Case note: ECLI:CE:ECHR:2017:0207JUD005781809

Roorda, B.

EHRC 2017/88 EHRM, 07-02-2017, 57818/09, 51169/10, 4618/11, 19700/11, 31040/11, 47609/11, 55306/11, 59410/11, 7189/12, 16128/12, 16134/12, 20273/12, 51540/12, 64243/12, 37038/13, ECLI:CE:ECHR:2017:0207JUD005781809 Vrijheid van vreedzame vergadering, Kennisgevingplicht, Kennisgevingtermijnen, Spontane manifestaties, Integrale demonstratieverboden, Demonstratiebeperkingen naar tijd en plaats, 'Sight and sound'-criterium, Simultane demonstraties, Tegendemonstraties, Hostile audience, Verkeersbelangen, Recht op een daadwerkelijk rechtsmiddel, Recht op vrijheid en veiligheid

Ook gepubliceerd in:
ECLI:CE:ECHR:2017:0207JUD005781809

Aflevering	2017 afl. 5
Rubriek	Uitspraken EHRM
College	EHRM
Datum	07 februari 2017
Rolnummer	57818/09 51169/10 4618/11 19700/11 31040/11 47609/11 55306/11 59410/11 7189/12 16128/12 16134/12 20273/12 51540/12 64243/12 37038/13
Rechter(s)	López Guerra (President) Jäderblom Keller Dedov Lubarda Pastor Vilanova Serghides
Partijen	Lashmankin e.a. tegen Rusland
Noot	*mr. dr. B. Roorda*
Trefwoorden	Vrijheid van vreedzame vergadering, Kennisgevingplicht, Kennisgevingtermijnen, Spontane manifestaties, Integrale demonstratieverboden, Demonstratiebeperkingen naar tijd en plaats, 'Sight and sound'-criterium, Simultane demonstraties, Tegendemonstraties, Hostile audience, Verkeersbelangen, Recht op een daadwerkelijk rechtsmiddel, Recht op vrijheid en veiligheid
Regelgeving	EVRM - 5 EVRM - 6 EVRM - 10

EVRM - 11
EVRM - 13

EHRC 2017/88 EHRM, 07-02-2017, 57818/09, 51169/10, 4618/11, 19700/11, 31040/11, 47609/11, 55306/11, 59410/11, 7189/12, 16128/12, 16134/12, 20273/12, 51540/12, 64243/12, 37038/13, ECLI:CE:ECHR:2017:0207JUD005781809

Vrijheid van vreedzame vergadering, Kennisgevingplicht, Kennisgevingtermijnen, Spontane manifestaties, Integrale demonstratieverboden, Demonstratiebeperkingen naar tijd en plaats, 'Sight and sound'-criterium, Simultane demonstraties, Tegendemonstraties, Hostile audience, Verkeersbelangen, Recht op een daadwerkelijk rechtsmiddel, Recht op vrijheid en veiligheid

Samenvatting

Centraal in deze zaak staan vijftien zaken van in totaal drieëntwintig Russische staatsburgers die allemaal individueel hebben verzocht om toestemming voor het houden van – in de meeste gevallen kleine – kortdurende demonstraties. In alle gevallen is het verzoek om de demonstratie op de gewenste locatie en het gewenste tijdstip te houden afgewezen door de autoriteiten. De klachten over de precieze afwijzing lopen steeds wat uiteen: soms gaat het erom dat een demonstratie alsnog doorgang vond en daarbij extreem zware veiligheidsmaatregelen werden getroffen, in andere gevallen werd de demonstratie uiteengejaagd en werden de demonstranten gearresteerd en enige tijd vastgehouden op het politiebureau, en in weer andere gevallen ging de demonstratie niet door omdat de demonstranten niet akkoord gingen met de door de autoriteiten voorgestelde alternatieve demonstratielocaties en -tijdstippen. De zaken betreffen verder allemaal de rechtsbescherming die op nationaal niveau is geboden en de strenge eisen voor het krijgen van toestemming voor een demonstratie.

Het Hof onderzoekt allereerst of aan de eisen van art. 13 EVRM is voldaan, in het licht van de klacht dat er geen procedure beschikbaar was die het mogelijk zou maken om tijdig voor de geplande demonstratie een afdwingbare rechterlijke beslissing daarover te krijgen. Het Hof heeft eerder benadrukt dat een post hoc beslissing inderdaad niet voldoende is. Weliswaar zijn er rechtsmiddelen beschikbaar, maar in de praktijk blijkt lang niet altijd op tijd te worden besloten; ook het Constitutionele Hof van Rusland heeft erop aangedrongen op dit punt de regelgeving te wijzigen. Bovendien geldt dat, zou al op tijd worden besloten, de beslissing pas afdwingbaar zou worden na tien dagen beroepstermijn. Weliswaar is in 2015 een nieuwe regeling aangenomen waardoor de termijnen zijn aangepast, maar dat is voor de onderhavige klachten niet relevant. Het Hof overweegt daarnaast dat het voor de effectiviteit van het rechtsmiddel rekening dient te houden met de omvang van de rechterlijke toetsing. Het constateert daarbij dat de rechter geen enkele verplichting heeft om de redelijkheid van een beslissing te beoordelen, terwijl proportionaliteit en noodzakelijkheid in het licht van de EHRM-jurisprudentie nu juist hoofdpunten zouden moeten zijn. In sommige gevallen blijken nationale rechters wel na te gaan of er voldoende motivering is, maar het Hof stelt vast dat dat maar sporadisch gebeurt en dat normaliter alleen een wettigheidsbeoordeling plaatsvindt. Een belangenafweging wordt in ieder geval bijna nooit uitgevoerd, waardoor de beschikbare rechtsmiddelen ook om die reden niet kunnen voldoen aan de eisen van art. 13 EVRM.

Ten aanzien van de klachten over de inbreuk op de demonstratievrijheid benadrukt het Hof dat plaats en tijdstip van een demonstratie voor de inhoud daarvan erg belangrijk kunnen zijn, zodat het verplicht wijzigen daarvan een inbreuk op art. 11 EVRM oplevert. Tegelijkertijd realiseert het zich dat een veelheid van factoren van invloed kunnen zijn op de besluitvorming over dit soort kwesties, zodat het op dit punt een ruime margin of appreciation toekent aan de staten. Niettemin is die niet onbeperkt, en geldt dat vooral wanneer een ruime margin wordt toegekend, die in ieder geval gepaard moet gaan met goede procedurele waarborgen die kunnen verzekeren dat de staat zich binnen zijn margin blijft bewegen. In het bijzonder is van belang of de besluitvorming fair is verlopen en of daarbij voldoende aandacht aan alle individuele belangen is gegeven. Daarbij merkt het Hof op dat er naar nationaal recht geen vereiste is dat nationale rechters beoordelen of een beperking van de demonstratievrijheid noodzakelijk of proportioneel is; weliswaar zijn er enige eisen gesteld in de rechtspraak van het Constitutionele Hof, maar die leveren

geen daadwerkelijke beperking van de discretie van de autoriteiten op en laten nog steeds ruimte voor willekeur. Alle onderhavige zaken laten zien dat er weliswaar relevante redenen zijn aangevoerd, maar ook dat die niet voldoende waren om de zware maatregelen te treffen waarom het gaat. Vaak was er helemaal geen bewijs voor disruptie van de omgeving, en bovendien is enige verstoring normaal gesproken onvoldoende reden voor een verbod. Voorgestelde alternatieve locaties pasten vaak niet bij de boodschap die de betrokkenen wilden overdragen. Bovendien blijkt uit de feiten dat de bevoegdheden vaak discriminatoir zijn toegepast, in die zin dat sommige demonstraties wel en andere geen doorgang konden vinden. Dat gold bijvoorbeeld voor een homodemonstratie die niet door mocht gaan, terwijl een anti-homodemonstratie in vergelijkbare omstandigheden dat wel mocht. Daarmee voldoet de wetgeving volgens het Hof niet aan de daaraan te stellen kwaliteitseisen en waren de inbreuken niet voldoende voorzien bij wet.

Daarnaast gaat het Hof nog in op de vraag of het redelijk is om een volledig verbod te stellen op demonstraties in de nabijheid van bepaalde gebouwen of op bepaalde plaatsen, zoals bij gerechtsgebouwen of gevangenissen. Het Hof wijst erop dat slechts in heel weinig Europese staten zo'n verbod bestaat en dat het ook moeilijk te verdedigen is: in lijn met zijn eerdere rechtspraak oordeelt het dat daarvoor duidelijk moet zijn dat individualiseerbare maatregelen daadwerkelijk veel minder wenselijk zijn dan een algemene regeling. Het Hof merkt op dat parlement noch Constitutioneel Hof zich over die vraag uitdrukkelijk hebben gebogen, en dat voor het algemene verbod daarmee niet voldoende rechtvaardiging bestaat. Inhoudelijk gezien overweegt het dat er weliswaar redenen kunnen zijn om niet voor een gerechtsgebouw te demonstreren, maar dat ook rechters blootgesteld kunnen worden aan enige kritiek; in ieder geval moet een rechtvaardiging voldoende concreet en zwaarwegend zijn in de individuele omstandigheden van het geval. Dat is in deze gevallen nooit gebleken.

Vervolgens gaat het Hof in op de regelingen rondom de notificatie van de geplande demonstraties, waarbij het opmerkt dat het al eerder heeft bepaald dat de wetgeving daarbij veel te rigide en te beperkend is, en bovendien geen ruimte laat voor spontane demonstraties. Ook de wijze van communicatie van de besluiten aan klagers schoot tekort. Ten slotte constateert het Hof dat er in de relevante gevallen onvoldoende redenen waren voor het uiteenjagen van de demonstraties, omdat andere maatregelen hadden kunnen volstaan, en dat ditzelfde geldt voor de extreem strenge veiligheidsmaatregelen die rondom andere demonstraties zijn getroffen – die werden daardoor in een aantal gevallen zelfs helemaal aan het zicht onttrokken. Concluderend stelt het Hof vast dat art. 11 is geschonden en dat er geen reden is om de klachten over art. 14 EVRM nog afzonderlijk te behandelen.

Daarnaast stelt het Hof nog schendingen vast van art. 5 EVRM (willekeurige arrestatie van enkele demonstranten) en art. 6 EVRM (rechtszekerheid en toegang tot de rechter).

Vanwege de geconstateerde schendingen verplicht het Hof Rusland tot het uitkeren van schadevergoeding aan alle klagers die hierom hebben verzocht. De toegewezen vergoedingen bedragen in vijf gevallen 5.000 euro, in veertien gevallen 7.500 euro en in drie gevallen 10.000 euro. Bovendien verplicht het Hof Rusland tot vergoeding van proceskosten van meerdere partijen.

beslissing/besluit

Uitspraak

I. Joinder of the applications

325. In accordance with Rule 42 § 1 of the Rules of Court, the Court decides to join the applications, given their factual and legal similarities.

II. Alleged violations of Article 13 of the Convention

326. The applicants complained under Article 13 of the Convention in conjunction with Article 11 of the Convention that they did not have an effective remedy against the alleged violations of their freedom of

assembly. They alleged in particular that they had not had at their disposal any procedure which would have allowed them to obtain an enforceable decision prior to the date of the planned public event. Article 13 of the Convention reads:

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

A. Admissibility

327. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

(a) The applicants

328. The applicants submitted that under Russian law the organisers had to notify the competent authorities no earlier than fifteen days before the intended public event. The authorities had three days to propose a change of the location, time or manner of conduct of a public event. If the organisers submitted objections or proposed alternative locations or time, the authorities had again three days to reply to the organisers. Given that the complaint against the authorities' decision proposing a change of the location, time or manner of conduct of a public event had to be examined within ten days and that that time-limit was rarely observed in practice owing to the heavy case-load of Russian courts, such complaints were in most cases examined only after the intended date of the public event. Exceptions were rare and could be explained by a lighter case-load of a particular judge. That situation was due to the fact that Russian law did not impose an obligation on the courts to examine such complaints before the planned date of the public event. Although the Constitutional Court in its decision of 2 April 2009 had indeed found that the courts should be required to examine the complaints before the intended public event (see paragraph 258 above), the legislative amendments to that effect had still not been adopted. The Constitutional Court had itself noted that omission in its judgment of 14 February 2013 and had urged the legislator to amend the domestic law (see paragraph 267 above). Furthermore, there was no evidence that the Constitutional Court's instructions were followed by the courts in their everyday practice. The Government had not provided any statistical information as to the length of the judicial examination of such cases or any other proof of their allegation that in most cases such complaints were examined before the date of the planned public event (see paragraph 336 below). The facts of the present case provided an ample body of evidence that showed that examination of such complaints was often longer than ten days, and was rarely terminated before the date of the planned public event.

329. Even if the court examined and allowed the complaint before the planned date of the public event, the judicial decision was not immediately enforceable, as confirmed by the facts of the present case (see, for example, paragraph 155 above). It became enforceable only after the expiry of the ten-day time-limit for appeal (one-month time-limit since 1 January 2012) or, if an appeal was lodged, after the appeal decision was issued, that is in any case after the planned date of the public event. In such cases, even if the complaint was allowed, it was no longer possible for the courts to provide a remedy by ordering that the authorities approve the public event.

330. The applicants further submitted that there was no possibility to apply for an injunction enabling the organiser to proceed with the public event pending the examination of his judicial complaint. The possibility of suspending the decision complained against provided for by Russian law was ineffective. Firstly, any such suspension did not amount to an approval of the public event. In the absence of such approval the public event would remain unlawful. Secondly, the applicants argued that the domestic

courts were unwilling to apply provisional measures to disputes concerning the freedom of assembly on the ground that such provisional measures would have the effect of prejudging the outcome of the dispute. The applicants produced a copy of the decision of 5 September 2013 by the Voroshilovskiy District Court of Rostov-on-Don on a complaint against the refusal to approve a public event, rejecting the application for interim measures on the ground that the requested interim measure was identical to the merits of the complaint.

331. As regards the possibility of applying for immediate enforcement, it was an extraordinary measure which entirely depended on the judge's discretion and was ordered only in a small number of cases relating to the freedom of assembly. Indeed, the Government had been able to submit only eight examples of cases relating to freedom of assembly in which immediate enforcement had been ordered (see paragraph 339 below), although they had full access to the entire case-law of Russian courts. By contrast, the applicants referred to three judicial decisions where the requests for immediate enforcement had been rejected by courts. They argued that the examples provided by the Government were insufficient to prove the existence of an established practice of ordering immediate enforcement in freedom-of-assembly cases. In the absence of a clear requirement to enforce judicial decisions in such cases immediately, as for example in electoral disputes (see paragraph 287 above), the mechanism of immediate enforcement could not be considered effective.

332. Accordingly, the statutory time-limits for notification about a public event and those for judicial review of the authorities' proposal to change its location or time did not allow for an enforceable judicial decision to be taken before the intended date of the public event.

333. The applicants further argued that a judicial complaint under Chapter 25 of the CCP was allowed only if the authorities' refusal to approve the location, time or manner of conduct of a public event had been issued in breach of the domestic law. No other grounds for allowing the complaint were envisaged by Russian law. It was therefore impossible to challenge the authorities' decision on such grounds as, for example, that the location proposed by the authorities was incompatible with the purposes of the public event.

334. The applicants concluded that they did not have an effective remedy in respect of their complaints under Articles 10 and 11. They added that the new Code of Administrative Procedure which had entered into force in September 2015 (see paragraphs 289 et seq.) did not remedy that situation, because the procedure established by it still did not permit a final judgment to be obtained sufficiently in advance of the scheduled public event to allow for its preparation.

(b) The Government

335. The Government submitted that the organisers had to notify the competent authorities no earlier than fifteen days and no later than ten days before the intended public event. The notification time-limit gave sufficient time to the authorities to propose changing the time or location of the public event or to give a warning to the organisers about possible liability if the aims of the public event or any other envisaged arrangements were incompatible with Russian law. At the same time, it permitted the holding of public events in response to topical current affairs. The extension of the notification time-limit would restrict such possibility.

336. The Government further submitted that any actions or inactions of the authorities restricting the freedom of assembly could be challenged before a court in accordance with the procedure established by Chapter 25 of the CCP (see paragraphs 276 to 283 above). The domestic law established a shortened ten-day time-limit for the examination of such complaints (see paragraph 278 above), as compared to the general two-month time-limit for civil claims. Further shortening of that time-limit might undermine the quality of the judicial review. The appeal had to be examined within two months (see paragraphs 284 and 285 above). Despite the absence of any statistical information on the issue, it was possible to affirm that if the organisers of a public event submitted their complaint without delay it was examined promptly, in most cases before the date of the planned public event. The average examination time was three to ten days for a first-instance complaint, and twelve to twenty-three days for appeal. The Government referred

to the Constitutional Court's instructions that such complaints had to be examined as quickly as possible, in any event before the intended public event, for the judicial proceedings not to be deprived of all meaning (see paragraph 258 above).

337. The Government argued that belated examination of complaints was often caused by the organisers themselves. For example, as regards application no. 31040/11, although the applicants had received the authorities' proposal to cancel the march and change the location of the meeting of 20 March 2010 on 12 March 2010, they sent their complaint to the court by post only on 15 March 2010. The Convention did not oblige States to provide a perfectly functioning postal system (see *Foley v. the United Kingdom* (dec.), no. 39197/98, 11 September 2001). It was a well-known fact that Russian postal service was overburdened and that there were serious delays in delivery of correspondence. However, instead of bringing the complaint directly to the court's registry, the applicants had chosen to take the risk of sending it by post. The complaint had been delivered to the court on Friday 19 March 2010, which had prevented the court from examining it before the planned date of the public event. The delay in the examination of the complaint had therefore been attributable to the applicants.

338. The Government further submitted that Chapter 25 of the CCP provided for the possibility of suspending the decision complained against pending judicial proceedings, at the request of the complainant or of the court's own motion (see paragraph 279 above). However, according to available information, no requests for suspension were lodged by the complainants in cases relating to freedom of assembly during the period from January 2011 until the present.

339. The courts allowed complaints if it found that the authorities' actions were unlawful and breached the complainant's rights. Judicial decisions entered into force either on the expiry of the time-limit for appeal (ten days until 1 January 2012 and a month after that date) if no appeal was lodged, or on the day of the delivery of the appeal judgment (see paragraphs 284 and 285 above). However, it was possible for the complainant to request immediate enforcement of the first-instance decision if the appeal could not be examined before the planned public event (see paragraph 287 above). The domestic law did not prohibit the use of the immediate enforcement procedure in cases concerning freedom of assembly. The Government submitted copies of eight judicial decisions ordering immediate enforcement in cases where the authorities' proposals to change the location of the public event were challenged.

340. The Government concluded from the above that if the organisers of the public event did not agree with the authorities' proposal to change the location or time of the public event, they had an effective remedy before the courts allowing them to obtain an enforceable decision before the planned date of the public event. To illustrate the effectiveness of that remedy, the Government referred to five judicial decisions in which the organisers' complaints had been allowed, in three of which immediate enforcement had been ordered. The Government did not submit copies of those judicial decisions.

341. Lastly, the Government submitted that in March 2013 the President proposed a draft Code of Administrative Procedure, which had since been adopted and had entered into force (see paragraphs 289 to 294 above). The draft Code provided that complaints against the authorities' decisions concerning change of location or time of public events, and of their purposes, type or other arrangements, were to be examined by courts within ten days. If the complaint was lodged before the planned date of the public event, it had to be examined by the eve of that date at the latest. If the complaint was lodged on the day of the public event, it had to be examined on the same day. If the last day of the time-limit fell at a weekend or on a public holiday, it was to be examined on that day if the complaint had not been, or could not have been, examined earlier. If the appeal was lodged before the planned date of the public event, it had to be examined by the eve of that date at the latest.

2. The Court's assessment

342. The Court reiterates that Article 13 guarantees the availability at national level of a remedy in respect of grievances which can be regarded as arguable in terms of the Convention (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 96, ECHR 2000-XI). It has not been disputed between the

parties that the applicants had an arguable claim under Articles 10 and 11 within the meaning of the Court's case-law and were thus entitled to a remedy satisfying the requirements of Article 13.

343. Such a remedy must allow the competent domestic authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they discharge their obligations in this respect (see *Hasan and Chaush*, loc. cit.).

344. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint; the "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. At the same time, the remedy required by Article 13 must be "effective" in practice as well as in law, in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has already occurred (see *Kudla v. Poland* [GC], no. 30210/96, §§ 157 and 158, ECHR 2000-XI, and *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 96, 10 January 2012).

345. In the area of complaints about restrictions on the freedom of assembly imposed before the date of an intended assembly – such as, for example, a refusal of prior authorisation where such authorisation is required – the Court has already observed that the notion of an effective remedy implies the possibility of obtaining a final decision concerning such restrictions before the time at which the assembly is intended to take place. A *post-hoc* remedy cannot provide adequate redress in respect of Article 11 of the Convention. It is therefore important for the effective enjoyment of freedom of assembly that the applicable laws provide for reasonable time-limits within which the State authorities, when giving relevant decisions, should act (see *Baczkowski and Others v. Poland*, no. 1543/06, §§ 81-83, 3 May 2007).

346. The Court has already found that Russian laws provided for time-limits for the organisers to give notice of a public event. In contrast, the authorities were not obliged by any legally binding time-frame to give their final decisions before the planned date of the public event. The Court has therefore found that the judicial remedy available to the organisers of public events, which was of a *post-hoc* character, could not provide adequate redress in respect of the alleged violations of the Convention (see *Alekseyev v. Russia*, nos. 4916/07, 25924/08 and 14599/09, § 99, 21 October 2010).

347. Indeed, the Court notes that Chapter 25 of the CCP and the Judicial Review Act, in force at the material time, did not require the courts to examine the judicial review complaint against the authorities' refusal to approve the location, time or manner of conduct of a public event before the planned day of the event. Nor did the time-limit for lodging a notification and examining judicial review complaints ensure an enforceable decision before the planned day of the public event, for the following reasons.

348. Firstly, the organisers have to notify the competent authorities no earlier than fifteen days before the intended public event; a notification lodged before that time-limit is considered premature (see paragraphs 226 and 231 above). That requirement establishes a very tight time-frame within which any proposals to change the place, time or manner of conduct of a public event are to be made by the authorities, debated with the organisers and eventually examined on judicial review. The relevant comparative material demonstrates that only a small minority of European countries establish a time-limit before which a notification is considered premature and that in those countries where such a time-limit exists it is usually considerably longer than fifteen days (see paragraph 320 above).

349. Secondly, Russian law provides that after receiving a notification the authorities have three days to propose a change of the location, time or manner of conduct of a public event (see paragraph 228 above). The present cases demonstrate that this time-limit is not always observed (see, for example, paragraphs 14, 41, 76 and 109 above, where the authorities made their proposals between four and seven days after receiving the notification) without any negative consequences for the validity of the belated proposal (see, in particular, paragraph 47 above). The authorities' failure to observe the time-limit further shortens the already limited time available to the organisers to apply for a remedy.

350. Thirdly, at the material time the complaint against the authorities' refusal to approve the location, time or manner of conduct of a public event was to be examined by a court within ten days (see paragraph 278 above). The Court is not convinced by the Government's assertion, not supported by any documents or statistical data, that the ten-day time-limit was routinely observed and that in most cases the complaints were examined before the date of the planned event (see paragraph 336 above). As demonstrated by the facts of the present cases, the ten-day time-limit was rarely complied with: in the majority of the cases it took the competent District Court between two weeks and seven months to examine the complaint. Indeed, the complaints relating to freedom of assembly were not considered to be urgent, and did not have any priority over other cases, which, combined with the heavy case-load of the Russian courts, resulted in recurrent delays in their examination. The Court reiterates in this connection that a heavy case-load cannot serve as a justification for delays in judicial proceedings (see, *mutatis mutandis*, *Klein v. Germany*, no. 33379/96, §§ 42 and 43, 27 July 2000).

351. As a result of the aggregated factors described above, even if the organisers of a public event lodged a notification on the first day of the fifteen-day notification time-limit and then lodged a judicial review complaint immediately after receiving the authorities' proposal to change its location, time or manner of conduct, there was no guarantee that their judicial review complaint would be decided before the planned date of the event. It is significant that the Constitutional Court in its rulings of 2 April 2009 and 14 February 2013 required the legislator to amend the legal provisions governing the time-limits for examining organisers' complaints against refusals to approve the time or location of a public event, so that they were examined before the planned date of the event (see paragraphs 258 and 267 above). It was not until 8 March 2015 that the relevant provisions were amended with the effect from 15 September 2015 (see paragraphs 289 to 294 above), long after the facts of the present cases.

352. Further, the Court observes that even if a District Court examined the complaint before the planned date of the public event, the judicial decision became enforceable only after the expiry of the ten-day time-limit for appeal (a one-month time-limit since 1 January 2012) or, if an appeal was lodged, after the appeal decision was issued (see paragraphs 284 to 286 above). One of the present applications provides a telling example of a situation where the judgment issued before the planned date of the public event and finding that the authorities' refusal to approve it had been unlawful did not permit the organisers to hold their event because it was not yet enforceable (see paragraphs 153 to 155 above).

353. The Court takes note of the Government's argument that the domestic law in force at the material time provided for the possibility of applying for immediate enforcement of a District Court judgment (see paragraph 287 above). It reiterates that it is for the Government to illustrate the practical effectiveness of the remedy with examples from the case-law of the domestic courts (see *Ananyev and Others*, cited above, § 110). The Government submitted copies of eight judicial decisions ordering immediate enforcement in cases where the authorities' proposals to change the location of the public event were challenged (see paragraph 339 above). This is not enough, in the Court's view, to show the existence of settled domestic practice. The Court is therefore not convinced of the practical effectiveness of an application for immediate enforcement (see, for similar reasoning, *Ananyev and Others*, loc. cit.).

354. Further, as regards the possibility of suspending the decision complained against pending the judicial proceedings (see paragraph 279 above), the Government themselves admitted that such a suspension had never been ordered in cases relating to freedom of assembly (see paragraph 341 above). Nor did the Government explain what redress could have been afforded to the organisers by suspending a decision refusing to approve the location, time or manner of conduct of a public event. Such a suspension did not amount to an approval of the location, time or manner of conduct chosen by the organisers, and did not therefore give the public event the presumption of legality.

355. The Court notes that, since the facts prompting the present applications arose, on 15 September 2015, a new Code of Administrative Procedure entered into force. It provides, in particular, that complaints against the authorities' decisions concerning changes to the purposes, location, type or manner of conduct of a public event are to be examined by the District Court, and if possible any appeal is also to be examined, before the planned date of the event. The judicial decision is subject to immediate enforcement (see paragraphs 289 to 294 above). The Court notes that these developments in the domestic law, welcome as they are, occurred after the events at issue in the present cases.

356. The Court will further examine the applicants' additional argument that the scope of judicial review was limited to examining the lawfulness of the proposal to change the location, time or manner of conduct of a public event (see paragraph 333 above). Indeed, in accordance with Chapter 25 of the CCP and the Judicial Review Act, in force at the material time, the sole relevant issue before the domestic courts was whether the contested refusal to approve the location, time or manner of conduct of a public event was lawful (see paragraphs 281 to 283 above). It is clear from the Supreme Court's interpretation of the relevant provisions that "lawfulness" was understood as compliance with the rules of competence, procedure and contents (see paragraph 280 above). It is significant that the Supreme Court expressly stated that the courts had no competence to assess the reasonableness of the authorities' acts or decisions made within their discretionary powers (ibid.). It follows that the courts were not required by law to examine the issues of "proportionality" and "necessity in a democratic society", in particular whether the contested decision answered a pressing social need and was proportionate to any legitimate aims pursued, principles which lie at the heart of the Court's analysis of complaints under Article 11 of the Convention (see paragraph 412 below).

357. The Court observes that the present case demonstrates that in practice the domestic courts occasionally go beyond the issues of lawfulness and examine whether the authorities' refusal to approve the location, time or manner of conduct of a public event was "well-reasoned" (see, for example, paragraphs 48, 51, 71, 72, 82, 145, 153, 166, 184, 189, 200 above). That practice is apparently rooted in the requirement contained in the Public Events Act that any proposal to change the time, location or manner of conduct of a public event must be "well-reasoned" (see paragraph 228 above) and in the Constitutional Court's explanation that the authorities must give "weighty reasons" for their proposals (see paragraph 256 and 257 above). The Court however notes that this practice is fragmentary and that courts often limit their examination to the issues of lawfulness (see, for example, paragraphs 11, 26, 35, 68, 89, 105, 133 above).

358. In any event, the analysis of the judicial decisions made in the present case reveals that, even in those cases where the Russian courts examined the question whether the refusal to approve the location, time or manner of conduct of a public event had been well reasoned, they failed to recognise that the cases involved a conflict between the right to freedom of assembly and other legitimate interests and to perform a balancing exercise. The balance appeared to be set in favour of protection of other interests, such as rights and freedoms of non-participants, in a way that made it difficult to turn the balance in favour of the freedom of assembly. The Court concludes that in practice Russian courts did not apply standards which were in conformity with the principles embodied in Article 11 and did not apply the "proportionality" and "necessity" tests. The Court has already found on a number of occasions, albeit in the context of Article 8, that a judicial review remedy incapable of examining the issue of proportionality does not meet the requirements of Article 13 of the Convention (see *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, §§ 135-39, ECHR 1999-VI; *Peck v. the United Kingdom*, no. 44647/98, §§ 105-07, ECHR 2003-I; and *Keegan v. the United Kingdom*, no. 28867/03, §§ 40-43, ECHR 2006-X).

359. The Court takes note of the Supreme Court's Ruling of 27 June 2013, stating that any restrictions on human rights and freedoms must be prescribed by federal law, pursue a legitimate aim and be necessary in a democratic society, that is to say, proportionate to the legitimate aim (see paragraph 217 above). The Court welcomes these instructions, but notes that they were issued after the events at issue in the present cases. It will have to wait for an opportunity to examine the practice of the Russian courts after that Ruling to assess how these instructions are be applied in practice. The Court also notes that the new Code of Administrative Procedure which entered into force on 15 September 2015 reproduced in substance the provisions of Chapter 25 of the CCP and the Judicial Review Act. According to the new Code of Administrative Procedure the lawfulness of the contested decision or act – understood in the sense of compliance with the rules of competence, procedure and contents – remains the sole relevant issue examined on judicial review (see paragraphs 295 to 297 above).

360. To sum up, the Court considers that the applicants did not have at their disposal an effective remedy which would allow an enforceable judicial decision to be obtained on the authorities' refusal to approve the location, time or manner of conduct of a public event before its planned date. Moreover, the scope of judicial review was limited to examining the lawfulness of the proposal to change the location, time or

manner of conduct of a public event, and did not include any assessment of its "necessity" and "proportionality". In these circumstances, the Court does not need to consider the applicants' complaints relating to the individual circumstances of each case.

361. There has therefore been a violation of Article 13 of the Convention in conjunction with Article 11 of the Convention.

III. Alleged violations of Articles 10, 11 and 14 of the Convention

362. The applicants complained that the restrictions imposed by the authorities on the location, time or manner of conduct of public events breached their right to freedom of expression and to peaceful assembly, guaranteed by Articles 10 and 11 of the Convention respectively. Some of the applicants also complained under Article 14 of the Convention taken in conjunction with Articles 10 and 11 that they had been discriminated against on the grounds of their political opinion or sexual orientation.

These Articles read as follows:

Article 10

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Article 11

"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."

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."

363. At the outset, the Court notes that in relation to the same facts the applicants rely on two separate Convention provisions: Article 10 and Article 11 of the Convention, both taken alone and in conjunction with Article 14. In the Court's opinion, in the circumstances of the present case, Article 10 is to be regarded as a *lex generalis* in relation to Article 11, a *lex specialis* (see *Ezelin v. France*, 26 April 1991, § 35, Series A no. 202, and *Kudrevicius and Others v. Lithuania* [GC], no. 37553/05, § 91, ECHR 2015). The thrust of the applicants' complaints is that the authorities imposed various restrictions on holding of peaceful assemblies thereby preventing them from expressing their views *together with other*

demonstrators. The Court therefore finds that the applicants' complaint should be examined under Article 11, taken alone and in conjunction with Article 14 (see *Schwabe and M.G. v. Germany*, nos. 8080/08 and 8577/08, § 101, ECHR 2011 (extracts); *Galstyan v. Armenia*, no. 26986/03, §§ 95-96, 15 November 2007; and *Primov and Others v. Russia*, no. 17391/06, § 91, 12 June 2014).

364. That being said, the Court notes that the issues of freedom of expression and freedom of peaceful assembly are closely linked in the present case. Indeed, the protection of personal opinions, secured by Article 10 of the Convention, is one of the objectives of freedom of peaceful assembly as enshrined in Article 11 of the Convention (see *Ezelin*, cited above, § 37; *Djavit An v. Turkey*, no. 20652/92, § 39, ECHR 2003-III; and *Barraco v. France*, no. 31684/05, § 29, 5 March 2009). In the sphere of political debate the guarantees of Articles 10 and 11 are often complementary, so Article 11, where appropriate, must be considered in the light of the Court's case-law on freedom of expression. The Court reiterates that 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, and *Primov and Others*, cited above, § 92).

365. The Court will therefore examine the present case under Article 11, interpreted where appropriate in the light of Article 10, taken alone and in conjunction with Article 14.

A. Submissions by the parties

1. The applicants

366. The applicants submitted that an interference with the freedom of assembly did not need to amount to an outright ban, legal or *de facto*, but could consist in various other measures taken by the authorities (see *Singartiyski and Others v. Bulgaria*, no. 48284/07, § 43, 18 October 2011). The term "restrictions" in paragraph 2 of Article 11 should be interpreted as including measures taken before, during and after an assembly (see *Ezelin*, cited above, § 39). Although a requirement of prior notification did not as such constitute an interference with the freedoms of expression and assembly, the situation was different where, as in Russia, the notification procedures were not limited to informing the authorities of the organisers' intention to hold an assembly, but allowed the authorities to impose restrictions on its location, time or manner of conduct. In Russia the organisers' right to hold a peaceful assembly was conditional on the authorities' approval of the chosen location, timing and manner of conduct. Failure to reach an agreement following the authorities' proposal to change the location, time or manner of conduct of a public event resulted in the organisers being prohibited from holding it. The domestic law gave the police powers to disperse public events which took place at a location or time or in a manner not approved by the authorities and to bring the organisers and participants to liability under Article 20.2 of the Administrative Offences Code. Prior restrictions imposed by the Russian authorities on the location, time or manner of conduct of a public assembly therefore constituted an interference with freedom of assembly (see *Berladir and Others v. Russia*, no. 34202/06, §§ 47-51, 10 July 2012).

367. In the applicants' opinion, the Public Events Act did not meet the Convention's "quality of law" requirements. In particular, the terms "a well reasoned proposal for changing the location and/or time of the public event, or for amending its purposes, type or other arrangements" (see paragraph 228 above) and "the location and time agreed upon after consultation with competent regional or municipal authorities" (see paragraph 231 above) were not clearly defined, and gave the authorities wide discretion in amending the essential parameters of an assembly. Thus, the domestic law did not establish any criteria on the basis of which to assess whether the proposal for changing the location, time or other parameters of a public event was "well reasoned". Nor did it establish the criteria for assessing the suitability of the alternative locations proposed by the authorities.

368. The applicants further argued that Russian administrative and judicial practice interpreted the term "agreed upon" as "approved" or "authorised" by the competent authorities. The organisers had no right to hold a public event if its location and time had not been approved by the authorities. It followed that,

although the domestic law formally established a notification procedure for public events, the prohibition on holding an event without the approval of the authorities, and the imposition of liability for the failure to comply with that prohibition, effectively turned it into an authorisation procedure.

369. The applicants referred to the 2012 report by the Russian Ombudsman which stated that the procedure for the approval of public events did not establish clearly the powers and obligations of the parties involved, thereby creating possibilities for abuse of the position of power by the authorities. The applicants stressed the importance of negotiation and mediation to resolve disputes between the authorities and the organisers. Such negotiation and meditation procedures were however not provided by Russian law. In particular, Russian law did not provide for any mechanism to solve the disagreements between the authorities and the organisers as to the location, time and other parameters of a public event. As a rule, the authorities rejected any attempts at dialogue and turned down all objections or alternative proposals by the organisers, insisting that the public event should be held at the location and time and in the manner determined by the authorities. Thus, in some cases, the authorities had refused to approve an assembly even despite the organisers' active cooperation, such as agreeing to change the date or the location, in particular by proposing a number of alternative locations for their event (see paragraph 23, 57, 60, 62, 77, 79, 86, 95, 97, 112, 114 and 116 above). The organisers' refusal to accept the location proposed by the authorities resulted in a *de facto* prohibition of the event in question.

370. Relying on the OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly (see paragraph 317 above), the applicants further submitted that restrictions on the location, time or manner of conduct of an assembly should not be imposed simply to pre-empt possible disorder or interferences with the rights of others. They should not undermine the very purpose of the assembly, for example by imposing a location that did not correspond to the assembly's purposes. According to the applicants, any demonstration in a public place inevitably caused a certain level of disruption to ordinary life, including disruption of traffic, and it was important for the public authorities to show a certain degree of tolerance towards peaceful gatherings. It was precisely the aim of the notification procedure to inform the authorities about the intended public event in advance so that they could take measures to regulate the traffic and any other measures necessary to avert safety and security risks. In sum, when imposing restrictions on the location, time, or manner of conduct of a public event the authorities should strictly apply the test of necessity and proportionality.

371. The Russian authorities, including the courts, never applied the necessity and proportionality tests when imposing restrictions on the location, time or manner of conduct of public events. Firstly, they had systematically refused to recognise that the location, time or manner of conduct were essential elements of public assemblies. The applicants argued, in particular, that the locations chosen by them had been crucially important, either because of their proximity to the target of their protest (for example, a town administration or the police headquarters) or because of their central location, which would allow them to reach a wide audience. They further argued that the alternative locations proposed by the authorities were unsuitable, because they were located either far from the State institutions targeted by the protest or on some occasions even in remote or isolated areas far from the town centre (see paragraphs 77, 110, 130, 138, 160, 180, 187 and 197 above). Those locations lacked visibility and would not have therefore permitted the applicants to draw attention to their message. The applicants disagreed with the Government's position that any location proposed by the authorities, no matter how remote or desolate, was suitable to ensure an effective exercise of the right to freedom of assembly and therefore had to be accepted by the organisers. In the applicants' opinion, a location would be suitable only if it permitted the assembly to achieve its aims. The locations proposed by the authorities had not satisfied that requirement. In some cases (see paragraphs 14, 22, 56 and 58 above) the authorities had not proposed any alternative locations at all, in breach of the domestic law.

372. Secondly, the domestic authorities had not advanced relevant and sufficient reasons for their proposals to change the location, time or manner of conduct of the applicants' assemblies. The reasons cited by the authorities had been mostly hypothetical and had not been based on a reasonable assessment of facts. For example, reference to public order considerations had been unconvincing in cases of public events that had involved low numbers of expected participants and had not therefore presented any danger to public order (see, for example, paragraph 131 above). Similarly, the authorities had not explained why it had been impossible to hold two events simultaneously at the same location, taking into

account, for example, the number of participants, the size of the location, and the aims of the two events (see paragraphs 137, 139, 179, 186 and 196 above). In some cases the authorities' reference to circumstances allegedly preventing holding a public event at the location chosen by the applicants had turned out to be factually incorrect (see paragraphs 115, 153 and 202 above). In the applicants' opinion, this showed that the domestic authorities had sometimes resorted to pretexts to refuse approval, while the true aim of the restriction had been to hinder public expressions of criticism against the authorities. That aim could not be considered legitimate.

373. Thirdly, the facts of the present case showed that the authorities had not examined whether the legitimate aims of protecting public order and the rights of others could have been attained by other less restrictive means, in particular by employing the police to ensure public order, regulate traffic, prevent clashes, and so on.

374. The applicants concluded from the above that, by refusing to approve the locations chosen by the organisers, the authorities had failed to strike a fair balance between the rights of those wishing to exercise their freedom of assembly and the legitimate aim of protecting public order or the rights of others who could have been temporarily inconvenienced by the assembly.

375. The applicants further argued that under Russian law, if a public event was held at a location, time or in a manner not approved by the authorities that event could be dispersed by the police and its organisers and the participants brought to liability for an administrative offence of a breach of the established procedure for the conduct of public events. Under Russian law the recourse to forced dispersal was not limited to cases of violent assemblies or assemblies presenting danger to public order or public safety; the mere fact of unlawfulness of a public event was sufficient to legitimise its dispersal under the domestic law. The Court had however already found that the fact that the assembly was unlawful did not justify an infringement of freedom of assembly (see *Oya Ataman v. Turkey*, no. 74552/01, § 39, ECHR 2006-XIII). It was 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 was not to be deprived of its substance (see *Malofeyeva v. Russia*, no. 36673/04, § 136, 30 May 2013). In the applicants' opinion, the mere failure to comply with the restrictions on the location, time or manner of conduct of a public event imposed by the authorities did not justify its dispersal. Such dispersal could be justified only when it was applied as a measure of last resort where there was an imminent threat of violence and where other reasonable measures to facilitate and protect the assembly from harm (for example, by quieting violent individuals) had proved ineffective (they referred to §§ 165 and 166 of the OSCE/ODIHR Guidelines, cited in paragraph 317 above). A blanket use of dispersals for non-violent assemblies by the Russian authorities might not be considered "necessary in a democratic society".

376. Thus, the present case gave ample examples of situations where public events had been dispersed by force and some of the participants arrested despite the fact that they had been peaceful and no breaches of public order had been committed by the participants (see paragraphs 46, 115, 131, 141 and 210 above). The only reason for the dispersals had been the fact that the location, time or manner of conduct had not been approved by the authorities. The applicants considered that the dispersal of their public events had not been "necessary in a democratic society".

377. The applicants also referred to other defects of Russian legislation governing notification of public events. In particular, they submitted that the blanket statutory ban on holding public events at certain locations, such as in the immediate vicinity of court buildings or detention facilities, was incompatible with Article 11 because it prevented the domestic authorities, and ultimately the courts, from carrying out a proportionality exercise on a case-by-case basis. Blanket bans required stronger justification than individual restrictions. The Government however had not provided "relevant" and "sufficient" reasons for its blanket ban on holding events at certain locations. In particular, the applicants argued that it was sometimes essential to hold a public event near a court building, for example if its aim was to promote the independence of the judiciary (see, for example, *Kakabadze and Others v. Georgia*, no. 1484/07, 2 October 2012), or to criticise perceived dysfunctions in the judicial system (see, for example, *Sergey Kuznetsov v. Russia*, no. 10877/04, 23 October 2008). The Court had found that the judiciary, as with all other public institutions, could not be immune from criticism, however shocking and unacceptable

certain views or words might appear (see *Skalka v. Poland*, no. 43425/98, § 34, 27 May 2003). It was also significant in this connection that Russian law did not clearly establish on the basis of which criteria the perimeter of the zones in which public events were prohibited was to be determined. According to the Public Events Act the perimeter of such zones was to be determined by a decision of the regional or municipal executive authorities issued in accordance with the land and urban planning legislation on the basis of the land or urban planning register. However, the land and urban planning legislation did not give any definition of the term "in the immediate vicinity of". As a result, the determination of the perimeter of such zones was left to the complete discretion of the regional and municipal authorities. In practice, the perimeter of the zones was defined by the local authorities as a certain radius of, for example, 25, 50, 100 or 150 m.

378. The applicants also noted that the 2012 amendments to the Public Events Act gave regional legislatures powers to establish a list of places where holding of public events was prohibited, in addition to the list established by the Public Events Act. Many regions had adopted regional laws prohibiting holding of public events at such places as airports, railway and bus stations, seaports, markets and fairs, territories in the vicinity of medical or educational institutions, and religious or military buildings. In some regions, public events were prohibited in town centres where regional legislative, executive and judicial bodies were situated. These prohibitions applied only to public events within the meaning of the Public Events Act (see paragraph 218 above), and did not concern such mass gatherings as military parades, religious ceremonies, fairs, sports events or public celebrations. The applicants concluded that Russian law gave a very wide discretion in establishing blanket bans on holding public events at certain locations.

379. The applicants further submitted that there were no legal provisions establishing how a time-limit for lodging a notification was calculated in cases where the deadline fell at a weekend or on a public holiday. As a result, it was impossible to hold public assemblies during or immediately after the long winter holidays in January, which lasted at least one business week. Thus, some of the applicants (application no. 4618/11, see paragraphs 29 to 37 above) had been unable to hold a meeting and a march on 19 January 2010 because the time-limit for lodging a notification had fallen in its entirety on the New Year and Christmas holidays, which ran from 1 to 10 January. Nonetheless, the date of 19 January was very important to the applicants, because they had planned to hold a meeting and a march on the anniversary of the murder of two social activists, to commemorate their tragic deaths. The authorities had not explained to the applicants on which dates a notification had to be lodged in order to comply with the statutory time-limit and be approved by the authorities. The refusal to approve the meeting and the march had not pursued any legitimate aim. It had been justified by purely logistical reasons and had not been therefore "necessary in a democratic society". The applicants conceded that they had eventually been able to hold a "picket" on 19 January 2010 because the notification time-limit for a "picket" was shorter than that required for a meeting or a march. However, a "picket" was not an adequate substitute for a meeting and a march. A "picket" differed from a meeting or a march by its aims and scale, because it involved fewer participants, attracted fewer journalists, and in the end had less social impact.

380. Nor did Russian law allow spontaneous assemblies. One applicant (application no. 37038/13, see paragraphs 206 to 215 above) argued that he had participated in a spontaneous public protest against a draft law prohibiting adoption of Russian children by United States nationals. The date of the examination of the draft law by the State Duma had been announced two days before. Given the minimum three-day notification period, there was no time to submit a notification. Those people who wanted to protest against the adoption of that law had had no other choice but to hold solo "pickets", which did not require prior notification. Although the protesters had positioned themselves at a distance of more than fifty metres from each other, the authorities had regarded the solo "pickets" as a single public event, had stopped it, arrested the participants, and fined them for participating in a public event held without prior notification, in breach of Article 20.2 § 2 of the Code of Administrative Offences.

381. Furthermore, the applicants complained that there were no legal provisions establishing how the authorities' decision agreeing to a public event or proposing a change of its location, time or manner of conduct should be communicated to the organisers. Thus, in one case (application no. 51169/10, see paragraphs 13 to 20 above) the authorities had sent a decision approving a "picket" by post. The applicant concerned argued that owing to the frequent delays in delivery of correspondence by Russian

post, the authorities should have known that there was little chance that he would receive the letter before the planned date of the event and would have enough time to prepare for it. That letter had indeed arrived at the local post office only on the day of the "picket". Even if he had received it, it would no longer have been possible to hold the event. The applicant submitted that he had given the authorities his mobile telephone number and the mobile telephone numbers of two other organisers. Accordingly, the authorities had had all the necessary information enabling them to contact the organisers and inform them of the approval of the "picket". Instead of contacting them by telephone however, the authorities had preferred to send the decision by post, knowing that the letter would not reach them in time. Despite the formal approval of the "picket", the applicant had therefore been deprived of a practical and realistic opportunity to hold it.

382. Some of the applicants also submitted that they had been discriminated against in the exercise of their freedom of assembly on account of their sexual orientation or political views. In particular, some applicants (application no. 19700/11) argued that the wording of the judicial decisions in their case (see paragraph 72 above) had clearly demonstrated that the only reason for the authorities' refusals to approve the public events organised by them had been their sexual orientation. The discriminatory motivation of the authorities had been further confirmed by the fact that they had agreed to an anti-gay protest on the same day, 26 June 2010, and at the location which, when proposed by the applicants, had been rejected by the authorities as unsuitable.

383. Other applicants (applications nos. 47609/11, 59410/11, 16128/12, 16134/12, 20273/12, 51540/12 and 64243/12) submitted that the manner in which all their notifications had been dealt with in the period from 2009 to 2012, as compared with the manner of dealing with notifications submitted by pro-government organisations in the same period, had revealed a pattern of discrimination on grounds of political opinion. During the aforementioned period the authorities had refused to approve seventeen out of eighteen notifications of assemblies near the town administration lodged by the applicants, while pro-government organisations had been regularly allowed to assemble at that location, including for forty-five consecutive days in July and August 2011. The Government had not provided any evidence that pro-government organisations had received any proposals from the authorities for the location to be changed.

384. The applicants referred to several specific examples of discriminatory attitudes on the part of the authorities. Firstly, in the applicants' opinion the Town Administration's decision of 4 June 2009 (see paragraph 126 above) was based on discriminatory grounds. By denying them the right to hold an event entitled "Russia against Putin" on the ground that it might trigger a hostile reaction from Mr Putin's supporters, the authorities had treated them less favourably than the pro-government associations. Given that the authorities had not provided any convincing justification, the applicants argued that the authorities' real aim had been to prevent them from expressing their opposition views, which had amounted to discrimination on grounds of political views. Secondly, by allowing the pro-government Young Guard to lodge a single notification for a series of "pickets", while at the same time denying that opportunity to the applicants (see paragraphs 185 to 193 above), the domestic authorities had treated the pro-government organisation more favourably than the applicants, without any justification. Thirdly, the applicants had lodged their notifications for the meetings of 31 July and 31 August 2011 and 31 January 2012 at the earliest opportunity, immediately after the opening of the Town Administration (see paragraphs 178, 185 and 195 above). On all three occasions the applicants had not seen anyone enter the Town Administration building and submit a notification ahead of them. The Government had not disputed that the only way to submit a notification at 9 a.m. was to enter the Administration building before its opening hours without an entry pass. They had not disputed either that, unlike the applicants, members of pro-government organisations had been allowed to enter the Administration building without complying with the above entry formalities, and had therefore been able to lodge their notifications before anyone else. As a result of the less favourable treatment they received compared with pro-government organisations, the applicants' chances of having their notifications approved had been reduced. That difference in treatment had no objective or reasonable justification.

385. Lastly, as regards the enclosing of the location of the meeting of 31 March 2011 (see paragraphs 171 to 175 above), the limiting of the number of participants, and the institution of bodily searches, the applicants argued that the safety measures applied on that occasion had been much more severe than any security measures applied to public events organised at the same location by the public authorities or by

pro-government organisations during the following two months (in particular on 5 and 23 April and 31 May 2011). Those measures had severely affected the applicants' capacity to share and communicate their political views, while the pro-government organisations had fully enjoyed the opportunity to interact with the passers-by and disseminate their ideas without any hindrance caused by unnecessary security measures. The authorities had not provided any justification for that difference in treatment. There had been no evidence of any changes in the security situation. The authorities had never argued that the terrorist threat was higher on 31 March 2011 than on the days when the other public events had been held. The difference in treatment to which the applicants had been subjected had therefore amounted to discrimination on the grounds of political views.

386. In the applicants' opinion the above examples showed that they had been consistently treated differently on the basis of their political opinion and that that difference in treatment had not been based on an objective and reasonable justification.

387. In conclusion, the applicants stated that there was a systemic problem relating to freedom of assembly in Russia. The difficulties encountered by the applicants had not been isolated incidents; they originated in a widespread administrative practice resulting from malfunctions in the domestic legislation described above (compare *Broniowski v. Poland* [GC], no. 31443/96, § 189, ECHR 2004-V, and *Burdov v. Russia (no. 2)*, no. 33509/04, § 131, ECHR 2009). Indeed, the lack of clarity of the domestic law and the disproportionate and unnecessary restrictions provided by it, coupled with the absence of an effective remedy, had made possible its arbitrary and discriminatory application. As a result, restrictions on the time, location or manner of conduct were systematically imposed on peaceful assemblies if the message conveyed by them did not please the authorities. The large number of applications pending before the Court demonstrated the recurrent and persistent nature of the problem, which affected large numbers of people from all Russian regions (compare *Ananyev and Others*, cited above, §§ 185 and 195). The amendments introduced in 2012 had further aggravated the situation, in particular by providing that all public events were to be held at specially designated locations, and that other locations could be used in exceptional circumstances only.

2. The Government

388. The Government submitted that the notification procedure established by Russian law did not encroach upon the essence of the right under Article 11 of the Convention, because its purpose was to allow the authorities to take reasonable and appropriate measures to protect public order, to guarantee the smooth conduct of a public event, and to reconcile the right to freedom of assembly on the one hand, and, on the other hand, the rights and lawful interests (including the freedom of movement) of others (see, for example, *Bukta and Others v. Hungary*, no. 25691/04, § 35, ECHR 2007-III, and *Éva Molnár v. Hungary*, no. 10346/05, § 37, 7 October 2008). The requirement to notify the authorities about a public event and to obtain their agreement on its location and time did not therefore interfere with freedom of assembly.

389. The Government further submitted that Russian legal provisions governing public events met the "quality of law" requirement of Articles 10 § 2 and 11 § 2. In particular, the Public Events Act set up a clear time-limit for submitting a notification (see paragraph 226 above). Since the June 2012 amendments to the Act citizens could also hold public events in specially designated locations without submitting a notification (see paragraph 245 above). It was therefore possible for a public event to be held even in those cases where the notification time-limit could not for some reason be complied with.

390. Furthermore, domestic law established clear time-limits within which the authorities could submit proposals for changing the location or time of the public event, or for amending its purposes, type or other arrangements (see paragraph 228 above). If no such proposals were received by the organiser within the established time-limit, the public event was deemed to be approved by default.

391. Russian law did not indeed establish any procedure for notifying approval of a public event or a proposal to change its location, time or manner of conduct to its organisers. Any notification method, including delivery by post, was therefore lawful and acceptable. According to the applicable regulations,

all letters sent to an addressee within the same town were to be delivered within two days. By sending their decision by post, the authorities could therefore reasonably believe that the organisers would be notified in time. The applicants' argument that it would no longer be possible to hold a public event if the authorities' approval was received with a delay was unconvincing. According to the legal provisions then in force, the organisers were entitled to start campaigning for the public event from the moment the notification was lodged. They could therefore inform potential participants about the location, time and aims of the event before receiving the authorities' approval.

392. The Government further submitted that Russian law did not confer on the organisers any right to have the location and time of their public event approved by the authorities. The assessment of the risks of breaches of public order or rights of others and of security threats was within the discretionary powers of competent authorities. Referring to the decision of 2 April 2009 by the Constitutional Court (see paragraphs 255 to 259 above), they argued that the Public Events Act required the executive to give weighty reasons for their proposals to change the location or time of a public event. Such reasons might include the need to preserve the normal, uninterrupted functioning of vital public utility or transport services, to protect public order or the safety of citizens, or other similar reasons. It was impossible, however, to make an exhaustive list of permissible reasons, as this would have the effect of unjustifiably restricting the executive's discretion. The authorities also had to propose another location and time compatible with the public event's purposes and allowing the participants to bring their message to their target audience. The organisers, in their turn, were also required to make an effort to reach an agreement with the executive. If it proved impossible to reach an agreement, the organisers were entitled to defend their rights and interests in court. The courts had competence to assess whether the executive's decision was lawful and well reasoned, and whether the restriction on freedom of assembly was proportionate.

393. The Government submitted that in the present case each of the authorities' proposals to change the location, time or manner of conduct of a public event had been based on relevant and sufficient reasons. In particular, the authorities had referred to traffic constraints and risk of road accidents, construction works, other public events or celebrations at the locations chosen by the applicants, possible inconvenience to other people in the area, risk of breaches of public order, and others. The restrictions imposed on the applicants' freedom of assembly had therefore pursued the legitimate aims of protecting public order and the rights of others. The authorities had proposed alternative locations or time-slots to the applicants. Accordingly, the applicants had been afforded an opportunity to express their views in another venue chosen by the public authority. Despite the requirements of the national law, the organisers had not been cooperative and had refused, without any valid reason, to accept the authorities' proposals (see *Berladir and Others*, cited above, §§ 56 and 60). The applicants' arguments that the locations chosen by them were crucially important and the locations proposed by the authorities unsuitable had been unconvincing because the change of location could not as such restrict the freedom of assembly. The domestic courts had found the authorities' actions lawful and justified.

394. There was no reason to believe that any of the authorities' decisions had been motivated by discriminatory attitudes. In particular, as regards the allegations of discrimination on grounds of political opinion (applications nos. 47609/11, 59410/11, 16128/12, 16134/12, 20273/12, 51540/12 and 64243/12), the Government submitted that the location chosen by the applicants was very popular with all political parties and public associations. Given that simultaneous holding of several public events at the same location was prohibited, the authorities approved the public event which had been notified first. The authorities had always applied a chronological approach, and had never been guided by any discriminatory attitudes. It was however logical that bigger associations more often succeeded in organising public events. Most of the public associations adopted cooperative attitudes and accepted the authorities' proposals to change the locations of events. By contrast, the applicants almost never agreed to such proposals, under the pretext that the location near the Lenin monument was the only suitable location owing to its proximity to the Town Administration.

395. As regards the specific situations cited by the applicants, the Government argued that the security measures applied during the meeting of 31 March 2011 had been determined taking into account all relevant information about the current security situation available to the law enforcement authorities. The enclosing of the location and the bodily searches of the participants had been justified by the high risk of terrorist acts. Such measures were often taken during mass events. As regards the alleged difference in

treatment of the notifications of a series of "pickets", the Government submitted that the notification lodged by the applicants had concerned a series of separate "pickets", each of which required a separate notification submitted within the statutory time-limit. By contrast, the notification submitted by the Young Guard had concerned a single public event lasting many days. The fact that the Young Guard had been allowed to hold their series of "pickets" while the applicants' notification had been rejected did not disclose any evidence of discrimination on account of political views. Lastly, as regards the meeting of 31 January 2012, the applicants had lodged their notification at 9.25 a.m. on 16 January 2012, while Mr B. had lodged his notification at 9 a.m. the same day. The applicable procedures did not require the Town Administration to establish how the people wishing to lodge a notification had entered the Town Administration building. The reasons why one notification had been lodged before another had not been therefore taken into account by the Town Administration when deciding which of the public events to approve. There was therefore no evidence of discrimination on the grounds of political views.

396. The Government also submitted that since States had the right to require a notification for assemblies, they should be able to apply sanctions to those who participated in assemblies that did not comply with that requirement. The impossibility of imposing such sanctions would render illusory the power of the State to require notification (see *Ziliberberg v. Moldova* (dec.), no. 61821/00, 4 May 2004). Thus, the Court had found that the dispersal of a demonstration on the ground that the notification requirement had not been complied with and the arrest, prosecution and conviction of its organisers and participants was compatible with Articles 10 and 11 (see *Éva Molnár*, cited above; *Rai and Evans v. the United Kingdom* (dec.), nos. 26258/07 and 26255/07, 17 November 2009; and *Berladir and Others*, cited above). The Government concluded from the above that it was justified to disperse an unlawful public event. The applicants in the present case had acted unlawfully by holding public events without the authorities' approval. Dispersals of their public events had therefore been lawful and justified. The penalties imposed on them in the administrative offence proceedings had not been severe and had been therefore proportionate to the legitimate aims of protecting public order and the rights of others.

397. The Government argued that the only situation where the dispersal of an assembly because of the absence of the requisite prior notice had been found to amount to a disproportionate restriction on freedom of peaceful assembly concerned a spontaneous demonstration when an immediate response to a current event was warranted (see *Bukta and Others*, cited above, § 36). They disputed that the event held by the applicant of application no. 37038/13 could be qualified as genuinely spontaneous. They conceded that the date of the examination of the draft law had indeed been announced two days before, making it impossible to submit a notification within the statutory time-limit. They however stressed that on that date the State Duma had examined the draft law at second reading, while three readings were necessary for a law to be adopted. There had been sufficient time to organise a public event in accordance with the procedure prescribed by law before the third and final reading of the draft law by the State Duma. The facts of the present case had not therefore disclosed special circumstances such as would warrant an immediate demonstration as the only adequate response. The applicant had been therefore lawfully fined for participating in a public event held without prior notification. The amount of the fine had been reasonable.

398. The Government further submitted that the Public Events Act set up a list of locations where holding of public events was prohibited (see paragraph 223 above). That prohibition was justified by the special legal regime of those locations and the need to ensure their security. In particular, referring to the decision of 29 May 2007 by the Constitutional Court (see paragraph 253 above), the Government argued that the aim of the prohibition on holding public events in the vicinity of court buildings was to protect the independence of the judiciary and to prevent pressure on judges. The restriction was therefore justified, and did not breach citizens' constitutional rights. The acknowledged importance of freedom of expression did not require the automatic creation of rights of entry to private property, or even necessarily to all publicly owned property, provided that interested parties had an alternative opportunity to exercise their freedom of expression in a meaningful manner (see *Appleby and Others v. the United Kingdom*, no. 44306/98, §§ 47 and 48, ECHR 2003-VI).

399. The Government argued that the Public Events Act clearly indicated the authorities which had competence to determine the perimeter of the zones in which holding of public events was prohibited and the legal provisions and documents on the basis of which such a perimeter was to be determined (see

paragraph 225 above). The Constitutional Court had held in its decision of 17 July 2007 (see paragraph 254 above) that such decisions had to be objectively justified by the aim of ensuring the normal functioning of public utility services situated on the territories concerned. An arbitrary determination of the perimeter of the zones in which holding of public events was prohibited was therefore excluded.

400. Lastly, the Government drew the Court's attention to the amendments to the Public Events Act introduced on 8 June 2012, which had imposed an obligation on the regional authorities to designate suitable locations where public events could be held without prior notification (see paragraph 245 above). Those amendments had further reinforced the citizens' freedom of assembly.

B. The Court's assessment

1. Admissibility

401. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) Applicability of Article 11 of the Convention

402. The Court reiterates that the right to freedom of assembly covers 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. The guarantees of Article 11 therefore apply to all gatherings except those where the organisers and participants have violent intentions, incite violence or otherwise reject the foundations of a democratic society (see *Kudrevicius and Others*, cited above, §§ 91 and 92).

403. It has not been disputed that Article 11 of the Convention is applicable to the facts of the present case. Indeed, all the public events at issue in the present case were intended to be, and actually were, peaceful. None of them were intended to incite violence or rejected the foundations of a democratic society.

(b) Existence of an interference

404. The Court reiterates that 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 v. Russia*, no. 21613/07, § 84, 3 October 2013; *Primov and Others*, cited above, § 93; and *Nemtsov v. Russia*, no. 1774/11, § 73, 31 July 2014). 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 as well. 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).

405. The right to freedom of assembly includes the right to choose the time, place and manner of conduct of the assembly, within the limits established in paragraph 2 of Article 11 (see *Sáska v. Hungary*, no. 58050/08, § 21, 27 November 2012). The Court stresses in this connection that the organisers' autonomy in determining the assembly's location, time and manner of conduct, such as, for example, whether it is static or moving or whether its message is expressed by way of speeches, slogans, banners or by other

ways, are important aspects of freedom of assembly. Thus, the purpose of an assembly is often linked to a certain location and/or time, to allow it to take place within sight and sound of its target object and at a time when the message may have the strongest impact (see *Süleyman Çelebi and Others v. Turkey*, nos. 37273/10 and 17 others, § 109, 24 May 2016; see also, for the same approach, § 40 of the Report of the UN Special Rapporteur on the right to freedom of peaceful assembly and freedom of association of 21 May 2012, cited in paragraph 313 above; point 4.2 of the Compilation of Venice Commission Opinions Concerning Freedom of Assembly of 1 July 2014, cited in paragraph 315 above; and point 3.5 and § 101 of the 2010 Guidelines on Freedom of Peaceful Assembly by the ODIHR in consultation with the Venice Commission, cited in paragraph 317 above). Accordingly, in cases where the time and place of the assembly are crucial to the participants, an order to change the time or the place may constitute an interference with their freedom of assembly, as does a prohibition on speeches, slogans or banners (see *Stankov and the United Macedonian Organisation Ilinden*, cited above, §§ 79-80 and 108-09; *The United Macedonian Organisation Ilinden and Ivanov v. Bulgaria*, no. 44079/98, § 103, 20 October 2005; and *Disk and Kesk v. Turkey*, no. 38676/08, § 31, 27 November 2012).

406. The Court has already found in a case against Russia that the refusal to approve the location or time of an assembly amounted to an interference with the right to freedom of assembly. It has noted that although Russian law did not require an authorisation for public gatherings, a public event could not occur lawfully if the event organiser had not accepted a public authority's proposal for another venue and/or timing for the event. If the organiser still proceeded with the event as initially planned, it could be dispersed and its participants arrested and convicted of administrative offences (see *Berladir and Others*, cited above, §§ 47-51).

407. In the present case the competent authorities refused to approve the location, time or manner of conduct of public events planned by the applicants, and proposed alternative locations, times or manner of conduct. The applicants, considering that the authorities' proposals did not answer the purpose of their assembly, either cancelled the event altogether or decided to hold it as initially planned despite the risk of dispersal, arrest and prosecution. Some of them were indeed arrested and convicted of administrative offences, following the dispersal of their assembly. In one case the applicant was arrested and fined for participating in a public event which had not been notified to the authorities. He claimed that there was no longer time to submit a notification within the time-limit established by law because of the last-minute announcement of the date of the parliamentary examination of the draft law against which he wished to protest.

408. The Court concludes that there has been an interference with the applicants' right to freedom of peaceful assembly.

409. Such an interference will constitute a breach of Article 11 unless it is "prescribed by law", pursues one or more legitimate aims under paragraph 2, and is "necessary in a democratic society" for the achievement of the aim or aims in question (see *Kudrevicius and Others*, cited above, § 102).

(c) Justification for the interference

(i) General principles

410. The Court reiterates that the expressions "prescribed by law" and "in accordance with the law" in Articles 8 to 11 of the Convention not only require that the impugned measure should have some basis in domestic law, but also refer to the quality of the law in question. The law should be accessible to those concerned and formulated with sufficient precision to enable them – 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 *Hasan and Chaush*, cited above, § 84, and *Maestri v. Italy* [GC], no. 39748/98, § 30, ECHR 2004-I, with further references). Also, the law must be sufficiently clear in its terms to give individuals an adequate indication as to the circumstances in which and the conditions on which public authorities are entitled to interfere with the rights guaranteed by the Convention (see *Liu v. Russia*, no. 42086/05, § 56, 6 December 2007; *Gülmez v. Turkey*, no. 16330/02, § 49, 20 May 2008; *Vlasov v.*

Russia, no. 78146/01, § 125, 12 June 2008; and, *mutatis mutandis*, *Bykov v. Russia* [GC], no. 4378/02, § 76, 10 March 2009).

411. For domestic law to meet these 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 *Hasan and Chaush*, loc. cit., and *Maestri*, loc. cit., with further references).

412. The general principles concerning the necessity of an interference with freedom of assembly have recently been summarised in the case of *Kudrevicius and Others* (cited above) as follows:

"() 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).

(b) 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; *Balçik 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. Turkey*, 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).

() 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; *Balçik 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 (see paragraph 97 above; see also, mutatis mutandis, *Drieman and Others*, decision cited above).

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).

() 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 to the present case

413. It has not been disputed by the parties that the refusal to approve the location, time or manner of conduct of the public events planned by the applicants, the dispersal of public events, the arrest of the organisers and participants and their prosecution for administrative offences had a basis in the domestic law, namely the Public Events Act and the Administrative Offences Code.

414. The applicants, however, complain that these provisions confer unduly wide discretion on the authorities in terms of proposing changes of location, time or manner of conduct of public events, and applying security measures during public events, dispersing public events in the event of the organisers' refusal to comply with the authorities' proposals, and arresting the organisers and participants of such events. They also complain of the general ban on holding public events at certain locations, of the alleged inflexibility of the statutory time-limit for notification of a public event, of the lack of a clear procedure for informing the organisers of the authorities' decision approving a public event, or refusing such approval and proposing a change of the location, time or manner of conduct. The Court will examine each of the above aspects in turn.

415. As a preliminary remark, the Court notes that it has already criticised the very similar legal framework existing in Azerbaijan as lacking foreseeability and precision and, as a result, allowing public assemblies to be arbitrarily banned or dispersed (see *Gafgaz Mammadov v. Azerbaijan*, no. 60259/11, § 55, 15 October 2015).

() The authorities' proposals to change the location, time or manner of conduct of the applicants' public events

416. All the applicants complained that the domestic law conferred an unduly wide discretion on the executive authorities to propose a change of the location, time or manner of conduct of public events which was not restricted by the requirements of proportionality or necessity in a democratic society or by effective judicial control.

417. The Court notes at the outset that the judgment of the national authorities in any particular case that there are valid reasons against holding a public assembly at a specific location is one which the Court is not well equipped to challenge (see *Berladir and Others*, cited above, § 59). It would have difficulties assessing locations in terms of their size, security, traffic density, closeness to the target audience, and so on. Indeed, a multitude of local factors are implicated in managing the locations, time, and manner of conduct of public assemblies. Hence, by contrast to content-based restrictions on freedom of assembly which should be subjected to the most serious scrutiny by this Court (see *Primov and Others*, cited above, § 135), in the sphere of restrictions on the location, time or manner of conduct of an assembly the Contracting States must be allowed a wider margin of appreciation. That margin of appreciation, although wide, is not unlimited and goes hand in hand with European supervision by the Court, whose task is to give a final ruling on whether the imposed restrictions were compatible with Article 10 or 11.

418. The Court reiterates that where a wide margin of appreciation is afforded to the national authorities, the procedural safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation. In particular, the Court must examine whether the decision-making process leading to measures of interference was fair and such as to afford due respect to the interests safeguarded to the individual by the Convention (see *Chapman v. the United Kingdom* [GC], no. 27238/95, § 92, ECHR 2001-I; see also *Buckley v. the United Kingdom*, 25 September 1996, §§ 74-76, *Reports of Judgments and Decisions* 1996-IV; and *Liu v. Russia (no. 2)*, no. 29157/09, §§ 85 and 86, 26 July 2011).

419. The Public Events Act empowers the competent regional or municipal authorities to make "well-reasoned" proposals to the organisers for changes in the location, time or manner of conduct of a public event (see paragraph 228 above). However, the relevant law does not provide for any substantive criteria on the basis of which to determine whether the executive authorities' proposals are "well reasoned". In its common meaning "well reasoned" means no more than giving "valid" or "sound" reasons. There is no requirement that the proposal be considered "necessary in a democratic society", and therefore no requirement of any assessment of the proportionality of the measure.

420. It is true that the Constitutional Court has held that the authorities must give "weighty" reasons for such proposals and identified certain general principles by which they are to be guided when using this power. On the other hand, the Constitutional Court has also stressed that the executive's discretion in the matter may not be unjustifiably restricted (see paragraphs 256 and 257 above). In the Court's view, the safeguards provided by the Constitutional Court have not been demonstrated to constitute a real curb on the wide powers afforded to the executive so as to offer the individual adequate protection against arbitrary interference.

421. The present case demonstrates that the authorities refer to a wide variety of reasons to justify their proposals for a change to the location, time or manner of conduct of a public event. The reasons most frequently cited in the present case were: other public events scheduled at the same location and time (for more details see paragraph 422 below); risk of various disruptions to ordinary life, such as interference with vehicle or pedestrian traffic, with the normal functioning of public authorities or public utility services, with maintenance works in the vicinity, or more generally with the everyday life of residents, such as, for example, obstruction of access to parks or shops (for more details see paragraph 423 below); safety or national security considerations, such as for example a risk of terrorist attacks (for more details see paragraph 424 below); or negative attitudes of others to the views expressed at the public event and the consequent risk of violence (for more details see paragraphs 425 below). Although these reasons were undoubtedly relevant, the authorities did not have to show that they were sufficient to justify a restriction of the freedom of assembly, that is to say that such a restriction was necessary in a democratic society and, in particular, proportionate to any legitimate aim pursued.

422. An analysis of the present case reveals, for example, that a mere reference to the fact that another public event had earlier been notified to take place at the location chosen by the organisers was considered by the authorities to be a valid reason for a proposal to change the location (see paragraphs 14, 22, 56, 58, 63, 76, 85, 87, 129, 135, 137, 149, 151, 179, 186, 196, and 205 above). The authorities did not examine whether, in view of the size of the venue and the expected number of participants, it might be feasible to hold the two events simultaneously. Nor did they ascertain whether there was a risk of clashes between the two events and, where such a risk existed, whether it could be managed by taking appropriate security measures. The Court considers that the refusal to approve the venue of a public assembly solely on the basis that it is due to take place at the same time and at the same location as another public event and in the absence of a clear and objective indication that both events cannot be managed in an appropriate manner through the exercise of policing powers, is a disproportionate interference with the freedom of assembly (see, in the same vein, § 30 of the Report of the UN Special Rapporteur on the right to freedom of peaceful assembly and freedom of association of 21 May 2012, cited in paragraph 313 above; point 2.3 of the Compilation of Venice Commission Opinions Concerning Freedom of Assembly of 1 July 2014, cited in paragraph 315 above; and point 4.3 and § 122 of the 2010 Guidelines on Freedom of Peaceful Assembly by the ODIHR in consultation with the Venice Commission, cited in paragraph 317 above).

423. Further, in a large number of cases the reasons advanced by the domestic authorities for their refusals to approve the location, time or manner of conduct of a public event related to different types of disruptions of ordinary life, such as, for example, interference with, or hindrance to, traffic (see paragraphs 40, 41, 56, 58, 76, 78, 85, 98, 135, 159 above), utility services (see paragraph 41 above), commercial activities (see paragraphs 41 and 80 above), everyday life of citizens (see paragraphs 8 and 58 above), and maintenance works (see paragraphs 56, 78, 87, 109, 111, 113 above). The Court reiterates in this connection that any assembly in a public place is likely to cause a certain level of disruption to ordinary life, and that this in itself does not justify an interference with the right to freedom of assembly, as it is important for the public authorities to show a certain degree of tolerance (see *Kudrevicius and Others*, §§ 155-57, cited in paragraph 412 above). In none of the present cases did the authorities argue that the organisers intentionally structured their public event 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. Nor is there any evidence that the authorities considered ways of minimising disruption to ordinary life, for example by organising a temporary diversion of traffic on alternative routes or by taking other similar measures, and at the same time accommodating the organisers' legitimate interest in assembling within sight and sound of their target audience.

424. Proposals to change the location, time or manner of conduct of an assembly were also quite often motivated by a reference to safety or national security considerations, such as a risk of terrorist attacks (see paragraphs 8, 94, 96, 98 above). It is significant that in their decisions the executive authorities did not rely on any evidence corroborating the existence of such risks or assess whether they were serious enough to justify a restriction of the freedom of assembly. Moreover, the present case shows that a reference to safety and national security risks was sometimes used selectively to restrict anti-government public assemblies, while during the same period of time pro-government assemblies and public festivities were allowed to proceed unhindered, the alleged terrorist risk notwithstanding (see paragraphs 105 and 171 to 175 above; see also, for the same reasoning, *Makhmudov v. Russia*, no. 35082/04, §§ 69-73, 26 July 2007).

425. As regards the reference to negative attitudes of others to the views expressed at the assembly and the consequent risk of violence also advanced by the Russian authorities on one occasion (see paragraph 126 above), the Court reiterates that the mere existence of a risk of clashes between the demonstrators and their opponents is insufficient as a justification for banning the event. If every possibility of tension and heated exchange between opposing groups during a demonstration were to warrant its prohibition, society would be faced with being deprived of the opportunity of hearing differing views on any question which offends the sensitivity of the majority opinion. Participants in peaceful assemblies must be able to hold demonstrations without having to fear that they will be subjected to physical violence by their opponents. It is thus the duty of Contracting States to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully (*Plattform "Ärzte für das Leben" v. Austria*, 21 June 1988, §§ 32 and 34, Series A no. 139; *Barankevich v. Russia*, no. 10519/03, §§ 31 and 32, 26 July 2007; and

Fáber v. Hungary, no. 40721/08, §§ 38-40, 24 July 2012). The Court therefore considers that a reference to negative attitudes of others towards the views expressed at a public assembly cannot serve as a justification either for a refusal to approve such an assembly or for a decision to banish it from the city centre to the outskirts. There is no indication that an evaluation of the resources necessary for neutralising the threat of clashes was part of the domestic authorities' decision-making process. Instead of considering measures which could have allowed the applicants' public event to proceed without disturbance, the authorities chose to relocate it out of the town centre to a remote and deserted location (see paragraphs 126 to 130 above).

426. Further, the Court observes that the Public Events Act does not require that the location or time proposed by the authorities as an alternative to the location chosen by the organisers should be such that the message which they seek to convey is still capable of being communicated. Although the Constitutional Court held that the authorities should propose a location and time compatible with the assembly's purposes (see paragraph 257 above), an analysis of the present case reveals that the Constitutional Court's instructions were not complied with in practice. Indeed, on many occasions the authorities proposed locations outside the city centre, far from any government officers and with limited passage of people, that is not within sight and sound of the target audiences (see, for example, paragraphs 77, 86, 110, 130, 138, 160, 180, 187 and 197 above). The Court considers that the practice whereby the authorities allow an assembly to take place, but only at a location which is not within sight and sound of its target audience and where its impact will be muted, is incompatible with the requirements of Article 11 of the Convention (see, in the same vein, § 40 of the Report of the UN Special Rapporteur on the right to freedom of peaceful assembly and freedom of association of 21 May 2012, cited in paragraph 313 above; point 4.2 of the Compilation of Venice Commission Opinions Concerning Freedom of Assembly of 1 July 2014, cited in paragraph 315 above; and point 3.5 and §§ 45 and 101 of the 2010 Guidelines on Freedom of Peaceful Assembly by the ODIHR in consultation with the Venice Commission, cited in paragraph 317 above).

427. In view of the foregoing, the Court finds that in practice the competent authorities empowered to propose changes of location, time or manner of conduct of public events did not attach sufficient importance to freedom of assembly. The balance appears to be set in favour of protection of other interests, such as rights and freedoms of non-participants or avoidance of even minor disturbances to everyday life.

428. The Court takes note of the Government's argument that the exercise of the executive's powers to propose a change of the location, time or manner of conduct of a public event is subject to judicial review (see paragraph 392 above). It has however already found that at the material time the Russian legal system did not permit to obtain judicial review of the authorities' refusal to approve the location, time or manner of conduct of a public event before its planned date (see paragraphs 347 to 354 above). Moreover, the scope of judicial review was limited to examining the lawfulness of the proposal to change the location, time or manner of conduct of a public event, and did not include any assessment of its "necessity" and "proportionality" (see paragraphs 356 to 358 above). Indeed, the breadth of the executive's discretion is such that it is likely to be difficult if not impossible to prove that any proposal to change the location, time or manner of conduct of a public event is unlawful or not "well-reasoned" (see, for similar reasoning *Gillan and Quinton v. the United Kingdom*, no. 4158/05, §§ 80 and 86, ECHR 2010 (extracts)).

429. In the Court's view, there is a clear risk of arbitrariness in the grant of such broad and uncircumscribed discretion to the executive authorities. There is a risk that such a widely framed power could be misused against organisers of, and participants in, public assemblies in breach of Article 10 and/or 11 of the Convention (see, for similar reasoning, *Gillan and Quinton*, cited above, § 85). Indeed, the present case shows that the above powers are often used in an arbitrary and discriminatory way. It provides ample examples of situations where opposition groups, human rights defenders or gay rights activists were not allowed to assemble at a central location and were required to go to the outskirts of town on the ground that they might hinder traffic, interfere with the everyday life of citizens, or present a security risk, and were dispersed and arrested if they refused to comply, while pro-government public events were allowed to take place at the same location, traffic, everyday-life disturbances and security risks notwithstanding. The most telling example is the case of gay rights activists who proposed ten

different locations in the town centre, all of which were rejected by the town authorities on various grounds, while an anti-gay public event was approved to take place at one of those same locations on the same day (see paragraphs 53 to 64 above). Another conspicuous example is the case of the supporters of the opposition "Strategy-31" movement who, between June 2009 and August 2012, lodged at least eighteen notifications of public events in the centre of Rostov-on-Don, only one of which was approved by the town authorities, while government supporters did not have any apparent difficulty in having their public events at the same locations approved by the town authorities (see paragraphs 121 to 205 above).

430. To sum up, the Court is mindful that in cases arising from individual applications its task is not normally to review the relevant law and practice *in abstracto*, but to examine the manner in which that legislation was applied to the applicant in the particular circumstances (see, among many others, *Sahin v. Germany* [GC], no. 30943/96, § 87, ECHR 2003-VIII, and *Roman Zakharov v. Russia* [GC], no. 47143/06, § 164, ECHR 2015). The facts of the present case demonstrate the lack of adequate and effective legal safeguards against arbitrary and discriminatory exercise of the wide discretion left to the executive. Accordingly, the domestic legal provisions governing the power to propose a change of location, time or manner of conduct of public events do not meet the Convention "quality of law" requirements described in paragraphs 410 and 411 above.

(b) Prohibition of holding public events at certain locations

431. The applicants in one case (no. 19700/11) in addition complained that they had not been allowed to hold a public event at a location chosen by them because of a blanket statutory ban on holding public events in the vicinity of court buildings.

432. The Court observes that Russian law prohibits holding public events at certain locations, such as, among others, in the immediate vicinity of court buildings, detention facilities, the residences of the President of the Russian Federation, dangerous production facilities, railway lines and oil, gas or petroleum pipelines (see paragraph 223 above). Since 2012 the regional legislatures may designate other locations where public events are prohibited if a public event there can interfere with the normal functioning of public utility services, transport, social or communications services, or hinder the passage of pedestrians or vehicles or the access of citizens to residential buildings, transport or social facilities (see paragraphs 247 above). The Public Events Act does not define the term "in the immediate vicinity"; what is considered to be "in the immediate vicinity" is determined for each location by the local executive authorities.

433. The Court notes at the outset that the relevant comparative material demonstrates that only a minority of European countries establish statutory restrictions on holding public assemblies at certain locations which are normally publicly accessible, and none provides for a general ban on public assemblies near court buildings (see paragraphs 321 and 322 above). The UN Special Rapporteur on the right to freedom of peaceful assembly and freedom of association, the OSCE and the Venice Commission all recommend that blanket bans on assemblies in specific locations, such as in the vicinity of government institutions or courts, be avoided, since they tend to be over-inclusive and disproportionate, because no consideration can be given to the specific circumstances of each case (see § 39 of the Report of the UN Special Rapporteur on the right to freedom of peaceful assembly and freedom of association of 21 May 2012, cited in paragraph 313 above; point 4.2 of the Compilation of Venice Commission Opinions Concerning Freedom of Assembly of 1 July 2014, cited in paragraph 315 above; and §§ 43 and 102 of the 2010 Guidelines on Freedom of Peaceful Assembly by the ODIHR in consultation with the Venice Commission, cited in paragraph 317 above).

434. The Court reiterates that a State can, consistently with the Convention, adopt general measures which apply to pre-defined situations regardless of the individual facts of each case, even if this might result in individual hard cases (see *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 106, ECHR 2013 (extracts)). However, a general ban on demonstrations can only be justified if there is a real danger of their resulting in disorder which cannot be prevented by other less stringent measures. In this connection, the authority must take into account the effect of a ban on demonstrations which do not by themselves constitute a danger to public order. Only if the disadvantage of such

demonstrations being caught by the ban is clearly outweighed by the security considerations justifying the issue of the ban, and if there is no possibility of avoiding such undesirable side effects of the ban by a narrow circumscription of its scope in terms of territorial application and duration, can the ban be regarded as being necessary within the meaning of Article 11 § 2 of the Convention (see *Christians against Racism and Fascism v. the United Kingdom*, no. 8440/78, Commission decision of 16 July 1980).

435. According to the Government, the purpose of the ban on holding public events in the vicinity of the buildings and facilities mentioned in the Public Events Act is to ensure the security of these sensitive locations (see paragraph 398 above). The same purpose has been advanced by the Constitutional Court (see paragraph 254 above). The Court accepts that this purpose is relevant and in particular that the restriction in question pursues the aims of ensuring public safety and preventing disorder within the meaning of the second paragraph of Article 11.

436. Turning now to the proportionality of the general ban, the Court notes that there is no evidence that it has been the subject of an exacting parliamentary and judicial review. Neither the Government, nor the Constitutional Court in its ruling of 17 July 2007 (see paragraph 254 above), explained what security considerations justified it, except by vaguely referring to the "special legal regime" of the locations mentioned in the Public Events Act. Nor did the Constitutional Court explain why a general ban was a more feasible means of achieving the legitimate aim than a provision allowing case-by-case examination and targeting only those assemblies which presented a danger of disorder; or why the general ban could not be relaxed without a risk of abuse, significant uncertainty, discrimination or arbitrariness (compare *Animal Defenders International*, cited above, §§ 108 and 114-16). The Court is therefore not persuaded that the Government provided a convincing justification for the general ban in question.

437. Further, by contrast to the *Christians against Racism and Fascism* case (cited above), which concerned the prohibition for two months of all public processions in London, the restriction at issue in the present case is not limited in time, and applies to the entire territory of Russia and to all types of public events. Moreover, wide discretion is afforded to the local executive authorities in determining what is considered to be "in the immediate vicinity" of the locations specified in the Public Events Act. The general ban at issue is therefore not specifically circumscribed to address a precise risk to public safety or a precise risk of disorder with the minimum impairment of the right of assembly (compare *Animal Defenders International*, cited above, § 117).

438. Accordingly, the Court considers the Government have not convincingly shown that the general ban on holding public events at certain locations is proportionate to the legitimate aim of ensuring public safety and preventing disorder.

439. Relying on the Constitutional Court's ruling of 29 May 2007, the Government submitted, alternatively, that the prohibition on assemblies in the immediate vicinity of court buildings in addition pursued the aim of protecting the independence of the judiciary and of preventing pressure on judges (see paragraph 253, and 398 above). The Court reiterates that exceptions to freedoms of association and assembly must be narrowly interpreted, such that the enumeration of them is strictly exhaustive and the definition of them necessarily restrictive (see *Sidiropoulos and Others v. Greece*, 10 July 1998, § 39, *Reports* 1998-IV, and *Svyato-Mykhaylivska Parafiya v. Ukraine*, no. 77703/01, § 132, 14 June 2007). It notes that, unlike the second paragraph of Article 10, paragraph 2 of Article 11 does not allow restrictions whose aim is maintaining the authority and impartiality of the judiciary. The Court has already found, in the context of public assemblies in front of court buildings, that the judiciary cannot be immune from criticism, and that very strong reasons are required for justifying restrictions on assemblies the purpose of which is to criticise alleged dysfunctions of the judicial system (see *Sergey Kuznetsov*, cited above, § 47, and *Kakabadze and Others*, cited above, § 88).

440. That being said, the Court accepts that a ban on holding public events in the immediate vicinity of court buildings may serve a legitimate interest, namely that of protecting the judicial process in a specific case from outside influence, and thereby protecting the rights of others, namely the parties to judicial proceedings. The ban should however be tailored narrowly to achieve that interest. In Russia the prohibition on holding public events in the vicinity of court buildings is formulated in absolute terms. It is not limited to public assemblies held with the intention of obstructing or impeding the administration

of justice. It prohibits all assemblies, including those unrelated to any judicial proceedings. For example, the applicants were not allowed to hold a Gay Pride event in the town centre, on the ground that the location they chose was in the vicinity of the Constitutional Court building (see paragraph 56 above). It is significant that the event at issue was unrelated to any case being examined by the Constitutional Court; its purpose was to mark the anniversary of the start of the gay rights movement back in the 1960s and to condemn homophobia and discrimination against homosexuals.

441. Taking into account the absolute nature of the ban, coupled with the local executive authorities' wide discretion in determining what is considered to be "in the immediate vicinity" of court buildings (see paragraph 437 above), the Court concludes that the general ban on holding public events in the vicinity of court buildings is so broadly drawn that it cannot be accepted as compatible with Article 11 § 2.

442. In view of the above, the Court considers that the Government have not adduced relevant and sufficient reasons to justify this general ban on holding public events at certain locations. The refusal (in application no. 19700/11) to approve the applicants' public event by sole reference to this ban, without any consideration to the specific circumstances of the case, could not therefore be regarded as being necessary within the meaning of Article 11 § 2 of the Convention.

() Operation of the time-limit for notification of public events

443. The Court will now turn to some applicants' complaints about the operation of the time-limit for notification of public events (applications nos. 4618/11 and 37038/13). Under Russian law the organisers have to notify the competent authorities no earlier than fifteen days and no later than ten days before the intended public event (no later than three days in case of a "picket"); they have no right to hold a public event if the notification was lodged outside these time-limits (see paragraphs 226 and 231 above). The above-mentioned applicants argued that the inflexibility of this time-limit deprived them of the possibility of holding a public event at a date chosen by them.

444. The Court reiterates in this connection that the timing of public meetings held in order to voice certain opinions may be crucial for the political and social weight of such meetings. If a public assembly is organised after a given social issue loses its relevance or importance in a current social or political debate, the impact of the meeting may be seriously diminished. Freedom of assembly – if prevented from being exercised at a propitious time – can well be rendered meaningless (see *Baczkowski and Others*, cited above, § 82).

445. It further reiterates 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 assemblies. States have a wide margin of appreciation in establishing the modalities of the operation of the notification procedure, including notification time-limits, provided this is formulated with sufficient precision and does not represent a hidden obstacle to freedom of peaceful assembly as protected by the Convention (see *Kudrevicius and Others*, §§ 147 and 48, cited in paragraph 412 above).

446. The Court has already found in the case of *Primov and Others* that the legal provisions governing the time-limit for notifying a public event were not formulated with sufficient precision. In particular, it did not clarify whether the obligation to notify the authorities no earlier than fifteen days and no later than ten days before the public event meant that within that time-slot the notification was to be *sent* by the organisers or *received* by the administration. This ambiguity could be misleading for the organisers and result in the notification being rejected as lodged out of time (see *Primov and Others*, cited above, §§ 124 and 125).

447. Further, it emerges from the comparative law materials that there are varied approaches among the member States to time-limits for lodging a notification. It is however significant that only a small minority of European countries establish a time-limit before which a notification is considered premature and that in a majority of the States the time-limit after which a notification can no longer be lodged is two or three days before the assembly (see paragraph 320 above). The characteristic features of the Russian

notification system are that it provides for a very short time-slot during which it is possible to lodge a notification, and that the time-limit after which a notification can no longer be lodged is considerably further removed from the date of the assembly than in a majority of other States. The Court will examine the two characteristic features, and in particular how they were applied in the present case, in turn.

– Situations where the entire notification time-limit fell on a public holiday (application no. 4618/11)

448. As regards the first characteristic, the Court notes that the time-slot during which it is possible to lodge a notification is six days: no earlier than fifteen days and no later than ten days before the intended public event, except for "pickets", which may be notified three days before the planned date. The Constitutional Court found that that provision was incompatible with the Russian Constitution in so far as it prevented a public event from being held in those cases where the entire time-limit for notification fell on a public holiday (see paragraphs 270 to 275 above). Indeed, the inflexible application of this provision makes it impossible to hold a public event other than a "picket" during a number of days after the New Year and Christmas holidays in January each year.

449. It is true that it is usually possible to organise a "picket" during that period. However, the Court notes that a "picket" is a static public event employing only visual means of expression, such as banners or placards. Participants are prohibited from using sound amplifying equipment, which makes it impossible to make speeches. The only reason to justify why during several days in January each year the only type of public event available to organisers should be a static and silent one appears to be the operation of the statutory time-limit for lodging notifications. The Court reiterates that while rules governing public assemblies, such as the system of prior notification, are essential for the smooth conduct of public events, their enforcement cannot become an end in itself (see *Primov and Others*, cited above, § 118). It considers, in particular, that exceptions should be available where, in the circumstances of the case, a rigid application of notification time-limits can lead to an unnecessary interference with freedom of assembly.

450. The present case provides a telling illustration of an automatic and inflexible application of the notification time-limit. As a result of the particularity of the legal framework described above, the applicants were unable to hold a march and a meeting to commemorate the anniversary of the murders of a well-known human rights lawyer and a journalist on 19 January (see paragraphs 30 to 37 above). The Court accepts that the date of the event was crucial for its participants. Although the applicants were able to hold a "picket" on that day, they had to content themselves with a static event instead of a march, and could not express themselves through public speeches. The authorities did not adduce relevant and sufficient reasons for the restrictions imposed on their freedom of assembly (see *Stankov and the United Macedonian Organisation Ilinden*, cited above, §§ 108 and 109).

– Spontaneous assemblies (application no. 37038/13)

451. Turning now to the second particularity of the Russian notification system, the Court notes the 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 is a "picket", which may be notified three days before the planned date.

452. The Court notes that the Public Events Act makes no allowance for special circumstances, where an immediate response to a current event is warranted in the form of a spontaneous assembly (see *Kudrevicius and Others*, §§ 152 and 153, cited in paragraph 412 above). Indeed, in such cases the delay caused by compliance with the ten-day notification time-limit may render that response obsolete. The possibility of holding a "picket" does not always constitute an adequate substitute solution. Firstly, as the Court has already found, a "picket" is a particular type of assembly, allowing for limited methods of expression only. Secondly, it must be notified three days before, which in some cases requiring an immediate reaction may be too long a delay.

453. Thus, the applicant in case no. 37038/13 wanted to protest against a draft law prohibiting the adoption of Russian children by US citizens. The date of the parliamentary examination of the draft law

was announced two days before, making it impossible for the protesters to comply even with the shorter three-day notification time-limit for "pickets", let alone with the normal ten-day time-limit for other types of public event (see paragraphs 206 to 215 above). The failure to inform the public sufficiently in advance of the date of the parliamentary examination of the draft law therefore left the protesters with the option of either foregoing their right to peaceful assembly altogether, or of exercising it in defiance of the administrative requirements.

454. The Court further notes that when convicting the applicant of participating in a public event held without prior notification, the domestic courts limited their assessment to establishing that the applicant had taken part in a "picket" 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.

455. In these circumstances, in the absence of a proper judicial review of these issues by the domestic authorities, the Court cannot speculate as to whether or not the facts of the instant case disclosed such special circumstances to which the only adequate response was an immediate assembly. The Government's argument that an immediate response was not warranted in the circumstances of the case (see paragraph 397 above) was not mentioned in any form in the domestic decisions and was cited for the first time in the proceedings before this Court.

– Conclusion in respect of the application of the notification time-limit

456. To sum up, the Government did not give any reasons why it should have been "necessary in a democratic society" to establish inflexible time-limits for notification of public events and not to make any exceptions to their application to take account of situations where it is impossible to comply with the time-limit, for example because of public holidays, in cases of justified spontaneous assemblies or in other cases (see, as an example, *Primov and Others*, cited above, §§ 121-28). In the light of the foregoing, the Court considers that the automatic and inflexible application of the notification time-limits in applications nos. 4618/11 and 37038/13 without any regard to the specific circumstances of each case amounted to an interference which was not justified under Article 11 § 2 of the Convention.

() Procedure for informing the organisers about the authorities' decision in response to a notification of a public event

457. The Court will further examine the complaint raised by one of the applicants (application no. 51169/10) that he had been prevented from holding a public event because of the delay in communicating the authorities' decision approving it. It notes in this connection that Russian law does not establish any procedure for informing the organisers of the authorities' decision approving a public event or refusing such approval and proposing a change of the location, time or manner of conduct. As held by the Russian courts, the authorities have wide discretion to choose the means of communication with the organisers (see paragraph 18 above). It is not the Court's task to indicate the preferred ways of communicating with the organisers; the domestic authorities, which have the advantage of possessing direct knowledge of the situation, are better placed to assess the situation in the light of practical circumstances, such as the reliability or otherwise of the local postal service, the location of the parties, and the availability of technical equipment. However, given the very tight time-frame of the notification procedure, the Court considers that whatever the chosen method of communication, it should ensure that the organisers are informed of the authorities' decision reasonably far in advance of the planned event, in such a way as to guarantee the right to freedom of assembly which is practical and effective, not theoretical or illusory. Indeed, if the organisers are not informed in timely fashion of the authorities' approval or the proposal to change the location, time or manner of conduct of the planned event, the organisers may have insufficient time to announce to the participants the approved time and location of the event, and may even have to abandon it (see, as an example of such a situation, *Primov and Others*, cited above, § 146).

458. Turning to the circumstances of the present case, the Court notes that the applicant was prevented from holding a public event because he had not received in time the authorities' decision approving one of the time-slots among those proposed by him (see paragraphs 15 to 20 above). The authorities chose to send the decision by post – which the Government themselves described as notoriously overburdened and prone to delivery delays (see paragraph 337 above) – three days before the planned event, thereby failing in their obligation to keep the organiser informed of the progress of his notification in timely fashion and in such a way as to guarantee the right to freedom of assembly which was practical and effective, not theoretical or illusory.

() Dispersals of public events and arrests of the participants

459. Some applicants further complained about the dispersal of their events, and three applicants also complained about their arrests for participating in an unlawful public event (applications nos. 19700/11, 31040/11, 47609/11, 55306/11, 59410/11, 7189/12, 51540/12, and 37038/13).

460. The Court notes in this connection that the representative of the competent regional or municipal authorities present at the public event is empowered to order termination of that event if, among others, the organisers or participants have committed unlawful acts or have breached the procedure for the conduct of public events – for example by not submitting a notification or by failing to comply with the elements indicated in the notification or agreed upon after a proposal from the authorities to change its location, time or manner of conduct. If the event is not terminated as ordered, it may be dispersed by the police (see paragraphs 238 and 239 above). The police also have wide powers to escort to the police station or administratively arrest any person suspected of an administrative offence, including the offence of breaching the established procedure for the conduct of public events (see paragraphs 308 to 310 above).

461. It is significant that any breach of the procedure for the conduct of public events 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. Similarly, the participants may be escorted to the police station or administratively arrested in connection with an administrative offence of breaching the established procedure for the conduct of public events, which is widely formulated and covers any breach of procedure, even a minor one (see paragraphs 298 and 302 above). In particular, Russian law permits dispersal of a public event and arrest of the participants for the sole reason that no notification has been lodged or that the event is taking place at a location or time that has not been approved by the authorities, regardless of the existence of any disorder or of any real nuisance to the rights of others. The facts of the present case, as well as of other cases examined previously, show that the authorities display zero tolerance towards unlawful assemblies, even if they are peaceful, involve few participants and create only minimal or no disruption of ordinary life (see paragraphs 46, 91, 101, 115, 141, 142 and 210 above, see also *Malofeyeva*, cited above, §§ 137 and 140; *Kasparov and Others*, cited above, § 95; *Navalnyy and Yashin v. Russia*, no. 76204/11, § 65, 4 December 2014; and *Novikova and Others v. Russia*, nos. 25501/07, 57569/11, 80153/12, 5790/13 and 35015/13, §§ 136, 171,175 and 179-83, 26 April 2016). In all the above cases the domestic authorities made no attempt to verify the extent of the risks posed by the protestors, or to verify whether it had been necessary to disperse them. Nor was there any noticeable assessment of whether the applicants' escort to the police station or administrative arrest had been necessary in the circumstances, as required by the Constitutional Court in its judgments of 16 June 2009 and 17 January 2012 (see paragraphs 311 and 312 above). Moreover, the dispersal and arrest of participants occurred within a very short time after the beginning of the assembly, showing the authorities' impatience to end the unlawful public event before the protesters had had sufficient time to express their position of protest and to draw the attention of the public to their concerns (see, for similar reasoning, *Oya Ataman*, cited above, § 41, and *Samüt Karabulut v. Turkey*, no. 16999/04, § 37, 27 January 2009; see also, by contrast, *Éva Molnár*, cited above, §§ 42 and 43, and *Nosov and Others v. Russia*, nos. 9117/04 and 10441/04, §§ 58-60, 20 February 2014).

462. The Court takes note of the Government's argument that since States had the right to require notification of assemblies they should be able to sanction those who participated in assemblies that did not comply with the requirement by dispersing or arresting them and by convicting them of

administrative offences. It reiterates in this connection that enforcement of rules governing public assemblies, although important, cannot become an end in itself. 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 *Kudrevicius and Others*, §§ 150 and 151, cited in paragraph 412 above). The Court considers that the authorities could have attained their goals by allowing the applicants to complete their protest and perhaps imposing a reasonable fine on the spot or later on (see *Novikova and Others*, cited above, § 175; see also *Taranenko v. Russia*, no. 19554/05, §§ 75 and 95, 15 May 2014 on the chilling effect that a disproportionately severe sanction may have on the sanctioned person and other persons taking part in protest actions).

463. In view of the above considerations, the Court finds that by ending the applicants' protests and taking some of them to the police station, the authorities failed to show the requisite degree of tolerance, in breach of the requirements of Article 11 § 2 of the Convention (as set out in the case of *Kudrevicius and Others*, §§ 150 and 151, cited in paragraph 412 above).

() Security measures taken by the police during public events

464. Lastly, three applicants (application no. 20273/12) also complained about unusually strict security measures taken during a meeting organised by them and which had allegedly impeded their ability to communicate their message to the public.

465. The Court reiterates that the domestic authorities have a positive obligation to take appropriate measures with regard to lawful demonstrations in order to ensure their peaceful conduct and the safety of all citizens. They have a wide margin of appreciation in the choice of the means to be used (see *Kudrevicius and Others*, §§ 158-60, cited in paragraph 412 above). That being said, the Court has already found that unusually long security checks of participants that had resulted in delaying a rally amounted to an unjustified interference with the applicants' freedom of assembly (see *Singartiyski and Others*, cited above, § 42). Thus, applying security measures in the course of a public assembly is, on one hand, a part of the authorities' positive obligations to ensure the peaceful conduct of the assembly and the safety of all citizens, but, on the other hand, it also constitutes a restriction on the exercise of the right to freedom of assembly (see *Frumkin v. Russia*, no. 74568/12, § 102, 5 January 2016).

466. Among the security measures available to the authorities policing public assemblies in Russia are searches of participants and their belongings at the entry to the public event (see paragraph 236 above), which logically leads to cordoning or fencing off the location to prevent the entry of those who have not yet been searched or who refuse to be searched. This provision is formulated in general terms and gives no indication of the circumstances in which the police may use the power conferred on them. In particular, there is no requirement that the security measures in question be considered "necessary in a democratic society", and therefore no requirement for any assessment of the proportionality of the measure. In the Court's view, there is a risk of arbitrariness in the grant of such a broad discretion to the police (see, for similar reasoning, *Singartiyski and Others*, cited above, § 45; and, *mutatis mutandis*, *Gillan and Quinton*, cited above, §§ 80 and 85).

467. The facts of the present case illustrate how the police powers are used in practice. The police fenced off the location of an approved public event with metal barriers, parked buses along the barriers, diverted all passers-by to alternative roads, searched all the participants before letting them enter the fenced-off location, and closed the entry as soon as the number of participants reached the number indicated in the notification, that is fifty people (see paragraph 174 above). The Court agrees with the applicants that the combination of the above measures resulted in creating a shielded enclosure where a small group of people were allowed to express their protest surrounded by the police and hidden from public view. The participants' ability to communicate the message which they sought to convey was thereby seriously undermined and the impact of the assembly was significantly muted.

468. The Court observes that the only justification cited by the domestic authorities for the invasive security measures described above was a vague reference to possible terrorist or extremist acts. No

evidence corroborating the reality and seriousness of the security risk referred to by the authorities or the necessity of reinforced security measures at the material time was produced or examined in the domestic judicial proceedings.

469. Examining the circumstances of the present case as a whole, the Court perceives strong and concordant indications militating against the authorities' allegation that public security considerations were the true reason for the security measures in question. If the authorities had indeed had sufficiently serious and credible information about a security risk, that information would have required reinforced security measures during all public events held at the time. However, as submitted by the applicant and not contradicted by the Government, no security measures were taken by the police during other public events held at the same period of time, including at an official public event held at the same location only five days after the applicants' meeting (see paragraphs 175 and 385 above). These elements – the lack of evidence capable of substantiating the reality and seriousness of the alleged security risk, viewed in the light of the fact that security measures had been adopted solely during the applicants' opposition meeting, whereas no such measures had been taken during the official public events – lead the Court to the conclusion that, in adopting the exceptionally drastic security measures during the applicants' meeting, the domestic authorities acted in an arbitrary and discriminatory manner (see, for similar reasoning, *Makhmudov*, cited above, §§ 69-73).

470. Lastly, as regards the police's decision to stop admitting new participants to the applicants' meeting, the Court observes that the Public Events Act permits the authorities to stop admission only if the maximum capacity of the venue is exceeded (see paragraph 235 above). That ground was not however relied on in the domestic proceedings or in the proceedings before the Court. As claimed by the applicants, and not contested by the Government, the venue in question was able to accommodate up to 800 people. It is clear from the photographs submitted by the applicants that the venue was far from crowded and there was enough space to accommodate more participants. Indeed, the only ground relied on to stop admission of new participants was the fact that the number of participants mentioned in the notification had been reached. Neither the Government nor the domestic courts relied on any legal provision allowing the authorities to stop admitting participants to a public event on that ground. The court is therefore not convinced that that measure was in accordance with the law.

() Conclusion

471. The Court finds that in each application the authorities did not give relevant and sufficient reasons for their proposals to change the location, time or manner of conduct of the applicants' public events. These proposals were based on legal provisions which did not provide for adequate and effective legal safeguards against arbitrary and discriminatory exercise of the wide discretion left to the executive and which did not therefore meet the Convention "quality of law" requirements.

472. The Court finds, in addition, that the refusal to approve the public event in application no. 19700/11 by reference to the general ban on holding public events in the vicinity of court buildings could not be regarded as being "necessary in a democratic society" because the general ban lacked convincing justification and was so broadly drawn that it could not be accepted as compatible with Article 11 § 2.

473. Also, the automatic and inflexible application of the time-limits for notification of public events in applications nos. 4618/11 and 37038/13 – without taking into account that it was impossible to comply with the time-limit because of public holidays or spontaneous nature of the event respectively – was not justified under Article 11 § 2.

474. Further, in application no. 51169/10 the authorities failed in their obligation to ensure that the official decision taken in response to a notification reached the applicants reasonably in advance of the planned event, in such a way as to guarantee the right to freedom of assembly which was practical and effective, not theoretical or illusory.

475. By dispersing the applicants' public events and by arresting three of them in applications nos. 19700/11, 31040/11, 47609/11, 55306/11, 59410/11, 7189/12, 51540/12 and 37038/13, the authorities

failed to show the requisite degree of tolerance towards peaceful, albeit unlawful, assemblies, in breach of the requirements of Article 11 § 2.

476. Lastly, in adopting the exceptionally drastic security measures during the public event in application no. 20273/12, the domestic authorities acted in an arbitrary and discriminatory manner.

477. 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". There has therefore been a violation of Article 11 of the Convention interpreted in the light of Article 10 of the Convention in each application.

478. Having regard to this finding, and in the light of the reasoning that has led to this conclusion (see, in particular, paragraphs 424, 429, 430 and 469 above), the Court considers that it is not necessary to examine separately the applicants' complaint under Article 14 of the Convention taken in conjunction with Articles 10 and 11.

IV. Alleged violations of Article 5 § 1 of the Convention

479. Three of the applicants complained that their arrest had been arbitrary and unlawful. They relied on Article 5 § 1, 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. Admissibility

480. The Court notes that this complaint, raised by two applicants in applications nos. 47609/11 and 51540/12 and by the applicant in application no. 37038/13, is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

(a) Applications no. 47609/11 Yelizarov v. Russia and no. 51540/12 Batyy v. Russia

481. Two applicants (Mr Yelizarov and Mr Batyy) submitted that the domestic authorities had never explained why it had been impossible to draw up a report on the administrative offence on the spot without escorting them to the police station. They had not been violent. No violent or otherwise dangerous incidents had occurred during the public event, which was entirely peaceful. They were therefore escorted to the police station in breach of the requirements of Article 27.2 of the Code of Administrative Offences (see paragraph 309 above).

482. Nor had the authorities demonstrated the existence of any exceptional circumstances justifying the applicants' administrative arrest under Article 27.3 of the Code of Administrative Offences (see paragraph 310 above). In particular, they had not shown that the arrest had been necessary for the prompt and proper examination of the case or to secure the enforcement of any penalty to be imposed, as required by that Article, or proportionate to the purposes provided by the Constitution and the Convention, as required by the Constitutional Court in its judgment of 16 June 2009 (see paragraph 311 above). There had been nothing "exceptional" in the applicants' situation to justify their administrative arrest and overnight detention at the police station. They had been charged with a non-violent offence, and there had been no risk of absconding or interfering with the proceedings. The authorities had not explained why their situation was different from that of other participants in the same event who had not been arrested. The fact that the applicants were eventually sentenced to relatively small fines showed that their detention pending trial was manifestly disproportionate to the gravity of the imputed offence.

483. The Government submitted that Mr Yelizarov's and Mr Batyy's arrest had been lawful. They had breached the established procedure for the conduct of public events and had disobeyed a lawful order by the police. They had been escorted to the police station and arrested for the purpose of stopping the above administrative offences in accordance with Articles 27.1, 27.2 and 27.3 of the Code of Administrative Offences (see paragraphs 308 to 310 above). In particular, they had been charged with an administrative offence punishable by up to fifteen days' administrative detention and could therefore be lawfully arrested pending the administrative offence proceedings for up to forty-eight hours.

(b) Application no. 37038/13 Tarasov v. Russia

484. The applicant submitted that his detention had not been recorded. The police had not made an administrative arrest report. Nor had they mentioned in the report of the administrative offence that he had been escorted to the police station. His arrest had therefore been unlawful. Moreover, given that he had not committed any offence, his arrest had not had any legitimate purpose under Article 5 § 1.

485. The Government submitted that the applicant had been escorted to the police station and then administratively arrested for the legitimate purpose of drawing up a report on the administrative offence. While Russian law did not establish a maximum length of time for escort to a police station, administrative arrest was limited to three hours. That requirement had been respected in the applicant's case, as his administrative arrest had not exceeded three hours: from 10.30 a.m. to 1.20 p.m. All procedural requirements prescribed by law had therefore been respected.

2. The Court's assessment

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

one is arbitrarily deprived of his liberty (see *Giulia Manzoni v. Italy*, 1 July 1997, § 25, *Reports* 1997-IV).

487. It has not been disputed that Mr Yelizarov and Mr Batyy were deprived of their liberty within the meaning of Article 5 § 1 of the Convention from 6.45 p.m. on 31 October to 10.20 a.m. on 1 November 2010 (see paragraph 142 above). As regards Mr Tarasov, the time he was initially put into the police van is disputed by the parties. It is however clear from the documents in the case file that he was deprived of his liberty at least from 10 a.m. until 1.20 p.m. on 19 December 2012 (see paragraphs 210 to 212 above).

488. The Court observes that Mr Tarasov was first escorted to the police station in accordance with Article 27.2 of the Code of Administrative Offences (see paragraph 309 above) and then, once at the police station, administratively arrested in accordance with Article 27.3 of the Code of Administrative Offences (see paragraph 310 above). There is no evidence in the case file that the escorting procedure under Article 27.2 was applied to Mr Yelizarov or Mr Batyy. It follows from the available documents that they were administratively arrested in accordance with Article 27.3.

489. As regards the escorting procedure, the police report stated that Mr Tarasov had been escorted to the police station for the purpose of drawing up an administrative offence report. Article 27.2 of the Code of Administrative Offences provides that a suspected offender could be escorted to a police station for the purpose of drawing up an administrative offence report only if such a report could not be drawn up at the place where the offence had been discovered. The Government have not argued that in the applicant's case this was impossible, and no obstacles to drawing up the report on the spot may be discerned from the documents in the case file (see, for similar reasoning, *Navalnyy and Yashin*, cited above, §§ 68 and 93).

490. As regards Mr Tarasov's, Mr Yelizarov's and Mr Batyy's administrative arrest, 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 administrative case and to secure the enforcement of any penalty to be imposed". In the absence of any explicit reasons given by the authorities for arresting the applicants, the Court considers that their administrative arrest was unlawful (see, for similar reasoning, *Frumkin*, cited above, § 150).

491. For these reasons the Court is not satisfied that the escorting of Mr Tarasov to the police station and Mr Tarasov's, Mr Yelizarov's and Mr Batyy's administrative arrest complied with Russian law so as to be "lawful" within the meaning of Article 5 § 1.

492. It follows that there has been a violation of Article 5 § 1 in respect of Mr Yelizarov, Mr Batyy and Mr Tarasov.

A. Application no. 31040/11 Ponomarev and Others v. Russia

493. The applicants complained that the quashing of the judgment of 23 September 2010 by way of supervisory review had violated their "right to court" and that the supervisory-review judgment of 12 November 2010 had not been pronounced publicly. They relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

1. Admissibility

494. The Court has on several occasions already found that Article 6 was applicable under its civil head to domestic proceedings concerning the rights to freedom of assembly or association (see, for example, *APEH Üldözötteinek Szövetsége and Others v. Hungary*, no. 32367/96, §§ 34-36, ECHR 2000-X;

Kuznetsov and Others v. Russia, no. 184/02, §§ 79-85, 11 January 2007; and *Sakellaropoulos v. Greece* (dec.), no. 38110/08, 6 January 2011). It does not see any reason to depart from that finding in the present case.

495. The Court further notes that the applicants' complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) Submissions by the parties

496. The applicants submitted that the quashing of the judgment in their favour by way of a supervisory-review procedure had violated their "right to court" guaranteed by Article 6 § 1 of the Convention. There had been no fundamental defect in the proceedings. The fact that the Presidium disagreed with the assessment made by the lower courts had not been, in itself, an exceptional circumstance warranting the quashing of a binding and enforceable judgment and reopening of the proceedings.

497. The applicants further submitted that the reasoned judgment of 12 November 2010 had not been pronounced publicly. At the end of the hearing only the operative part had been read out by the bailiffs. The reasoned judgment had not been read out publicly and had been sent to the applicants by post. It had not been published on the Moscow City Court's official website or made publicly available in any other form.

498. The Government conceded that, in accordance with the Court's established case-law, the quashing of a binding and enforceable judgment by way of supervisory-review proceedings could constitute a violation of an applicant's "right to court" guaranteed by Article 6 § 1 of the Convention. However, the Court had found that in certain cases the quashing of a binding and enforceable judicial decision could be justified for correction of fundamental defects and when made necessary by circumstances of a substantial and compelling character (see *Protsenko v. Russia*, no. 13151/04, §§ 25-34, 31 July 2008, and *Tishkevich v. Russia*, no. 2202/05, §§ 25 and 26, 4 December 2008). In the present case, the quashing of the judgment of 23 September 2010 had been justified for correction of a clear misbalance between private and public interests.

499. As regards the public pronouncement of 12 November 2010, the Government submitted that the applicants had been notified of the date of the hearing and had attended. The judgment had been pronounced publicly in the courtroom. There was no information about the applicants' presence in the courtroom at that moment.

(b) The Court's assessment

500. The Court reiterates that for the sake of legal certainty, a principle which is enshrined in Article 6, final judgments should in principle be left intact. The principle of legal certainty insists that no party is entitled to seek reopening of proceedings merely for the purpose of a rehearing and a fresh decision in the case. Higher courts' power to quash or alter binding and enforceable judicial decisions should be exercised for correction of fundamental defects. The mere possibility of two views on the subject is not a ground for re-examination. Departures from that principle are justified only when made necessary by circumstances of a substantial and compelling character (see *Ryabykh v. Russia*, no. 52854/99, §§ 51 and 52, ECHR 2003-IX, and *Kot v. Russia*, no. 20887/03, §§ 23 and 24, 18 January 2007).

501. The Court further reiterates that it has frequently found violations of the principle of legal certainty and of the right to a court in supervisory-review proceedings, both before 2003, as governed by the 1964 Code of Civil Procedure, and from 2003 to 2008, as governed by the 2002 Code of Civil Procedure (see, among many other authorities, *Ryabykh*, cited above, §§ 51–56; *Volkova v. Russia*, no. 48758/99, §§ 34-36, 5 April 2005; *Roseltrans v. Russia*, no. 60974/00, §§ 27 and 28, 21 July 2005; *Kot*, cited above, §§

21-30; *Bodrov v. Russia*, no. 17472/04, §§ 29-32, 12 February 2009; and *Lenchenkov and Others v. Russia*, nos. 16076/06, 42096/06, 44466/06 and 25182/07, §§ 20-24, 21 October 2010).

502. As regards the supervisory-review procedure under the Code of Civil Procedure in force from 2008 to 2012, the Court has found that, despite certain amendments introduced in 2008, there remained many of the defects identified in the previous versions of that supervisory-review procedure (see *Martynets v. Russia* (dec.), no. 29612/09, 5 November 2009). The Court has however recently held that, despite these defects, the possibility cannot be excluded that the operation of the amended supervisory-review procedure in practice could, under certain circumstances, be consonant with the requirements of Article 6 of the Convention. The Court considered that the issue to be addressed by it was not whether the amended 2008 supervisory-review procedure was compatible as such with the Convention, but whether the procedure, as applied in the circumstances of particular cases, resulted in a violation of the requirement of legal certainty (see *Trapeznikov and Others v. Russia*, nos. 5623/09, 12460/09, 33656/09 and 20758/10, §§ 34 and 35, 5 April 2016).

503. Turning to the circumstances of the present case (see paragraphs 49 to 51 above) the Court notes that the supervisory-review application was lodged by a party to the proceedings and initiated within the statutory time-limit and after they had availed themselves of an appeal before a second-instance court. The Court, however, is not persuaded that these elements are of crucial importance for its analysis (see, among many others, *Kot*, cited above, §§ 12-13 and 28).

504. The Court further notes that the judgment of 23 September 2010 in the applicants' favour was set aside on the ground that the City Court had incorrectly established the facts of the case. The Court reiterates that the incorrect application of domestic law or establishment of the facts do not on their own constitute a fundamental defect within the meaning of its case-law, and do not justify a departure from the principle of legal certainty (see, amongst many other authorities, *Luchkina v. Russia*, no. 3548/04, § 19, 10 April 2008).

505. Having regard to these considerations, the Court finds that, by granting the Moscow Government's request to set aside the judgment of 23 September 2010, the Presidium of the Moscow City Court infringed the principle of legal certainty and the applicants' "right to court" under Article 6 § 1 of the Convention. There has accordingly been a violation of that Article.

506. In view of that finding, it is not necessary to examine separately the applicants' complaint that the supervisory-review judgment was not pronounced publicly.

B. Application no. 37038/13 Tarasov v. Russia

507. The applicant complained that he had been convicted by courts which were not "established by law". He relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

"In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

508. The applicant complained that the charges against him, which he argued to be criminal within the meaning of Article 6, had been examined by a justice of the peace instead of by a district court as provided by the domestic law (see paragraph 307 above). His case had not therefore been examined by a tribunal established by law. The applicant conceded that he had not raised this issue before the first-instance court or on appeal. He argued however that the domestic courts, which were not bound by the parties' arguments, should have examined the jurisdiction issue of their own motion.

509. The Government submitted, firstly, that the applicant had not raised the jurisdiction issue before the first-instance or appeal courts. He had not therefore exhausted domestic remedies. Secondly, the Government submitted that Article 6 was not applicable to the contested proceedings, because the applicant had been charged with an administrative rather than a criminal offence.

510. The Court notes that the applicant did not raise the issue of the justice of the peace's lack of jurisdiction to examine his case, either before the justice of the peace herself or on appeal. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

VI. Other alleged violations of the Convention

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

VII. Application of Article 41 of the Convention

512. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

513. All applicants except one (Mr Lashmankin) claimed each between 5,000 and 60,000 euros (EUR) in respect of non-pecuniary damage. One applicant (Mr Tarasov) also claimed 20,000 Russian roubles (RUB, about EUR 450) in respect of pecuniary damage, representing the fine he had paid.

514. The Government submitted that the claims for non-pecuniary damage were excessive. As regards the claim for pecuniary damage, they submitted that the fine had been lawfully imposed on Mr Tarasov for an administrative offence.

515. The Court considers that there is a direct causal link between the violation of Article 11 found and the fine Mr Tarasov had paid following his conviction for the administrative offence (see, for similar reasoning, *Novikova and Others*, cited above, § 232). The Court therefore awards Mr Tarasov EUR 450 in respect of pecuniary damage, plus any tax that may be chargeable.

516. The Court observes that it has found violations of Articles 11 and 13 in respect of all the applicants. It has also found violations of Article 5 in respect of Mr Yelisarov, Mr Batyy and Mr Tarasov. Lastly, it has found a violation of Article 6 in respect of Mr Ponomarev, Mr Ikhlov and Mr Udaltsov. Having regard to the nature of the violations found in respect of each applicant and to the principle *ne ultra petitum*, the Court awards the following amounts in respect of non-pecuniary damage, plus any tax that may be chargeable:

Mr Nepomnyashiy: EUR 7,500;

Mr Ponomarev: EUR 7,500;

Mr Ikhlov: EUR 7,500;

Mr Udaltsov: EUR 7,500;

Ms Yefremenkova: EUR 5,000;

Mr Milkov: EUR 7,500;

Mr Gavrikov: EUR 7,500;

Mr Sheremetyev: EUR 7,500;

Mr Kosinov: EUR 7,500;

Mr Labudin: EUR 7,500;

Mr Khayrullin: EUR 7,500;

Mr Grigoryev: EUR 7,500;

Mr Gorbunov: EUR 7,500;

Mr Zhidenkov: EUR 5,000;

Mr Zuyev: EUR 5,000;

Ms Maryasina: EUR 5,000;

Mr Feldman: EUR 5,000;

Mr Yelizarov: EUR 10,000;

Mr Nagibin: EUR 7,500;

Ms Moshiyan: EUR 7,500;

Mr Batyy: EUR 10,000;

Mr Tarasov: EUR 10,000.

B. Costs and expenses

517. Mr Ponomorev, Mr Ikhlov and Mr Udaltsov claimed EUR 4,000 for their representation by Mr Shukhardin before the domestic courts and the Court. They asked for the award to be paid directly to Mr Shukhardin's bank account. The Government submitted that the claims were unsubstantiated, because no legal fee agreement or payment receipts were presented by the applicants to confirm that the costs had really been incurred.

518. Relying on a legal fee agreement and the lawyer's time-sheets, Mr Gavrikov claimed EUR 7,930 for representation by Mr Bartenev. The Government submitted that the amount claimed was excessive.

519. Relying on bills and invoices, Mr Nagibin, Ms Moshiyan, Mr Batyy and Mr Yelizarov claimed RUB 73,535 for translation fees, 1,313.84 pounds sterling for proofreading fees, and RUB 2,776 for postal expenses. The Government submitted that the claims were excessive. Moreover, the translation and proofreading invoices were addressed to the applicants' representative's law firm rather than to the applicants themselves.

520. Relying on legal fee agreements and invoices, Mr Tarasov claimed EUR 315 for legal representation in the domestic proceedings, EUR 8,500 for legal representation before the Court, and EUR 32 for postal expenses. The applicant asked that his legal fees for representation before the Court be paid directly into the bank account of his representative Mr Terekhov. The Government submitted that the amounts

claimed were excessive, that the claim for legal fees incurred in the domestic proceedings was unrelated to the present case, and that the postal bills did not mention the addressee.

521. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. As regards the Government's argument that Mr Ponomorev, Mr Ikhlov, and Mr Udaltsov had not produced a legal fee agreement between them and their representative Mr Shukhardin, the Court has already found in a similar situation that, given that Russian legislation provides that a contract on consulting services may be concluded in an oral form (Article 153 read in conjunction with Article 779 of the Civil Code of the Russian Federation), and irrespective of the fact that the applicant had not yet paid the legal fees, they were real from the standpoint of the Convention (see *Fadeyeva v. Russia*, no. 55723/00, § 147, ECHR 2005-IV). The Court does not see any reason to depart from this finding in the present case.

522. Regard being had to the above criteria and the documents in its possession, the Court considers it reasonable to award the following amounts:

– Mr Ponomorev, Mr Ikhlov and Mr Udaltsov: EUR 3,800, to be payable to the bank account of their representative Mr Shukhardin;

– Mr Gavrikov: EUR 7,500, plus any taxes that may be chargeable to the applicant;

– Mr Nagibin, Ms Moshiyan, Mr Batyy and Mr Yelizarov: EUR 3,000, plus any taxes that may be chargeable to the applicants;

– Mr Tarasov: EUR 300, plus any taxes that may be chargeable to the applicant; and EUR 8,500 payable to the bank account of his representative Mr Terekhov.

C. Default interest

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

For these reasons, the Court, unanimously,

1. *Decides* to join the applications;

2. *Declares* the complaints about the alleged breach of the applicants' rights to freedom of expression and freedom of assembly, the lack of an effective remedy in that respect and the alleged discrimination on account of political opinion or sexual orientation, the alleged unlawfulness of Mr Yelisarov's, Mr Batyy's and Mr Tarasov's arrest and the quashing of the judgment in Mr Ponomarev's, Me Ikhlov's and Mr Udaltsov's favour by way of supervisory review admissible and the remainder of the applications inadmissible;

3. *Holds* that there has been a violation of Article 13 of the Convention in respect of each applicant;

4. *Holds* that there has been a violation of Article 11 of the Convention in respect of each applicant;

5. *Holds* that there is no need to examine the complaint under Article 14 of the Convention taken in conjunction with Articles 10 and 11 of the Convention;

6. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of Mr Yelisarov, Mr Batyy and Mr Tarasov;

7. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the quashing of the judgment in Mr Ponomarev's, Mr Ikhlov's and Mr Udaltsov's favour by way of supervisory review;

8. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 450 (four hundred and fifty euros), plus any tax that may be chargeable, to Mr Tarasov in respect of pecuniary damage;

(ii) the following amounts, plus any tax that may be chargeable, in respect of non-pecuniary damage:

– Mr Nepomnyashiy: EUR 7,500 (seven thousand five hundred euros);

– Mr Ponomarev: EUR 7,500 (seven thousand five hundred euros);

– Mr Ikhlov: EUR 7,500 (seven thousand five hundred euros);

– Mr Udaltsov: EUR 7,500 (seven thousand five hundred euros);

– Ms Yefremenkova: EUR 5,000 (five thousand euros);

– Mr Milkov: EUR 7,500 (seven thousand five hundred euros);

– Mr Gavrikov: EUR 7,500 (seven thousand five hundred euros);

– Mr Sheremetyev: EUR 7,500 (seven thousand five hundred euros);

– Mr Kosinov: EUR 7,500 (seven thousand five hundred euros);

– Mr Labudin: EUR 7,500 (seven thousand five hundred euros);

– Mr Khayrullin: EUR 7,500 (seven thousand five hundred euros);

– Mr Grigoryev: EUR 7,500 (seven thousand five hundred euros);

– Mr Gorbunov: EUR 7,500 (seven thousand five hundred euros);

– Mr Zhidenkov: EUR 5,000 (five thousand euros);

– Mr Zuyev: EUR 5,000 (five thousand euros);

– Ms Maryasina: EUR 5,000 (five thousand euros);

– Mr Feldman: EUR 5,000 (five thousand euros);

– Mr Yelizarov: EUR 10,000 (ten thousand euros);

– Mr Nagibin: EUR 7,500 (seven thousand five hundred euros);

– Ms Moshiyan: EUR 7,500 (seven thousand five hundred euros);

– Mr Batyy: EUR 10,000 (ten thousand euros);

– Mr Tarasov: EUR 10,000 (ten thousand euros);

(iii) the following amounts, plus any tax that may be chargeable to the applicants, in respect of costs and expenses:

– Mr Ponomorev, Mr Ikhlov and Mr Udaltsov jointly: EUR 3,800 (three thousand eight hundred euros), to be payable to the bank account of their representative Mr Shukhardin;

– Mr Gavrikov: EUR 7,500 (seven thousand five hundred euros);

– Mr Nagibin, Ms Moshiyan, Mr Batyy and Mr Yelizarov jointly: EUR 3,000 (three thousand euros);

– Mr Tarasov: EUR 300 (three hundred euros), plus EUR 8,500 (eight thousand five hundred euros) payable to the bank account of his representative Mr Terekhov;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Annotatie

1. Het is maar zelden dat het Europese Hof zo uitgebreid een demonstratierechtelijke uitspraak doet als de onderhavige: het arrest telt maar liefst 149 pagina's, waarvan een groot deel gewijd is aan inhoudelijke overwegingen ten aanzien van verscheidene interessante demonstratierechtelijke rechtsvragen. De vijf meest in het oog springende rechtsvragen zijn de volgende: (1) Is er sprake van een schending van het recht op een daadwerkelijk rechtsmiddel ex art. 13 in verbinding met art. 11 EVRM – het recht op vrijheid van vreedzame vergadering – indien demonstranten voorafgaand aan een demonstratie geen definitieve rechterlijke uitspraak kunnen afdwingen over het besluit van de autoriteiten om de demonstratie te beperken of te verbieden? (2) Is art. 11 EVRM geschonden indien de autoriteiten een demonstratie (structureel) niet toestaan op de plaats en het tijdstip waarop de demonstranten haar wensen te houden? (3) Hoe verhoudt een demonstratieverbod – dan wel een demonstratiebeperking – zich tot art. 11 EVRM indien dit enkel wordt ingegeven door de aanwezigheid van een simultane demonstratie en/of vijandig publiek? (4) Levert een integraal demonstratieverbod naar plaats, bijvoorbeeld in de directe omgeving van een gerechtsgebouw, strijd op met art. 11 EVRM? (5) Is een kennisgevingsregeling op grond waarvan een demonstratie niet eerder dan vijftien dagen en niet later dan tien dagen van tevoren moet worden aangemeld in overeenstemming met art. 11 EVRM?

Hieronder ga ik nader in op de wijze waarop het Hof de vijf bovenstaande rechtsvragen beantwoordt. De aandacht gaat hierbij in het bijzonder uit naar de demonstratie-inhoudelijke aspecten die het Hof bij de beantwoording van meerdere van die vragen van belang acht en de gevaren die zijn benadering in zich draagt (randnrs. 2-6). Tot slot besteed ik enige aandacht aan het bestraffen van demonstranten die zich onrechtmatig gedragen (randnr. 7) en het beperken van demonstraties vanwege verkeersbelangen (randnr. 8).

2. De eerste rechtsvraag beantwoordt het Hof bevestigend. Het recht op een daadwerkelijk rechtsmiddel zoals neergelegd in art. 13 EVRM is geschonden indien het voor demonstranten niet mogelijk is voorafgaand aan een demonstratie een definitieve rechterlijke uitspraak af te dwingen over het besluit van de autoriteiten om de demonstratie te beperken of te verbieden. Eerder beantwoordde het Hof deze vraag ook al bevestigend in het arrest *Alekseyev* t. *Rusland* van 2010 (EHRM 21 oktober 2010, nrs. 4916/07, 25924/08, 14599/09, ECLI:CE:ECHR:2010:1021JUD000491607, «EHRC» 2011/6 m.nt. Loof, par. 98-100, punt 5 van de annotatie). Daarin overwoog het dat – nu het tijdstip van de demonstratie van

cruciaal belang is voor de demonstranten *in casu* – het recht op een daadwerkelijk rechtsmiddel ex art. 13 EVRM met zich brengt dat het voor de demonstranten mogelijk moet zijn om een rechterlijke uitspraak voorafgaand aan de demonstratie af te dwingen (zie ook *Baçzkowski e.a.* t. *Polen*, EHRM 3 mei 2007, nr. 1543/06, ECLI:CE:ECHR:2007:0503JUD000154306, par. 81).

In *Lashmankin e.a.* besteedt het Hof geen specifieke aandacht aan het voorgenomen tijdstip om te demonstreren. De enkele onmogelijkheid om een rechterlijke uitspraak voorafgaand aan de geplande demonstratiedatum af te dwingen, lijkt dus al voldoende voor het Hof om een schending vast te stellen. Daarmee kiest het Hof dus een andere, meer algemene benadering, waarmee ik het graag eens ben. De vraag die het Hof eerder centraal stelde, dus die of een gepland demonstratietijdstip van cruciaal belang is voor de demonstranten, vraagt immers om een beoordeling van de inhoud van hetgeen demonstranten wensen te uiten. Een rechterlijke beoordeling moet zich echter zo ver als redelijkerwijs mogelijk is weghouden van de inhoud van de manifestatie (zie de in par. 315 en 317 door het Hof aangehaalde aanbevelingen van internationaalrechtelijke organisaties; zie ook par. 417 waarin het Hof wijst op *Primov e.a.* t. *Rusland*, EHRM 12 juni 2014, nr. 17391/06, ECLI:CE:ECHR:2014:0612JUD001739106, «EHRC» 2014/197, par. 135). Het is dan ook gunstig dat dat aspect uit de nieuwe benadering is weggevallen.

In plaats daarvan gaat het Hof dit keer uitgebreid in op de vraag in hoeverre het daadwerkelijk onmogelijk is voor demonstranten om een rechterlijke uitspraak voorafgaand aan de demonstratie af te dwingen. Het noemt drie redenen waarom het afdwingen van een uitspraak voor de geplande demonstratiedatum nagenoeg onmogelijk is in Rusland (par. 347-350).

Ten eerste mogen organisatoren volgens de Russische wet niet eerder kennisgeven van een demonstratie dan vijftien dagen voorafgaand aan de geplande datum van de demonstratie. Dit maakt dat er slechts zeer weinig ruimte is om voorafgaand aan de demonstratie nog tot overeenstemming te komen over plaats, tijdstip en wijze van demonstreren. Bij de beoordeling van de vraag of een dergelijke (korte) kennisgevingtermijn noodzakelijk is betrekt het Hof het gegeven dat van de zevenentwintig bij de Raad van Europa aangesloten lidstaten slechts vier eenzelfde soort regel kennen. De termijnen die deze landen hanteren zijn echter – één uitzondering daargelaten – beduidend langer dan die van Rusland (vier maanden in Letland, dertig dagen in Polen en Spanje en vijftien dagen in Frankrijk) (zie par. 318, 320 en 348).

Ten tweede blijkt uit de feiten van *Lashmankin e.a.* dat de autoriteiten zich meermalen niet hebben gehouden aan de wettelijke termijn van maximaal drie dagen waarbinnen zij na het ontvangen van een kennisgeving een wijziging van demonstratielocatie, -tijdstip en -vorm mogen voorstellen. Hierdoor werd het tijdbestek waarbinnen organisatoren met succes voorafgaand aan de demonstratie in rechte kunnen opkomen tegen een opgelegde beperking nog korter dan dat al was.

In de derde en laatste plaats blijkt uit de onderhavige zaken dat de Russische rechter zich meermalen niet heeft gehouden aan de wettelijke termijn van maximaal tien dagen om een klacht over de door de autoriteiten voorgestelde alternatieven te beoordelen. Het gegeven dat de Russische rechter zich geconfronteerd ziet met een grote hoeveelheid zaken kan dergelijke vertragingen niet rechtvaardigen.

Het Hof heeft met instemming kennisgenomen van een wetswijziging in 2015 op grond waarvan de rechter klachten tegen door de autoriteiten opgelegde demonstratiebeperkingen in beginsel voorafgaand aan de geplande demonstratiedatum dient te beoordelen, resulterend in onmiddellijk afdwingbare uitspraken. Deze wetswijziging – die overigens pas na twee oproepen daartoe van het Russische Constitutionele Hof is gerealiseerd – heeft echter geen invloed op het oordeel van het EHRM in de onderhavige zaken, aangezien die zaken nog vóór de wetswijziging van 2015 speelden.

Er is nog een extra reden waarom art. 13 EVRM in verbinding met art. 11 EVRM in de onderhavige zaken is geschonden. Volgens de Russische wet dient de rechter slechts te beoordelen of de weigering van de plaats, het tijdstip of de vorm van de betoging rechtmatig is geweest. Dat de Russische rechter hierbij ook toetst of de weigering goed is gemotiveerd – 'well-reasoned' – is onvoldoende volgens het Straatsburgse Hof. Art. 11 lid 2 EVRM vereist immers dat een beperking noodzakelijk dient te zijn.

Op deze noodzakelijkheidseis gaat het Hof inhoudelijk verder niet uitgebreid in bij zijn beoordeling of het recht op een daadwerkelijk rechtsmiddel ex art. 13 EVRM is geschonden. Dat doet het Hof echter wel bij het beantwoorden van de rechtsvragen die specifiek zien op de vreedzame vergadervrijheid ex art. 11 EVRM (zie randnrs. 3-6).

3. Bij de beantwoording van de vraag of art. 11 EVRM geschonden wordt, indien de autoriteiten een demonstratie (structureel) niet toestaan op de plaats en het tijdstip waarop de demonstranten haar wensen te houden, overweegt het Hof samengevat het volgende. Het recht van vreedzame vergadering omvat het recht om het tijdstip, de plaats en de vorm van demonstreren te kiezen, binnen de grenzen van art. 11 lid 2 EVRM (zie ook *Sáska* t. *Hongarije*, EHRM 27 november 2012, nr. 58050/08, ECLI:CE:ECHR:2012:1127JUD005805008, «EHRC» 2013/60, par. 21). Indien het gekozen tijdstip of de gekozen plaats van essentieel belang zijn voor de demonstranten, kan een voorschrift inzake tijd of plaats een beperking van de fundamentele vergadervrijheid opleveren (par. 405). Aan de autoriteiten komt daarbij een ruime, maar niet ongelimiteerde 'margin of appreciation' toe (par. 417). Er dienen heldere beperkingscriteria te bestaan aan de hand waarvan getoetst kan worden of een beperking noodzakelijk is in een democratische samenleving. Dergelijke criteria ontbreken in de Russische wetgeving en rechtspraak, wat leidt tot arbitraire en zelfs discriminatoire uitspraken (par. 419-420). De beperkingen ontberen derhalve voldoende wettelijke grondslag als gevorderd in art. 11 lid 2 EVRM (par. 430). Bovendien handelen de Russische autoriteiten in strijd met art. 11 EVRM door demonstraties enkel toe te staan op een locatie die niet binnen gezichts- en geluidsafstand is van het doel ('within sight and sound of its target audience'), zodanig dat het uitstralende effect van de demonstraties wordt geminimaliseerd (par. 426).

Drie van de bovenstaande overwegingen verdienen nader aandacht. Ten eerste de wat mij betreft ongelukkige overweging dat een voorschrift inzake tijd en/of plaats een beperking kan ('may') opleveren in de zin van art. 11 lid 2 EVRM, indien het gekozen tijdstip en/of de gekozen plaats van cruciaal belang zijn voor de demonstranten. Impliceert het Hof hiermee dat een voorschrift inzake tijd en/of plaats geen beperking van de vergadervrijheid oplevert indien tijd en/of plaats niet van cruciaal belang zijn voor de demonstranten? Zuiverder lijkt het mij om iedere beperking naar tijd en/of plaats te kwalificeren als een beperking in de zin van art. 11 lid 2 EVRM, gelet ook op de overweging van het Hof dat de vergadervrijheid het recht omvat om zelf tijd, plaats en wijze van demonstreren te kiezen, zolang dit gebeurt binnen de grenzen van art. 11 lid 2 EVRM (par. 405). Bovendien is het opmerkelijk dat het Hof de mate waarin het tijdstip en de plaats van belang zijn voor de demonstranten *in casu* achterwege laat als criterium bij de beoordeling of art. 13 EVRM is geschonden (zie randnr. 2), maar dat het Hof dit criterium hier wel weer tevoorschijn laat komen. Naast de principiële bezwaren tegen een dergelijk inhoudelijk criterium (zie randnr. 2), zijn er ook praktische bezwaren. Als de mate van het belang van tijdstip en plaats meegewogen dient te worden, zou dit kunnen leiden tot arbitraire en discriminatoire uitspraken op nationaal niveau. Want wanneer zijn een tijdstip en/of plaats 'cruciaal' voor demonstranten? Daarnaast zie ik de noodzaak van dit criterium niet in. De vraag of er sprake is van een beperking van art. 11 EVRM en of deze beperking een schending oplevert, kan uitstekend worden getoetst aan de hand van heldere niet-inhoudelijke beperkingscriteria.

Een tweede punt dat aandacht verdient, is dat het Hof in art. 11 EVRM-zaken slechts zelden oordeelt dat er niet is voldaan aan het vereiste 'voorzien bij wet'. In de regel is het de noodzakelijkheidstoets op grond waarvan het Hof tot de conclusie komt dat art. 11 EVRM is geschonden (zie hierover ook A.J. Nieuwenhuis, 'Vrijheid van vereniging, vergadering en betoging' in J.H. Gerards (red.), *Grondrechten*, Nijmegen: Ars Aequi Libri 2013, p. 111).

In de derde plaats is het interessant dat *Lashmankin e.a.* de eerste zaak is waarin het EHRM het uit de aanbevelingen van internationaalrechtelijke gremia afkomstige 'sight and sound'-criterium toepast (zie hierover uitgebreider D. Simons, 'Protest as you like it: time, place & manner restrictions under scrutiny in Lashmankin v. Russia' van 20 februari 2017 op strasbourgobservers.com). Het Hof noemt het 'sight and sound'-criterium in één adem met de eis dat een demonstratie niet mag worden verbannen naar een locatie die zodanig is dat het uitstralende effect – de impact – van de demonstratie wordt geminimaliseerd. Een vergelijkbaar 'impact-criterium' bestaat al langer in de Nederlandse rechtspraak (zie bijvoorbeeld Rb. Arnhem (vzr.) 13 mei 2005, ECLI:NL:RBARN:2005:AT5504, *AB* 2005/294 m.nt. Schilder & Brouwer).

4. Hoe verhoudt een demonstratieverbod – dan wel demonstratiebeperking – zich tot art. 11 EVRM indien dat enkel wordt ingegeven door de aanwezigheid van een simultane demonstratie en/of vijandig publiek? Een verbod onder die omstandigheden is volgens het Hof in strijd met art. 11 EVRM, indien de autoriteiten er niet in slagen met behulp van duidelijke en objectieve aanwijzingen aan te tonen dat het ook met politie-inzet onmogelijk was beide demonstraties doorgang te laten vinden. In deze zaak is van disproportioneel handelen sprake omdat de Russische autoriteiten (a) niet hebben onderzocht of – gelet op de omvang van de plaats en het verwachte aantal deelnemers – het mogelijk was om demonstraties tegelijkertijd te laten plaatsvinden en (b) ook niet zijn nagegaan of er een risico bestond dat beide demonstraties met elkaar in conflict zouden raken en – als dat het geval zou zijn – of een eventuele botsing voorkomen zou kunnen worden door het treffen van passende veiligheidsmaatregelen (par. 422).

De enkele kans dat er mogelijk conflicten ontstaan tussen een demonstratie en een tegendemonstratie of 'hostile audience' is onvoldoende om een demonstratie te verbieden of te verbannen naar een afgelegen plaats. Het Hof geeft hiervoor twee redenen: de samenleving zou de mogelijkheid worden ontnomen om verschillende meningen te horen over controversiële kwesties. Bovendien behoren vreedzame demonstranten zonder vrees voor fysiek geweld van tegendemonstranten of 'hostile audience' te kunnen demonstreren. Om die redenen hebben staten een inspanningsverplichting om in geval van aanwezigheid van tegendemonstranten of 'hostile audience' veiligheidsmaatregelen te treffen teneinde de demonstratie zoveel als redelijkerwijs mogelijk is doorgang te laten vinden (par. 425). Als de enkele aanwezigheid van 'hostile audience' tot een demonstratieverbod zou leiden, dan zou dit een premie zetten op het verstoren van een demonstratie waar je het niet mee eens bent, zo werd al in 1981 geschreven (J.A. Peters, *Het primaat van de vrijheid van meningsuiting: vergelijkende aspecten Nederland-Amerika* (diss. Leiden), Nijmegen: Ars Aequi Libri 1981, p. 148 en 161-162; zie in dit verband ook het standaardarrest *Plattform 'Ärzte für das Leben'* t. *Oostenrijk*, EHRM 21 juni 1988, nr. 10126/82, ECLI:CE:ECHR:1988:0621JUD001012682, *NJ* 1991, 641 m.nt. Alkema, par. 32 en punt 5 van de annotatie).

Mocht de situatie zodanig zijn dat een beperking naar plaats noodzakelijk is – wat volgens de Nederlandse rechtspraak alleen het geval kan zijn in een bestuurlijke overmachtssituatie (zie hierover uitgebreider p. 123-134 van mijn proefschrift: *Het recht om te demonstreren*, Den Haag: Boom Juridisch 2016) – dan nog is het de autoriteiten niet toegestaan om de demonstratie te verbannen naar een plaats die niet voldoet aan het eerder genoemde 'sight and sound'-criterium en het 'impact'-criterium', zo blijkt uit de overwegingen van het Hof (par. 426). Geheel in strijd met dit uitgangspunt handelden de Nederlandse autoriteiten toen twee Turkse ministers op zaterdag 11 maart 2017 trachtten in Rotterdam democratische steun te verwerven voor een herziening van de Turkse grondwet. Met verwijzing naar par. 424-425 van *Lashmankin* stelt Spronken dan ook 'dat een weigering toestemming te geven voor een bijeenkomst vanwege veiligheidsrisico's door een mogelijke confrontatie tussen deelnemers aan een bijeenkomst en tegenstanders ervan, als zodanig onvoldoende grond is de bijeenkomst te verbieden' (zie T.N.B.M. Spronken, 'Vrijheid van vergadering in roerige tijden', *NJB* 2017/666; zie over deze kwestie ook J.G. Brouwer & B. Roorda, 'Openbare orde geen argument om Turkse minister het spreken te beletten' van 10 maart 2017 op www.openbareorde.nl).

5. De vierde rechtsvraag, namelijk of een integraal demonstratieverbod naar plaats, bijvoorbeeld in de directe omgeving van een gerechtsgebouw, strijd oplevert met art. 11 EVRM, beantwoordt het Hof mede met behulp van de uitkomsten van de zaak *Animal Defenders International* t. *Verenigd Koninkrijk* (EHRM 22 april 2013 (GK), nr. 48876/08, ECLI:CE:ECHR:2013:0422JUD004887608, «EHRC» 2013/149 m.nt. Gerards). Het hanteren van algemeen geldende beperkingen kan gerechtvaardigd zijn, ook al wordt daardoor niet iedere zaak op haar eigen merites beoordeeld en leidt dit mogelijk tot vergaande uitkomsten in individuele gevallen (zie ook de kritiek van Gerards op dergelijke 'blanket bans' in punt 4 van haar annotatie; zie verder B. Roorda, 'Integrale demonstratieverboden: toelaatbaar, wenselijk en noodzakelijk?', *TvCR* 2014, p. 219-243). Een integraal verbod op demonstraties is echter alleen gerechtvaardigd indien er een daadwerkelijk gevaar bestaat dat zij zullen ontaarden in wanordelijkheden die niet kunnen worden voorkomen door minder vergaande maatregelen. De autoriteiten dienen daarbij in het bijzonder oog te hebben voor demonstraties die zelf geen gevaar veroorzaken voor de openbare orde. Verwijzend naar *Christians against Racism and Fascism* t. *Verenigd Koninkrijk* (ECieRM 16 juli 1980, nr. 8440/78, ECLI:CE:ECHR:1980:0716DEC000844078, p. 150) overweegt het Hof dat de veiligheidsoverwegingen die een integraal verbod rechtvaardigen duidelijk

zwaarder moeten wegen dan het nadeel dat vreedzame protesten ook onder dit verbod vallen. Bijkomende voorwaarde is dat de onwenselijke neveneffecten van het integrale verbod niet kunnen worden vermeden door een minder vergaand integraal verbod naar plaats en duur. Alleen dan wordt voldaan aan de noodzakelijkheidseis in de zin van art. 11 lid 2 EVRM (par. 434).

De Russische wet biedt de autoriteiten de bevoegdheid om integrale verboden naar plaats uit te vaardigen in de onmiddellijke nabijheid van onder meer gerechtsgebouwen, gevangenissen, presidentiële verblijven, spoorwegen en pijpleidingen. Het doel ervan is de veiligheid van deze gevoelige locaties te waarborgen (par. 435). Het Hof is van oordeel dat de integrale verboden disproportioneel zijn omdat (a) de regering noch het Russische Constitutionele Hof duidelijk maken welke specifieke veiligheidsredenen het verbod kunnen rechtvaardigen, (b) het Constitutionele Hof niet aantoont waarom een integraal verbod geschikter is dan een mogelijk incidenteel verbod na een individuele beoordeling van een demonstratie en (c) het Constitutionele Hof evenmin aantoont waarom een minder vergaand middel dan een integraal verbod niet mogelijk zou zijn zonder dat dit leidt tot misbruik, rechtsonzekerheid, discriminatie of willekeur (par. 436). Een extra argument put het Hof uit de al genoemde zaak *Christians against Racism and Fascism*. Hierin werd weliswaar een integraal verbod toegestaan, maar dit verbod gold 'slechts' gedurende twee maanden en enkel voor zover het zich voortbewegende demonstraties in een wijk van Londen betrof. De Russische integrale verboden zijn ongelimiteerd in tijd en betreffen alle soorten demonstraties op meerdere plaatsen in Rusland. Bovendien is het verbod in tegenstelling tot dat in de zaak *Animal Defenders International* niet voldoende specifiek geformuleerd, nu de wet niet duidelijk maakt wat precies moet worden verstaan onder 'in de onmiddellijke nabijheid' van de aangewezen locaties (par. 437).

Het Hof gaat tot slot specifiek in op het betoog van de Russische regering dat integrale verboden in de directe nabijheid van gerechtsgebouwen gerechtvaardigd zijn om de onafhankelijkheid van de rechtspraak te beschermen en om druk van buitenaf op rechters te voorkomen. De genoemde redenen overtuigen het Hof niet. De bescherming van de rechterlijke macht is geen doelcriterium in de zin van het tweede lid van art. 10 en art. 11 EVRM. Dat is met een reden. De rechtspraak kan niet immuun zijn voor kritiek. Een demonstratieverbod in de nabijheid van een gerechtsgebouw kan onder omstandigheden het legitieme doel 'de bescherming van de rechten en vrijheden van anderen' ex art. 11 lid 2 EVRM dienen, namelijk als het ten doel heeft de procespartijen in een specifieke zaak te beschermen tegen invloed van buitenaf. Het verbod dient strikt te zijn geformuleerd om dat doel te bereiken. Het Russische integrale verbod voldoet niet aan die eis. Het heeft betrekking op alle soorten demonstraties, ook zij die niet zien op een specifiek rechtsproces. Als voorbeeld wijst het Hof op een 'gay pride' die door de Russische autoriteiten werd verboden omdat zij in de nabijheid van het Constitutionele Hof zou plaatsvinden, terwijl het evident was dat de demonstratie niet zag op een specifieke rechtszaak (par. 440).

Deze laatste overwegingen lijken enigszins op gespannen voet te staan met de eerdere overweging van het Hof dat een voorschrift inzake tijd en/of plaats een beperking van de vergadervrijheid kan opleveren indien het tijdstip en/of de plaats van cruciaal belang zijn voor de betogers. Uit het bovenstaande lijkt immers te volgen dat ook als het tijdstip en de plaats niet van cruciaal belang zijn voor de betogers, een voorschrift inzake tijd en/of plaats wel degelijk een beperking in de zin van art. 11 lid 2 EVRM kan opleveren. Sterker nog: uit het bovenstaande lijkt zelfs te volgen dat juist als de demonstratie geen verband houdt met de inhoud van een zaak voor het Constitutionele Hof – en daarmee het tijdstip en de plaats wellicht niet van cruciaal belang zijn voor de betogers – de kans minder groot is dat een dergelijk voorschrift een legitiem doel dient in de zin van art. 11 lid 2 EVRM. Mijns inziens is een en ander een reden temeer om bij de beoordeling of een gestelde beperking gerechtvaardigd is, niet mee te wegen in hoeverre het tijdstip en de plaats van de demonstratie van belang zijn voor de demonstranten (zie hierover ook randnr. 3).

6. De vijfde en laatste in het oog springende rechtsvraag – is een kennisgevingregeling op grond waarvan een demonstratie niet eerder dan vijftien dagen en niet later dan tien dagen van tevoren moet worden aangemeld in overeenstemming met art. 11 EVRM? – beantwoordt het Hof als volgt. Het Hof ziet de noodzaak van een (korte) termijn van vijftien dagen niet direct in (par. 447). Een dergelijke termijn is echter niet per definitie in strijd met art. 11 EVRM. De verdragsstaten hebben een ruime 'margin of appreciation' om de kennisgevingprocedure en de daarbij behorende kennisgevingtermijnen naar eigen wens vorm te geven, op voorwaarde (a) dat zij met voldoende precisie zijn geformuleerd en (b) dat zij

geen verborgen obstakel vormen voor demonstranten om gebruik te kunnen maken van hun recht op vreedzame vergadering (par. 445). In *Primov e.a.* t. *Rusland* (EHRM 12 juni 2014, nr. 17391/06, ECLI:CE:ECHR:2014:0612JUD001739106, «EHRC» 2014/197, par. 124-125) oordeelde het Hof reeds dat de Russische overheid niet aan de eerstgenoemde voorwaarde voldoet. Het is namelijk niet duidelijk of de kennisgeving voorafgaand aan de demonstratie tussen de vijftien en tien dagen voorafgaand aan de demonstratie moet zijn verzonden door de organisatoren of dat zij binnen die termijn moet zijn ontvangen door de autoriteiten (par. 446). Aan de tweede voorwaarde is *in casu* evenmin voldaan volgens het Hof. Dit heeft niet zozeer te maken met de wettelijke procedure en de daarbij behorende kennisgevingtermijnen, maar des te meer met de inflexibele wijze waarop de Russische autoriteiten vasthouden aan de kennisgevingregels, zonder enig oog te hebben voor de specifieke omstandigheden van het geval. Het Hof constateert een schending van art. 11 EVRM nu geen uitzondering op de kennisgevingplicht wordt gemaakt in situaties waarin het onmogelijk is om te voldoen aan de gestelde termijnen, bijvoorbeeld (a) in vakantieperiodes waarin het niet mogelijk is om bij de autoriteiten kennis te geven van demonstraties of (b) in geval van spontane manifestaties (par. 448-456).

Interessant is het verweer van de Russische regering in een van de zaken waarin er volgens de demonstrant sprake is van een spontane manifestatie die niet vanwege het ontbreken van een kennisgeving had mogen worden beëindigd (par. 380). De feiten van die zaak zijn als volgt. Op 10 december 2012 neemt het Russische parlement in eerste lezing een wet aan die adoptie van Russische kinderen door VS-burgers verbiedt. Op 17 december 2012 wordt aangekondigd dat de tweede lezing van de wet zal plaatsvinden op 19 december 2012. Omdat het te laat is om nog een demonstratie aan te melden, besluit verzoeker – Tarasov – een (kennisgevingvrij) eenmensprotest te houden. Op 19 december 2012 staan er in de buurt van Tarasovs eenmensprotest nog meer individuele personen actie te voeren. Tarasov wordt aangehouden vanwege het houden van een niet-aangemelde demonstratie en vanwege zijn weigering het protest te staken (par. 206-215). Volgens de Russische regering handelen de autoriteiten hiermee niet in strijd met art. 11 EVRM. Zij onderbouwt dit door te wijzen op de rechtsregel zoals die volgt uit de arresten *Bukta e.a.* t. *Hongarije* (EHRM 17 juli 2007, nr. 25691/04, ECLI:CE:ECHR:2007:0717JUD002569104, «EHRC» 2007/117 m.nt. Loof, par. 36) en *Eva Molnár* t. *Hongarije* (EHRM 7 oktober 2008, nr. 10346/05, ECLI:CE:ECHR:2008:1007JUD001034605, «EHRC» 2008/140 m.nt. Loof, par. 37): beëindiging van een vreedzaam verlopende demonstratie met als enkele reden het ontbreken van een voorafgaande kennisgeving van die demonstratie bij de autoriteiten, levert alleen dan een disproportionele beperking van de demonstratievrijheid op, indien zich bijzondere omstandigheden voordoen waarin een onmiddellijke reactie in de vorm van een demonstratie op een politieke gebeurtenis gerechtvaardigd is. Dergelijke bijzondere omstandigheden die een onmiddellijke reactie rechtvaardigen deden zich in het geval van Tarasov niet voor volgens de Russische regering. Hoewel de datum van de tweede lezing van de wet pas twee dagen van tevoren bekend werd gemaakt, op grond waarvan het onmogelijk was om tijdig kennis te geven, stond er ook nog een derde lezing van de wet op de agenda. Tarasov had volgens de Russische regering bij die derde en laatste lezing kunnen demonstreren. Om die reden was het niet noodzakelijk om tijdens de tweede lezing van de wet zonder kennisgeving te demonstreren (par. 397).

Het Hof gaat inhoudelijk niet in op dit verweer van de Russische regering. Het verwijt de Russische regering dat dit argument bij de nationale procedure in het geheel niet is genoemd en pas voor het eerst werd aangevoerd in de procedure voor het Hof (par. 455). Daarmee stuit het verweer op ‘estoppel’.

Het verweer van de Russische regering toont mijns inziens aan dat het onduidelijk kan zijn of er sprake is van bijzondere omstandigheden die het onmiddellijk houden van een niet-kennisgegeven demonstratie kunnen rechtvaardigen. Met andere woorden: wanneer kan men precies spreken van een spontane manifestatie? (zie hierover ook p. 220-221 van mijn proefschrift). Helaas heeft het Hof het verweer van de Russische regering niet kunnen aangrijpen om hierover meer duidelijkheid te scheppen.

Ook in dit verband leunt het Hof op zijn rechtsvergelijkende studie naar zevenentwintig bij de Raad van Europa aangesloten landen. In maar liefst dertien landen is het ontbreken van een kennisgeving of het handelen in strijd met opgelegde beperkingen een zelfstandige grond om een demonstratie te beëindigen (par. 324). Nederland wordt hier ook toe gerekend. Ten onrechte, want op grond van art. 9 Grondwet juncto art. 2 Wet openbare manifestaties (Wom) is beëindiging van een demonstratie in Nederland alleen gerechtvaardigd indien dat noodzakelijk is ter bescherming van de gezondheid, in het belang van het

verkeer of ter bestrijding of voorkoming van wanordelijkheden. De formulering van art. 7 Wom – waarin de beëindigingsbevoegdheid is neergelegd – leidt echter voortdurend tot deze verwarring. In het evaluatierapport van de Wet openbare manifestaties wordt onder meer om deze reden erop aangedrongen art. 7 Wom te wijzigen (zie B. Roorda, J.G. Brouwer & A.E. Schilder, *Evaluatie Wet openbare manifestaties*, 3 juli 2015, te raadplegen via www.rijksoverheid.nl, p. 76-78). De minister van Binnenlandse Zaken en Koninkrijksrelaties (BZK) heeft inmiddels aangegeven dit te zullen gaan doen (zie p. 1-3 van de bijlage bij de Kamerbrief 'Reactie op de evaluatie van de Wet openbare manifestaties' van 17 januari 2017, kenmerk 2016-0000804427).

7. Een Russische wetswijziging van 8 juni 2012 heeft geleid tot een aanzienlijke verhoging van de maximale geldboetes – tot 300 maal en in geval van ambtenaren zelfs tot maar liefst 600 maal zo hoog als het eerdere maximum – die door de Russische autoriteiten kunnen worden opgelegd indien demonstranten zich onrechtmatig gedragen. Met name ambtenaren en rechtspersonen die een demonstratie organiseren en zich daarbij onrechtmatig gedragen, riskeren een hoge boete, oplopend tot maximaal 600.000 roebel (circa 10.000 euro) respectievelijk 1.000.000 roebel (circa 16.500 euro). Een burger, niet-ambtenaar riskeert in hetzelfde geval een maximale boete van 300.000 roebel (circa 5.000 euro) of een werkstraf van maximaal 200 uren. Daar komt nog bij dat er sinds de wetswijziging van 2012 betrekkelijk hoge minimumboetes gelden (par. 301-304). Het Russische Constitutionele Hof oordeelt in 2013 dat deze minimumboetes in strijd zijn met de Russische grondwet, aangezien zij het onvoldoende mogelijk maken voor rechters om de omstandigheden van het geval en de persoonlijke situatie van de overtreder mee te nemen bij het opleggen van een boete (par. 305).

Ter vergelijking: het organiseren of deelnemen aan een niet-kennisgegeven of verboden demonstratie alsook het handelen in strijd met door de burgemeester gestelde demonstratiebeperkingen kan in Nederland op grond van art. 11 lid 1 Wom leiden tot ten hoogste twee maanden hechtenis of een geldboete van maximaal 4.100 euro. Het Nederlandse (demonstratie)recht kent in tegenstelling tot het Russische demonstratierecht geen minimumstraffen.

Met Brouwer en Schilder heb ik in onze Wom-evaluatie (p. 77) aanbevolen om in art. 11 lid 1 aanhef en sub a Wom de deelnemer aan een niet-kennisgegeven manifestatie uit te sluiten van strafbaarheid. Het is volgens ons voldoende als alleen de organisator van een niet-aangemelde manifestatie met straf wordt bedreigd. Onze aanbeveling is in lijn met de rechtspraak van het EHRM. In een van de overwegingen uit het arrest *Kudrevicius e.a.* t. *Rusland* die het Hof in *Lashmankin* aanhaalt, overweegt de Grote Kamer van het Hof uitdrukkelijk dat een persoon niet gestraft kan worden voor deelname aan een niet-kennisgegeven demonstratie – zelfs niet als het een lage boete betreft – zolang die persoon zich onberispelijk gedraagt tijdens de demonstratie (zie par. 412 van *Lashmankin e.a.* waarin het Hof verwijst naar EHRM 15 oktober 2015 (GK), nr. 37553/05, ECLI:CE:ECHR:2015:1015JUD003755305, «EHRC» 2016/27, par. 149). De minister van BZK heeft onlangs echter te kennen gegeven onze aanbeveling met betrekking tot art. 11 Wom niet over te nemen (zie p. 3 van de bijlage bij de Kamerbrief 'Reactie op de evaluatie van de Wet openbare manifestaties van 17 januari 2017', kenmerk 2016-0000804427).

8. Tot slot, uit de rechtsvergelijkende studie van het Hof blijkt dat acht landen van de zevenentwintig onderzochte Raad van Europa-landen 'verkeersbelangen' hanteren als beperkingsgrond bij demonstraties (par. 322). Hieronder bevindt zich ook Nederland. Een enkele verstoring van het verkeer kan volgens het Hof een beperking van het recht op vrijheid van vreedzame vergadering ex art. 11 EVRM echter niet rechtvaardigen (zie par. 412 waarin het Hof wijst op onder meer par. 155 van *Kudrevicius e.a.* t. *Rusland*).

De Speciale VN-Rapporteur inzake de fundamentele vergader- en verenigingsvrijheid stelt dat het belang van de vrije doorgang van het verkeer niet automatisch dient te prevaleren boven dat van de fundamentele vergadervrijheid. Hij wijst daarbij op de overweging van het Spaanse Constitutionele Hof dat in een democratische samenleving de stedelijke ruimte niet enkel een ruimte is van circulatie, maar ook van participatie (zie par. 313 waarin het Hof onder meer par. 41 van een rapport van de Speciale VN-Rapporteur van 21 mei 2012 (A/HRC/20/27) aanhaalt).

De Office for Democratic Institutions and Human Rights (ODIHR) van de Organization for Security and Co-operation in Europe (OSCE) laat zich in een rapport van 2014 nog kritischer uit over

verkeersbelangen als beperkingscriterium. De internationale mensenrechtenstandaard zou zich tegen dit criterium verzetten, ook al wordt het slechts zelden toegepast (‘Report Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States’ van de OSCE/ODIHR, Warschau 17 december 2014, par. 134). Gelet hierop is het volgens mij aanbevelenswaardig om het criterium ‘in het belang van het verkeer’ te schrappen uit art. 2 Wom. Dit zal naar mijn verwachting geen (grote) gevolgen hebben voor de rechtspraktijk. Het verkeersbelangcriterium wordt niet dan wel nauwelijks gebruikt om Wom-manifestaties te beperken. Bovendien bieden de andere twee doelcriteria – de bescherming van de gezondheid en de bestrijding en voorkoming van wanordelijkheden – voldoende soelaas indien hiertoe een noodzaak bestaat (zie hierover ook p. 205 van mijn proefschrift).

mr. dr. B. Roorda, Universitair docent aan de Rijksuniversiteit Groningen en onderzoeker bij het Centrum voor Openbare Orde en Veiligheid (RuG)