.

...

In view of the foregoing, the institution of criminal proceedings against the police officers ... is refused for the absence of *corpus delicti*.”

53. On 24 May 2013 the first criminal case against twelve individuals suspected of participation in mass disorder was transferred to the Zamoskvoretskiy District Court of Moscow for the determination of criminal charges (“the first Bolotnaya case”).

54. On 2 December 2012 Mr Navalnyy gave testimony as a witness in the first Bolotnaya case. He testified, in particular, as follows:

“The political organisers and the formal organisers, we all had a clear idea ... and the Moscow mayor’s office confirmed that the march would be the same as the one that had taken place on 4 February 2012. Bolotnaya Square is a traditional place for holding various opposition events. We all had a clear understanding what the route would be, where the stage would be, what the layout would be. We came there at that time for a rather traditional, customary event, the scenario of which was well-known to everybody ... two days beforehand the maps showing where people would assemble and the direction of the march were published on the official [news] website RiaNovosti; they are still posted there. The map was published on the [police] website ‘Petrovka, 38’ and this map is still posted there. Not only the organisers, but the participants too, they knew where they were going ... When we approached the venue of the meeting ... we saw that the map showing where people would assemble on the square had been essentially altered. It was essentially different from the map of 4 February [2012], and, above all, different from the document which had been agreed with the Moscow mayor’s office and had been published on the website[s] RiaNovosti and ‘Petrovka, 38’ ... [according to which] people were to assemble on Bolotnaya embankment as well as in the park at Bolotnaya Square. However, when we came we saw that the park at Bolotnaya Square, taking up about 80% of the square, was barred and cordoned off ... since [the cordon] did not correspond [to the map] the column stopped. The event organisers and the people who came just waited for this question to be resolved, for the police to remove the wrong cordon, for the police chiefs to reply as to what had changed, why the approved meeting was not being conducted according to the scenario that had been approved ... I had previously [organised events] ... Somebody had taken the map and changed the location of the meeting. This had practically never happened before ... to show visually that we were not moving anywhere, we sat on the ground ... the first line of [the police] cordon was composed of 20-year-old conscripts, and with a thousand people pressing on it the cordon broke. It could only break. This led to an uncontrollable situation, as several policemen were walking and trying to say something through megaphones – impossible to tell what they were saying. Some activists passing by were also speaking through megaphones – impossible to tell what they were saying. No authorities were present on the spot. And [it was] impossible to understand who was in command. So all of that caused the rupture of the police cordon. People started spreading across that spot ... Then I tried to walk over to the stage to try and explain to the gathering what was going on, using the amplifiers. I did not know then that the police had already cut off the amplifiers.

[Question to the witness] Did anybody try to negotiate with the participants of the sit-down protest?

- Attempts had been made as much as possible in the circumstances ... everybody had stopped because we all wanted to understand where the representatives from the mayor's office were, where the appropriate representative of the Department of the Interior was. All the [high-ranking] police officers were asked, but they only shrugged. Nobody could understand what was going on. The State Duma deputies present on the spot tried to act as negotiators, but ... they said that nobody wanted to come up to us. We could see some police officers resembling chiefs, at a distance ... but it was impossible to get to them ... it was impossible to reach the [police] command. Nobody would come to us. Nobody could negotiate despite everyone's wish to do so.

... when I was in the detention facility I lodged a complaint about the hindrance of a peaceful public event. This complaint was with the Moscow Department of the Interior. I have set out the arguments [as to why] I considered that there had been ample evidence that the officials of the Moscow Department of the Interior had deliberately provoked the crowd to panic so that [they] could later make claims about mass disorder.”

55. On the same day Mr Davidis gave testimony as a witness in the first Bolotnaya case. He testified, in particular, as follows:

“The negotiations with the [mayor's office] were very difficult this time ... I had been the organiser of most events from 25 December 2011. It was always possible to meet the deadline, to find a compromise, [but not this time]. ... It was [only] on 4 [May 2012] that we received the written agreement. On the same day the working meeting took place ... Usually, everything is decided no later than five days before the event. This time there was practically twenty-four hours' notice. We could not even bring the vehicles carrying the stage to the square before 1 p.m. [on 6 May 2012]. We were put under very harsh conditions ... we had to put up the stage within three hours ... At the [working meeting] technical issues were discussed, but for the previous events we held, as a matter of practice, [there was] an on-site reconnaissance: the representatives of the organisers [together with] the representatives of the police ... would visit the site, walk through the route and determine where the barriers would be put, the stage, the lavatories, so that there was no ambiguity in understanding the event. This time, because [the working meeting] was on 4 [May 2012], and the event was on 6 [May 2012], it was already clear at the working meeting that we wouldn't have time for an on-site reconnaissance; therefore at Mr Deynichenko's suggestion it was stated that in organising the event we would follow the example of the assembly held on 4 February [2012]. Then, it was also a march from Kaluzhskaya Square and a meeting at Bolotnaya Square. The only thing that was noted was that this time the stage would be a bit closer to the park at Bolotnaya Square, at the corner of the square, because originally the event had been declared for 5,000 participants. We had a feeling that people were disappointed, somehow low-spirited, and that not many would come. When we realised that there would be more people I told that to Mr Oleynik [the First Deputy Director of the Regional Security Department], but he told us that it was unacceptable. But it was clear that we could not do anything about it. We warned that there would be significantly more participants ... When we called Mr Deynichenko the following day he told [us] that he had had a map drawn up by the Department of the Interior, and that Mr Udaltsov could come during the day to see it to clarify any issues. During the day he postponed the meeting several times and then

he was no longer picking up the phone. Therefore it was not possible to see or discuss the map.

[Question to the witness] Was the blocking of the park discussed at the working meeting, or later?

- No, of course not. The event of 4 February [2012] had been organised so that the meeting was held at Bolotnaya Square. Bolotnaya Square is an area comprising the park and Bolotnaya embankment. It was supposed that people would ... turn [like before] towards the park. It was said that everything except the position of the stage, which would be moved forwards 20 metres, would be the same as [the last] time, this was expressly spelled out. We were guided by it.

[Question to the witness] With whom was it discussed that the positioning of the security forces would be the same, [give us] the names?

- This was spelled out at the big working meeting at the office of Mr Oleynik and in his presence. Since we realised that we had no time for an on-the-spot reconnaissance, Mr Deynichenko suggested that it would be like the last time as we had already walked along this route.

...

... Nadezhda Mityushkina called me several times and complained that they were having trouble bringing in the equipment ... that they could not find anyone in charge. Usually it is the police representative who is responsible for the event, separately for the march and for the meeting. When I crossed [to] the area allocated to the march, even before passing through the metal detectors, Colonel Makhonin, who is traditionally in charge of the march, called me. We met. I gave him a written undertaking not to breach the law ... I told him that [two members of staff] had been arrested [at the stage area] ... he promised to release them ...

[Question to the witness] What exactly did Colonel Makhonin say? The areas allocated to the march and to the meeting, were they determined in front of the camera?

- No we did not discuss it ...

... at the turning [from Malyy Kamenny bridge] the procession came to a standstill ... some people sat on the ground ... those who sat down had justifiably asked for an expansion. I could not push through to get there. I learned that both [State Duma deputies] were conducting negotiations; I thought that it was probably going to settle this situation ... at a certain point Ms Mityushkina called me and said that the police were demanding to close the event. I explained ... that if [the police] considered that there had been breaches, they had to give us time to remedy these defects, they could not end the event at once. I called Mr Udaltsov ... and said that we were coming, [that there was] no need to end anything. Actually when I reached the corner the sit-in protest had already ended. The organisers who had participated in the sit-in protest and [other] people tried to approach the stage ...

...

The official website of the Moscow [Department of the] Interior published the map on which it was shown, just as agreed [and] just as on 4 February 2012, [that] the border [of the meeting venue] was outlined at the far end of the park and not the near one ... all agreements were breached.

[Question to the witness] During the working meeting on 4 [May 2012] or at the beginning of the [march], did the Department of the Interior warn you about any preparations for provocations, breach of public order, the campsite?

- No, there were no such talks with the police.

...

[Question to the witness] If one has a badge, does it help in principle for talking to the police?

- No, it does not make any difference. I personally called Mr Deynichenko and asked him to take measures. There was no communication with the police. The police officers did not pick up the phone calls. [I] did not manage to find anyone in charge of the police.

...

[Question to the witness] When, according to the rules, ... should the appointments be made to coordinate ... on the part of the organisers and the mayor's office?

- The law does not expressly say [when] ... we received no documents from the [Moscow Government] or the Department of the Interior. We had no information as to who was responsible.

[Question to the witness] That means that at the beginning and during the event you did not know the names of those in charge?

- Except for the officer in charge of the march, Colonel Makhonin.

...

[Question to the witness] When the emergency occurred, who did you try calling at the Department of the Interior command ...?

- By then I was no longer trying to call anyone. I had heard that [the two State Duma deputies] were holding negotiations. I called Mr Udaltsov to tell him that they were trying to close the meeting, but he told me that they were already heading to the stage, that they had ended the sit-in protest.

...

[Question to the witness] Why did the police announce that the event was banned?

- I cannot explain why such a decision was taken. They themselves impeded the conduct of the event and then they ended it by themselves ...

...

[Question to the witness] The reason why [the event was] closed was the sit-down protest?

- As I understood from Ms Mityushkina, yes.

[Question to the witness] How did the police make their demands? Through loudspeakers?

- I would not say that it was some sort of large-scale [announcement]. It was more through physical force. But some demands were made via megaphones, there were no other means."

56. On 5 December 2012 Mr Nemtsov gave testimony as a witness in the first Bolotnaya case. He testified, in particular, as follows:

“... I was not one of the organisers of the event, but I was well informed about the way it had been authorised. On the website of the Moscow Department of the Interior a map was posted showing the location of the police [cordon] and the access points. The map was in the public domain and one could see that the park of Bolotnaya Square should have been opened. But it turned out to be closed. Moreover, we openly announced on the Internet, and it was reported in the media, that the route would be exactly the same as on 4 February 2012 ... On 4 February 2012 there was an authorised event ... all of [Bolotnaya] Square was open, no cordons on Bolshoy Kamennyy bridge. We easily turned into the square, there had been no scuffles ... we were sure that on 6 May 2012 it would be exactly the same picture ... but the police had deceived us, blocked Bolotnaya Square, having left a very narrow passage for the demonstrators. We understood that it would be hard to pass through this bottleneck. We stopped, and to show the police that we were not going to storm the Kremlin and the [Bolshoy] Kamennyy bridge we sat on the ground ... Mr Gudkov [the State Duma deputy], ... offered to be an intermediary in the negotiations between the protesters and the police ... we waited, all was peaceful ... he several times attempted to negotiate but this came to nothing. It became clear that ... the crowd were about to panic. We got up. And an awful scuffle began ... I was moving [to the stage] ... when I arrived there I saw a strange scene for an authorised event. The microphones had all been switched off, Mr Navalnyy and Mr Udaltsov had been arrested just before me. The police never act like that at authorised events. I took a megaphone and addressed the people. I did not speak for long. Within a few minutes the police apprehended me. ...

[Question to the witness] Why, as you say, were the police particularly aggressive?

- The demonstration took place just one day before Mr Putin’s inauguration. Naturally, the police had received very strict orders. Naturally, they were paranoid about ‘Maidan’. The fact that they had treacherously breached the agreement and closed off the square, this proves that there were political orders. I was particularly surprised at Mr Gorbenko, the deputy mayor, with whom Mr Gudkov was negotiating. He is a reasonable man, but here he was like a zombie, he would not negotiate with Mr Gudkov. This was strange ... he did not want to talk like a human. ...

[Question to the witness] Did you know about the intention to set up tents, or about the breaking of the cordon?

- No, I did not know about it then.

...

We demanded only that [the authorities] implement what had been agreed with [the organisers].”

57. On 18 December 2012 Ms Mirza, the head of the Ombudsman’s secretariat, gave testimony as a witness in the first Bolotnaya case. She testified, in particular, as follows:

“... [on 6 May 2012] I was present as an observer ... unlike the usual events held at Bolotnaya Square, [this time] the park was cordoned off ... when we passed the metal detectors ... Mr Biryukov called and asked us to return urgently because ... at Malyy Kamennyy bridge ... [protesters] had sat down on the ground ... [The Ombudsman] tried to persuade these people to stand up and to go and conduct the meeting ... At this time the [second] riot police cordon, which had stood between Bolshoy Kamennyy bridge and Malyy Kamennyy bridge, apparently approached the crowd, therefore the pressure built up from both sides ... I tried to leave the congested area ... showed my



observer's badge ... but the riot police were not listening to me, laughed slightly and continued to press, there was no reaction on their part. This somewhat surprised me because we found ourselves there at the request of the Moscow Department of the Interior.

...

Usually there was no such multi-layered defence. Bolshoy Kamenny bridge was blocked as if it was warfare, beyond what was required, as we thought ... among the protesters we saw several people in masks, and we reported that to the police, [as] this was unusual. The mood of the Department of the Interior was also unusual, and so was the mood of the riot police. A police chief from the Moscow Department of the Interior, Mr Biryukov, told me, for example, that he could do nothing, that he was not in charge of the riot police and that the riot police reported to the [federal] police, and this was also unusual to us. I spoke to the deputy mayor ... and saw how upset he was, and his very presence there was also [a rare occasion].

...

As I was later told by Mr Biryukov from the Department of the Interior, [the protesters had sat down on the ground] because the passage had been narrowed down. The passage had indeed been narrowed down, I can confirm that, I saw that, the passage was much narrower than usual, and there were metal detectors which were not supposed to be there.

...

Mr Biryukov was in charge on behalf of the Moscow Department of the Interior – this is absolutely certain because he is always in charge of such events. His name, his function and his telephone number were written on our badges so that he could be contacted if any questions or doubts arose. As to the [representative of the mayor's office], [I am not sure].

[Question to the witness] You have explained about the cordon. Why was it not possible, for example, to move it [back] so as to prevent a scuffle?

- Mr Biryukov is a very constructive person and he knows his job, but he could not explain to me why he could not influence the riot police.

... [the deputy mayor also] told me that he could not do anything, it was said to me personally. At this time the breaking of the cordon occurred. [The Ombudsman] and our staff, together with a few other people, walked out through [the gap] ...

[Question to the witness] Did you receive any information while at the cordon? Perhaps you heard from the police officers about the official closure of the public event?

- No.

... After the cordon had already been broken, when the arrests had begun, [then] they were telling us through a megaphone to disperse, that the meeting was over, I heard it.”

58. On 23 December 2013 Mr N. Svanidze, a member of the Civic Chamber of the Russian Federation, gave testimony as a witness in the first Bolotnaya case. He testified, in particular, as follows:

“... [on 6 May 2012] I was present as an observer ... [when] everybody headed towards the narrow bottleneck at the embankment ... it created a jam. Several dozen

people sat on the ground, and the cordon moved towards them ... I asked ‘Why won’t they open up the passage?’, but Viktor Aleksandrovich [Biryukov] would turn his face away and would not answer when told that the passage had to be opened. I understood that there was no point talking to him, he was not in command.

...

[Question to the witness] Did [the Ombudsman] or anyone else attempt to negotiate the widening of the passage?

- We could not do anything. We requested it, [Ms Mirza] requested it and I think that [the Ombudsman] did too, but nothing was done. The passage was not widened.

...

[Question to the witness] Were there any calls to move towards the Kremlin?

- No.

...

[Question to the witness] During your presence at the event did you know on what territory the meeting had been authorised?

- Yes, I was convinced that [it was] Bolotnaya Square and the park at Bolotnaya Square.”

59. On the same day Mr Vasiliev, a staff member at the Ombudsman’s office, gave testimony as a witness in the first Bolotnaya case. He testified, in particular, as follows:

“... [on 6 May 2012] I was present as an observer ... on that day we gathered at the press centre of the Department of the Interior, we were given maps, instructions on how to behave, the list of public observers ...

... the Ombudsman asked [the protesters sitting on the ground] why they were not going to the meeting venue. I could not hear the answer, they got up and headed on, after that, congestion occurred ... [the Ombudsman] began looking for the officer responsible for the cordon. There was [the chief press officer] Mr Biryukov there, [the Ombudsman] told him: ‘let’s move the cordon back so that people can pass’ [but] Mr Biryukov told him that it was outside his powers. [The Ombudsman] asked in whose powers it was; he replied ‘I don’t know’. At that moment the police began splitting the crowd ...”

60. On 21 February 2014 the Zamoskvoretskiy District Court of Moscow delivered a judgment in the first Bolotnaya case. It found eight individuals guilty of participation in mass disorder and of violent acts against police officers during the public assembly on 6 May 2012. They received prison sentences of between two and a half and four years; one of them was released on parole. Three co-defendants had previously been pardoned under the Amnesty Act and a fourth had his case disjoined from the main proceedings.

61. On 22 May 2014 the Zamoskvoretskiy branch of the Investigative Committee dismissed five complaints by individuals who had sustained injuries on 6 May 2012, allegedly through the excessive use of force by the police. The complaints had originally been a part of the criminal

investigation file concerning the mass disorder, but were subsequently disjoined from it. During the investigation of the mass disorder case, confrontations were conducted between those who had lodged complaints (in the capacity of the accused in the criminal case) and the police officers accused of violence (in the capacity of victims in the criminal case). The relevant part of the decision read as follows:

“In suppressing attempts to break the police cordon, the police officers acted in coordination and concert, without applying physical force or special means of restraint; however, the work of the officers charged with apprehending offenders did involve physical force and special means of restraint, in so far as necessary [to restrain] those resisting.

After the crowd of protesters had calmed down and thinned out a little, the police officers began to tighten the cordon, [and] by doing so encouraged the citizens to proceed to the stage. At the same time many participants in the meeting who did not want to go there began to return to Bolshaya Yakimanka Street in Moscow. The police also accompanied them.

Later, in the area of Malyy Kamennyy bridge and at the corner of the park [at Bolotnaya Square] confrontations took place between the provocateurs, the persons calling for defiance and the persons displaying such defiance. During the apprehension of those persons force was used by the police because of their resistance, and in a number of cases, special means of restraint were also used for apprehending the most active instigators.

...

Because of such a turn of events the police officers justifiably used physical force to apprehend the participants in the mass disorder, and also special means of restraint in relation to some of them who attempted to resist.”

62. On 20 June 2014 the Moscow City Court upheld the judgment of 21 February 2014, having slightly reduced the prison sentences for two of the defendants.

63. On 24 July 2014 the Moscow City Court found Mr Udaltsov and Mr Razvozhayev guilty of organising mass disorder on 6 May 2012. The judgment contained the following findings:

“The witness Mr Deynichenko testified that on 4 May 2012 he had taken part in a working meeting at the Moscow Department of Regional Security... as a follow-up to the meeting a draft security plan was prepared, and all necessary agreements were reached with the organisers concerning the order of the march and meeting, the movement of the column, the stage set-up, access to the meeting venue, barriers and the exit from the stage; the [organisers] had agreed on that. The question of using the park at Bolotnaya Square was not raised because the declared number of participants was 5,000, whereas over 20,000 people could be accommodated in the open area of the square and the embankment, and [the organisers] had known that in advance. It had been discussed with them how the cordon would be placed from Malyy Kamennyy bridge to the park of Bolotnaya Square, so the organisers knew about the cordon in advance. The placement of the cordon was indicated in the [security plan]. This document was for internal use and access to it was only given to the police; the location of the forces could be changed in an emergency by the operational headquarters. The organisers did not insist on an on-the-spot visit; such visits are held

at the initiative of the organisers, which had not been requested because they had known the route ... and the meeting venue ... [The witness Mr Deynichenko] had known that at the beginning of the march the event organisers, including Mr Udaltsov, had discussed between them that they were not going to turn towards the meeting venue but would stop and try to break the cordon to proceed to Bolshoy Kamennyy bridge.

...

The witness N. Sharapov testified that Mr Udaltsov had known the route of the march and had not raised a question about opening up the park at Bolotnaya Square. Moreover, the park was a nature reserve with narrow lanes ... the park had been opened up previously [for a public event], as an exception, on only one occasion, on 4 February 2012, but then it was winter, it was snowing and the declared number of participants had significantly exceeded 5,000. No such exception was made for 6 May 2012.

... according to the statement of the Moscow City Security Department, ...the meeting venue at Bolotnaya embankment could accommodate 26,660 people ...

The fact that no map of the assembly route or the placement of the police had been produced at the working meeting of 4 May 2012, that these questions had not been expressly discussed, ... that the event organisers present at the working meeting had not been shown any maps, was confirmed by them.

... the court concludes that no official map had been adopted with the organisers and, in the court's opinion, [the published map] had been based on Mr Udaltsov's own interview with journalists ...

Therefore the map presented by the defence has no official character, its provenance is unknown and therefore unreliable and it does not reflect the true route of the demonstration and the placement of the police forces.

... the witness Mr Makhonin ... testified that on 5 May 2012 he received the [security plan] ... Before the start of the march he personally met the event organisers Ms Mityushkina, Mr Udaltsov [and] Mr Davidis and in the presence of the press and with the use of video recordings explained to them the order of the meeting and the march, warned against the breach of public order during the conduct of the event; and stressed the need to inform him personally about any possible provocations by calling the telephone number known to the organisers. He asked Mr Udaltsov about the intention to proceed towards the Kremlin and to cause mass disorder because the police had received information about it from undercover sources; Mr Udaltsov had assured him that there would be no breaches of order at the event and that they had no intention to move towards the Kremlin ... He (Mr Makhonin) arrived at Bolotnaya Square after the mass disorder had already begun ... After the mass disorder began he tried calling Mr Udaltsov on the phone but there was no reply. Mr Udaltsov did not call him ... Other event organisers had not asked him to move the cordon. Given the circumstances, Ms Mityushkina, at his request, announced the end of the meeting, and the police opened additional exits for those willing to leave. In addition to that, the police repeated through a loudspeaker the announcement about the end of the meeting

...

... the witness Mr Zdorenko ...testified that ... following information received [from undercover sources] about the possible setting up of a camp site, at about 9 p.m. on 5 May 2012 he arrived at Bolotnaya Square and organised a search of the area including the park. The park was cordoned off and guarded ... if necessary, at the decision of the operational headquarters, the venue allocated for the meeting could be

significantly extended at the expense of the park [at Bolotnaya Square]. However, there was no need for that given that there were no more than 2,500-3,000 persons on Bolotnaya Square ... [others being stopped at] Malyy Kamennyy bridge.

...

The witness A. Zharkov testified that ...while the stage was being set up he had seen an unknown man smuggling four camping tents in rubbish bins.

...

The witness M. Volondina testified that ... before the beginning of the march, police information came through from undercover sources that the event organisers intended to encircle the Kremlin holding hands to prevent the inauguration of the Russian President.

The witness M. Zubarev testified that ... he had been [officially] filming ... while Police Officer Makhonin ... explained the order ... and warned the organisers ... and asked Mr Udaltsov to inform him of any possible provocations. Mr Udaltsov stated that they would act lawfully and that he had requested the police to stop any unwanted persons from joining the public event ...

The witness Y. Vanyukhin testified that on 6 May 2012 ... at about 6 p.m. Mr Udaltsov, while on the way to the stage, told people around him that they were going to set up a campsite ...

... the witness Ms Mirza testified that ... Police Officer Biryukov had asked her and [the Ombudsman] to come to Malyy Kamennyy bridge where some of the protesters, including Mr Nemtsov and Mr Udaltsov, had not turned right towards the stage but had gone straight to the cordon, where they had begun a sit-in protest on the pretext that access to the park of Bolotnaya Square had been closed and cordoned off ... While [the Ombudsman] was talking to those sitting on the ground they remained silent and did not reply but would not stand up.

The witness Mr Babushkin testified that ... after the first confrontations between the protesters and the police had begun, the latter announced through a loudspeaker that the meeting was cancelled and invited the citizens to leave.

The witness Mr Ponomarev testified that ... the police cordon had been placed differently from [the cordon placed for] a similar march on 4 February 2012 ... he proposed to Mr Udaltsov that the cordon be pushed back so that the police would go back a few steps and widen access to Bolotnaya Square, and the latter replied that he would figure it out when they reached the cordon ... he knew that Mr G. Gudkov was negotiating with the police about moving the cordon, which had now been reinforced by the riot police.

... the witnesses Mr Yashin and Mr Nemtsov testified that ... during the steering committee meeting the question of setting up tents during the public event had not been discussed ... while [Mr G. Gudkov] and [Mr D. Gudkov] were negotiating with the police ... the crowd built up [and] suddenly the police began moving forward, the protesters resisted and the cordon broke ...

The witness Mr G. Gudkov [deputy of the State Duma] testified that ... at the request of the organisers, who had told him that they would not go anywhere and would remain sitting until the police moved the cordon back and opened up access to the park at Bolotnaya Square, he had taken part in the negotiations with the police on that matter. He had reached an agreement with the officers of the Moscow Department of the Interior that the cordon would be moved back, but the organisers who had filed the

notice [of the event] should have signed the necessary documents. However, those who had called for a sit-in, including Mr Udaltsov, refused [to stand up] to go to the offices of the Moscow Department of the Interior to sign the necessary documents, although he (Mr Gudkov) had proposed several times that they should do so ...

... the witness Mr D. Gudkov [deputy of the State Duma] testified that ... together with Mr G. Gudkov he had conducted negotiations with the police ... an agreement had been reached that the cordon at the Malyy Kamennyy bridge would be moved back and the access to the park would be opened up, but at that point some young men in hoodies among the protesters began first to push the citizens onto the cordon provoking the [same] response, after that the cordon was broken, the [police] began the arrests and mass disorder ensued.

...

... the court [rejects] the testimonies to the effect that it was the police who had begun moving towards the protesters who were peacefully sitting on the ground and thus provoked the breaking of the cordon ... [and finds ] that it was the protesters, and not the police ... who began pushing against the cordon, causing the crowd to panic, which eventually led to the breaking of the cordon and the ensuing mass disorder.

...

The court takes into account the testimony of Mr Davidis that ... at about 6 p.m. Ms Mityushkina, who was responsible for the stage, informed him about the demand of the police that she announce, as an event organiser, that it was terminated. He passed this information on to Mr Udaltsov by phone, [and he] replied that they were standing up and heading towards the stage ... he knew that on 6 May 2012 [some] citizens had brought several tents to Bolotnaya Square, but Mr Udaltsov had not informed him about the need to put up tents during the public event.

...

The court takes into account the testimony of Mr Bakirov ..., one of the [formal] event organisers ..., that nobody had informed him about the need to put up tents during the public event.

...

[The court examined] the video recording ... of the conversation between Mr Makhonin and Mr Udaltsov during which the latter assured Mr Makhonin that they would conduct the event in accordance with the authorisation, he would not call on people to stay in Bolotnaya Square and if problems occurred he would maintain contact with the police.

...

... [the court examined another video recording] in which Mr Makhonin and Mr Udaltsov discussed the arrangements. Mr Makhonin showed Mr Udaltsov where the metal detectors would be placed; after that they agreed to meet at 3 p.m. ... and exchanged telephone numbers ...

...

According to [expert witnesses Ms N. and Ms M.], the borders of Bolotnaya Square in Moscow are delimited by Vodootvodnyy channel, Serafimovicha Street, Sofiyskaya embankment and Faleyevskiy passage, and the [park] forms a part of Bolotnaya Square. During public events at Bolotnaya Square the park is always cordoned off and is not used for the passage of citizens.

These testimonies are fully corroborated by the reply of the Head of the Yakimanka District Municipality of Moscow of 27 July 2012 and the map indicating the borders of Bolotnaya Square.

...

[The court finds] that the place of the sit-in ... was outside the venue approved by the Moscow authorities for the public event ...

...

The organisation of mass disorder may take the form of incitement and controlling the crowd's actions, directing it to act in breach of the law, or putting forward various demands to the authorities' representatives. This activity may take different forms, in particular the planning and preparation of such actions, the selection of groups of people to provoke and fuel mass disorder, incitement to commit it, by filing petitions and creating slogans, announcing calls and appeals capable of electrifying the crowd and causing it to feel appalled, influencing people's attitudes by disseminating leaflets, using the mass media, meetings and various forms of agitation, in developing a plan of crowd activity taking into account people's moods and accumulated grievances, or guiding the crowd directly to commit mass disorder.

... this offence is considered accomplished as soon as at least one of the actions enumerated under Article 212 § 1 of the Criminal Code has been carried out ...

... the criminal offence of organisation of mass disorder is considered accomplished when organisational activity has been carried out and does not depend on the occurrence or non-occurrence of harmful consequences.

...

There are no grounds to consider the closure of access to the park of Bolotnaya Square and the placement of a guiding police cordon at the foot of Malyy Kamennyy bridge to be a provocation ... since it was only to indicate the direction and it did not obstruct access to the meeting venue at Bolotnaya Square.

... the reinforcement of the cordon ... was necessary in the circumstances ... to prevent it from breaking ... but the police [cordon] did not advance towards the protesters.

It is therefore fully proven that the mass disorder organised by Mr Udaltsov [and others] ... led to the destabilisation of public order and peace in a public place during the conduct of a public event, put a large number of people in danger, including those who had come to fulfil their constitutional right to congregate in peaceful marches and meetings, and led to considerable psychological tension in the vicinity of Bolotnaya Square in Moscow, accompanied by violence against the police ... and the destruction of property ...”

64. The Moscow City Court sentenced Mr Udaltsov and Mr Razvozhayev to four and a half years' imprisonment. On 18 March 2015 the Supreme Court of the Russian Federation upheld the judgment of 24 July 2014, with a number of amendments.

65. On 18 August 2014 the Zamoskvoretskiy District Court of Moscow examined another “Bolotnaya” case and found four individuals guilty of participating in mass disorder and committing violent acts against police officers during the demonstration on 6 May 2012. They received prison

sentences of between two and a half and three and a half years; one of them was released on parole. That judgment was upheld by the Moscow City Court on 27 November 2014.

**B. The applicant's arrest, detention and conviction for an administrative offence**

66. On 6 May 2012 the applicant arrived at Bolotnaya Square at about 6 p.m. to take part in the meeting. He stood in front of the stage on Bolotnaya embankment, within the area designated as the meeting venue.

67. According to the applicant, between 6 p.m. and 7 p.m. the area around him remained peaceful, although there was general confusion. He claimed that he had not heard any announcement about the termination of the meeting; he had heard the police orders made through a megaphone to disperse, but in the general commotion he was unable to leave immediately and remained within the authorised meeting area until 7 p.m., when he was arbitrarily arrested by the police dispersing the demonstration. The applicant denied that he had received any warning or orders before being arrested. The police apprehended him and took him to a police van, where he waited for an hour before it left Bolotnaya Square for the police station. According to the applicant, there was no traffic at Bolotnaya Square at the time of his arrest; it was still suspended.

68. According to the Government, the applicant was arrested at 8.30 p.m. at Bolotnaya Square because he was obstructing the traffic and had disregarded the police order to move away.

69. At 9.30 p.m. the applicant was taken to the Krasnoselskiy District police station in Moscow. At the police station an on-duty officer drew up a statement on an administrative offence (*протокол об административном правонарушении*) on the basis of a report (*рапорт*) by Police Officer Y., who had allegedly arrested the applicant. Y.'s report contained the following handwritten statement:

"I [Y.] report that on 6 May 2012 at 9.30 p.m., at 5/16 Bolotnaya Square, together with Police Lieutenant [A.], I arrested Mr Frumkin."

70. The rest of the report was a printed template stating as follows:

"... who, acting in a group of citizens, took part in an authorised meeting, went out onto the road and thus obstructed the traffic. [He] did not react to the multiple demands of the police to vacate the road ..., thereby disobeying a lawful order of the police, who were fulfilling their service duty of maintaining public order and ensuring safety. He thereby committed an administrative offence under Article 19.3 § 1 of the Code of Administrative Offences."

71. The statement on the administrative offence contained an identical text, but indicated that the applicant had been arrested at 8.30 p.m. The applicant was charged with obstructing traffic and disobeying lawful police



orders, an offence under Article 19.3 of the Code of Administrative Offences. His administrative detention was ordered with reference to Article 27.3 of the Code of Administrative Offences (*протокол об административном задержании*). The “reasons” section of the order remained blank.

72. At 2 p.m. on 7 May 2012 the applicant was taken to court, but his case was not examined. After having spent the day in a transit van without food or drink, at 11.55 p.m. he was taken back to the cell at the Krasnoselskiy District police station. A new order for the applicant’s administrative detention was issued, indicating that he had been detained “for the purpose of drawing up the administrative material”.

73. At 8 a.m. on 8 May 2012 the applicant was brought before the Justice of the Peace of circuit no. 100 of the Yakimanka District, who examined the charges. The applicant requested that the case be adjourned on the grounds that he was unfit to stand trial after the detention; he also requested that the hearing be opened to the public and that two police officers be examined as witnesses. Those requests were rejected in order to expedite the proceedings. A further request for the examination of several eyewitnesses was partly refused and partly granted. Three witnesses for the defence were examined.

74. On the basis of the report written by Police Officer Y., the court established that at 8.30 p.m. on 6 May 2012 the applicant had been walking along the road at Bolotnaya Square and obstructing the traffic, and that he had then disobeyed lawful police orders to vacate the venue. The Justice of the Peace rejected as unreliable two eyewitnesses’ testimonies to the effect that the police had not given the applicant any orders or warnings before arresting him. The applicant was found guilty of disobeying lawful police orders, and was sentenced under Article 19.3 of the Code of Administrative Offences to fifteen days’ administrative detention.

75. On 11 May 2012 the Zamoskvoretskiy District Court of Moscow examined an appeal lodged by the applicant. At the applicant’s request the court examined Ms S. as a witness. She testified that at 7.46 p.m. on 6 May 2012 she had been looking for her son when she saw the applicant in a police van and spoke to him. She also testified that at 9.03 p.m. she had been at Bolotnaya Square; the site had already been fully cordoned off but the traffic had not resumed. The court rejected the applicant’s argument that the police report and the police statement were inconsistent as regards the time of his arrest and found that the correct interpretation of those documents was that the time of arrest had been 8.30 p.m. and the detention at the police station 9.30 p.m. The court dismissed the video recording submitted by the applicant on the grounds that it did not contain the date and the time of the incident, but found that the applicant’s guilt had been proved by other evidence. It upheld the first-instance judgment.

76. On 11 January 2013 the Deputy President of the Moscow City Court examined the applicant's administrative case in supervisory-review proceedings and upheld the earlier judicial decisions.

## II. RELEVANT DOMESTIC LAW

77. The Federal Law on Assemblies, Meetings, Demonstrations, Marches and Pickets (no. FZ-54 of 19 June 2004 – “the Public Events Act”) provided as follows at the material time:

### **Section 7. Notification of a public event**

“Notification of a public event (except for a gathering or solo picketing) shall be filed by its organiser in writing with the executive body of the subject [constituent entity] of the Russian Federation or the municipal authorities no earlier than fifteen days and no later than ten days prior to the scheduled date of the event ...”

### **Section 8. Venue for holding a public event**

“A public event may be held at any venue suitable for the purposes of the event, provided that it does not create a risk of the collapse of buildings or structures or any other threats to the safety of the participants in the public event. ...”

### **Section 12. Obligations of the executive body of the subject of the Russian Federation or the municipal authorities**

“1. Upon receipt of the notification of a public event, the executive body of the subject of the Russian Federation or the municipal authorities shall: ...

(iii) depending on the form of the public event and the number of participants, appoint an authorised representative to assist the event organisers in conducting the event in accordance with the law. The authorised representative shall be formally appointed by a written decision which shall be sent to the event organiser prior to the scheduled date of the event;

(iv) inform the organiser of the public event about the maximum capacity of the territory (venue) where the public event is to be held;

(v) ensure, within its competence and jointly with the organiser of the public event and the authorised representative of the Ministry of the Interior, public order and the safety of citizens during the public event and, if necessary, provide them with urgent medical aid; ...

2. If the information contained in the text of the notification of a public event and other data give grounds to suppose that the aims of the planned event and the way in which it will be conducted do not comply with the Constitution of the Russian Federation and/or are in breach of prohibitions established by the legislation of the Russian Federation concerning administrative offences or the criminal legislation of the Russian Federation, the executive body of the subject of the Russian Federation or the municipal authorities shall immediately notify the organiser of the public event by issuing a reasoned written warning that the organiser, as well as other participants in the public event, may be held duly liable in the event of such non-compliance or breach.”

**Section 13. Rights and obligations of the representative of the executive body of the subject of the Russian Federation or the municipal authorities**

“1. The representative of the executive body of the subject of the Russian Federation or the municipal authorities shall have the right:

(i) to require the organiser of a public event to comply with the conditions for holding the event;

(ii) to decide on the suspension or termination of the public event following the procedure and on the grounds set out in this Federal Law.

2. The representative of the executive body of the subject of the Russian Federation or the municipal authorities must:

(i) be present at the public event;

(ii) assist the event organiser in the conduct of the public event;

(iii) ensure, jointly with the organiser of the public event and the authorised representative of the Ministry of the Interior, public order and the safety of citizens, as well as compliance with the law, during the event.”

**Section 14. Rights and obligations of the authorised representative of the Ministry of the Interior**

“1. On a proposal by the executive body of the subject of the Russian Federation or the municipal authorities, the chief of the department of the interior in charge of the territory (venue) where the public event is intended to be held must appoint an authorised representative of the Ministry of the Interior to assist the event organiser in maintaining public order and the safety of citizens. The representative shall be formally appointed by a written decision of the chief of the department of the interior.

2. The authorised representative of the Ministry of the Interior shall have the right:

(i) to require the organiser of a public event to announce the closure of access to the event to citizens and to take his or her own action to prevent citizens from accessing the venue if the maximum capacity of the territory (venue) is exceeded;

(ii) to require the organiser of and the participants in the public event to comply with the conditions for holding the event;

(iii) at the request of the event organiser, to remove any citizens disobeying the organiser’s lawful orders.

3. The authorised representative of the Ministry of the Interior must:

(i) facilitate the conduct of the public event;

(ii) ensure, jointly with the organiser of the public event and the executive body of the subject of the Russian Federation or the municipal authorities, public order and the safety of citizens and compliance with the law, during the public event.”

**Section 15. Grounds and procedure for suspension of a public event**

“1. If during the holding of a public event there occurs, through the fault of the participants, a breach of lawful order which does not entail a risk to the life or health of the participants, the representative of the executive body of the subject of the Russian Federation or the municipal authorities may require the event organiser to remedy the breach alone or jointly with the authorised representative of the Ministry of the Interior.

2. In the event of non-compliance with the requirement referred to in subsection 1 above, the authorised representative of the executive body of the subject of the Russian Federation or the municipal authorities may suspend the public event for a time determined by him or her in order to remedy the breach. Upon rectification of the breach, the public event may be continued as agreed between the organiser and the respective representative.

3. If the breach has not been remedied upon the expiry of the time-limit set by the authorised representative of the executive body of the subject of the Russian Federation or the municipal authorities, the public event shall be terminated in accordance with section 17 of this Federal Law.”

#### **Section 16. Grounds for termination of a public event**

“A public event may be terminated on the following grounds:

(i) if the event has created a real danger for the life and health of citizens, as well as for the possessions of individuals or legal persons;

(ii) if the participants in the public event have committed unlawful acts and the organisers have deliberately breached the provisions of this Federal Law relating to the conditions for holding the event.”

#### **Section 17. Procedure for termination of a public event**

“1. In the event that a decision to terminate a public event is taken, the authorised representative of the executive body of the subject of the Russian Federation or the municipal authorities shall:

(i) order the event organiser to terminate the public event, giving the justification for its termination, and within twenty-four hours issue this order in writing and serve it on the event organiser;

(ii) determine a time-limit for compliance with the order to terminate the public event;

(iii) in the event of non-compliance with the order to terminate the public event by the organiser, address the participants in the public event directly and allow additional time for compliance with the order to terminate it.

2. In the event of non-compliance with the order to terminate a public event, the police shall take all necessary measures to terminate the event, acting in accordance with the legislation of the Russian Federation.

3. The procedure for termination of a public event provided for in subsection 1 above shall not apply if mass disorder, riots, arson attacks or other emergency situations occur. In these situations the termination of a public event shall be carried out in accordance with the legislation of the Russian Federation.”

78. The Criminal Code of the Russian Federation provides as follows:

#### **Article 212. Mass disorder**

“1. The organisation of mass disorder accompanied by violence, riots, arson, destruction of property, use of firearms, explosives and explosive devices, as well by armed resistance to a public official, shall be punishable by four to ten years’ deprivation of liberty.

2. Participation in mass disorder as provided for by paragraph 1 of this Article shall be punishable by three to eight years' deprivation of liberty.

3. The instigation of mass disorder provided for by paragraph 1 of this Article, or the instigation of participation in it, or the instigation of violence against citizens shall be punishable by restriction of liberty for up to two years, or community work for up to two years, or deprivation of liberty for the same term."

**Article 318. Use of violence against a public official**

"1. The use of violence not endangering life or health, or the threat to use such violence, against a public official or his or her relatives in connection with the performance of his or her duties shall be punishable by a fine of up to 200,000 Russian roubles (RUB) or the equivalent of the convicted person's wages for eighteen months, or community work for up to five years, or up to five years' deprivation of liberty ..."

79. The relevant provisions of the Code of Administrative Offences of 30 December 2001 at the material time read as follows:

**Article 19.3 Refusal to obey a lawful order of a police officer ...**

"Failure to obey a lawful order or demand of a police officer ... in connection with the performance of the officer's official duties relating to maintaining public order and security, or impeding the officer's performance of his or her official duties, shall be punishable by a fine of between RUB 500 and RUB 1,000 or by administrative detention for up to fifteen days."

**Article 20.2 Breaches of the established procedure for the organisation or conduct of public gatherings, meetings, demonstrations, marches or pickets**

"1. Breaches of the established procedure for the organisation of public gatherings, meetings, demonstrations, marches or pickets shall be punishable by an administrative fine of between ten and twenty times the minimum wage, payable by the organisers.

2. Breaches of the established procedure for the conduct of public gatherings, meetings, demonstrations, marches or pickets shall be punishable by an administrative fine of between RUB 1,000 and RUB 2,000 for the organisers, and between RUB 500 and RUB 1,000 for the participants."

**Article 27.2 Escorting of individuals**

"1. The escorting or the transfer by force of an individual for the purpose of drawing up an administrative offence report, if this cannot be done at the place where the offence was discovered and if the drawing up of a report is mandatory, shall be carried out:

(1) by the police ...

...

2. The escort operation shall be carried out as quickly as possible.

3. The escort operation shall be recorded in an escort operation report, an administrative offence report or an administrative detention report. The escorted person shall be given a copy of the escort operation report if he or she so requests."

**Article 27.3 Administrative detention**

“1. Administrative detention or short-term restriction of an individual’s liberty may be applied in exceptional cases if this is necessary for the prompt and proper examination of the alleged administrative offence or to secure the enforcement of any penalty imposed by a judgment concerning an administrative offence. ...

...

3. Where the detained person so requests, his or her family, the administrative department at the person’s place of work or study and his or her defence counsel shall be informed of his or her whereabouts.

...

5. The detained person shall have his or her rights and obligations under this Code explained to him or her, and a corresponding entry shall be made in the administrative arrest report.”

**Article 27.4 Administrative detention report**

“1. Administrative detention shall be recorded in a report ...

2. ... If he or she so requests, the detained person shall be given a copy of the administrative detention report.”

**Article 27.5 Duration of administrative detention**

“1. The duration of administrative detention shall not exceed three hours, except in the cases set out in paragraphs 2 and 3 of this Article.

2. Persons subject to administrative proceedings concerning offences involving unlawful crossing of the Russian border ... may be subject to administrative detention for up to forty-eight hours.

3. Persons subject to administrative proceedings concerning offences punishable, among other administrative sanctions, by administrative detention may be subject to administrative detention for up to forty-eight hours.

4. The term of the administrative detention shall be calculated from the time when [a person] escorted in accordance with Article 27.2 is taken [to the police station] or, in respect of a person in a state of alcoholic intoxication, from the time of his sobering up.”

**III. RELEVANT INTERNATIONAL MATERIAL**

80. The Guidelines on Freedom of Peaceful Assembly adopted by the Venice Commission at its 83rd Plenary Session (Venice, 4 June 2010) provide as follows:

**“Section A – guidelines on freedom of peaceful assembly****1. Freedom of Peaceful Assembly**

...

Only peaceful assemblies are protected.

An assembly should be deemed peaceful if its organisers have professed peaceful intentions and the conduct of the assembly is non-violent. The term ‘peaceful’ should be interpreted to include conduct that may annoy or give offence, and even conduct that temporarily hinders, impedes or obstructs the activities of third parties.

...

## **5. Implementing Freedom of Peaceful Assembly Legislation**

### **5.1 Pre-event planning with law enforcement officials**

Wherever possible, and especially in the case of large assemblies or assemblies on controversial issues, it is recommended that the organiser discuss with the law enforcement officials the security and public safety measures that are put in place prior to the event. Such discussions might, for example, cover the deployment of law enforcement personnel, stewarding arrangements, and particular concerns relating to the policing operation.

...

### **5.3 A human rights approach to policing assemblies**

The policing of assemblies must be guided by the human rights principles of legality, necessity, proportionality and non-discrimination and must adhere to applicable human rights standards. In particular, the State has a positive duty to take reasonable and appropriate measures to enable peaceful assemblies to take place without participants fearing physical violence. Law enforcement officials must also protect participants of a peaceful assembly from any person or group (including agents provocateurs and counter-demonstrators) that attempts to disrupt or inhibit it in any way.

### **5.4 The use of negotiation and/or mediation to de-escalate conflict**

If a standoff or other dispute arises during the course of an assembly, negotiation or mediated dialogue may be an appropriate means of trying to reach an acceptable resolution. Such dialogue – whilst not always successful – can serve as a preventive tool helping to avoid the escalation of conflict, the imposition of arbitrary or unnecessary restrictions, or recourse to the use of force.

...

## **Section B – Explanatory Notes**

15. ... For the purposes of the Guidelines, an assembly means the intentional and temporary presence of a number of individuals in a public place for a common expressive purpose ...

...

18. The question of at what point an assembly can no longer be regarded as a temporary presence (thus exceeding the degree of tolerance presumptively to be afforded by the authorities towards all peaceful assemblies) must be assessed in the individual circumstances of each case. ... Where an assembly causes little or no inconvenience to others then the authorities should adopt a commensurately less stringent test of temporariness ... the term ‘temporary’ should not preclude the erection of protest camps or other non-permanent constructions.

...

**‘Peaceful’ and ‘non-peaceful’ assemblies**

25. *‘Peaceful’ assemblies*: Only ‘peaceful’ assembly is protected by the right to freedom of assembly ...

26. The term ‘peaceful’ should be interpreted to include conduct that may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote, and even conduct that temporarily hinders, impedes or obstructs the activities of third parties. Thus, by way of example, assemblies involving purely passive resistance should be characterized as ‘peaceful’ ...

...

28. If this fundamental criterion of ‘peacefulness’ is met, it triggers the positive obligations entailed by the right to freedom of peaceful assembly on the part of the State authorities ... It should be noted that assemblies that survive this initial test (thus, *prima facie*, deserving protection) may still legitimately be restricted on public order or other legitimate grounds ...

...

**Legality**

38. To aid certainty, any prior restrictions should be formalised in writing and communicated to the organiser of the event within a reasonable timeframe (see further paragraph 135 below). Furthermore, the relevant authorities must ensure that any restrictions imposed during an event are in full conformity with the law and consistent with established jurisprudence. Finally, the imposition, after an assembly, of sanctions and penalties which are not prescribed by law is not permitted.

...

**Content-based restrictions**

95. Whether behaviour constitutes the intentional incitement of violence is inevitably a question which must be assessed on the particular circumstances ... Some difficulty arises where the message concerns unlawful activity, or where it could be construed as inciting others to commit non-violent but unlawful action. Expressing support for unlawful activity can, in many cases, be distinguished from disorderly conduct, and should not therefore face restriction on public order grounds. The touchstone must again be the existence of an imminent threat of violence ...

96. ... resort to [hate] speech by participants in an assembly does not of itself necessarily justify the dispersal of the event, and law enforcement officials should take measures (such as arrest) only against the particular individuals involved (either during or after the event).

...

**Restrictions imposed during an assembly**

108. The role of the police or other law enforcement personnel during an assembly will often be to enforce any prior restrictions imposed in writing by the regulatory body. No additional restrictions should be imposed by law enforcement personnel unless absolutely necessary in light of demonstrably changed circumstances. On occasion, however, the situation on the ground may deteriorate (participants, for example, might begin using or inciting imminent violence), and the authorities may have to impose further measures to ensure that other relevant interests are adequately



safeguarded. In the same way that reasons must be adduced to demonstrate the need for prior restrictions, any restrictions imposed in the course of an assembly must be equally rigorously justified. Mere suspicions will not suffice, and the reasons must be both relevant and sufficient. In such circumstances, it will be appropriate for other civil authorities (such as an Ombudsman's office) to have an oversight role in relation to the policing operation, and law enforcement personnel should be accountable to an independent body. Furthermore ... unduly broad discretionary powers afforded to law enforcement officials may breach the principle of legality given the potential for arbitrariness. The detention of participants during an assembly (on grounds of their committing administrative, criminal or other offences) should meet a high threshold given the right to liberty and security of person and the fact that interferences with freedom of assembly are inevitably time sensitive. Detention should be used only in the most pressing situations when failure to detain would result in the commission of serious criminal offences.

...

#### **Decision-making and review process**

132. The regulatory authority ... should fairly and objectively assess all available information to determine whether the organisers and participants of a notified assembly are likely to conduct the event in a peaceful manner, and to ascertain the probable impact of the event on the rights and freedoms of other non-participant stakeholders. In doing so, it may be necessary to facilitate meetings with the event organiser and other interested parties.

133. The regulatory authority should also ensure that any relevant concerns raised are communicated to the event organiser, and the organiser should be offered an opportunity to respond to any concerns raised. This is especially important if these concerns might later be cited as the basis for imposing restrictions on the event. Providing the organiser with such information allows them the opportunity to address the concerns, thus diminishing the potential for disorder and helping foster a cooperative, rather than confrontational, relationship between the organisers and the authorities.

134. Assembly organisers, the designated regulatory authorities, law enforcement officials, and other parties whose rights might be affected by an assembly, should make every effort to reach mutual agreement on the time, place and manner of an assembly. If, however, agreement is not possible and no obvious resolution emerges, negotiation or mediated dialogue may help reach a mutually agreeable accommodation in advance of the notified date of the assembly. Genuine dialogue between relevant parties can often yield a more satisfactory outcome for everyone involved than formal recourse to the law. The facilitation of negotiations or mediated dialogue can usually best be performed by individuals or organisations not affiliated with either the State or the organiser. The presence of parties' legal representatives may also assist in facilitating discussions between the assembly organiser and law enforcement authorities. Such dialogue is usually most successful in establishing trust between parties if it is begun at the earliest possible opportunity. Whilst not always successful, it serves as a preventive tool helping to avoid the escalation of conflict or the imposition of arbitrary or unnecessary restrictions.

135. Any restrictions placed on an assembly should be communicated in writing to the event organiser with a brief explanation of the reason for each restriction (noting that such explanation must correspond with the permissible grounds enshrined in human rights law and as interpreted by the relevant courts). The burden of proof

should be on the regulatory authority to show that the restrictions imposed are reasonable in the circumstances ... Such decisions should also be communicated to the organiser within a reasonable timeframe – *i.e.* sufficiently far in advance of the date of a proposed event to allow the decision to be judicially appealed to an independent tribunal or court before the notified date of the event.

136. The regulatory authority should publish its decisions so that the public has access to reliable information about events taking place in the public domain. This might be done, for example, by posting decisions on a dedicated web-site.

...

## 6. Policing Public Assemblies

...

147. Governments must ensure that law enforcement officials receive adequate training in the policing of public assemblies. Training should equip law enforcement agencies to act in a manner that avoids escalation of violence and minimises conflict, and should include ‘soft skills’ such as negotiation and mediation ...

...

149. Law enforcement agencies should be proactive in engaging with assembly organizers: [o]fficers should seek to send clear messages that inform crowd expectations and reduce the potential for conflict escalation ... Furthermore, there should be a nominated point of contact within the law enforcement agency whom protesters can contact before or during an assembly. These contact details should be widely advertised ...

150. The policing operation should be characterized by a policy of ‘no surprises’: [l]aw enforcement officers should allow time for people in a crowd to respond as individuals to the situation they face, including any warnings or directions given to them ...

...

157. Using mediation or negotiation to de-escalate tensions during an assembly: [i]f a standoff or dispute arises during the course of an assembly, negotiation or mediated dialogue may be an appropriate means of trying to reach an acceptable resolution ...

...

159. Law enforcement officials should differentiate between peaceful and non-peaceful participants: [n]either isolated incidents of sporadic violence, nor the violent acts of some participants in the course of a demonstration, are themselves sufficient grounds to impose sweeping restrictions on peaceful participants in an assembly ... Law enforcement officials should not therefore treat a crowd as homogenous if detaining participants or (as a last resort) forcefully dispersing an assembly.

164. Policing peaceful assemblies that turn into non-peaceful assemblies: [a]ssemblies can change from being peaceful to non-peaceful and thus forfeit the protection afforded under human rights law ... Such an assembly may thus be terminated in a proportionate manner. However, the use of violence by a small number of participants in an assembly (including the use of inciting language) does not automatically turn an otherwise peaceful assembly into a non-peaceful assembly, and any intervention should aim to deal with the particular individuals involved rather than dispersing the entire event.

165. Dispersal of assemblies: [s]o long as assemblies remain peaceful, they should not be dispersed by law enforcement officials. Indeed, dispersal of assemblies should be a measure of last resort and should be governed by prospective rules informed by international standards. These rules need not be elaborated in legislation, but should be expressed in domestic law enforcement guidelines, and legislation should require that such guidelines be developed. Guidelines should specify the circumstances that warrant dispersal, and who is entitled to make dispersal orders (for example, only police officers of a specified rank and above).

166. Dispersal should not occur unless law enforcement officials have taken all reasonable measures to facilitate and protect the assembly from harm (including, for example, quieting hostile onlookers who threaten violence), and unless there is an imminent threat of violence ...

167. Dispersal should not therefore result where a small number of participants in an assembly act in a violent manner. In such instances, action should be taken against those particular individuals. Similarly, if ‘agents provocateurs’ infiltrate an otherwise peaceful assembly, the authorities should take appropriate action to remove the ‘agents provocateurs’ rather than terminating or dispersing the assembly, or declaring it to be unlawful ...

168. If dispersal is deemed necessary, the assembly organiser and participants should be clearly and audibly informed prior to any intervention by law enforcement personnel. Participants should also be given reasonable time to disperse voluntarily. Only if participants then fail to disperse may law enforcement officials intervene further.”

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

81. The applicant alleged a violation of his right to peaceful assembly. He complained, in particular, of disruptive security measures implemented at the site of the meeting at Bolotnaya Square, the early termination of the assembly, and his own arrest followed by his conviction for an administrative offence. He relied on Article 11 of the Convention, which 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**

82. 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**

### *1. The parties' submissions*

#### **(a) The Government**

83. The Government contended that the authorities had acted lawfully and reasonably in the preparation of the public assembly of 6 May 2012, both during the event and in assessing the need and the means to disperse it at the point when it ceased to be peaceful. They pointed out that the Moscow authorities and the event organisers had worked out the terms of the public assembly in their written exchange and in person at the working meeting on 4 May 2012. However, the police had suspected the protesters of having intended to act in breach of the agreed terms, and on 5 May 2012 the prosecutor's office had issued the organisers with a warning to that effect. At the same time, the police had developed a detailed security plan providing for the necessary security measures (see paragraphs 16 et seq. above).

84. The Government further alleged that the disorder at Bolotnaya Square had occurred when some of the organisers and participants had refused to follow the agreed plan and had attempted to march outside the agreed area. They had disregarded the police instructions to proceed to the designated venue at Bolotnaya embankment, even though the venue had been accessible, and had sat on the ground, causing scuffles and disorder. According to the Government, two State Duma deputies, the Ombudsman of the Russian Federation and a member of the Civic Chamber of the Russian Federation had supported the police's demands and tried to convince the protesters to follow the route, to no avail. Then, at 6 p.m. one of the organisers, acting at the request of the police, had announced the early closure of the meeting; from 5.58 p.m. to 7 p.m. some of the protesters had attempted to break the police cordon and had thrown various objects at the police. From 6 p.m. to 9 p.m. the police had gradually forced the protesters to leave and had arrested those who offered the most active resistance. The Government submitted that the intervention of the police had been justified since the assembly had ceased to be "peaceful" within the meaning of Article 11 of the Convention. In dispersing the protesters, the police had not resorted to excessive force: only police truncheons had been

used; only the most aggressive perpetrators had been targeted; and no tear gas or smoke bombs had been deployed.

85. The Government further asserted that the circumstances at issue had been the subject of a large-scale domestic inquiry, which had resulted in the prosecution and criminal conviction of the organisers for mass disorder (see paragraph 63 above) and of a number of other individuals for committing violent acts against the police (see paragraphs 53-60 and 65 above). In addition, the Government referred to two decisions refusing to open a criminal investigation into alleged police brutality (see paragraphs 52 and 61 above). They submitted that overall the establishment of the facts and their assessment by the domestic investigative and judicial authorities had been thorough and correct.

86. As regards the particular circumstances of the case, the Government alleged that the applicant had incurred sanctions for failing to obey police orders to leave the site of the public assembly at the end of the authorised meeting. They maintained that he had been arrested at 8.30 p.m. and taken to the police station, where he had been detained pending the administrative proceedings and subsequently convicted of failure to comply with a lawful police order, an offence under Article 19.3 of the Code of Administrative Offences.

87. The Government argued that the charges brought against the applicant had stemmed from a specific act of disobedience committed after the dispersal of the rally, and in any event after the expiry of the authorised time slot, rather than from his disagreement with the decision to terminate the assembly prematurely. They contended that there had been no interference with the exercise of the applicant's right to peaceful assembly and that in any event the penalty imposed on him, fifteen days' detention, had not been disproportionate because he had been previously convicted of a similar offence.

88. The Government concluded that both the general measures taken in relation to the assembly as a whole and the individual measures taken against the applicant personally had been justified under Article 11 § 2 of the Convention. They submitted that the measures in question had complied with domestic law, had been necessary "for the prevention of disorder or crime" and "for the protection of the rights and freedoms of others" and had remained strictly proportionate.

**(b) The applicant**

89. The applicant maintained that he had been prevented from taking part in an authorised public assembly. First, he argued that the heavy-handed crowd-control measures had caused tension between the protesters and the police, resulting in some isolated confrontations which had been used as a pretext for terminating and dispersing the meeting. Secondly, he argued that the termination of the meeting had not been clearly

announced and that, owing to the general confusion, he had remained at the site of the meeting until his arrest. He contested having committed the act of disobedience imputed to him.

90. As regards the general measures, the applicant first pointed out that the restrictions set out in the police security plan were not aimed at ensuring the peaceful conduct of the assembly, but at limiting and suppressing it. Secondly, he argued that the authorities had unilaterally altered the original meeting layout without informing the organisers or the public. He contended that the restriction of the area had had no purpose other than to prevent the possibility of tents being erected in the park. Rather than serving to prevent public disorder, that restriction had created a bottleneck at the entrance to the meeting venue and had caused tension resulting in a spontaneous sit-in by a small number of participants, including organisers. Furthermore, as the tension had built up, the authorities had failed to communicate with the organisers and to facilitate peaceful cooperation.

91. The applicant further alleged that the authorities had failed to effectively inform the demonstrators of the termination of the meeting and of the order to disperse. He had been unaware of the decision to end the assembly and it had not been obvious to him, since he had not seen any clashes. He pointed out that under the domestic law, the police were required to suspend the assembly first and to give the organisers time to remedy any breach before they could terminate it. In any event, he denied that the assembly had ceased to be peaceful, despite numerous incidents of confrontation with the police. No confrontations had taken place within the authorised perimeter in front of the stage. Overall, he argued that the response by the police had been uncoordinated and disproportionate and that it had had the effect of escalating the confrontation rather than defusing it. The immense number of police officers and extensive crowd-control resources deployed at the site of the assembly should have allowed the authorities to ensure the peaceful continuation of the meeting, but they had chosen to close it instead. The applicant relied on the expert report (see paragraphs 49 et seq. above) in support of his allegations.

92. As regards his own arrest, the applicant claimed that he had been a peaceful participant in an authorised public assembly. He submitted that he had been arrested at 7 p.m., still within the hours of the authorised assembly, contrary to the Government's claim, as the police had been mopping up the scene of the rally after its early closure; prior to his arrest the police had given him no warning and no order which he could have disobeyed; he had not been obstructing the traffic since it was still suspended for the assembly, and had not been committing any objectionable acts. He maintained that he had been arrested merely for his presence at the site of the rally as a means of discouraging him and others from participating in opposition rallies. He further complained that the domestic courts had taken no account of his arguments and exonerating evidence and

had imposed the most severe penalty possible. Overall, he contested his arrest and the ensuing conviction as unlawful, lacking a legitimate aim and not necessary in a democratic society, and thus in violation of Article 11 of the Convention.

## 2. *The Court's assessment*

### (a) **General principles**

93. The right to freedom of assembly, one of the foundations of a democratic society, is subject to a number of exceptions which must be narrowly interpreted and the necessity for any restrictions must be convincingly established. When examining whether restrictions on the rights and freedoms guaranteed by the Convention can be considered “necessary in a democratic society” the Contracting States enjoy a certain but not unlimited margin of appreciation (see *Barraco v. France*, no. 31684/05, § 42, 5 March 2009). It is, in any event, for the Court to give a final ruling on the restriction’s compatibility with the Convention and this is to be done by assessing the circumstances of a particular case (see *Osmani and Others v. the former Yugoslav Republic of Macedonia* (dec.), no. 50841/99, 11 October 2001, and *Galstyan v. Armenia*, no. 26986/03, § 114, 15 November 2007).

94. When the Court carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review under Article 11 the decisions they took. This does not mean that it has to confine itself to ascertaining whether the State exercised its discretion reasonably, carefully and in good faith; it must look at the interference complained of in the light of the case as a whole and determine, after having established that it pursued a “legitimate aim”, whether it answered a “pressing social need” and, in particular, whether it was proportionate to that aim and whether the reasons adduced by the national authorities to justify it were “relevant and sufficient” (see *Coster v. the United Kingdom* [GC], no. 24876/94, § 104, 18 January 2001; *Ashughyan v. Armenia*, no. 33268/03, § 89, 17 July 2008; *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 101, ECHR 2008; *Barraco*, cited above, § 42; and *Kasparov and Others v. Russia*, no. 21613/07, § 86, 3 October 2013). In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 11 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see *Rai and Evans* (dec.), nos. 26258/07 and 26255/07, 17 November 2009, and *Gün and Others v. Turkey*, no. 8029/07, § 75, 18 June 2013; see also *Gerger v. Turkey* [GC], no. 24919/94, § 46, 8 July 1999, and *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 47, *Reports of Judgments and Decisions* 1998-I).

95. The protection of opinions and the freedom to express them, as secured by Article 10, is one of the objectives of freedom of assembly as enshrined in Article 11. A balance must always be struck between the legitimate aims listed in Article 11 § 2 and the right to free expression of opinions by word, gesture or even silence by persons assembled on the streets or in other public places (see *Ezelin v. France*, 26 April 1991, §§ 37 and 52, Series A no. 202; *Barraco*, cited above, § 27; *Fáber v. Hungary*, no. 40721/08, § 41, 24 July 2012; and *Taranenko v. Russia*, no. 19554/05, § 65, 15 May 2014).

96. The Contracting States must refrain from applying unreasonable indirect restrictions upon the right to assemble peacefully. In addition, there may be positive obligations to secure the effective enjoyment of this right (see *Oya Ataman v. Turkey*, no. 74552/01, § 36, ECHR 2006-XIII). The States have a duty to take reasonable and appropriate measures with regard to lawful demonstrations to ensure their peaceful conduct and the safety of all citizens, although they cannot guarantee this absolutely and they have a wide discretion in the choice of the means to be used. In this area the obligation they enter into under Article 11 of the Convention is an obligation as to measures to be taken and not as to results to be achieved (see *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 251, ECHR 2011 (extracts); see also *Plattform "Ärzte für das Leben" v. Austria*, 21 June 1988, § 34, Series A no. 139; *Oya Ataman*, cited above, § 35; and *Protopapa v. Turkey*, no. 16084/90, § 108, 24 February 2009). It is incumbent on the State, in particular, to take the appropriate preventive security measures to guarantee the smooth conduct of a public event, such as ensuring the presence of first-aid services at the site of demonstrations and regulating traffic so as to minimise its disruption (see *Oya Ataman*, cited above, § 39, and *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, §§ 158-60, ECHR 2015).

97. It is important for the public authorities, moreover, to show a certain degree of tolerance towards peaceful gatherings, even unlawful ones, if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance (see *Oya Ataman*, cited above, §§ 37 and 39). The limits of tolerance expected towards an unlawful assembly depend on the specific circumstances, including the duration and the extent of public disturbance caused by it, and whether its participants had been given sufficient opportunity to manifest their views (see *Cisse v. France*, no. 51346/99, §§ 51-52, ECHR 2002-III; *Éva Molnár v. Hungary*, no. 10346/05, §§ 42-43, 7 October 2008; *Navalnyy and Yashin v. Russia*, no. 76204/11, §§ 63-64, 4 December 2014; and *Kudrevičius and Others*, cited above, §§ 155-57 and 176-77).

98. On the other hand, where demonstrators engage in acts of violence, interferences with the right to freedom of assembly are in principle justified for the prevention of disorder or crime and for the protection of the rights



and freedoms of others (see *Giuliani and Gaggio*, cited above, § 251). The guarantees of Article 11 of the Convention do not apply to assemblies where the organisers and participants have violent intentions, incite to violence or otherwise deny the foundations of a “democratic society” (see *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 77, ECHR 2001-IX; *The United Macedonian Organisation Ilinden and Ivanov v. Bulgaria*, no. 44079/98, § 99, 20 October 2005; *Sergey Kuznetsov v. Russia*, no. 10877/04, § 45, 23 October 2008; *Alekseyev v. Russia*, nos. 4916/07, 25924/08 and 14599/09, § 80, 21 October 2010; *Fáber*, cited above, § 37; and *Gün and Others*, cited above, § 70). The burden of proving the violent intentions of the organisers of a demonstration lies with the authorities (see *Christian Democratic People’s Party v. Moldova (no. 2)*, no. 25196/04, § 23, 2 February 2010).

99. In any event, an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour (see *Ezelin*, cited above, § 53; *Ziliberberg v. Moldova (dec.)*, no. 61821/00, 4 May 2004; and *Primov and Others v. Russia*, no. 17391/06, § 155, 12 June 2014). Even if there is a real risk of a public demonstration resulting in disorder as a result of developments outside the control of those organising it, such a demonstration does not as such fall outside the scope of Article 11 § 1 of the Convention, but any restriction placed on such an assembly must be in conformity with the terms of paragraph 2 of that Article (see *Schwabe and M.G. v. Germany*, nos. 8080/08 and 8577/08, § 92, ECHR 2011).

**(b) Application of these principles in the present case**

100. The applicant alleged a violation of his right to freedom of peaceful assembly, referring to the measures taken as regards the assembly in general and the specific measures taken against him personally. He alleged that the crowd-control measures implemented by the police at Bolotnaya Square had in effect provoked a confrontation between the protesters and the police, and that the police had then used the incident as a pretext for the early termination of the meeting and its dispersal. He claimed, moreover, that the authorities had intended from the outset to suppress the rally in order to discourage street protest and political dissent. He argued that his own arrest at the site of the rally, his pre-trial detention and the ensuing conviction for an administrative offence had been arbitrary and unnecessary.

101. The Court observes that although the first part of the applicant’s allegations concerns a somewhat general situation, it is clear that those general events have directly affected the applicant’s individual state of affairs and his rights guaranteed by Article 11 of the Convention. He arrived

at the site of the public event with the intention of taking part in the meeting; however, this became impossible because the meeting was disrupted and then cancelled, and the main speakers were arrested. This complaint is distinct from the grievances about the applicant's own subsequent arrest and detention, also lodged under Article 11 of the Convention. The Court has thus identified two issues in the applicant's complaints and it will consider each of them separately.

*(i) Obligation to ensure the peaceful conduct of the assembly*

102. The Court observes that applying security measures in the course of a public assembly constitutes, on the one hand, a restriction on the exercise of the right to freedom of assembly, but, on the other hand, it is also a part of the authorities' positive obligations to ensure the peaceful conduct of the assembly and the safety of all citizens (see the case-law cited in paragraph 96 above). It will begin its analysis with the question whether the authorities took all reasonable measures to ensure that the meeting at Bolotnaya Square was conducted peacefully. The Court observes that the parties have agreed on the main circumstances of the standoff between the assembly leaders and the police at Malyy Kamenny bridge, followed by a violent confrontation, the termination of the meeting and its dispersal. They agree on the timeline and the sequence of events as established by the domestic courts, but differ as to the perception of those events, any causal links between them and their legal interpretation. They disagree, in particular, on whether the authorised venue layout was altered, whether the authorities' conduct caused, or at least compounded the onset of the confrontations, and whether the scale of the disorder justified the closure of the event and its dispersal by the police.

103. According to the official version, on 6 May 2012 mass disorder took place at Bolotnaya Square. The Government contended that on that day the assembly leaders had intended to take the march outside the designated area, to set up a protest campsite and, possibly, to hold an unauthorised assembly near the Kremlin. When they were barred by the police cordon, the organisers called for a sit-in and encouraged assaults on the police cordon. In those circumstances the police had no choice but to terminate the assembly, which had already been irrevocably disrupted, and to restrain the active offenders.

104. The assembly leaders, on the contrary, accused the authorities of having framed the demonstration so that a confrontation would become inevitable and so that a peaceful rally could be portrayed as an aggressive mob warranting a resolute crackdown. They denied that it had been their original intention to go outside the designated meeting area; conversely, the sit-in was a reaction to the authorities' unilateral change of the meeting layout. The protesters sat on the ground in an attempt to negotiate a passage through the park at Bolotnaya Square, which they considered to be a part of the agreed meeting venue, but the authorities showed no willingness to

negotiate or even to communicate with them. From this point of view, the ensuing breaking of the cordon and confrontations were a consequence of the authorities' uncooperative conduct. In any event, the applicant contended that despite some isolated rowdy incidents, the assembly had generally remained peaceful and there had been no cause for terminating or dispersing it.

105. It appears from the materials submitted in this case that safeguarding public order on 6 May 2012 was an elaborate security operation. The Court observes, in particular, that the security plan provided for a complex array of security measures to be taken in the whole city of Moscow on that day, of which a significant part was devoted to the public assembly at Bolotnaya Square (see paragraphs 16 et seq. above). The unprecedented scale of the police presence and of the equipment deployed for this event was noted in the media reports referred to by the parties, by the Expert Commission and by the witnesses in the criminal proceedings (see paragraphs 51 and 57 above).

106. It is common ground that the enhanced security was due to anticipated unauthorised street protests. The authorities had closely monitored the activities of the opposition leaders in the period preceding 6 May 2012 by accessing open sources and by means of secret surveillance. They had suspected the opposition activists of plotting a popular uprising, starting with unlawful public assemblies and setting up campsites supposedly inspired by the "Occupy" movement and similar to the "Maidan" protest in Ukraine (see the testimonies of Mr Deynichenko, Mr Zdorenko, Mr Makhonin and Ms Volondina, paragraph 63 above). It was for fear of such a campsite being erected in the park of Bolotnaya Square that the police had decided to obstruct access to it, restricting the assembly venue to the embankment, where tents could not be easily set up.

107. The Court notes that although Article 11 of the Convention does not guarantee a right to set up a campsite at a location of one's choice, such temporary installations may in certain circumstances constitute a form of political expression, restrictions on which must comply with the requirements of Article 10 § 2 of the Convention (see examples of other forms of expression of opinion in *Steel and Others v. the United Kingdom*, 23 September 1998, § 92, *Reports* 1998-VII; *Drieman and Others v. Norway* (dec), no. 33678/96, 4 May 2000; and *Taranenko*, cited above, §§ 70-71). It reiterates that in any event in this context Article 10 of the Convention is to be regarded as a *lex generalis* in relation to Article 11, a *lex specialis*, and the complaint under Article 11 must in these circumstances be considered in the light of Article 10 (see *Ezelin*, cited above, §§ 35 and 37). The Court will take this into account when assessing the proportionality of the measures taken in response to the threat posed by the assembly's suspected hidden agenda (see paragraph 139 below).

108. Before deciding on the role of undeclared goals, whether on the part of the organisers or the authorities, the Court will comment on the formal reasons for the decisions taken when the assembly was being organised. On the face of it, the decision to close the park to the rally does not appear in itself hostile or underhand *vis-à-vis* the organisers, given that the embankment had sufficient capacity to accommodate the assembly, even with a significant margin for exceeding the expected number of participants. According to the statement of the Moscow Regional Department of Security (see paragraph 63 above), the maximum capacity of the Bolotnaya embankment was about 26,000 people. It was therefore large enough not only for the originally declared 5,000 participants, or the officially recorded turnout of 8,000, but even for the organisers' retrospective estimate of 25,000. However, the organisers objected not only to the lack of access to the park, but, above all, to the discovery of a last-minute alteration of the venue layout, which allegedly led to a misunderstanding and the disruption of the assembly.

109. The organisers, the municipal authorities and the police had discussed the layout of the assembly venue during the working meeting of 4 May 2012. The assembly organisers claimed that it had been expressly agreed at the working meeting to replicate on 6 May 2012 the route and the format of the assembly that had taken place on 4 February 2012. Their testimonies to that effect have been neither confirmed nor denied by the officials who were present at the working meeting. When cross-examined, Mr Deynichenko and Mr Sharapov stated that the inclusion of the park had not been requested or discussed. Assuming that the latter was true and no express agreement had been reached as regards the park, the Court nevertheless considers that it was not entirely unreasonable on the part of the organisers to perceive it as having been included by default. First, the official boundary of Bolotnaya Square comprised the park, as confirmed by the expert witnesses N. and M., as well as the head of Yakimanka District Municipality of Moscow. Secondly, the park had been included in the meeting venue on the previous occasion, a fact admitted by the official sources, in particular the witness Mr Sharapov (see the testimonies of all the aforementioned witnesses quoted in paragraph 63 above).

110. It is common ground that no map was produced at the working meeting and no on-the-spot reconnaissance was carried out because of the time constraints. After the working meeting, the police developed the security plan and drew up their own map, which excluded the park. It is not clear whether their map was based on their perception of the discussion at the working meeting, or whether they decided on the park's closure afterwards, taking into account the expected number of participants and the potential public order issues. In any event, both the security plan and the maps used by the police forces remained police internal documents and were not shared with the organisers (see the Moscow Department of the

Interior's reply to the Investigative Committee, paragraph 48 above, and the Moscow City Court's judgment in Mr Udaltsov's and Mr Razvozhayev's case, paragraph 63 above).

111. At the same time, a different map of the assembly venue was published on the police's official website and included the park. The provenance of the map might have been unofficial, as established by the Moscow City Court, but even if it was based on the information submitted by the organisers and not by the police's own services, its publication by the police press office implied some sort of official endorsement (see paragraphs 48 and 63 above). Moreover, the fact that the map had been in the public domain for at least twenty-four hours before the assembly allowed the officers responsible for the security of the meeting to spot any errors and to inform the organisers and the public accordingly. Given the high priority attached to policing this event and the thoroughness with which the security forces followed up every piece of information concerning the protest activity, it was unlikely that the published map had inadvertently slipped their attention.

112. In view of the foregoing, the Court concludes that there was at least a tacit, if not an express, agreement that the park at Bolotnaya Square would form part of the meeting venue on 6 May 2012.

113. With this finding in mind, the Court turns to the next contested point: the significance of the sit-in at Malyy Kamenny bridge. The Court will examine the reasons for its occurrence, the extent to which it disrupted the assembly and the authorities' conduct in this situation.

114. The Court observes that during the domestic proceedings two conflicting explanations were given for the sit-in. The assembly leaders and participants maintained that it was a reaction to the unexpected change of the venue layout and an attempt to negotiate a passage through the park. This reason is in principle consistent with the Court's finding that the placement of the police cordon was different from that expected by the assembly organisers (see paragraph 112 above).

115. However, certain police officials maintained that the sit-in leaders had demanded access to Bolshoy Kamenny bridge towards the Kremlin, an ultimatum that could not be granted (see Mr Deynichenko's report of 6 May 2012, paragraph 43 above, and his testimony, paragraph 63 above; and the decision of the Investigative Committee of 20 March 2013, paragraph 52 above). It is impossible to establish whether any such request was indeed expressed because no witnesses other than the police heard it. On the other hand, a number of witnesses unrelated to the conflicting parties confirmed that the sit-in leaders had demanded that the police move the cordon back so as to allow access to the park. The independent observers from the Ombudsman's office who had been involved in the negotiations explained that the protesters, faced with the narrowed-down passage, had demanded that it be widened. Moreover, they named the police official,

Colonel Biryukov, to whom the Ombudsman had passed on that demand (see the testimonies of Ms Mirza and Mr Vasiliev, paragraphs 57 and 59 above). Likewise, the assembly observer from the Civic Chamber of the Russian Federation testified that no demands to open the passage to the Kremlin had been made (see the testimony of Mr Svanidze, paragraph 58 above). Similar testimonies were also given by the two State Duma deputies, Mr G. Gudkov and Mr D. Gudkov, who had also attempted to mediate in the conflict; they specified that the sit-in leaders had insisted on the cordon being moved back and had asked for access to the park.

116. On the basis of this evidence the Court finds that the sit-in leaders expressed the demand to have the park opened up for the assembly and that they made that demand known to the police.

117. As to the nature of the sit-in and the degree of disturbance it caused, the Court notes the following. It appears from the video footage submitted by the parties, and it is confirmed by the witness accounts, that the sit-in narrowed the passage to Bolotnaya Square even further and that it caused some confusion and impatience among the demonstrators aspiring to reach the meeting venue. Nevertheless, the same sources made it clear that with only twenty to fifty people sitting on the ground, the sit-in remained localised and left sufficient space for those wishing to pass. It is beyond doubt that the sit-in was strictly peaceful. However, it required the authorities' intervention – and those taking part in it openly invited it - since the cordon could not be moved without the authorities' consent and relevant orders. The question therefore arises whether at this stage the authorities took all reasonable steps to preserve the assembly's peaceful character.

118. Having received the request to move the cordon back, the police commanders had to accept or reject it, or seek a compromise solution. It is not for the Court to indicate what manoeuvre was the most appropriate one for the police cordon in the circumstances. The fact that the police were exercising caution against the park being taken over by a campsite, or their unwillingness to allow the protesters to proceed in the direction of the Kremlin, or both, might have justified the refusal to allow access to the park, given that in any event the assembly had sufficient space for a meeting. Crucially, whatever course of action the police deemed correct, they had to engage with the sit-in leaders in order to communicate their position openly, clearly and promptly.

119. The standoff near the cordon lasted for about forty-five to fifty minutes, a considerable period of time. From about 5 p.m. to 5.15 p.m. the organisers were addressing the police officers forming the cordon, but it appears that there were no senior police officers among them competent to discuss those issues; the senior officers were apparently watching the event from some distance behind the cordon. The negotiators became involved at about 5.15 p.m. and the talks continued until at least 5.45 p.m. The police chose first to contact the protest leaders through an intermediary, the

Ombudsman, who had to tell them to stand up and go towards the stage. He passed on the message and returned to the police the protesters' demand to open the passage to the park. It is unclear whether, after that initial exchange, the police replied to the protesters and, if so, whether the Ombudsman managed to transmit the reply. However, at the same time two State Duma deputies, Mr G. Gudkov and Mr D. Gudkov, were in concurrent negotiations and had allegedly reached an agreement that the cordon could in principle be moved.

120. It appears that the mediators had some high-ranking interlocutors on the police side. The Ombudsman was talking to Colonel Biryukov. According to the security plan, on 6 May 2012 he was responsible for "coordination with the representatives of public organisations and also coordination and information flow with other services of the Moscow Department of the Interior" (see paragraph 21 above). However, Colonel Biryukov told the Ombudsman that the decision about the police cordon was outside his powers (see the testimonies of Ms Mirza and Mr Vasiliev, paragraphs 57 and 59 above). The deputies, Mr G. Gudkov and Mr D. Gudkov had apparently spoken to Mr Gorbenko, the deputy mayor; they did not identify the police officers to whom they had also spoken, but they claimed to have achieved a different result from the Ombudsman.

121. The documents available in the case file do not disclose the identity of the official who took the decision as regards the cordon, or what the decision actually was. According to the security plan, the relevant segment of the cordon belonged to "Zone no. 8" under the command of Police Colonel Smirnov with nine officers as his deputies (listed in paragraph 22 above). However, it is not clear whether he had the authority to negotiate with the assembly organisers or to alter the position of the cordon specified in the security plan. Police Colonel Deynichenko was in charge of the overall command of the security operation; on 4 May 2012 he took part in the working meeting, and on 6 May 2012 after the assembly he drew up a report on the implementation of the security plan. However, there is no information as to whether he was involved in the negotiations with the sit-in leaders or whether he gave any orders concerning the cordon.

122. The Court notes that another official, Colonel Makhonin, played an active role in policing the event. Before the march he met the assembly organisers for a final briefing, gave them instructions and had them sign a formal undertaking against any breach of public order. He also indicated to the organisers that he was their emergency contact and instructed them to call him for any outstanding public-order issues.

123. It is unknown whether Mr Udaltsov tried to call Colonel Makhonin during the standoff. Likewise, the Court is unable to verify the testimony of Mr Davidis to the effect that he tried to call Mr Deynichenko. The domestic courts did not rule on those points, and no relevant evidence has been presented to the Court. In any event, the senior police officers had ample

opportunity to contact the organisers by telephone and to personally approach the sit-in participants by simply walking a few metres. Mr Makhonin, for his part, testified that he had not tried to call Mr Udaltsov until he arrived at Bolotnaya Square “after the mass disorder had already begun” (see paragraph 63 above). Given that the first incident occurred a few minutes after the sit-in had ended, this means that he did not call Mr Udaltsov during the sit-in and was away from Bolotnaya Square while it lasted. At 6 p.m. he appeared in the stage area, where he instructed Ms Mityushkina to end the assembly (see paragraphs 131 et seq. below).

124. It is noteworthy that Mr Makhonin’s official function in relation to the assembly at Bolotnaya Square has not been specified. His name did not appear on the security plan among hundreds of named police officials personally responsible for various tasks, including checking the bins, apprehending offenders, video recording and press relations. He was not a member of the operational headquarters either. According to the security plan, it was Colonel Smirnov’s and Colonel Saprykin’s task to personally meet the organisers before the beginning of the march in order to brief them and to have them sign the undertakings (see paragraph 22 above), although in practice it was Colonel Makhonin who did this.

125. It is also peculiar that the security plan did not assign an officer to liaise with the assembly organisers, although it specifically designated officers for liaising with civil-society organisations and with the press (see paragraph 21 above). As it happened, Colonel Makhonin exercised some operational functions in relation to the assembly organisers, but without knowing the limits of his mandate it is impossible to tell whether he had the authority to decide on the cordon manoeuvre or to negotiate with the sit-in leaders.

126. The Court has found above that the march leaders were taken by surprise because of the substantial restriction of space for the meeting, since the police cordon at Malyy Kamenny bridge excluded a significant part of the venue as originally agreed. Faced with that situation, instead of proceeding to the place available in front of the stage, they began a sit-in, which aggravated the congestion (see paragraphs 114 and 117 above). In the Court’s view, the controversy about the placement of the police cordon could reasonably have been dealt with had the competent officials been prepared to come forward in order to communicate with the assembly organisers and to discuss the placement of the cordon with them. Their involvement could have alleviated the tensions caused by the unexpected change of the venue layout and could have helped avoid the standoff and the consequent discontent on the part of the protesters.

127. The Court’s findings in the foregoing paragraphs lead to the conclusion that the police authorities had not provided for a reliable channel of communication with the organisers before the assembly. This omission is striking, given the general thoroughness of the security preparations for



anticipated acts of defiance on the part of the assembly leaders. Furthermore, the authorities failed to respond to the real-time developments in a constructive manner. In the first fifteen minutes after the march's arrival at Malyy Kamenny bridge, no official took any interest in talking to the march leaders showing signs of distress in front of the police cordon. Eventually, when the sit-in began, they sent the Ombudsman with a message to the leaders to stand up and move on, which provided no answer to the protesters' concerns. Whether or not the senior police officers beyond the cordon had initially understood the demands of the sit-in leaders, there was nothing preventing them from immediately clarifying the issue and from giving them a clear answer.

128. In the light of the foregoing, the Court finds that in the present case the authorities made insufficient effort to communicate with the assembly organisers to resolve the tension caused by the confusion about the venue layout. The failure to take simple and obvious steps at the first signs of the conflict allowed it to escalate, leading to the disruption of the previously peaceful assembly.

129. The Court has already referred to the Venice Commission's Guidelines on Freedom of Peaceful Assembly, which recommends negotiation or mediated dialogue if a standoff or other dispute arises during the course of an assembly as a way of avoiding the escalation of conflict (see guideline 5.4, paragraph 80 above). It considers, however, that it is unnecessary to define the standard required in relation to the Guidelines or otherwise. The Court considers that from any point of view the authorities in this case did not comply with even the minimum requirements in their duty to communicate with the assembly leaders, which was an essential part of their positive obligation to ensure the peaceful conduct of the assembly, to prevent disorder and to secure the safety of all the citizens involved.

130. The authorities have thus failed to discharge their positive obligation in respect of the conduct of the assembly at Bolotnaya Square. There has accordingly been a violation of Article 11 of the Convention on that account.

*(ii) Termination of the assembly and the applicant's arrest, detention and charges*

131. At the end of the negotiations the position of the police cordon remained unchanged; it was only reinforced by the riot police. The subsequent events developed simultaneously on two opposite sides of Bolotnaya Square. Congestion occurred at Malyy Kamenny bridge at 5.50 p.m., at which point the protesters ended the sit-in and left for the stage. At 5.55 p.m. the pressure of the crowd caused the cordon to break for the first time, but it was quickly restored without the use of force, and in the next few minutes protesters from among the crowd began tossing various objects at the police cordon, including a Molotov cocktail. At the same time,

at 6 p.m., at the far end of Bolotnaya Square Ms Mityushkina, acting on the instructions of Colonel Makhonin, announced from the stage that the meeting was closed. In the next fifteen minutes several confrontations took place between the protesters and the police at Malyy Kamenny bridge, until at 6.15 p.m. the police began expansive action to disperse the crowd there.

132. The Government did not specify whether it was Colonel Makhonin who took the decision to terminate the assembly or whether he was following orders. It is also unclear exactly what prompted that decision, although some witnesses suggested that it was because of the sit-in. The fact that at 5.55 p.m. the authorities were threatening the assembly leaders with criminal sanctions corroborates that hypothesis (see paragraph 34 above). It is clear, in any event, that at 6 p.m. when the announcement was made, the crowd had built up, and there had been squeezing and pushing and isolated incidents of small-scale aggression at the cordon at Malyy Kamenny bridge, but no widespread disorder or intensive fighting.

133. It does not appear that the assembly was suspended before being terminated, as required by section 15.3 of the Public Events Act. According to the authorities, at that stage it was justified to announce an emergency termination under section 17.3, which curtails the termination procedure in the event of mass disorder. The Court considers that irrespective of whether the domestic requirements for “mass disorder” had been met, the tensions were still localised at Malyy Kamenny bridge while the rest of the venue remained calm. The authorities have not shown that prior to declaring the whole meeting closed they had attempted to separate the turbulent sector and target the problems there, so as to enable the meeting to continue in the sector of the stage where the situation remained peaceful. The Court is therefore not convinced that the termination of the meeting at Bolotnaya Square was inevitable.

134. However, even assuming that the decision to terminate the assembly was taken because of a real and imminent risk that violence would spread and intensify, and that the authorities acted within the margin of appreciation which is to be allowed in such circumstances, that decision could have been implemented in different ways and using various methods. Given the diversity in the circumstances of the individual protesters, in particular the degree of their involvement or their non-involvement in clashes and the wide range of consequences faced by them, it is impossible to give a general assessment of the police conduct in dispersing the assembly at Bolotnaya Square. For this reason, the Court will abstain from analysing the manner in which the police dispersed the protesters at Malyy Kamenny bridge, as it falls outside the scope of the applicant’s case. The Court will examine the actions taken against the applicant personally, and in doing so it will take into account the general situation in his immediate vicinity, that is, the area in front of the stage inside the designated meeting area at Bolotnaya embankment.

135. It follows from the parties' submissions, corroborated by video and documentary evidence, that the area within the cordoned perimeter of the meeting venue at Bolotnaya embankment remained strictly peaceful for the whole time, even during the disorder outside that perimeter, at Malyy Kamenny bridge. It appears that during the sit-in the area in question was nearly empty, and that when the protest leaders abandoned the sit-in, some people then followed them towards the stage, although many had already left the meeting.

136. After the arrest of Mr Udaltsov, Mr Navalnyy and Mr Nemtsov at the stage, a considerable number of people continued to congregate in that area. The police addressed them through megaphones, ordering them to vacate the area, but many of them refused to leave and "linked arms in passive resistance" (see paragraph 51 above). Given the benign character of their protests, the police did not use force against those protesters to the same extent as they did at Malyy Kamenny bridge. For the most part, the police were steadily pressing them out towards the exits and selectively arresting some individuals.

137. The Court refers to the principles reiterated in paragraph 99 above which extend the protection of Article 11 to peaceful participants in an assembly tarnished by isolated acts of violence committed by other participants. In the present case, the Court finds that the applicant remained within the perimeter of the cordoned meeting venue and that his behaviour remained, by all accounts, strictly peaceful. Moreover, it does not appear from any submissions that he was among those who manifested even "passive resistance".

138. It is in dispute between the parties whether the applicant was arrested before or shortly after the time slot originally authorised for the assembly, and the Court will address this controversy in the context of Article 6 of the Convention (see paragraphs 163 et seq. below). For the purposes of its analysis under Article 11 it is sufficient to note that even if the applicant was on the wrong side of the time-limit, measures taken after an assembly has ended fall, as a general rule, within the scope of Article 11 of the Convention as long as there is a link between the exercise of the freedom of peaceful assembly by the applicant and the measures taken against him (see *Ezelin*, cited above, § 41, and *Navalnyy and Yashin*, cited above, § 52). Accordingly, in the circumstances of this case, even after the assembly was officially terminated, the guarantees of Article 11 continued to apply in respect of the applicant, notwithstanding the clashes at Malyy Kamenny bridge. It follows that any measures taken against him in the given situation had to have complied with the law, pursued a legitimate aim and been necessary in a democratic society within the meaning of Article 11 § 2 of the Convention.

139. The Court is mindful of the authorities' admission that all the security measures taken, in particular the crackdown on those charged with

offences committed on 6 May on Bolotnaya Square, were motivated by the “fear of Maidan”: the enhanced security was specifically aimed at preventing illegal campsites from being set up. At the same time, the Court observes, and the Government have insisted on this point, that the applicant was not arrested and punished for breaching the rules on public assemblies. Even if his presence at the meeting venue after its closure were to be considered a manifestation of his objection to the early termination of the assembly, that was not the offence with which he was charged. According to the domestic courts and the Government’s submissions, he was arrested, detained and sentenced to fifteen days’ imprisonment because he was obstructing traffic and disobeyed lawful police orders to stop doing so.

140. In this context, the severity of the measures applied against the applicant is entirely devoid of any justification. He was not accused of violent acts, or even of “passive resistance” in protest against the termination of the assembly. His motives for walking on the road and obstructing the traffic are left unexplained by the domestic judgments; the applicant’s explanation that there was no traffic and that he was simply not quick enough to leave the venue in the general confusion has not been contested or ruled out. Therefore, even assuming that the applicant’s arrest, pre-trial detention and administrative sentence complied with domestic law and pursued one of the legitimate aims enumerated in Article 11 § 2 of the Convention – presumably, public safety – the measures taken against him were grossly disproportionate to the aim pursued. There was no “pressing social need” to arrest the applicant and to escort him to the police station. There was especially no need to sentence him to a prison term, albeit a short one.

141. It must be stressed, moreover, that the arrest, the detention and the ensuing administrative conviction of the applicant could not have failed to have the effect of discouraging him and others from participating in protest rallies or indeed from engaging actively in opposition politics. Undoubtedly, those measures also had a serious potential to deter other opposition supporters and the public at large from attending demonstrations and, more generally, from participating in open political debate. The chilling effect of those sanctions was further amplified by the large number of arrests effected on that day, which attracted broad media coverage.

142. There has accordingly been a violation of Article 11 of the Convention on account of the applicant’s arrest, pre-trial detention and administrative penalty.

## II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

143. The applicant further complained that his arrest and pre-trial detention pending the administrative proceedings had been arbitrary and

unlawful. Article 5 § 1 of the Convention provides, in so far as relevant, as follows:

“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**

144. The Court notes that this part of the application 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. The parties' submissions*

#### **(a) The Government**

145. The Government contended that after the authorised public assembly had been terminated the applicant had stayed on at Bolotnaya Square; he had walked on the road obstructing the traffic, and had disobeyed the police officers' order to stop doing so. According to the Government, the applicant had been escorted to the police station, where he had been issued with a statement on the administrative offence provided for by Article 19.3 of the Code of Administrative Offences. The Government contended that the legal grounds for the arrest had been Article 27.2 of the Code of Administrative Offences, which empowered the police to escort individuals, that is, to take them to the police station in order to draw up an

administrative offence report. The Government stated that the applicant had been in police custody since his arrest at 9.30 p.m. on 6 May 2012 until 8 a.m. on 8 May 2012. They explained that the length of the applicant's detention had been calculated from 9.30 p.m. on 6 May 2012, the time when he was taken to the Krasnoselskiy District police station, and argued that the term of his pre-trial detention had not exceeded the statutory limit of forty-eight hours. Overall, the Government submitted that the applicant's deprivation of liberty had complied with domestic law and that all requisite formalities, such as issuing a lawful detention order, had been fulfilled.

**(b) The applicant**

146. The applicant contested the Government's submissions and alleged that it had not been necessary either to arrest him or to detain him at the police station after the police report and the statement on the administrative offence had been drawn up. Moreover, there had been no legal grounds to remand him in custody pending the hearing before the Justice of the Peace.

*2. The Court's assessment*

147. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 of the Convention essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. However, the "lawfulness" of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion. Furthermore, the list of exceptions to the right to liberty secured in Article 5 § 1 of the Convention is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely to ensure that no one is arbitrarily deprived of his liberty (see *Giulia Manzoni v. Italy*, 1 July 1997, § 25, *Reports* 1997-IV).

148. The Court has noted above that the applicant was arrested for walking on the road and obstructing the traffic, although it remains unclear whether it has been alleged that he was doing so within or after the period for which the traffic had been suspended, and whether there actually was any traffic (see paragraph 140 above; see also paragraph 164 below). It appears that the police were in haste to disperse the remaining demonstrators from Bolotnaya Square after the early termination of the rally, and since the applicant had not yet left they decided to arrest him. Even if the preceding disorder at Malyy Kamenny bridge may explain, if not justify, their zealotry in pursuing the peaceful protesters lingering at the site, and even accepting that the situation might not have allowed the

relevant documents to be drawn up on the spot, there is no explanation, let alone justification, for the applicant's ensuing detention at the police station.

149. It has not been disputed that from the time of his arrest, at the latest at 8.30 p.m. on 6 May 2012, until his transfer to court at 8 a.m. on 8 May 2012 the applicant was deprived of his liberty within the meaning of Article 5 § 1 of the Convention. The Government submitted that his arrest and detention had the purpose of bringing him before the competent legal authority on suspicion of having committed an administrative offence and thus fell within the ambit of Article 5 § 1 (c) of the Convention. The Court notes that the duration of administrative detention should not as a general rule exceed three hours, which is an indication of the period of time the law regards as reasonable and sufficient for drawing up an administrative offence report. Once the administrative offence report had been drawn up at 9.30 p.m., the objective of escorting the applicant to the Krasnoselskiy District police station had been met and he could have been discharged.

150. However, the applicant was not released on that day and was formally remanded in custody to secure his attendance at the hearing before the Justice of the Peace. The Government argued that the term of the applicant's detention remained within the forty-eight-hour time-limit provided for by Article 27.5 § 3 of the Code of Administrative Offences. However, neither the Government nor any other domestic authorities have provided any justification as required by Article 27.3 of the Code, namely that it was an "exceptional case" or that it was "necessary for the prompt and proper examination of the alleged administrative offence". In the absence of any explicit reasons given by the authorities for not releasing the applicant, the Court considers that his thirty-six-hour detention pending trial was unjustified and arbitrary.

151. In view of the foregoing, the Court finds a breach of the applicant's right to liberty on account of the lack of reasons and legal grounds for remanding him in custody pending the hearing of his case by the Justice of the Peace.

152. Accordingly, there has been a violation of Article 5 § 1 of the Convention.

### III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

153. The applicant complained of a violation of the right to a fair and public hearing in the administrative proceedings against him. He relied on Article 6 §§ 1 and 3 (b), (c) and (d) of the Convention, which provides, in so far as relevant, as follows:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by [a] ... tribunal ...

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(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

154. The Court reiterates that in order to determine whether an offence qualifies as “criminal” for the purposes of Article 6 the Convention, it is necessary to ascertain whether or not the provision defining the offence belongs, in the legal system of the respondent State, to the criminal law; the “very nature of the offence” and the degree of severity of the penalty risked must then be considered (see *Menesheva v. Russia*, no. 59261/00, § 95, ECHR 2006-III). Deprivation of liberty imposed as punishment for an offence belongs in general to the criminal sphere, unless by its nature, duration or manner of execution it is not appreciably detrimental (see *Engel and Others v. the Netherlands*, 8 June 1976, §§ 82-83, Series A no. 22, and *Ezeh and Connors v. the United Kingdom* [GC], nos. 39665/98 and 40086/98, §§ 69-130, ECHR 2003-X).

155. In the present case, the Government disagreed that Article 6 was applicable to the proceedings in question. However, the applicant in the present case was convicted of an offence which was punishable by detention, the purpose of the sanction being purely punitive. Moreover, he served a fifteen-day prison term as a result of his conviction. The Court has previously found that the offence set out in Article 19.3 of the Code of the Administrative Offences had to be classified as “criminal” for the purposes of the Convention in view of the gravity of the sanction and its purely punitive purpose (see *Malofeyeva v. Russia*, no. 36673/04, §§ 99-101, 30 May 2013; *Nemtsov v. Russia*, no. 1774/11, § 83, 31 July 2014; and *Navalnyy and Yashin*, cited above, § 78). The Court sees no reason to reach a different conclusion in the present case and considers that the proceedings in this case fall to be examined under the criminal limb of Article 6.

156. The Court also considers that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. Thus, it should be declared admissible.



## **B. Merits**

### *1. The parties' submissions*

#### **(a) The Government**

157. The Government maintained that the proceedings in the applicant's administrative case had complied with Article 6 of the Convention. They argued that the applicant had been given a fair opportunity to state his case, to obtain the attendance of three witnesses on his behalf and to present other evidence. The applicant had been given an opportunity to lodge written requests and he had availed himself of that right. The Government accepted that neither the police officers who had arrested the applicant and had drawn up the police report nor the officer who had issued the statement on the administrative offence had been called as witnesses. However, they pointed out that those officers could have been summoned to the court hearing if doubts or questions had arisen.

#### **(b) The applicant**

158. The applicant maintained that he had not been given a fair hearing in the determination of the charge against him. He complained that the court had refused to accept the video recordings of his arrest as evidence and to call and examine the police officers as witnesses. Furthermore, the court had not observed the principle of equality of arms in that it had rejected the testimonies of all the defence witnesses while giving weight to the written police report and the statement on the administrative offence. In addition, the applicant complained that the hearing had not been open to the public, that his right to mount a defence had been violated and that the hearing had not been adjourned following his request to allow him to prepare for it. He claimed that having spent about thirty-six hours in detention and in transit between the police station and court, he had been unfit to stand trial on 8 May 2012 and to defend himself effectively.

### *2. The Court's assessment*

#### **(a) General principles**

159. Although the admissibility of evidence is primarily governed by the rules of domestic law, it remains the task of the Court to ascertain whether the proceedings, considered as a whole, were fair as required by Article 6 § 1 of the Convention (see *Delta v. France*, 19 December 1990, § 35, Series A no. 191, and *Vidal v. Belgium*, 22 April 1992, § 33, Series A no. 235-B). In the context of the taking of evidence, the Court has required that an applicant must be "afforded a reasonable opportunity to present his case under conditions that do not place him at a disadvantage *vis-à-vis* his

opponent” (see *Bulut v. Austria*, 22 February 1996, § 47, *Reports* 1996-II, and *Kasparov and Others*, cited above, §§ 58-65).

160. The Court has previously held that in circumstances where the applicant’s conviction was based primarily on the assumption of his being in a particular place at a particular time, the principle of equality of arms and, more generally, the right to a fair trial, imply that the applicant should be afforded a reasonable opportunity to challenge the assumption effectively (see *Popov v. Russia*, no. 26853/04, § 183, 13 July 2006, and *Polyakov v. Russia*, no. 77018/01, §§ 34-37, 29 January 2009).

161. The guarantees in paragraph 3 (d) of Article 6 are specific aspects of the right to a fair hearing set forth in paragraph 1 of this provision which must be taken into account in any assessment of the fairness of proceedings. In addition, the Court’s primary concern under Article 6 § 1 of the Convention is to evaluate the overall fairness of the criminal proceedings (see *Taxquet v. Belgium* [GC], no. 926/05, § 84, ECHR 2010, with further references therein). Article 6 § 3 (d) of the Convention enshrines the principle that, before an accused can be convicted, all evidence against him must normally be produced in his presence at a public hearing with a view to adversarial argument. Exceptions to this principle are possible but must not infringe the rights of the defence, which, as a rule, require that the accused should be given an adequate and proper opportunity to challenge and question a witness against him, either when that witness makes his statement or at a later stage of the proceedings (see *Lucà v. Italy*, no. 33354/96, § 39, ECHR 2001-II, and *Solakov v. the former Yugoslav Republic of Macedonia*, no. 47023/99, § 57, ECHR 2001-X).

162. It follows from the above-mentioned principle that there must be a good reason for the non-attendance of a witness. Furthermore, when a conviction is based solely or to a decisive degree on depositions that have been made by a person whom the accused has had no opportunity to examine or to have examined, whether during the investigation or at the trial, the rights of the defence may be restricted to an extent that is incompatible with the guarantees provided by Article 6 § 1 of the Convention (see *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, §§ 118-19, ECHR 2011, and *Schatschaschwili v. Germany* [GC], no. 9154/10, §§ 107 et seq., ECHR 2015).

**(b) Application of these principles in the present case**

163. The Court observes that the applicant’s conviction for the administrative offence of disobeying lawful police orders was based on the following written documents: (i) the police report drawn up by two officers, Y. and A., whose orders the applicant had allegedly disobeyed and who had arrested him; the explanatory note by Y. reproducing the content of the police report; (iii) the statement on the administrative offence, which was produced at the police station by an on-duty officer on the basis of the

aforementioned police report and reiterating it word-by-word; (iv) the escorting order; and (v) the detention order of 6 May 2012. The Court observes that the police report was drawn up using a template and contained no individualised information except the applicant's name, the names and titles of the arresting officers and the time and place of the arrest. The report indicated that the applicant had been arrested at 9.30 p.m. for obstructing traffic, whereas the statement on the administrative offence indicated that he had been arrested at 8.30 p.m.

164. The applicant contested the accusations and contended that he had been arrested during the authorised time slot of the public assembly and that there had been no traffic there that he could possibly have obstructed. Three eyewitnesses confirmed his allegations; one of them had not been previously acquainted with the applicant and had no personal interest in the outcome of the administrative proceedings against him. Furthermore, the applicant had submitted a video recording, which the court rejected. Lastly, the court refused to call and examine the two police officers as witnesses, although there had been no impediment to its doing so, and the applicant was not given any other opportunity to confront them.

165. It follows that the only evidence against the applicant was not tested in the judicial proceedings. The courts based their judgment exclusively on standardised documents submitted by the police and refused to accept additional evidence or to call the police officers. The Court considers that given the dispute over the key facts underlying the charge, where the only evidence against the applicant came from the police officers who had played an active role in the contested events, it was indispensable for the domestic courts to exhaust every reasonable possibility of scrutinising their incriminating statements (see *Kasparov and Others*, cited above, § 64).

166. Moreover, the courts limited the scope of the administrative case to the applicant's alleged disobedience, having omitted to consider the "lawfulness" of the police order (see *Nemtsov*, cited above, § 93; *Navalnyy and Yashin*, cited above, § 84; and compare *Makhmudov v. Russia*, no. 35082/04, § 82, 26 July 2007). They thus punished the applicant for actions protected by the Convention without requiring the police to justify the interference with his right to freedom of assembly, which included a reasonable opportunity to disperse when such an order was given. The failure to do so ran contrary to the fundamental principles of criminal law, namely *in dubio pro reo* (see, *mutatis mutandis*, *Barberà, Messegué and Jabardo v. Spain*, 6 December 1988, § 77, Series A no. 146; *Lavents v. Latvia*, no. 58442/00, § 125, 28 November 2002; *Melich and Beck v. the Czech Republic*, no. 35450/04, § 49, 24 July 2008; and *Nemtsov*, cited above, § 92). The latter principles were applicable to the administrative proceedings against the applicant, which fell under the criminal limb of Article 6 of the Convention (see paragraph 155 above).

167. The foregoing considerations are sufficient to enable the Court to conclude that the administrative proceedings against the applicant, taken as a whole, were conducted in violation of his right to a fair hearing.

168. In view of these findings, the Court does not consider it necessary to address the remainder of the applicants' complaints under Article 6 §§ 1 and 3 (d) of the Convention.

#### IV. ALLEGED VIOLATION OF ARTICLE 18 OF THE CONVENTION

169. Lastly, the applicant complained that the security measures taken in the context of the public assembly, his arrest, detention and the administrative charges against him had pursued the aim of undermining his right to freedom of assembly and freedom of expression, and had been applied for political ends. He complained of a violation of Article 18 of the Convention, which reads as follows:

“The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.”

170. In their submissions under this head the parties reiterated their arguments as regards the alleged interference with the right to freedom of assembly, the reasons for the applicant's deprivation of liberty and the guarantees of a fair hearing in the administrative proceedings.

171. 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.

172. The Court has already found that the applicant was arrested, detained and convicted of an administrative offence arbitrarily and that this had the effect of preventing and discouraging him and others from participating in protest rallies and engaging actively in opposition politics (see paragraph 141 above).

173. In the light of the above, the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 18 of the Convention.

#### V. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

174. The applicant further complained of the conditions of his detention at the Krasnoselskiy District police station and the lack of effective domestic remedies in respect of this complaint. He referred to Articles 3 and 13 of the Convention, which provide as follows:

**Article 3 (prohibition of torture)**

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

**Article 13 (right to an effective remedy)**

“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.”

175. The Government contested this part of the application as having been lodged out of time. They pointed out that the applicant’s pre-trial detention at the Krasnoselskiy District police station had ended on 8 May 2012, and there had been no domestic proceedings in relation to this matter. His application to the Court had been lodged on 9 November 2012, that is, more than six months after the end of the detention in the conditions complained of.

176. Article 35 § 1 of the Convention permits the Court to deal with a matter only if the application is lodged within six months of the date of the final decision in the process of exhaustion of domestic remedies. Where no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of the knowledge of that act or its effect on or prejudice to the applicant. In cases featuring a continuing situation, the six-month period runs from the cessation of that situation (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 72, 10 January 2012, with further references).

177. Since the Russian legal system offers no effective remedy in respect of complaints about conditions of pre-trial detention, conditions of transport between the remand prison and the courthouse and conditions of detention in the courthouse (see *Ananyev and Others*, cited above, § 119; *Romanova v. Russia*, no. 23215/02, § 84, 11 October 2011; and *Denisenko and Bogdanchikov v. Russia*, no. 3811/02, § 104, 12 February 2009), the six-month period should be calculated from the end of the situation complained of.

178. The Court notes that the applicant’s pre-trial detention ended on 8 May 2012. Following his conviction on that day he was placed in a different detention facility, which ended the situation complained of. He brought his complaint under Articles 3 and 13 of the Convention on 9 November 2012. It has therefore been lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention (see *Grishin v. Russia*, no. 30983/02, § 83, 15 November 2007).

**VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION**

179. 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**

180. The applicant requested the Court to award him compensation in respect of non-pecuniary damage, leaving its amount to the Court’s discretion.

181. The Government considered that if the Court were to find a violation of the Convention in the present case, this finding would constitute in itself sufficient just satisfaction. They stated that any award to be made by the Court should in any event take into account the applicant’s individual circumstances, in particular the length of his deprivation of liberty and the gravity of the penalty.

182. The Court has found a violation of Articles 11, 6 and 5 of the Convention, and it considers that, in these circumstances, the applicant’s suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, it awards the applicant 25,000 euros (EUR) in respect of non-pecuniary damage.

### **B. Costs and expenses**

183. The applicant also claimed 2,805.28 pounds sterling (GBP) (approximately EUR 4,000) and EUR 3,300, inclusive of VAT, for the costs and expenses incurred before the Court. He submitted detailed invoices indicating the lawyers’ and the translators’ fees, the hourly rates and the time billed for the preparation of his observations and other procedural documents in this case.

184. The Government submitted that the applicant had not produced a legal-services agreement and that it had not been necessary to retain three legal counsel in this case.

185. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, which was of a certain complexity, the Court has found a breach of the Convention on several counts. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award EUR 7,000, plus any tax that may be chargeable to the applicant on this sum, in respect of costs and expenses. This sum is to be converted into pounds sterling at the rate applicable at the date of settlement and to be paid into the representatives’ bank account in the United Kingdom, as identified by the applicant.

### C. Default interest

186. 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 under Articles 5, 6, 11 and 18 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 11 of the Convention on account of the authorities' failure to ensure the peaceful conduct of the assembly at Bolotnaya Square;
3. *Holds* that there has been a violation of Article 11 of the Convention on account of the applicant's arrest, pre-trial detention and administrative sentence;
4. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
5. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention;
6. *Holds* that there is no need to examine the remainder of the complaints under Article 6 of the Convention;
7. *Holds* that there is no need to examine the complaint under Article 18 of the Convention;
8. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
    - (i) EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, in respect of non-pecuniary damage;
    - (ii) EUR 7,000 (seven thousand euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant, to be converted into pounds sterling at the rate applicable at the date of settlement and to be paid into his representatives' bank account in the United Kingdom;

(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;

9. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 January 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips  
Registrar

Luis López Guerra  
President