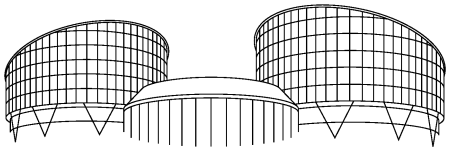

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF NEMTSOV v. RUSSIA

(Application no. 1774/11)

JUDGMENT

STRASBOURG

31 July 2014

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Nemtsov v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 8 July 2014,

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

PROCEDURE

1. The case originated in an application (no. 1774/11) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Boris Yefimovich Nemtsov ("the applicant"), on 10 January 2011.

2. The applicant was represented by Ms O. Mikhaylova and Mr V. Prokhorov, lawyers practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that his arrest at a demonstration and his subsequent detention had violated his right to peaceful assembly, freedom of expression and liberty. He also alleged that the administrative proceedings before the Justice of the Peace and the court had fallen short of guarantees of a fair hearing. He further complained of appalling conditions at the detention facility, which he regarded as inhuman and degrading.

4. On 10 January 2011 the Court decided to apply Rule 41 of the Rules of Court and grant priority treatment to the application. On the same day the Court gave notice of this application to the Government in accordance with Rule 40 of the Rules of Court.

5. On 21 October 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1959 and lives in Moscow. He is a professional politician who has held in the past the posts of Nizhniy Novgorod governor, Deputy Prime Minister, and Minister for Energy. He later became one of the best-known opposition leaders, a founder of the political party the Union of Right Forces, and subsequently of the political movement Solidarnost.

A. Public demonstration on 31 December 2010 and the applicant's arrest

7. On 10 December 2010 eight individuals, none of whom are applicants in the present case, submitted notice of a public demonstration to the mayor of Moscow. They indicated, in particular, that a meeting would be held from 6 p.m. to 7.30 p.m. on Triumfalnaya Square, Moscow. They estimated that about 1,500 people would take part in the event. The notice stated that the proposed demonstration was intended "to demand respect for the constitutional right to peaceful demonstration and assembly guaranteed by Article 31 of the Constitution of the Russian Federation". The organisers indicated, *inter alia*, that it would not be necessary to divert the traffic.

8. On 22 December 2010 the Moscow Government's Department for Liaison with Security Authorities informed the organisers that the event had been approved by the deputy mayor of Moscow. The number of participants had been limited to 1,000, and a particular sector of Triumfalnaya Square had been designated for the event: "in the area between the First and the Second Brestskaya Streets, opposite the Pekin Hotel and the adjacent road leading to the Tchaikovsky Concert Hall".

9. In the meantime, on 16 December 2010 another group of three individuals, none of whom are applicants in the present case, submitted notice of an alternative public demonstration to the mayor of Moscow, at the same time and place as the authorised event and with the same title. It appears that this second public demonstration was not authorised, but on 22 December 2010 a number of alternatives as to the time and place were offered to the organisers. Moreover, none of its organisers could go to the venue on 31 December 2010 because two of them had been arrested earlier on the same day; the third had been abroad.

10. The authorised meeting began at 6 p.m. on 31 December 2010 at Triumfalnaya Square, as planned. According to the applicant, the perimeter of the square was cordoned off and was guarded by the riot police. The only access to the meeting venue was at Tverskaya Street. The applicant claimed that he had arrived at the meeting with his daughter; he had parked his car at

Tverskaya Street and they had entered Triumfalnaya Square from Tverskaya Street through the only opening in the cordon.

11. During the meeting the applicant addressed the participants with a speech in which he criticised the criminal conviction of Mikhail Khodorkovskiy, the former owner of the Yukos oil company, and Platon Lebedev, his associate. He also condemned the corruption in the State administration. He chanted the slogans "The authorities to resign!", "Putin to resign!", "Happy New Year without Putin!"

12. At the end of the meeting the applicant, accompanied by his daughter, headed across Triumfalnaya Square towards Tverskaya Street. At the exit he saw the riot police arresting one of the participants in the demonstration. Shortly afterwards the applicant was also arrested and put into a police vehicle.

13. The parties disagreed as to the circumstances of the applicant's arrest.

14. The applicant claimed that on the way to his car his passage had been obstructed by police officers and he and his daughter had found themselves in a crowd. They heard the police instruction over a loudspeaker calling for people to stay calm and to pass through. The applicant saw two people being arrested and put in police vans, and then he was arrested too, without any warning or explanation. The applicant claimed that he had not disobeyed or resisted the police; on the contrary, he had followed their instructions "to pass through". He had been arrested by an officer who had been wearing a fur hat, an indication of his higher rank, as opposed to the crash helmets worn by the riot police troops guarding the cordon.

15. The applicant alleged that there existed at least three video recordings of his arrest, including the events immediately leading up to it; they had been produced by two media channels and one independent photographer, Mr T. He also maintained that there existed an official video of the public demonstration and the ensuing arrests, which had allegedly been shot by the police and kept at the Moscow Department of the Interior.

16. According to the Government, at the end of the meeting the applicant had headed towards Tverskaya Street and had begun calling passers-by to take part in another, unauthorised, meeting while shouting out anti-government slogans. They alleged that two police officers, Sergeant X and Private Y, had warned the applicant; they had ordered him to stop agitating the crowd and to return to the authorised meeting. They further contended that the applicant had ignored the warning and had continued shouting out the slogans and disobeying the police. Confronted with this behaviour, X and Y arrested him.

17. At 7 p.m. on the same day the applicant was taken to the police station of the Tverskoy District Department of the Interior. At 7.10 p.m. Private Y drew up a report stating that the applicant had been escorted to the police station "in order to draw up the administrative material". Also at

7.10 p.m., the on-duty police officer drew up a report on the applicant's administrative arrest under Article 27.3 of the Code of Administrative Offences, stating, like the other report, that he had been arrested "in order to draw up the administrative material". The applicant signed both reports, indicating his disagreement with their content.

18. Both X and Y produced identical duty reports stating, in so far as relevant, as follows:

> "... on 31 December 2010 at 18.30 Boris Yefimovich Nemtsov was apprehended [because] he had disobeyed a lawful order of the police in connection with [X and Y] performing [their] duty of maintaining public order and safeguarding the public. He (Nemtsov) stood at 31 Tverskaya Street and began to shout "Down with Putin!", "Russia without Putin!" as well as insults to President Medvedev, catching people's attention and calling them to come to the Mayakovskiy monument for a meeting. [X and Y] approached Nemtsov, introduced themselves and warned him that it was unacceptable to hold a meeting at Triumfalnaya Square. They invited him to proceed to the authorised event that was taking place between the First and the Second Brestskaya Streets, opposite the Pekin Hotel. Nemtsov did not react and continued to shout out slogans and call people to hold a meeting. Nemtsov deliberately refused to comply with the lawful orders to cease his actions breaching public order, and continued them ostentatiously. To prevent him from organising an unauthorised meeting at Triumfalnaya Square and to prevent the unlawful acts, he was invited to enter a police van. In response to [these] lawful orders to enter the police van, Nemtsov began to break loose. He pushed us away and shouted insults to us: "Down with the police state!", "Free-for-all cops!", attempting to cause mayhem among the citizens surrounding him. By doing so he demonstrated his refusal to carry out the lawful order of the police and prevented them from carrying out their duty, thus committing an offence under Article 19.3 of the Code of Administrative Offences".

19. At 7.30 p.m. X and Y made witness statements, essentially copying the text of their duty reports.

20. At the same time the district police inspector drew up a report on the administrative offence, stating that the applicant had disobeyed a lawful order of the police in breach of Article 19.3 of the Code of Administrative Offences. The applicant signed that report with the remark "100% lies".

21. On the same day the head of the same police station issued a decision to transfer the administrative case file to the Justice of the Peace.

22. On the same day at about 7.15 p.m. the NTV television channel reported on the series of arrests following the demonstration at Triumfalnaya Square. Police Colonel B. commented on the applicant's arrest, stating that he had been arrested for instigating an unauthorised meeting.

B. The applicant's detention at the Tverskoy District police station

23. The applicant remained in detention at the police station until 2 January 2011, pending the determination of the charges against him.

24. The applicant described the conditions of his detention at the police station as extremely poor. He was detained in a solitary cell measuring 1.5 by 3 metres, with a concrete floor, without windows and with very bleak artificial lighting, which was insufficient for reading. The cell was not equipped with ventilation or furniture, except for a narrow wooden bench without a mattress or any bedding. The walls in the cell had been coated with "shuba", a sort of abrasive concrete lining. The cell was not equipped with a lavatory or wash basin. The applicant had been obliged to call the wardens to take him to the lavatory when they were available. He was not provided with food or drink; he received only the food and drinking water that was passed to him by his family.

25. The Government submitted that from 31 December 2010 to 10 a.m. on 2 January 2011 the applicant had been detained in an administrative-detention cell measuring 5.6 sq. m equipped with artificial lighting and mandatory ventilation. They claimed that the applicant had been provided with drinking water and food, as well as with a sleeping place and bedding, but had refused to take them because he had received everything necessary from his family and friends.

26. On 1 January 2011 two members of a public commission for the monitoring of detention facilities visited the police station to check the conditions of the applicant's detention. Their report stated that the applicant had been detained in a cell without a window, which was poorly lit, lacked ventilation and had no sanitary facilities, sleeping place, mattress or bedding. They found that the cell was not adequate for a two-day confinement and noted that the applicant had not been receiving hot food.

27. On 2 January 2011, following his conviction for an administrative offence, the applicant was transferred to another detention facility until 15 January 2011.

28. The applicant claimed that the poor conditions of detention had had a negative impact on his health. He submitted a medical certificate indicating that between 3 and 12 January 2011 he had sought medical assistance every day.

C. Administrative proceedings

29. On 2 January 2011 the Justice of the Peace of circuit no. 369 of Tverskoy District of Moscow scheduled the hearing of the applicant's case to take place on the same day.

30. At 11.30 a.m. the applicant was brought before the Justice of the Peace, who examined the charges.

31. In the courtroom the applicant discovered that there was no seat for him and he remained standing during the hearing, which lasted for over five hours. The parties disagreed as to the reasons why the applicant had remained standing. According to the applicant, the Justice of the Peace had

ordered him to stand. The Government contested that allegation and claimed that the Justice of the Peace had repeatedly asked if anyone in the audience could give their seat to the applicant, but the applicant and his counsel had objected and insisted that he remain standing.

32. The applicant claimed that standing throughout the trial had been humiliating and physically difficult, especially after having spent two days in detention in poor conditions. He also alleged that it had prevented him from participating effectively in the proceedings because he could only address the judge in writing and had been obliged to write his submissions while standing up. This had further aggravated his fatigue and hampered the conduct of his defence.

33. The applicant pleaded not guilty and claimed that he had been detained for no reason other than political oppression. He contested the content of the police reports, in particular the statement that the police had given him a warning or an order which he could have disobeyed.

34. At the hearing the applicant lodged a number of motions. He requested in particular that the court admit as evidence the video footage of his arrest broadcast by two media channels. He also requested that the recording made by Mr T., an independent photographer, be admitted as evidence (see paragraph 15 above).

35. The applicant also requested that the court obtain from the prosecution the video recording made by the Moscow police at the scene of the public demonstration.

36. The applicant further requested that the court call and cross-examine Police Colonel B. about the circumstances of the applicant's arrest, which he had commented on in the media (see paragraph 22 above).

37. The Justice of the Peace dismissed the applicant's request to admit the video recordings on the grounds that the provenance of the recordings was not supported by evidence. The court also refused to order that the video recording made by the police be admitted as evidence, stating that the applicant's request was not "specific enough" and that the applicant had failed to prove the existence of any such recordings. Lastly, the court refused to call and examine Police Colonel B. as a witness, having considered that request irrelevant.

38. At the applicant's request the court called and examined thirteen witnesses who had been at the scene of the authorised demonstration. They testified that they had heard the applicant addressing the meeting and that after his speech he had said farewell and left; he had not made any calls to go on to another meeting. Six of those witnesses testified that they had left the meeting at the same time as the applicant and had witnessed his arrest. They explained that the exit from the meeting had been blocked by the riot police and the crowd had begun to build up because those who wanted to leave Triumfalnaya Square could not do so. When the applicant arrived at the cordon the police surrounded him so as to separate him from others

wanting to leave the meeting, and arrested him. Eight witnesses stated that the applicant had not been shouting any slogans and had not been acting against the police orders before being surrounded and arrested. One of those witnesses, M.T., stated that she had heard the applicant asking the riot police why the exit had been blocked. She had also heard him shouting that Article 31 of the Constitution guaranteed the freedom of assembly, but he had not shouted any calls or obscenities. The remaining witnesses had not seen the actual arrest. In particular, the applicant's daughter and her friend testified that they had been walking back to the car with the applicant and talking about the plans for New Year's eve, and when they had arrived at the police cordon they had lost sight of the applicant in the crowd; one or two minutes later they had called him on his mobile phone and had found out that he had been arrested.

39. The court called and examined two policemen, sergeant X and private Y, who had signed the reports stating that they had arrested the applicant because he had disobeyed their orders. They testified that on 31 December 2010 they had been on duty maintaining public order at Triumfalnaya Square. They had seen the applicant at 31 Tverskaya Street. He had been shouting anti-government slogans and calling people around him to hold an unauthorised meeting. They had approached the applicant and requested him to stop agitating outside the authorised meeting; they had asked him to return to the place allocated for the meeting and to speak there. The applicant had not reacted to their requests, so they had asked him to proceed to the police van. The applicant had disobeyed that order and had been arrested; he had put up resistance while being arrested.

40. On the same day the Justice of the Peace found that the applicant had disobeyed the police orders to stop chanting anti-government slogans and had resisted lawful arrest. The Justice of the Peace based her findings on the witness statements of X and Y, their written reports of 31 December 2010, their written statements of the same date, the report on the administrative arrest of the same date, the notice of the public demonstration of 16 December 2010 and the reply of 22 December 2010 indicating that it had not been authorised (it appears that this reference concerned the events described in paragraph 9 above). The Justice of the Peace dismissed the applicant's testimony on the grounds that as a defendant, he would have sought to exonerate himself from administrative liability. She also dismissed the testimonies of seven eyewitnesses on the grounds that they had contradicted the policemen's testimonies and because those witnesses had been acquainted with the applicant, had taken part in the same demonstration and therefore must have been biased towards the applicant. The testimonies of the remaining six witnesses were dismissed as irrelevant.

41. The applicant was found guilty of having disobeyed a lawful order of the police, in breach of Article 19.3 of the Code of Administrative Offences. He was sentenced to fifteen days' administrative detention.

42. On 3 January 2011 the applicant wrote an appeal against the judgment and submitted it to the detention facility administration unit. It appears that despite his counsel's numerous attempts to lodge the appeal directly with the court, it was not accepted before 9 January 2011. On 11 January 2011 his counsel submitted a supplement to the points of appeal.

43. In his appeal the applicant claimed that his arrest and conviction for the administrative offence had been in breach of the domestic law and in violation of the Convention. He alleged that his right to freedom of expression and freedom of assembly had been violated. He contested the findings of fact made by the first instance as regards his conduct after he had left the meeting. He challenged, in particular, the court's refusal to admit the photographic and video materials as evidence or to obtain the footage of the demonstration shot by the police. In addition, he complained about the manner in which the first-instance hearing had been conducted. In particular, he alleged that the Justice of the Peace had ordered him to stand throughout the hearing, which had been humiliating and had made it difficult to participate in the proceedings. The applicant also complained about the conditions of his detention at the police station from 31 December 2010 to 2 January 2011.

44. On 12 January 2011 the Tverskoy District Court examined the appeal. At the applicant's request the court kept the verbatim records of the hearing.

45. During the appeal hearing the applicant complained of the alleged unlawfulness of his arrest and the poor conditions of his detention at the police station. He asked the court to declare the acts of the police who had detained him for over forty hours before bringing him before a court unlawful.

46. As regards the merits of the administrative charges, the applicant reiterated before the appeal instance his requests that the court admit three video recordings of his arrest as evidence and that it obtain the video recording made by the Moscow police. He also requested that two photographs of his arrest be admitted as evidence. He asked the court to call and examine photographers T. and V. as witnesses and to cross-examine police officers X and Y again. The court granted the requests to admit one video recording and two photographs as evidence, and decided to call and examine photographer T. as a witness, but rejected all the other requests.

47. Photographer T. testified at the hearing that he had gone to the meeting to film it and had been waiting for the applicant at the exit from the meeting because he had wanted to interview him. When the applicant approached the exit a big group of policemen rushed over to block his way and there had been a minute's pause when a crowd began to build up against the cordon, blocking the passage. Then one person was arrested, and about thirty seconds later someone else, and then the applicant. T. saw the applicant's arrest as he was filming it from a distance of about five or six

metres. He was separated from the applicant by several rows of people, of which two rows consisted of policemen. The recording began a few minutes before the arrest and continued without any interruption until the applicant had been put in the police van. He specified that the applicant had not put up any resistance to the officers arresting him. He identified on the photograph the officer wearing a fur hat, who had arrested the applicant, and explained that that person had taken the applicant out of the crowd and then passed him on to another policeman in order to put the applicant into the police van. He also stated that the applicant had not shouted any slogans or insults. The applicant had repeated "Easy, easy" to the policemen while being escorted to the van. T. also testified that the applicant had been standing throughout the first-instance hearing, while his counsel had been sitting on a chair.

48. The court watched the video recording made by T. However, it decided not to take cognisance of T.'s testimonies, his recording or the photograph, on the following grounds:

> "... the footage begins with the image of a large number of people gathered at 31 Tverskaya Street in Moscow, with Mr Nemtsov at the centre. A policeman addresses the citizens through a loudspeaker with a request to disperse and not to block the passage, but Mr Nemtsov remains standing in one place addressing the gathered citizens. The video operator is at such a distance from the applicant that he is separated from him by several rows of people, including the gathered citizens and the riot police, and it is impossible to understand what these citizens and the applicant are saying. Subsequently the recording of the applicant is interrupted as the camera points away onto the policemen putting the first arrested person, and then another one, into the police vans. Only afterwards does the video recording show the applicant being led to a police van by policemen, and he puts up no resistance at this moment of the footage.
>
> In this respect, and taking into account that the footage does not show Mr Nemtsov's actions immediately before his placement in the police van, the video and the accompanying audio do not depict Mr Nemtsov addressing the citizens before he was detained. The court concludes that the submitted footage does not refute the testimonies of the policemen, and [T.'s] testimony cannot refute them either because he observed only those actions of Mr Nemtsov that appear on the footage.
>
> ...
>
> The photographs submitted during the appeal hearing that depict Mr Nemtsov surrounded by policemen, one of whom is supporting his arm, cannot be considered by the court as refuting the event of the offence or the evidence, including the testimonies of [X and Y], because of the absence of information on the exact time of its taking, or on its connection with the place ... "

49. On the same day the court dismissed the applicant's appeal and upheld the first-instance judgment. It found, in particular, on the basis of the testimonies and reports of X and Y, that the applicant had indeed been guilty of having disobeyed a lawful order of the police. It upheld the reasoning of the first-instance court whereby it rejected the testimonies of thirteen witnesses called at the applicant's request. As regards the

testimonies of X and Y, on the other hand, it found no reason to mistrust them because they had had no personal interest in the outcome of the applicant's case.

50. In its appeal decision the court addressed the lawfulness of the applicant's detention pending the first-instance trial and considered that there had been no breach:

> "... after the report on the administrative offence had been drawn up, the information necessary for establishing the circumstances of the committed offence was collected, including the explanations of [X and Y], the notice of the place of the public demonstration of 31 December 2010, the [mayor's] reply to that notice, as well as the personal characteristics of the person in relation to whom the administrative offence report had been drawn up. A ruling was made by the Justice of the Peace of 2 September 2010 convicting the applicant of an offence under Article 19.3 of the Code of Administrative Offences. Therefore the applicant's detention during less than 48 hours was not in breach of Article 27.5 § 2 of the Code of Administrative Offences."

51. As regards the conditions of the applicant's detention between 31 December 2010 and 2 January 2011, the court found that his complaints had been outside the scope of the current proceedings, holding that another type of legal action should have been brought by the applicant to challenge those acts. The court did not specify what procedure the applicant should have followed as an avenue for those complaints.

52. On 31 March 2011 the applicant lodged before the Tverskoy District Court a complaint under Chapter 25 of the Code of Civil Procedure. He challenged his initial arrest and complained of the poor conditions of detention for over forty hours.

53. On 4 April 2011 the court refused to accept the applicant's action, holding that the questions concerning the lawfulness of the police acts had to be examined in the relevant administrative proceedings, but could not be dealt with in civil proceedings.

54. On 14 April 2011 the applicant appealed against the refusal to accept his complaint. The Moscow City Court dismissed his appeal on 22 July 2011. It relied, in particular, on Ruling no. 2 of 10 February 2009 by the Plenary Supreme Court of the Russian Federation and held, in so far as relevant, as follows:

> "... the courts may not examine complaints lodged under Chapter 25 of the Code of Civil Procedure against acts or inaction connected with the application of the Code of Administrative Offences, Chapter 30 of which provides for the procedure for challenging them; or acts or inaction for which the Code of Administrative Offences does not provide for a procedure by which they may be challenged. Acts or inaction that are inseparable from the administrative case may not be subject to a separate challenge (evidence in the case, [including] reports on the application of precautionary measures to secure the course of justice in the administrative case). In this case the arguments against the admissibility of a particular piece of evidence or the application of a precautionary measure to secure the course of justice may be put forward during the hearing of the administrative case or in points of appeal against the judgment or

ruling on the administrative case. However, if the proceedings in the administrative case are terminated, the acts committed in the course of these proceedings, if they entailed a breach of an individual's or a legal person's rights or freedoms, or hindered the exercise of their rights and freedoms, or imposed an obligation after the proceedings had been terminated, [they] may be challenged under Chapter 25 of the Code of Civil Procedure. Under the same procedure one may challenge the acts of officials if no administrative file has been opened."

55. The applicant also attempted to challenge the acts of the judiciary involved in his case before the Judiciary Qualification Board of Moscow. His attempts were, however, unsuccessful.

II. RELEVANT DOMESTIC LAW

56. The relevant provisions of the Code of Administrative Offences of 30 December 2001, as in force at the material time, read as follows:

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

"Failure to obey a lawful order or demand of a police officer ... in connection with the performance of their official duties related to maintaining public order and security, or impeding the performance by them of their official duties, shall be punishable by a fine of between five hundred and one thousand roubles or by administrative detention of up to fifteen days."

Article 27.2 Escorting of individuals

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

(1) by the police ...

...

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

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

Article 27.3 Administrative detention

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

...

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

...

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

Article 27.4 Administrative detention report

"1. The administrative detention shall be recorded in a report ...

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

Article 27.5 Duration of administrative detention

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

2. Persons subject to administrative proceedings concerning offences involving unlawful crossing of the Russian border ... may be subject to administrative detention for up to 48 hours.

3. Persons subject to administrative proceedings concerning offences punishable, among other administrative sanctions, by administrative detention may be subject to administrative detention for up to 48 hours ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 10 AND 11 OF THE CONVENTION

57. The applicant complained that his arrest and detention on 31 December 2010, as well as his conviction for an administrative offence, had violated his right to freedom of expression and to freedom of peaceful assembly guaranteed by Articles 10 and 11 of the Convention, which read as follows:

Article 10 (freedom of expression)

"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 (freedom of assembly and association)

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the state."

A. Admissibility

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

B. Merits

1. The parties' submissions

59. The applicant alleged that he had been arrested after having taken part in an authorised political rally and had been placed in custody and subsequently convicted for an administrative offence as a reprisal for publically expressing his political views. He insisted that after having addressed the authorised meeting he had not planned or attempted to call for another, unauthorised, meeting. He contended that he had been simply walking towards the exit from the cordoned-off area when the police had obstructed the way out and arrested him without giving any warning or reason. He referred to the testimonies of thirteen witnesses given before the Justice of the Peace, which had corroborated his version of events and which the courts had discarded as irrelevant or biased.

60. The Government accepted that the applicant's arrest and his conviction for an administrative offence had constituted an interference with his freedom of expression and his freedom of assembly. However, they maintained that those measures had been lawful, had pursued the legitimate aim of maintaining public order and had been proportionate to that aim for the purposes of Articles 10 § 2 and 11 § 2 of the Convention. They claimed that the applicant had attempted to conduct an unauthorised public demonstration and referred to the notice filed by three individuals on 16 December 2010 which had not been approved by the mayor of Moscow. Given that the organisers of that event had received a proposal to change the venue and time of the demonstration, the limitations on the freedom of

assembly had been proportionate in this case. They maintained that the police's demand that the applicant stop the alleged agitation had therefore been lawful, whereas he had persisted with his allegedly illegal conduct and had to be forced to stop.

2. The Court's assessment

(a) The scope of the applicant's complaints

61. The Court notes that, in the circumstances of the 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 *Kasparov and Others v. Russia*, no. 21613/07, §§ 82-83, 3 October 2013).

62. On the other hand, notwithstanding its autonomous role and particular sphere of application, Article 11 must, in the present case, also be considered in the light of Article 10. The protection of personal opinions, secured by Article 10, is one of the objectives of freedom of peaceful assembly as enshrined in Article 11 (see *Ezelin*, cited above, § 37).

(b) The Court's assessment of the evidence and establishment of the facts

63. The Court observes that, according to the Government, the applicant incurred sanctions for attempting to hold an unauthorised meeting and failing to obey police officers' orders to stop agitating. The applicant, on the contrary, contended that he had committed no such acts and that the true aim of his arrest and conviction had been to discourage him and others from participating in opposition demonstrations. The Court observes that in the domestic proceedings and before the Court the applicant has firmly and consistently contested the factual findings of the domestic courts, and this dispute is central to the present case. In these circumstances, the Court will need to review the facts established in the domestic proceedings.

64. In doing so, the Court remains sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000, and *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, § 135, 24 February 2005). Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them. The Court, however, is not bound by the findings of the domestic courts, although in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, pp. 17-18, §§ 29-30, and *Avşar v. Turkey*, no. 25657/94, § 283, ECHR 2001-VII (extracts)). The Court has previously applied this reasoning in the context of Articles 10 and

11 of the Convention (see, *mutatis mutandis, Europapress Holding d.o.o. v. Croatia*, no. 25333/06, § 62, 22 October 2009, and *Hakobyan and Others v. Armenia*, no. 34320/04, §§ 92-99, 10 April 2012).

65. In the proceedings before the Court, there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. It adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof, are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII).

66. As regards the events of 31 December 2010, it finds that the parties have expressly or implicitly agreed on certain facts which may be summarised as follows. From about 6 p.m. to 6.30 p.m. the applicant took part in an authorised and peaceful public demonstration at Triumfalnaya Square. The place designated for the meeting was cordoned off by the riot police, and the only exit from the meeting was at Tverskaya Street; the exit was heavily guarded by the riot police. During the meeting the applicant addressed the participants with a speech expressing strong political views that could have been seen by the officials as controversial and even provocative. Having finished his speech he headed towards the exit, accompanied by his daughter and her friend. The applicant was arrested at the exit to Tverskaya Street before he could leave the restricted area. The time between the moment when the applicant, his daughter and her friend reached the police cordon in front of the exit to Tverskaya Street and the applicant's arrest did not exceed one or two minutes. This time-frame, stated by the applicant's daughter and her friend at the trial and not challenged at any stage, appears to constitute common ground between the parties. The foregoing account as a whole is, moreover, coherent with the witness testimonies and the police reports. Accordingly, the Court considers these circumstances as well-established facts.

67. The dispute between the parties concerns, in particular, the events that occurred between the applicant's arrival at the cordon and his placement in a police van one or two minutes later. The applicant asserted that as soon as he had arrived at the cordon he had been arrested without any reason or pretext. The Government, for their part, reiterated the account given by the two policemen, whereby the applicant began addressing passers-by at Tverskaya Street, calling them to hold a spontaneous meeting; it was alleged that he had shouted anti-government slogans and ignored the

warnings of the police and their requests to return to the authorised meeting, and that he had continued agitating until he was arrested.

68. The official account left it unexplained why the applicant had begun calling for a public meeting immediately after having spoken at the authorised demonstration. Nor did it explain who the "passers-by" inside the police cordon were. It follows from the witness testimonies that the people gathered at the cordon were the participants of the authorised meeting who were willing but unable to leave the restricted area. The official account also sits at odds with the time-frame established above, as such a sequence of actions and the arrest would have had to have been carried out within one or two minutes. Moreover, for most of that period the applicant featured on the footage filmed by photographer T., showing no signs of agitating or disobeying, according to the Tverskoy District Court's own finding (see paragraph 48 above).

69. Furthermore, none of the eyewitnesses, except the two policemen, saw or heard the applicant calling for a meeting or agitating. In particular, M.T. testified that she had heard the applicant asking the riot police why the exit had been blocked and then shouting out that Article 31 of the Constitution guaranteed freedom of assembly (see paragraph 38 above). In the same vein, photographer T. testified that the applicant had been intercepted by the police immediately on his arrival at the cordon (see paragraph 47 above). Both witnesses' accounts corroborate the applicant's version of events.

70. The courts' finding that the applicant must have nevertheless committed the unlawful acts, supposedly in the marginal time not covered by T.'s footage, was based solely on the statements of the two policemen and on their own written reports. Crucially, their testimonies outweighed those of the applicant and of all other witnesses. However, given the role of those policemen in the applicant's alleged offence, the Court cannot share the domestic courts' perception of these officers as neutral observers and sees no justification for affording their testimonies stronger evidentiary value.

71. In view of the above, the Court considers that there are cogent elements in the present case prompting it to doubt the credibility of the official reason for the applicant's arrest, detention and administrative charges. The materials at its disposal contain insufficient evidence of the applicant's attempt to call a second public meeting, whether legal or illegal, or of his disobedience towards the police. On the other hand, it finds the applicant's allegations sufficiently convincing and corroborated by evidence. On the basis of all evidence submitted by the parties it finds that the applicant had arrived at the police cordon and found himself in a crowd of people willing to leave the meeting but unable to do so because the exit had been blocked or narrowed down by the riot police. At this point he enquired about the reasons for the exit to be restricted and shouted out that

Article 31 of the Constitution guaranteed freedom of assembly. He was arrested and taken to the police van; he did not resist the arrest.

(c) Whether there was interference with the exercise of the freedom of peaceful assembly and whether the interference was justified

72. The Court reiterates that the right to freedom of assembly is a fundamental right in a democratic society and is one of the foundations of such a society (see, among numerous authorities, *Galstyan v. Armenia*, no. 26986/03, § 114, 15 November 2007). This right, of which the protection of personal opinion is one of the objectives, is subject to a number of exceptions which must be narrowly interpreted and the necessity for any restrictions must be convincingly established. 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). Accordingly, where the State does intervene, such 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 those aims.

73. The term "restrictions" in paragraph 2 of Article 11 must be interpreted as including both measures taken before or during the public assembly, and those, such as punitive measures, taken afterwards (see *Ezelin*, cited above, § 39, and *Galstyan*, cited above, § 101).

74. The Court considers that the applicant's arrest and detention constituted an interference with his right to peaceful assembly, as did the ensuing administrative charges brought against him. The Court observes, moreover, that the Government did not dispute the existence of the interference with the right to peaceful assembly in the present case.

75. In the light of these principles the Court will examine whether the interference with the applicants' right to peaceful assembly was lawful, pursued a legitimate aim and was necessary in a democratic society. It considers that in this case the questions of lawfulness and of the existence of a legitimate aim are indissociable from the question whether the interference was "necessary in a democratic society" (see, *mutatis mutandis***,** *Christian Democratic People's Party v. Moldova*, no. 28793/02, § 53, ECHR 2006-II), and it considers it unnecessary to examine them separately.

76. The Court notes that the legal basis for the applicant's arrest and the subsequent administrative charges brought against him was Article 19.3 of the Code of Administrative Offences, which prescribed an administrative penalty for disobeying the lawful orders of a police officer. However, the reference to this provision was contested by the applicant on the grounds that the underlying events had not, in fact, taken place, and the Court has upheld this view (see paragraph 71 above). In particular, it has found above

that the authorities had not proven that the applicant had received an order from the police, or that it was lawful, or that the applicant had disobeyed it (ibid.). On the contrary, it found that the applicant had arrived at the police cordon and was arrested after having shouted out that Article 31 of the Constitution guaranteed freedom of assembly, without having received any orders or having disobeyed them. The Court therefore concludes that the arrest and the ensuing administrative liability were imposed on the applicant without any connection with the intended purpose of the legal provision for disobeying lawful orders of the police. The interference with the applicant's right to freedom of peaceful assembly on such a legal basis could only be characterised as arbitrary and unlawful (see *Hakobyan and Others,* cited above, § 107).

77. The Court further notes the lack of any acknowledgments that the acts imputed to the applicant by the police, namely an attempted call for a spontaneous demonstration and the chanting of anti-government slogans, were by themselves protected by Articles 10 and 11 of the Convention. An order to stop those actions – had they truly occurred – required strong justification in order to be lawful. The courts dispensed with those considerations. The administrative proceedings against the applicant and his ensuing detention had the effect of discouraging him from participating in protest rallies or indeed from engaging actively in opposition politics.

78. Undoubtedly, those measures had a serious potential also to deter other opposition supporters and the public at large from attending demonstrations and, more generally, from participating in open political debate. The chilling effect of those sanctions was further amplified by the fact that they targeted a well-known public figure, whose deprivation of liberty was bound to attract broad media coverage. In view of the foregoing the Court finds that the applicant's arrest and the charges against him had not been justified by a pressing social need.

79. In view of these findings, the Court concludes that the interference with the applicant's right to peaceful assembly could not be justified under the requirements of Article 11 § 2 of the Convention (see paragraph 75 above).

80. There has accordingly been a violation of Article 11 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 OF THE CONVENTION

81. The applicant further complained that he had not received a fair hearing in the determination of the charges against him. In particular, he claimed that the administrative proceedings had fallen short of equality of arms: they had not been public, and the applicant had been unable to participate in them effectively or to obtain the attendance of witnesses on

his behalf under the same conditions as the witnesses against him. He relied on Article 6 §§ 1 and 3 (d) of the Convention, which provide, in so far as relevant, as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by [a] ... tribunal ...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him ..."

A. Admissibility

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

83. In the present case, the applicant was convicted of an offence which was punishable by detention, the purpose of the sanction being purely punitive. Moreover, he served a fifteen-day prison term as a result of his conviction. This offence should accordingly be classified as "criminal" for the purposes of the Convention. It follows that Article 6 applies (see *Menesheva*, cited above, §§ 94-98; *Malofeyeva v. Russia*, no. 36673/04, §§ 99-101, 30 May 2013; and *Kasparov*, cited above, §§ 39-45).

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

B. Merits

85. The Government contested the allegation that the proceedings in this administrative case had been conducted in breach of Article 6 of the Convention. They argued that the applicant had been given a fair opportunity to state his case, to obtain the attendance of thirteen witnesses

on his behalf, to cross-examine the police officers whose statements formed the basis of the charges and to present other evidence. The applicant was given an opportunity to lodge written requests and he availed himself of that right. They also pointed out that the hearing had been open to the public and that the hearing room had been full to its capacity of about twenty to twenty-five people.

86. The applicant maintained his complaint that his conviction for an administrative offence had been arbitrary and had not been based on an adequate assessment of the relevant facts. He alleged that the outcome of his trial had been predetermined and, essentially, there had been no adversarial proceedings. He claimed, in particular, that all the evidence against him had been taken into account, despite its provenance from the two policemen, whereas any evidence in his favour had been either expressly dismissed or given no weight. Although he had been given the opportunity to call and examine witnesses on his behalf, the court had dismissed their testimonies as biased or irrelevant, whereas the testimonies of the police officers had been accepted as reliable and objective. He pointed out that his requests concerning the examination of video materials had not been fully allowed, despite the fact that the material examined by the courts had contained no proof of his offence.

87. The Court reiterates that it is not its task to take the place of the domestic courts, which are in the best position to assess the evidence before them, establish facts and interpret domestic law. The Court will not, in principle, intervene, unless the decisions reached by the domestic courts appear arbitrary or manifestly unreasonable and provided that the proceedings as a whole were fair, as required by Article 6 § 1 (see, *mutatis mutandis*, *Van Kück v. Germany*, no. 35968/97, §§ 46-47, ECHR 2003-VII and *Khamidov v. Russia*, no. 72118/01, § 170, ECHR 2007-XII (extracts)).

88. Although it is not the Court's function under Article 6 § 1 to deal with errors of fact or law allegedly committed by the domestic courts, decisions that are "arbitrary or manifestly unreasonable" may be found incompatible with the guarantees of a fair hearing (see *Khamidov*, cited above, § 107; *Berhani v. Albania*, no. 847/05, §§ 50-56, 27 May 2010; *Ajdarić v. Croatia*, no. 20883/09, § 47-52, 13 December 2011; and *Anđelković v. Serbia*, no. 1401/08, §§ 26-29, 9 April 2013).

89. The Court has found above that in the present case there existed cogent elements that led it to depart from the findings of fact reached by the domestic courts. In particular, it has established that the applicant's conviction for an administrative offence was arbitrary and therefore in breach of Article 11 of the Convention (see paragraphs 76 and 80 above). It will consider below whether the procedure by which the domestic courts reached their decisions has also breached Article 6 of the Convention.

90. In reaching the conclusion that the applicant's conviction was arbitrary, the Court has taken into account the domestic courts' manner of evaluation of evidence, in particular the reasons for attributing weight only to the statements of the two policemen who were "victims" of the applicant's alleged disobedience while disregarding all defence witnesses (see paragraph 70 above).

91. The Court has also noted the ample and coherent evidence presented for the defence (see paragraph 69 above) and the reasons for their dismissal, in particular the assumption that the witnesses who participated in the same public demonstration as the applicant were biased towards him, which the Court finds it hard to justify. By applying this criterion the domestic courts disqualified *ab initio* any potential eyewitness in this case, irrespective of their individual situations or their attitude towards the applicant. The overall implausibility of the official version, compounded by the lack of any material corroborating the policemen's account, has been obvious to the Court. In sum, the Court considers that the domestic decisions were not based on an acceptable assessment of the relevant facts.

92. The Court further holds that by dismissing all evidence in the applicant's favour, the domestic courts placed an extreme and unattainable burden of proof on the applicant, so that his defence could not, in any event, have had even the slightest prospect of success. This ran contrary to the basic requirement that the prosecution has to prove its case and one of the fundamental principles of criminal law, namely, in *dubio pro reo* (see, *mutatis mutandis*, *Barberà, Messegué and Jabardo v. Spain*, 6 December 1988, § 77, Series A no. 146; *Lavents v. Latvia*, no. 58442/00, § 125, 28 November 2002; and *Melich and Beck v. the Czech Republic*, no. 35450/04, § 49, 24 July 2008).

93. Lastly, the Court observes that the courts limited the scope of the administrative case to the applicant's alleged disobedience, having omitted to consider the "lawfulness" of the police order (cf. *Makhmudov v. Russia*, no. 35082/04, § 82, 26 July 2007). They thus absolved the police from having to justify the interference with the applicant's right to freedom of assembly and sanctioned the applicant for actions which – had they truly occurred – would have been protected by the Convention (see paragraph 77 above).

94. The foregoing considerations are sufficient to enable the Court to conclude that the administrative proceedings against the applicant, taken as a whole, constituted a violation of his right to a fair hearing under Article 6 § 1 of the Convention.

95. In view of these findings the Court does not consider it necessary to address the remainder of the applicant's complaints under Article 6 §§ 1 and 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 §§ 1 AND 4 OF THE CONVENTION

96. The applicant further complained that his arrest and detention had been arbitrary and that there had been no effective judicial review thereof. He relied on Article 5 §§ 1 and 4 of the Convention, which provides:

> "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.
>
> ...
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Admissibility

97. 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

98. The Government claimed that at about 6.30 p.m. on 31 December 2010 the applicant had been arrested in accordance with Article 27.3 § 1 of the Code of Administrative Offences. He was then taken to the police station as required by Article 27.2 § 1 of the Code to draw up a report on the administrative offence. His subsequent detention pending trial did not

exceed the forty-eight hour time-limit set forth in Article 27.5 § 3 of the Code. They considered that the police had fully complied with the procedure prescribed by law. They further pointed out that the applicant had been able to challenge his detention before the Tverskoy District Court of Moscow and that on 12 January 2011 it had dismissed the applicant's appeal, including the point concerning the lawfulness of his detention.

99. The applicant disagreed with the Government. He considered that his arrest on 31 December 2010 had not fallen under sub-paragraphs (a) to (f) of Article 5 § 1 and therefore had been unlawful. Moreover, he contended that there had been no grounds to detain him pending trial for up to forty-eight hours after the police reports had been drawn up. He relied, in particular, on his arrest report, which stated that he had been detained for the purpose of drawing up an administrative offence report. He further claimed that he had been unable effectively to challenge the decision to detain him for forty-eight hours pending trial.

100. The Court reiterates that Article 5 of the Convention guarantees the fundamental right to liberty and security. That right is of primary importance in a "democratic society" within the meaning of the Convention (see *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 65, Series A no. 12, and *Winterwerp v. the Netherlands*, 24 October 1979, § 37, Series A no. 33).

101. It is a fundamental principle that no detention which is arbitrary can be compatible with Article 5 § 1 and the notion of "arbitrariness" in Article 5 § 1 extends beyond lack of conformity with national law, so that a deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus contrary to the Convention (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67, ECHR 2008). While the Court has not previously formulated a global definition as to what types of conduct on the part of the authorities might constitute "arbitrariness" for the purposes of Article 5 § 1, key principles have been developed on a case-by-case basis. Moreover, the notion of arbitrariness in the context of Article 5 varies to a certain extent, depending on the type of detention involved (see *Mooren v. Germany* [GC], no. 11364/03, § 77, ECHR 2009-...). In this connection, mere mistakes are to be distinguished from a flagrant denial of justice undermining not only the fairness of a person's trial, but also the lawfulness of the ensuing detention. According to the Court's case-law, detention following a conviction imposed in manifestly unfair proceedings amounting to a flagrant denial of justice is unlawful and automatically implies a breach of Article 5 § 1 of the Convention (see *Stoichkov v. Bulgaria*, no. 9808/02, §§ 51 and 58-59, 24 March 2005, and *Shulgin v. Ukraine*, no. 29912/05, § 55, 8 December 2011).

102. In particular, the condition that there be no arbitrariness demands that both the order to detain and the execution of the detention must

genuinely conform with the purpose of the restrictions permitted by the relevant sub-paragraph of Article 5 § 1 (see *Winterwerp*, cited above, § 39; *Bouamar v. Belgium*, judgment of 29 February 1988, Series A no. 129, § 50; *O'Hara v. the United Kingdom*, no. 37555/97, § 34, ECHR 2001-X; and *Hakobyan and Others*, cited above, §§ 107 and 123).

103. In the present case, the Court is mindful of its finding above that the applicant was subjected to a measure, namely arrest and detention followed by a short-term prison sentence, which was arbitrary and unlawful. It pursued aims unrelated to the formal grounds relied on to justify the deprivation of liberty and implied an element of bad faith on the part of the police officers. Furthermore, there were sufficient elements to conclude that the domestic courts that imposed the detention also acted arbitrarily in reviewing both the factual and the legal basis for the applicant's detention (see paragraphs 76 and 93 above). In such circumstances, the Court cannot but conclude that the applicant's deprivation of liberty as a whole was arbitrary and therefore unlawful within the meaning of Article 5 § 1.

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

105. In view of the nature and the scope of its finding above, the Court does not consider it necessary to rule separately on whether the judicial review of the applicant's detention complied with Article 5 § 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF DETENTION

106. The applicant alleged that Article 3 had been violated on account of the appalling conditions in which he had been detained at the police station of the Tverskoy District Department of the Interior from about 7.30 p.m. on 31 December 2010 to 10 a.m. on 2 January 2011. Article 3 of the Convention read as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The applicant also claimed that he had not had at his disposal an effective remedy for this violation of the guarantee against ill-treatment, as required under Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority ...."

107. The Government argued that the applicant had failed to exhaust an effective remedy that had been open for him to complain about the alleged violations of his rights under Article 3 of the Convention, at least in so far as he complained of a lack of bedding and food and insufficient light and

ventilation. They considered that a complaint to the prosecutor's office would have allowed the competent authority to resolve his situation.

108. As to the substance, the Government contested the applicant's description of his conditions of detention in the cell at the police station and provided an alternative account, set out in paragraph 25 above. They claimed that the conditions of the applicant's detention had complied with the requirements of Article 3 of the Convention.

109. The applicant disagreed with the Government's allegation that he had not exhausted domestic remedies and claimed that he had attempted several avenues of redress. He maintained that he had not had an effective remedy for his complaint concerning the inadequate conditions of detention. He pointed out that on 4 April 2011 the Tverskoy District Court had refused to examine his complaint concerning the conditions of detention on the grounds that it was a matter that could be addressed only in the course of the administrative proceedings; he had previously attempted to pursue that avenue, but his complaint had been dismissed without examination. As regards the divergence between the Government's account of his conditions of detention and his own, he pointed out that the Government's claim had not been supported by evidence, whereas he had provided a report by a public commission for the monitoring of detention facilities, which had corroborated his allegations.

A. Admissibility

110. The Government raised an objection in respect of non-exhaustion of domestic remedies by the applicant. The Court considers that the question of exhaustion of domestic remedies is closely linked to the merits of the applicant's complaint that he did not have at his disposal an effective remedy for his complaints concerning inhuman and degrading treatment on account of being detained in inadequate conditions. The Court thus finds it necessary to join the Government's objection to the merits of the applicant's complaint under Article 13 of the Convention.

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

B. Merits

1. *Exhaustion of domestic remedies and alleged violation of Article 13 of the Convention*

112. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to

bring a case against the State before the Court to first use the remedies provided by the national legal system. Consequently, States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption, reflected in Article 13 of the Convention, with which it has close affinity, that there is an effective remedy available to deal with the substance of an "arguable complaint" under the Convention and to provide appropriate relief. Moreover, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI, and *Handyside v. the United Kingdom*, 7 December 1976, § 48, Series A no. 24).

113. The Court observes that it has on many occasions examined the effectiveness of the domestic remedy suggested by the Government. It found, in particular, that even though review by a supervising prosecutor plays an important part in securing appropriate conditions of detention, a report or order by a prosecutor is primarily a matter between the supervising authority and the supervised body and is not geared towards providing preventive or compensatory redress to the aggrieved individual. Since the complaint to a prosecutor about unsatisfactory conditions of detention does not give the person using it a personal right to the exercise by the State of its supervisory powers, it cannot be regarded as an effective remedy (see *Dirdizov v. Russia*, no. 41461/10, § 76, 27 November 2012, and *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 104, 10 January 2012.

114. The Court also observes that the applicant's complaints about the poor conditions of his detention were rejected by the Tverskoy District Court on two occasions without examination on the merits. First, in its appeal decision of 12 January 2011 the court considered the complaints as falling outside of the scope of the administrative proceedings against the applicant; then, on 4 April 2011, in reply to the applicant's separate action, it stated that the complaints should have been considered during those administrative proceedings (see paragraphs 51 and 53 above). It did not follow from those decisions that the applicant had any further possibility of seeking redress. The Court notes, in particular, that they did not mention that the prosecutor's office would have been the most appropriate authority in the circumstances.

115. In the light of the above considerations, the Court concludes that the legal avenue put forward by the Government did not constitute an effective remedy that could have been used to prevent the alleged violations or their continuation and to provide the applicant with adequate and sufficient redress for his complaints under Article 3 of the Convention. Accordingly, the Court dismisses the Government's objection of non-exhaustion of domestic remedies.

116. The Court also finds that the applicant did not have at his disposal an effective domestic remedy for his complaint about the poor conditions of detention, in breach of Article 13 of the Convention.

2. Alleged violation of Article 3 of the Convention

117. The Court observes that the Government did not accept the applicant's description of the conditions of detention at the police station. However, it agrees with the applicant that the Government have failed to corroborate the alternative account with any evidence. Moreover, they did not challenge the authenticity or the accuracy of the report issued by two members of a public commission for the monitoring of detention facilities, who had visited the police station on 1 January 2011 specifically to inspect the conditions of the applicant's detention. The Court has no reason to doubt the findings of the commission and will accept their report as a basis for establishing the facts relating to the conditions of the applicant's detention pending trial.

118. It follows that the applicant was detained for about forty hours in a solitary cell measuring about 5 sq. m, which was poorly lit, had a concrete floor, no window, no ventilation, no sanitary equipment and no furniture except for a bench. Likewise, it considers it established that the applicant was not provided with a mattress, bedding or hot food and had to rely on provisions brought by his family.

119. The Court reiterates that it has already examined the conditions of detention obtaining in police stations in various Russian regions and found them to be in breach of Article 3 (see *Kuptsov and Kuptsova v. Russia*, no. 6110/03, § 69 et seq., 3 March 2011; *Nedayborshch v. Russia*, no. 42255/04, § 32, 1 July 2010; *Khristoforov v. Russia*, no. 11336/06, §§ 23 et seq., 29 April 2010; *Shchebet v. Russia*, no. 16074/07, §§ 86-96, 12 June 2008; *Fedotov v. Russia*, no. 5140/02, § 67, 25 October 2005; *Ergashev v. Russia*, no. 12106/09, §§ 128-34, 20 December 2011; and *Salikhov v. Russia*, no. 23880/05, §§ 89-93, 3 May 2012). It found a violation of Article 3 in a case where an applicant had been kept for twenty-two hours in an administrative-detention police cell without food or drink or unrestricted access to a toilet (see *Fedotov*, cited above § 68). In a different case, it noted that a similar cell designed for short-term administrative detention not exceeding three hours was not suitable for four days' detention because by its design, it lacked the amenities indispensable for prolonged detention. The cell did not have a toilet or a sink. It was solely equipped with a bench, there being no chair or table or any other furniture, and the applicant's food was brought by relatives (see *Ergashev*, cited above, § 131).

120. In the present case the Court finds the same deficiencies. Having regard to the cumulative effect of the factors analysed above, it considers that the conditions in which the applicant was held at the police station

diminished his dignity and caused him distress and hardship of an intensity exceeding the unavoidable level of suffering inherent in detention. It follows that the conditions of the applicant's detention amounted to inhuman and degrading treatment.

121. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention at the Tverskoy District police station from 31 December 2010 to 2 January 2011.

V. ALLEGED VIOLATION OF ARTICLES 3 AND 6 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS AT THE COURT HEARING

122. The applicant alleged that at the beginning of the hearing on 2 January 2011 the Justice of the Peace had ordered him to stand during the trial because apparently there had been no seat for him. The Government, for their part, confirmed that the applicant had been standing during the hearing but denied that he had been obliged to do so by the judge.

123. The Court reiterates that in order to fall within the scope of Article 3 ill-treatment must attain a minimum level of severity, which depends on all the circumstances of the case (see *T. v. the United Kingdom* [GC], no. 24724/94, § 68, 16 December 1999). Allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX).

124. In the present case, the applicant has submitted no proof, such as statements by eyewitnesses present in the courtroom, that the judge had compelled him to remain standing during the hearing. The Court considers that although a court order for a defendant to stand throughout the trial could, in principle, raise an issue under Article 3 of the Convention, in the circumstances of the present case the applicant has failed to substantiate this claim. The Court finds that this part of the application is manifestly ill-founded and should be rejected, pursuant to Article 35 §§ 3 and 4 of the Convention

125. In so far as the applicant could claim that being obliged to stand had affected his participation in the administrative proceedings, the Court refers to its finding of a violation of Article 6 on account of the gross overall arbitrariness of these proceedings and to its decision to dispense with examining the applicant's other specific complaints under Article 6 §§ 1 and 3 of the Convention (see paragraph 95 above). Accordingly, there is no need to examine this complaint from the standpoint of Article 6.

VI. ALLEGED VIOLATION OF ARTICLE 18 OF THE CONVENTION

126. The applicant complained that his arrest and detention on administrative charges had pursued the aim of undermining his right to freedom of assembly and freedom of expression. He relied on Article 18 of the Convention, which reads as follows:

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

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

128. The Court notes that this complaint is linked to the complaints examined above under Articles 5, 6, and 11 of the Convention and must therefore likewise be declared admissible.

129. It has found above that the applicant had been arrested, detained and convicted of an administrative offence arbitrarily and unlawfully and that this had had an effect of preventing or discouraging him and others from participating in protest rallies and engaging actively in opposition politics (see paragraphs 77-78 and 103 above).

130. Having regard to those findings, the Court considers that the complaint under Article 18 of the Convention raises no separate issue and it is not necessary to examine whether, in this case, there has been a violation of that provision.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

131. 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

132. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

133. The Government contested this claim as unreasonable and excessive. They considered that it was out of line with the Court's awards in similar cases and considered that a finding of a violation would constitute sufficient just satisfaction to the applicant.

134. The Court observes that it has found a violation of Articles 3, 5, 6, 11 and 13 in respect of the applicant. In these circumstances, the Court

considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, it awards the applicant EUR 26,000 in respect of non-pecuniary damage.

B. Costs and expenses

135. The applicant also claimed 100,000 roubles (RUB) for the costs and expenses incurred before the Court. He submitted a legal services agreement between him and Ms O. Mikhaylova and copies of payment receipts.

136. The Government pointed out that costs and expenses may only be awarded if a violation had been found. They did not contest the amounts claimed.

137. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,500 for the proceedings before the Court.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning the applicant's arrest, detention and conviction for an administrative offence, the complaint about the conditions of his detention and the absence of an effective remedy and the complaint about the undue purposes of the above restrictions admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 11 of the Convention;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the arbitrary conviction of the applicant for an administrative offence;

4. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the arbitrary arrest and detention of the applicant;

5. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of detention;

6. *Holds* that there has been a violation of Article 13 in conjunction with Article 3 of the Convention;

7. *Holds* that there is no need to examine the remainder of the complaints under Articles 5 and 6 of the Convention;

8. *Holds* that there is no need to examine the complaint under Article 18 of the Convention;

9. *Holds*

(a) that the respondent State is to pay the applicant, 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 26,000 (twenty-six thousand euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage;

(ii) EUR 2,500 (two thousand and five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

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

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

Done in English, and notified in writing on 31 July 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President