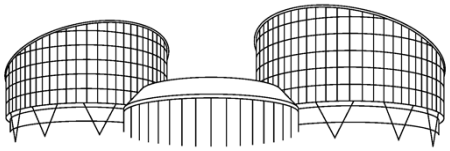

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF NAVALNYY v. RUSSIA

(Applications nos. 29580/12 and 4 others - see appended list)

JUDGMENT

STRASBOURG

15 November 2018

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

In the case of Navalnyy v. Russia,

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

Guido Raimondi, *President*,
Angelika Nußberger,
Linos-Alexandre Sicilianos,
Ganna Yudkivska,
Robert Spano,
Ledi Bianku,
André Potocki,
Aleš Pejchal,
Faris Vehabović,
Dmitry Dedov,
Armen Harutyunyan,
Georges Ravarani,
Pauliine Koskelo,
Tim Eicke,
Jolien Schukking,
Péter Paczolay,
Lado Chanturia, *judges*,

and Søren Prebensen, *Deputy Grand Chamber Registrar*,

Having deliberated in private on 24 January and 19 September 2018,

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

PROCEDURE

1. The case originated in five applications (nos. 29580/12, 36847/12, 11252/13, 12317/13 and 43746/14) 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 Aleksey Anatolyevich Navalnyy ("the applicant"), on 14 May 2012, 28 May 2012, 30 November 2012, 14 January 2013 and 6 June 2014 respectively.

2. The applicant was represented by Ms O. Mikhaylova, Mr K. Terekhov, Ms A. Maralyan and Ms K. Moskalenko, lawyers practising in Moscow. The Russian Government ("the Government") were represented initially by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. The applicant complained that his arrest at public events on seven occasions had violated his right to freedom of peaceful assembly and right

to liberty. He also alleged that his arrest, detention and the administrative charges brought against him had pursued the aim of undermining his right to freedom of assembly, for political reasons. Finally, he alleged that the administrative proceedings before the domestic courts had fallen short of the guarantees of a fair hearing.

4. On 28 August 2014 the applications were communicated to the Government. The parties each submitted written comments on the other's observations.

5. The applications were allocated to the Third Section of the Court (Rule 52 § 1). A Chamber of that Section composed of Luis López Guerra, President, Helena Jäderblom, Helen Keller, Dmitry Dedov, Branko Lubarda, Pere Pastor Vilanova, Alena Poláčková, judges, and Fatoş Aracı, Deputy Section Registrar, delivered a judgment on 2 February 2017. The Court unanimously joined the applications and unanimously declared the application admissible. It held unanimously that there had been violations of Article 11 of the Convention on account of all seven episodes complained of; of Article 5 § 1 of the Convention on account of the applicant's arrest on seven occasions and his pre-trial detention on two occasions; and of Article 6 § 1 of the Convention as regards six sets of administrative proceedings. It held unanimously that there had been no violation of Article 6 § 1 of the Convention in respect of the administrative proceedings concerning the events of 5 March 2012. It concluded, unanimously, that there was no need to examine the remainder of the complaints under Article 6 of the Convention, the complaint under Article 14 of the Convention or the complaint under Article 18 in conjunction with Article 11 of the Convention. It concluded, by four votes to three, that there was no need to examine the complaint under Article 18 in conjunction with Article 5 of the Convention. The joint partly dissenting opinion of Judges López Guerra, Keller and Pastor Vilanova, as well as the partly dissenting opinion of Judge Keller, were annexed to the judgment.

6. On 26 April 2017 the Government, and on 2 May 2017 the applicant, requested the referral of the case to the Grand Chamber in accordance with Article 43 of the Convention and Rule 73 of the Rules of Court. The panel of the Grand Chamber granted the requests on 29 May 2017.

7. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24 of the Rules of Court.

8. The applicant and the Government each filed written observations.

9. A hearing took place in public in the Human Rights Building, Strasbourg, on 24 January 2018.

There appeared before the Court:

(a) for the Government
Mr M. GALPERIN, *Agent*
Ms Y. BORISOVA,
Mr P. SMIRNOV,
Ms M. ZINOVEVA,
Mr N. CHESTNYKH,
Mr R. LESNIKOV,
Mr V. OLEYNIK,
Mr D. GAZIZOV, *Advisors*;

(b) for the applicant
Ms A. MARALYAN,
Ms O. MIKHAYLOVA, *Counsels*
Mr A. NAVALNYY, *Applicant.*

The Court heard addresses by Ms Maralyan, Ms Mikhaylova, Mr Navalnyy and Mr Galperin, and their answers to questions put by the Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicant was born in 1976 and lives in Moscow.

11. The applicant is a political activist, opposition leader, anti-corruption campaigner and popular blogger. These five applications concern his arrests on seven occasions at different public events.

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

A. The applicant's arrest on 5 March 2012

13. On 5 March 2012 the applicant took part in a meeting at Pushkinskaya Square, Moscow, which began at 7 p.m. It had been called to protest against the allegedly rigged presidential elections in Russia and had been approved by the municipal authorities.

14. At the end of the meeting, at 9 p.m., State Duma deputy Mr P. addressed the participants, inviting the public to stay after the meeting for informal consultations, which began at about 9.30 p.m. and were attended by some 500 people. According to the applicant, he stayed among others at

Pushkinskaya Square for a meeting with the deputy; they remained peacefully within the pedestrian area of the square and did not obstruct the traffic or access. According to the Government, the applicant was holding an irregular gathering without prior notification and was shouting political slogans.

15. At 10.45 p.m. the police arrived and arrested the applicant, among many others. He was taken to the Tverskoy District police station.

16. On the same evening two policemen drew up a report on the administrative offence, stating that the applicant had been arrested at 10.45 p.m. "in a fountain" at Pushkinskaya Square; that he had taken part in an irregular public gathering and that he had ignored police orders to disperse. The applicant was charged with a breach of the established procedure for conducting public events, an offence under Article 20 § 2 of the Code of Administrative Offences. The applicant was released at 12.15 a.m. on 6 March 2012.

17. On 15 March 2012 the Justice of the Peace of Circuit no. 369 of the Tverskoy District examined the administrative charges against the applicant. The applicant challenged the authenticity of the police reports and the witness statement of the two police officers on the grounds that he had been arrested by different police officers, but his objection was dismissed. On the basis of the written statements and testimony of two police officers the Justice of the Peace found the applicant guilty of taking part in an irregular public gathering conducted without prior notification and fined the applicant 1,000 Russian roubles (RUB), equivalent at the material time to about 25 euros (EUR), under Article 20 § 2 of the Code of Administrative Offences.

18. On 10 April 2012 the Tverskoy District Court of Moscow examined the applicant's appeal. The applicant was absent, but he was represented by a lawyer. The court questioned one further eyewitness, a journalist, who testified that before being arrested the applicant was standing "in a fountain, holding hands with others" and chanting political slogans. He also testified that the police officers who had placed the applicant in the police bus were the same officers who had signed the report and who had appeared at the first-instance hearing. The court examined two video recordings submitted by the applicant. It found that the State Duma deputy had indeed called a public meeting, but concluded that at the time of his arrest the applicant was not meeting the deputy but was participating in a protest assembly. It upheld the judgment of 15 March 2012.

B. The applicant's two arrests on 8 May 2012

19. On 8 May 2012 the applicant took part in an overnight "walkabout", an informal gathering whereby activists peacefully met at a public venue to discuss current affairs. On this occasion, several dozen activists met up to

discuss the inauguration of Mr Putin as President of Russia on the previous day. On 8 May 2012 some areas of central Moscow were restricted for traffic, and partly also to pedestrians, due to the presidential inauguration and the Victory Day celebrations.

20. At 4.30 a.m., according to the applicant, or at 4 a.m., according to the Government, the applicant was walking down Lubyanskiy Proyezd, accompanied by about 170 people. The group stopped on the stairs of a public building for a group photograph. While the applicant was taking the photograph he was arrested by riot police. At 8 a.m. he was taken to a police station where an administrative offence report was drawn up. The applicant was charged with a breach of the established procedure for conducting public events, an offence under Article 20 § 2 of the Code of Administrative Offences. The applicant was released at 10.50 a.m. on that day.

21. On the same day, at 11.55 p.m., according to the Government, or at 11 p.m., according to the applicant, the applicant was walking down Bolshaya Nikitskaya Street in a cluster of about fifty people. According to the applicant, they stayed on the pavement, had no banners or sound equipment, and were causing no nuisance. They were surrounded by riot police and the applicant was arrested without any order or warning.

22. At 11.58 p.m. on the same day the applicant was taken to a police station where an administrative offence report was drawn up. He was charged with a breach of the established procedure for conducting public events, an offence under Articles 20 § 2 (2) of the Code of Administrative Offences. The applicant was released at 2.50 a.m. on 9 May 2012.

23. On 30 May 2012 the Justice of the Peace of Circuit no. 387 of the Basmannyy District examined the charges concerning the applicant's administrative offence at Lubyanskiy Proyezd. The applicant was absent from the proceedings, but he was represented by his lawyer, who disputed the applicant's participation in an irregular assembly and claimed that his client had not chanted any slogans. He asked the Justice of the Peace to admit video evidence and to examine certain eyewitnesses, but she refused to do so. On the basis of written statements by two police officers the Justice of the Peace found the applicant guilty of taking part in a meeting conducted before 7 a.m., in breach of regulations, and fined him RUB 1,000 under Article 20 § 2 of the Code of Administrative Offences. This judgment was delivered in full on 1 June 2012. It was upheld on 6 July 2012 by the Basmannyy District Court of Moscow.

24. On 1 June 2012 the Justice of the Peace of Circuit no. 380 of the Presnenskiy District of Moscow examined the administrative charges concerning the applicant's administrative offence at Bolshaya Nikitskaya Street. The applicant was absent from the proceedings, but he was represented by his lawyer, who disputed the applicant's participation in an irregular assembly and claimed that his client had not chanted any slogans. The Justice of the Peace questioned three eyewitnesses and the police

officer who had arrested the applicant. The police officer testified that he had arrested the applicant because he was walking in a big group of people, obstructing traffic and chanting political slogans. The eyewitnesses testified that the applicant had been walking down the street with about fifty or sixty people, and that the police had blocked their way and had begun to arrest them without any warning; they denied hearing any slogans or amplified sound. The Justice of the Peace refused to admit video evidence and dismissed the eyewitness statements on the grounds that the eyewitnesses were likely to be the applicant's supporters and were therefore biased. The applicant was found guilty of taking part in a meeting conducted in breach of regulations and was fined RUB 1,000 under Article 20 § 2 of the Code of Administrative Offences. This judgment was upheld on 25 June 2012 by the Presnenskiy District Court of Moscow.

C. The applicant's arrest on 9 May 2012

25. On 9 May 2012 the applicant arrived at 5 a.m. at Kudrinskaya Square in Moscow to take part in an informal meeting with a State Duma deputy and to attend the Victory Day celebrations. He was among 50 to 100 people peacefully "walking about" and discussing current affairs. According to the applicant, this gathering was not a demonstration: there had been no banners and no noise, and no one was chanting slogans or giving speeches.

26. At 6 a.m. riot police arrived at the site of the meeting and arrested the applicant without issuing any orders or warning. The applicant submitted a video recording of his arrest.

27. At 8.50 a.m. on the same day the applicant was taken to the Strogino District police station. At 11.50 a.m. the applicant was searched and an administrative offence report was then drawn up. According to the applicant, he was detained at the police station for more than three hours before being brought before a Justice of the Peace. The Government confirmed that the applicant had been detained pending trial, but did not specify the duration.

28. At an unidentified time on the same day the applicant was brought before the Justice of the Peace of Circuit no. 375 of the Presnenskiy District of Moscow. The Justice of the Peace refused the applicant's requests that the police officers who had arrested him be called and examined, and that video evidence be admitted, but granted his request for examination of three eyewitnesses. The witnesses testified that there had been a public meeting with a State Duma deputy to discuss current political developments; that no one had chanted slogans or made noise or obstructed traffic; and that the police had not issued any orders or warnings before arresting the applicant. On the basis of the written statements of two police officers the court established that the applicant had taken part in an irregular public meeting

and had disobeyed a lawful order from the police to disperse. It also found that the applicant had chanted the slogans "Russia without Putin!" and "Putin is a thief!" and had refused to leave the square, which needed to be cleared for the Victory Day celebrations. The Justice of the Peace rejected the statements of the three eyewitnesses, on the grounds that they had given different estimates of the number of people present at the venue, the number of police officers who arrested the applicant, and the time of his arrival at the meeting. The applicant was found guilty of disobeying the lawful order of the police, in breach of Article 19 § 3 of the Code of Administrative Offences, and was sentenced to fifteen days' administrative imprisonment.

29. On 10 May 2012 the applicant lodged an appeal.

30. On 12 December 2012 the Presnenskiy District Court of Moscow examined the appeal. The applicant asked for the police officers on whose reports and statements the Justice of the Peace had based the judgment to be cross-examined, as well as eight eyewitnesses, and for the video recording of the arrest to be admitted as evidence. The court dismissed these requests and upheld the judgment of 9 May 2012.

D. The applicant's arrest on 27 October 2012

31. On 27 October 2012 the applicant held a static demonstration ("picket", *пикетирование*) at Lubyanskaya Square, which was a part of series of peaceful pickets held in Moscow in front of the buildings housing the Federal Security Service and the Russian Investigation Committee to protest "against repressions and torture". According to the applicant, his demonstration was a solo picket (*одиночное пикетирование*) which was not subject to a prior notification to the competent public authority. In total, about thirty people consecutively took part in this event.

32. At 3.30 p.m. the police arrested the applicant at 9 Maroseyka Street when he was walking down the street accompanied by a group of people. According to the applicant, at the moment of arrest he had finished picketing and was peacefully walking along the pavement; he was not chanting or carrying any banners, but he was being followed by a group of people, including journalists, whose number he estimated as "two dozen". According to the Government, the applicant had organised an irregular march without prior notification. The applicant was taken to the police station at 4.10 p.m. He was charged with a breach of the established procedure for conducting public events, an offence under Article 20 § 2 of the Code of Administrative Offences. He was released at 7.17 p.m. the same day.

33. On 30 October 2012 the Justice of the Peace of Circuit no. 387 of the Basmannyy District examined the charges. She examined three eyewitnesses called at the applicant's request, but refused his request that the police officers who had arrested him be called and examined. The

applicant's request that a video recording of the relevant events be admitted as evidence was also refused, as was the request that a written report from an NGO which had observed the pickets be admitted in evidence. The three eyewitnesses examined at the applicant's request testified that the applicant, after ending his picket, had walked down the street while speaking with a fellow activist, surrounded by journalists; he remained on the pavement, did not chant slogans, and carried no banners; several other participants in the picket remained standing with their banners, at a certain distance from each other; the police arrested the applicant without any warning or explanation. On the basis of written reports by two police officers the Justice of the Peace established that the applicant had organised and led a group of thirty people, thus holding a march without the approval of the local authorities; that they were heading from Lubyanskaya Square to Lefortovo detention facility, and that at 9 Maroseyka Street the group had obstructed the road, thus halting traffic. She dismissed the witness statements in the applicant's favour on the grounds that they contradicted the evidence in the case file and found the applicant guilty of taking part in a march which had not been duly notified to the authorities. She fined him RUB 30,000 (equivalent at the material time to about EUR 740) under Article 20 § 2 of the Code of Administrative Offences.

34. On 7 December 2012 the Basmannyy District Court upheld the judgment of 30 October 2012.

E. The applicant's two arrests on 24 February 2014

35. On 24 February 2014 at 12 noon the applicant went to the Zamoskvoretskiy District Court of Moscow to attend a hearing involving activists who were on trial for participation in mass disorders at Bolotnaya Square in Moscow on 6 May 2012. The judgment was to be delivered at a public hearing on that date. The court-house was cordoned off and obstructed by police vans, and the applicant was unable to enter. He therefore remained outside among other members of the public wishing to attend the hearing. According to the applicant he was standing there silently when the police suddenly rushed into the crowd and arrested him, without any order, warning or pretext. According to the official version, he was holding an irregular gathering and chanting political slogans.

36. At 12.50 p.m. on the same day the applicant was taken to a police station. He was charged with a breach of the established procedure for conducting public events, an offence under Article 20 § 2 of the Code of Administrative Offences. The applicant was released at 3 p.m. the same day.

37. Later that day, at about 7.45 p.m., the applicant took part in a peaceful public gathering following the delivery of the judgment in respect of mass disorders at Bolotnaya Square, as a result of which several activists had been sentenced to prison terms. The gathering of about 150 participants

took place at Tverskaya Street. The applicant was arrested while he was standing on the pavement talking to a journalist. According to the applicant he had received no order or warning, and he did not resist the police. According to the police report, when the applicant was being seated in the police vehicle he was waving at the crowd and trying to attract media attention, thus demonstrating a refusal to comply with the police order and resisting the officers in the performance of their duties.

38. At 8.20 p.m. the applicant was taken to the Tverskoy District police station, where an administrative offence report was drawn up. The applicant was charged with disobeying a lawful order of the police, an offence under Article 19 § 3 of the Code of Administrative Offences. He was detained on remand.

39. On the following day, 25 February 2014, at an unidentified time, the applicant was brought before the judge of the Tverskoy District Court, who examined the charges under Article 19 § 3 of the Code of Administrative Offences. The applicant's request for two eyewitnesses to be examined was granted. They testified that the police had not given the applicant any orders or warnings before proceeding to arrest him. The court admitted and examined the video recording of the contested events and questioned the two police officers on whose reports the charges were based. The court established that the applicant had taken part in an irregular meeting and had disobeyed the lawful order of the police to disperse. The applicant was found guilty of disobeying a lawful order of the police, in breach of Article 19 § 3 of the Code of Administrative Offences, and was sentenced to seven days' administrative imprisonment.

40. On 7 March 2014 the Zamoskvoretskiy District Court examined the charges relating to the applicant's alleged participation on 24 February 2014 in an unauthorised public gathering in front of the Zamoskvoretskiy District Court. The applicant requested that two eyewitnesses present at the court-house and the two policemen on whose reports the charges were based be examined. These requests were dismissed. The court admitted a video recording of the contested events, but decided not to take cognisance of its contents because it was undated and because it had not reproduced the full sequence of events. On the basis of the written reports by the two police officers, the judge found the applicant guilty of taking part in a meeting which had not been notified to the competent authority in accordance with the procedure provided by law, and fined him RUB 10,000 (equivalent to about EUR 200) under Article 20 § 2 of the Code of Administrative Offences.

41. On 24 March 2014 the Moscow City Court upheld the judgment of 25 February 2014.

42. On 22 May 2014 the Moscow City Court upheld the judgment of 7 March 2014.

II. RELEVANT DOMESTIC LAW AND PRACTICE

43. For a summary of the relevant domestic law see *Kasparov and Others v. Russia* (no. 21613/07, § 35, 3 October 2013); *Navalnyy and Yashin v. Russia* (no. 76204/11, §§ 43-44, 4 December 2014); *Novikova and Others v. Russia* (nos. 25501/07 and 4 others, §§ 67-69, 26 April 2016); and *Lashmankin and Others v. Russia*, (nos. 57818/09 and 14 others, §§ 216-312, 7 February 2017). The provisions directly relevant to the present case are set out below.

44. Article 55 § 3 of the Russian Constitution provides as follows:

> "The rights and freedoms of individuals and citizens may be limited by federal law only to the extent required for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, and for ensuring the defence of the country and the security of the State."

45. The Federal Law on Gatherings, Meetings, Demonstrations, Processions and Pickets, no. 54-FZ of 19 June 2004 ("the Public Events Act"), provided, at the material time, as follows:

Section 2
Basic definitions

"...

1. a public event is an open, peaceful action accessible to all, held in the form of a gathering (*собрание*), a meeting (*митинг*), a demonstration (*демонстрация*), a march (*шествие*), or a "picket" (*пикетирование*) or in various combination of these forms, organised at the initiative of citizens of the Russian Federation, political parties, other public associations, or religious associations, including [events] held with the use of vehicles. The aim of a public event is the free expression and formation of opinions, and to put forward demands on issues of political, economic, social and cultural life in the country, as well as issues of foreign policy. ..."

Section 3
Principles of holding a public event

"A public event is based on the following principles:

1. legality - compliance with the provisions of the Constitution of the Russian Federation, this Federal Law [and] other legislative acts of the Russian Federation;

..."

Section 5
Organiser of a public event

"...

4. The organiser of a public event must:

(1) notify the executive [or municipal] authority ... of the public event in accordance with section 7 of this Federal Law."

Section 7
Notification of a public event

"Notification of a public event (except for a gathering and a picket held by a solo participant) must be filed in writing by its organiser with the executive [or municipal] authority ... no earlier than fifteen days and no later than ten days before the date of the public event ..."

Section 16
Grounds for ending a public event

"The grounds for ending a public event shall be:

1. the emergence of a genuine threat to citizens' lives or health, and to the possessions of physical or legal persons;

2. commission by the participants of unlawful acts or a deliberate breach by the organiser of the requirements on the procedure for the conduct of public events established by this Federal Law;

3. [*following the legislative amendments of 8 June 2012*] non-compliance by the organisers with the obligations set out in section 5 paragraph 4 of this Federal Law."

Section 17
Procedure for ending a public event

"1. If it is decided to end the public event the representative of the executive [or municipal] authority ...:

(1) shall give an order to the organiser of the public event to end the public event, having explained the reasons for its termination, and within twenty-four hours, shall issue this order in writing and serve it on the organiser of the public event;

(2) shall set the time for compliance with the order to end the public event;

(3) if the organiser does not comply with the order to end the public event, shall directly address the participants of the public event and set an additional time for compliance with the order to end the public event.

2. In the event of non-compliance with the order to end the public event the police shall take the necessary measures to end the public event ...

3. The procedure for ending a public event as set out in paragraph 1 of this section shall not apply in the event of mass disorder, mob violence, arson, or other situations requiring urgent action. ...

4. Failure to obey lawful orders from police officers or resistance to them by certain participants of the public event may incur liability as provided for by law."

Section 18
Provision of conditions for holding a public event

"1. The organiser of a public event, officials and other citizens shall not be entitled to prevent the participants in a public event from expressing their opinions in a manner that does not violate public order and the procedure for holding a public event."

46. Prior to 8 June 2012 the relevant provisions of the Code of Administrative Offences of 30 December 2001 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 their official duties related to maintaining public order and security, or impeding the performance by them of their official duties, shall be punishable by a fine of between 500 and 1,000 Russian roubles (RUB) or by administrative imprisonment of 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
Transfer of individuals to a police station

"1. The transfer, that is, the removal 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 transfer operation shall be carried out as quickly as possible.

3. The transfer shall be recorded in a transfer operation report, an administrative offence report or an administrative detention report. The transferred person shall be given a copy of the transfer 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 his or her 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 the 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 48 hours.

3. Persons subject to administrative proceedings concerning offences which are punishable, among other administrative sanctions, by administrative imprisonment (*административный арест*) may be subject to administrative detention for up to 48 hours.

4. The term of the administrative detention is calculated from the time when [a person] transferred in accordance with Article 27 § 2 is taken [to the police station], and in respect of a person in a state of alcoholic intoxication, from the time of his sobering up."

47. On 8 June 2012 the Code of Administrative Offences was amended (Law no. 65-FZ), in particular as follows.

- A breach of the procedure for organising or running a public event by an organiser became punishable by a fine of between RUB 10,000 and RUB 20,000 or up to forty hours of community work (Article 20 § 2 (1)).

- The organisation or running of a public event without notifying the competent public authority became punishable by a fine of between RUB 20,000 and RUB 30,000 or up to fifty hours of community work (Article 20 § 2 (2)).

- Stricter penalties were introduced for the above actions or inaction where they obstructed pedestrians or traffic, or caused damage to health or property (Article 20 § 2 (3 and 4)). Separate offences concerned violations by an event participant of the procedure for running the event ((5)) and where such violations caused damage to health or property ((6)).

- Article 4.5 of the Code was amended to increase the limitation period for the offence under Article 20 § 2 from two months to one year.

48. On 26 June 2018 the Plenary of the Supreme Court of the Russian Federation adopted the Resolution "On certain questions arising during judicial examination of administrative cases and cases on administrative offences related to the application of the legislation on public events". To ensure consistency in judicial practice the Supreme Court provided the judiciary with guidelines on application of the legislation, primarily the Public Events Act and the Code of Administrative Offences, in resolving

administrative disputes and applying administrative liability, indicating in particular:

- that an organiser's failure to notify a public event was to be classified under Article 20 § 2 (2-4) of the Code, whereas the holding of a public event which had been refused by the authorities constituted an offence on the part of the organiser under (1) of the same provision (§§ 28-29 of the Supreme Court Resolution);

- that the failure by a participant in a public event to comply with lawful orders or instructions of the police was to be classified under Article 20 § 2 (5) of the Code of Administrative Offences, which was in these circumstances to be regarded as a *lex specialis* in relation to Article 19 § 3 (1) of the Code (§ 33 of the Resolution);

- that the concept of a non-authorised event included events conducted without notification as well as events in respect of which the competent authorities had rejected the notification;

- that transfer to a police station for the purpose of drawing up an administrative offence report and/or administrative detention in exceptional cases would be justified only if it was otherwise impossible to identify the committed offence, to establish the identity of the offender, to examine the case concerning the administrative offence correctly and in a timely manner or to enforce the administrative sentence; in particular, administrative detention could be justified by a demonstrated risk of the perpetrator resuming the unlawful acts or absconding, by the absence of a fixed residence, or by the need to carry out procedural acts or to secure the evidence (§ 40 of the Resolution).

III. RELEVANT MATERIALS

49. At the date of adoption of the present judgment, the Council of Europe's Committee of Ministers is continuing its supervision of the pending execution of the judgment in *Lashmankin and Others*, cited above. Most recently, at the 1318th meeting of the Committee of Ministers (June 2018, DH) a decision was adopted (CM/Del/Dec(2018)1318/H46-21) containing, in particular, the following statement as regards the general measures:

> "6. [the Ministers' Deputies] recalled also the Council of Europe's readiness, recently expressed by the Secretary General, to assist the Russian Federation in the work to improve its legislation in the field of freedom of assembly;
>
> 7. noted, as regards judicial practice, a number of positive developments, in the form of a series of decisions from the Constitutional Court and the Supreme Court over the last years, including an overview of the practice of international bodies and the case-law of the European Court concerning freedom of assembly, prepared by the Supreme Court, as well as its ongoing efforts to adopt further guidance to the domestic courts on certain issues arising in administrative cases and administrative offences cases regarding the application of the legislation governing the procedure for

the organisation and the holding of public events, and encouraged these developments;

8. further stressed the need to rapidly adopt additional measures, whether in the form of regulations or training and awareness raising measures, to ensure that the practice of relevant municipal authorities and the police, including as regards the use of force, the dispersal of public events and the arrest of participants, is brought into line with the requirements of the Convention and highlighted the potential interest of the wide dissemination of the guidelines prepared by the Venice Commission and the OSCE (CDL-AD(2014)046 - available also in Russian)."

50. The Follow-up Memorandum of the Council of Europe Commissioner for Human Rights on Freedom of Assembly in the Russian Federation, dated 5 September 2017 (accessed on https://rm.coe.int/follow-up-memorandum-on-freedom-of-assembly-in-the-russian-federation-/16807517aa), in so far as relevant, reads as follows:

Dispersal of peaceful assemblies and arrests of participants

"21. Whereas ensuring the safety of participants and public order in general is certainly a legitimate consideration, this should not translate into a lack of tolerance towards peaceful public events which have not been agreed with the authorities. The 2012 amendments to the legislation on assemblies gave broad grounds for the dispersal of public events, including any irregularities in the organisation or the conduct of public events, some of which are not clearly defined in law. As already noted in paragraph 15 above, one of the concerns about the 2012 amendments expressed by the Presidential Council was precisely the lack of clarity in terms of which actions or omissions can trigger administrative liability. The earlier clarifications by the Constitutional Court that there must be compelling public order considerations (*veskiye dovody*) to make holding a public event impossible, seem to have had little effect in practice. A notable example is the violent dispersal and arrests of hundreds of protesters - because of the absence of a prior authorisation from the authorities - during a spontaneous but peaceful gathering on the occasion of the verdict in the Bolotnaya case in February 2014.

...

23. There have also been reports of a growing intolerance towards unauthorised public events involving relatively low numbers of peaceful participants. This has included even single-person pickets, which are formally exempt from the agreement procedure. The following examples are illustrative of this tendency: the apprehension and escort to a police station of six activists for reading the Russian Constitution aloud in front of the State Duma on 12 September 2016; the reportedly violent arrest in Beslan and imposition of community service upon five mothers of victims of the September 2004 terrorist attack, who wished to commemorate its 12th anniversary while wearing t-shirts with inscriptions critical of the authorities; the apprehension of separate solo picketers, including minors, demonstrating with blank sheets of paper and duct-taped mouths in Moscow on 1 July 2017; and the apprehension of four animal rights activists picketing at a distance of 50 metres from one another in Ekaterinburg on 7 June 2017.

24. The need to maintain public order should not be interpreted in such a way as to strip the right to freedom of peaceful assembly of its meaning. According to international standards, if the domestic legal framework foresees a notification procedure, its objective should be to allow State authorities the opportunity to

facilitate the exercise of the right to freedom of assembly. Failure to notify the authorities of an assembly does not render it unlawful and should not be used as a basis for dispersing it. ...

25. The Commissioner welcomes the initiative of the Human Rights Council to prepare amendments to the legal framework governing public events in co-operation with the National Guard, and supports the statements made by the Federal Ombudsman and the Ombudsman of St Petersburg regarding the need to reinforce the right to freedom of assembly and safeguards against arbitrary application of restrictive measures."

IV. PREPARATORY WORKS

51. The relevant part of the preparatory work on Article 18 of the Convention (see Collected edition of the "*Travaux Préparatoires*" of the European Convention on Human Rights, Martinus Nijhoff, vol. IV, 1977, pp. 130, 179-181 and 955) reads as follows:

"... the international collective guarantee will have, as its purpose, to ensure that no State shall in fact aim at suppressing the guaranteed freedom, by means of minor measures which, while made with the pretext of organizing the exercise of these freedoms on its territory, or of safeguarding the letter of the law, have the opposite effect. ... It is legitimate and necessary to limit, sometimes even to restrain, individual freedoms, to allow everyone the peaceful exercise of their freedom and to ensure the maintenance of morality, of the general well-being, of the common good and of public need. When the State defines, organises, regulates and limits freedoms for such reasons, in the interest of, and for the better insurance of, the general well-being, it is only fulfilling its duty. That is permissible; that is legitimate.

But when it intervenes to suppress, to restrain and to limit these freedoms for, this time, reasons of state; to protect itself according to the political tendency it represents, against an opposition which it considers dangerous; to destroy fundamental freedoms which it ought to make itself responsible for coordinating and guaranteeing, then it is against public interest if it intervenes. Then the laws which it passes are contrary to the principle of international guarantee.

...

[e]very State which violates human rights and above all the rights of freedom, will always have an excuse; morality, order, public security and above all democratic rights

...

It is therefore quite clearly from democracy that the freedoms we wish do guarantee derive their practical content.

The same is true of the restrictions which the State may legitimately impose by domestic legislation upon a given freedom. In all the countries of the world the exercise of freedom has to be organized. Consequently, in all the countries of the world freedoms have to be defined and limited. Suppose we take the case of a democracy. The limitation imposed will be valid only if it has as its aim the public interest and the common good. The State, in a democracy, may limit an individual freedom in the interests of the freedom of all, in order to allow the collective exercise of all the freedoms, in the general interest of a superior freedom of right, in the public

interest of the nation. The restriction which it imposes is a legitimate one precisely by reason of the fact that this is the goal which is aimed at: it sets a limit upon freedom in the general interest, in the interest of the freedom of all."

THE LAW

I. PRELIMINARY OBJECTIONS

52. For the first time before the Grand Chamber, the Government raised a number of preliminary objections concerning in part the scope of the case referred to the Grand Chamber, and in part the admissibility of certain complaints.

A. The parties' submissions

53. The Government pointed out that in two of his original applications comprising the present case the applicant did not rely on Article 5 and complained about his arrest and transfer to the police station with reference to Article 11 only. In their opinion, the scope of the case before the Grand Chamber should be limited accordingly.

54. They further invited the Court to declare all of his complaints under Article 5, and all but one of his complaints under Article 11 inadmissible on grounds of failure to exhaust domestic remedies as required by Article 35 § 1. They explained that whilst no separate remedy had to be exhausted in relation to one's arrest and transfer to a police station, it was necessary to challenge these measures before the court examining the merits of the administrative charges. The applicant had allegedly not done so, except for one case where he had complained of the allegedly unreasonable duration of his detention at the police station on 24 February 2014. Nor had the applicant complained in the domestic proceedings that his right to freedom of peaceful assembly under Article 11 had been breached in any of the episodes, and with regard to some of the claims he had expressly denied that he had been participating in a public assembly.

55. As regards the applicant's complaint under Article 18, the Government submitted that only two of the original application forms contained a reference to Article 18 and then only in conjunction with Article 5, not Article 11, in relation to two episodes (namely, the first episode, of 5 March 2012 and the fourth episode, of 9 May 2012). They suggested that the Court should limit its examination accordingly.

56. In the alternative, the Government invited the Court to declare parts of the complaint under Article 18 inadmissible as out of time. In particular, should the Grand Chamber decide to base its examination not on the initial

description of the complaints (contained in applications nos. 29580/12 and 36847/12 of 14 and 18 May 2012, concerning the events of 5 March and 9 May 2012, respectively), but on the arguments subsequently presented by the applicant in his observations of 14 September 2017, the relevant parts of his Article 18 complaints were "to be rejected for non-compliance with the six-month rule [as set out] in Article 35 § 1".

57. The applicant maintained in his oral pleadings that it was reasonable to rely on the qualification and the scope of the case as defined by the Chamber, to the effect that the complaints under Article 18 were in essence raised in all five applications. He did not comment on the Government's proposal to limit the scope of its examination in respect of the Article 5 complaint.

B. The Court's assessment

58. The Court reiterates that according to its settled case-law, the "case" referred to the Grand Chamber necessarily embraces all aspects of the application previously examined by the Chamber in its judgment, there being no basis for a merely partial referral of the case. The "case" referred to the Grand Chamber is the application as it has been declared admissible (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 66, ECHR 2004-XI; *K. and T. v. Finland* [GC], no. 25702/94, §§ 140-41, ECHR 2001-VII; *Perna v. Italy* [GC], no. 48898/99, §§ 23-24, ECHR 2003-V; *mutatis mutandis*, *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, § 157; and *Azinas v. Cyprus* [GC], no. 56679/00, § 32, ECHR 2004-III).

59. However, this does not mean that the Grand Chamber may not also examine, where appropriate, issues relating to the admissibility of the application in the same manner as this is possible in Chamber proceedings, for example by virtue of Article 35 § 4 *in fine* of the Convention, or where such issues have been joined to the merits or where they are otherwise relevant at the merits stage (see *K. and T. v. Finland*, cited above, § 141, and *Blečić v. Croatia* [GC], no. 59532/00, § 65, ECHR 2006-III). Thus, even at the merits stage the Grand Chamber may reconsider a decision to declare an application admissible if it concludes that it should have been declared inadmissible for one of the reasons given in the first three paragraphs of Article 35 of the Convention (ibid.; *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 102, ECHR 2018).

60. The Court observes that in the present case not only the Government's preliminary objections regarding the admissibility of certain complaints but also those concerning the scope of the case referred to the Grand Chamber raise issues of admissibility, namely with regard to exhaustion of domestic remedies and compliance with the six-month rule. It reiterates that, according to Rule 55 of the Rules of Court, any plea of

inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application (see *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, § 79, ECHR 2014 (extracts), and *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, §§ 64 and 67, ECHR 2016 (extracts)). In their observations of 12 January 2015 to the Chamber addressing the merits of the complaint under Article 5, the Government mentioned in passing that it was "also noteworthy that the applicant [did not] appear to have challenged the use of the specific measures *per se* in the domestic proceedings. The essence of his complaints ... [lay] in the denial of the fact of commission of the imputed offences". However, the Government did not make any plea of inadmissibility on grounds of failure to exhaust domestic remedies in this regard. Nor did they dispute that the applicant had exhausted domestic remedies with regard to his complaints under Article 11.

61. The Court discerns no exceptional circumstances in this case which could have dispensed the Government from their obligation pursuant to Rule 55 to raise these preliminary objections prior to the adoption of the Chamber's decision on admissibility. Consequently, the Government are estopped from raising them at this stage of the proceedings (see *Pine Valley Developments Ltd and Others v. Ireland*, 29 November 1991, § 45, Series A no. 222).

62. However, in so far as the Government's objections went to the scope of the complaints lodged under the Convention, namely in that they had not encompassed certain parts of the complaints pursued before the Grand Chamber, the consequence of accepting them would be a finding that the six-month rule had not been complied with in respect of those parts of the complaints (see *Radomilja and Others*, cited above, § 139). Unlike their objection concerning the non-exhaustion of domestic remedies, this is a matter which goes to the Court's jurisdiction and which it is not prevented from examining of its own motion (see *Blečić*, cited above, §§ 66-68; *Buzadji*, cited above, § 70; and *Fábián v. Hungary* [GC], no. 78117/13, § 90, ECHR 2017 (extracts)).

63. In this regard, the Court observes that it can be seen from the proceedings before the Chamber that the Chamber considered that the factual elements of the respective complaints were present in all the initial applications. The Court notes that all five of the applications comprising the present case were communicated to the Government on 28 August 2014 and included questions under Articles 5 and 11 and also under Article 18 taken in conjunction with the afore-mentioned provisions, in relation to each of the seven episodes. The Government replied to the questions on the merits of the alleged violations without any comment on the scope of the case, although they were fully cognizant of it (compare *Radomilja and Others*, cited above, § 105). Subsequently the Chamber decided to join the

applications "given their common factual and legal background" (see § 39 of the Chamber judgment) and found admissible the complaints under Articles 5 and 11 and also those under Article 18 in conjunction with Articles 5 and 11 respectively, in relation to all seven episodes.

64. Furthermore, as is clear from the Chamber's reasoning on the merits, the arrest and police transfer complained of were instances of deprivation of liberty, which fell to be examined under Article 5 of the Convention, as well as comprising one of the counts of alleged interference under Article 11. Thus, the applicant's grievance on account of the allegedly arbitrary arrests was deemed to form part of the factual basis of his Article 11 complaints, made in all five applications for all of the seven episodes (as reflected in §§ 50 and 51 of the Chamber judgment). It may also be noted that the Chamber characterised the complaint under Article 18, taken in conjunction with Article 5 and with Article 11 respectively, as a single complaint (see points 8 and 9 of the operative part of the Chamber judgment), although it did not find it necessary to examine the merits.

65. The Grand Chamber sees no grounds to call into question the Chamber's assessment in this regard, nor any other reason for the Court to decline jurisdiction in respect of any part of the complaints declared admissible. It is satisfied that in the circumstances of the case taken as a whole, the factual elements of the applicant's complaints of unlawful and arbitrary arrest and detention under Article 5 were essentially covered by those of his wider complaints of unjustified interferences with his Article 11 rights, as were his complaints of an ulterior purpose under Article 18 taken in conjunction with the afore-mentioned provisions. It should be reiterated that a complaint consists of two elements: factual allegations and legal arguments. By virtue of the *jura novit curia* principle the Court is not bound by the legal grounds adduced by the applicant under the Convention and the Protocols thereto and has the power to decide on the characterisation to be given in law to the facts of a complaint by examining it under Articles or provisions of the Convention that are different from those relied upon by the applicant (see *Radomilja and Others*, cited above, § 126).

66. Accordingly, the scope of the case now before the Grand Chamber is not limited in the manner claimed by the Government but extends to all aspects of the case as declared admissible by the Chamber (see *K. and T. v. Finland*, cited above, § 141; *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 128, ECHR 2005-XI; and *Cumpănă and Mazăre*, cited above, § 66-69). It accordingly dismisses all of the Government's preliminary objections.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

67. The applicant complained that his arrest on seven occasions had been unlawful and arbitrary. He also complained that on two of those occasions – 9 May 2012 and 24 February 2014 – he had been unjustifiably

detained pending the administrative proceedings. He relied on Article 5 § 1 of the Convention, which reads 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. The parties' submissions to the Grand Chamber

1. The applicant

68. The applicant maintained that his arrest had been unlawful and arbitrary on all seven occasions. He alleged that the gatherings at issue were not of such a scale as to affect public order. In relation to the fourth and seventh episodes, when he was charged with failure to obey a police order (on 9 May 2012 and 24 February 2014), he had not received any order or warning before the police arrested him. In any event, a breach of public order was not imputed to him in the domestic proceedings. Moreover, even if the police believed otherwise, there had been no reason why the administrative offence reports could not be drawn up on the spot, as provided for by Article 27 § 2 of the Code of Administrative Offences. The applicant pointed out that in each case he had obeyed the police officers arresting him and had been under their full control. In each case he was taken to a police van, which would have been a suitable place to draw up a report without leaving the venue. In his view, it had not been necessary to bring him to the police station to complete the paperwork on any of these occasions, especially because he had to spend a long time – occasionally exceeding three hours – in transit to the police station. He relied on the Court's finding in *Navalnyy and Yashin* (cited above, § 95) that, given the

absence of the statutory limit on the duration of a transfer to a police station, an unreasonably long transfer may in itself constitute unrecorded and unacknowledged detention in breach of Article 5 § 1.

69. In addition, on 9 May 2012 and 24 February 2014 he was detained for over three hours, in breach of the statutory time-limit, although there had been no exceptional circumstances justifying the decision not to release him pending trial. He claimed that his pre-trial detention on those two occasions were not in conformity with the purposes of the deprivation of liberty set out in the relevant sub-paragraphs of Article 5 § 1.

2. The Government

70. The Government alleged that the applicant's arrest had been lawful and necessary for the purpose of bringing him to justice in relation to the administrative offences. They indicated that transferring him to the police stations had been necessary in each case because the administrative reports could not be drawn up on the spot, since the circumstances were such as to render the paperwork impracticable. As for the administrative detention, its duration did not exceed three hours from the moment of bringing the applicant to the police station, except for two occasions when he was charged with offences punishable by deprivation of liberty, in which cases his detention fell within the statutory forty-eight-hour time-limit.

B. The Grand Chamber's assessment

71. The Chamber made the following assessment of the applicant's complaint:

> "60. The Court has previously examined complaints brought by people arrested in similar circumstances, including one by the applicant. In those cases the police interrupted irregular but peaceful gatherings, arrested the participants, and escorted them to police stations to have administrative offence reports drawn up. The Court noted, in particular, that under Article 27.2 of the Code of Administrative Offences the applicants could only be escorted to a police station if the reports could not be drawn up at the place where the offence had been discovered. However, no reasons had been given in those cases for not doing this on the spot, which led to the finding that the arrest and escort to the police station had constituted an arbitrary and unlawful deprivation of liberty (see *Navalnyy and Yashin*, cited above, §§ 68 and 93-97, and, *mutatis mutandis*, *Novikova and Others*, cited above, §§ 182-83 and 226-27). Furthermore, once the administrative offence reports had been drawn up at the police station, the objective of escorting would have been met and further remand in custody pending the judicial hearing would require specific justification, such as the demonstrated risk of absconding or obstructing the course of justice. In the absence of any explicit reasons for not releasing the applicant, the Court considered the detention pending trial unjustified and arbitrary even though it fell within the forty-eight-hour time-limit provided for by Article 27.5 § 3 of the Code of Administrative Offences (see *Navalnyy and Yashin*, cited above, § 96, and *Frumkin v. Russia*, no. 74568/12, § 150, 5 January 2016).

61. Having regard to the material in its possession, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Indeed, on none of the seven occasions was there a reason, explicit or implied, why the administrative offence report could not be drawn up on the spot. In addition, on 9 May 2012 the applicant was detained for an unstated number of hours before being brought before the Justice of the Peace on the same day, and on 24 February 2014 he was detained overnight before being brought before the judge, without explicit reasons being given for not releasing him before the trial, merely because he had been charged with offences punishable by a prison term. 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 detention pending trial on 9 May 2012 and 24 February 2014 was unjustified and arbitrary."

72. The Grand Chamber endorses the Chamber's reasons and finds that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's arrest on seven occasions and his pre-trial detention on two occasions.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

73. The applicant complained of a violation of Article 6 §§ 1, 2 and 3 (d) of the Convention. He alleged that on all seven occasions the proceedings in which he was convicted of an administrative offence fell short of the fair hearing guarantees, in particular the principles of equality of arms, adversarial proceedings, independence and impartiality of the tribunal, and the presumption of innocence. Article 6 of the Convention, in so far as relevant, reads:

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal ...

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

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

...

(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. Applicability of Article 6 of the Convention

1. The Chamber judgment

74. The Chamber referred to its previous findings that the offences set out in Articles 19 § 3 and 20 § 2 of the Code of Administrative Offences should be classified as "criminal" for the purposes of the Convention and did not see any reason to reach a different conclusion in the present case. It considered that the administrative proceedings fell to be examined under the criminal limb of Article 6 of the Convention.

2. The parties' submissions

75. In the proceedings before the Grand Chamber the Government maintained their objection as to the applicability of Article 6 of the Convention to the administrative proceedings in the present case, referring to the discretion of the legislative bodies of the member States to define what offences should be classified as criminal in their respective legal systems.

76. The applicant maintained, on the contrary, that Article 6 in its criminal limb was applicable, in accordance with the Court's well-established case-law.

3. The Court's assessment

77. The Court reiterates that the applicability of Article 6 falls to be assessed on the basis of the three criteria outlined in the *Engel* judgment, namely the legal classification of the offence under national law; the nature of the offence; and the degree of severity of the penalty that the person concerned risked incurring (see *Engel and Others v. the Netherlands*, 8 June 1976, §§ 82-83, Series A no. 22; *Öztürk v. Germany*, 21 February 1984, § 50, Series A no. 73; *Demicoli v. Malta*, 27 August 1991, §§ 31-34, Series A no. 210; *Menesheva v. Russia*, no. 59261/00, §§ 95-98, ECHR 2006-III; *Ezeh and Connors v. the United Kingdom* [GC], nos. 39665/98 and 40086/98, § 82, ECHR 2003-X; *Jussila v. Finland* [GC], no. 73053/01, § 30, ECHR 2006-XIV; and *Blokhin v. Russia* [GC], no. 47152/06, § 179, ECHR 2016).

78. The second and third criteria laid down in *Engel* are alternative and not necessarily cumulative. This does not exclude that a cumulative approach may be adopted where separate analysis of each criterion does not make it possible to reach a clear conclusion as to the existence of a criminal charge (see *Ezeh and Connors*, cited above, § 86; *Jussila*, cited above, § 31; and *Blokhin*, cited above, § 179.).

79. The Court has previously held that the offence set out in Article 20 § 2 of the Code of Administrative Offences should be classified as "criminal", regard being had to the general nature of the offence, and given

that the purpose of the sanction is punitive and deterrent in nature, all of which is a characteristic of the criminal sphere (see *Kasparov and Others*, cited above, §§ 37-45; *Mikhaylova v. Russia*, no. 46998/08, §§ 57-69, 19 November 2015; and *Kasparov and Others v. Russia (no. 2)*, no. 51988/07, § 43, 13 December 2016). As regards the offence under Article 19 § 3 of the Code, the Court noted that it was punishable by detention, which is generally indicative of an offence belonging to the criminal sphere, and that in view of its duration and manner of execution it attained the gravity of a criminal sanction (see *Malofeyeva v. Russia*, no. 36673/04, §§ 99-101, 30 May 2013; *Nemtsov v. Russia*, no. 1774/11, § 83, 31 July 2014; *Navalnyy and Yashin*, cited above, § 78; and *Ezeh and Connors*, cited above, §§ 69-130).

80. The Grand Chamber sees no reason to depart from the Chamber's conclusions and finds that Article 6 was applicable under its criminal limb to the seven sets of administrative proceedings in the present case.

B. Compliance

1. The parties' submissions

(a) The applicant

81. The applicant alleged that in all seven sets of administrative proceedings he had not been given a fair hearing. He complained that the courts had refused to call and examine the witnesses requested by him, and in five sets of proceedings they had refused to admit in evidence the video recordings of his arrest in evidence. Furthermore, the courts had not respected the principle of equality of arms, in that they had rejected the statements in the applicant's favour as false while giving weight to those of the police officers. The applicant claimed that by dismissing all evidence in his favour the domestic courts had placed an extreme and unattainable burden of proof on him as a defendant, and that the judgments were not based on acceptable assessment of the relevant facts. Moreover, the courts did not require the police to justify interference with the applicant's right to freedom of assembly. As regards two sets of proceedings – concerning the episodes of 9 May 2012 and 27 October 2012 – he formulated an additional complaint that the courts had discharged the function of the prosecution, in accordance with the administrative procedure, but contrary to the principles of equality of arms and independence of the tribunal. He also complained that in those two sets of proceedings the courts had modified the charges of their own motion, thus assuming the role of the prosecution.

(b) The Government

82. The Government maintained that the proceedings in the applicant's administrative cases had complied with Article 6 of the Convention. They

argued that the applicant had been given a fair opportunity on each occasion to state his case and to have the relevant witnesses called and cross-examined. The Government contested the assertion that the domestic courts had taken on the function of the prosecution. They claimed that the administrative-offence case files had been prepared by the police, who had collected the evidence and had presented charges in writing, whereas the court had resolved the cases as an independent adjudicator. The Government considered that the video materials provided by the applicant were of limited evidentiary value and contended that it was in any event within the competence of the domestic courts to decide on the relevance and admissibility of particular items of evidence.

2. The Court's assessment

83. The Chamber made the following assessment of the applicant's complaint:

> "69. The Court observes that the circumstances surrounding the applicant's arrest were disputed by the parties to the administrative proceedings in all seven cases. In the proceedings concerning the episode of 5 March 2012 the applicant claimed, in particular, that the two police officers who had drawn up the administrative offence report were not the same officers who had arrested him. In the proceedings concerning the episodes of 8 and 9 May 2012 and the evening of 24 February 2014 the applicant contested that the gatherings in question had caused a disturbance and denied that he had been given a warning or an order to disperse before being arrested. In two other sets of proceedings – concerning the episodes of 27 October 2012 and of 24 February 2014 at 12 noon – the applicant contested that there had been any public gathering at all within the meaning of the Public Events Act and claimed that he had been arrested without any warning or pretext. It follows that each set of proceedings involved a dispute over the key facts, and it was incumbent on the domestic courts to resolve these disputes in a fair and adversarial manner.
>
> 70. The Court observes that in the proceedings concerning the episode of 5 March 2012 the Justice of the Peace examined only two police officers whose identity had been disputed by the applicant and refused to call other witnesses. However, the appeal court had justifiably found this evidence insufficient and had also examined a private individual – a journalist – who had been an eyewitness to the applicant's arrest. The latter had confirmed the police officers' identity. In addition, the same appeal court examined the video recording submitted by the applicant, and on the basis of all the evidence found the officers' identity established. The Court has no reason to find the manner in which the appeal court had assessed the evidence relating to the officers' identity arbitrary or manifestly unreasonable, and it notes that the applicant did not have any other grievances in relation to this set of proceedings.
>
> 71. By contrast, the courts in the six other sets of proceedings decided to base their judgments exclusively on the versions of events put forward by the police. They systematically failed to check the factual allegations made by the police, having refused the applicant's requests for additional evidence such as video recordings to be admitted, or for witnesses to be called, in the absence of any obstacles to doing so. Moreover, when the courts did examine witnesses other than the police officers, they automatically presumed bias on the part of all witnesses who had testified in the

applicant's favour; on the contrary, the police officers were presumed to be parties with no vested interest.

72. The Court has already examined a number of cases concerning administrative proceedings against individuals charged with breaching rules of conduct of public events or with failing to obey police orders to disperse. It found that in those proceedings the Justices of the Peace had accepted the submissions of the police readily and unequivocally and had denied the applicants any opportunity to adduce any proof to the contrary. It held that in the dispute over the key facts underlying the charges where the only witnesses for the prosecution were the police officers who had played an active role in the contested events it was indispensable for the courts to use every reasonable opportunity to check their incriminating statements (see *Kasparov and Others*, § 64; *Navalnyy and Yashin*, § 83; and *Frumkin*, § 165, all cited above). Failure to do so ran contrary to the fundamental principles of criminal law, namely *in dubio pro reo* (see *Frumkin*, cited above, § 166, and the cases cited therein). It also found that by dismissing all evidence in the defendant's favour without justification the domestic courts had placed an extreme and unattainable burden of proof on the applicant, contrary to the basic requirement that the prosecution has to prove its case and to one of the fundamental principles of criminal law, namely *in dubio pro reo* (see *Nemtsov*, cited above, § 92).

73. The Court considers that the six sets of administrative proceedings in this case were all flawed in a similar way; they resulted in judicial decisions which were not based on an acceptable assessment of the relevant facts. Moreover, the courts did not require the police to justify the interference with the applicants' right to freedom of assembly, which included a reasonable opportunity to disperse when such an order is given (see *Frumkin*, cited above, § 166, and *Nemtsov*, cited above, § 93).

74. On the basis of the foregoing considerations the Court concludes that the administrative proceedings concerning both episodes of 8 May 2012, the episodes of 9 May and 27 October 2012, and both episodes of 24 February 2014, were all conducted in violation of his right to a fair hearing. In view of this finding, the Court does not consider it necessary to address the remainder of the applicants' complaints under Article 6 §§ 1 and 3 (d) of the Convention in respect of these six sets of proceedings."

84. The Grand Chamber endorses the Chamber's reasoning and finds that there has been no violation of Article 6 § 1 of the Convention on account of the administrative proceedings concerning the events of 5 March 2012 (see paragraphs 17-18 above) and that there has been a violation of this provision on account of the administrative proceedings relating to the remaining six episodes, on 8 and 9 May and 27 October 2012 and on 24 February 2014 (see paragraphs 23-24, 28-30, 33-34 and 38-42 above). In view of this finding, the Grand Chamber does not consider it necessary to address the remainder of the applicant's complaints under Article 6 §§ 1 and 3 (d) of the Convention in respect of the latter six sets of proceedings.

IV. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

85. The applicant complained that his arrest on seven occasions in relation to his alleged participation in unauthorised public events and his

detention and convictions for administrative offences had violated his right to freedom of peaceful assembly as guaranteed by 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. The Chamber judgment

86. The Chamber found that in all seven episodes there had been an interference with the applicant's right to freedom of assembly. It noted, in particular, that although the applicant had not intended to hold a march on 27 October 2012, or a public gathering in front of the courthouse at noon on 24 February 2014, the specific circumstances of those events were such as to fall within the scope of Article 11 of the Convention.

87. The Chamber found that the present case was identical to several other Russian cases where the Court had found violations of Article 11 of the Convention because the police had stopped and arrested protestors for the sole reason that their demonstration as such had not been authorised, the formal unlawfulness of the gathering being the main justification for the administrative charges. It stated that there was an indication of a practice existing in Russia whereby the police would interrupt such a gathering, or a perceived gathering, and arrest the participants as a matter of routine.

88. As regards the existence of a legitimate aim, the Chamber dispensed with examining this question because it considered that the measures had in any event been disproportionate to the aims put forward by the Government, namely the prevention of disorder or crime and the protection of the rights and freedoms of others. The Chamber held that even assuming that the applicant's arrests and administrative sentences had complied with domestic law and pursued a legitimate aim, these measures fell short of being proportionate to the declared aims. It noted that the Government had failed to demonstrate that there existed a "pressing social need" to interrupt the gatherings, arrest the applicant and, in particular, to sentence him on two occasions to a term of imprisonment, albeit a short one. Furthermore, the Chamber noted that the measures had a serious potential to have a chilling effect, by deterring future attendance at public gatherings and preventing an open political debate – an effect amplified by the fact that a well-known public figure had been targeted, whose arrest was bound to attract wide

media coverage. The Chamber therefore held that there had been a violation of Article 11 in all seven episodes.

B. The parties' submissions

1. The applicant

89. The applicant maintained that the authorities had interfered with his right to freedom of peaceful assembly by interrupting the gatherings, or perceived gatherings, by arresting him and by imposing administrative liability for breaches of procedure in conducting public events or for non-compliance with police orders. As regards two occasions, he contested that the events in question had constituted a public gathering. First, on 27 October 2012 he had been arrested on the pretext that he was holding a march, whereas he had merely been walking away from the venue of a static demonstration. Secondly, on 24 February 2014 at 12 noon he had been arrested while waiting in front of the court-house because he wished to attend the delivery of the judgment in a high-profile case. This gathering, if classified as one, could not have been foreseen or notified to the authorities, and it caused no disturbance which would have merited its dispersal, arrests or the ensuing prosecution.

90. He accepted that on 5 March 2012, twice on 8 May 2012, on 9 May 2012 and once on 24 February 2014 (in the evening) he had taken part in political gatherings which had not been notified to the authorities. However, he considered that in view of their immediate connection with current affairs, their small scale, and the absence of risk to public order, the authorities could be expected to show tolerance for these gatherings. According to the applicant, on each of these seven occasions the authorities' response had been unlawful, devoid of a legitimate aim and grossly disproportionate, in violation of Article 11 of the Convention.

91. In his oral pleadings the applicant submitted that it was extremely difficult to obtain authorisations for public events organised by the opposition, especially at a suitable time and location. In particular, he alleged that it was impossible for him to organise any public event in the city centre of Moscow or St Petersburg, since all notifications were systematically rejected with no appropriate alternative proposals as required by the domestic law.

92. The applicant disputed the assertion that he had shown disobedience to police orders, as well as the very fact of receiving orders; he also denied having shouted slogans, obstructed the traffic or pedestrian walkways or breached public order.

2. The Government

93. The Government stated that on all seven occasions there had been a public gathering subject to notification, and accepted that the dispersal of the persons gathering and the law-enforcement measures against the applicant had constituted an interference with the right to freedom of peaceful assembly.

94. The Government considered that the interference with the applicant's freedom of peaceful assembly had complied with domestic law and was necessary "for the prevention of disorder or crime" and "for the protection of the rights and freedoms of others". They claimed that on all seven occasions the applicant had attempted to conduct unauthorised public gatherings, which the police had lawfully intercepted, and that the competent courts had justifiably found him guilty of administrative offences. They did not consider that on any of these occasions there had been special circumstances absolving the protestors from compliance with the requirement of prior notification of their assembly. They gave examples of other, lawful public events in which the applicant had participated without any interference. They challenged the applicant's allegations that those assemblies had not caused any noise or nuisance, given the size of the groups at issue and the presence of the media. In particular, on 27 October 2012 (the fifth occasion) he held a march which had obstructed traffic and, contrary to what the applicant suggested, "it was unlikely" that some of the other events "did [not] produce any noise and cause any nuisance to the pedestrians" in view of the number of people participating, their locations and time (notably the first on 5 March 2012 and the last two on 27 February 2014). They also challenged the applicant's submission that he did not obstruct traffic in the seventh episode.

95. Finally, they considered that the administrative sanctions had been proportionate, regard being had to the persistent and deliberate character of his offences. They indicated that the increased amounts of the fines to which the applicant was sentenced on 27 October 2012 and on 24 February 2014 were due to the legislative increase of the fines provided by Article 20 § 2 of the Code.

96. The Government considered that at least on two occasions the authorities had shown a considerable degree of tolerance towards unlawful gatherings. In particular, on 5 March 2012 the police did not arrest the applicant until 10.45 p.m. whereas the authorised meeting had finished at 9 p.m.; likewise, on 8 May 2012 the protestors had been able to go on "walkabouts" for a long time before the police decided to intercept them.

97. The Government stated that in the Chamber judgment the Court had not been called upon to establish the existence of the practice of interference with public assemblies in Russia, and that the thirteen examples on which the Court had relied were not representative or sufficient to demonstrate such a practice. They also pointed out that in thirteen Member States the

failure to give a prior notification of an assembly or to comply with the restrictions imposed on the assembly's location or time could by itself justify the dispersal of an assembly, according to the comparative study carried out for *Lashmankin and Others* (cited above, § 324).

C. The Grand Chamber's assessment

1. Applicability of Article 11 of the Convention and the existence of an interference

(a) General principles

98. The Court reiterates that the right to freedom of assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society. Thus, it should not be interpreted restrictively (see *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 91, ECHR 2015, and *Taranenko v. Russia*, no. 19554/05, § 65, 15 May 2014). To avert the risk of a restrictive interpretation, the Court has refrained from formulating the notion of an assembly, which it regards as an autonomous concept, or exhaustively listing the criteria which would define it. It has specified in relevant cases that the right to freedom of assembly covered both private meetings and meetings in public places, whether static or in the form of a procession; in addition, it can be exercised by individual participants and by the persons organising the gathering (see *Kudrevičius and Others*, cited above, § 91, with further references, and *Lashmankin and Others*, cited above, § 402). It has also emphasised that Article 11 of the Convention only protects the right to "peaceful assembly", a notion which does not cover gatherings where the organisers and participants have violent intentions. The guarantees of Article 11 therefore apply to all gatherings except those where the organisers and participants have such intentions, incite violence or otherwise reject the foundations of a democratic society (see *Kudrevičius and Others*, cited above, § 92, with further references).

99. Thus, the question of whether a gathering falls within the autonomous concept of "peaceful assembly" in paragraph 1 of Article 11 and the scope of protection afforded by that provision is independent of whether that gathering was conducted in accordance with a procedure provided for by the domestic law. It is only once the Court has concluded that a gathering falls within the scope of protection that its classification and regulation under national law have a bearing on the Court's assessment. Those elements are relevant for the ensuing question of the State's negative obligations, namely whether a restriction on the protected freedom is justified under paragraph 2, as well as for an assessment of the State's positive obligations, i.e. whether the latter has struck a fair balance between the competing interests at stake.

100. In this connection, the Court deems it useful to reiterate that notification, and even authorisation procedures, for a public event do not in general encroach upon the essence of the right under Article 11 of the Convention, as long as the purpose of regulating the assembly is to allow the authorities to take reasonable and appropriate measures in order to guarantee its smooth conduct (see *Kudrevičius and Others*, cited above, § 147, with further references, quoted at paragraph 128 below). It has, however, also held that the enforcement of such rules cannot become an end in itself (ibidem, § 150, quoted at paragraph 128 below). It follows that a peaceful gathering may be of such a nature that making it permissible only subject to conditions of prior notification and/or authorisation may in itself be found disproportionate for the purposes of Article 11 of the Convention.

101. The Court has emphasised that the freedom of assembly provided for in Article 11 is closely linked with the freedom of expression guaranteed by Article 10, as the protection of personal opinions, secured by the latter, is one of the objectives of freedom of peaceful assembly as enshrined in Article 11. According to its settled case-law, a complaint about one's arrest in the context of a demonstration falls to be examined under Article 11 of the Convention on the basis that Article 10 is to be regarded as a *lex generalis* in relation to Article 11, which is a *lex specialis* (see *Ezelin v. France*, 26 April 1991, § 35, Series A no. 202). One of the distinctive criteria noted by the Court is that in the exercise of the right to freedom of assembly the participants would not only be seeking to express their opinion, but to do so together with others (see *Primov and Others v. Russia*, no. 17391/06, § 91, 12 June 2014).

102. At the same time, the Court has recognised that in the sphere of political debate the guarantees of Articles 10 and 11 are often complementary (see *Primov and Others*, cited above, § 92). Notwithstanding its autonomous role and particular sphere of application, Article 11 must also be considered in the light of Article 10, where the aim of the exercise of freedom of assembly is the expression of personal opinions, as well as the need to secure a forum for public debate and the open expression of protest (see *Kudrevičius and Others*, cited above, § 86, with further references). Thus, for instance, where a group of people held a picket in front of a regional court and was subsequently found administratively liable and fined for having breached the procedure for organising and holding a public assembly, the Court has considered that the administrative prosecution amounted to an interference with the applicant's right to freedom of assembly, interpreted in the light of his right to freedom of expression (see *Sergey Kuznetsov v. Russia*, no. 10877/04, § 36, 23 October 2008). The link between Article 10 and Article 11 is particularly relevant where the authorities have interfered with the right to freedom of peaceful assembly in reaction to the views held or statements made by participants in a demonstration or members of an association (see, for

example, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 85, ECHR 2001-IX).

103. The Court reiterates that an interference with the right to freedom of assembly does not need to amount to an outright ban, legal or *de facto*, but can consist in various other measures taken by the authorities. The term "restrictions" in Article 11 § 2 must be interpreted as including both measures taken before or during a gathering and those, such as punitive measures, taken afterwards (see *Ezelin*, cited above, § 39; *Kasparov and Others*, cited above, § 84; *Primov and Others*, cited above, § 93; and *Nemtsov*, cited above, § 73). For instance, a prior ban can have a chilling effect on those who may intend to participate in a rally and thus amount to an interference, even if the rally subsequently proceeds without hindrance on the part of the authorities. A refusal to allow an individual to travel for the purpose of attending a meeting amounts to an interference. So too do measures taken by the authorities during a rally, such as dispersal of the rally or the arrest of participants, and penalties imposed for having taken part in a rally (see *Kasparov and Others*, cited above, § 84, with further references).

(b) Application of these principles in the present case

104. The Court takes note of the Government's allegation that the applicant had denied having taken part in an assembly on some of the occasions in question. Nevertheless, on each of the seven occasions he was held liable for an administrative offence: in five episodes under Article 20 § 2 of the Code of Administrative Offences, pursuant to which a breach of the established procedure for the conduct of public gatherings, meetings, demonstrations, marches or pickets constituted an offence; and on two occasions he was found guilty of disobeying a lawful order by the police, in breach of Article 19 § 3.

105. Having regard to the parties' submissions concerning the nature of the different events at issue and the extent of the applicant's involvement in them, the Court will consider the particular features of each respective episode.

(i) The first episode (5 March 2012)

106. The political rally at which the applicant and other participants (about 500 people) refused to leave the venue after the end of the authorised time slot was a continuation of a meeting notified under the Public Events Act (see paragraphs 13-14 above). It undoubtedly constituted an assembly within the meaning of Article 11. His arrest, transfer to the police station and the ensuing administrative conviction constituted an interference with the right to freedom of peaceful assembly under Article 11 § 2 of the Convention.

(ii) The second, third and fourth episode (8 and 9 May 2012)

107. The applicant was arrested three times during "walkabout" gatherings held in public as a form of protest (see paragraphs 19-21 and 25 above). While he asserted that the "walkabouts" were not meetings or marches, or other types of gatherings subject to notification under the Public Events Act, he accepted that those gatherings were a form of expression chosen by a group of opposition supporters to show their discontent with the renewal of Mr Putin's presidential mandate. The applicant did not contest his participation in those gatherings.

108. The Court observes that the "walkabouts" in question involved groups of persons who acted in a coordinated and purposeful way, in this particular instance for political purposes; these gatherings numbered approximately 170, 50 and 50-100 people respectively, and they were peaceful. Having regard to the purpose and the format of the "walkabouts", namely the expression of personal opinions by a group of people, the Court considers that they fell within the notion of "assembly" contained in Article 11. The applicant intended to take part in those public gatherings and has never denied it; even if he did not consider them "marches" or "meetings" subject to notification under the applicable national law, he had been exercising his right to freedom of assembly under Article 11 of the Convention. In the Court's view, his arrests, transfer to a police station, detention and the ensuing sanctions constituted "a restriction", within the meaning of the second paragraph of Article 11, and thus an interference with his right to freedom of peaceful assembly as protected by the first paragraph of this Article.

(iii) The fifth and the sixth episodes (27 October 2012 and 24 February 2014 noon)

109. In these two episodes the applicant had contested that the conduct imputed to him constituted a public gathering under the Public Events Act as alleged by the authorities. In the fifth episode, the applicant took part in a stationary demonstration prior to being arrested. The arrest and charges, as transpires from the police reports and the domestic courts' judgments, did not relate to the stationary demonstration itself, but to what happened afterwards: the applicant was leaving the venue, accompanied by a group of about 25-30 people, including journalists, and their movement was described as an unauthorised march (see paragraphs 31-32 above). The Court finds that irrespective of whether such conduct could in principle amount to a public event within the meaning of Russian law, in the specific circumstances of this episode and for the purpose of deciding on the applicability of Article 11 of the Convention, it cannot be separated from the applicant's participation in the stationary demonstration. Accordingly, even if the applicant did not intend to hold the march imputed to him, there was still a link between the measures taken against him and his exercise of

the right to freedom of assembly (see *Navalnyy and Yashin*, cited above, § 52; and, *mutatis mutandis*, *Kasparov and Others*, cited above, § 85, and *Kasparov and Others (no. 2)*, cited above, § 27).

110. In the sixth episode, approximately 150 persons were present outside the courthouse for the purpose of attending a court hearing; the applicant, with other activists, was not allowed to enter and waited outside, thus forming a gathering which, in the authorities' view, was unlawful on the grounds of lack of authorisation (see paragraph 35 above). In making its assessment on the latter event, the Chamber held, *inter alia*:

> "45. As regards the events in front of the court-house on 24 February 2014 at 12 noon, the Court notes that the applicant and other members of the public went to the Zamoskvoretskiy District Court intending to attend the pronouncement of the judgment in a criminal case which they considered to be political. By appearing at the hearing they meant to demonstrate the involvement of civil society and its solidarity with the activists, whom they regarded as political prisoners. The common cause which brought these people to the court-house – to express personal involvement in a matter of public importance – distinguished this unintended gathering from a random agglomeration of individuals each pursuing their own cause, such as a queue to enter a public building. It is also to be distinguished from a situation where a passer-by gets accidentally mixed up with a demonstration and may be mistaken for someone taking part in it (see *Kasparov and Others*, cited above, § 72). The Court reiterates that Article 11 of the Convention covers both private meetings and meetings in public places (see *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 91, ECHR 2015), and that the protection of personal opinions is one of the objectives of freedom of peaceful assembly as enshrined in Article 11 of the Convention (see *Ezelin v. France*, 26 April 1991, § 37, Series A no. 202). The Court therefore finds that in this episode there has been an interference with the applicant's right to freedom of assembly..."

111. The Grand Chamber doubts that, having regard to the Russian legislation, the applicant could have thought that by turning up for a public court hearing he was participating in a public event that was subject to advance notification. Whilst it is not bound by the legal qualification under Russian law of the event at noon on 24 February 2014, the Grand Chamber, endorsing the Chamber's reasoning above, finds that the applicant's intention and his actual conduct were covered by the notion of "peaceful assembly" in Article 11 § 1 and thus fell within the scope of protection afforded by this provision.

112. The Court therefore finds that the applicant's arrests, transfer to a police station and the ensuing sanctions on these two occasions constituted an interference with the right to freedom of peaceful assembly under Article 11 § 2.

(iv) The seventh episode (evening of 24 February 2014)

113. The applicant was arrested at a spontaneous stationary demonstration of about 150 people, held in response to the judgment in the "Bolotnaya" case pronounced earlier that day. The applicant has not denied

his intention to participate in this gathering (see paragraph 37 above). The Court has no doubt that this event constituted an assembly within the meaning of Article 11, and considers that the applicant's conduct fell within the ambit of this provision. Accordingly, the dispersal of the gathering and the applicant's arrest, transfer to a police station, detention and the administrative sanctions constituted an interference with his right of peaceful assembly under Article 11 § 2 of the Convention.

2. Whether the interference was justified

(a) Prescribed by law

(i) General principles as regards lawfulness

114. The relevant principles were summarised in *Kudrevičius and Others* (cited above, §§ 108-10):

> "108. The Court reiterates its case-law to the effect that the expressions 'prescribed by law' and 'in accordance with the law' in Articles 8 to 11 of the Convention not only requires that the impugned measure should have a legal basis in domestic law, but also refers to the quality of the law in question, which should be accessible to the person concerned and foreseeable as to its effects (see, among other authorities, *Rotaru v. Romania* [GC], no. 28341/95, § 52, ECHR 2000-V; *VgT Verein gegen Tierfabriken v. Switzerland*, no. 24699/94, § 52, ECHR 2001-VI; *Gawęda v. Poland*, no. 26229/95, § 39, ECHR 2002-II; *Maestri v. Italy* [GC], no. 39748/98, § 30, ECHR 2004-I; *Vyerentsov*, cited above, § 52; *Gorzelik and Others v. Poland* [GC], no. 44158/98, §§ 64-65, ECHR 2004-I; and *Sindicatul 'Păstorul cel Bun' v. Romania* [GC], no. 2330/09, § 153, ECHR 2013 (extracts)).
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> 109. In particular, a norm cannot be regarded as a 'law' unless it is formulated with sufficient precision to enable the citizen – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see, for example, *Djavit An*, cited above, § 65). Experience shows, however, that it is impossible to attain absolute precision in the framing of laws, particularly in fields in which the situation changes according to the prevailing views of society (see, among other authorities, *Ezelin*, cited above, § 45). In particular, the consequences of a given action need not be foreseeable with absolute certainty: experience shows this to be unattainable. Again, whilst certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice (see, among other authorities, *Sunday Times v. the United Kingdom (no. 1)*, 26 April 1979, § 49, Series A no. 30; *Rekvényi v. Hungary* [GC], no. 25390/94, § 34, ECHR 1999-III; *Ziliberberg*, decision cited above; *Galstyan*, cited above, § 106; and *Primov and Others*, cited above, § 125).
>
> 110. The role of adjudication vested in the national courts is precisely to dissipate such interpretational doubts as may remain; the Court's power to review compliance with domestic law is thus limited, as it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see *Kruslin v. France*, 24 April 1990, § 29, Series A, no. 176-A; *Kopp v. Switzerland*, 25 March 1998, § 59, *Reports* 1998-II; *VgT Verein gegen Tierfabriken*, cited above, § 52; *Mkrtchyan v. Armenia*, no. 6562/03, § 43, 11 January 2007; and *Vyerentsov*, cited above, § 54).

> Moreover, the level of precision required of domestic legislation – which cannot in any case provide for every eventuality – depends to a considerable degree on the content of the instrument in question, the field it is designed to cover and the number and status of those to whom it is addressed (see *Vogt v. Germany*, 26 September 1995, § 48, Series A no. 323, and *Rekvényi*, cited above, § 34)."

115. The Court also reiterates that for domestic law to meet the qualitative requirements, it must afford a measure of legal protection against arbitrary interferences by public authorities with the rights guaranteed by the Convention. In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion and the manner of its exercise (see, among other authorities, *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 84, ECHR 2000-XI; *Maestri v. Italy* [GC], no. 39748/98, § 30, ECHR 2004-I; and *Lashmankin and Others*, cited above, § 411).

(ii) Application of these principles in the present case

116. The Court notes, firstly, that in the first four episodes the authorities acted under section 16 of the Public Events Act which provided for the ending of a public event on the grounds of a deliberate breach by the organiser of the procedure for the conduct of public events. From June 2012 the authorities could also end a public event specifically for non-compliance with the notification requirement, and this ground was applicable to the fifth and the subsequent episodes. Both grounds for the ending of public events appear to have been alternative rather than cumulative in relation to the occurrence of a genuine threat, which was also a specified ground. As regards the administrative sanctions, they were based on Articles 20 § 2 and 19 § 3 of the Code of Administrative Offences (see paragraphs 44 to 46 above). The measures taken against the applicant could therefore be said to have had a basis in domestic law.

117. On the other hand, the circumstances in the present case suggest that, because of the overly broad nature of the aforementioned legal provisions, the foreseeability of their application could be called into question. In the absence of criteria distinguishing an informal gathering from a public event subject to official notification, the police and the domestic courts adopted an interpretation which extended the formal requirement to a very wide variety of loosely defined situations. Thus, in the fifth episode the applicant was penalised for having been followed by a group of people after he had left a stationary demonstration, as their movement had been intercepted by the police as amounting to an "unlawful march". In the sixth episode the applicant had found himself amidst a group of activists in front of the courthouse because they had been denied entry to

the court hearing. The requirement on the latter two occasions that such conduct should have been subject to advance notification cannot reasonably be viewed as having been foreseeable, even under the most extensive interpretation of the Public Events Act.

118. The existing legal framework thus afforded the executive authorities wide discretion in deciding what behaviour constituted a public event. In the exercise of this discretion the police had power to end the event – and this included through administrative law-enforcement measures, such as arrest, transfer to a police station and pre-trial detention – for the sole reason that the notification procedure had not been complied with, even in the absence of any nuisance. Stressing the importance of adequate safeguards against arbitrary interferences by public authorities with the right to freedom of assembly, the Court cannot but note the broad terms used in the relevant provisions of section 2 of the Public Events Act defining the notion of "public event", the broad scope of the attendant duty of notification of such an event under sections 5 and 7 of the Act and the broad definition of the offence in Articles 19 § 3 and 20 § 2 of the Code of Administrative Offences, applicable to any failure to observe that duty (see paragraphs 44 to 46 above). Having regard also to the nature of the impugned events in the instant case, the Court finds reason to doubt that the manner of application of the relevant law was sufficiently foreseeable to meet the quality requirement inherent in the autonomous notion of lawfulness under paragraph 2 of Article 11. This doubt is compounded by the fact that on each occasion the authorities interrupted the applicant's exercise of freedom of assembly by arresting and detaining him in circumstances at variance with Article 5 § 1 of the Convention (see paragraph 72 above).

119. However, considering that the law in question raises important questions extending beyond a mere analysis of its quality and foreseeability, the Court finds it more appropriate to incorporate that analysis in the broader proportionality assessment to be carried out under the necessity test below, i.e. in an extended review of whether the discretion enjoyed by the authorities in this area was accompanied by adequate safeguards against abuse (see paragraphs 148 to 150 below).

(b) Whether the impugned interference pursued a legitimate aim - prevention of disorder or crime and the protection of the rights and freedoms of others

(i) The Court's case-law as regards a legitimate aim

120. In the *Merabishvili* judgment (see *Merabishvili v. Georgia* [GC], no. 72508/13, 28 November 2017) the Court conducted an overview of cases in which it had specifically addressed the question whether an interference pursued a legitimate aim. It found that even though the legitimate aims and grounds set out in the restriction clauses in the

Convention are exhaustive, they were also broadly defined and had been interpreted with a degree of flexibility. Respondent Governments normally have a relatively easy task in persuading the Court that the interference pursued a legitimate aim, even when the applicants cogently argue that it actually pursued an unavowed ulterior purpose. The Court has indeed itself recognised that in most cases it deals with the point summarily. Cases in which the Court has voiced doubts about the cited aim without ruling on the issue or has rejected one or more of the cited aims were few and far between, and the cases in which it has found a breach of the respective Article purely owing to the lack of a legitimate aim are rarer still. The real focus of the Court's scrutiny has rather been on the ensuing and closely connected issue: whether the restriction is necessary or justified, that is, based on relevant and sufficient reasons and proportionate to the pursuit of the aims or grounds for which it is authorised. Those aims and grounds are the benchmarks against which necessity or justification is measured (see *Merabishvili,* cited above, §§ 294-302).

121. The Court is mindful that under its well-established case-law, in proceedings originating in an individual application under Article 34 of the Convention its task is not to review domestic law in the abstract but to determine whether the way in which it was applied to the applicant gave rise to a breach of the Convention (see *Perinçek v. Switzerland* [GC], no. 27510/08, § 136, ECHR 2015, with references). Therefore in verifying the existence of a legitimate aim in a particular case the Court examines the purpose of the legislative provision in question taking into account its implementation in the applicants' concrete case.

122. With the view to its examination of the present case, the Court also finds it noteworthy that there are certain differences in the wording of the permissible grounds for restriction of rights as set out in various Convention Articles (see *Perinçek*, cited above, §§ 146-51). It has concluded, albeit in the context of Article 10, that since the words used in the English text appear to be only capable of a narrower meaning, the expressions "the prevention of disorder" and "*la défense de l'ordre*" in the English and French texts of Article 10 § 2 can best be reconciled by being read as having the less extensive meaning (see *Perinçek*, cited above, § 151). The same must hold true for Article 11 § 2, which contains the same words in their respective language versions, since the Convention must be read as a whole, and interpreted in such a way as to promote internal consistency and harmony between its various provisions (*see Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 48, ECHR 2005-X).

(ii) Legitimate aims in the present case

123. Turning to the existence of a legitimate aim, the Court will examine whether the applicant's arrest, detention and conviction of administrative offences pursued the legitimate aims of prevention of disorder or crime and

the protection of the rights and freedoms of others, as claimed by the Government.

124. In this regard the Court notes, in particular, that the fifth arrest took place as the applicant was walking away from the venue of a stationary demonstration that he had just completed and a group of people, including journalists, followed him. The authorities qualified this as an "unauthorised march" although the applicant had not manifested any intention to lead a march or to do anything apart from merely walking down the street while leaving the venue (see paragraph 32 above). In the given context the applicant could not have foreseen that his conduct would be perceived as a public event imputed to him by the authorities. In fact, this group was neither formed on his initiative, nor for that matter could it be regarded as disruptive, since it was stated that the applicant and the other persons were walking on the pavement, and no evidence to the contrary was submitted to the Court.

125. In the sixth episode the authorities decided that a group of people waiting to enter a court hearing constituted an unauthorised "public gathering" (see paragraph 35 above). It may be understood from the Government's submissions that after some time waiting outside the court certain members of the public began to shout political slogans. However, no evidence was submitted to the Court that the applicant did so, or that he had otherwise demonstrated an intention to hold a political rally outside the court. Nothing in the case file suggests that before coming to the court hearing the persons outside the courthouse had expected to be denied entry, or that they were prepared to hold a demonstration if that happened. Moreover, it appears that the area outside the court building was in any event cordoned off and was obstructed by police vans, and that the persons waiting outside the cordon did not cause any additional impediment to the traffic.

126. The Court is therefore not satisfied that on the fifth and the sixth occasions the impugned measures taken against the applicant pursued any legitimate aim for the purposes of Article 11 § 2. For this reason alone there has been a violation of Article 11 in respect of each of these two episodes.

127. As regards the remaining five episodes, the Court notes that the relevant arrests took place during public events conducted without notification (the second, the third, the fourth and the seventh episodes) or after the end of the authorised time slot (the first episode). All of these events were peaceful gatherings which caused hardly any disturbance (see paragraphs 14, 19-21, 25 and 37 above). The Court seriously doubts that any legitimate aim provided for in Article 11 § 2 was pursued, but sees no need to reach a firm conclusion on this point, considering that the interference was in any event not "necessary" for the reasons set out below.

(c) Whether the disputed restrictions on the five remaining occasions were necessary in a democratic society

(i) Principles in the Court's case-law

128. In examining the necessity of the impugned interference with the right to freedom of assembly in the instant case, the Court will have regard to the principles summarised in *Kudrevičius and Others* (cited above, §§ 142-60; and recently quoted in *Lashmankin and Others* (cited above, § 412):

(α) General

"142. 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*, cited above, § 42). 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 *Rufi Osmani and Others v. the former Yugoslav Republic of Macedonia* (dec.), no. 50841/99, ECHR 2001-X, and *Galstyan*, cited above, § 114).

143. 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*, cited above, § 86). 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*, decision cited above, and *Gün and Others*, cited above, § 75; see also *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 47, *Reports* 1998-I, and *Gerger v. Turkey* [GC], no. 24919/94, § 46, 8 July 1999).

144. The proportionality principle demands that a balance be struck between the requirements of the purposes listed in paragraph 2 on the one hand, and those of the free expression of opinions by word, gesture or even silence by persons assembled on the streets or in other public places, on the other (see *Rufi Osmani and Others*, decision cited above; *Skiba*, decision cited above; *Fáber*, cited above, § 41; and *Taranenko*, cited above, § 65).

145. Freedom of assembly as enshrined in Article 11 of the Convention protects a demonstration that may annoy or cause offence to persons opposed to the ideas or claims that it is seeking to promote (see *Stankov and the United Macedonian*

Organisation Ilinden, cited above, § 86). Any measures interfering with freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities – do a disservice to democracy and often even endanger it (see *Güneri and Others v. Turkey*, nos. 42853/98, 43609/98 and 44291/98, § 76, 12 July 2005; *Sergey Kuznetsov*, cited above § 45; *Alekseyev*, cited above, § 80; *Fáber*, cited above, § 37; *Gün and Others*, cited above, § 70; and *Taranenko*, cited above, § 67).

146. The nature and severity of the penalties imposed are also factors to be taken into account when assessing the proportionality of an interference in relation to the aim pursued (see *Öztürk v. Turkey* [GC], no. 22479/93, § 70, ECHR 1999-VI; *Rufi Osmani and Others*, decision cited above; and *Gün and Others*, cited above, § 82). Where the sanctions imposed on the demonstrators are criminal in nature, they require particular justification (see *Rai and Evans*, decision cited above). A peaceful demonstration should not, in principle, be rendered subject to the threat of a criminal sanction (see *Akgöl and Göl v. Turkey*, nos. 28495/06 and 28516/06, § 43, 17 May 2011), and notably to deprivation of liberty (see *Gün and Others*, cited above, § 83). Thus, the Court must examine with particular scrutiny the cases where sanctions imposed by the national authorities for non-violent conduct involve a prison sentence (see *Taranenko*, cited above, § 87)."

(β) The requirement of prior authorisation

"147. It is not, in principle, contrary to the spirit of Article 11 if, for reasons of public order and national security a High Contracting Party requires that the holding of meetings be subject to authorisation (see *Oya Ataman*, cited above, § 37; *Bukta and Others v. Hungary*, no. 25691/04, § 35, ECHR 2007-III; *Balçık and Others v. Turkey*, no. 25/02, § 49, 29 November 2007; *Nurettin Aldemir and Others v. Turkey*, nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02, § 42, 18 December 2007; *Éva Molnár*, cited above, § 35; *Karatepe and Others v. Turkey*, nos. 33112/04, 36110/04, 40190/04, 41469/04 and 41471/04, § 46, 7 April 2009; *Skiba*, decision cited above; *Çelik v. Turkey (no. 3)*, no. 36487/07, § 90, 15 November 2012; and *Gün and Others*, cited above, §§ 73 and 80). Indeed, the Court has previously considered that notification, and even authorisation procedures, for a public event do not normally encroach upon the essence of the right under Article 11 of the Convention as long as the purpose of the procedure is to allow the authorities to take reasonable and appropriate measures in order to guarantee the smooth conduct of any assembly, meeting or other gathering (see *Sergey Kuznetsov*, cited above, § 42, and *Rai and Evans*, decision cited above). Organisers of public gatherings should abide by the rules governing that process by complying with the regulations in force (see *Primov and Others*, cited above, § 117).

148. Prior notification serves not only the aim of reconciling the right of assembly with the rights and lawful interests (including the freedom of movement) of others, but also the aim of preventing disorder or crime. In order to balance these conflicting interests, the institution of preliminary administrative procedures appears to be common practice in member States when a public demonstration is to be organised (see *Éva Molnár*, cited above, § 37, and *Berladir and Others v. Russia*, no. 34202/06, § 42, 10 July 2012). However, regulations of this nature should not represent a hidden obstacle to freedom of peaceful assembly as protected by the Convention (see *Samüt Karabulut v. Turk*ey, no. 16999/04, § 35, 27 January 2009, and *Berladir and Others*, cited above, § 39).

149. Since States have the right to require authorisation, they must be able to impose sanctions on those who participate in demonstrations that do not comply with such requirement (see *Ziliberberg*, decision cited above; *Rai and Evans*, decision cited above; *Berladir and Others*, cited above, § 41; and *Primov and Others*, cited above, § 118). At the same time, the freedom to take part in a peaceful assembly is of such importance that a person cannot be subject to a sanction – even one at the lower end of the scale of disciplinary penalties – for participation in a demonstration which has not been prohibited, so long as that person does not himself commit any reprehensible act on such an occasion (see *Ezelin*, cited above, § 53; *Galstyan*, cited above, § 115; and *Barraco*, cited above, § 44). This is true also when the demonstration results in damage or other disorder (see *Taranenko*, cited above, § 88).

150. An unlawful situation, such as the staging of a demonstration without prior authorisation, does not necessarily justify an interference with a person's right to freedom of assembly (see *Cisse v. France*, no. 51346/99, § 50, ECHR 2002-III; *Oya Ataman*, cited above, § 39; *Barraco*, cited above, § 45; and *Skiba*, decision cited above). While rules governing public assemblies, such as the system of prior notification, are essential for the smooth conduct of public demonstrations, since they allow the authorities to minimise the disruption to traffic and take other safety measures, their enforcement cannot become an end in itself (see *Primov and Others*, cited above, § 118). In particular, where demonstrators do not engage in acts of violence it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings 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, § 42; *Bukta and Others*, cited above, § 37; *Nurettin Aldemir and Others*, cited above, § 46; *Ashughyan*, cited above, § 90; *Éva Molnár*, cited above, § 36; *Barraco*, cited above, § 43; *Berladir and Others*, cited above, § 38; *Fáber*, cited above, § 47; *İzci v. Turkey*, no. 42606/05, § 89, 23 July 2013; and *Kasparov and Others*, cited above, § 91).

151. The absence of prior authorisation and the ensuing 'unlawfulness' of the action do not give *carte blanche* to the authorities; they are still restricted by the proportionality requirement of Article 11. Thus, it should be established why the demonstration was not authorised in the first place, what the public interest at stake was, and what risks were represented by the demonstration. The method used by the police for discouraging the protesters, containing them in a particular place or dispersing the demonstration is also an important factor in assessing the proportionality of the interference (see *Primov and Others*, cited above, § 119). Thus, the use by the police of pepper spray to disperse an authorised demonstration was found to be disproportionate, even though the Court acknowledged that the event could have disrupted the flow of traffic (see *Oya Ataman*, cited above, §§ 38-44).

152. In the case of *Bukta and Others* (cited above, §§ 35 and 36), the Court held that in special circumstances where a spontaneous demonstration might be justified, for example in response to a political event, to disperse that demonstration solely because of the absence of the requisite prior notice, without any illegal conduct on the part of the participants, might amount to a disproportionate restriction on their freedom of peaceful assembly.

153. The Court has also clarified that the principle established in the case of *Bukta and Others* cannot be extended to the point where the absence of prior notification of a spontaneous demonstration can never be a legitimate basis for crowd dispersal. The right to hold spontaneous demonstrations may override the obligation to give prior notification of public assemblies only in special circumstances, namely if an immediate response to a current event is warranted in the form of a demonstration.

In particular, such derogation from the general rule may be justified if a delay would have rendered that response obsolete (see *Éva Molnár*, cited above, §§ 37-38, and *Skiba*, decision cited above).

154. Furthermore, it should be pointed out that even a lawfully authorised demonstration may be dispersed, for example when it turns into a riot (see *Primov and Others*, cited above, § 137)."

(γ) Demonstrations and disruption to ordinary life

"155. Any demonstration in a public place may cause a certain level of disruption to ordinary life, including disruption of traffic (see *Barraco*, cited above, § 43; *Disk and Kesk v. Turkey*, no. 38676/08, § 29, 27 November 2012; and *İzci*, cited above, § 89). This fact in itself does not justify an interference with the right to freedom of assembly (see *Berladir and Others*, cited above, § 38, and *Gün and Others*, cited above, § 74), as it is important for the public authorities to show a certain degree of tolerance (see *Ashughyan*, cited above, § 90). The appropriate 'degree of tolerance' cannot be defined *in abstracto*: the Court must look at the particular circumstances of the case and particularly at the extent of the 'disruption to ordinary life' (see *Primov and Others*, cited above, § 145). This being so, it is important for associations and others organising demonstrations, as actors in the democratic process, to abide by the rules governing that process by complying with the regulations in force (see *Oya Ataman*, cited above, § 38; *Balçık and Others*, cited above, § 49; *Éva Molnár*, cited above, § 41; *Barraco*, cited above, § 44; and *Skiba*, decision cited above).

156. The intentional failure by the organisers to abide by these rules and the structuring of a demonstration, or of part of it, in such a way as to cause disruption to ordinary life and other activities to a degree exceeding that which is inevitable in the circumstances constitutes conduct which cannot enjoy the same privileged protection under the Convention as political speech or debate on questions of public interest or the peaceful manifestation of opinions on such matters. On the contrary, the Court considers that the Contracting States enjoy a wide margin of appreciation in their assessment of the necessity in taking measures to restrict such conduct ...

157. Restrictions on freedom of peaceful assembly in public places may serve to protect the rights of others with a view to preventing disorder and maintaining an orderly flow of traffic (see *Éva Molnár*, cited above, § 34). Since overcrowding during a public event is fraught with danger, it is not uncommon for State authorities in various countries to impose restrictions on the location, date, time, form or manner of conduct of a planned public gathering (see *Primov and Others*, cited above, § 130)."

(δ) The State's positive obligations under Article 11 of the Convention

"158. States must not only refrain from applying unreasonable indirect restrictions upon the right to assemble peacefully but also safeguard that right. Although the essential object of Article 11 is to protect the individual against arbitrary interference by public authorities with the exercise of the rights protected (see *Associated Society of Locomotive Engineers and Firemen (ASLEF) v. the United Kingdom*, no. 11002/05, § 37, 27 February 2007, and *Nemtsov*, cited above, § 72), there may in addition be positive obligations to secure the effective enjoyment of these rights (see *Djavit An*, cited above, § 57; *Oya Ataman*, cited above, § 36; and *Gün and Others*, cited above, § 72).

159. The authorities have a duty to take appropriate measures with regard to lawful demonstrations in order to ensure their peaceful conduct and the safety of all citizens (see *Oya Ataman*, cited above, § 35; *Makhmoudov v. Russia*, no. 35082/04, §§ 63-65, 26 July 2007; *Skiba*, decision cited above; and *Gün and Others*, cited above, § 69). However, they cannot guarantee this absolutely and they have a wide discretion in the choice of the means to be used (see *Protopapa v. Turkey*, no. 16084/90, § 108, 24 February 2009). 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 *Plattform 'Ärzte für das Leben' v. Austria*, 21 June 1988, § 34, Series A no. 139, and *Fáber*, cited above, § 39).

160. In particular, the Court has stressed the importance of taking preventive security measures such as, for example, ensuring the presence of first-aid services at the site of demonstrations, in order to guarantee the smooth conduct of any event, meeting or other gathering, be it political, cultural or of another nature (*Oya Ataman*, cited above, § 39)."

(ii) Application of these principles to the five remaining episodes

129. Based on the principles set out in its case-law, the Court will examine whether the measures taken against the applicant in each of the five remaining episodes (that is, the first, second, third, fourth and seventh) were proportionate to either of the legitimate aims invoked by the Government, namely "the prevention of disorder or crime" and "the protection of the rights and freedoms of others" and whether the reasons adduced by the national authorities to justify them were "relevant and sufficient". In doing so it will assess whether the applicant's arrest, detention and the sanctions imposed on the said occasions answered a pressing social need.

(α) First episode

130. On 5 March 2012 the applicant was arrested and transferred to a police station because he had refused to leave the site of an authorised peaceful rally for about two hours after the expiry of the allocated time-slot. It was not disputed that he had thus breached the rules of conduct governing public events.

131. It may be noted that in this episode the scale of the spill-over protest – about 500 participants – was significantly smaller than that of the preceding authorised meeting. The applicant and his fellow activists called on the participants, using hand-held loudspeakers, to stay on for a "peaceful protest", and indeed their behaviour remained non-violent. The protestors occupied the square, which was otherwise a public recreation zone, limited by busy traffic arteries, and they were not blocking the adjacent roads or pedestrian walkways (see paragraphs 13-14 above). It appears that the nuisance caused by the applicant and his fellow protestors caused a certain disruption to ordinary life but did not in the concrete circumstances exceed that level of minor disturbance that follows from normal exercise of the right of peaceful assembly in a public place (see *Fáber v. Hungary*, no. 40721/08, § 47, 24 July 2012; *Bukta and Others v. Hungary*,

no. 25691/04, § 37, ECHR 2007-III; cf. *Kudrevičius and Others*, cited above, §§ 149, 164-75).

132. Furthermore, there were no signs of an imminent outbreak of violence or increase in the level of disturbance. The number of the riot police officers present at the venue, fully equipped with riot suppression gear, was comparable to that of the protestors, who were unarmed and unaggressive. Given that the authorities were fully in control of the situation there was no apparent risk of its deterioration.

133. Against this background, it may be concluded that this gathering was dispersed and the applicant arrested for the sole reason that the demonstration was no longer covered by the authorisation permit and was therefore considered unlawful. This is also confirmed by the police reports and the judgments in the applicant's administrative case. The Government argued that the police had tolerated the unlawful gathering for two hours before resorting to arrests. However, the decision to disrupt the gathering and to arrest the applicant was based on the lack of what they considered sufficient notification, irrespective of the degree of disturbance caused by the protestors. As found above, they were not required by the Public Events Act to carry out such balancing assessment (see paragraph 116 above). In exercising the discretion afforded to them by the domestic law the authorities did not act in the manner compatible with the essence of the right to freedom of assembly, or with due recognition of the privileged protection under the Convention of political speech, debate on questions of public interest and the peaceful manifestation on such matters (see *Kudrevičius and Others*, cited above, § 156; *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 163, ECHR 2016; on the authorities' narrow margin of appreciation in restricting political speech, see *Ceylan v. Turkey* [GC], no. 23556/94, § 34, ECHR 1999-IV, and *Mouvement raëlien suisse v. Switzerland* [GC], no. 16354/06, § 61, ECHR 2012 (extracts)). In these circumstances it is immaterial whether the amount of the fine, EUR 25, was appropriate for a breach of the rules of conduct of public events.

(β) Second, third and fourth episodes

134. On these three occasions the applicant was arrested during "walkabout" gatherings. The protestors chose this activity primarily because they considered it free from formalities. They walked in loosely coordinated groups of 50-170 persons along central streets, which were closed for traffic at the relevant time on account of scheduled celebrations, without using banners or sound equipment, chanting slogans or giving speeches (see paragraphs 19-21 and 25 above). On one occasion the applicant was arrested while a group photograph was being taken (see paragraph 20 above), and on another occasion while having an "informal meeting with a State Duma deputy" (see paragraph 25 above).

135. It was disputed, and it still is open to doubt, whether such gatherings were subject to notification. As noted above, the police enjoyed wide discretion in deciding what behaviour constituted a public event (see paragraphs 117-18 above). Moreover, as previously pointed out, any breach of the procedure for the conduct of public events – lack of notification is only one example – or any unlawful act by a participant, no matter how small or innocuous, may serve as a ground for the authorities' decision to terminate a public event (see *Lashmankin and Others*, cited above, § 461).

136. The Court has reiterated above that the purpose of the notification procedure is to allow the authorities to take reasonable and appropriate measures in order to guarantee the smooth conduct of any assembly, meeting or other gathering (see paragraph 99 above). Regulations of this nature should not represent a hidden obstacle to freedom of peaceful assembly as protected by the Convention (see *Samüt Karabulut v. Turkey*, no. 16999/04, § 35, 27 January 2009, and *Berladir and Others v. Russia*, no. 34202/06, § 39, 10 July 2012), and a distinction must be made between content-based restrictions on freedom of assembly which should be subjected to the most serious scrutiny by this Court and restrictions of a technical nature (see *Primov and Others*, cited above, § 135).

137. The Court has previously held that the exceptions to the right to freedom of assembly must be narrowly interpreted and the necessity for any restrictions must be convincingly established (see *Kudrevičius and Others*, § 142). In an ambiguous situation, such as the three examples at hand, it was all the more important to adopt measures based on the degree of disturbance caused by the impugned conduct and not on formal grounds, such as non-compliance with the notification procedure. An interference with freedom of assembly in the form of the disruption, dispersal or arrest of participants in a given event may only be justifiable on specific and averred substantive grounds, such as serious risks referred to in paragraph 1 of section 16 of the Public Events Act. This was not the case in the episodes at hand.

(γ) Seventh episode

138. In the final episode the applicant took part in a spontaneous stationary demonstration of about 150 participants to protest against a judgment sentencing several activists to prison terms, delivered on the same day. The protestors gathered on the pavement at Tverskaya Street. There was no sound equipment, organised chanting or speeches. The applicant was arrested while he was talking to a journalist (see paragraph 37 above). From the official point of view, this demonstration was unlawful in that no advance notification had been submitted in accordance with the Public Events Act.

139. The Court reiterates that in deciding whether an interference was "necessary in a democratic society" in pursuit of a legitimate aim, it has

acknowledged that the national authorities enjoy a certain margin of appreciation in choosing the means for achieving the legitimate aim, while pointing out that this margin is subject to European supervision embracing both legislation and the decisions applying it (see *Roman Zakharov v. Russia* [GC], no. 47143/06, § 232, ECHR 2015).

140. The Court has previously found that the Russian notification system involved an unusually long, as compared to other States, ten-day period between the end of the notification time-limit and the planned date of the assembly; the only exception for this rule being a stationary demonstration ("picket"), which could be notified three days before the planned date. The Court has noted that the Public Events Act made no allowance for special circumstances, where an immediate response to a current event is warranted in the form of a spontaneous assembly. It also noted that when convicting the participants in a public event held without prior notification, the domestic courts had limited their assessment to establishing that they had taken part in a gathering which had not been notified within the statutory time-limit. They had not examined whether there were special circumstances calling for an immediate response to a current event in the form of a spontaneous assembly and justifying a derogation from the strict application of the notification time-limits. Indeed, the domestic legal provisions governing notification time-limits are formulated in rigid terms, admitting of no exceptions and leaving no room for a balancing exercise conforming with the criteria laid down in the Court's case-law under Article 11 of the Convention (see *Lashmankin and Others*, cited above, §§ 451-54).

141. In the above-mentioned case of *Lashmankin and Others*, the Court found no reasons why it should have been "necessary in a democratic society" to establish inflexible time-limits for notification of public events and to make no exceptions to their application in order to take account of situations where it is impossible to comply with the time-limit, for example in cases of justified spontaneous assemblies or in other circumstances. It considered that the automatic and inflexible application of the notification time-limits without any regard to the specific circumstances of each case could by itself amount to an interference without justification under Article 11 § 2 of the Convention (ibid., §§ 456 and 473).

142. The authorities' interference with the spontaneous demonstration at hand was also an example of such an automatic and inflexible application of formal requirements which were found to be incompatible with the essence of the right to freedom of peaceful assembly in the aforementioned *Lashmankin and Others* judgment. Again, as in the case now under consideration, the legislative lacuna in the regulation of spontaneous assemblies was compounded by the rigid and formalistic enforcement of provisions on termination of public events conducted without notification.

(δ) Concluding remarks on the necessity of the restrictions in the five remaining events

143. Against this background, the Court finds that a common feature of the above-mentioned events is that none of them entailed, if at all (see in particular paragraph 109 above), disruption to ordinary life going beyond a level of minor disturbance. As the Court has stressed on many occasions, an unlawful situation, such as the staging of a demonstration without prior authorisation, does not necessarily justify an interference with a person's right to freedom of assembly. In particular, where irregular demonstrators do not engage in acts of violence the Court has required that the public authorities show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance (see *Kudrevičius and Others*, § 150, quoted above at paragraph 128, with further references). In this regard the present case can hardly be distinguished from previous cases in which the Court has found that such tolerance should extend to instances where the demonstration has been held at a public place in the absence of any risk of insecurity or disturbance (see *Fáber*, cited above, § 47) or without danger to public order beyond the level of minor disturbance (see *Bukta and Others*, cited above, § 37) or has caused a certain level of disruption to ordinary life, including to traffic (see *Kudrevičius and Others*, cited above, § 155, and *Malofeyeva*, cited above, §§ 136-37).

144. However, on each of these five occasion the gathering was dispersed and the applicant was arrested, detained and convicted of administrative offences without it appearing from the relevant decisions that an assessment had been made of the level of disturbance the gatherings had caused, nor on one occasion of its spontaneous nature (on the latter point, see paragraph 37 above), merely because they lacked authorisation and had persisted despite the police orders to stop. It thus appears that the authorities failed to show the requisite degree of tolerance to what they considered an unauthorised gathering, seemingly in disregard of what the Court has emphasised on numerous occasions, namely that the enforcement of rules governing public assemblies should not become an end in itself (see *Kudrevičius and Others*, cited above, § 155).

145. What is more, and in spite of the above, the applicant was subject to sanctions which, although classified as administrative under domestic law, were "criminal" within the autonomous meaning of Article 6 § 1, thereby attracting the application of this provision under its "criminal" head (see paragraph 80 above). However, a peaceful demonstration should not, in principle, be rendered subject to the threat of a criminal sanction and notably to deprivation of liberty. Where the sanctions imposed on a demonstrator are criminal in nature, they require particular justification (see *Kudrevičius and Others*, cited above, § 146). The freedom to take part in a peaceful assembly is of such importance that a person cannot be subject to a

sanction – even one at the lower end of the scale of disciplinary penalties – for participation in a demonstration which has not been prohibited, so long as that person does not himself commit any reprehensible act on such an occasion (ibid., § 149).

146. Thus, on the facts pertaining to the five episodes in question, the Court cannot find that the applicant's freedom of peaceful assembly as protected by the Convention was outweighed by any interests on the part of the respondent State in restricting the exercise of that freedom with a view to preventing disorder or crime or to protecting the rights and freedoms of others. The reasons relied on by the respondent State did not correspond to a pressing social need. Even assuming that they were relevant, they are not sufficient to show that the interference complained of was "necessary in a democratic society". Notwithstanding the national authorities' margin of appreciation, the Court considers that there was no reasonable relationship of proportionality between the restrictions placed on the applicants' right to freedom of assembly and any legitimate aim pursued. Accordingly, the Court holds that there has been a violation of Article 11 of the Convention also in regard to those five events.

(iii) Overall conclusions

147. In short, the Court concludes that there has been a violation of Article 11 of the Convention in respect of the fifth and sixth episodes, as the restrictions at issue failed to pursue a legitimate aim (see paragraph 126 above), and also in respect of the remaining five episodes because of the respondent State's failure to show that the restrictions were necessary in a democratic society (see paragraph 146 above).

148. As regards the latter five episodes, it should be added that they disclose a persistent failure by the national authorities to show tolerance towards unauthorised but peaceful gatherings and, more generally, to apply standards which are in conformity with the principles embodied in Article 11 of the Convention. It was not apparent from the relevant provisions in Articles 19 § 3 and 20 § 2 of the Code of Administrative Offences or from the decisions applying them that due consideration ought to be and had in fact been given to interests such as the need for prevention of disorder or crime and for protection of the rights and freedoms of others. Nor did it appear that the competent authorities had struck a fair balance between those interests, on the one hand, and those of the applicant in exercising his right to freedom of peaceful assembly, on the other.

149. Such failures have already been identified in a number of previous cases where the police stopped and arrested protestors for the sole reason that their demonstration had not been authorised, and in which the formal unlawfulness had been put forward as the only justification (see *Malofeyeva*, cited above, §§ 137 and 140; *Kasparov and Others*, cited above, § 95; *Navalnyy and Yashin*, cited above, § 65; *Novikova and Others*,

cited above, §§ 136, 171, 175 and 179-83, 26 April 2016; and *Lashmankin and Others*, cited above, §§ 459-63). The Court has already, well before the period during which the episodes complained of occurred, issued judgments in which it found that the respondent State had violated Article 11 and in which it specifically addressed the requirements which, according to its case-law, must be met in respect of measures interfering with the right of peaceful assembly (see, in particular, *Makhmudov v. Russia*, no. 35082/04, 26 July 2007; *Barankevich v. Russia*, no. 10519/03, § 28, 26 July 2007; *Sergey Kuznetsov*, cited above; *Alekseyev v. Russia*, nos. 4916/07, 25924/08 and 14599/09, 21 October 2010; as regards judgments rendered prior to the sixth and seventh episodes, see *Malofeyeva*, cited above; *Kasparov and Others*, cited above). Thus, the authorities of the respondent State have been in a position to know and to take into account the relevant Convention standards. Nevertheless, it appears that the domestic practices have continued to violate Convention standards and even that legislative changes have been introduced, entailing further restrictions.

150. The Court considers that there is a link between these failures and the previously observed structural inadequacy in the regulatory framework, which provides for excessively restrictive formal requirements for organising certain public gatherings, as identified in *Lashmankin and Others* (§§ 471-77). Thus, the broad interpretation of what constitutes a gathering subject to notification and the lack of tolerance towards gatherings which do not comply with the procedure highlights yet another dimension to the aforementioned structural problem. The absence of safeguards circumscribing the authorities' discretion in interfering with peaceful public gatherings which are not causing "disorder" or nuisance is aggravated by a broad interpretation in practice of what constitutes a "gathering subject to notification" and by excessively wide discretion in imposing restrictions on such gatherings through rigid enforcement involving, as it did, immediate arrest and deprivation of liberty as well as sanctions of a criminal nature as described above (see paragraphs 79-80 above). It may even be questioned whether, owing to these characteristics of the applicable legal framework, any pursuit of national remedies would also be ineffective and devoid of any prospects of success.

151. Against this background, it cannot be said that the relevant national law provided effective safeguards against abuse, as is further exemplified by the above findings that a legitimate aim was absent on the fifth and sixth occasions (see paragraph 126 above).

152. It should be further stressed that the applicant's arrests, detention and ensuing administrative convictions 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. Their chilling effect was further amplified by the fact that they targeted a well-known public figure, whose deprivation of liberty was bound to attract wide media coverage.

153. Accordingly, there has been a violation of Article 11 of the Convention in all seven episodes.

V. ALLEGED VIOLATION OF ARTICLE 18 OF THE CONVENTION

154. The applicant complains that his arrest and detention and the administrative charges brought against him undermined his right to freedom of assembly, with a view to curtailing his political activity. He alleged that there had been a violation of Article 18 of the Convention, which provides:

Article 18

> "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."

A. The Chamber judgment

155. The Chamber noted that these complaints were linked to the complaints examined under Articles 5 and 11 of the Convention and therefore declared them admissible. However, referring to its finding under Articles 5 and 11 that the applicant's arrest and administrative detention had the effect of preventing and discouraging him and others from participating in protest rallies and actively engaging in opposition politics, in violation of these provisions, the Court considered that it was not necessary to examine whether, in the present case, there had been a violation of Article 18 in conjunction with Articles 5 or 11 of the Convention.

B. The parties' submissions

1. The applicant

156. The applicant considered his complaint under Article 18, taken in conjunction with Articles 5 and 11, to constitute a fundamental aspect of his case. He submitted that since the 2011-2012 protest rallies in which he played a leading role, the authorities had become wary of his participation in any kind of informal gathering. They sought to punish him for his political criticism and took steps to discourage his supporters. He was specifically and personally targeted by the authorities who acted to suppress political dissent. He referred, in particular, to the footage of his arrest in front of the courthouse on 24 February 2014 (the sixth episode). He also alleged that he had been arrested even though the gatherings in question had

been peaceful and had raised no public-order issues. The procedure set out by law for drawing up the administrative offence report had been manipulated so as to remove him from the event venue unnecessarily and to detain him without a lawful purpose. Whilst he had promoted the ideas and values of a democratic society – notions to which *Merabishvili* judgment attached special importance – and as the most prominent opposition figure advocating these values, he had been harassed precisely because of his active engagement in political life and the influence that he had on the political views of the Russian people.

157. In the applicant's view, since the authorities regarded him as a major political opponent, he had been subjected to numerous instances of prosecution amounting to harassment and persecution. He relied, *inter alia*, on the Court's judgments in *Navalnyy and Yashin* (cited above, § 73) and *Navalnyy and Ofitserov v. Russia* (nos. 46632/13 and 28671/14, § 119, 23 February 2016) as evidence of a tangible political element to his treatment. For him the present case was yet another demonstration of the authorities' intention to punish him for his political activities and to discourage him and others from open public debate. Thus, the said authorities had not acted in good faith. He relied, in particular, on *travaux préparatoires* for Article 18 of the Convention, indicating that the drafters' underlying concern had been to ensure the protection of individuals against the imposition of restrictions arising from the State's desire to shield "the political tendency it represents" from an "opposition which it considers dangerous". According to the applicant, there existed in Russia an administrative practice of interrupting peaceful political gatherings and showing no tolerance towards non-notified peaceful gatherings. In this regard he pointed to the repetitive and targeted nature of his arrests, carried out in a manner that was intended to attract broad media coverage and thereby to amplify the chilling effect of the sanctions against him.

2. The Government

158. The Government considered that the applicant's complaint under Article 18 in the present case had not complied with the requirement set out in *Merabishvili* judgment, namely that the allegation of an ulterior purpose to the restriction should represent a fundamental aspect of the case (referring to *Merabishvili*, cited above, § 291). In particular, they reiterated their previous arguments, set out above, that the applicant had only raised an Article 18 complaint in two of the applications and only in conjunction with Article 5. Moreover, he had not separately and distinctly formulated a complaint of improper ulterior motives in the domestic proceedings.

159. The Government invited the Court to follow the approach adopted in a number of comparable cases, that is, to refrain from examining separately the Article 18 complaint in so far as it overlapped with the complaints under substantive Articles. They referred to ten previous cases

against Russia in which the Court had declared the complaint under Article 18 admissible but had dispensed with examining it on the merits, on the grounds that it did not raise a separate issue in relation to the substantive Articles in conjunction with which Article 18 was relied on.

160. In the Government's view Article 18 did not in any event have an autonomous role, nor was it of practical use, as the concept of misuse of powers was one that belonged to the sphere of criminal law and unrelated to human rights. Also, allegations of hidden motives were not by their nature susceptible to proof, except in very rare cases such as *Gusinskiy v. Russia* (no. 70276/01, ECHR 2004-IV); in the present case the arguments advanced by the applicant were no more than speculation or a personal perception, devoid of any tangible evidence. The applicant had not provided any evidence corroborating the alleged presence of improper or hidden motives in order to meet the high standard of proof to which Article 18 was subject. That the applicant was an opposition politician could not in itself be sufficient to demonstrate bad faith on the part of the authorities in taking law-enforcement measures against him.

161. Contesting the assertion that the applicant had been specifically targeted, they pointed out that he was treated in the same way as many other opposition protestors; they referred to the Court's case-law cited in the Chamber judgment, suggesting the existence of a practice whereby the police would interrupt gatherings, or perceived gatherings, and arrest the participants as a matter of routine. They stated that the applicant was a regular participant in public gatherings and that he was not harassed so long and for such time as the gathering was an approved one, and argued that his persistent and intentional conduct involving breaches of the procedure for holding public gatherings was malicious and constituted an abuse of rights within the meaning of Article 17 of the Convention.

162. The Government submitted that the applicant's arrest and administrative charges on all seven occasions pursued the purposes provided for in Articles 5 § 1 and 11 of the Convention.

C. The Grand Chamber's assessment

163. The Court will begin its assessment by noting that the gist of the applicant's complaint is that on all seven occasions he was specifically targeted for his political activism, and that his arrests and the other measures taken against him had pursued the purpose of curtailing his political endeavours, in breach of Article 18 in conjunction with Articles 5 and 11.

164. In the present case, the parties were invited to address in their pleadings before the Grand Chamber the question of purpose, and in particular to identify the predominant purpose for the applicant's arrests, detentions and administrative sanctions. Having regard to their submissions in the light of the recent developments in the case-law on the general

principles applicable to complaints under Article 18 of the Convention (see *Merabishvili*, cited above), the Court considers that the applicant's complaint under this Article represents a fundamental aspect of the present case. It also considers that the essence of this complaint has not been addressed in its above assessment of the complaints under Articles 5 and 11 of the Convention. It will therefore be examined separately. In this connection, and taking account of the sequence of events as a whole, the Court will concentrate its examination on the fifth and sixth episodes, in respect of which it has concluded that the interference with the applicant's right to peaceful assembly did not pursue a legitimate aim, in violation of Article 11, and has found that his arrest and detention were arbitrary and unlawful, in violation of Article 5 § 1. In so doing, it will have regard to the general principles set out in paragraphs 287 to 317 of its recent *Merabishvili* judgment, especially the following passages (omitting the case-citations):

> "287. In a similar way to Article 14, Article 18 of the Convention has no independent existence ...; it can only be applied in conjunction with an Article of the Convention or the Protocols thereto which sets out or qualifies the rights and freedoms that the High Contracting Parties have undertaken to secure to those under their jurisdiction ... This rule derives both from its wording, which complements that of clauses such as, for example, the second sentence of Article 5 § 1 and the second paragraphs of Articles 8 to 11, which permit restrictions to those rights and freedoms, and from its place in the Convention at the end of Section I, which contains the Articles that define and qualify those rights and freedoms.
>
> 288. Article 18 does not, however, serve merely to clarify the scope of those restriction clauses. It also expressly prohibits the High Contracting Parties from restricting the rights and freedoms enshrined in the Convention for purposes not prescribed by the Convention itself, and to this extent it is autonomous ... Therefore, as is also the position in regard to Article 14, there can be a breach of Article 18 even if there is no breach of the Article in conjunction with which it applies ...
>
> 289. Lastly, being aware – as already highlighted – of a certain inconsistency in its previous judgments regarding the use of the terms 'independent' and 'autonomous' in these contexts, the Court seizes the opportunity offered by the present case to align the language used in relation to Article 18 to that used in relation to Article 14, as has been done above.
>
> 290. It further follows from the terms of Article 18 that a breach can only arise if the right or freedom at issue is subject to restrictions permitted under the Convention ...
>
> 291. The mere fact that a restriction of a Convention right or freedom does not meet all the requirements of the clause that permits it does not necessarily raise an issue under Article 18. Separate examination of a complaint under that Article is only warranted if the claim that a restriction has been applied for a purpose not prescribed by the Convention appears to be a fundamental aspect of the case ..."

165. Moreover, in setting out the general principles of interpretation of Article 18 in the above-mentioned judgment, the Court further addressed situations where the contested restrictions pursued a "plurality of purposes" and adapted its approach by introducing a criterion of whether the ulterior

purpose, as compared to the Convention-compliant one, was predominant. It further affirmed that this question ought to be assessed according to the ordinary standard of proof, rather than according to the stricter standard that it had applied under this Article in a number of previous cases. Whilst the following principles are formulated with a view to situations of *plurality of purposes*, they also provide guidance for situations such as the fifth and sixth episodes in the applicant's case, where no legitimate aim or purpose has been shown:

> *(i) Plurality of purposes*
>
> "302. [The above] overview [of the case-law] shows that although the legitimate aims and grounds set out in the restriction clauses in the Convention are exhaustive, they are also broadly defined and have been interpreted with a degree of flexibility. The real focus of the Court's scrutiny has rather been on the ensuing and closely connected issue: whether the restriction is necessary or justified, that is, based on relevant and sufficient reasons and proportionate to the pursuit of the aims or grounds for which it is authorised. Those aims and grounds are the benchmarks against which necessity or justification is measured ...
>
> 303. That manner of proceeding should guide the Court in its approach to the interpretation and application of Article 18 of the Convention in relation to situations in which a restriction pursues more than one purpose. Some of those purposes may be capable of being brought within the respective restriction clause, while others are not. In such situations, the mere presence of a purpose which does not fall within the respective restriction clause cannot of itself give rise to a breach of Article 18. There is a considerable difference between cases in which the prescribed purpose was the one that truly actuated the authorities, though they also wanted to gain some other advantage, and cases in which the prescribed purpose, while present, was in reality simply a cover enabling the authorities to attain an extraneous purpose, which was the overriding focus of their efforts. Holding that the presence of any other purpose by itself contravenes Article 18 would not do justice to that fundamental difference, and would be inconsistent with the object and purpose of Article 18, which is to prohibit the misuse of power. Indeed, it could mean that each time the Court excludes an aim or a ground pleaded by the Government under a substantive provision of the Convention, it must find a breach of Article 18, because the Government's pleadings would be proof that the authorities pursued not only the purpose that the Court accepted as legitimate, but also another one.
>
> 304. For the same reason, a finding that the restriction pursues a purpose prescribed by the Convention does not necessarily rule out a breach of Article 18 either. Indeed, holding otherwise would strip that provision of its autonomous character.
>
> 305. The Court is therefore of the view that a restriction can be compatible with the substantive Convention provision which authorises it because it pursues an aim permissible under that provision, but still infringe Article 18 because it was chiefly meant for another purpose that is not prescribed by the Convention; in other words, if that other purpose was predominant. Conversely, if the prescribed purpose was the main one, the restriction does not run counter to Article 18 even if it also pursues another purpose.
>
> 306. This interpretation is consistent with the case-law of the Contracting States' national courts and of the Court of Justice of the European Union ..., which the Court can take into account when construing the Convention ... That is especially

appropriate in this case, since the preparatory works to the Convention clearly show that Article 18 was meant to be its version of the administrative-law notion of misuse of power ...

307. Which purpose is predominant in a given case depends on all the circumstances. In assessing that point, the Court will have regard to the nature and degree of reprehensibility of the alleged ulterior purpose, and bear in mind that the Convention was designed to maintain and promote the ideals and values of a democratic society governed by the rule of law.

308. In continuing situations, it cannot be excluded that the assessment of which purpose was predominant may vary over time."

(ii) Questions of proof

"...

310. ... [T]he Court finds that it can and should adhere to its usual approach to proof rather than special rules ...

311. The first aspect of that approach ... is that, as a general rule, the burden of proof is not borne by one or the other party because the Court examines all material before it irrespective of its origin, and because it can, if necessary, obtain material of its own motion. ... . It has [...] relied on the concept of burden of proof in certain particular contexts. On a number of occasions, it has recognised that a strict application of the principle *affirmanti incumbit probatio*, that is that the burden of proof in relation to an allegation lies on the party which makes it, is not possible, notably in instances when this has been justified by the specific evidentiary difficulties faced by the applicants ...

312. Indeed, although it relies on the evidence which the parties adduce spontaneously, the Court routinely of its own motion asks applicants or respondent Governments to provide material which can corroborate or refute the allegations made before it. If the respondent Government in question do not heed such a request, the Court cannot force them to comply with it, but can – if they do not duly account for their failure or refusal – draw inferences ... It can also combine such inferences with contextual factors. Rule 44C § 1 of the Rules of Court gives it considerable leeway on that point.

313. The possibility for the Court to draw inferences from the respondent Government's conduct in the proceedings before it is especially pertinent in situations – for instance those concerning people in the custody of the authorities – in which the respondent State alone has access to information capable of corroborating or refuting the applicant's allegations ... That possibility is likely to be of particular relevance in relation to allegations of ulterior purpose.

314. The second aspect of the Court's approach is that the standard of proof before it is 'beyond reasonable doubt". That standard, however, is not co-extensive with that of the national legal systems which employ it. First, such proof can follow from the coexistence of sufficiently strong, clear and concordant inferences or similar unrebutted presumptions of fact. Secondly, the level of persuasion required to reach a conclusion is intrinsically linked to the specificity of the facts, the nature of the allegation made, and the Convention right at stake. The Court has consistently reiterated those points ...

315. The third aspect of the Court's approach ... is that the Court is free to assess not only the admissibility and relevance but also the probative value of each item of

> evidence before it. In *Nachova and Others* (cited above, § 147), the Court further clarified that point, saying that when assessing evidence it is not bound by formulae and adopts the conclusions supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. It has also stated that it is sensitive to any potential evidentiary difficulties encountered by a party. The Court has consistently adhered to that position, applying it to complaints under various Articles of the Convention ...
>
> 316. There is therefore no reason for the Court to restrict itself to direct proof in relation to complaints under Article 18 of the Convention or to apply a special standard of proof to such allegations.
>
> 317. It must however be emphasised that circumstantial evidence in this context means information about the primary facts, or contextual facts or sequences of events which can form the basis for inferences about the primary facts ... Reports or statements by international observers, non-governmental organisations or the media, or the decisions of other national or international courts are often taken into account to, in particular, shed light on the facts, or to corroborate findings made by the Court ..."

166. In the present case, the Court's conclusion in relation to the fifth and sixth episodes, that the Government could not plausibly rely on the aims put forward under Articles 5 and 11, obviates the need for any discussion on a plurality of purposes for those episodes. However, whilst the Government failed to substantiate their argument that the aims of the measures taken on those two occasions had been "the prevention of disorder or crime" and "the protection of the rights and freedoms of others", in breach of Article 11, this would not by itself be sufficient to conclude that Article 18 has also been violated (see *Merabishvili*, cited above, §§ 291 and 303). There is still a need to examine the question whether– in the absence of a legitimate purpose – there was an identifiable ulterior one. Furthermore, in relation to the remaining episodes the concept of plurality of purposes would still be relevant.

167. The Court notes that the applicant was arrested seven times in a relatively short period and in a virtually identical manner, which, according to the Government, was the result of the applicant's own conduct, persisted in despite his knowledge that – from an official point of view – it would be in breach of the regulations.

168. However, it cannot be overlooked that the arrests took place in the context of the applicant exercising his Convention right to freedom of assembly. The Court finds that a certain pattern may be discerned from the series of seven episodes. Moreover, the pretexts for the arrests were becoming progressively more implausible, whereas the degree of potential or actual disorder caused by the applicant diminished. It is also noteworthy that in the first four episodes the applicant was one of the leaders of the gatherings, and this could explain to a certain extent why he was among the first persons to be arrested. However, this was not the case in the subsequent episodes where the applicant did not play any special role.

169. In the fifth episode (on 27 October 2012) the applicant was one of some thirty activists taking part consecutively in a stationary demonstration. There were several prominent public figures among the participants and no obvious leadership. Moreover, according to the official version, the applicant was arrested not in connection with the demonstration itself but for holding a "march" when he was walking away from the venue followed by a group of people, including journalists. Nothing suggests that the applicant had arranged for these people to accompany him, or that he was somehow in charge of his followers or that he was in a position to control them in the very brief moments before his arrest (see paragraph 32 above).

170. An equally evident example was the sixth episode (on 24 February 2014) with his arrest in front of the courthouse, where he was merely one of the persons waiting to be allowed inside the building to attend the public hearing. The police deliberately divided the crowd to retrieve the applicant and remove him from the venue, although nothing in his conduct or appearance distinguished him from other peaceful individuals quietly waiting behind the police cordon. In this episode it is particularly difficult to dismiss the applicant's allegation that he was specifically and personally targeted as a known activist, even in the most innocuous situation remotely resembling a public gathering (see paragraph 156 above).

171. In this context, the Court's observation in *Merabishvili* to the effect that in a continuous situation the predominant purpose may vary over time (§ 308) assumes particular significance. It may well appear that the predominant purpose of the measures taken against the applicant has indeed changed over the period under examination. What might possibly have seemed a legitimate aim or purpose at the outset appears less plausible over time. Thus, as held in paragraphs 126 and 127 above, whereas the Court has serious doubts that any legitimate aim as claimed by the Government existed on the first four occasions, it has found that no such aim was present on the fifth and sixth occasions, and was again highly questionable on the seventh occasion. Also, as noted above, the violations in the present case occurred despite the authorities' increasing awareness that the practices in question were incompatible with Convention standards (see paragraph 149 above). In this connection, the Court considers that regard should also be had to the wider context (ibid., § 317), notably to its similar findings in *Navalnyy and Yashin* (cited above) with regard to a demonstration three months before the first of the seven episodes in the present case. Equally relevant to the general context are its findings with regard to the sequence of events that unfolded in two sets of criminal proceedings which were being conducted against the applicant in parallel. In one case it found that the national courts had "omitted to address" and "had heightened ... concerns that the real reason for the applicant's prosecution and conviction had been a political one" (see *Navalnyy and Ofitserov*, cited above, §§ 116-19). In the other it held that the applicant's criminal sentence was "arbitrary and

manifestly unreasonable", that the law was "extensively and unforeseeably construed" and applied in an arbitrary manner which flawed the proceedings "in such a fundamental way that it rendered other criminal procedure guarantees irrelevant" (see *Navalnyye v. Russia*, no. 101/15, §§ 83-84, 17 October 2017).

172. In addition, there is converging contextual evidence corroborating the view that the authorities were becoming increasingly severe in their response to the conduct of the applicant, in the light of his position as opposition leader, and of other political activists and, more generally, in their approach to public assemblies of a political nature. The Court has previously noted the important legislative changes which took place in the reference period, increasing and expanding liability for a breach of the procedure for conducting public events (see *Lashmankin and Others*, cited above, §§ 301-06). In particular, the maximum amount of the fine payable for such offences was increased by twenty times; new types of aggravated offences were introduced with correspondingly severe sanctions; and the limitation period for the offences in question was extended. Further restrictions of the legislative framework on freedom of assembly introduced in July 2014, including criminal liability for assembly-related offences, although falling outside the period under consideration, may be noted as a continuous trend. Concerns about the rise in the severity of sanctions and imposition of further restrictions on freedom of assembly in Russia have been expressed by several Council of Europe bodies, most recently in the Follow-up Memorandum of the Commissioner for Human Rights on Freedom of Assembly in the Russian Federation, dated 5 September 2017 (see paragraph 50 above). The latter report covers the relevant period and refers specifically to the dispersal of the spontaneous but peaceful gathering on the occasion of the verdict in the Bolotnaya case (the seventh episode, 24 December 2014).

173. Against this background, the applicant's claim that his exercise of freedom of assembly has become a particular object for targeted suppression appears coherent within the broader context of the Russian authorities' attempts at the material time to bring the opposition's political activity under control. At this point, the Court considers it appropriate to have regard to the nature and degree of reprehensibility of the alleged ulterior purpose, bearing in mind that the Convention was designed to maintain and promote the ideals and values of a democratic society governed by the rule of law (see *Merabishvili*, cited above, § 307).

174. At the core of the applicant's Article 18 complaint is his alleged persecution, not as a private individual, but as an opposition politician committed to playing an important public function through democratic discourse. As such, the restriction in question would have affected not merely the applicant alone, or his fellow opposition activists and supporters, but the very essence of democracy as a means of organising society, in

which individual freedom may only be limited in the general interest, that is, in the name of a "higher freedom" referred to in the *travaux préparatoires* (see paragraph 51 above). The Court considers that the ulterior purpose thus defined would attain significant gravity.

175. In the light of all the above-mentioned elements, and in particular the sequence and pattern of the events in the present case (see paragraphs 167-68 above), viewed as a whole, the Court finds it established beyond reasonable doubt that the restrictions imposed on the applicant in the fifth and the sixth episodes pursued an ulterior purpose within the meaning of Article 18 of the Convention, namely to suppress that political pluralism which forms part of "effective political democracy" governed by "the rule of law", both being concepts to which the Preamble to the Convention refers (see, *mutatis mutandis*, *Ždanoka v. Latvia* [GC], no. 58278/00, § 98, ECHR 2006-IV, and *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, § 147, ECHR 2016 (extracts)). As the Court has pointed out, notably in the context of Articles 10 and 11, pluralism, tolerance and broadmindedness are hallmarks of a "democratic society". Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of people from minorities and avoids abuse of a dominant position (see, among other authorities, *Young, James and Webster v. the United Kingdom*, 13 August 1981, § 63, Series A no. 44; *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 90, ECHR 2004-I; *Leyla Şahin*, cited above, § 108; and *Karácsony and Others*, cited above, § 147).

176. Accordingly, the Court concludes that there has been a violation of Article 18 in conjunction with both Article 5 and Article 11 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

177. The applicant complains that his arrest and detention and the administrative charges brought against him pursued the aim of undermining his right to freedom of assembly, for political reasons. He alleges that there has been a violation of Articles 14 of the Convention, which provides:

Article 14

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

178. The Chamber noted that these complaints were linked to the complaints examined under Articles 5 and 11 of the Convention and therefore declared them admissible. However, referring to its finding under

Articles 5 and 11 that the applicant's arrest and administrative detention had the effect of preventing and discouraging him and others from participating in protest rallies and actively engaging in opposition politics in violation of these provisions, the Court considered that it was not necessary to examine whether, in the present case, there had been a violation of Article 14 of the Convention in conjunction with Articles 5 or 11 of the Convention.

179. The Grand Chamber endorses the Chamber's reasons and finds that this complaint raises no separate issue to be examined in addition to its findings under Articles 5 and 11 of the Convention.

VII. APPLICATION OF ARTICLES 41 AND 46 OF THE CONVENTION

180. 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."

181. Article 46 of the Convention provides:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

A. Article 46

182. Under Article 46 the Contracting Parties have undertaken to abide by the final judgments of the Court in cases to which they are parties, execution being supervised by the Committee of Ministers. It follows, *inter alia*, that a judgment in which the Court finds a violation of the Convention or the Protocols thereto imposes on the respondent State the legal obligation not just to pay those concerned the sums awarded by way of just satisfaction pursuant to Article 41 of the Convention but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if necessary, individual measures which it considers appropriate to incorporate into domestic law in order to put an end to the violation found by the Court and to redress as far as possible the effects. It is primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used under its domestic law to comply with that obligation. However, with a view to helping the respondent State in that task, the Court may seek to indicate the type of individual and/or general measures that might be taken in order to put an end to the situation it has found to exist (see, among other authorities, *Stanev v. Bulgaria* [GC], no. 36760/06,

§§ 254-55, ECHR 2012; *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 158, ECHR 2014; and *Simeonovi v. Bulgaria* [GC], no. 21980/04, § 149, ECHR 2017 (extracts)).

183. The Court reiterates that it has previously found that the provisions of the Public Events Act did not provide for adequate and effective legal safeguards against arbitrary interference with the right to freedom of assembly, and did not therefore meet the Convention "quality of law" requirements (see *Lashmankin and Others*, cited above, §§ 471-78; and the decision of the Committee of Ministers CM/Del/Dec(2018)1318/H46-21, cited in paragraph 49 above). The Court stated in particular that:

> "... the automatic and inflexible application of the time-limits for notification of public events ... without taking into account that it was impossible to comply with the time-limit because of ... spontaneous nature of the event ... was not justified under Article 11 § 2. ... By dispersing the applicants' public events and by arresting [them], the authorities failed to show the requisite degree of tolerance towards peaceful, albeit unlawful, assemblies, in breach of the requirements of Article 11 § 2. In view of the above considerations, the Court finds that the interferences with the applicants' freedom of assembly were based on legal provisions which did not meet the Convention's "quality of law" requirements, and were moreover not "necessary in a democratic society."

184. Prior to the *Lashmankin* judgment, the Court had noted a pattern of violations of Article 11 in Russian cases because the police were stopping and arresting participants in undeniably peaceful assemblies for the sole reason that those gatherings had not been authorised as such, the formal unlawfulness of the demonstration being the main justification for the arrest and the administrative charges (see *Kasparov and Others (no. 2)*, cited above, § 30, and the cases cited therein).

185. In the present case the Court has found a violation of Article 11 of the Convention linking it with the structural inadequacy of the regulatory framework, which failed to provide effective legal safeguards against abuse (see paragraphs 118 and 148-51 above). This is further corroborated by its finding above under Article 18 that the authorities, on two occasions, pursued an ulterior purpose in restricting the applicant's rights under Articles 5 and 11 (see paragraph 175 above).

186. The Court therefore considers it appropriate to point out that this situation in principle calls for the adoption of general measures by the respondent State, which remains, subject to monitoring by the Committee of Ministers, free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see *Simeonovi*, cited above, § 151; *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; and *Broniowski v. Poland* [GC], no. 31443/96, § 192, ECHR 2004-V). This is a case where the Court considers that the respondent State should take appropriate legislative and/or other general measures to secure in its domestic legal

order a mechanism requiring the competent authorities to have due regard to the fundamental character of the freedom of peaceful assembly and show appropriate tolerance towards unauthorised but peaceful gatherings causing only a certain disruption to ordinary life not going beyond a level of minor disturbance; to give due consideration when restricting this freedom to whether the restriction is justified by legitimate interests, such as the need for prevention of disorder or crime and for protection of the rights and freedoms of others, and to strike a fair balance between such interests, on the one hand, and those of the individual in exercising his or her right to freedom of peaceful assembly, on the other (see paragraph 148 above). Furthermore, any imposition of sanctions ought to require particular justifications (see paragraph 145 above). The prevention of similar violations in the future should be addressed in the appropriate legal framework, in particular ensuring that the national legal instruments pertaining to the restrictions and the modalities of the exercise of the right to freedom of assembly do not represent a hidden obstacle to the freedom of peaceful assembly protected by Article 11 of the Convention. The adoption on 26 June 2018 by the Plenary of the Supreme Court of the Russian Federation of the Resolution "On certain questions arising during the judicial examination of the administrative cases and cases on administrative offences related to the application of law on public events" (see paragraph 48 above), while providing welcome clarifications for the judiciary, underscores the need for legislative and/or other general measures.

B. Article 41

1. Damage

187. Before the Chamber the applicant claimed 121,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,025 in respect of pecuniary damage. The Government contested the non-pecuniary claims as unreasonable and excessive, and objected to the award in respect of pecuniary damage on the grounds that this would be tantamount to setting aside the domestic judgments.

188. The Chamber decided, on an equitable basis, to award the applicant EUR 50,000 in respect of non-pecuniary damage. It also granted the pecuniary claim in full.

189. In the proceedings before the Grand Chamber the parties did not alter their submissions under this head. The Court upholds the Chamber judgment in respect of the claims for damages and awards the applicant the same amounts as the Chamber: EUR 50,000 in respect of non-pecuniary damage and EUR 1,025 in respect of pecuniary damage.

2. Costs and expenses

190. In the Chamber proceedings the applicant claimed EUR 1,053 on account of postal expenses incurred before the Court in relation to the proceedings in four applications. He also claimed EUR 10,100 and EUR 1,500 for his legal representation by two lawyers. The Government objected on the grounds that compensation for costs and expenses in this case would be tantamount to setting aside the domestic judgments.

191. The Chamber dismissed the Government's objection that an award for costs and expenses would be tantamount to setting aside the domestic judgments and awarded the claimed amounts in full.

192. No amendments to the parties' submissions under this head were made in the proceedings before the Grand Chamber. It sees no reason to depart from the Chamber judgment and awards the applicant EUR 12,653 in respect of costs and expenses.

C. Default interest

193. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Dismisses*, unanimously, the Government's objection of non-exhaustion of domestic remedies with respect to part of the complaints under Article 5 § 1 of the Convention;

2. *Dismisses*, unanimously, the Government's objection of non-exhaustion of domestic remedies in respect of the complaints under Article 11 of the Convention;

3. *Dismisses*, unanimously, the Government's objection as to the failure to comply with the six-months rule in respect of part of the complaints under Article 18 of the Convention;

4. *Holds*, unanimously, that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's arrest on seven occasions and his pre-trial detention on two occasions;

5. *Holds*, unanimously, that there has been no violation of Article 6 § 1 of the Convention as regards the administrative proceedings concerning the events of 5 March 2012;

6. *Holds*, unanimously, that there has been a violation of Article 6 § 1 of the Convention as regards the remaining six sets of administrative proceedings;

7. *Holds*, unanimously, that there is no need to examine the remainder of the complaints under Article 6 §§ 1 and 3 (d) of the Convention as regards the aforementioned six sets of administrative proceedings;

8. *Holds*, unanimously, that there has been a violation of Article 11 of the Convention;

9. *Holds*, by fourteen votes to three, that there has been a violation of Article 18 of the Convention taken in conjunction with Articles 5 and 11 of the Convention;

10. *Holds*, unanimously, that there is no need to examine the complaint under Article 14 of the Convention;

11. *Holds*, unanimously,
(a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
(i) EUR 50,000 (fifty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 1,025 (one thousand and twenty-five euros), plus any tax that may be chargeable, in respect of pecuniary damage;
(iii) EUR 12,653 (twelve thousand six hundred and fifty-three euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
(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;

12. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 15 November 2018.

Søren Prebensen
Deputy to the Registrar

Guido Raimondi
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint separate opinion of Judges Pejchal, Dedov, Ravarani, Eicke and Paczolay is annexed to this judgment.

G.R.
S.C.P.

PARTLY CONCURRING, PARTLY DISSENTING OPINION OF JUDGES PEJCHAL, DEDOV, RAVARANI, EICKE AND PACZOLAY[1]

INTRODUCTION

1. Some of us voted against a violation of Article 18 on the basis that the evidence in relation to the seven episodes under consideration in this case (taken together or individually), although sufficient to establish a violation of Articles 5 § 1 and 11 respectively, is insufficient to satisfy the dual test laid down by the Grand Chamber in its judgment in *Merabishvili v. Georgia* [GC] (no. 72508/13, § 309, 28 November 2017) that "a purpose prescribed by the Convention was invariably a cover for an ulterior one" and that the "ulterior purpose ... was the predominant one"; the ulterior purpose in the present case being the suppression of the political pluralism that is an essential part of any democracy society governed by the rule of law as protected by the Convention (see judgment at § 175 and the cases there cited).

2. The others voted in favour of a violation of that provision as regards episodes 5 and 6, *inter alia*, for the reasons described in the judgment. In so concluding some of us also took into account the fact that, as the Chamber had noted (judgment § 86), the applicant had not, in fact, "intended to hold a march on 27 October 2012 [fifth episode], or a public gathering in front of the courthouse at noon on 24 February 2014 [sixth episode]". While ultimately persuaded that, for the reasons identified in the judgment, these episodes and the authorities' response to them could be considered under Article 11 of the Convention, the clear analogies to the situation in *Tatár and Fáber v. Hungary*, nos. 26005/08 and 26160/08, § 40, 12 June 2012 provided further support to the finding of a violation under Article 18. In that case, the Court concluded that:

> "By qualifying the expressive interaction ... as an assembly, the authorities brought the Assembly Act into play, which imposes a duty of notification on the organisers of an assembly, failing which they commit a regulatory offence. ... The national authorities' approach to the concept of assembly does not correspond to the rationale of the notification rule. Indeed, the application of that rule to expressions – rather than only to assemblies – would create a prior restraint which is incompatible with the free communication of ideas and might undermine freedom of expression."

3. What unites us, however, is the firm belief that Article 18, as interpreted by the Court following the Grand Chamber judgment in *Merabishvili v. Georgia*, (cited above) was not the most appropriate tool to assess whether, on the facts of this case, the authorities in the actions they

1. Judges Pejchal, Dedov and Paczolay voted against finding a violation of Article 18, whereas judges Ravarani and Eicke voted in favour of finding such violation.

took against the applicant were, in fact, abusing their powers. In our view, this question would have been more appropriately and more effectively examined under Article 17.

4. However, as the application was not communicated (nor pleaded) under that provision and as, consequently, the parties did not have the opportunity to make submissions in this respect, it would have been inappropriate for the Court to consider this case under Article 17; just as it would now be inappropriate for us to second-guess what would have been the outcome of the case if it had been examined and assessed under that provision.

5. This however, does not prevent us from setting out why, in our view, consideration under Article 17 would have been the more appropriate approach to the present case. In doing so, we acknowledge that, at least as far as we are aware and despite its express terms and despite its drafting history, this provision has to date never been applied in relation to conduct by a state, whether by the former Commission or by this Court;[2] the rare cases where Article 17 has been applied to date always concerned the conduct of two individual applicants or groups. Consequently, the applicability of Article 17 to conduct by states is rarely discussed in academic literature and many commentaries all but omit any reference to "states" and immediately turn to the abuse of rights by individuals or groups.

6. However, the wording of Article 17 is very clear:

> "Nothing in this Convention may be interpreted as implying **for any State**, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth or at their limitation to a greater extent than is provided for in the Convention." (emphasis added)

7. Leaving aside the express reference to "States" in the opening words, it is difficult to see how the prohibition of limitations to rights and freedoms "to a greater extent than is provided for in the Convention" could, in fact, be addressed to anybody other than "states". That said, we do not subscribe to the idea, suggested by some, that Article 17 contains two separate norms of which only the second ("activities aimed at the limitation of rights to a greater extent than provided for in the Convention") applies (or is capable of

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2. In the so-called "Greek" case, the seizure of power by the Greek colonels in 1967 led to a military dictatorship and eventually the suspension of several constitutional provisions. Before the Commission, seized by a certain number of states, the Greek Government tried to rely on Article 15. In its Report under (former) Article 31 of the Convention, the Commission observed, however, in essence, that simple political unrest, such as strikes or political demonstrations, were not sufficient to create a public danger within the meaning of Article 15; ordinary police measures were sufficient to control them. It did not get to answer the question of the applicability of Article 17 because it had already found that the requirements of Article 15 had not been met. In his dissenting opinion, however, Mr Ermacora expressly found that "the respondent Government has engaged in activities or has performed acts aiming at the limitation of the rights under the Convention to a greater extent than is provided for in the Convention (Article 17 of the Convention)": *Denmark, Norway, Sweden and the Netherlands v. Greece*, nos. 3321/67, 3322/67, 3323/67, 3344/67, 5 November 1969.

applying) to states. As the drafting history of Article 17 and 18 makes clear, the drafters of the Convention clearly had in mind the possibility that a state may "engage in ... activity or perform [an] act aimed at the destruction of any of the rights and freedoms set forth" in the Convention. Consequently, in our view, its application goes beyond possible abuses by the state of the limitations permitted under the Convention provisions providing for qualified rights and/or possible abuses of the state's right to derogate from certain obligations under the Convention in times of emergency, as provided for by Article 15 and is capable of applying to any act or activity of the state "aimed at the destruction of any of the rights and freedoms set forth" in the Convention or its Protocols.

8. Consequently, we are of the view that Article 17 is a self-standing provision that has a scope of its own capable of application to the facts of the present case (I.). We will also set out our view on its relationship with Article 18 (II.).

I. THE APPLICATION OF ARTICLE 17 TO STATES

9. Article 17 prohibits the abuse of rights and is primarily applied by the Court as a mechanism to declare inadmissible applications by individuals or groups who attempt to avail themselves of the rights and freedoms guaranteed by the Convention with the aim of destroying them or hollowing them out.[3]

10. The question of the applicability of Article 17 to states, however, raises a different question: is the abuse of rights expressly prohibited by Article 17 not already sufficiently anticipated and prevented by the text and operation of other provisions, namely those which, with regard to each alleged interference with or restriction of a right, require a proportionality assessment and prevent states from restricting these rights beyond what is "necessary in a democratic society"? The scope of a right can, of course, become much reduced if the way it can be exercised depends on the discretion of the State and it is so as to avoid (or at least manage) this risk that the different paragraphs 2 of the so-called qualified rights (Articles 8 to 11) authorise interferences or restrictions only as far as they are necessary in a democratic society, *inter alia*, in the interests of public security, public order, public health or public morals or for the protection of rights or freedom of others. One might be tempted to stop there and assert that balancing interests and subjecting the right to restrict rights to a proportionality test are sufficient safeguards against abuse of its powers by

3. See, for example, about revisionism, *Garaudy v. France* (dec.), no. 65831/01, 24 June 2003; *Perinçek v. Switzerland* [GC], no. 27510/08, ECHR 2015 (extracts), promoting totalitarian ideas; *Fáber v. Hungary*, no. 40721/08, 24 July 2012, hate speech; *Norwood v. the United Kingdom*, (dec.), no. 23131/03, ECHR 2004-XI, incitement to violence; and *Hizb Ut-Tahrir and Others v. Germany* (dec.), no. 31098/08, 12 June 2012.

the state. On the other hand, one may equally wonder whether such a view of things embraces all the hypotheses that may arise.

11. The *travaux préparatoires* of the Convention show very clearly that one of the purposes of inserting Article 17 was the protection of the Member States against the dangers of a totalitarian, fascist or communist seizure of power and to provide a sanction against attacks on the internal security of the State.

12. However, there was more: during the elaboration of the text of the Convention, it was highlighted, *inter alia*, by those who had (at that time, only recently) experienced a totalitarian regime that threats to human rights could also emanate from states themselves. Mr Benvenuti, the Italian representative explained his proposal for the insertion into the Convention of a clause in terms similar to Article 30 of the Universal Declaration of Human Rights[4] on the basis that it was *"necessary above all to prevent abuses, violations or restrictions, on the part of the legislative power of the different countries who have to apply the Convention on Human Rights ..."*.[5] He went on to say:

> "... what we must fear today is not the seizure of power by totalitarianism by means of violence, but rather that totalitarianism will attempt to put itself in power by pseudo-legitimate means. Experience has shown that it is sufficient to establish an atmosphere of intimidation and terror in one single electoral campaign in a country for all the executive acts establishing a totalitarian regime to acquire a character, an appearance, of legality. That is exactly what happened with us. For example, the Italian constitution was never repealed, all constitutional principles remained in theory, but the special laws approved by the Chambers, elected in one misdirected campaign, robbed the constitution little by little of all its substance, especially of its substance of freedom."[6]

13. Mr Teitgen, the representative of France, stressed that "the collective international guarantee will have, as its purpose, to ensure that no State shall in fact aim at suppressing the guaranteed freedoms, by means of minor measures which, while made with the pretext of organising the exercise of these freedoms on its territory, or of safeguarding the letter of the law, have the opposite effect".[7] He went on to say that:

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4. Article 30 of the Universal Declaration of Human Rights, in language identical to the first part of Article 17, provides: "Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein". In fact, it appears that the original draft of Article 30 did not contain any reference to "states" but was deliberately expanded so as to include an express reference to "states" and "groups", thereby expanding its scope significantly.

5. European Commission on Human Rights, Preparatory work on Article 17 of the European Convention on Human Rights, Information document prepared by the Secretariat of the Commission, 23 April 1957 (DH (57) 4), p. 6.

6. Coll. Ed., I, p. 179.

7. European Court of Human Rights, Preparatory work on Article 17 of the European Convention on Human Rights, Information document prepared by the Registry, 5 March 1975, (CDH (75) 7, p. 5.

> "It is legitimate and necessary to limit, sometimes even to restrain, individual freedoms, to allow everyone the peaceful exercise of their freedom and to ensure the maintenance of morality, the general well-being, the common good and of public need. When the State defines, organises, regulates and limits the freedoms for such reasons, in the interest of, and for the better insurance of, the general well-being, it is only fulfilling its duty.
>
> That is permissible; that is legitimate.
>
> But when it intervenes to suppress, to restrain and to limit these freedoms for, this time, reasons of state; to protect itself according to the political tendency which it represents, against an opposition which it considers dangerous; to destroy the fundamental freedoms which it ought to make itself responsible for co-ordinating and guaranteeing, then it is against public interest if it intervenes. Then the laws it passes are contrary to the principle of the international guarantee."[8]

14. Thus, from its very beginning, Article 17 was aimed not only at enabling states to take measures against threats from groups or individuals to democratic society, but also (and perhaps even more so) at preventing states from a totalitarian drift.

15. As indicated above, the text of Article 17 was modelled on Article 30 of the Universal Declaration of Human Rights, approved on 10 December 1948 by the UN General Assembly, which, in turn, was also replicated in common Article 5 of the International Covenant on Civil and Political Rights and of the International Covenant on Economic, Social and Cultural Rights.[9] The interpretation suggested in this Separate Opinion draws further support from the views of the drafters of common Article 5 of the two aforementioned UN Covenants. As the Annotation of the Draft International Covenants prepared by the UN Secretary General, and annexed to the European Commission's summary of the *travaux preparatoires* of Article 17,[10] explains:

> "The opinion was expressed that States were hardly likely to undertake the obligations under the covenant and then attempt to destroy or limit the rights to a greater extent than provided in the covenant, but a proposal to delete the reference to "States" was rejected. It was observed that States were already empowered to limit many rights, for such reasons as the protection of "public order" or "national security" and that they should not be encouraged to restrict further the provisions of the covenants;"[11]

16. In at least two decisions, the UN Human Rights Committee confirmed that Article 5 ICCPR applied to actions by a state party. The

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8. CDH (75) 7, p. 6.

9. Article 5 of the ICCPR provides: "Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant."

10. Doc DH(57)4, Appendix II.

11. DH (57) 4, Appendix II, Extracts from the draft international covenants on human rights, prepared by the U.N. Secretary-general, Information document prepared by the Secretariat of the Commission, 23 April 1957, p. 21, no. 58.

majority of the Human Rights Committee relied on Article 5 in support of its exercise of jurisdiction in relation to events outside the territory of the relevant State. The Human Rights Committee reasoned that *"it would be unconscionable to so interpret the obligation under Article 2 [the obligation to respect and ensure the rights under the ICCPR "to all individuals within its territory and subject to its jurisdiction"] as to permit a State party to perpetrate violations of the Covenant on the territory of another State, which violations it could not perpetrate on its own territory"*: *Delia Saldias de Lopez v Uruguay,* Comm. No. 52/1979, CCPR/C/OP/1 at 88 (1984) at § 12.3 and *Lilian Celiberti de Casariego v Uruguay*, Comm. No. 56/1979, CCPR/C/OP/1 at 92 (1984) at §10.3. In his Separate Opinion in both cases, Mr Christian Tomuschat described Article 5 as:

> "... a provision designed to cover instances where formally the rules under the Covenant seem to legitimize actions which substantially run counter to its purpose and general spirit."

17. It is not our intention to engage in any great detail in the history of the concept of "abuse of power" or to scrutinise all its facets, but in the present context, Article 17 can be understood as being directed at, not only – excessive – individual restrictions of the exercise of fundamental rights, but also a general system of limitations or actions going beyond what is necessary in a democratic regime. It may be an apparent or even brutal abuse of power, without any effort of concealment; it may be an excessive use of the power to restrict rights, again without any ulterior purpose, but with the (dominant) intention to limit any form of expression of personal freedoms (speech, assembly, etc.); or it may be a succession of incidents which, taken one by one, appear to be isolated and straightforward violations of a Convention right, but which, taken together, show a greater problem of systemic violations ultimately aimed at the destruction of the rights and freedoms provided by the Convention. There lies the real abuse of rights or power: *a system of violations*. Such a system can manifest itself in various forms, at all levels of the exercise of state authority: a too strict and liberticidal legislation, a restrictive administrative practice that applies the legal rules with excessive severity, or a systematic judicial prosecution in cases of alleged violation of legal or administrative rules restricting rights guaranteed by the Convention and the application of severe sanctions in case of guilt found.

18. In this respect, Article 17 goes well beyond isolated cases of unacceptable limitations of individual rights and is capable (and even designed) to address structural issues where the abuse of rights lasts over a period of time and transpires through the general intensity of the restrictions of a given fundamental right. The various violations taken in isolation – which must always be sanctioned by the Court, however on different grounds – are merely individual instances of an abusive system which, as a whole, falls under Article 17.

19. That being said, the question remains whether such a system of systematic and abusive limitations of fundamental freedoms is not better addressed under Article 18.

II. THE RELATIONSHIP BETWEEN ARTICLES 17 AND 18

20. Article 18 is a separate provision of the Convention which provides:

> "The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

21. It is clear that, at least on their face, both Articles 17 and 18 appear to envisage similar situations. The question therefore arises whether there was a need to introduce both. In other words, do these provisions have different scopes and/or purposes?

22. In answering this question, it is of interest to note that neither the Universal Declaration of Human Rights (10 December 1948) nor the drafts of the European Movement (February and July 1949) contained an express provision corresponding to Article 18 of the Convention. Article 18 was also not included in the first draft Convention. The first mention of a provision corresponding to the present Article 18 can be found in a document prepared by the Conference of Senior Officials of Human Rights in Strasbourg from 8 to 17 June 1950.[12] No explanation is provided why the addition of such provision was deemed necessary or useful.

23. That said, it appears that the prohibition of the misuse of power, as expressed in Article 18, finds its origin in the French administrative law concept of *détournement de pouvoir*. This concept was used for the first time by the French *Conseil d'État*, which, from the 19th century onwards, has engaged in an examination of the intentions of the author of an administrative decision and to see whether an unacknowledged objective was hidden behind the veil of apparent legality.

24. The case-law of the Court (implicitly if not expressly) having sought to be faithful to these historic parallels, it is undeniable that Article 18 is more difficult to apply than Article 17. After all, in addition to the abuse of power, it requires the proof of bad faith, of hidden unmentionable motives in relation to the application of a particular restriction to a particular identified right in the context of a particular incident.

25. In this respect it seems difficult to suggest that Article 18 only lays down in a more formal way the prohibition already provided for in Article 17. In fact, the reverse seems to be true: it is perhaps Article 18 – and not Article 17 – which is redundant and unnecessary. After all, it seems

12. European Court of Human Rights, Preparatory work on Article 18 of the European Convention on Human Rights, Information document prepared by the Registry, 10 March 1975, (CDH (75) 11), p. 7.

clear to us that Article 17 is more than capable of being read as permitting, in the context of its search for a potential abuse of rights by the state, however not indispensable, identification of the genuine unacknowledged motives of the author of the particular challenged act.

26. If misuse of power is also undoubtedly an abuse of power, the opposite is not necessarily true. There may be instances of abuse of power when the authorities in taking an individual decision do not, in fact, pursue an ulterior purpose. To use the paradigm of the theory of sets, Article 18 is a subset of Article 17. The concept of abuse of rights is broader than that of misuse of power, meaning that certain acts will be considered "abusive", not because the purpose is unlawful, but because of the way in which the power was used.

27. In our view, this is clearly demonstrated by discussion about Article 18 in the Grand Chamber judgment in *Merabishvili v. Georgia*, (cited above), §§ 264 et seq. In that latter judgment, the Court clarified its case-law and held that in case of a plurality of purposes of an act, some of which are conventional and others not, there is misuse of power only if the illegal purpose was predominant.[13]

28. Despite the fact that the Grand Chamber, in *Merashbivili*, engaged in a detailed analysis of the different facets of Article 18, we are doubtful whether it was successful in trying to elaborate a formula that would be easily translatable to further situations where an Article 18 issue is said to arise.

29. In the present case, there is no issue of a plurality of simultaneous purposes, some of which are legal and others illegal. The problem presented by the present case is a succession of different episodes which are said, viewed globally, to demonstrate an ulterior purpose, namely to suppress political opposition.

30. The majority of the Grand Chamber in this case sought to overcome this dilemma by finding a violation of Article 18 in relation to two out of the seven episodes under consideration. The logic of this may be questioned: if there is an ulterior purpose to suppress political opposition, *inter alia,* by preventing them from demonstrating, that purpose is unlikely to be identifiable by reference to events taken individually (the occasional impeding of one or another isolated demonstration) and is most likely to be identifiable only over the long term, considering whether there is a system of hindrances. The judgment, while seeking to remain faithful to the test only recently established in *Merabishvili*, at least implicitly seems to acknowledge that this is so by supplementing its conclusions on the application of Article 18 to episodes 5 and 6 with the words "taking account of the sequence of events as a whole" (§ 164) or "in particular the sequence and pattern of the events in the present case" (§ 175).

13. Ibid., §§ 303 et seq.

31. It is, of course, not the purpose of the present opinion to take a concluded view on the question whether, over the whole period covering the seven episodes, there was a general purpose to prevent gatherings by the opposition and whether the seven episodes were only instances of that general ulterior purpose. This would have necessitated not only a significant departure from the Court's current approach to Article 18 but also a careful and detailed consideration of any asserted general ulterior purpose contrary to Article 18, over a certain period of time; an exercise in which the Grand Chamber deliberately and, in light of the current state of the case-law, understandably did not engage.

32. However, the majority having chosen not to travel down that route, the question fell to be considered whether, in fact, Article 18 was at all the most appropriate provision for assessing the abuse of power asserted in the present case; and has led us to conclude that it was not.

CONCLUSION

33. In light of the above, we are of the view that, if the case had been presented in those terms, an examination of the facts of the present case under Article 17 would have enabled the Court to assess whether the number of individual episodes addressed in the judgment, taken together, are evidence or isolated manifestations of a system that abusively seeks to limit, by legislative, administrative and/or judicial means, the democratic rights of the applicant in a way that substantially runs counter to the purpose and general spirit of the Convention and is aimed at unduly limiting those rights; and to do so without (a) having to adopt a narrow focus on the (administrative) authorities involved in the individual incident under consideration and (b) having to address the difficult issue of whether those authorities, in their response to each individual occasion on which the applicant sought to exercise his fundamental freedom of assembly, pursued an ulterior purpose.

APPENDIX

List of applications

1. 29580/12 – Navalnyy v. Russia
2. 36847/12 – Navalnyy v. Russia
3. 11252/13 – Navalnyy v. Russia
4. 12317/13 – Navalnyy v. Russia
5. 43746/14 – Navalnyy v. Russia