CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF MAKHMUDOV v. RUSSIA

(Application no. 35082/04)

JUDGMENT

STRASBOURG

26 July 2007

FINAL

26/10/2007

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 Makhmudov v. Russia,

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

Mr C.L. ROZAKIS, *President,*
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS,
Mr G. MALINVERNI, *judges,*
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 5 July 2007,

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

PROCEDURE

1. The case originated in an application (no. 35082/04) 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 Rustam Khamidovich Makhmudov ("the applicant"), on 27 September 2004.

2. The applicant was represented before the Court by Mr I. Puzanov, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr P. Laptev, Representative of the Russian Federation before the European Court of Human Rights.

3. The applicant complained, in particular, about a violation of his right to freedom of assembly, unlawful detention at a police station in inhuman conditions and a lack of any compensation in this connection.

4. On 9 March 2006 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. The Government objected to the joint examination of the admissibility and merits of the application. Having considered the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1950 and lives in Moscow. At the material time the applicant was a district councillor.

A. Public assembly on 4 September 2003

7. On 21 August 2003 the non-governmental organisation "City-wide public council for the protection of citizens' rights in town planning and for the protection of the environment" decided to hold an assembly of Krylatskoye district residents at the Zashchitnikov Neba Square in Moscow. The purposes of the assembly were:

(1) to protest against the Moscow mayor's failure to respond to the resolution of the assembly held in May 2003;

(2) to protest against the planned construction of several luxurious blocks of flats in the place of facilities for sports and children;

(3) to cast a vote of no confidence in the city authorities and call for their resignation;

(4) to discuss matters of local self-governance.

8. On 25 August 2003 the applicant, together with three other co-organisers of the assembly, informed the Prefecture of the Western Administrative District of Moscow – the residential district of Krylatskoye being in its jurisdiction – of the date, time, place and purposes of the assembly. The assembly was scheduled to take place from 6.30 to 8.30 p.m. on Thursday, 4 September 2003, with the participation of about a hundred persons.

9. On 29 August 2003 the prefect of the Western Administrative District of Moscow issued a decision to accept the notice and instructed the police to ensure public safety during the assembly.

10. The applicant and co-organisers informed residents of the Krylatskoye district about the planned assembly by way of bill-posting.

11. On 3 September 2003 the prefect cancelled his previous decision of 29 August 2003 "in connection with the operative information of law-enforcement authorities about an expected outbreak of terrorist activities in the Krylatskoye district and with a view to ensuring the safety of the district's residents". The police were instructed "to take measures to prevent the assembly planned for 4 September 2003 at the Zashchitnikov Neba Square from being held".

12. On 4 September 2003 a few dozen residents gathered on the Zashchitnikov Neba Square and the applicant was among them. No loud

speakers were deployed and no attempts were made to start a general discussion. Nevertheless, the police dispersed the crowd by force.

13. On 5, 6 and 7 September 2003 (Friday to Sunday) the "Day of the City" was celebrated throughout Moscow. The programme for the festivities had been approved by the Moscow Government's resolution of 12 August 2003 and included sixty-one events. The events – such as the "World-wide Tea Festival", the opening ceremony, "Parade of the Festivals", the European champions' road running cup, the Moscow cup of the automobile all-round competition, the children's artistic and sport performance, sound and light show, students' parade, and many others – took place in major public thoroughfares. The applicant submitted media reports showing that no scheduled events had been cancelled and that the public festivities had been attended by thousands of people.

B. The applicant's overnight detention at the police station

14. The applicant left the Zashchitnikov Neba Square in a private car at about 8 p.m. At a nearby crossing the police blocked his car and, holding the driver at gun-point, took the applicant out of the car by force and escorted him to Krylatskoye district police station (*ОВД района «Крылатское»*).

15. According to the administrative-arrest record of 4 September 2003, the applicant was arrested for refusing to comply with a lawful order of the police.

16. Following the applicant's complaints about unlawful police actions, the Kuntsevskiy District Prosecutor interviewed the officers who had apprehended the applicant. Captain F., Officer D. and the driver, L., stated that they had been present at the meeting site since 6 p.m. At 8 p.m., when people were beginning to leave, they had arrested the applicant and taken him to the police station "for clarification of facts, namely the [legal] ground for holding a public assembly". Mr N., who had been the duty officer at the police station, testified that at 8 p.m. the head of the police station had told him to prepare a report on an administrative offence of disobedience of police orders committed by Mr Makhmudov, who had been "detained for conducting an unauthorised meeting".

17. At the police station the applicant was placed in a cell where he remained until he was brought before a judge on the following day (see below). The cell was dirty and covered with spittle; the applicant was not given any food or drink.

C. Administrative proceedings against the applicant

18. On 5 September 2003 the applicant was brought before a judge of the Kuntsevskiy District Court of Moscow. He was charged with disobeying

lawful police orders and with organising an unauthorised assembly, these being administrative offences under Articles 19.3 and 20.2 of the Code on Administrative Offences. The two charges were examined separately.

1. The charge of disobeying lawful police orders

19. Examining the charge of disobedience, the judge found as follows:

> "During the preparation and examination of the administrative case a number of breaches of the Code of Administrative Offences have been revealed. These breaches are the grounds for remitting the file to the head of the police station...
>
> It is not clear from the case material what the offender's stance is with regard to the offence imputed to him; it appears from his statement that he has not committed any offence; however, in breach of Article 28.2 of the Code, the report does not list witnesses who could confirm the guilt of the offender; nor does it refer to other evidence confirming the offending acts or disobedience of police orders. Besides, it transpires from the decision on the institution of administrative proceedings and the opening of an administrative inquiry that on 5 September 2003 an administrative inquiry was ordered, but no such inquiry has actually been carried out as the file does not contain any depositions or other additional material obtained by such an inquiry. Furthermore, pursuant to Article 28.2 § 2 of the Code, a report on an administrative offence punishable by administrative arrest must be submitted for judicial examination immediately after its issuance. The administrative-arrest record concerning Mr Makhmudov had been prepared at 8 p.m. on 4 September 2003 but the material was submitted to the court only at 4.30 p.m. on 5 September 2003. Finally, the report contains no information as to who disobeyed the order, which police officer gave the order, where he gave the order (house number) or what kind of lawful order it was. The administrative-arrest record does not refer to Article 19.3 of the Code, although the breach of that provision was the basis for the applicant's arrest, or to the grounds for arrest; the record does not describe the detainee's clothing, absence or presence of bodily injuries, or to whom the information about the arrest was communicated. The information on the identity of attesting witnesses is incomplete, the attesting witness no. 2 did not sign the record, and witnesses for the defence have not been examined."

20. The judge returned the material to Krylatskoye police station for correction of the above defects and ordered the applicant's release at 5.10 p.m.

21. On 7 October 2003 the police resubmitted the file to the court.

22. On 29 October 2003 the Kuntsevskiy District Court found that the police had not made good the defects identified in the decision of 5 September 2003. The judge opined as follows:

> "Mr Makhmudov unambiguously declared himself not guilty of the imputed offence and listed the following [nine] witnesses as being ready to testify that he had not committed any illegal actions against the police officers.
>
> Taking into account that the available material is insufficient for finding Mr Makhmudov guilty of the administrative offence, that the court has taken measures to make good the defects in the material and for supplementing the evidence, and that those defects have not been remedied, the court considers that all

> the measures for proving Mr Makhmudov's guilt of the offence have been exhausted and – as the available evidence is not sufficient for a finding of guilt – finds it necessary to discontinue the proceedings".

23. Following the applicant's complaint that the legal basis for discontinuance of the proceedings had not been set out explicitly, on 2 December 2003 that decision was quashed by a higher court and the matter remitted for a new examination.

24. On 19 December 2003 the Kuntsevskiy District Court ordered the discontinuance of the proceedings on the ground that the two-month prescription period had expired.

2. The charge of organising an unauthorised assembly

25. Having examined the witnesses for the defence, who denied that the assembly had taken place, and the police officers who testified for the prosecution, the judge found that the applicant had been in breach of the established procedure for organising public assemblies. He had known that the prefect's decision of 29 August 2003 had been reversed but proceeded nevertheless with organisation of the assembly. The judge fined the applicant 1,000 Russian roubles (approximately 30 euros).

26. On 6 July 2004 the Moscow City Court upheld that decision on an appeal by the applicant.

D. Judicial review of the prefect's decision of 3 September 2003

27. The applicant challenged the prefect's decision of 3 September 2003 before the Kuntsevskiy District Court. He claimed that it had no legal basis, for Russian law did not permit cancellation of an authorised assembly, that it had been issued too late, on the eve of the assembly, and that it could not be founded on the "operative information". He also sought a declaration that the police had unlawfully dispersed the assembly by force.

28. The District Court asked Krylatskoye police station and the police command of the Western Administrative District of Moscow to produce the operative information which had been the basis for cancelling the authorisation.

29. On 16 December 2003 Krylatskoye police station replied that there had been no such information in their possession.

30. On 21 January 2004 the police command of the Western Administrative District replied that the material requested was classified as secret and for that reason could not be made available to the judge.

31. The applicant asked the District Court to relinquish jurisdiction to the Moscow City Court which was competent, under national law, to hear cases involving confidential material. In an interim decision of 30 January 2004, the District Court refused the request, holding that the purpose of the proceedings was to establish whether or not the prefect's decision had been

lawful rather than whether the prefect had or had not received information from the law-enforcement authorities.

32. In a judgment of 30 January 2004, the District Court rejected the applicant's complaint. It established that the prefect had issued the contested decision further to a letter from the head of the police command of the Western Administrative District of 2 September 2003. In that letter, the police officer had asked the prefect to annul his decision of 29 August 2003 because the police command "had received, from various sources, information about potential terrorist attacks in Moscow, in places of mass gatherings". The District Court continued as follows:

> "In the court's view, the information of law-enforcement authorities about a possibility of subversive and terrorist attacks in Moscow in places of mass gatherings potentially presupposes the existing threat of violence not just against those citizens who intend to take part in the meeting but also against those citizens who had no intention of exercising their constitutional right to freedom of mass assemblies.
>
> No evidence contradicting the information contained in the letter from the police command of the Western Administrative District to the prefect of the Western Administrative District has been produced before the court. The prefect's decision of 3 September 2003 was issued not in connection with the notice filed by the assembly organisers but in connection with a threat of increasing terrorist activities in the areas of mass gatherings, with a view to ensuring the security of the Krylatskoye District's residents...
>
> Assessing the contested decision, the court finds that the prefect ... acted within the competence of the State body and [his actions] were appropriate to the presumed threat and complied with the Russian Constitution..."

As regards the forceful actions of the police in dispersing the meeting, the District Court found as follows:

> "Taking into account the submissions by the claimant and his representatives, by the representatives of the police command of the Western Administrative District and of Krylatskoye police station, and having examined the video material submitted by the claimant and by Krylatskoye district council, the court finds that the actions of the Krylatskoye district police, which were aimed at preventing the mass action from taking place in connection with a real threat to life, health and security of citizens, were compatible with [the Moscow regulations on co-ordinated police action during mass assemblies] and the requirements of Article 17 § 3 of the Constitution which prohibits violations of rights and freedom of others, including during the exercise of the constitutional right to organise meetings, demonstrations, marches and pickets, having regard to the special conditions in the city of Moscow."

33. The applicant lodged an appeal. He submitted, in particular, that not a single public gathering organised by the Moscow mayor's office in the framework of the "Day of the City" had been cancelled as a result of a potential terrorist threat. He pointed out that the District Court had failed to supply a concrete legal basis for the prefect's decision to cancel the assembly permit.

34. On 8 April 2004 the Moscow City Court, in summary fashion, rejected the applicant's appeal.

E. Civil claim for damages on account of unlawful arrest

35. On 13 November 2003 and 25 March 2004 the applicant lodged a civil claim for damages against Krylatskoye police station, the Moscow branch of the federal treasury and the Ministry of the Interior. He sought compensation for unlawful arrest and overnight detention in inhuman conditions, without sleep, food or drink.

36. On 6 July 2004 the Kuntsevskiy District Court dismissed the applicant's claim, finding that Article 1070 of the Civil Code did not provide for State officials' liability for non-pecuniary damage incurred through unlawful administrative arrest.

37. On 14 April 2005 the Presidium of the Moscow City Court quashed that decision and remitted the claim for a fresh examination.

38. On 16 November 2005 the Kuntsevskiy District Court dismissed the applicant's claim again. It noted that in cases of administrative arrest, State officials would be liable for non-pecuniary damage only if a fault on their part were proven. The applicant had been detained for 21 hours and 10 minutes for his failure to comply with a lawful police order. His arrest had been lawful because the Constitution only required a judicial decision if the relevant period of custody exceeded forty-eight hours. The administrative case against him had been discontinued on a formal ground – the expiry of the prescription period – rather than by a finding of his innocence. Having regard to these circumstances, the District Court found that the State officials had acted within their competence and powers and therefore could not be held liable for non-pecuniary damage sustained by the applicant.

39. On 2 March 2006 the Moscow City Court, on an appeal by the applicant, upheld the judgment of 16 November 2006, endorsing, in summary fashion, the District Court's reasoning.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Public assemblies

40. The Constitution guarantees the right to freedom of peaceful assembly and the right to hold meetings, demonstrations, marches and pickets (Article 31).

41. Decree of the Presidium of the USSR Supreme Council no. 9306-XI of 28 July 1988 (in force at the material time pursuant to Russian Presidential Decree no. 524 of 25 May 1992) provided that organisers of an assembly were to serve written notice on the municipal authorities no later

than ten days before the planned assembly (§ 2). The authority was to give its response no later than five days before the assembly (§ 3). An assembly could be banned if its purpose was contrary to the Constitution or threatened public order or the security of citizens.

42. The provisional regulations on the procedure for notification of the executive branch of the Moscow authorities about meetings, street marches, demonstrations and pickets in streets, squares and other public places, approved by Presidential Decree no. 765 of 24 May 1993, provided that notice of an assembly was to be served by the assembly organisers on the executive body between the fifteenth and tenth day before the planned assembly (§ 2). The executive body could refuse to accept the notice if the purpose of the assembly was contrary to the principles of the Universal Declaration of Human Rights, generally accepted public morals, if there was no undertaking on the part of the organisers to ensure public safety, if the assembly coincided in time and place with another one, if it threatened normal functioning of companies or organisations, or if it required suspending public or rail transport (§ 4). The executive body, in cooperation with the organisers, could suggest a different place, time or route of the assembly in order to ensure public safety (§ 5). Refusal to accept notice of an assembly was amenable to judicial review (§ 10).

B. Suppression of Terrorism Act

43. The Suppression of Terrorism Act (Federal Law no. 130-FZ of 25 July 1998, in force at the material time) provided that the Ministry of the Interior fought terrorism by way of preventing, detecting and putting an end to terrorist offences pursuing lucrative goals (section 7 § 3).

44. Regional executive bodies, municipal bodies, public associations and organisations and State officials were required to assist the authorities responsible for suppression of terrorism (section 9 § 1).

C. Administrative arrest

45. The Code of Administrative Offences of 30 December 2001 provides as follows:

Article 27.3. Administrative arrest (*administrativnoye zaderzhaniye*)

> "1. Administrative arrest, that is a temporary restriction of liberty of an individual, may be ordered in exceptional circumstances where it is necessary for a correct and prompt examination of the administrative case..."

Article 27.5. Duration of administrative arrest

"1. The duration of administrative arrest must not exceed three hours, except for situations described in paragraphs 2 and 3 of the present Article...

3. Anyone who is subject to administrative proceedings concerning an offence punishable by administrative detention, may be placed under administrative arrest for a period not exceeding forty-eight hours."

46. Article 19.3 provides that disobedience of a lawful order or demand of a police officer is punishable by an administrative fine or by up to fifteen days' administrative detention (*administrativnyi arest*).

D. Compensation for unlawful deprivation of liberty

47. The State or regional treasury is liable – irrespective of any fault by State officials – for the damage sustained by an individual on account of unlawful criminal prosecution, unlawful application of a preventive measure in the form of placement in custody or an undertaking not to leave the place of residence, or an unlawful administrative penalty in the form of detention or community work (Article 1070 § 1 of the Civil Code). Damage incurred by an individual through unlawful acts of the investigation or prosecution authorities in a form other than listed above is compensated for in accordance with the general grounds giving rise to liability for damage, that is on the condition that the fault of the person who inflicted the damage has been proven (Article 1069 read in conjunction with Article 1064).

48. A court may hold the tortfeasor liable for non-pecuniary damage incurred by an individual through actions impairing his or her personal non-property rights, such as the right to personal integrity and the right to liberty of movement (Articles 150 and 151). Non-pecuniary damage must be compensated for irrespective of the tortfeasor's fault in the event of unlawful conviction or prosecution, unlawful application of a preventive measure in the form of placement in custody or an undertaking not to leave the place of residence, or an unlawful administrative penalty in the form of detention or community service (Article 1100 § 2).

THE LAW

I. ORDER OF EXAMINATION OF THE COMPLAINTS

49. The Court considers it appropriate to examine the applicant's complaints in the chronological order of the events that gave rise to them. It will first determine whether there has been a violation of the applicant's

right to freedom of assembly and subsequently examine the issues relating to the material and legal aspects of his deprivation of liberty and the availability of an enforceable right to compensation.

II. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

50. The applicant complained under Article 11 of the Convention that the authorities had prevented a peaceful assembly from being held on 4 September 2003 under the pretence of a "terrorist threat", whereas that ground had not been invoked to cancel mayor-sponsored festivities two days later. Article 11 reads as follows:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others..."

A. Admissibility

51. The Government submitted that the applicant had not exhausted effective domestic remedies in that he had not complained to a prosecutor about an alleged violation of his right to freedom of assembly.

52. The applicant replied that an application to a prosecutor was not considered an effective remedy in the Court's case-law. In any event, he had availed himself of the right to judicial review of the prefect's decision.

53. The Court reiterates its settled case-law to the effect that a complaint which does not give the person submitting it a personal right to the exercise by the State of its supervisory powers does not constitute an "effective remedy" (see, for example, *Horvat v. Croatia*, no. 51585/99, § 47, ECHR 2001-VIII). In the Russian legal system the prosecutor is not required to hear representations from the complainant, who is not a party to any proceedings and is only entitled to obtain information about the way in which the prosecutor has dealt with the complaint. It follows that a complaint to a prosecutor was not a remedy to be exhausted. On the other hand, the applicant could, and did, make use of the possibility of obtaining judicial review of the prefect's decision by which the assembly authorisation had been revoked. The Court therefore dismisses the Government's objection as to the non-exhaustion of domestic remedies.

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

B. Merits

1. Whether there was interference

55. The Court reiterates at the outset that the right to freedom of assembly covers both private meetings and meetings in public thoroughfares as well as static meetings and public processions; this right can be exercised both by individual participants and by those organising the assembly (see *Djavit An v. Turkey*, no. 20652/92, § 56, ECHR 2003-III, and *Christians against Racism and Fascism v. the United Kingdom*, no. 8440/78, Commission decision of 16 July 1980, Decisions and Reports 21, p. 138, at p. 148). 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 after the meeting (see *Ezelin v. France*, judgment of 26 April 1991, Series A no. 202, § 39).

56. The applicant in the present case attempted to organise a meeting of local residents to protest against the Moscow government's town-planning policy. However, permission for the assembly was withdrawn on the eve of the day when it was due to take place. The meeting was dispersed by the police and the applicant was fined for having taken part in an unauthorised assembly. The Court considers that these measures – taken before, during and after the planned meeting – amounted to interference with the applicant's right to freedom of assembly. Accordingly, its task is to determine whether the interference was justified.

2. Whether the interference was justified

(a) Submissions by the parties

57. The applicant submitted that the allegation of possible terrorist attacks in places of mass gatherings had been mere conjecture not supported by any facts. In the domestic proceedings the police command of the Western Administrative District of Moscow had refused to submit relevant material to the District Court, citing its confidential nature. In the Strasbourg proceedings the Government had not produced any proof that such a threat had actually existed and had been real. The burden of proof was on the party making the allegation and the Government had failed to discharge it in the present case.

58. The applicant stressed that the festivities dedicated to the "Day of the City" had not been cancelled despite the alleged risk of terrorist attacks. The real reason behind the prohibition on his assembly lay in the fact that it had been directed against the Moscow mayor and government and that it had coincided in time with the festivities organised by those same authorities.

59. The applicant pointed out that the interference was devoid of legal basis because the legislation in force at the material time did not allow the prefect to revoke a decision authorising a public assembly.

60. The Government emphasised that the applicant had been able to exercise his right to freedom of assembly without any interference on several occasions in the past. The restriction on his rights which is at issue in the present case had been of an exceptional nature. It had been imposed because the information about terrorist attacks in places of mass gatherings had been received from the police. It had been necessary for the prevention of disorder and crime, that is to say terrorist attacks, and for the protection of the rights and freedoms of citizens who had had no intention of taking part in the meeting.

61. The Government maintained that under the Suppression of Terrorism Act the prefect had not just a right but a legal obligation to restrict the right to freedom of assembly if information about planned terrorist attacks had been received from law-enforcement authorities.

62. Finally, the Government rejected as "tactless" the applicant's reference to the successful celebration of the "Day of the City" in support of his argument that there had been no valid grounds for banning the assembly on 4 September 2003. They did not elaborate on this argument.

(b) The Court's assessment

(i) General principles

63. The Court has recognised that the right of peaceful assembly enshrined in Article 11 is a fundamental right in a democratic society and, like the right to freedom of expression, one of the foundations of such a society. As has been stated many times in the Court's judgments, not only is democracy a fundamental feature of the European public order but the Convention was designed to promote and maintain the ideals and values of a democratic society. Democracy, the Court has stressed, is the only political model contemplated in the Convention and the only one compatible with it. By virtue of the wording of the second paragraph of Article 11, the only necessity capable of justifying an interference with the rights enshrined in that Article is one that may claim to spring from "democratic society" (see *Christian Democratic People's Party v. Moldova*, no. 28793/02, §§ 62-63, ECHR 2006-..., and *Djavit An*, cited above, § 56).

64. States must not only safeguard the right to assemble peacefully but also refrain from applying unreasonable indirect restrictions upon that right. In view of the essential nature of freedom of assembly and its close relationship with democracy there must be convincing and compelling reasons to justify an interference with this right (see *Ouranio Toxo v. Greece*, no. 74989/01, § 36, ECHR 2005-X (extracts), and *Adalı v. Turkey*, no. 38187/97, § 267, 31 March 2005, with further references).

65. In carrying out its scrutiny of the impugned interference, the Court has to ascertain whether the respondent State exercised its discretion reasonably, carefully and in good faith. It must also look at the interference complained of in the light of the case as a whole and determine whether it was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 11 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see, among other authorities, *Christian Democratic People's Party*, § 70, cited above).

(ii) Application of the above principles to the present case

66. The Court notes at the outset that the applicant complained about the prohibition on the meeting scheduled for 4 September 2003 rather than about any general measures affecting his right to freedom of assembly. In these circumstances, the Government's argument that the applicant had been previously able to exercise his right to freedom of assembly is irrelevant.

67. The Government justified the lawfulness, legitimate aim and necessity of the interference by reference to information about a possibility of a terrorist attack which had made revocation of the permission for the applicant's meeting imperative. The applicant denied that such information had existed or that the threat had been actual.

68. The Court reiterates that, in assessing evidence in Convention proceedings, it is habitually guided by the principle *affirmanti, non neganti, incumbit probatio* (the burden of proof lies upon he who affirms, not upon he who denies). The proof may follow from the co-existence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In certain instances the respondent Government alone have access to information capable of corroborating or refuting specific allegations. The failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's claims (see, among other authorities, *Fadeyeva v. Russia*, no. 55723/00, § 79, ECHR 2005-IV, and *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004).

69. The Government's submissions in the present case were confined to the affirmation that the information on a potential terrorist attack had indeed

been channelled by the law-enforcement authorities to the prefect, who had taken the decision to revoke permission for the applicant's meeting. The Court notes that the Government did not corroborate the affirmation with any material or offer an explanation as to why it was not possible to produce evidence substantiating their allegation. Obviously, given the sensitive nature of the information, solely the respondent Government, and not the applicant, would have had access to that material.

70. The Court further notes that no evidence corroborating the necessity to revoke the permission for the applicant's meeting was produced or examined in the domestic proceedings. It appears that the District Court initially considered such evidence relevant to the proceedings on the applicant's complaint and made attempts to obtain it from the police (see paragraph 28 above). The local police replied that it had no such information, whereas the district police command refused to make it available to the judge, citing its confidential character (see paragraphs 29 and 30 above). The applicant then asked the court to make use of the possibility provided for in domestic law of relinquishing jurisdiction to a higher court competent to examine classified information. The District Court refused that request, holding that the availability of such information was no longer relevant for determination of the lawfulness of the prefect's decision (see paragraph 31 above). Nevertheless, in the judgment of the same date, the District Court posited the assumption that the information had actually existed and "presupposed the threat of violence" against Moscow residents. It also held that the applicant had failed to disprove that information by producing evidence to contradict it. The Court observes that, in doing so, the District Court shifted onto the applicant the burden of proof, which was obviously impossible to satisfy without access to the police files. The District Court also stated – without specifying the reasons for that finding – that the terrorist threat had been not merely potential but a real one which justified the police's forcible actions in dispersing a public assembly which endangered the life and limb of citizens (see paragraph 32 above). In reviewing the matter on appeal, the City Court endorsed the District Court's reasoning in summary fashion. In these circumstances, the Court finds that the domestic judgments – in so far as they relied on information about a "terrorist threat" as the ground for banning the applicant's meeting – were based on assumptions rather than on reasoned findings of fact.

71. Furthermore, examining the circumstances of the present case as a whole, the Court perceives strong and concordant indications militating against the Government's allegation that a potential terrorist attack had been the true reason for banning the applicant's meeting. It was claimed in the domestic proceedings that the prefect had been warned by the police about an outbreak of terrorist activities "in places of mass gatherings". Such information, if sufficiently serious and credible, would have required reinforced security measures in major public thoroughfares, theatres,

exhibition halls, sports facilities, etc. The fact that alarming information was allegedly received on the eve of mass celebrations dedicated to the "Day of the City" would have called for heightened vigilance on the part of the authorities and might indeed have necessitated cancelling certain events to guarantee the security of participants. Nevertheless, it transpires from the public documents and media reports – submitted by the applicant and not contradicted by the Government – that the public festivities organised by the Moscow mayor and government had proceeded in accordance with the approved programme on the days immediately following the scheduled date of the applicant's meeting (see paragraph 13 above). Although the number of participants at those festivities significantly exceeded the number expected for the applicant's planned meeting, that meeting was the only public event to have been cancelled on account of "an expected outbreak of terrorist activities".

72. These elements – the respondent Government's failure to produce any evidence capable of substantiating the affirmation of a "terrorist threat" as the ground for banning the applicant's meeting, viewed in the light of the fact that solely the meeting directed against the Moscow government's policies had been cancelled, whereas the public festivities organised by the Moscow government had been allowed to proceed without incident notwithstanding the alleged "terrorist threat" – lead the Court to the conclusion that, in banning the applicant's meeting, the domestic authorities acted in an arbitrary manner. The Court finds that there was no justification for the interference with the applicant's right to freedom of association.

73. There has therefore been a violation of Article 11 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 §§ 1 AND 3 OF THE CONVENTION

74. The applicant complained that his detention at the police station had been unlawful and that he had not been brought promptly before a judge. The relevant parts of Article 5 provide as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (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...
>
> ...

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge...”

A. Admissibility

75. The applicant's complaints concerned two aspects of his arrest and detention. Firstly, he alleged that his arrest had been unlawful because he had not breached any police order. Secondly, he claimed that his appearance before a judge had not been secured in a “prompt” manner.

76. As regards the lawfulness of the applicant's arrest, the Court considers, in the light of the parties' submissions, that this aspect of the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

77. The Court further observes that the applicant appeared before a judge twenty-one hours after his arrest. It considers that this period can be regarded as “prompt” for the purposes of Article 5 § 3 of the Convention (see, for example, *Aquilina v. Malta* [GC], no. 25642/94, § 51, ECHR 1999-III). It follows that this part of the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Merits

1. Submissions by the parties

78. The applicant pointed out that at the moment of his arrest he had already left the meeting place and was being driven home. The police had resorted to disproportionate force, blocking his car and holding the driver at gun-point. He had not committed any offence of disobedience, whether actual or alleged. Furthermore, his arrest had not been necessary for the purpose of bringing him before a competent authority or preventing him from re-offending or fleeing. Being a prominent public figure and law-abiding citizen, there had been no reason to believe that he would not appear before a judge. In a judgment of 5 September 2003, he had not been found guilty of the imputed offence of disobedience and, by virtue of the presumption of innocence, should have been presumed innocent.

79. The Government submitted that the applicant had been subject to administrative arrest for the offence of disobedience of a lawful police order. That offence being punishable by, in particular, administrative detention, the statutory period for holding the suspect in custody was not to

exceed forty-eight hours. As the applicant had actually been deprived of his liberty for no more than twenty-one hours, there had been no violation of Article 5 § 1 of the Convention.

2. The Court's assessment

80. The Court reiterates at the outset that an essential part of the safeguard against arbitrary arrest and detention laid down in Article 5 § 1 (c) of the Convention is the "reasonableness" of the suspicion on which an arrest must be based. Having a "reasonable suspicion" presupposes the existence of facts or information which would satisfy an objective observer that the person concerned might have committed the offence (see *K.-F. v. Germany*, judgment of 27 November 1997, *Reports of Judgments and Decisions* 1997-VII, § 57, and *Fox, Campbell and Hartley v. the United Kingdom*, judgment of 30 August 1990, Series A no. 182, § 32).

81. According to the formal arrest record, the applicant's arrest was effected in connection with the offence of disobedience of a lawful police order (see paragraph 15 above). Of the two offences imputed to the applicant, only the offence of disobedience – but not the offence of organising an unauthorised assembly – was punishable by deprivation of liberty and therefore permitted administrative arrest for up to forty-eight hours (see paragraphs 45 and 46 above).

82. The Court notes that the applicant consistently denied that he had disobeyed any police order. The police, who formally invoked disobedience of a lawful order as a ground for his arrest, were unable to indicate to the domestic courts any facts or information concerning the offence imputed to the applicant, let alone any evidence in its support. The arresting officers – who had been present at the site and would normally be presumed to have first-hand knowledge of the circumstances of the offence of disobedience – stated to a prosecutor that they had apprehended the applicant and taken him to the police station for clarification of the legal basis for holding the meeting rather than for disobedience of police orders. They did not mention any orders which the applicant might have disobeyed (see paragraph 16 above). In fact, the allegation of disobedience was mentioned for the first time by the head of the police station who told the duty officer – neither of them having been present during the applicant's arrest – to draft a report on the administrative offence allegedly committed by the applicant (ibid.).

83. As pointed out in the District Court's judgment of 5 September 2003 (see paragraph 19 above), the report prepared at the police station did not indicate why the applicant had been suspected of disobedience; nor did it specify who had given the order, where and when it had been given, or what that order had been. Even after the police had been afforded a second opportunity to clarify the nature of the suspicion which had led to the applicant's arrest, they had failed to do so, and this prompted the court to discontinue the proceedings (see paragraph 22 above). The submissions by

the respondent Government to the Court contained no facts or information relating to the offence of disobedience, which had allegedly been the basis for the applicant's arrest.

84. Furthermore, if the police had indeed harboured a suspicion of the applicant's involvement in the commission of an offence, it was incumbent on them to carry out an investigation with a view to confirming or dispelling the concrete suspicion grounding the applicant's arrest (see *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, Series A no. 145-B, § 53). However, no such investigation was carried out and the police made no attempt to collect evidence capable of proving or disproving any suspicion against the applicant which they might have had (see the District Court's judgments of 5 September and 29 October 2003).

85. In these circumstances, the Court does not discern any facts or information which could satisfy an objective observer that the applicant might have committed the offence of disobedience which was invoked as the basis for his arrest. It finds that the applicant's arrest on 4 September 2003 was not based on a "reasonable suspicion" and was therefore arbitrary.

86. There has therefore been a violation of Article 5 § 1 (c) of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

87. The applicant complained that the conditions of his overnight detention at Krylatskoye police station had been incompatible with Article 3 of the Convention which reads as follows:

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

88. The Government claimed that the applicant had never mentioned the allegedly inhuman conditions of his detention in many of his complaints to prosecutors, the Ministry of the Interior or the courts. They submitted that he had failed to exhaust domestic remedies. In the civil proceedings he had not lodged an appeal against the Kuntsevskiy District Court's judgment of 6 July 2004.

89. The applicant pointed out that the appalling conditions of his detention had been described in his statement of claim lodged with the Kuntsevskiy District Court. The District Court, however, had rejected his claim in respect of non-pecuniary damage.

90. Neither the applicant nor the Government made submissions on the merits of this complaint.

91. As regards the exhaustion of domestic remedies, the Court reiterates that it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy invoked was "effective" in the sense either of preventing the alleged violation or its continuation, or of providing adequate

redress for any violation that had already occurred (see *Kudła v. Poland* [GC], no. 30210/96, § 158, ECHR 2000-XI).

92. Given the brevity of the applicant's detention at the police station, a complaint to the authorities could obviously not have brought about an improvement of the conditions of the detention before it ended. It follows that the only "effective" remedies available to the applicant were those capable of providing redress for the alleged violation that had already occurred. A complaint to a prosecutor or higher police officer would have perhaps resulted in disciplinary measures against officers responsible for operation of the detention wing but it would not have afforded any redress to the applicant himself. In these circumstances, the applicant could have reasonably expected that a civil action based on the general law of tort would be an effective remedy and might lead to an award of compensation. It appears from the applicant's statement of claim to the Kuntsevskiy District Court that a reference to allegedly inhuman conditions of his detention formed part of his claim for compensation (see paragraph 35 above). The District Court, however, did not deal with that part of the claim, confining its inquiry to the authorities' compliance with procedural – rather than substantive – aspects of the deprivation of liberty. Nevertheless, the applicant did not raise this matter again on appeal or in the subsequent proceedings following the quashing of the Kuntsevskiy District Court's judgment by the Presidium of the Moscow City Court.

93. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

V. ALLEGED VIOLATION OF ARTICLE 5 § 5 OF THE CONVENTION

94. The applicant complained that he was unable to obtain compensation for the detention which he considered unlawful. He relied on Article 5 § 5 which reads as follows:

> "Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

A. Admissibility

95. The Government claimed that the applicant had not exhausted domestic remedies because at the time he lodged his application with the Court – on 27 September 2004 – the Presidium of Moscow City Court had not yet considered his supervisory-review application.

96. The Court reiterates that the last stage of domestic remedies may be reached shortly after the lodging of the application, but before the Court is called upon to pronounce on admissibility (see *Sağat, Bayram and Berk*

v. Turkey (dec.), no. 8036/02, 6 March 2007, and *Ringeisen v. Austria*, judgment of 16 July 1971, Series A no. 13, § 91).

97. At the time the applicant lodged his application with the Court, his application for supervisory review of the District Court's judgment of 6 July 2004 was pending before the Moscow City Court. As the Russian Code of Civil Procedure required regional courts to examine applications for supervisory review within one month (Article 381 § 1), the applicant could have reasonably expected that the Presidium's decision would be issued shortly thereafter. There is nothing to indicate that the delay of several months in examining his application for supervisory review was attributable to him. In any event, the Court reiterates that an application for supervisory review is not a remedy for purposes of exhaustion under Article 35 § 1 of the Convention (see *Denisov v. Russia* (dec.), no. 33408/03, 6 May 2004). The Court therefore dismisses the Government's objection.

98. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

B. Merits

99. The applicant emphasised that the right to compensation for unlawful administrative arrest was not secured in Russian law. By contrast with an arrest in criminal proceedings, in the case of administrative arrest the victim had to prove that State officials were at fault.

100. The Government submitted that under the Russian law of tort, unlawful administrative arrest constituted a cause of action in respect of pecuniary and non-pecuniary damage. The applicant had made use of the possibility of lodging a civil action, which had been examined at two instances and dismissed because the courts had found his arrest lawful. The Government emphasised that the administrative proceedings against the applicant had been discontinued on account of the expiry of the prescription period. That particular ground did not give rise to liability of State authorities for any inconvenience which might have been caused to the applicant.

101. The Court reiterates that Article 5 § 5 is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4. The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the preceding paragraphs of Article 5 has been established, either by a domestic authority or by the Court (see *Fedotov v. Russia*, no. 5140/02,

§ 83, 25 October 2005, and *N.C. v. Italy* [GC], no. 24952/94, § 49, ECHR 2002-X).

102. In the present case the Court has found a violation of paragraph 1 of Article 5 in that the applicant's arrest was not based on a "reasonable suspicion" of his having committed any offence. It must therefore establish whether or not the applicant had an enforceable right to compensation for the breach of Article 5.

103. In adjudicating the applicant's claim for compensation, the domestic courts confined their review to the compliance of State officials with the formal procedural requirements applicable in cases of administrative arrest, leaving the reasonableness of the suspicion grounding his arrest outside the scope of their inquiry. Noting that the administrative proceedings against the applicant had been discontinued upon expiry of the prescription period rather than by a declaration of innocence, they determined that the applicant's arrest and ensuing detention had been lawful under domestic law.

104. The Court further notes that the Russian law of tort limits strict liability for unlawful detention to specific procedural forms of deprivation of liberty which include, in particular, deprivation of liberty in criminal proceedings and administrative punishment, but exclude administrative arrest (see paragraphs 47 and 48 above). Since the applicant was subject to administrative arrest, a mere finding of its unlawfulness would not be sufficient for an award of compensation; he would also have to prove that the State officials were at fault (ibid.). Furthermore, where an individual was arrested lawfully under domestic law but in breach of paragraph 1 of Article 5 of the Convention, that violation could not give rise, either before or after the findings made by the European Court in the present judgment, to an enforceable claim for compensation before the domestic courts (compare *Brogan and Others*, cited above, § 67). It follows that the applicant did not have an enforceable right to compensation for the administrative arrest effected in breach of Article 5 § 1.

105. There has therefore been a violation of Article 5 § 5 of the Convention.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

106. The applicant complained under Article 6 § 1 of the Convention that the domestic proceedings had been excessively long and that the courts had been partial and biased because they had ruled against him. He also complained under Article 1 of Protocol No. 1 about the imposition of an administrative fine. In so far as the applicant complained about the unfavourable outcome of the judicial proceedings concerning his right to freedom of assembly, the Court notes that this issue has already been addressed above and has led to a finding of a violation of Article 11 of the

Convention. The proceedings lasted less than one year, which is not in excess of a "reasonable time", and the allegation of partiality and bias is not supported by any material in the case-file. It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

107. The applicant lastly complained under Article 14 of the Convention that during his detention the police officers had made disparaging statements about his Tatar ethnic origin and that the prosecutor had neglected to investigate this matter. The Court reiterates that discrimination on account of one's ethnic origin or religion is a form of racial discrimination, which is a particularly invidious kind of discrimination and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction (see *Igor Artyomov v. Russia* (dec.), no. 17582/05, 7 December 2006, and *Timishev v. Russia*, nos. 55762/00 and 55974/00, § 56, ECHR 2005-XII). However, Article 14 has no independent existence, since it has effect solely in relation to the rights and freedoms safeguarded by those provisions (see *Inze v. Austria*, judgment of 28 October 1987, Series A no. 126, § 36). It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

108. 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

109. The applicant claimed 120,000 euros (EUR) in respect of non-pecuniary damage in connection with a violation of Article 3, EUR 100,000 for a violation of Article 5, EUR 20,000 for a violation of Article 6 § 1, EUR 30,000 for a violation of Article 11, EUR 5,000 for a violation of Article 1 of Protocol No. 1, EUR 5,000 for a violation of Article 13, and EUR 20,000 for a violation of Article 14.

110. The Government considered that the amounts claimed were excessive and that a finding of a violation would constitute sufficient just satisfaction.

111. The Court notes that it has found a combination of serious human-rights violations in the present case. The public assembly which the

applicant had attempted to organise was arbitrarily banned. He was arrested without there being a reasonable suspicion of his having committed any offence and was detained overnight. He did not have an enforceable right to compensation for the unlawful arrest and detention. Making a global assessment on an equitable basis, the Court awards the applicant EUR 12,000 in respect of compensation for non-pecuniary damage, plus any tax that may be chargeable on that amount, and rejects the remainder of his claim.

B. Costs and expenses

112. The applicant claimed EUR 5,000 in respect of legal fees, 100 Russian roubles (RUR) for certification of an authority form, RUR 1,934.05 for posting eighteen letters to the Court, RUR 8,226.96 for translation of his observations into English, and subsequent expenses in the event of an oral hearing being necessary. The applicant submitted copies of postal and translation receipts and of a legal-services contract providing for his obligation to pay his representative EUR 2,000 for the preparation of written submissions and EUR 3,000 for oral submissions at a hearing if necessary.

113. The Government pointed out the applicant was claiming EUR 3,000 in legal fees and a further unspecified amount in respect of future expenses relating to an oral hearing. These expenses, however, had not been actually incurred. Furthermore, they claimed that the postal expenses were unreasonable as to quantum because of an excessive number of letters sent to the Court.

114. The Court is satisfied that the legal-services contract between the applicant and his lawyer created a legally enforceable obligation to pay the amounts indicated therein. However, since no oral hearing has been held in the case, that obligation only extended to the amount due for the preparation of written submissions. The expenses for translation of the memorandum appear reasonable as to quantum and should be reimbursed in full. The Court lastly notes that the number of letters sent by the applicant's representative was excessive and that a certain reduction of postal expenses must be applied. Having regard to these elements, the Court awards the applicant EUR 2,250 in respect of costs and expenses, plus any tax that may be chargeable on that amount.

C. Default interest

115. The Court considers it appropriate that the default interest 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 an alleged violation of the applicant's right to freedom of assembly, the lawfulness of his arrest and the availability of the right to compensation for unlawful arrest, admissible and the remaining complaints 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 5 § 1 of the Convention;

4. *Holds* that there has been a violation of Article 5 § 5 of the Convention;

5. *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 Russian roubles at the rate applicable at the date of settlement:
      (i) EUR 12,000 (twelve thousand euros) in respect of non-pecuniary damage;
      (ii) EUR 2,250 (two thousand two hundred and fifty euros) in respect of costs and expenses;
      (iii) any tax that may be chargeable;
   (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;

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

Done in English, and notified in writing on 26 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President