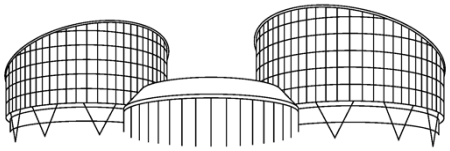

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF BODALEV v. RUSSIA

(Application no. 67200/12)

JUDGMENT

Art 10 • Freedom of expression • Insufficient reasons for convicting applicant of administrative offences for peaceful, non-disruptive performances in public space amounting to political expression or protest • No justification provided for treating the performances as "assemblies" and thereby requiring prior notification under domestic law
Art 11 • Freedom of peaceful assembly • Insufficient reasons for administrative offence convictions for attending protest rallies • Disproportionate sentences, conducive to creating a "chilling effect" on legitimate recourse to protests

STRASBOURG

6 September 2022

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

In the case of Bodalev v. Russia,

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

Georges Ravarani, *President,*
Georgios A. Serghides,
María Elósegui,
Darian Pavli,
Peeter Roosma,
Andreas Zünd,
Mikhail Lobov, *judges,*
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 67200/12) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Ivan Sergeyevich Bodalev on 13 September 2012;

the decision to give notice to the Russian Government ("the Government") of the complaints under Articles 10 and 11 of the Convention and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 25 January and 28 June 2022,

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

INTRODUCTION

1. The present case concerns the applicant's prosecution in relation to his participation in peaceful assemblies.

THE FACTS

2. The Government were initially represented by Mr M. Galperin, former Representative of the Russian Federation to the European Court of Human Rights, and later by his successor in this office, Mr M. Vinogradov.

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

I. PROTEST RALLY ON 4 DECEMBER 2011

4. On 4 December 2011 the applicant took part in a rally in St Petersburg protesting against the alleged fraud committed during the election to the State Duma on the same day.

5. Before the Court the applicant referred to a video accessible at an Internet video hosting service. The video appeared to show that rally from

different angles and at different moments. The video showed a police officer speaking to a loudspeaker and indicating that the rally had not received official approval from the competent authority, that it therefore was in breach of the Public Events Act (hereinafter "the PEA"); and that participants' actions could amount to an administrative offence. The officer also asked the journalists who were present at the venue of the rally not to impede the police in carrying out their duties. That text was repeated, in nearly identical terms, several times.

6. The applicant was arrested and taken to the police station. He was released on 5 December 2011.

7. On 7 February 2012 a justice of the peace sentenced the applicant to fines of 700 Russian roubles (RUB; 18 euros (EUR)) for the offences under Articles 19.3 § 1 and 20.2 § 2 of the Code of Administrative Offence (CAO) (see paragraphs 41 and 42 below). On both charges the justice of the peace held that the public event in the form of a meeting (*митинг*) had not been notified to the competent authority in breach of section 5 of the PEA and sub-paragraph 2 of paragraph 3 of section 6 of the PEA (see paragraphs 38 and 39 below); the police had informed the participants accordingly several times and had instructed them to stop the meeting and to disperse.

8. The applicant appealed before the Kirovo-Chepetskiy District Court of the Kirov Region, arguing that there had been no evidence that he (rather than the "event" itself or other people) had not complied with the statutory obligation to respect the "public order" under sub-paragraph 2 of paragraph 3 of section 6 of the PEA.

9. The applicant was notified of the appeal hearing but decided to not participate in it. On 26 March 2012 the District Court upheld the trial judgments.

10. The applicant received copies of the appeal decisions on an unspecified date. On 25 May and 14 August 2012 he sought review under Article 30.12 of the CAO in respect of his convictions under Articles 19.3 § 1 and 20.2 § 2 of the CAO respectively. On 22 June and 6 September 2012 the Deputy President of the Kirov Regional Court confirmed those convictions on review. He stated that it was not "possible" in a CAO case to ascertain whether the police had acted lawfully.

II. PROTEST RALLY ON 6 DECEMBER 2011

11. On 6 December 2011 the applicant took part in another protest rally relating to the recent election. It was held at around 7.30 p.m. on a weekday near one of the entrances to a metro station.

12. Before the Court the applicant referred to a video accessible at an Internet video hosting service. Its content was similar to the video relating to the rally on 4 December 2011 (see paragraph 5 above).

13. The police arrested a number of people, including the applicant.

14. The police compiled an offence report in respect of the applicant, indicating that the rally in the form of a meeting was in breach of section 6 § 3 (2) of the PEA; that Officer A. and other officers had made several warnings to the participants, specifying that breach and instructing them to disperse; that the applicant had not complied with that order and thereby committed an offence under Article 19.3 § 1 of the CAO.

15. On 7 December 2011 a justice of the peace sentenced the applicant to eleven days of detention for that offence. On 12 March 2012 the Kuybyshevskiy District Court of St Petersburg heard the applicant and upheld the judgment in substance. It also stated that the meeting had been held next to an entrance to a metro station during the time when the passenger traffic had been intense; in view of the political nature of the event entailing expressions of discontent and the large number of demonstrators, there had been a "real threat to other people".

16. On 16 March 2012 the applicant sought review of the court decisions mentioned above. On 10 April 2012 the St Petersburg City Court upheld them. On 17 August 2012 the Supreme Court of Russia upheld them on the second review.

III. "PERFORMANCE" ON 26 NOVEMBER 2012

17. On 26 November 2012 the applicant and several other people staged a "performance" aimed at "reviving" the Russian Constitution and consisting of a coffin filled with the brochures containing its texts, and a speech. The applicant held a poster saying "Let us resurrect the Constitution" and uttered several slogans like "Follow your own laws", "Stop the police state" and "We need a different Russia".

18. The police were present during that "performance". After it ended, the applicant was arrested and taken to the local police station.

19. On 17 December 2012 a justice of the peace sentenced him to a fine of RUB 15,000 (EUR 373) under Article 20.2 § 5 of the CAO. The justice of the peace considered that the "performance" amounted to a "public event" regulated under the PEA; that that event had not been notified to the competent authority and "had been in breach of section 6 of the PEA"; and that the applicant had taken part in that unlawful event.

20. The applicant appealed, arguing that a lawful conviction under paragraph 5 of Article 20.2 of the CAO required proof that as a participant he had breached the obligations or bans listed in section 6 §§ 3 and 4 of the PEA; that neither the offence report nor the trial judgment described and held against him any failure to comply with any ban or obligation.

21. On 6 June 2014 the Kuybyshevskiy District Court of St Petersburg upheld the judgment in a summary manner.

22. The applicant sought review of the court decisions mentioned above. He reiterated his arguments concerning the interpretation and application of section 6 of the PEA.

23. On 9 September 2014 the City Court upheld those court decisions. It held that it was established that the applicant had held a poster and had distributed leaflets during the event; that thereby he had taken part in a "public event", which had not been notified to the competent authority.

IV. PROTEST RALLY ON 31 DECEMBER 2012

24. On 31 December 2012 the applicant took part in another rally at which the police were present. He was arrested during that rally, allegedly, prior to hearing any specific order from the police and, *a fortiori*, prior to disobeying it.

25. By separate judgments issued on 1 January 2013 the Kuybyshevskiy District Court of St Petersburg sentenced him to fines of RUB 700 and RUB 20,000 (EUR 17 and 497 respectively) under Article 19.3 § 1 and Article 20.2 § 5 of the CAO respectively. The District Court held in relation to the charge under Article 20.2 § 5 that the police officer had informed the participants that the event had not been notified and "had explained the consequences of taking part in such an event".

26. On 31 January 2013 the City Court held an appeal hearing. The applicant was present at it. At the closure of the hearing the court delivered the operative part of the appeal decisions to uphold the trial judgments. It appears that the applicant received the texts of the appeal decisions on 21 February 2013. The City Court held in relation to the charge under Article 20.2 § 5 that the participants "had been publicly notified by a police officer about the violation of the law". On 12 April 2013 the Deputy President of the City Court confirmed those court decisions on review.

V. RALLY ON 5 APRIL 2013

27. On 5 April 2013 the applicant took part in a public assembly together with less than twenty people, near the building of the St Petersburg Administration of the Bank of Russia. It appears that the event was aimed at carrying the message that the Russian Government needed to prevent the removal of the State-owned enterprises' revenues to offshore jurisdictions.

28. According to the applicant, when the event was about to end, the police arrived and arrested him and some other participants.

29. With reference to a video recording, the applicant was sentenced to a fine of RUB 1,000 (EUR 21) under Article 19.3 of the CAO for disobedience to a lawful police order to disperse, despite a repeated order from the police. On appeal, the City Court watched the video recording and concluded that a police officer had once pronounced a phrase that the event had been unlawful;

the recording did not confirm that he had made any repeated statements or orders to cease participation in the event; the officer had not been examined at the trial as regards the relevant circumstances. The appeal court quashed the conviction. The first-instance court then returned the case to the police. The proceedings were not pursued thereafter.

30. Instead, on 10 June 2013 the Nevskiy District Court of St Petersburg convicted the applicant under Article 20.2 § 2 of the CAO for organising and holding the public event that had not been notified to the competent authority. On 20 August 2013 the City Court upheld the judgment. The City Court held that it was irrelevant for the offence under paragraph 2 of Article 20.2 of the CAO whether the police had ordered a dispersal.

31. The applicant sought review of those court decisions under Article 30.12 of the CAO. Referring to the video recording, the applicant argued that the police had only announced once their position on the legality of the event while making, and even less repeating, no specific order to disperse. On 21 November 2013 the Deputy President of the City Court reclassified the case under Article 20.2 § 5 of the CAO and held as follows:

> "Thus, a participant's obligations as provided by the law are not related to the fact whether that person took part in a public event, which was or was not approved by the executive authority. Irrespective of that, a participant is required to comply with the obligations and bans provided for by [the Public Events Act] ...
>
> It follows from the circumstances of the case that [the applicant] participated in a public event in the form of a meeting, which had not been approved by [the authority]. Thus, he was a participant rather than the organiser of that event. At the same time, by participating in the meeting and after being informed by the police that it was being held in breach of the requirement under the [Public Events Act] concerning notification of a public event, [the applicant] did not comply with the lawful order from the police to stop the meeting and to disperse. Thus, he violated the obligations imposed on him as a participant of a public event, namely the obligation to comply with all lawful instructions ... from the police. Therefore, his actions should be classified under paragraph 5 of Article 20.2 of the CAO."

The Deputy President sentenced the applicant to a fine of RUB 20,000 (EUR 450 at the time), noting that he had previously been prosecuted for similar offences.

32. On 11 March 2014 the Supreme Court of Russia upheld the judgment of 21 November 2013. The Supreme Court confirmed, *inter alia*, the finding that a participant's statutory obligations under section 6 § 3 of the PEA applied both to notified and non-notified public events.

VI. "PERFORMANCE" ON 27 JUNE 2013

33. On 27 June 2013 the applicant and five others came in front of the building of the local office of the Federal Migration Service (FMS) in St Petersburg. Once there, one of them put a ladder to the wall of the building. The applicant and another person climbed by that ladder onto the balcony at

the first floor of the building. There they shouted slogans "FMS in Dushanbe" and "Freedom to the people" and unfolded a red flag with a white circle with a picture of a grenade. Apparently, that flag was related to *The Other Russia*, a non-registered political party (see *Lashmankin and Others v. Russia*, nos. 57818/09 and 14 others, § 123, 7 February 2017, and *Karuyev v. Russia*, no. 4161/13, § 2, 18 January 2022).

34. It appears that a migration officer opened the balcony door and invited the applicant and the other person to enter inside. They complied. The FMS office called the police. Police officers arrived and took the applicant to the local police station. An offence report was compiled accusing him of an offence under Article 20.2 § 2 of the CAO because the police considered that the "performance" amounted to an assembly regulated by the Public Events Act and thus required a prior notification to the city administration. However, no such notification had been submitted to it.

35. On 8 October 2013 the Dzerzhinskiy District Court of St Petersburg convicted the applicant under Article 20.2 § 2 of the CAO and sentenced him to a fine of RUB 20,000 (EUR 456). The court considered that the event concerned criticism of the legislation on migration, amounted to a "public event" regulated by the PEA, specifically a group static demonstration (a "picketing"); that the applicant was the organiser of that event; that he had not notified it to the competent authority in breach of the PEA.

36. The applicant appealed. On 19 December 2013 the City Court considered that the applicant had participated in the demonstration and had not been its organiser. The appeal court reclassified the charge under Article 20.2 § 5 of the CAO and upheld the fine, finding as follows:

> "In the judgment of 8 October 2013 the district court established that [the applicant] had voluntarily participated in a public event in the form of a static demonstration; and that that demonstration had not been notified as required by the law ...
>
> Article 20.2 § 2 of the CAO... only concerns an organiser of a public event, who violated section 5 § 5 of the [Public Events Act] prohibiting running a public event without notifying a public authority. A participant's action or inaction during [that] event should be classified under paragraph 5 of Article 20.2 of the CAO ... Since [the applicant] had participated in the static demonstration which had not been notified to [the authority], he had acted as a participant rather than the organiser of that demonstration."

Noting that the applicant had already been convicted of similar offences in 2012 and 2013 the appeal court decided that the fine of RUB 20,000 was appropriate. The applicant had not been present at the appeal hearing. The text of the appeal decision was dispatched to him on 31 January 2014.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

37. For a summary of the relevant domestic law see *Lashmankin and Others v. Russia* (nos. 57818/09 and 14 others, §§ 216-312, 7 February

2017), and *Navalnyy v. Russia* ([GC], nos. 29580/12 and 4 others, §§ 43-48, 15 November 2018). The provisions directly relevant to the present case are set out below.

I. PUBLIC EVENTS ACT

38. The Federal Law on Gatherings, Meetings, Demonstrations, Processions and Pickets, no. 54-FZ of 19 June 2004 ("the Public Events Act" or "PEA") provides that the organiser of a public event must notify the executive or municipal authority of the event (sections 5 and 7 of the Act).

39. Section 6 § 3 of the PEA provides as follows:

> "3. During a public event the participants must:
>
> 1) comply with all lawful instructions [*требования*] given by the event organiser, the persons designated by the organiser, the designated representative of the executive authority of the constituency of the Russian Federation or the municipality, or by law enforcement officers;
>
> 2) respect the public order [*общественный порядок*] and the programme of the public event;
>
> 3) comply with regulations aimed at ensuring transport safety and traffic security ... where vehicles are used for the public event ..."

The Constitutional Court considered that where during a public event a participant uses symbols or other elements of visual support which are prohibited by Russian law, this may amount to a breach of the obligation to respect the "public order" under paragraph 3 of section 6 of the PEA (decision no. 3089-O of 26 November 2018).

In June 2012 section 6 § 4 was added to the PEA. It states that public event participants are not allowed (1) to cover their face, including by way of using masks or other objects specially designed to impede a person's identification; (2) to be in possession of arms or objects used as such, beer or beverages produced from it; 3) to be in a state of alcoholic intoxication at the venue of the public event.

40. Pursuant to section 16 of the Act, the grounds for ending a public event shall be (i) the emergence of a genuine threat to citizens' lives or health, and to the possessions of physical or legal persons; (ii) commission by the participants of unlawful acts or a deliberate breach by the organiser of the rules for the conduct of public events established by the Act; (iii) since 2012, non-compliance by the organisers with the obligations set out in section 5 of the Act. Section 17 provides that if it is decided to end the public event the representative of the executive or municipal authority (1) shall give an order to the organiser of the public event to end the public event, having explained the reasons for its termination, and within twenty-four hours, shall issue this order in writing and serve it on the organiser of the public event; (2) shall set the time for compliance with the order to end the public event; (3) if the

organiser does not comply with the order to end the public event, shall directly address the participants of the public event and set an additional time for compliance with the order to end the public event. In the event of non-compliance with the order to end the public event the police shall take the necessary measures to end the public event. That procedure for ending a public event shall not apply in the event of mass disorder, mob violence, arson, or other situations requiring urgent action.

II. CODE OF ADMINISTRATIVE OFFENCES

41. Article 19.3 § 1 of the CAO provided at the time that the following conduct was punishable with a fine of RUB 500 to 1,000 or administrative detention for up to fifteen days: (i) disobedience to a lawful order or request made by a police officer, a military officer or a detention facility officer, in connection with the exercise of his or her duties relating to securing public order and public safety; (ii) resistance to those officers in the exercise of their official duties.

42. Article 20.2 § 2 of the CAO provided, prior to June 2012, that violation of the rules for running a public event was punishable by a fine of RUB 1,000 to 2,000 as regards organisers and a fine of RUB 500 to 1,000 for participants. Subsequently, Article 20.2 of the CAO was amended. Since June 2012 it contained a new paragraph 5 concerning participants. It provided that the following conduct was punishable with a fine of from RUB 10,000 to 20,000 or up to forty hours of community work: violation by a participant in a public event of the rules for running a public event.

43. On 26 June 2018 the Plenary of the Supreme Court of the Russian Federation adopted the Resolution "On certain questions arising during judicial examination of administrative cases and cases on administrative offences related to the application of the legislation on public events". To ensure consistency in judicial practice the Supreme Court provided the judiciary with guidelines on application of the legislation, primarily the PEA and the CAO, in resolving administrative disputes and applying administrative liability, indicating that:

(a) the violation by a participant in a public event of the established procedure for running (*порядок проведения*) a public event – constituting an offence under Article 20.2 § 5 of the CAO – is only established where the demonstrator did not comply with (or violated) one of the obligations and prohibitions incumbent on demonstrators under section 6 §§ 3 and 4 of the Public Events Act. For instance, one such obligation requires compliance with all legal orders made by the police, military officers or National Guard officers; and

(b) the failure by a participant in a public event to comply with lawful orders or instructions of the police was to be classified under Article 20.2 § 5

of the CAO, which was in these circumstances to be regarded as a *lex specialis* in relation to Article 19.3 § 1 of the Code (§ 33 of the Resolution).

44. In Ruling no. 19-P of 17 May 2021 the Constitutional Court of the Russian Federation held that the constitutional right of peaceful assembly implies a real opportunity – through organising and participating in public events regulated under the Public Events Act – to influence the activities of public authorities by way of maintaining a civilised dialogue between civic society (*гражданское общество*) and the State. This does not exclude the protest nature of such events or criticism directed at specific acts or actions on the part of public authorities or at their policies. Therefore, the authorities' reaction to those events should be neutral and – irrespective of political, cultural or other views expressed by organisers or demonstrators – should be aimed at facilitating the lawful exercise of freedom of peaceful assembly, including by way of elaborating precise regulations for organising and holding public events and by avoiding restrictions that exceed what is acceptable in a democratic State based on the rule of law. Legislative, regulatory or other measures on the part of public authorities in this regard should not unjustifiably restrict the constitutional right of peaceful assembly. Restrictions should be based on the principles of necessity and proportionality, with due regard to the presumption in favour of the organisers' and demonstrators' willingness to maintain the peaceful nature of the event. Article 20.2 of the CAO, which uses a "blanket reference" technique, should be interpreted and applied with reference to the contents of the relevant legislation and regulations. It is precisely their breach, specifically as regards the notification procedure for public events, that constitutes an element of the administrative offence.

III. POLICE ACT 2011

45. Section 13 § 1 (1) and (7) of the Police Act (Federal Law no. 3-FZ of 7 February 2011) provides that outside the context of public events being held lawfully the police is authorised to make an (oral) order requiring citizens to disperse or to go to another location, where the amassing of people poses a threat to their lives or health, the lives or health of other citizens, possessions (*объекты собственности*) or interferes with the work of organisations or impedes the traffic of vehicles or pedestrians.

THE LAW

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

46. The applicant complained that (i) his convictions on account of the "performances" on 26 November 2012 and 27 June 2013 had violated

Article 10 of the Convention; (ii) his participation in the peaceful rallies on 4 and 6 December 2011, 31 December 2012 and 5 April 2013 had violated Articles 10 and/or 11 of the Convention.

47. The thrust of the complaint in relation to the "performances" concerns the applicant's exercise of the right to freedom of expression and the respondent State's choice to "interfere" with it by way of a conviction for violating the rules applicable to political rallies. The Court will examine this complaint under Article 10, in the light of the principles applicable under Article 11 of the Convention. The Court will examine the complaints about the other events under Article 11.

48. Articles 10 and 11 of the Convention 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 ...

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 1

"1. Everyone has the right to freedom of peaceful assembly ...

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 ..."

A. Admissibility

49. The Government have not argued that the complaints were belated. However, the Court reiterates that the six-month rule under Article 35 § 1 of the Convention, as applicable at the relevant time, concerns its jurisdiction and will first examine this matter.

50. The appeal decisions on the applicant's convictions relating to the rallies on 4 and 6 December 2011 were delivered on 26 March and 12 March 2012 respectively. He did not specify when he received the text of the appeal decision of 26 March 2012. The applicant was neither represented nor present at the appeal hearing on 26 March 2012. There is no indication that he did not become aware of the content of the appeal decision of 12 March 2012 on the same date. He lodged the related complaints before the Court only on 12 October 2012 and 13 September 2012 respectively, that is more than six

months after the appeal decisions mentioned above but within six months of the court decisions upholding them in the review proceedings under Article 30.12 of the CAO.

51. The CAO did not specify the rules applicable to the review procedure such as a time-limit for initiating it. In 2006 the Constitutional Court of Russia indicated that the rules of the Code of Commercial Procedure such as a three-month period specified there, could be applied by analogy. In 2008 the provisions of the CAO concerning the review procedure were redrafted, albeit no time-limit was specified in the CAO. The Court has previously noted that, at least in 2009, there were uncertainties, *inter alia*, as to whether recourse to the review procedure as amended in 2008 was (deemed to be) subject to any time-limit (see *Annenkov and Others v. Russia*, no. 31475/10, § 109, 25 July 2017), namely the three-month period mentioned above. However, in *Smadikov v. Russia* ((dec.), no. 10810/15, § 49, 31 January 2017) the Court stated that, at least as of August 2014, the review procedure was not a remedy to be exhausted prior to lodging an application before the Court and thus, as a rule, a review decision upholding lower court decisions would not be taken into account for the purpose of calculating the six-month period under Article 35 § 1 of the Convention.

52. The present case concerns the review procedure in 2012 (see paragraph 50 above). The Court notes that the applicant immediately sought review in respect of the court decisions relating to the event on 6 December 2011. As regards the event on 4 December 2011, he lodged applications for review within some two and five months of the appeal decision dated 26 March 2012. None of those applications were rejected as belated.

53. In the Court's view, in 2012 the applicant could legitimately rely on the findings made by the Constitutional Court. The fact that one of his applications that was lodged, for unspecified reasons, five months after the appeal decision was, nevertheless, processed cannot be held against the applicant as regards his compliance with the six-month rule under Article 35 § 1 of the Convention (see, in the same vein, *Annenkov and Others*, cited above, §§ 109-10).

54. Accordingly, the Court does not dismiss as belated the complaints relating to the rallies on 4 and 6 December 2011.

55. The Court notes that the complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

56. The applicant argued that prosecution under Article 20.2 § 5 of the CAO required the courts to establish that a public-event participant had not fulfilled one of the statutory obligations listed in paragraphs 3 and 4 of section 6 of the PEA (see paragraph 39 above). The list did not include any statutory obligation for a participant to notify the competent authority of an event. Therefore, a participant could presume that the event had been properly notified unless a competent public official informed him or her that it had not been notified. Even where such information had been given, nothing in section 6 of the PEA prohibited a participant from continuing to participate in the event. If the authorities wanted him or her to stop participation, they had to deliver a lawful order to that effect. That order would have to follow the procedure prescribed in sections 15 to 17 of the PEA. Only the participant's refusal to comply with such an order would constitute a lawful basis for prosecuting him or her under Article 20.2 § 5 of the CAO. Still, such prosecution would have to be convincingly shown to have been "necessary in a democratic society".

57. Except for the cases relating to the events on 6 December 2011 and 27 June 2013, the only reason for dispersing the events concerned the fact that the dates and the timing of the events had not been notified to the competent authority under the PEA. The appeal court mentioned some unspecified "real threat to unrelated citizens" in relation to the event on 6 December 2011 (see paragraph 15 above). Before the Court the Government mentioned that the lighting of smoke flares on 27 June 2013 had amounted to a breach of order. However, the national courts had not made any factual or legal findings on that account.

58. The applicant argued that during the rallies on 4 and 6 December 2011 the police had given no specific order to disperse. The police had only made vague requests such as "to not impede police officers to perform their duties" or "to stop unlawful actions" without explaining what exactly had to be done (for example, to leave the venue of the rally). Moreover, those events had been spontaneous assemblies and a direct response to the reports of fraud during the election on 4 December 2011 and prior to the publication of the final results on 9 December 2011, in order to encourage the general public, observers and the authorities to investigate and rectify the alleged fraud. In such circumstances it had been impossible to comply with the statutory requirement to lodge a notification of an event well in advance. The authorities should have shown an appropriate degree of tolerance toward such genuinely spontaneous and peaceful assemblies. In any event, the police had been aware that such protests had been possible and thus had been enabled to

ensure the smooth and safe conduct of them. The overall reaction of the authorities (the applicant's arrests and convictions, especially the one resulting in an eleven-day detention) had been disproportionate.

59. Referring to some video recordings from the file in the CAO case relating to the event on 31 December 2012, the applicant alleged that he had been arrested immediately after the police had started to announce that the event had been unlawful and long before they had ordered the participants to disperse. In any event, the rally could not be classified an event falling within the scope of the PEA.

60. As to the event on 5 April 2013, the police had only announced that it had been unlawful; no order to disperse had been given. The applicant referred in that regard to some video recordings in the file concerning the related CAO case and the fact that the proceedings under Article 19.3 of the CAO had not been pursued (see paragraph 29 above).

61. The applicant argued that the "performances" on 26 November 2012 and 27 June 2013 had been a form of artistic expression and should not have been classified as "public events" in the meaning of section 2 of the PEA (see paragraph 38 above). The events had not been "accessible to all" because they had not been advertised to the general public and had not involved any participation of the public; the performance on 27 June 2013 had been held on a balcony of the migration service building. That performance had involved two people, including the applicant, and thus should not have been classified as a static demonstration (a "picket") under Russian law. The performance on 26 November 2012 did not match any of the types of "public events" that had to be notified under the PEA. Thus he could not have been lawfully prosecuted for participating in a non-notified "public event". In any event, on 26 November 2012 the police had not made any warnings to the participants about unlawfulness of the event and had not issued any order to stop unlawful actions. No such circumstances had been established or relied upon by the courts. The police had not been present during the performance; after the event had been completed and while the participants, including the applicant had been leaving the venue, a plain-clothed police officer had approached him and had asked him to come to the police station. On 27 June 2013 the applicant had been asked to stop the performance by a migration service officer and had complied. He had then been "handed over" to the police that had arrived half an hour later. Lastly, the applicant argued that the fines of RUB 15,000 and 20,000 had been significant and had been comparable to fines for certain criminal offences such as battery or deliberate destruction of property.

(b) The Government

62. The Government submitted that during each public event in question the police had repeatedly warned the participants that the event had been unlawful and had ordered them to cease their unlawful actions. Nevertheless,

the participants, including the applicant, had continued their participation in the unlawful events and thereby had committed disobedience to lawful orders. The applicant's arrests had been aimed at establishing his identity and at putting an end to the ongoing administrative offences.

63. The statutory obligations imposed on public-event participants under paragraph 3 of section 6 of the PEA had been applicable to both notified and non-notified public events. Under section 17 of the PEA a participant's failure to comply with lawful orders from the police could entail liability. The procedure for terminating a public event only applied to lawful events, specifically events that had been notified to (approved by) the competent authority. The termination of the unlawful events in the present case, including the measures affecting the applicant as a participant, had had basis in the general police powers relating to maintaining order and ensuring public safety. Thus, for instance, the event on 6 December 2011 had been in breach of sub-paragraph 2 of paragraph 3 of section 6 of the PEA; the police had ordered the participants to cease participation in the event and to disperse. The order had been repeated several times and the participants had been afforded time to disperse.

64. The event on 27 June 2013 had amounted to a "picketing" regulated by the Public Events Act; the use of smoke flares had amounted to a breach of public order.

2. The Court's assessment

65. The Court considers that there has been an "interference" with the applicant's right to freedom of expression on account of his conviction in relation to the "performances" on 26 November 2012 and 27 June 2013, and his right to freedom of peaceful assembly on account of his conviction in relation to the rallies on 4 and 6 December 2011, 31 December 2012 and 5 April 2013. An "interference" infringes Article 10 or 11 of the Convention unless it satisfies the requirements of paragraph 2 of that provision. It thus has to be determined whether the interference was "prescribed by law", sought to pursue one or more legitimate aims as defined in that paragraph, and was "necessary in a democratic society" to achieve those aims.

(a) Prescribed by law

66. The Court reiterates that the expression "prescribed by law" requires that the impugned measure should have a basis in domestic law. It also refers to the quality of the law in question, which should be accessible to the persons concerned and foreseeable as to its effects, that is that it is formulated with sufficient precision to enable the persons concerned – 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 and to regulate their conduct (see *Öztürk v. Turkey* [GC], no. 22479/93, § 54,

ECHR 1999-VI). The phrase "prescribed by law" implies, *inter alia*, that domestic law must be sufficiently foreseeable in its terms to give individuals an adequate indication as to the circumstances in which and the conditions on which the authorities are entitled to resort to measures affecting their rights under the Convention (see *Fernández Martínez v. Spain* [GC], no. 56030/07, § 117, ECHR 2014 (extracts)). "Law" includes everything that goes to make up the written law, including enactments of lower rank than statutes, and the relevant case-law authority (ibid.). It is primarily for the national authorities, notably the courts, to interpret and apply domestic law, the Court's role consisting in ascertaining whether the effects of such an interpretation are compatible with the Convention (see *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 249, 22 December 2020).

67. It is common ground between the parties that participation in a non-notified/non-approved public event could entail liability under Article 20.2 § 5 of the CAO if it was proven that the participant had violated statutory duties or prohibitions prescribed under paragraphs 3 and 4 of section 6 of the Public Events Act respectively (see paragraph 39 above). This was also reiterated by the Plenary Supreme Court in 2018 (see paragraph 43 above).

68. The prohibitions listed in paragraph 4 of section 6 of the PEA were clearly not applicable and were not breached by the applicant. Thus the Court will focus on paragraph 3 of section 6 of the PEA. It is noted that it contained sub-paragraphs 1 and 2 which required participants to comply with lawful orders issued by the police and to respect the "public order" (*общественный порядок*), respectively.

69. The Government have not argued that at the material time (that is between 2011 and 2013) peaceful and non-disruptive participation in a peaceful but non-approved event, *per se*, constituted a breach by a demonstrator of his or her statutory obligation to respect the "public order". The Government have submitted no evidence of established domestic practice interpreting the obligation contained in section 6 § 3 (2) of the Act in that sense (compare *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, §§ 113-16, ECHR 2015; *Gough v. the United Kingdom*, no. 49327/11, § 155, 28 October 2014; *Lucas v. the United Kingdom* (dec.), no. 39013/02, 18 March 2003; and *Karuyev v. Russia*, no. 4161/13, §§ 21-24, 18 January 2022).

70. Having said this, the Court considers that it ought to have been foreseeable to an event participant, who was made aware that the event had not received official approval from the competent authority, that his or her failure to comply with orders by the police made during that event and relating to the lack of that approval, which included any lawful orders to disperse or stop participating, could constitute a breach of his or her obligation under section 6 § 3 (1) of the PEA and therefore could entail prosecution under Article 20.2 § 5 of the CAO. It is common ground between

the parties that in the context of a non-approved event the relevant "order" would usually be an order to cease participation in that event, that is to disperse by way of leaving the venue of the event.

71. For the purpose of the present case, the Court will proceed on the assumption that section 13 § 1 (1) and (7) of the Police Act furnished the legal basis for that type of order to be issued by the police in the context where, as indicated above, no administrative offence has yet been committed and no breach of the "public order" has occurred on account of the mere peaceful participation in a non-approved event (see paragraph 45 above).

72. The parties disagreed as to whether the police had intervened or in which manner they had proceeded during those public events. Both before the national courts and the Court the applicant argued that he had not disobeyed any specific orders, specifically orders to leave the venues of the events.

73. Having said this, for the reasons stated below the Court decides to dispense with reaching a conclusion relating to lawfulness because, in any event, the convictions were not convincingly shown to have been necessary in a democratic society in pursuance of a legitimate aim.

(b) Pursuing a legitimate aim

74. The Government stated, in substance, that the applicant's convictions had the aim of enforcing the Public Events Act, specifically the notification requirement and a participant's obligations under section 6 § 3 of that Act, namely the obligations to comply with lawful orders issued by the police and to respect the "public order" (*общественный порядок*). The Court will presume that the convictions sought to prevent disorder and protect the rights of others (see *Eğitim ve Bilim Emekçileri Sendikası and Others v. Turkey*, no. 20347/07, § 105, 5 July 2016).

(c) Necessary in a democratic society in pursuance of the legitimate aims

(i) General principles

75. The general principles for assessing whether an "interference" in respect of people organising and running a demonstration and in respect of other participants was "necessary in a democratic society" are well established in the case-law (see *Kudrevičius and Others*, cited above, §§ 142-60; *Lashmankin and Others v. Russia*, nos. 57818/09 and 14 others, § 142, 7 February 2017; and *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 128, 15 November 2018). The following principles are particularly relevant in the present case:

(a) The freedom to take part in a peaceful assembly is of such importance that a person cannot be subject to a penalty – 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 or herself commit any reprehensible act on such an occasion.

(b) An unlawful situation, such as the staging of a demonstration without prior authorisation (prior notification or approval, as the case may be under national law), does not necessarily justify an interference with a person's right to freedom of assembly. While rules governing public assemblies, such as the system of prior notification or approval, 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. 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 if the freedom of peaceful assembly is not to be deprived of all substance. The absence of prior authorisation (prior notification or approval) 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 (approved) in the first place, what the public interest at stake was, and what risks the demonstration entailed.

(c) Any demonstration in a public place may cause a certain level of disruption to ordinary life. This fact 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. 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. 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. 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 expression of opinions on such matters. On the contrary, the Contracting States enjoy a wide margin of appreciation in their assessment of the necessity in taking measures to restrict such conduct.

(d) 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. This does not mean that 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.

(e) 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. Where the penalties imposed on the demonstrators are criminal in nature, they require particular justification. A peaceful demonstration should not, in principle, be rendered subject to the threat of a criminal penalty, and notably to deprivation of liberty.

(ii) Application of the principles in the present case

76. Like other cases examined by the Court in respect of Russia and other countries, the present case concerns an "interference" in the context of public events which were notified in advance to the competent local authority but were not approved by it or events which were not notified (see *Lashmankin and Others*, § 211, and *Navalnyy*, §§ 14, 33 and 40, both cited above; and *Obote v. Russia*, no. 58954/09, § 9, 19 November 2019; see also *Ziliberberg v. Moldova*, no. 61821/00, § 13, 1 February 2005; *Balçık and Others v. Turkey*, no. 25/02, §§ 5 and 16, 29 November 2007; *Tatár and Fáber v. Hungary*, nos. 26005/08 and 26160/08, § 8, 12 June 2012; *Vyerentsov v. Ukraine*, no. 20372/11, § 14, 11 April 2013; *Gün and Others v. Turkey*, no. 8029/07, § 30, 18 June 2013; *Shmushkovych v. Ukraine*, no. 3276/10, § 12, 14 November 2013; and *Eğitim ve Bilim Emekçileri Sendikası and Others*, cited above, §§ 100, 103 and 106). The Court will examine the applicant's complaint in the light of the general principles summarised in paragraph 75 above, which are applicable in the present case.

77. It transpires from the available material that at least two events, on 4 and 6 December 2011, were spontaneously held in the context of the election to the State Duma. The "performances" on 26 November 2012 and 27 June 2013 were not notified in advance to the competent local authority. The Court has no information as to the circumstances in which the other two public events were planned by their organisers or whether they had any organisers who could be expected to notify that authority of the events being planned and, if appropriate, be held liable for omitting to lodge such notification.

78. Next, the Court notes that it was not established that the applicant had been in charge of organising or running any of those public events. *A fortiori*, it was not established that he had intentionally failed to abide by the applicable regulations, specifically the requirement to lodge prior notices about those events. The applicant was convicted as an ordinary demonstrator.

79. It is uncontested that the events and the applicant's participation in them were peaceful. Importantly, the only specific act held against him was his participation in non-approved events and, more specifically, his non-

compliance with orders to disperse that were issued essentially on the basis that those events had not received official approval from the competent authority.

80. The Court notes that the police were present at five events, except for the event on 27 June 2013, and that they opposed the running of four events, except for the events on 26 November 2012 and 27 June 2013. Their opposition to those events was solely based on the fact that they had not received official approval from the competent authority. The applicant disagreed with the domestic courts' findings relating to the police orders. He was prosecuted with reference to the fact that he had taken part in the non-approved events.

81. It is in this context that the Court will now examine in turn whether it was "necessary in a democratic society" to convict the applicant in relation to his participation in those six events.

(α) Rallies on 4 and 6 December 2011

82. A rally was not lawful under Russian law in the absence of official approval from the local authority. However, it appears that the mere presence at a non-approved public event was not *per se* an offence under Russian law (see paragraphs 43 and 67-72 above). The applicant was convicted for the supposed failure to comply with orders to disperse but this is contested.

83. As to Article 11 of the Convention, the Court reiterates its consistent case-law that an unlawful situation, such as participation in a non-notified demonstration, does not necessarily justify an interference with a participant's right to freedom of peaceful assembly. This is particularly so where, as in the present case, demonstrators did not engage in acts of violence. Thus, it is important for the public authorities to show a certain degree of tolerance if that freedom is not to be deprived of all substance. The absence of prior notification and the ensuing unlawfulness of the action do not give *carte blanche* to the authorities, including the courts. They are still restricted by the proportionality requirement of Article 11. The courts should have established what the public interest at stake was in relation to that non-approved rally, and what risks it entailed (see *Kudrevičius and Others*, cited above, § 151).

84. The court decisions contain no reasoning or assessment of evidence on the existence or legality of any order to disperse being given, the applicant being afforded a reasonable opportunity – including time and physical possibility – to comply with it, or on his failure to comply with it (compare *Chernega and Others v. Ukraine*, no. 74768/10, §§ 250-51, 18 June 2019). Apart from the offence report, which was to be considered as a bill of indictment, the court decisions discussed no evidence that the police had issued an order to disperse on 6 December 2011 or, even less, that that order had been related to any real risk of violating the rights of others. It transpires from the offence report that the applicant was prosecuted in relation to the

unlawfulness of the event because the competent authority had not been notified of it. Nothing suggests that the applicant uttered any threats, engaged in any reprehensible conduct or caused any harm or significant inconvenience to others, for instance, by way of obstructing an entrance to the metro station.

85. Therefore, even assuming a conviction for a rally participant's failure to disperse might be justified as "necessary in a democratic society" in certain circumstances, the national courts' perfunctory reasoning makes it impossible for the Court to ascertain that they adequately established the relevant facts and applied the principles under Article 11 of the Convention.

86. In particular, the Court notes that the public meetings on 4 and 6 December 2011 could, *prima facie*, be considered as a genuinely spontaneous reaction to the alleged violations committed during the election to the State Duma on 4 December 2011 (see also *Navalnyy and Yashin v. Russia*, no. 76204/11, § 7, 4 December 2014, and *Davydov and Others v. Russia*, no. 75947/11, §§ 6-9, 30 May 2017). The Court refers to its findings concerning the prior notification requirement under the Public Events Act (see *Navalnyy*, cited above, §§ 140-42):

(a) an unusually long ten-day period for that notification, with no allowance for special circumstances, where an immediate response to a current event is warranted in the form of a justified spontaneous assembly, and with no room for a balancing exercise as required by the Court's case-law;

(b) no reasons were adduced why it was "necessary in a democratic society" to provide for the automatic and inflexible application of the notification requirement irrespective of the specific circumstances of each case. That could by itself amount to an interference without justification under Article 11 § 2. This situation was compounded by the rigid and formalistic enforcement of provisions on termination of non-notified rallies; and

(c) related administrative convictions of participants had only been based on their participation in the rallies which had not been notified within the statutory time-limit.

87. There is no indication that the police showed any degree of tolerance, which might have been appropriate in the present case. The applicant was not afforded an opportunity to express his views and was removed from the venues of the public meetings. The courts did not show any tolerance either, convicting him in relation to his presence at those meetings, without adequately establishing the relevant facts and irrespective of any considerations pertaining to their spontaneous nature.

88. It follows that the applicant's convictions in relation to the events on 4 and 6 December 2011 were not convincingly shown to have been necessary in a democratic society. By implication, it is not decisive that following the conviction for the first event he was sentenced to two relatively small fines. As to the event on 6 December 2011, the applicant was sentenced to eleven-

day detention, which was by itself disproportionate in the circumstances of the case (compare *Chernega and Others*, cited above, § 256).

(β) Rallies on 31 December 2012 and 5 April 2013

89. The findings in paragraphs 82 and 83 above also apply in respect of those rallies.

90. The Russian courts did not establish that the rally on 31 December 2012 and, even less, the applicant's actions had caused any major disruption to ordinary life and other activities on that date to a degree exceeding that which was normal or inevitable in the circumstances. The Court finds it established that the police informed the participants that the event had not been notified and "explained the consequences of taking part in such an event" so that they were "publicly notified by a police officer about the violation of the law" (see paragraphs 25 and 26 above). The court decisions did not, however, clearly establish that the police had given any specific order to disperse or that, despite his argument to the contrary, the applicant had been afforded reasonable time to comply with it (compare *Chernega and Others*, cited above, §§ 250-51). The Court has no information or evidence at its disposal to ascertain those circumstances, which were essential for a lawful conviction under Russian law. It is in the first place incumbent on the national courts to establish all relevant facts and to interpret and apply national law.

91. Even accepting that it was convincingly established that the applicant had heard the police announcement about the absence of the official approval for that event and that he had been afforded time to react to it as appropriate, the reprehensible conduct held against him was limited to his peaceful presence at that non-approved but peaceful event and to his failure to leave the venue, without any indication of serious risks to public safety.

92. In this connection the Court notes the ten-fold increase of fines in 2012 for an offence under Article 20.2 of the CAO, whereas most other offences remained punishable by a fine of up to RUB 5,000 for physical persons (the equivalent of some EUR 125). Admittedly, this reflected the legislator's perception of the increased danger posed by the specific offences, even where the reprehensible conduct consisted only in participating in a non-notified assembly, or/and because the existing legislative framework was initially inadequate (see *Novikova and Others v. Russia*, nos. 25501/07 and 4 others, § 210, 26 April 2016). In the Court's view, the high level of fines – at least by national standards – was conducive to creating a "chilling effect" on legitimate recourse to protests (ibid.; see, *mutatis mutandis*, *Guja v. Moldova* [GC], no. 14277/04, § 95, ECHR 2008, and *Goodwin v. the United Kingdom*, 27 March 1996, § 39, *Reports of Judgments and Decisions* 1996-II).

93. The applicant received a fine equivalent at the time to EUR 497, which was the maximum statutory fine for an offence under Article 20.2 § 5 of the

CAO. The Court considers that the amount of the fine was, in the circumstances, a disproportionate penalty *vis-à-vis* the applicant's exercise of freedom of assembly as an ordinary demonstrator (compare *Novikova and Others*, cited above, § 212). When assessing the proportionality of this penalty, it is relevant to note that the applicant's offence did not cause any damage whatsoever. Importantly, the Court notes that the Russian Constitutional Court found it necessary in 2013 to afford the courts a possibility to impose fines below the statutory minimum amount in order to take proper account of the circumstances of the case. This allowed the courts to impose individualised sentences that were fair and proportionate (ibid.). However, this possibility was not properly implemented in the applicant's case.

94. Similar considerations apply as to the applicant's conviction in relation to the event on 5 April 2013. According to the applicant, when the event was about to end, the police arrived and arrested him and some other participants. The domestic court then refused to convict him under Article 19.3 of the CAO for disobedience to a lawful police order to disperse. The court considered that a police officer had once pronounced a phrase that the event had been unlawful, and that the available video recording did not confirm that he had made any repeated statements or orders to cease participation in the event. In separate proceedings, the applicant was convicted, under paragraph 2 of Article 20.2 of the CAO, for organising that event without prior notification to the competent authority. The court stated that it was irrelevant for that offence whether the police had ordered a dispersal. Later on, the reviewing court reclassified the case under paragraph 5 of Article 20.2 of the CAO because it considered that the applicant had been a participant rather than the organiser and had not complied with his obligation to disperse. At the same time, the reviewing court omitted to provide any assessment as regards the reality, contents or legality of any orders given by the police and disobeyed by the applicant, specifically an order to disperse (see paragraphs 27-32 above). The applicant received a fine equivalent to EUR 450.

95. Therefore, even assuming a conviction for the failure to disperse might be justified as "necessary in a democratic society" in certain circumstances, the Russian courts' perfunctory reasoning makes it impossible for the Court to ascertain that they adequately established the relevant facts and applied the principles under Article 11 of the Convention. The sentences were not proportionate in the circumstances of the case.

(γ) "Performances" on 26 November 2012 and 27 June 2013

96. Subject to paragraph 2 of Article 10 of the Convention, freedom of expression is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb (see *Karuyev*, cited above,

§ 17). Article 10 of the Convention protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed (ibid.). Protests can constitute expressions of opinion within the meaning of Article 10 (see *Taranenko v. Russia*, no. 19554/05, § 70, 15 May 2014, and *Karastelev and Others v. Russia*, no. 16435/10, § 88, 6 October 2020 and the cases cited therein). The protection of Article 10 is not limited to spoken or written word, for ideas and opinions are also capable of being communicated by non-verbal means of expression or through a person's conduct (see *Karuyev*, cited above, § 18 and the cases cited therein). There is little scope under paragraph 2 of Article 10 for restrictions on political speech or on discussion of matters of public interest (see *Taranenko*, cited above, § 77).

97. As to the event on 26 November 2012, the applicant's conviction was related to staging – together with several other people – a "performance" aimed at "reviving" the Russian Constitution and consisting of a coffin filled with the brochures containing its texts, and a speech. The applicant held a poster "Let us resurrect the Constitution" and uttered several slogans like "Follow your own laws", "Stop the police state" and "We need a different Russia" (see paragraph 17 above). For the Court, this action concerned a form of political expression (compare *Tatár and Fáber*, cited above, § 36).

98. As to the event on 27 June 2013, the applicant's conviction was related to another "performance", consisting of – after climbing by a ladder onto the balcony of a public building – unfolding a flag together with another person and shouting slogans expressing their critical views about the legislation on migration (see paragraph 33 above). Noting the nature of their conduct, its expressive character as seen from an objective point of view and their purpose or intention (see *Karuyev*, cited above, § 19, and *Murat Vural v. Turkey*, no. 9540/07, § 54, 21 October 2014), the Court considers that this action concerned a form of political protest (compare *Taranenko*, cited above, §§ 69-71 and 77; *Mariya Alekhina and Others v. Russia*, no. 38004/12, §§ 204-05, 17 July 2018; and *Olga Kudrina v. Russia*, no. 34313/06, § 49, 6 April 2021).

99. The Russian courts considered that the applicant had taken part in what fell within the ambit of the federal law regulating different types of assemblies, namely gatherings, meetings, demonstrations, processions, pickets or a combination thereof ("the Public Events Act"), and thus had had to receive a prior official approval as an assembly regulated by that Act. Thereby the courts brought it into play, which imposes a duty of prior notification on the organisers of an assembly. The applicant was convicted as a participant in that non-notified assembly. He contested that he had exercised the right to freedom of assembly with others. He asserted his right to freedom of expression and argued that he should not have been punished – with reference to that Act – for the manner of his exercise of that freedom. In this context the general principles relating to the exercise of the right to peaceful

assembly and interferences with it are of relevance in the present case (see paragraph 75 above).

100. Definitions of assembly may vary in the national legal systems. The autonomous (meaning of the) concept of "assembly" under Article 11 § 1 of the Convention protects against improper classifications in national law, those classifications only having relative value and constituting no more than a starting point (see *Tatár and Fáber*, cited above, § 38). The mere fact that an expression occurs in the public space does not necessarily turn that event into an assembly (ibid; compare *Karademirci and Others v. Turkey*, nos. 37096/97 and 37101/97, § 26, ECHR 2005-I).

101. The Court reiterates its findings (see *Navalnyy*, § 150, and *Obote*, § 38, both cited above) on a broad interpretation of what constituted an assembly subject to notification under the Public Events Act, and the Russian authorities' excessively wide discretion in imposing restrictions on those events through rigid enforcement. A static demonstration was defined broadly to the extent that a vast array of social situations could fall under it. Any stationary presence in a public place – no matter how small and short, irrespective of its purpose or context, and regardless of its potential to cause disruption to ordinary life – of two or more people holding any object that could be regarded as "a means of visual expression" could be declared unlawful unless a document containing a lengthy list of elements had been submitted to the authorities no later than three days before the assembly.

102. There is no indication that the applicant publicised or promoted the coming "performances", specifically as an invitation to others to exercise together their right to freedom of peaceful assembly. Several other people, who were present at the venue on 27 June 2013, did not take an active part in the "performance", except for one person who accompanied the applicant. That "performance" was intended to send a message to the migration authority rather than through the direct gathering of people – the latter in any case being usually unachievable during a short protest. Furthermore, the Court notes that like for spontaneous events, an obligation to inform the public authority of the intention to hold a potentially provocative performance – in particular, such as the one on 27 June 2013 – and punishment for failing to comply with that obligation may defeat the purpose of that kind of expressive conduct, which by its nature may need to be "spontaneous" or unexpected (compare *Chernega and Others*, cited above, § 239).

103. The Russian courts' approach to the concept of assembly in the present case did not correspond to the rationale of the notification requirement for assemblies. Indeed, the application of that requirement to all forms of protest or expressive actions – rather than only to assemblies – would create a prior restraint which is incompatible with the free communication of ideas and might undermine freedom of expression (see *Tatár and Fáber*, cited above, § 40).

104. Regardless of whether the "performances" in the present case fell within the scope of the Public Events Act, it is essential for the Court to establish whether the applicant's right to freedom of expression and/or peaceful assembly has been respected. National authorities may interfere with that kind of expressive conduct, specifically when that interference is necessary in a democratic society to prevent disorder – for instance, to put an end to ongoing disorder – or to protect the rights of others (compare *Kudrevičius and Others*, §§ 113-16; *Gough*, § 155; and *Chernega and Others*, § 259; all cited above), for instance, to enforce neutral and place-specific regulations, such as rules related to the use of public parks.

105. The courts did not provide any justification for treating the event on 26 November 2012 as an "assembly" subject to prior approval and did not even specify which type of that regulated assembly it was. They did not adduce sufficient reasons for convicting the applicant for merely engaging, in a peaceful and non-disruptive manner in the public space, in political expression together with several other people (see paragraph 97 above).

106. Having said this, the Court does not exclude that the aim of putting an end to disorder could have been of relevance and could have justified some type of "interference" on 27 June 2013 (compare *Olga Kudrina*, cited above, § 51). However, in so far as the applicant's conviction is concerned, it was solely based on the fact that what was undeniably an intentionally obstructive act amounting to a political protest had not been notified in advance to, and approved by, the competent authority (see paragraph 98 above). The courts did not hold against the applicant that his actions had caused disruption to ordinary life exceeding the level of minor disturbance that follows from normal exercise of the right of peaceful assembly in a public place. In particular, the alleged use of smoke flares played no particular role in the judicial reasoning and was not tied to him specifically (see paragraphs 33-36 above). Nor was he convicted for the very act of getting onto the balcony of a public building, thereby upsetting the "public order" or causing disorder. It appears that the applicant had complied with the migration officer's order, ceased his "performance", and had entered inside the building as requested. The police had not issued, and he had not disobeyed, any specific order prior to his arrest. It is not the Court's task in the present case to speculate whether a conviction based on compelling factors relating to preventing disorder could have been justified (see, *mutatis mutandis*, *Mukhin v. Russia*, no. 3642/10, §§ 113-19 and 128-30, 14 December 2021).

107. The domestic courts' reasons solely focusing on the need to punish non-compliance with the prior notification requirement in respect of an "assembly" regulated by the Public Events Act were not sufficient for the purposes of Article 10 § 2 of the Convention seen in the light of Article 11 in the present case. The Court concludes that the applicant's convictions – under Article 20.2 § 5 of the CAO – in relation to both "performances" were not convincingly shown to have been necessary in a democratic society.

(d) Conclusion

108. The court decisions disclose a failure by the national authorities to apply standards which are in conformity with the principles relating to Articled 10 and 11 of the Convention. The applicant's convictions were not convincingly shown to have been necessary in a democratic society.

109. There have therefore been violations of Article 10 in relation to the events on 26 November 2012 and 27 June 2013 and of Article 11 of the Convention in relation to the other four events.

II. OTHER ALLEGED VIOLATIONS

110. Referring to Articles 10 and 11 of the Convention, the applicant complained about his removal from the venues of certain events mentioned above, by way of subjecting him to the administrative escorting or arrest procedures. The Court considers that it has examined the main legal questions raised by the applicant in the present application and that there is no need to give a separate ruling on the admissibility and merits of the remaining complaints.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

111. 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."

112. The applicant claimed 3,350 euros (EUR) in respect of non-pecuniary damage.

113. The Government contested the claim.

114. The Court grants the claim, plus any tax that may be chargeable.

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

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaints under Articles 10 and 11 of the Convention (on account of the convictions for administrative offences) admissible;

2. *Holds*, by five votes to two, that there has been a violation of Article 10 of the Convention in relation to the applicant's conviction in relation to the event on 26 November 2012;

3. *Holds*, by four votes to three, that there has been a violation of Article 10 of the Convention in relation to the applicant's conviction in relation to the event on 27 June 2013;

4. *Holds*, by five votes to two, that there have been violations of Article 11 of the Convention in respect of the applicant's convictions in relation to the other events;

5. *Holds*, unanimously, that it is not necessary to examine the remaining complaints;

6. *Holds*, by five votes to two,
   (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, EUR 3,350 (three thousand three hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 6 September 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško	Georges Ravarani
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) partly dissenting opinion of Judge Zünd;
(b) joint dissenting opinion of Judges Elósegui and Lobov.

G.R.
M.B.

PARTLY DISSENTING OPINION OF JUDGE ZÜND

1. The mere fact that a demonstration or other public event lacks prior notification or approval is not sufficient for an interference by the police, or for the punishment of participants or organisers, if public order is not disturbed in a significant manner. That is why I voted with the majority with respect to most of the events at hand.

2. However, I am unable to find a violation of the Convention as far as the event of 27 June 2013 is concerned. The applicant, together with another person, climbed a public building from the outside using a ladder, shouted slogans and unfolded a flag. This must be seen as an intentionally disruptive act clearly exceeding the level of minor disturbance, all the more so as the two people were carrying smoke flares with them, irrespective of whether these were used or not.

JOINT DISSENTING OPINION OF JUDGES ELÓSEGUI AND LOBOV

1. The effective exercise of the rights to freedom of expression and freedom of assembly is contingent on both the State's and the individuals' playing by democratically established rules. Both should act sensibly and responsibly, thus avoiding arbitrary or abusive conduct. The relevant general principles in this area have long been settled in the Court's case-law and nothing in this case calls for a fresh discussion of them.

2. Our disagreement with the majority has been essentially prompted by their unwillingness to engage in the usual balancing exercise required by the Convention with a view to carrying out a meaningful determination of whether the applicant's conduct disclosed elements of abuse, thus justifying the restrictions imposed by the authorities in at least some of the instances which were summarily joined in the present judgment. While criticising the domestic courts for a "perfunctory" attitude, the majority's assessment tends itself to ignore some highly relevant factual aspects of the case, including the applicant's profile as a virtually "professional" and reoffending activist, his deliberate refusal to abide by police orders, and not least his openly unlawful provocative actions, such as trespassing on public premises and using disruptive paraphernalia in the form of smoke flares or violent visual symbols.

3. The majority's indiscriminate criticism of the national judicial decisions is another matter of concern. Admittedly, the national courts did not build their reasoning under Articles 10 and 11 of the Convention with reference to the proportionality test, as developed in the Court's case-law. Yet there is also nothing to suggest that the applicant had raised any detailed grounds to that effect in the domestic proceedings. The courts thus limited themselves to consideration of the relevant national provisions and the rationale behind them, and contrasted the applicant's conduct with that framework. This approach mirrors, in substance, the structure of the minimum analysis required by the Convention. The courts' conclusions relating to the breach of the national law, be it the absence of notification or of authorisation, cannot therefore, on their face, be considered arbitrary or otherwise abusive. In other words, the courts' failure to strictly follow, of their own motion, the Court's proportionality test is not sufficient to find a violation of the Convention.

4. The Court, for its part, should have undertaken such a balancing exercise on its own, even without having the benefit of a prior assessment of proportionality by the national courts (see the most recent example of this approach adopted by the same Section in *Arnar Helgi Lárusson v. Iceland*, no. 23077/19, § 62, 31 May 2022; see also the separate opinion of judges Elósegui and Serghides insisting on the need for the Court to conduct a full proportionality test on its own in *Nadtoka v. Russia (no. 2)*, no. 29097/08,

8 October 2019). The present case would thus have provided an excellent opportunity to make a nuanced assessment of the balance between the interest of the applicant in participating in unauthorised or unannounced rallies and those of society in ensuring compliance with the law on public assemblies in the context of each incident involved. The majority missed this opportunity, taking instead a broad-brush approach. As a result, they have found violations in relation to all the incidents considered, relying essentially on the lack of a proportionality assessment at the domestic level and without engaging in a meaningful balancing exercise, as required by the Convention.

5. The applicant's activist position is acceptable under both the Convention and the domestic law and must not be held against him. We doubt nonetheless that the Court could legitimately dispense with measuring the size and nature of the sanctions imposed in the light of the applicant's profile as a reoffender, which was heavily emphasised by the domestic courts (see paragraphs 31 and 36 of the judgment). In view of the applicant's background, could anyone seriously believe that he misunderstood the essence of the police's announcement inducing him to leave the rally which was held to be unlawful (see paragraphs 59-60 and the majority's reasoning in paragraphs 90-91 of the judgment)? Also, the majority could legitimately have asked themselves whether the applicant's right to freedom of assembly in the form of climbing onto the balcony of an official building (see paragraph 33 of the judgment) was outweighed by the genuine need to ensure security and public order, with a fine of 20,000 roubles being a proportionate measure to that effect.

6. Regrettably, the judgment fails to weigh up the above elements, limiting itself to a hasty three-step approach: the "perfunctory" reasoning of the domestic courts, the "non-violent" nature of the event, and hence a violation of the Convention (see, for example, paragraph 95 of the judgment).

7. We are respectfully unable to join this approach by the majority. Possible shortcomings in domestic proceedings do not justify the Court skipping a genuine balancing exercise in its own judgment. Violence is not the only factor that justifies proportionate restrictions on the rights to freedom of expression and freedom of assembly in European societies. Persistent and disruptive behaviour in breach of the law is not justified under the Convention and calls for closer scrutiny.