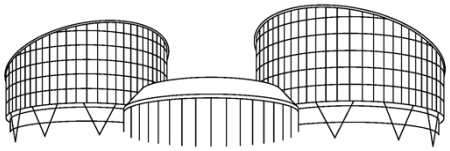

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF PRIMOV AND OTHERS v. RUSSIA

(Application no. 17391/06)

JUDGMENT

STRASBOURG

12 June 2014

FINAL

13/10/2014

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Primov and Others v. Russia,

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

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

Having deliberated in private on 20 May 2014,

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

PROCEDURE

1. The case originated in an application (no. 17391/06) 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 Mr Niyaz Dzhanlatovich Primov, Mr Nasir Dzhanlatovich Dzhavadov and Mr Bunyam Askerovich Askerov, who are Russian nationals born in 1957, 1962 and 1953 respectively ("the applicants"). The application was lodged on 3 May 2006.

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

3. The applicants alleged, in particular, that the ban on the demonstration of 25 April 2006, its violent dispersal and the arrest of the three applicants had violated their rights under Articles 10 and 11 of the Convention. They also invoked Article 5 in respect of their arrests.

4. On 5 May 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The refusal by the district administration of 17 April 2006 to allow the demonstration in Usukhchay planned for 25 April 2006

5. On 10 April 2006 a group of seven people living in the Dokuzparinskiy District of Dagestan, a mountainous region close to the border with Azerbaijan, posted a written notice informing the district authorities that on 25 April 2006 they would hold a public demonstration in the village of Usukhchay. The applicants' names were not mentioned in the list of organisers of the demonstration. The principal aims of the demonstration were to criticise the work of the head of the local administration, Mr A., to denounce corruption and the misuse of public funds by the local administration, and to draw attention to the inactivity of the law-enforcement agencies *vis-à-vis* abuses committed by Mr A. and his colleagues. The demonstration was supposed to be held in a recreational park in the village of Usukhchay from 11 a.m. to 5 p.m.; the estimated number of participants was 5,000. The organisers asked the police to dispatch officers for the protection of those participating in the demonstration. Although the applicants' names were not in the notice, they claimed that they had played an active part in the organisation of the meeting in their respective communities.

6. The notice (*уведомление*) was sent to the district administration with copies to the Dokuzparinskiy district prosecutor and the head of the district police department. The applicants produced a copy of a payment slip from a post office in Makhachkala indicating that the notice had been posted by registered mail on 10 April 2006. It appears from the documents submitted by the Government that the notice was received by the district administration on 17 April 2006.

7. On 17 April 2006 the head of the district administration, Mr A. – the same person who was the principle target of the criticism by the demonstrators – informed the organisers that the district administration was opposed to the demonstration. In his letter of 17 April 2006 Mr A. said that, first, the notice had been lodged (*подано*) outside the time-limit fixed in the Public Gatherings Act. Secondly, the park in Usukhchay was not supposed to admit more than 500 people, so it was impossible to hold a demonstration there. Thirdly, the purpose of the demonstration was to condemn the embezzlement of public funds and the deliberate destruction of financial records by the district administration. However, according to Mr A., the competent law-enforcement authorities, in particular the prosecutor's office, and financial authorities such as the Ministry of Finance of Dagestan, had

already inquired into those allegations and concluded that there had been no case to answer. The letter also contained a warning addressed to the organisers that if they proceeded with the demonstration as planned, they would be held liable in accordance with the law.

B. Events of 19 April 2006 in Kamsumkent and Khiv and the arrest of the second applicant

8. At about 4 p.m. on 19 April 2006, a group of men armed with iron rods and sticks attacked another group of individuals near the village of Khiv. Two persons were injured. Having received information about the clash, the Derbent police dispatched a group of officers to the scene. The police set up an improvised roadblock near the "Gereykhanov Sovkhoz" (Kasumkent village) to check the passing cars and prevent further clashes. A few hours later a group of about 300 people armed with wooden sticks, iron rods and similar objects arrived at the roadblock in several cars without licence plates. The police stopped those cars. According to the authorities, the second applicant then climbed onto the roof of his car and started to incite his fellow villagers to resist the police and to run them over. His followers started to abuse the police verbally, pushed them out of their way and tried to overturn a police vehicle and a truck which the police had used to block the road. One of the police officers was injured, and his uniform was ripped. As a result, the police gave up and let the cars pass.

9. The second applicant denied having participated in the scuffle. He maintained that on that day he had been taking part in a gathering in the Kurakhskiy District. As to the episode near the police roadblock, he claimed that he had argued with the police officers, asking them to let him and his car through, and the windscreen of his car had been broken by them. However, he had not committed any unlawful acts.

10. On an unspecified date the prosecutor's office opened a criminal investigation into the events of 19 April 2006 (case no. 6424).

11. On 21 April 2006 the second applicant was arrested with reference to case no. 6424, which concerned the riot on 19 April 2006 in the village of Khiv. On 22 April 2006 the Khiv District Court granted the police's request to detain the second applicant on remand. The second applicant was suspected of having committed a crime under Article 212 § 3 ("Mass riots"), and Article 318 § 1 ("Use of violence against a public official") of the Criminal Code of the Russian Federation. The court ruled that the second applicant should be detained because otherwise he might obstruct the establishment of the truth, destroy evidence or abscond. The second applicant appealed, claiming that the court's decision was unsubstantiated, but on 28 April 2006 the Supreme Court of Dagestan dismissed the appeal in a summary fashion.

12. On 20 June 2006 the Sovetskiy District Court of Makhachkala ordered the second applicant's release, indicating that he had a permanent place of residence, three children to take care of and an elderly father who was ill, and that the charges against him were not serious. The second applicant was released.

13. Subsequently, the criminal case against the second applicant was closed by the trial court for "active repentance".

C. Demonstration of 25 April 2006 in Usukhchay and Miskindzha and its dispersal

14. Despite the decision of the local administration of 17 April 2006 whereby the demonstration of 25 April 2006 had not been allowed, the organisers decided to hold it as planned. The first and the third applicants took part in that "unauthorised" demonstration; the second applicant was not amongst the protesters since at that time he had been detained on remand in connection with the episode of on 19 April 2006 in the village of Khiv (see paragraphs 8 to 13 above).

1. The first and the third applicants' account

15. At about 10 a.m. on 25 April 2006, a group of approximately 1,000 people gathered on the outskirts of Usukhchay. Other demonstrators were unable to reach the assembly point because the roads had been blocked by the police.

16. The organisers tried to meet representatives of the village administration in order to discuss the situation, but to no avail. When the demonstrators started moving towards the centre of the village, the police blocked their way. At the same time another group of demonstrators from the neighbouring village of Miskindzha were stopped by the police on the way to Usukhchay; they were ordered to return to Miskindzha and hold their demonstration there separately, if they so wished.

17. In the afternoon the demonstrators from Usukhchay started moving towards Miskindzha. As the police had blocked the road, the demonstrators had to leave their cars and walk. Because of the bad weather and the long distance to walk, some of them decided to give up. As a result, when the demonstration arrived at Miskindzha, there were no more than 200 to 300 participants.

18. The meeting was peaceful; however, at about 3 p.m. the demonstrators were encircled by police officers from the Special Police Force Unit (the "OMON"). The police opened fire with automatic rifles above the demonstrators' heads. They also used tear gas, smoke bombs and stun grenades to disperse the demonstration. The demonstrators started to run in the direction of the village; the police officers followed them. The police beat the demonstrators with rubber truncheons and rifle butts. As a

result, one person was shot dead, five people were severely injured and several dozen people were beaten up or were injured by the shells of the tear-gas bombs which had exploded in the midst of the crowd. Sixty-seven people were arrested, and the organisers of the meeting were charged in connection with their participation in the organisation of an unauthorised demonstration. From the first and the third applicants' submissions it appears that they were present at the scene of the confrontation in Miskindzha up to a certain moment but left when the clash started at about 3 p.m. None of them was hurt during the clash.

19. As to the gunshot injury received by a police officer, one of the participants in the demonstration, referring to the words of another witness, Mr S.F., claimed that the wound had been self-inflicted: the officer concerned had shot himself in the leg by accident, because his gun had not been locked.

2. The Government's account

20. On 24 April 2006 the Ministry of Internal Affairs of Dagestan issued Order No. 7 "On measures to stabilise the situation in the Dokuzparinskiy District of Dagestan". The order described the unauthorised demonstration of 25 April 2006, which supposedly would involve about two thousand people "with an aggressive predisposition". The order mentioned the risks of blocking the roads and disturbing the normal work of State institutions. A "mixed squad" was formed comprising of thirty-five police officers from the Special Forces Unit of the Ministry (OMON) and 147 officers from eight local police stations. Colonel Iz. was appointed as commander of the "mixed squad". The order provided for undercover observation of the leaders of the demonstrators, video-recording of the events, strengthening of identity checks at the roadblocks and other security measures.

21. The squad moved to Usukhchay and took position at several roadblocks controlling roads leading to the village and near certain buildings occupied by State bodies. The aim of the operation was to secure public order, guarantee the constitutional rights and freedoms of the population and prevent clashes between the supporters of Mr A. and his opponents.

22. In their observations, the Government claimed that on the eve of the demonstration someone had taken alcohol, foodstuff and illegal drugs to Usukhchay. It had all been distributed amongst the residents of the village. In addition, there was information about individuals from other villages who had arrived in Usukchay with the aim of inciting the local population to participate in the unlawful demonstration and to insubordination to the law-enforcement authorities.

23. At about 11 a.m. on 25 April 2006, three groups of people gathered near the premises of the village administration. One group of about 150 people were supporters of Mr A., the head of the district administration.

The two other groups – which counted about one thousand people in aggregate – were the opponents of Mr A. Official documents contained in the case file also refer to another group of about 450 to 500 people, who arrived in Usukhchay to take part in the demonstration; it is unclear whether that group was able to join the gathering in the centre or was stopped by the police on the outskirts of the village.

24. In view of the risk of clashes between the opposing groups, representatives of the protesters were invited to take part in negotiations in the local prosecutor's office. The negotiations involved Colonel Iz., the Deputy Minister of Internal Affairs of Dagestan, the prosecutor, Ms Lg., and the head of the local police, Mr Akb. The authorities proposed to the organisers that they could hold the demonstration in a municipal garage.

25. However, that offer was declined. The demonstrators started to move from Usukhchay to Miskindzha, where they arrived at about 1 or 2 p.m. In the meantime, however, someone had blocked the road with objects including paving stones, timber beams and water pipes. This was a federal-level road connecting several villages and its blockage caused a considerable traffic jam.

26. The authorities warned the organisers that if the road remained blocked, the organisers would be held liable, and that the law-enforcement authorities present on the spot would use force and "special equipment".

27. The organisers refused to follow the instructions and told other demonstrators to disobey the police orders. When the police, following the orders of Deputy Minister Colonel Iz., started to remove the barricade from the road, unidentified men in the crowd started to throw stones at them. In addition, several shots were fired from a garden situated uphill on the left side of the road. Some of the protesters were armed with cold weapons such as iron rods, which they used as bats while attacking the police, whereas others tried to grab the service guns from the police officers.

28. As a result, the police had to use firearms and special equipment. In particular, they used two stun grenades, twenty-three tear-gas grenades, thirty-six rubber bullets, and fired 747 shots from automatic rifles above the heads of the crowd. Fifty-two of the most active protesters were arrested and taken to the Dokuzparinskiy police station.

29. In addition, unidentified police officers used pump-action shotguns loaded with 22 mm grenades filled with tear gas. Those shots were fired in the direction of the crowd.

30. Following the clash between the police and the demonstrators, several police officers were injured. Eleven had bruises on their arms and legs, scratches and concussion; one had a ruptured spleen; and one, Mr Il., had a gunshot wound in the form of a perforated bullet hole in the right thigh.

31. Four civilians were seriously injured and one died. Mr Akh. had a blunt gunshot wound to the right side of the thorax with fractured ribs;

Mr Nsr. had a gunshot wound to the left side of the thorax with broken shoulder bones; Mr Al. was wounded by a shell fragment in the right shin and thigh; Mr Gnd. had a gunshot wound to the right forearm with a fractured bone; and Mr Ng. received a mortal wound by a gas grenade to the thorax and died on the way to hospital.

3. Documents submitted by the Government

32. In support of their account, the Government produced some documents apparently obtained in the course of the investigation (case no. 67610). It is unclear, however, whether all those documents related to case No. 67610 and whether they constituted the entirety of the materials collected within that case. The content of those documents, insofar as relevant, is described below.

33. The Government produced medical certificates describing the injuries of several police officers, but not Mr Il. They also produced several medical certificates describing the injuries sustained by the protesters, all of whom had bruises and scratches. According to the certificates, the protesters claimed that the police had kicked, beaten and battered them with rubber truncheons and gun butts. Some of the protesters had been injured by the rubber bullets used by the police. Others claimed that they had been beaten up after having been arrested and taken to the police station.

34. In his testimony Mr Akb., the head of the Dokuzparinskiy police, gave an account of the events which was generally consonant with that of the Government. He said that he had been warned about the demonstration in a telegram sent by the organisers. On 17 April 2006 he had met one of them and discussed the event. He further explained that at some time after 10 a.m. on 25 April 2006, his men had stopped a large group of protesters who had been trying to enter Usukhchay. Mr Akb. had spoken with the leaders of the protesters and explained to them that "the demonstration had not been authorised, and that the actions [of the demonstrators] were unlawful". Subsequently, he had been involved in the negotiations with the demonstrators. The deputy head of the district administration had proposed to the protesters that they hold the demonstration in a municipal garage, explaining that if they stayed in the square near the district administration premises, they risked blocking the main road. The leaders of the protesters visited the garage, but were not satisfied with that offer. They informed the authorities that they would send the protesters to Miskindzha and hold their demonstration there, in the village community centre. When the negotiations were over, a small group of protesters started to move towards the village centre, whereas others marched to Miskindzha, accompanied by the police. At about 1 p.m. Mr Akb. was informed that the federal road had been blocked by two large heaps of stones. He arrived at the scene and started to negotiate with the leaders of the protesters. He tried to persuade them to unblock the road, but they refused and insisted on meeting the

leadership of the Dagestan Republic. New people arrived at the scene, armed with stones and sticks. Since the negotiations had failed, Mr Akb. ordered the police to start clearing the road. The men who had gathered on the sides of the road started to throw stones at the police officers, several of whom were hit, so Mr Akb. authorised the use of shields and rubber truncheons. Once the first heap of stones had been removed and the traffic had started to move, the police discovered that 300 metres further down the road it had again been obstructed with pipes. Throughout that time the police officers had stones thrown at them. Mr Akb. authorised them to use firearms but only above the heads of the protesters. By 6 p.m. the road had been unblocked.

35. Mr Yakh., one of the protesters, testified that when they had arrived in Miskindzha, the road had not yet been blocked. People had started to block the road spontaneously with stones in order to draw the authorities' attention to their claims. The leaders of the demonstration, who spoke before the crowd, called everybody to order and asked them not to break the law. Then a police colonel appeared. He asked the leaders of the protesters to unblock the road, but they refused. The police then attacked the protesters from two sides and started to shoot and throw gas grenades into the crowd. People started to run in the direction of Miskindzha. Mr Yakh. testified that he had not seen protesters throwing stones at the police: by contrast, the police had thrown stones at the crowd in order to unblock the road.

36. Witness Mr Ag., a district administration official, testified that all the protesters, including women and elderly people, had been drunk, because earlier a mini-lorry had brought a cargo of vodka which had been distributed to the protesters. Mr Ag. joined the crowd and went with the protesters to Miskindzha, where he listened to the speeches of the leaders of the demonstration before a crowd of approximately 300 people. After the failure of the negotiations between the protesters and the authorities, the leaders started to incite the protesters to throw stones; he also heard the sound of shots coming from the side where the protesters had gathered. A police officer was wounded. The police started to move towards the protesters and fired two or three warning shots above their heads. When the police started to remove the stones from the road and arrest the protesters, Mr Ag. left. On the way back he overheard two women complaining that the organisers had not paid them and that they had been used as a human shield against the police.

37. According to an undated report by the head of the Special Forces Unit, Major Kr., the police had started using gas grenades only when a large group of about 1,000 men armed with iron rods, wooden sticks and knives had attacked them. Major Kr. also specified that when his officers were moving from the first barricade to the second, someone had started to shoot at them from under the nearby trees with an automatic gun and a hunter's gun.

38. Witness Mr Agb. testified that on 25 April 2006 he had been going on his business but had been stopped by the crowd. He had heard the first applicant calling the protesters not to block the road but to gather in the community centre of Miskindzha. However, some of the demonstrators disobeyed; two lorries arrived and dumped stones on the road. Some of the protesters were throwing stones at the police.

39. One of the witnesses, Mr Chub., was the driver of the lorry that had brought stones for the first barricade. He explained that he had loaded the stones near the river in order to build a shed in his garden. Near the entry to Miskindzha he was stopped by a group of youngsters who ordered him, under the threat of violence, to dump the stones directly on the road.

40. The written testimonies of several other eyewitnesses were inconclusive. Some of them testified that a group of adolescents had been throwing stones at the police; others said that the police had used firearms by shooting in the air, whereas the demonstrators had no firearms. Some witnesses heard shots from the side of the protesters.

D. Arrest of the participants and organisers of the demonstration

1. The first applicant (Mr Primov)

(a) Arrest and detention

41. On 29 April 2006 the first applicant was arrested for participating in the organisation of an unauthorised demonstration on 25 April 2006 (criminal case no. 67610). He was suspected of having committed a crime under Article 213 § 2 ("Hooliganism"), and Article 318 § 2 ("Use of violence against a public official") of the Criminal Code of the Russian Federation (for all further references to the Criminal Code see "Relevant domestic law" below).

42. In particular, the police suspected that the first applicant had incited the demonstrators to block the road and to "disobey the lawful orders of the police with the use of firearms". The police applied to the Sovetskiy District Court for a detention order against the first applicant.

43. According to the Government, the decision of the Prosecutor of the Dagestan Republic (hereinafter "the RPO", the Regional Prosecutor's Office) to seek the first applicant's detention was based on the witness statements of Mr Als., Mr Agsh., Mr Shk. and an anonymous witness. Those witnesses identified the first applicant as one of the leaders of the demonstration who had incited the crowd to attack the police.

44. On 30 April 2006 the Sovetskiy District Court of Makhachkala placed the first applicant in pre-trial detention. In its ruling the court noted that he was suspected of having committed a serious crime and that he might continue his criminal activity, abscond or obstruct the course of justice. The court also referred to his "personality".

45. The first applicant's lawyer appealed. He indicated that the first applicant worked as head of a municipal social-security office, had a permanent place of residence and four children, and had good references from his colleagues and neighbours. The lawyer also stated that the first applicant had not been contacted by the investigators before his arrest. The lawyer noted that a suspect could be held in pre-trial detention before being formally charged only in exceptional circumstances. The court's ruling did not refer to any specific facts showing that the first applicant indeed intended to continue his criminal activities, abscond or obstruct the course of justice. Furthermore, the lawyer pointed to various irregularities in the application by the police and in the court's ruling imposing the detention order.

46. On 6 May 2006 the Supreme Court of Dagestan dismissed the appeal in a summary fashion. The Supreme Court's reasoning was identical to that of the lower court.

47. On 8 May 2006 the first applicant was charged under Article 213 § 3 and Article 318 § 2 of the Criminal Code. In the indictment the first applicant was referred to as "the organiser of the demonstration". The indictment also mentioned that, as one of the organisers of the demonstration, the first applicant had ordered the protesters to block the road, throw stones in the direction of the police and use firearms.

48. It appears that in the meantime the first applicant had a confrontation with the witnesses who had earlier identified him as one of the instigators of the riot. According to the Government, they had all denied their previous allegations concerning his role in the riot.

49. On 27 June 2006 the Sovetskiy District Court of Makhachkala refused to extend the first applicant's pre-trial detention. The court ruled that the police had not produced any evidence that he might abscond or obstruct the course of justice, and that another preventive measure could not be applied. The court also stated that the need to question other demonstrators who had used violence against the police was not a good reason for extending his detention. The court lastly stated that the first applicant had no previous convictions, was married, was in employment, had good references, had been awarded State decorations and had a permanent place of residence. The first applicant was released.

(b) Findings of the domestic investigation

50. On 25 December 2006 the criminal case against the first applicant was discontinued for lack of evidence. The investigator established that the road going to Miskindzha had been blocked by the protesters; when the police had tried to clear the road, the protesters had started to throw stones and sticks at them. Several police officers had been injured; police officer Il. had been wounded by a bullet fired from a hunter's gun.

51. The investigator's decision to discontinue the case referred to the protocol of examining the site of the clash during which he had discovered the following objects: 139 5.45 mm cartridges (the type used in the police's automatic guns), one 7.45 mm cartridge (standard army Kalashnikov rifle), two cardboard cartridges (hunter's gun) and one cartridge from a tear-gas grenade.

52. The investigator further referred to the testimony of several demonstrators who had stated that when the police had approached the demonstrators, most of the people had remained calm. However, some time later, a group of young men whom the witnesses had identified as "the people of Mr Kanberov", had arrived and started to throw stones and shout insults at the police.

53. Two police officers questioned by the investigator were granted anonymity. They testified that the leaders of the demonstration, including the first and third applicants, had ordered the protesters to disobey the police and throw stones at them. The testimony of the two anonymous witnesses was confirmed by several other police officers who testified under their real names, including Mr Sch. However, during a face-to-face confrontation with the first applicant, officer Sch. retracted his statement.

54. Police officer Mr Msl. testified that the first applicant had left the scene of the confrontation between 12 noon and 1 p.m., namely before the start of the clash, because of an emergency in his family. That fact was confirmed by witness Mr Dzhv. Witness Mr Um. testified that the first applicant had tried to persuade the protesters to follow the orders of the police and had designated thirty people to keep order during the demonstration.

55. The first and third applicants were also questioned. They denied their guilt and claimed that they had been collaborating with the police and had tried to call the protesters to order.

56. The investigator lastly referred to a video recording of the demonstration which showed that the first and third applicants had asked the protesters not to react to provocations and to remain calm.

57. On 25 December 2006 the first applicant was informed of his right to claim damages in connection with the criminal prosecution against him.

2. The third applicant (Mr Askerov)

58. The third applicant was arrested on 29 April 2006. Whereas it is undisputed that the third applicant was present during the demonstration of 25 April 2006, his arrest was connected not to that demonstration but to his role in the events of 19 April 2006 in the village of Khiv and was ordered within criminal case no. 6424 (see paragraphs 8 to 13 above).

59. On 1 May 2006 the Sovetskiy District Court of Makhachkala ordered the third applicant's pre-trial detention. The court reasoned that as he might be given a prison sentence, he might abscond. The court noted that

although the arrest warrant had been issued by the police on 20 April 2006, the third applicant had not been arrested until 29 April 2006.

60. The third applicant appealed. He stated, in particular, that before 29 April 2006 the police had not taken any steps to enforce the arrest warrant of 20 April 2006. He had been arrested on the premises of the Ministry of the Interior of Dagestan, where he had gone of his own motion.

61. On 6 May 2006 the Supreme Court of Dagestan upheld the findings of the first-instance court in a summary fashion. On the same day the third applicant was charged under Articles 212 and 318 of the Criminal Code for participating in the events of 19 April 2006 in the village of Khiv. The charges against him were similar to those against the second applicant.

62. On 26 June 2006 the Sovetskiy District Court of Makhachkala refused to extend the third applicant's pre-trial detention. The court ruled that the police had not produced any evidence that he might abscond or obstruct the course of justice. The court also indicated that the need to conduct further investigative steps was not a legitimate reason for extending his detention. The court concluded that it was possible to apply a milder preventive measure. The third applicant was released.

63. As follows from the Government's submissions, the accusations against the third applicant were based on the testimony of one witness. The prosecution authorities decided to drop the charges against him.

E. Criminal investigation into the events of 25 April 2006 and other inquiries

64. On 25 April 2006 the RPO ordered a criminal investigation into the events in Usukhchay and Miskindzha (case no. 67611). The facts were categorised under Article 105 § 2 (e) ("Murder") and Article 222 ("Unlawful possession of or trafficking in firearms") of the Criminal Code ("the CC").

65. On 7 May 2006 Colonel Mk., acting head of the Special Forces Unit (OMON) of the Ministry of Internal Affairs of Dagestan, drew up a report on the events of 25 April 2006. He explained that the tear-gas grenades had been used when the protesters attacked the police with iron rods and tried to grab the service guns.

66. On 10 May 2006 an internal inquiry carried out by the federal Ministry of the Interior concluded that the police's actions on 25 April 2006 had been appropriate. In particular, according to the final report of the inquiry, at 4.45 p.m. Colonel Iz. had ordered his officers to unblock the road, but the officers were attacked by a group of men armed with iron rods, stones and knives. Some of those men tried to grab the officers' service guns. When the police entered Miskindzha, they discovered a lorry loaded with alcohol, cigarettes and foodstuff. Lieutenant-Colonel Mr Og. testified that his men had been fired at from the nearby gardens located on the left

side of the road. Officer Il. (who had sustained a bullet wound to his thigh) testified that a hooded man had shot at him with a hunter's gun. An appendix to the internal inquiry described restrictions on the use of gas grenades; in particular, it was prohibited to "shot gas grenades directly at humans".

67. On an unspecified date in May 2006 the first applicant drafted and submitted to the investigator his account of the events of 25 April 2006 (a copy was submitted by the Government). He claimed that the demonstration had started peacefully, despite information that a group of Mr A.'s supporters had occupied the park in Usukhchay. During the negotiations with the authorities in the morning of 25 April 2006 the authorities' representatives warned the protesters that if they insisted on holding the demonstration in Usukhchay, there would be bloodshed. In the afternoon, when the demonstrators refused to leave the road near Miskindzha, the police started to shoot and beat them with rubber truncheons. The first applicant submitted to the prosecutor a video recording of the start of the clash, and requested the questioning of several participants of the events.

68. On 19 October 2006 the RPO opened a criminal investigation under Article 286 § 3 (b) and (c) of the CC ("Abuse of office") concerning the killing of Mr Ng. (case no. 668459).

69. On 4 December 2006 cases nos. 668459 and 67611 were joined.

70. According to the Government, within those two cases the investigators questioned more than seventy witnesses and conducted ballistic and medical forensic examinations. The relatives of the victims or the victims themselves were granted the status of victims in those proceedings.

71. However, the prosecution was unable to establish the persons responsible for the facts at the heart of the investigation. As a result, on 20 February 2007 the investigation was suspended. The investigator held that "in breach of the instruction on the use of special equipment ... No. 865*dsp*, officers of the Special Forces Unit ... fired twenty-three 23mm gas grenades ..." However, it was impossible to identify the police officers who had fired the fatal shot.

72. It appears that on an unidentified date the investigation was reopened and on 16 January 2010 it was suspended again.

II. RELEVANT DOMESTIC LAW AND PRACTICE

73. Article 30 of the Constitution of the Russian Federation provides that everyone has the right to freedom of association. Article 55 § 3 provides that rights and freedoms may be restricted by federal laws for the protection of constitutional principles, public morals, health and the rights and lawful interests of others, and to ensure the defence and security of the State.

A. The Public Gatherings Act

74. The Federal Law on Assemblies, Meetings, Demonstrations, Marches and Picketing (no. 54-FZ of 18 August 2004 – "the Public Gatherings Act"), as in force at the relevant time, provided for the rights and duties of the organisers of public events. The relevant provisions of the Public Gatherings Act were summarised in detail in the case of *Alekseyev v. Russia* (nos. 4916/07, 25924/08 and 14599/09, § 50, 21 October 2010). The relevant parts of the most important provisions are summarised below.

75. Section 5 of the Public Gatherings Act provided that the organiser of a public event had to submit to the municipal authority a written notice in accordance with section 7. The organiser had the right to hold a demonstration at the venue and time specified in the notice or as altered by agreement with the municipal authority; or to hold assemblies at a venue that had been specially allocated or adapted to ensure the safety of citizens while such assemblies were held. The organiser had to require the participants in the public event to observe public order and comply with the lawful requirements of the authorities.

76. Under section 5(5) of the Public Gatherings Act, the organiser of the public event had no right to hold it if the notice on holding the public event had not been submitted in due time or no agreement had been reached with the municipal authorities on their reasoned proposal as to the alteration of the venue and/or time of the public event.

77. Section 7 of the Public Gatherings Act provided that a written notice about a public event had to be lodged (*подается*) by the organiser with the municipal authority concerned not earlier than fifteen days and not later than ten days before the date of the event. Under Part 2 of the Public Gatherings Act the procedure for lodging such notices had to be defined in the regional legislation.

78. Under section 8, a public event could be held at any suitable venue provided that it did not threaten the safety of the participants. Under section 12, the municipal authorities, upon receiving notice of the public event, had to propose an alternative venue and/or time for the public event, if the original conditions set out in the notice did not correspond to the requirements of the law. The municipal authorities also had to ensure, within their competence and jointly with the organisers and the authorised representative of the Ministry of the Interior, that public order and the safety of citizens while holding the event were respected.

79. Under section 19 of the Act, decisions, acts or omissions of municipal authorities could be contested in court in accordance with the law.

B. Judicial review of the actions of the municipal authorities

80. Under the Code of Civil Procedure of 2002 ("the new CCP"), a person affected by an unlawful administrative act or omission by a State or municipal authority disposes of two types of remedy: a "complaint" or a "claim" (*иск*) against the State. Complaints are governed by Chapter 25 of the Code ("Challenging decisions, acts or omissions of State and municipal authorities and officials").

81. The new CCP provides for judicial review of decisions and other acts of State or municipal officials if those acts breached the rights and freedoms of the interested person. Article 258 § 3 provides that a complaint must not be granted if the action challenged in court "is in compliance with the law, has been taken within the jurisdiction of the State body or official and the rights and freedoms of the citizen have not been violated".

82. As follows from Article 258 of the new CCP, a successful plaintiff under Chapter 25 may obtain an injunction against the State body or official concerned. By that injunction the court must require "full elimination of the breach of the rights and freedoms". The Code is silent on whether Chapter 25 allows the plaintiff to seek other reliefs provided for by the law, in particular, damages.

83. Article 257 of the CCP provides that complaints lodged under Chapter 25 of the Code must be examined within ten days from the date of their lodging. Under Article 338 the parties then have ten days to lodge an appeal. Under Article 348 the Court of Appeal has one month from the date of its receipt to consider it.

THE LAW

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

84. The applicants complained that their arrests and detention had been unjustified. This complaint falls to be examined under Article 5 §§ 1 and 3 of the Convention, which reads, insofar as relevant, 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 or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial. ...”

85. The Government maintained that there had been sufficient evidence that the applicants had actively participated in the violent clashes with the police on 19 and 25 April 2006. The applicants' detention was justified by relevant and sufficient reasons, and lasted no more than necessary. After a certain lapse of time all the applicants were released and the charges against them were dropped.

86. The applicants maintained their complaint under Article 5. They denied having participated in any violent acts and claimed that the authorities had acted in bad faith in arresting them.

87. The Court is satisfied that the facts of the case gave rise to a “reasonable suspicion” against all three applicants. Although subsequently the charges against two of them were dropped for want of sufficiently strong incriminating evidence, this fact alone does not mean that the original suspicion was not “reasonable” within the meaning of Article 5 § 1 (c). There is no proof that the authorities had arrested the applicants on the basis of wittingly false accusations and evidence. Furthermore, there is no doubt that the detention orders in respect of all three of them were “lawful” in domestic terms and issued “in accordance with a procedure prescribed by law”, as required by Article 5 § 1.

88. As to whether the applicants' detention was justified by “relevant and sufficient reasons”, as required by Article 5 § 3, the Court observes as follows. The applicants spent less than two months in pre-trial detention (one month and twenty-eight days for the first applicant, one month and twenty-nine days for the second, and one month and twenty-seven days for the third). Although the reasonableness of the length of the detention cannot be defined *in abstracto*, and whereas even short periods of detention are susceptible to review by the Court (see *Shishkov v. Bulgaria*, no. 38822/97, § 66, ECHR 2003-I (extracts), and *Ţurcan v. Moldova*, no. 39835/05, §§ 45 et seq., 23 October 2007), the Court observes that *in casu* the applicants' detention was mainly justified by the gravity of the charges against them; the three detention orders were equally laconic and did not rely on other facts specific to the situation of each applicant (except for a very general reference to the “personality” of the first applicant). The Court has frequently found a violation of Article 5 § 3 of the Convention in Russian cases where the domestic courts extended an applicant's detention relying essentially on the gravity of the charges and using stereotyped formulae without addressing specific facts or considering alternative preventive measures (see *Pelevin v. Russia*, no. 38726/05, § 55, 10 February 2011, with further references). However, most of the previous cases concerned

extensions of the pre-trial detention, whereas the present case concerns the initial detention orders imposed immediately after the start of the criminal investigation. The Court reiterates that it has assumed in many cases that during the initial period of detention a "reasonable suspicion" alone could be a sufficient reason for remanding the suspect in custody (see *Kusyk v. Poland*, no. 7347/02, § 37, 24 October 2006). The Court considers that in the present case the seriousness and, more importantly, the character of the alleged crimes (involvement in riots and organising violent resistance to law-enforcement bodies), in the light of the available information about the applicants' role in the clashes could reasonably constitute sufficient factual grounds justifying the initial detention of the applicants. Since all of the applicants were released after less than two months' detention, and in view of the overall context of the case the Court is prepared to conclude that their complaint under Article 5 §§ 1 (c) and 3 is manifestly ill-founded. It follows that this complaint must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

89. The applicants further complained that the authorities' refusal to allow the demonstration of 25 April 2006, the violent dispersal of the demonstration and the arrest of the three applicants breached their right to freedom of expression and to peaceful assembly, guaranteed by Articles 10 and 11 of the Convention respectively.

90. Those provisions read as follows:

Article 10 (freedom of expression)

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

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

Article 11 (freedom of assembly and association)

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

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of

national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the state."

91. At the outset, the Court notes that in relation to the same facts the applicants invoke two separate Convention provisions: Article 10 and Article 11 of the Convention. In the Court's opinion, in these circumstances, Article 10 is to be regarded as a *lex generalis* in relation to Article 11, a *lex specialis* (see *Ezelin v. France*, 26 April 1991, § 35, Series A no. 202). The applicants were seeking not only to express their opinion about corruption in the local administration, but to do so together with other demonstrators (see *Schwabe and M.G. v. Germany*, nos. 8080/08 and 8577/08, § 101, ECHR 2011 (extracts)). The Court reiterates that in *Galstyan v. Armenia* (no. 26986/03, §§ 95-96, 15 November 2007), in which the applicant was arrested and convicted because of his behaviour during a demonstration, the Court found it unnecessary to consider the complaint under Article 10 separately from that under Article 11 of the Convention. There are no reasons to depart from that approach in the present case. Consequently the Court concludes that the applicants' complaint does not require a separate examination under Article 10.

92. That being said, the Court notes that notwithstanding its particular sphere of application, in the sphere of political debate the guarantees of Articles 10 and 11 are often complementary, so Article 11, where appropriate, must be considered in the light of the Court's case-law on freedom of expression. The Court reiterates that the link between Article 10 and Article 11 is particularly relevant where the authorities have interfered with the right to freedom of peaceful assembly in reaction to the views held or statements made by participants in a demonstration or members of an association (see, for example, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 85, ECHR 2001-IX).

A. Admissibility

93. The Court reiterates that the term "restrictions" in paragraph 2 of Article 11 must be interpreted as including measures taken before or during the public assembly – such as banning the event, dispersal of the gathering or the arrest of participants – and those, such as punitive measures, taken after the meeting (see *Ezelin*, cited above, § 39; *Bączkowski and Others v. Poland*, no. 1543/06, §§ 66-68, 3 May 2007; *Oya Ataman v. Turkey*, no. 74552/01, §§ 7 and 30, ECHR 2006-XIII; *Hyde Park and Others v. Moldova*, no. 33482/06, §§ 9, 13, 16, 41, 44 and 48, 31 March 2009; *Osmani and Others v. "the former Yugoslav Republic of Macedonia"* (dec.),

no. 50841/99, ECHR 2001-X; and *Sergey Kuznetsov v. Russia*, no. 10877/04, § 36, 23 October 2008).

94. The applicants' complaint in the present case is focused essentially on the events of 25 April 2006 in the villages of Usukhchay and Miskindzha. However, the applicants also complained about other episodes, which represent, in their words, separate instances of "interference" with their Article 11 rights. In particular, they complained about the decision of the local administration of 17 April 2006 not to allow the demonstration, and about their arrests and detention. The Court will address each of those episodes separately.

1. Decision of 17 April 2006 not to allow the demonstration

95. The applicants complained that their rights under Article 11 had been affected by the decision by the local administration of 17 April 2006 not to allow the demonstration. The Government, in response, claimed that under Article 19 of the Public Gatherings Act it was open for the organisers of the demonstration to complain in court about the decision of the district administration of 17 April 2006 to ban the demonstration. However, the organisers did not lodge such a complaint. Therefore, they failed to exhaust domestic remedies under Article 35 of the Convention.

96. The Court considers that the Government's objection is misconceived. None of the applicants was mentioned in the list of organisers of the demonstration submitted to the district administration. Therefore, since they were not amongst the organisers, it is difficult to see how it would be possible for them to challenge the decision of 17 April 2006 in court, even assuming that such remedy was effective (see a finding to the contrary in *Alekseyev*, cited above, §§ 97 et seq.). In any event, lacking any proof that the applicants were amongst the organisers of the demonstration, the Court concludes that they have not, as such, been personally affected by the refusal of the district administration to allow it. In this part their complaint is incompatible with the Convention *ratione personae* and must be rejected pursuant to Article 35 §§ 3 (a) and 4 thereof.

2. Demonstration of 25 April 2006 in Usukhchay and Miskindzha and its dispersal

97. Next, all three applicants complained about the events of 25 April 2006, namely about the blocking of the village of Usukhchay by the police and subsequent violent dispersal of the demonstration near the village of Miskindzha.

98. The Court notes that the second applicant was arrested on 21 April 2006, and was therefore unable to take part in the demonstration of 25 April. His allegation that he had been arrested in order to prevent him from participating in the demonstration of 25 April 2006 has no support in

the materials of the case. In the Court's opinion, the mere wish of a person to take part in a demonstration does not suffice to conclude that this person was affected by banning or dispersal of a public gathering. It follows that the second applicant's complaint under Article 11 about his arrest and about the events of 25 April 2011 is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must be rejected pursuant to Article 35 § 4.

99. By contrast, the Government did not dispute that the first and third applicants were amongst the protesters on 25 April 2006. As to the applicant themselves, although they denied having taken part in the acts of violence against the police on that date, they acknowledged having been at the scene at the time of the clash. Thus, insofar as the events of 25 April 2006 are concerned, the Court is prepared to consider that the blocking of the village of Usukhchay and the subsequent dispersal of the demonstration in Miskindzha, affected their rights under Article 11 of the Convention. The first and the third applicants' complaint, so construed, is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. The Court further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

3. Arrest and detention of the first applicant

100. The Court recalls that on 29 April 2006 the first applicant was arrested for having participated in the organisation of an unauthorised demonstration on 25 April 2006. It is clear that the arrest of the first applicant was related to the events of 25 April 2006 and to his role in those events. Leaving aside the question whether or not the applicant participated in any violent action, the Court considers that his arrest can be regarded, on the arguable basis, as an instance of "interference" with his Article 11 rights. This part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. The Court further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

4. Arrests and detention of the second and the third applicants

101. Finally, the second and the third applicants complained about their arrests. The second applicant claimed that the police arrested him on 21 April 2006 in order to prevent him from participating in the demonstration of 25 April 2006. The third applicant alleged that his arrest had been *de facto* a punishment for his participation in that demonstration.

102. The Court does not have any proof supporting the second and the third applicants' allegations that their arrests on 21 and 29 April 2006 respectively were connected to their participation in the demonstration of 25 April. All materials in the case-file show that the second and the third

applicant were arrested in connection with the events of 19 April 2006 in the villages of Kamsumkent and Khiv, which are not at issue in the present case. The Court concludes that the applicants' arrests and detention cannot be considered as an instance of "interference" with their rights guaranteed by Article 11 of the Convention, insofar as the demonstration of 25 April 2006 is concerned. In such circumstances the Court concludes that the second and the third applicants' complaint under Article 11, to the extent that it concerns their arrests, is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must be rejected pursuant to Article 35 § 4.

5. Conclusion as to the admissibility of the complaint

103. In sum, the Court declares admissible the first and third applicants' complaint under Article 11 about the events of 25 April 2006 as well as the first applicant's complaint about his arrest and subsequent detention. The remainder of the applicants' complaints under Article 11 is to be rejected as inadmissible.

B. Merits

1. The Government's submissions

104. The Government indicated that the organisers of the demonstration had failed to meet the requirement of section 7(1) of the Public Gatherings Act, which required that notice about an upcoming public event must be lodged not earlier than fifteen and not later than ten days before the date of the event. The notice was received by the district administration on 17 April 2006, namely after the deadline. Furthermore, the admission capacity of the park was 500 people, not 5,000. The Government argued that section 7 of the Public Gatherings Act had been properly published, and established clear and foreseeable rules governing public gatherings.

105. The Government also argued that, in view of the violation of the relevant provisions of the domestic law on prior notice, the limitation on the demonstrators' rights had pursued the aims of preventing public disorder and protecting the rights and freedoms of others.

106. As to the proportionality of the interference, the Government argued that the decision not to authorise the demonstration had been taken "in order to prevent the violation of the legislation on public gatherings". The requirement to notify the authorities in the requisite form was part of the normal duties of demonstration organisers. The local authorities took measures to prevent mass public disorder and possible destabilisation of the political situation in the district.

107. The organisers were warned about repercussions for the participants of the unauthorised demonstration. They were also repeatedly

warned against the use of firearms and cold weapons during the demonstration. The authorities tried to negotiate with the demonstrators and proposed an alternative place for them to hold the demonstration, but that offer was declined and the protesters continued their unlawful actions. Thus, they blocked the road between two villages; many participants of the unauthorised demonstration had firearms, iron rods and other weapons, and they used them against the police officers. The use of force by the police squad was compatible with the requirements of the Police Act of 18 April 1991. The Government explained that the Police Act provided for the use of physical force and special equipment (such as rubber truncheons and tear gas) to discontinue criminal activities and administrative offences, and supress acts of violence or riots which perturb the normal functioning of the transport system, communications, and so on.

108. The Government further described the clash between the police and the protesters near the village of Miskindzha. They claimed that the police had the right, under section 15(2) of the Police Act, to use firearms in self-defence. They stressed that the use of firearms was limited to shots above the heads of the crowd.

109. The Government explained that the use by some unidentified police officers of pump-action shotguns loaded with 22 mm tear-gas grenades was contrary to Instruction No. 865dsp of the Ministry of Internal Affairs of Russia of 5 November 1996, which prohibited firing such grenades directly at people.

2. The applicants' submissions

110. The first and the third applicants (hereinafter – "the applicants") argued that the domestic authorities and the Government had misconstrued the Public Gatherings Act. Section 17 of the Act spoke of "lodging" the notice, not its "receipt". The notice was posted on 10 April 2006; it followed that the organisers of the demonstration had complied with the time-limits for "lodging" the notice.

111. The applicants further argued that the Public Gatherings Act provided for a notice requirement only. It followed that the district administration did not have the power to authorise the meeting or refuse the authorisation; they could only take note of the notice.

112. The applicants claimed that the interference with the rights of the protesters had been two-fold: it had consisted of, first, the dispersal of the meeting, and, secondly, the arbitrary criminal prosecution of some of the protesters. The Government did not deny that there had been an interference with Article 11 rights, at least in so far as the dispersal was concerned.

113. The applicants' claimed that the dispersal of the demonstration with the use of firearms had been disproportionate. The gathering was originally peaceful; its purpose was to criticise the local authorities, which was a perfectly legitimate form of civil protest. The use of firearms and special

equipment by the law-enforcement agencies was disproportionate and was aimed at the suppression of criticism.

114. In addition, the use of firearms was contrary to the domestic law, in particular, to section 15(3) of the Police Act, which prohibits the use of firearms in crowded places where there is a risk that third persons may be injured.

115. The Government's assertion that prior to the demonstration someone had distributed alcohol, foodstuff and drugs amongst the residents of the village was not supported by any evidence. Similarly, there was no evidence that the protesters had started the violence and had blocked the road.

3. The Court's assessment

(a) General principles

116. The Court reiterates that the freedom of assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of its foundations. Thus, it should not be interpreted restrictively (see *Schwabe and M.G.*, cited above, § 110).

117. The Court has previously considered that notification, and even authorisation, procedures for a public event do not normally encroach upon the essence of the right under Article 11 of the Convention as long as the purpose of the procedure is to allow the authorities to take reasonable and appropriate measures in order to guarantee the smooth conduct of any assembly, meeting or other gathering (see *Sergey Kuznetsov*, cited above, § 42, and *Rai and Evans v. the United Kingdom* (dec.), nos. 26258/07 and 26255/07, 17 November 2009). Organisers of public gatherings should respect the rules governing that process by complying with the regulations in force.

118. The Court reiterates its finding in *Ziliberberg v. Moldova* (dec., no. 61821/00, 4 May 2004) that "since States have the right to require authorisation, they must be able to apply sanctions to those who participate in demonstrations that do not comply with the requirement." The question is how far such "sanctions" may go and whether the dispersal can be reasonable explained by the original "unlawfulness" of the public action. In *Ziliberberg* the Court decided that a short detention of the applicant and a small fine were not an excessive response to participation in an unauthorised demonstration in a public thoroughfare. However, as the Court stated in *Samüt Karabulut v. Turkey* (no. 16999/04, § 35, 27 January 2009, with further references), "an unlawful situation does not justify an infringement of freedom of assembly". While rules governing public assemblies, such as the system of prior notification, are essential for the smooth conduct of public events since they allow the authorities to minimise the disruption to traffic and take other safety measures, the Court

emphasises that their enforcement cannot become an end in itself. In particular, where irregular demonstrators do not engage in acts of violence the Court has required that the public authorities show a certain degree of tolerance towards peaceful gatherings (see *Berladir and Others v. Russia*, no. 34202/06, § 38, 10 July 2012; *Galstyan*, cited above, §§ 116-117; *Bukta and Others v. Hungary*, no. 25691/04, § 37, ECHR 2007-III; *Oya Ataman*, cited above, §§ 38-42; and *Akgöl and Göl v. Turkey*, nos. 28495/06 and 28516/06, § 43, 17 May 2011).

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

(b) Application to the present case

120. The Court reiterates its finding above that the first and the third applicants had not been amongst the organisers of the demonstration and hence had no standing to complain about the decision of 17 April 2006 as such. That being said, in assessing the events of 25 April 2006 and the actions of the police on that day the Court cannot disregard the reasons adduced by the district administration in the decision of 17 April 2006. After all, when on 25 April 2006 the police blocked the village of Usukhchay, it did so in order to implement the decision of 17 April 2006 and prevent the unauthorised gathering. Therefore, the Court will start its analysis of the events of 25 April 2006 with the examination of the reasons adduced by Mr A.'s, the head of the district administration, in his decision of 17 April 2006.

(i) Alleged belated lodging of the notice

121. The Court recalls that Article 11 establishes a three-tier test: an interference will constitute a breach of Article 11 unless it is "prescribed by law", pursues one or more legitimate aims under paragraph 2 and is "necessary in a democratic society" for the achievement of those aims. A particular feature of the present case is that the authorities forwarded three separate objections against the demonstration. The Court has to analyse each of them, by applying the three-tier test, in order to see whether any of those objections could have justified the banning of the demonstration.

122. First, Mr A. argued that the notice was lodged outside of the time-limit set by the Public Gatherings Act. On this point the Court agrees that the duty to notify the authorities about a public event is not, as such, contrary to Article 11 of the Convention and that such a requirement pursues the legitimate aims of securing public order and protecting the rights and freedoms of other. However, the "duty of notification" is not an aim in itself. It exists in order to allow the authorities to evaluate the risks associated with the planned public event and take measures in order to mitigate them, for example, by suggesting an alternative place or timing of the event.

123. The present case raises two questions related to the "duty of notification". First, the parties disagreed as to whether the organisers had submitted the notice within the time-limits provided for in the Public Gatherings Act. Secondly, even if they did not comply with the time-limits, the question is whether their failure to do so was by itself sufficient to make the upcoming event "unlawful" and what legal consequences it should have entailed.

124. On the first question, the Court notes that the Russian law required the organisers to "lodge" the notice not earlier than fifteen and not later than ten days before the planned event. The word "lodging" used in the Public Gatherings Act is ambiguous. The organisers believed that in order to comply with the law they had to *send* the notice during that period, whereas the district administration considered that the notice had to be *received* before the deadline.

125. The Court is not called upon to give a definitive interpretation of the Public Gatherings Act. It simply observes that a norm cannot be regarded as a "law" if it is not formulated with sufficient precision. Some laws are inevitably couched in terms which, to a greater or lesser extent, are vague (see, among other authorities, *Rekvényi v. Hungary* [GC], no. 25390/94, § 34, ECHR 1999-III). However, in the present case it was relatively easy for the legislator to clarify what was meant by "lodging" of a notice: its sending or receipt. The Government did not refer to any secondary legislation or regional Act which would elucidate that point. The Court does not exclude the possibility that the authorities' reading of the law might have been correct. However, even on this assumption, the organisers must have been excused for misinterpreting the law since the law itself was ambiguous.

126. Next, the Court notes that the law provided for a very short time-slot when the notification could have been "lodged". Had the organisers sent their notice at some point before 10 April 2006, they would have risked having it rejected as premature. They posted the notice on the first day of the prescribed period in Makhachkala, the capital of Dagestan, which is about 230 km from the village of Usukhchay. However, for reasons which remain unknown, the letter took seven days to reach the

district administration. In a region where the postal service is not very swift, the five-day period prescribed by law appears to be clearly insufficient if the notice is to be delivered by mail. Thus, the Court concludes that the organisers made a reasonable effort to comply with the very tough requirement of the law and thus met their "duty of notification".

127. The Court also notes that the delay in "lodging" the notice, if any, was insignificant. Mr A. decided not to allow the demonstration on the same day the notice was received. From the text of his reply of 17 April 2006 it is clear that he considered the notice on the merits and assessed, in particular, the capacity of the park and the subject matter of the protest. The present case must therefore be distinguished from a situation where organisers submit a notice, for example, on the eve of an event, leaving the authorities no chance to prepare for that event or negotiate alternative options.

128. In the Court's opinion, in the circumstances Mr A.'s refusal to allow the demonstration with reference to the allegedly belated "lodging" of the notice did not have a firm basis in the domestic law and was, in addition, not sufficient to justify the interference complained of.

(ii) Insufficient admission capacity of the park

129. The second reason for the refusal to allow the demonstration was the allegedly insufficient capacity of the park. The first and the third applicants did not argue that Mr A. was wrong in his assessment of the capacity, and there is nothing in the case materials to refute his assessment. In such circumstances, the Court is prepared to accept that the park was, indeed, too small to host all the demonstrators.

130. In the Court's opinion, even though a park is, *a priori*, a "public space" suitable for mass gatherings, its size is a relevant consideration, since overcrowding during a public event is fraught with danger. It is not uncommon for State authorities in various countries to impose restrictions on the location, date, time, form or manner of conduct of a planned public gathering (see *Berladir and Others*, cited above, § 54). The Court is therefore prepared to accept that such restrictions, in principle, pursue a legitimate aim. Furthermore, it is not disputed that the domestic law permitted the authorities to regulate the manner, timing and location of public events, depending on the characteristics of the specific area at issue.

131. That being said, the Court does not consider that the size of the park was sufficient reason for a total ban on the demonstration. The situation in the present case is comparable to that in the case of *Barankevich v. Russia* (no. 10519/03, § 33, 26 July 2007), where the Court found that "instead of considering measures which could have allowed the ... assembly to proceed peacefully, the authorities imposed a ban on it. They resorted to the most radical measure denying the applicant the possibility of exercising his rights to freedom of ... assembly". The Court considers that in the present case it was the authorities' duty to reflect on the possible alternative

solutions and propose another venue to the organisers. However, the head of the district administration decided to take the "most radical measure". Thus, a fair balance between the legitimate aim and the means for attaining it was not attained.

(iii) The authorities' substantive criticism of the message of the demonstration

132. The third reason for banning the demonstration related to the ideas which its organisers wished to express in public, in other words, the "message" of the demonstration. Thus, in his reply to the organisers' written notice, Mr A. stated that all allegations of corruption, embezzlement and tampering with official records were false and had been refuted by numerous official investigations and audits.

133. The Court is not aware of the details of the local political debate and does not need to assess the veracity of the accusations; it is sufficient to note that the demonstrators' "message" undeniably concerned a serious matter of public concern and related to the sphere of political debate. Furthermore, it is clear that the accusations against the district administration officials related to some factual circumstances which had already given rise to a number of domestic inquiries.

134. The Court reiterates that it has been its constant approach, under Article 10, to require very strong reasons for justifying restrictions on political speech or serious matters of public interest (see, with necessary changes made, *Karman v. Russia*, no. 29372/02, § 36, 14 December 2006; *Feldek v. Slovakia*, no. 29032/95, § 83, ECHR 2001-VIII; and *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61, ECHR 1999-IV).

135. The approach under Article 11 must be the same: public events related to political life in the country or at the local level must enjoy strong protection under that provision, and rare are the situations where a gathering may be legitimately banned in relation to the substance of the message which its participants wish to convey. The Government should not have the power to ban a demonstration because they consider that the demonstrators' "message" is wrong. It is especially so where the main target of criticism is the very same authority which has the power to authorise or deny the public gathering, as in the case at hand. Content-based restrictions on the freedom of assembly should be subjected to the most serious scrutiny by this Court, and in the present case the Government did not forward any convincing argument which would justify such a restriction.

136. Having regard to the above the Court concludes that the decision of Mr A. not to allow the demonstration, in the light of the reasons adducted in his letter of 17 April 2006, was unjustified.

(iv) The events of 25 April 2006: the blockade of Usukhchay and the dispersal of the demonstration near Miskindzha

137. The above finding, however important it may be, does not suffice to conclude that all subsequent actions of the police on 25 April 2006 were automatically contrary to the Convention. In many cases the dispersal of a demonstration can be regarded as a direct consequence of the authorities' decision not to allow it, but in the present case the Court considers that the dispersal must be examined in its own right. Even a lawfully authorised demonstration may be dispersed, for example when it turns into a riot. Similarly, even where the original ban on a demonstration is unjustified, as in the case at hand, its dispersal may be necessary in view of the subsequent developments. The situation in the present case evolved very quickly, and the actions of the police must be assessed not only in the light of the decision of 17 April 2006 but also taking into account the situation as it stood on 25 April 2006.

138. The Court observes that the events of 25 April 2006 had two distinct phases. The dividing line between them lies at around 1 p.m., when the demonstrators, including the first and third applicants, approached the village of Miskindzha and blocked the federal road with stones and other objects. The first phase, which took place in or near Usukhchay village, was relatively peaceful, whereas the second phase, which took place on the federal road near Miskindzha, culminated in a clash between the forces of order and the protesters. The Court will first assess the first phase of the demonstration, namely the events of the morning of 25 April 2006. The central question is whether any new circumstances, not mentioned in the decision of 17 April 2006, could have justified the actions of the authorities, and, in particular, the blockade of the village by the police.

(α) Establishment of the facts

139. Before turning to the legal analysis of the events of 25 April 2006, the Court observes that the parties' accounts differed on certain points. The Court's approach to the establishment of the facts depends on a number of factors. One is the character of the complaint made under the Convention. The Court observes that, as a result of the dispersal of the demonstration, some of the protesters were seriously wounded and one, Mr Ng., died. As follows from the intermediate conclusions of the criminal investigation (case no. 668459), the casualties were in part explained by the fact that unidentified police officers did not respect the instructions and fired tear-gas grenades directly at the crowd.

140. The Court reiterates that in certain cases under Articles 2 and 3, where the underlying events remain within the exclusive knowledge of the authorities, it has applied a reversed burden of proof and required the Government to produce a convincing explanation as to what happened to the applicant. However, in the present case the Court has not received

complaints from those who were wounded during the dispersal of the demonstration or from the relatives of the late Mr Il. The case before the Court is not about endangering the first and third applicants' life and limb, but only about interfering with their right under Article 11.

141. The Court observes that the events of 25 April 2006 were the object of numerous inquiries and examinations at the domestic level (compare with *Disk and Kesk v. Turkey*, no. 38676/08, § 30, 27 November 2012, where the Court stressed that there had been no domestic investigation, and where it decided "on the basis of the material submitted by the parties"). The applicants did not challenge the findings of the investigations and inquiries before the domestic courts. Nor did they criticise the manner in which those investigations and inquiries had been conducted. In such circumstances, it is safe to use the factual findings of the official investigations and inquiries as the basis for further examination of the case.

142. The Court must nonetheless distinguish the facts of the case, as established by the official inquiries and investigations, and the possible inferences from those facts and their legal interpretation. The Court has to verify whether the domestic authorities "based their decisions on an acceptable assessment of the relevant facts" (see *Hyde Park and Others v. Moldova (no. 4)*, no. 18491/07, § 52, 7 April 2009).

(β) Blockade of Usukhchay on 25 April 2006 by the police

143. The Court observes that on 25 April 2006 Usukhchay village was blockaded by the police and that the protesters were not allowed to gather in the centre of the village near the premises of the district administration, as they wished. The first and third applicants did not argue that the decision of the police commander to block access to the village was contrary to the domestic law. Furthermore, it is clear that the actions of the police on that day pursued the legitimate aim of preventing disorder and crime. The question remains as to whether those actions were proportionate to the legitimate aim pursued.

144. The Court notes that the reasons for blockading the village were not set out in writing; however, such reasons can be deduced from the overall circumstances, the decisions taken and the statements made by various State authorities involved in the events. The first reason was invoked by the district authorities during the negotiations with the leaders of the demonstration in the morning of 25 April 2006: they claimed that if a considerable number of people were to gather near the premises of the district administration, the crowd would risk blocking the main road adjacent to the square.

145. The Court reiterates in this respect that any large-scale gathering in a public place inevitably creates inconvenience for the population. Although a demonstration in a public place may cause some disruption to ordinary life, including disruption of traffic, it is important for the public authorities

to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of its substance (see *Galstyan*, cited above, §§ 116-117, and *Bukta and Others*, cited above, § 37). The appropriate "degree of tolerance" cannot be defined *in abstracto*: the Court must look at the particular circumstances of the case and particularly to the extent of the "disruption of ordinary life".

146. The Court accepts that the risk of temporarily blocking the main road existed. However, in contrast with the barricades which were mounted on the federal road near Miskindzha several hours later (see below), the blocking of the road in Usukhchay by the crowd was expected to be relatively brief. Further, since the gathering took place in the centre of the village, the Court is not persuaded that there were no alternative thoroughfares where the traffic could have been diverted by the police.

147. The Court notes that the authorities tried to propose to the leaders of the demonstration an alternative venue in the village, namely the municipal garage. That offer was made at the last moment, when it was virtually impossible for the organisers to modify the form, scale and timing of the event. Thus, the alternative proposal made by the administration was, in the Court's opinion, inappropriate (contrast with *Berladir and Others*, cited above, § 56). It follows that the first reason invoked by the authorities was insufficient to justify the complete blockade of the village by the police.

148. Secondly, it is clear that the blockade of the village was explained by security considerations. Thus, Order No. 7 (see paragraph 20 above) demonstrated that the police feared that the demonstration would result in attacks against State institutions and infrastructure.

149. That being said, the Court notes that, in contrast to the incident near Miskindzha, examined below, in the morning of 25 April 2006, when the crowd gathered on the outskirts of Usukhchay, the authorities had not yet been confronted with actual violence.

150. In a previous case where there existed a risk of clashes between the demonstrators and their opponents, the Court held that "the mere existence of a risk [of clashes with a counter-demonstration] is insufficient for banning the event: in making their assessment the authorities must produce concrete estimates of the potential scale of disturbance in order to evaluate the resources necessary for neutralising the threat of violent clashes" (see *Fáber v. Hungary*, no. 40721/08, § 40, 24 July 2012, with further references). In the same case the Court analysed the existence of a "demonstrated risk of insecurity or disturbance" (§ 47). Thus, the Court has to examine first whether any such risk was "demonstrated", that is, supported with ascertainable facts, and, secondly, whether its "scale" was such as to justify the authorities' actions.

151. Turning to the present case, the Court notes that the authorities' fear of possible clashes was not imaginary: on 19 April 2006 more than

three hundred men armed with iron rods and sticks battered several individuals in the villages of Kamsumkent and Khiv and then attacked a roadblock mounted by the police (see paragraph 8 above). Although the link between the two incidents – of 19 April and of 25 April 2006 – is not entirely clear, the relation between those incidents cannot be ruled out. It follows that the authorities' forecast as to the possible scenario for the demonstration of 25 April 2006 was not groundless, and was based on a very recent episode. Furthermore, the intensity of violence on 19 April 2006 was not insignificant. Therefore, in the light of the specific facts of the present case, the Court is prepared to conclude that the presence of heavily armed police forces on the ground was not unjustified, and certain additional security measures were arguably required.

152. That being said, the Court is not persuaded that the complete blockage of the village was necessary. The Court stresses that it would be wrong to disperse a demonstration simply because some of its participants have a history of violent behaviour. The demonstration was originally intended to be peaceful. At least, it was so stated by the organisers in the notice sent to the district administration on 10 April 2006. The district administration's refusal to authorise the demonstration did not refer to the violent character of the gathering; it was prohibited for other reasons. The behaviour of the demonstrators in the morning of 25 April 2006 was non-violent as well. The authorities deployed a large number of well-equipped and trained police officers in the village and, as the matter transpires, police forces had the situation in Usukhchay under control. Everything suggests that the police forces prevented protesters from entering Usukhchay and demonstrating there essentially because the police considered that the gathering was "unauthorised"; however, the reasons adduced by the district administration for not authorising the demonstration were either unconvincing or had no clear legal basis. In the light of the above, the total blockade of the village was an excessive measure.

153. The Court concludes that, to the extent that the first and third applicants complained about the impossibility to demonstrate on the morning of 25 April 2006 in the village of Usukhchay, the response of the authorities was disproportionate. There was, therefore, a violation of Article 11 of the Convention on this account.

(γ) Clash between the protesters and the police near Miskindzha

154. The Court will now turn to the second phase of the events, which ended with the clash between the protesters and the police near Miskindzha, as a result of which several people were wounded and even killed. The Court observes that, as transpires from the materials of the case, the first and the third applicants followed the crowd to Miskindzha and were present at the scene when the confrontation has started; however, at some point later they left. The findings of the domestic investigation in this respect were not

conclusive; the Court is prepared to assume that the two applicants were a part of the demonstration for the most part of its second phase.

155. The Court recalls that Article 11 does not cover demonstrations where the organisers and participants have violent intentions (see *Stankov and the United Macedonian Organisation Ilinden*, cited above, § 77). However, an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration if the individual in question remains peaceful in his or her own intentions or behaviour (see *Ziliberberg,* and *Schwabe and M.G.*, § 92, both cited above). The Court endorses the opinion of the Commission in the case of *Christians against racism and fascism v. the United Kindgom* (Commission decision of 16 July 1998, no. 8440/78, Decisions and Reports 21, p. 48), where the Commission held as follows:

> "... [T]he possibility of extremists with violent intentions, not members of the organising association, joining the demonstration cannot as such take away [the right under Article 11]. Even if there is a real risk of a public procession resulting in disorder by developments outside the control of those organising it, such procession does not for this reason alone fall outside the scope of Article 11 § 1 of the Convention."

156. In the present case the parties disagreed as to who had been responsible for the escalation of violence – the protesters or the police. It remains to be established whether the intensity of the violence was such as justify the actions of the police which led to the loss of life and limb. However, as a preliminary conclusion the Court is prepared to assume that during the second phase of the events of 25 April 2006 the protesters still enjoyed protection of Article 11 of the Convention. It must be ascertained whether, in the light of the escalation of violence in the afternoon of 25 April 2006, the authorities' response was proportionate to the aim pursued, namely the prevention of disorder.

157. The Court notes that where both sides – demonstrators and police – were involved in violent acts, it is sometimes necessary to examine who started the violence. The situation was examined from that angle in the case of *Nurettin Aldemir and Others v. Turkey* (nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02, § 45, 18 December 2007), where the Court found as follows:

> "The Court observes that there is no evidence to suggest that the group in question initially presented a serious danger to public order. Nevertheless, it is likely that they would have caused some disruption in a particularly busy square in central Ankara. It transpires that the demonstrators, including the applicants, wished to draw attention to a sensitive bill proposed in the Parliament and that their rally was initially peaceful. However, the authorities' intervened swiftly with considerable force in order to disperse them, thereby causing tensions to rise, followed by clashes."

The Court concluded in that case that the forceful intervention of the police officers had been disproportionate. It must be stressed that, in domestic terms, the public gathering in that case was "unlawful" since it was held in a place where demonstrations were not permitted (see § 7).

158. Turning to the present case, the Court notes that at around 1 p.m. the protesters blocked the road with two barricades, and when the police, after long negotiations, tried to clear the road in order to let the traffic through, some of the protesters started to throw stones at the officers and attacked them with iron rods, wooden sticks and knives. The fact that the protesters attacked the police first, and that the police officers used firearms in reaction thereto and in order to protect themselves was established in the report of the internal inquiry dated 10 May 2006 (see paragraph 66 above) and in the investigation report dated 25 December 2006 within criminal case no. 67610 (see paragraph 50 above). The Court reiterates that the applicants did not challenge those findings before the domestic courts and did not criticise the process of the investigation and the inquiry (see paragraph 141 above).

159. Furthermore, those findings were not arbitrary as such. Thus, several witnesses testified that protesters had been throwing stones at policemen (see paragraph 52 above). Gun cartridges which did not belong to weaponries of the police had been found on the scene of the clash (see paragraph 51 above). Several policemen had been wounded and one received a gunshot wound from a hunter's gun (see paragraph 50 above). The exact chronology of the events is difficult to establish since witness testimony collected by the investigating authorities contained conflicting accounts (compare, for example, paragraphs 35 and 36 above). However, the essential finding of the investigation, namely that the protesters had attacked the police first, had support in the materials of the case (see, in particular, paragraphs 34, 36, 37, 38 and 40). Furthermore, it was not disputed that despite the dispatch of over 180 policemen to the area the police were seriously outnumbered.

160. The Court cannot exclude that the authorities may have been partly responsible for what happened on the road near Miskindzha. Thus, the crowd marched to Miskindzha because the demonstration could not take place in Usukhchay as originally planned. However, even if the decision of 17 April 2006 to ban the demonstration was erroneous, and even if the blockage of Usukhchay was a disproportionate measure, it did not give the protesters the right to block the road and attack the police. The Court stresses that the protesters did not limit themselves to holding their meeting in another place; they blocked a federal road and demanded the presence of the leadership of the Dagestan Republic for further negotiations. As transpires from the materials in the Court's possession, the road blocked by the protesters was the main thoroughfare linking several mountain villages. Therefore, its blockage went beyond the inevitable disruption of traffic and

circulation of pedestrians which often accompanies demonstrations in big cities. In such circumstances, the intervention of the police does not seem to overstep the margin of appreciation of the national authorities.

161. The Court observes that not all of the protesters were involved in the acts of violence. Moreover, there is no strong evidence that the first and third applicants were personally involved in any violent act: thus, although the first applicant was originally suspected of having incited the protesters to block the road and oppose the police "with the use of firearms", the accusations against him were finally dropped. As to the third applicant, he has never been suspected of any violent behaviour during the events of 25 April 2006; his arrest and subsequent prosecution were related to his role in the incident of 19 April 2006 near Kamsumkent and Khiv.

162. That being said, what happened on the road near Miskindzha cannot be described as marginal or "sporadic" violence (see *Ziliberberg*, cited above). A considerable number of demonstrators overstepped the boundary of peaceful protest, attacked policemen with stones, sticks, rods and knives and seriously injured some of them (see paragraph 66 above). Against this background, the use of the special equipment and even firearms by the police does not seem to be unjustified. Even if some of the police officers acted unprofessionally and in defiance of the rules on the use of gas grenade launchers (ibid.), there is no evidence that the firearms had been used deliberately to kill or to wound the protesters.

163. The Court emphasises that it has no complaint from the persons who had been injured by the police during the clash or whose relative has been killed by a gas grenade. In the context of Article 11 the Court is prepared to conclude that the authorities' overall response to the blocking of the road and the aggressive behaviour of a big group of protesters was not disproportionate. It follows that there was no violation of Article 11 of the Convention on this account.

(δ) Arrest of the first applicant (from the standpoint of Article 11)

164. Finally, the Court turns to the first applicant's complaint about his arrest on 29 April 2006. This element of the case has already been examined by the Court under Article 5; in particular, the Court found that the authorities had had reasons to suspect the applicant of having incited the crowd to attack the policemen, that the arrest and further detention had been ordered with a view of further investigation into his role in the events of 25 April 2006. The Court also found that the term of his detention was not excessive for the purposes of Article 5 § 3 of the Convention. Now the same facts are to be examined through the prism of the right to peaceful assembly. The question is whether detaining the applicant for two months pending investigation into his role in the events of 25 April 2006 was compatible with Article 11 of the Convention.

165. The Court answers this question in the positive. The Court recalls that the authorities had certain *prima facie* evidence supporting the initial suspicion against the first applicant (see paragraphs 40 and 41 above), and that the extremely violent character of the clash in the afternoon of 25 April 2006 makes the authorities' account even more credible. There is no proof that the authorities had at their disposal any important piece of evidence or vital information which would refute the initial suspicion against the applicant and which they knowingly ignored. It is thus safe to conclude the authorities genuinely suspected the applicant of having incited attacks against the policemen. Therefore, the applicant's arrest and detention had a lawful basis (see the Court's findings under Article 5 § 1 (c) above) and pursued a legitimate aim of "prevention disorder or crime". As to the proportionality of the measure, the Court observes that Article 11 does not give immunity against prosecution for violent actions during public gatherings, especially where the intensity of violence is considerable, as in the present case. There is no evidence that the authorities acted in bad faith, the duration of his detention pending the investigation (two months) appears reasonable, given the complexity of the case. Finally, the fact that the applicant was finally released and the charges against him were dropped for lack of sufficient evidence of his involvement in violent acts is indicative of the will of the authorities to establish the truth and not just put the blame for the tragic events of 25 April 2006 on the leaders of the protesters. In such circumstances the Court is prepared to conclude that the two months' detention of the first applicant following the events of 25 April 2006 was not contrary to Article 11 of the Convention. Therefore, there was no violation of this Convention provision on that account.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

166. 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

167. The applicants claimed 30,000 euros (EUR) each in respect of non-pecuniary damage.

168. The Government believed that the finding of a violation would constitute a sufficient just compensation. The amounts claimed by the applicants were, in the Government's opinion, excessive.

169. The Court recalls that all complaints of the second applicant were declared inadmissible. As to the first and the third applicants, the Court

found a violation of Article 11 only in connection with the events of the morning of 25 April 2006, finding no violation in all other respects.

170. In the light of all materials in its possessions, and in view of its findings under Article 11 of the Convention, the Court awards the first and the third applicants on an equitable basis EUR 7,500 each in respect of non-pecuniary damage.

B. Costs and expenses

171. The applicants also claimed EUR 2,770 for the legal costs and expenses incurred before the Court.

172. The Government claimed that the above amount had not been paid to the lawyers, and had thus not been actually incurred.

173. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Government did not contest the reasonableness of the lawyers' rates or the fact that legal services had been rendered to the applicants by the lawyers concerned. As to whether or not the amounts were "actually incurred", the Court reiterates that even where legal fees have not been paid, they remain "recoverable" under the domestic law (see *Fadeyeva v. Russia*, no. 55723/00, § 147, ECHR 2005-IV). The Court is thus prepared to consider such costs as "actually incurred". At the same time, the Court is prepared to reduce the amount of legal costs given that not all of the first and third applicants' complaints were declared admissible. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 covering costs of the proceedings before the Court in respect of the first and third applicants.

C. Default interest

174. 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 first and the third applicants' complaints under Article 11 of the Convention about the events of 25 April 2006 and the first applicant's complaint about his arrest and detention admissible, and the remainder of the applicants' complaints inadmissible;

2. *Holds* unanimously that there has been a violation of Article 11 of the Convention in respect of the impossibility for the first and the third applicants to demonstrate on the morning of 25 April 2006 in Usukhchay;

3. *Holds* by five votes to two that there has been no violation of Article 11 of the Convention in respect of the authorities' actions in the afternoon of 25 April 2006 on the road near Miskindzha;

4. *Holds* unanimously that there has been no violation of Article 11 of the Convention in respect of the first applicant's arrest and detention;

5. *Holds* unanimously
(a) that the respondent State is to pay the first and the third applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the Russian Roubles at the rate applicable at the date of settlement:
(i) EUR 7,500 (seven thousand five hundred euros) to the first and the third applicant each, plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 2,000 (two thousand euros) to the first and the third applicants jointly, plus any tax that may be chargeable to the first and the third applicants, in respect of their costs and expenses;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 12 June 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
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) concurring opinion of Judge Dedov;

(b) joint partly concurring, partly dissenting opinion of Judges Pinto de Albuquerque and Turković.

I.B.L.
S.N.

CONCURRING OPINION OF JUDGE DEDOV

1. My opinion refers to the Court's interpretation in the present case of Article 11 of the Convention. The Court has found a violation of this Article in respect of the fact that it was impossible to demonstrate. The Court has stated, in particular, that "content-based restrictions on the freedom of assembly" should be justified by convincing arguments, and that the Government failed to provide such arguments. But there were indeed arguments, and the demonstration was prohibited on account of the allegedly inaccurate message being expressed by its organisers, since, according to the authorities, all of the allegations of corruption were false and had been refuted by official investigations and audits (see paragraphs 132-136 of the judgment). The Court has not explained why these arguments were unconvincing. The Court has also found no violation of Article 11 in respect of the forced dispersal of the demonstration. In my view, there is a link between the content-based refusal to allow the demonstration and the subsequent blockade and clash between protesters and the police. The authorities' preliminary reaction in the letter of 17 April 2006 (see paragraph 7) was formalistic and contrary to the fundamental principles of governance in a democratic society, and consequently led to the dissatisfaction which turned into outrage, intolerance and, ultimately, violence. If corruption and embezzlement were the subject-matter of criticism, as in the present case, a dialogue between the authorities and the organisers and the latter's involvement in the investigation and audit process were vital in order to maintain the legitimacy of the authorities' power. Therefore, the authorities are partly to blame for the violence committed by the demonstrators and police.

2. What fundamental principles are applicable in the present case? Outside the context of elections, citizens' involvement, including through protest, is the only method by which grievances can be brought to the attention of government. In order for citizens' participation to be meaningful, the government must be responsive to the concerns raised by the citizenry, as the individual's power to influence is necessarily limited by the government's responsiveness. To the extent that freedom of association and assembly are considered essential to democratic self-governance, the force of these freedoms is curtailed when government officials are not responsive to the concerns raised. Admittedly, government officials cannot enact every change or proposal advocated by dissident citizens. But a problem arises when officials offer no response, or a perfunctory and/or dismissive response, to claims of wrongdoing by government officials (and in the facts of this case, the fact that the official dismissing the grievances is the very same official against whom they are made is even more problematic). The right to assemble in order to petition the government for redress of grievances is a hollow right when officials offer inadequate

responses to potentially valid concerns of corruption. This is especially so in the case of local governments, which are closer and more accessible to the population.

3. The facts of this case present a troubling picture with regard to the local authorities' response to the applicants' complaints. Upon receiving notice that the applicants intended to hold a demonstration to denounce alleged corruption and misuse of funds by Mr. A and the attendant failure of law-enforcement agencies to counter these abuses, the local authorities responded by stating that those allegations were baseless. In effect, this response seems to suggest the applicants were prohibited from holding their demonstration because the government considered their views to be incorrect. Yet a fundamental purpose of the freedoms of association and assembly is to enable citizens to gather in order to express their own views on the workings of the government and to demand accountability for perceived shortcomings – governments may not block protests on account of officials' beliefs that protesters' positions are inaccurate. This type of inadequate response to citizens' grievances undermines one of the core functions of the freedom of assembly, namely citizens' right to self-governance and to communicate their views to their government authorities. If denied the ability to hold a demonstration on the issue of alleged corruption by the local authorities, protesters are effectively denied any opportunity of making their views heard by the public and by local authorities. Moreover, the demonstrators were equally entitled to express their dissatisfaction with the authorities' response to the effect that their concerns were baseless.

4. It is widely accepted that the freedoms of speech, assembly and association provide the basis for an active citizenry to foster a functioning democratic government. It has been stressed on many occasions that public debate is a political duty and the very foundation of constitutional government (see Whitney v. California, 274 U.S. 357 (1927); De Jonge v. Oregon, 299 U.S. 353 (1937); and New York Times Co. v. Sullivan, 376 U.S. 254 (1964)), and that freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment (see *Stoll v. Switzerland* [GC] (no. 69698/01, § 101, ECHR 2007-V), and *Mouvement raëlien suisse v. Switzerland* ([GC], no. 16354/06, § 48, 13 July 2012).

5. The Council of Europe has also expressed concerns about democratic self-governance through the Congress of Local and Regional Authorities Resolution no. 326 on Citizen Participation at the Local and Regional Levels in Europe, issued in 2011, which calls on member States to take measures to increase citizen participation, through methods such as panels, initiatives and referendums, as "recent demonstrations and events in Europe and on its borders indicate a growing need for citizens to be listened to by their elected politicians and to be able to influence politics at all levels,

including between elections". More generally, the Resolution stated in paragraph 2 that:

> "For good governance at the local and regional level it is essential that citizens are able to have direct contact with elected officials and have some influence on the exercise of the authorities' powers and responsibilities. This is the level where their immediate concerns are taken into account. Working directly with people at neighbourhood level is central to how locally and regionally elected representatives should operate".

The Parliamentary Assembly of the Council of Europe has expressed similar concerns. Jean-Claude Mignon, PACE President, stated at a round table during the 2012 World Forum for Democracy that "citizens should have their say in the way public affairs are run, not only once every four or five years, but every day[1]".

6. I believe that the authorities failed to properly respect public discussion because they did not understand its importance and role in a democratic society and in relation to the national constitutional order.

1. Mignon J.-C. Towards a Democracy More Representative of Citizens, 10 October 2012.

JOINT PARTLY CONCURRING, PARTLY DISSENTING OPINION OF JUDGES PINTO DE ALBUQUERQUE AND TURKOVIĆ

1. In the present case, the applicants contested four different, but interrelated, administrative and police actions: (1) the district administration's prohibition of the demonstration of 25 April 2006; (2) the blocking by the police of the demonstrators' access to their chosen place of assembly on that day; (3) the police dispersal of the demonstration; and (4) the arrest and detention of the first and third applicants on 29 April 2006, following the demonstration, and of the second applicant on 21 April 2006, prior to the demonstration. We agree with the majority's conclusions on points (1), (2) and (4), albeit for different reasons. But we disagree entirely with the majority on point (3), which constitutes the core of this complex case. Unlike the majority, we think that the police acted unlawfully and disproportionately when they fired 747 live bullet shots from automatic rifles and twenty-three 23 mm gas grenades at the demonstrators, causing the death of one of them from a gas grenade injury to his thorax, and several gunshot injuries to four other demonstrators. Indeed, it is a miracle that such a brutal reaction did not cause more casualties[1].

The facts

2. We do not agree with the majority's assessment of the evidence in the file. We are of the view that the majority's reasoning in this regard says both too much and too little. On the one hand, the majority stopped short of the clear conclusion reached by the domestic criminal investigation that the police had breached the law and in particular that gas grenades had been fired in a prohibited manner, that is to say, against the instructions on the use of gas grenades not to "[shoot] gas grenades directly at humans" (see paragraphs 66 and 71 of the judgment). But it did not go so far as to absolve the police of any wrongdoing during the dispersal of the demonstrators, since it concluded that the police had acted "unprofessionally and in defiance of the rules on the use of gas grenade[s]" (see paragraph 162). Regrettably this conclusion was not upheld in the subsequent reasoning of the judgment.

1. As will be shown in this opinion, the sheer gravity of the facts imputed to the respondent State, the great complexity of the legal issues involved and above all the need for clarification of the "clear and imminent danger" test applicable in assessing the proportionality of the dispersal of aggressive demonstrations would justify the intervention of the Grand Chamber. Moreover, the conclusion reached by the Chamber on the use of gas grenades during the demonstration directly contradicts the recent case-law of the European Court of Human Rights ("the Court") established in *Abdullah Yaşa and Others v. Turkey* (no. 44827/08, 16 July 2013).

3. On the other hand, the majority did not refrain from making inadmissible factual assumptions where the domestic criminal investigator had not reached any final conclusion, such as on the issues of the number of violent demonstrators and the origin of the violence. While the witnesses talked of a "group of youngsters" (paragraph 39), a "group of adolescents" (paragraph 40) and a "group of young men" (paragraph 52) displaying aggressive behaviour, the majority referred to a "considerable number of demonstrators" (paragraph 162) or a "big group of protesters" (paragraph 163) displaying such behaviour. Where the domestic criminal investigator concluded that a group of young men had just "started to throw stones and shout insults at the police" (paragraph 52), the majority concluded that the demonstrators had "attacked policemen with stones, sticks, rods and knives" (paragraph 162, referring to a Ministry of Interior report cited in paragraph 66).

4. What is more, the majority simply ignored crucial evidence. The applicants' statements made during the domestic criminal investigation were disregarded in spite of the existence of irrefutable video and testimonial evidence that the first and third applicants had conducted themselves peacefully during the demonstration and that the first applicant had left the scene of the demonstration before the confrontation with the police started (see paragraphs 54-56). In fact, the very fact that the criminal cases against the applicants were dismissed for lack of evidence was not considered. Neither the criminal investigation's evidence nor its conclusions were taken seriously. Basically, the majority accepted as the uncontested truth the conclusions of the internal inquiry carried out by the federal Ministry of the Interior, which was based on the statements of police officers who had been involved in the dispersal of the demonstration, including the commander of the "mixed squad", Mr Iz. (see paragraph 66), without even taking note of the fact that none of the police officers had ever referred to the use of knives or guns by the demonstrators against the police in their testimonies before the domestic criminal investigator, or the fact that a police officer had even retracted his previous statement claiming that the demonstrators had acted violently towards the police (see paragraph 53). Although there were reasons to suspect that the wound caused to the sole police officer allegedly injured by a gunshot (Mr Il.) had been accidental and self-inflicted, the fact that Mr Il.'s medical certificate was not presented by the Government to the Court was likewise considered of no importance by the majority (see paragraph 33, contrasted with paragraph 19). Finally, the crucial fact that gas grenades were fired by the police "in the direction of the crowd", as the Government themselves acknowledged (see paragraph 29), and that one of these gas grenades hit the thorax of a demonstrator and killed him (see paragraph 31), was entirely disregarded by the majority. Thus, the statement that "the essential finding of the investigation, namely that the protesters had attacked the police first, had support in the materials of the case (see, in

particular, paragraphs 34, 36, 37, 38 and 40)" reflects a one-sided reading of the evidence. It did not convince us.

5. The assessment of the evidence was made especially difficult owing to the shortcomings in the domestic investigation carried out immediately after the events, which were aggravated by the lack of information provided by the Government (see paragraph 32). The domestic criminal investigation was fruitless, in spite of the seventy witnesses heard and the ballistic and medical forensic examinations carried out. It did not reach any conclusion as to the identity of the people responsible for the death and injuries which occurred during the demonstration of 25 April 2006. In other words, the domestic prosecuting authorities did not, and to this day do not, know exactly who did what and when on 25 April 2006 on the road going to Miskindzha, and therefore closed the investigation in February 2007 and, after reopening it, closed it again in January 2010. If in 2007 the domestic prosecuting authorities knew little about the order of events, the Court knows even less seven years later. Any factual assumption made in 2014 on the basis of an inconclusive criminal investigation and, worse still, of an internal inquiry of the Ministry of the Interior based on evidence produced by the very police officers under investigation, is nothing but pure illusion. Hence, the Court should have refrained from imputing to the applicants responsibility for the grave incident that occurred on 25 April 2006, and instead should have stuck to the bare fact that on that day the police used dangerous weapons unlawfully against the demonstrators and killed one of them.

6. As the OSCE, the Venice Commission and the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association have repeatedly stressed, there is a presumption in favour of holding peaceful assemblies, which means that an assembly should be presumed lawful and deemed as not constituting a threat to public order, until the Government put forward compelling evidence that rebuts that presumption[2]. In the instant case, the Government did not prove to the required level of satisfaction that the violence had been initiated by the demonstrators, still less that the applicants had been in any way involved in violent action against the police. In fact, the available evidence speaks against that thesis. The majority did not take in account the said presumption, acknowledged by current international human rights standards.

7. In conclusion, the essential finding of the investigation is not that the demonstrators attacked the police first, but that the police breached the law and in particular that gas grenades were fired at demonstrators in a prohibited manner, "in the direction of the crowd", and that this police

2. See the Venice Commission and OSCE/ODIHR Guidelines on freedom of peaceful assembly, 2010, second edition, guideline 2.1, and the Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 24 April 2013, A/HRC/23/39, paragraph 50.

conduct caused a fatal casualty. This irrefutable fact was not considered by the majority, on the grounds that there was no Article 2 complaint in the file. Such an argument is utterly unfounded since the lack of an Article 2 complaint clearly does not excuse the majority from considering the full array of "special equipment" deployed by the police against the demonstrators, and the way in which it was used. On the contrary, it is necessary to consider these issues in order to make a fair assessment of the proportionality of the "overall response" of the police during the demonstration of 25 April 2006 and to be able ultimately to come to a conclusion as to whether the police conduct was in accordance with Article 11 of the European Convention on Human Rights ("the Convention"). To pretend otherwise equates to not seeing the wood for the trees[3].

The legality and proportionality of the prohibition of the demonstration

8. The district administration's prohibition of the demonstration of 25 April 2006, on the basis of the allegedly belated notification of the assembly to the authorities, the insufficient capacity of the place of assembly chosen by the organisers and the purportedly critical political message of the demonstrators, was clearly at odds with the international obligations of the respondent State, namely with Article 11 of the Convention[4]. In the case at hand, the political nature of the assembly and the nature of the administrative and police authorities' conduct in breach of the State's negative obligation not to interfere unduly with freedom of assembly, as well as the public place where the police conduct took place, point in the direction of a narrow margin of appreciation for the district administration. In the light of this standard, the reasons invoked for the State interference lack any foundation.

9. Indeed, the first reason given is clearly unfounded. Russian law required organisers to "lodge" the notice no earlier than fifteen and no later than ten days before the planned event, failing which the demonstration would be prohibited[5]. In addition to the lack of clarity of this law, already

3. The majority did not even consider it important to investigate whether the deceased Mr Nkh. had been armed or had acted violently towards the police. In *Solomou and Others v. Turkey* (no. 36832/97, 24 June 2008), the Court found a violation of Article 2 in relation to the shooting of an unarmed demonstrator, despite the fact that some other demonstrators had been armed with iron bars. Thus, the principle established in *Solomou and Others*, according to which there can be no use of deadly force against peaceful, unarmed demonstrators, has been called into question by the majority in the present case.

4. This opinion will not deal with the problematic order for undercover observation of the leaders of the demonstrators and the video recording of the demonstration (see paragraph 20). These delicate issues (see the Venice Commission and OSCE/ODIHR Guidelines, 2010, cited above, paragraph 169 of the explanatory notes) were not raised by the applicants in their complaints.

stressed by the majority's judgment, the way it was applied is subject to justified criticism. The district administration's interpretation, according to which the notice had to be received before the deadline, is manifestly arbitrary, since it imputes to the organisers any delay caused by the public postal service. This interpretation places an untenable burden on the organisers of the demonstration, in view of the obvious fact that they cannot prevent delays in the public postal service, for which they have no responsibility. Since the organisers of the demonstration sent notice of the demonstration in due time, any delay in the delivery of this notice to its addressees must be imputed to the public postal service and cannot in any way be held against the organisers[6]. Furthermore, as the Government admitted, the notice of the meeting was received by the local administration eight days prior to the holding of the meeting[7], which allowed a sufficient period of time for the administration to take the necessary measures to guarantee observance of the law[8]. In sum, any requirement regarding the giving of notice to the public authorities may not be excessively stringent in terms of the deadline imposed, and only the belated lodging of the notice can be imputed to the organisers, not its belated receipt. In any case, failure to comply with such a requirement may not be considered as sufficient grounds for prohibiting a demonstration[9].

10. The second reason given for the prohibition of the demonstration is also unfounded. The place chosen by the organisers, a public recreational park, is a traditional public forum, where the State may not restrict speech based on its content unless it can show that such regulation is necessary to secure a compelling State interest and is precisely tailored to achieve that interest. In addition, while regulations as to time, place and manner may be imposed, they must not be of such a nature as to encroach upon the

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5. Sections 5.5 and 7.1 of the Federal Law on assemblies, meetings, demonstrations, marches and picketing of 18 August 2004 ("the Public Gatherings Act"). The legal expression "refusal to allow" is a euphemism for prohibition.

6. See the Joint Opinion on the Law on Peaceful Assemblies of Ukraine by the Venice Commission and OSCE/ODIHR, CDL-AD(2010)033, § 30: "It is recommended to focus on the day of submission of the notification and/or the day of sending the notification instead of focusing on the arrival of the notification, because unintentional delays might occur due to post services."

7. See page 3 of the Government's observations.

8. See the Venice Commission and OSCE/ODIHR Guidelines, 2010, cited above, guideline 4.1 and paragraph 116 of the explanatory notes, and the Venice Commission Joint Opinion on the Law on Mass Events of the Republic of Belarus, CDL-AD (2012)006 OSCE/ODIHR, § 78; see also the Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 2013, cited above, paragraphs 52 and 55.

9. In view of this conclusion, section 5.5 of the Russian Public Gatherings Act, viewed in conjunction with the time-limits laid down in section 7.1, is incompatible with Article 11 of the Convention. The exact same conclusion was reached by the Venice Commission Opinion on the Federal Law on assemblies, meetings, demonstrations, marches and picketing of the Russian Federation, CDL-AD(2012)007, §§ 33 and 37.

substance of the freedom of assembly, and therefore must take into account the purpose of the demonstrators. In the case at hand, the district administration opposed the demonstration in the recreational park because the latter allegedly had a maximum capacity of 500 people, well below the estimated number of 5,000 demonstrators. According to the Government, the "authorities" proposed to the organisers that the demonstration be held in a "municipal garage", a proposal which was declined (see paragraphs 24 and 34). Even if the initial concern of the public authorities to ensure the security of the event might have justified a change of venue, the proposed alternative location was evidently unacceptable for two reasons. First, the proposed change from an outdoor to an indoor venue, where its impact would be muted, would have substantially diminished the practical impact of the event on the targeted administrative official and the administrative body he headed, and would have deprived the demonstration of its purpose of raising the political awareness of the general population[10]. Second, even more importantly, the proposed alternative venue would necessarily have implied a reduction in the number of demonstrators, limiting the number of people admitted to express their views and participate in the public debate. Both restrictions would unequivocally have affected the essence of the demonstrators' freedom of assembly. To formulate it in a principled manner, public authorities may not impose, directly or indirectly, a reduction in the number of participants in a demonstration or a venue where the limited space available would result in such a reduction, or one where the social and political purposes of the demonstrators would be frustrated. Furthermore, they may not "refuse to allow" (that is, prohibit) the holding of such a demonstration if the organisers reject the proposed alternative

10. As a general rule, assemblies should be facilitated within "sight and sound" of their target audience, and any alternative proposed by the authorities must be such that the message that the protest seeks to convey is still capable of being effectively communicated to those to whom it is directed. See the Venice Commission and OSCE/ODIHR Guidelines, 2010, cited above, guideline 3.5 and paragraphs 33, 45, 101 and 123 of the explanatory notes; the Joint Opinion on the Public Assembly Act of the Republic of Serbia by the Venice Commission and OSCE/ODIHR, CDL-AD(2010)031, § 32; the Joint Opinion on the Law on Peaceful Assemblies of Ukraine by the Venice Commission and OSCE/ODIHR, cited above, § 35; and the Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 2013, cited above, paragraphs 56 and 60. Thus, the blanket prohibition contained in section 8.2 and 8.3 of the Russian Public Gatherings Act is not compatible with Article 11 of the Convention. It should be noted that the Venice Commission Opinion on the Federal Law on assemblies, meetings, demonstrations, marches and picketing of the Russian Federation, cited above, § 34, had already stated as follows: "Rather than listing premises on which public events are always prohibited or are dependent on a procedure determined by the President of the Russian Republic (see Article 8.4 Assembly Act), general criteria in the Assembly Act should set out in what circumstances and to what extent an assembly might pose a threat to the listed buildings or to the function carried out in them. Such criteria could then be applied to specific cases when an assembly is proposed."

venue and, in the event that the latter stage the demonstration in the initial venue, may not punish them except where the grounds set forth in Article 11 § 2 of the Convention apply[11].

11. Finally, the third reason given for refusing to authorise the demonstration constitutes blatant interference with the principle of content-neutrality of State regulation of expression in the public arena[12]. According to this principle, the State is not assumed to support all the messages that are communicated in public facilities and spaces. It seems that this was not the case in Dagestan. The political purpose and public interest of the demonstration, which was aimed at criticising the work of the head of the district administration and condemning the embezzlement of public funds and the deliberate destruction of financial records by the district administration, were protected by the Russian Constitution (Article 31). Even assuming that, as the head of the district administration claimed, the competent law-enforcement authorities, in particular the prosecutor's office, and financial authorities such as the Ministry of Finance of Dagestan, had already inquired into those allegations and concluded that there was no case to answer, these conclusions were irrelevant for the purpose of assessing the legality of the demonstration. The fact that the head of the district administration, who was himself the target of the demonstrators' criticism, took the decision to prohibit the demonstration,

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11. In view of this conclusion, section 5.5 of the Public Gatherings Act is not compatible with Article 11 of the Convention. In its judgment of 2 April 2009, the Russian Constitutional Court examined that section and concluded that it did not confer on the authorities the power to prohibit assemblies and that the alternative time and place should correspond to the social and political objectives of the event. Both Judge Kononov, in his dissenting opinion joined to the above-mentioned judgment of the Constitutional Court, and the Commissioner for Human Rights in the Russian Federation in his Special Report on the constitutional right to peaceful assembly in the Russian federation, 2007, have criticised the way the Public Gatherings Act was couched and applied, arguing that the notification procedure has degenerated into a "*de facto* authorisation procedure". The Venice Commission Opinion on the Federal Law on assemblies, meetings, demonstrations, marches and picketing of the Russian Federation, cited above, §§ 21-23 and 30, has also expressed the criticism that the lack of clarity of section 5.5 and the resulting broad discretion left to the authorities are not compatible with Article 11 of the Convention. A remarkable step in the right direction was taken by the recent judgment of the Russian Constitutional Court of 14 February 2013, which found point 4 of section 2 of the Federal Law of 8 June 2012 No. 65-ФЗ, in the part vesting executive bodies of a subject of the Russian Federation with authority to determine unified places specially assigned or adapted for the holding of public events, not to conform to the Constitution of the Russian Federation to the extent that, contrary to the requirements of certainty, clarity and unambiguousness of legal regulations, it did not specify criteria for ensuring the equality of the legal conditions governing the exercise of the right to freedom of peaceful assembly in the determination of places specially assigned or adapted for the holding of public events by executive bodies of subjects of the Russian Federation, thereby engendering the possibility of differing interpretations and, consequently, of arbitrary application.

12. See on this principle the separate opinion of Judge Pinto de Albuquerque in *Mouvement Raëlien Suisse v. Switzerland* [GC], no. 16354/06, ECHR 2012.

with the tacit acceptance of the public prosecutor (see paragraph 24), is telling as regards the deficiency of the rule of law in Dagestan. According to one of the major tenets of a State under the rule of law, namely the principle of impartiality, a public official should not take decisions on issues where he or she has a personal interest. In the light of this principle, a responsible public official would have withdrawn from the case where he or she was the subject of the criticisms of those wishing to demonstrate. In other words, the rule to be extracted from the principle of impartiality is that a public official targeted by a demonstration is not in a position to take any substantive or procedural decision on it, and should therefore withdraw from the case.

The legality of the police dispersal of the demonstration

12. Since the district administration's prohibition of the demonstration was unlawful, the blocking of the demonstrators' access to their chosen place of assembly was *a fortiori* unlawful. The unlawfulness of the prohibition to assemble, which violated the demonstrators' right to assemble, tainted the subsequent order blocking the demonstrators' access to the place of demonstration and, consequently, also the police dispersal action. Moreover, there was no clear and imminent danger of public disorder, crime or other infringement of the rights of others to justify such interference with the demonstrators' right to assemble from 10 a.m. until 3 p.m., according to the applicants (see paragraph 18), or until 2 p.m., according to the Government (see paragraph 25)[13].

13. Paragraph 150 of the judgment is not a good example of clarity, in so far as the "demonstrated risk of insecurity" standard is not sufficiently determinate, leaving the Court in the dark when assessing the "scale" of the risk. Instead, this opinion refers to the "clear and imminent danger" test which is applicable to freedom of assembly cases (see the Venice Commission and OSCE/ODIHR Guidelines, 2010, cited above, guideline 3.3, and paragraphs 72, 95, 98, 154 (test for the stopping, searching or detention of demonstrators en route to an assembly) and 166 (test for dispersal) of the explanatory notes; the Venice Commission and OSCE/ODIHR Guidelines on freedom of peaceful assembly, 2008, paragraphs 63 and 86-90 of the interpretative notes; the Venice Commission Opinion on the Federal Law on assemblies, meetings, demonstrations, marches and picketing of the Russian Federation, cited above, § 44; the OSCE Guidebook on Democratic Policing, second edition, 2008, paragraph 66; the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 23 May 2011, A/HRC//17/28, paragraph 60; the Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 21 May 2012, A/HRC/20/27, paragraph 35; the Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria, CDL-AD(2009)035, § 58; the Joint Opinion on the Public Assembly Act of the Republic of Serbia by the Venice Commission and OSCE/ODIHR, cited above, § 13(G); the Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina) by the Venice Commission and OSCE/ODIHR, CDL-AD(2010)016, § 5; the Joint Opinion on the Order of Organising and Conducting Peaceful Events of Ukraine by the Venice Commission and OSCE/ODIHR, CDL-AD(2009)052, § 5(u); and the Inter-American Commission of Human Rights, Second Report on the situation of human rights defenders in the Americas, 31 December 2011,

13. Even assuming that such a danger arose at some stage during the afternoon when the clashes between the police officers and the demonstrators started, the police reaction should have been selective and gradual. When confronted with an aggressive demonstration, the police action must be targeted to those specific demonstrators who act violently[14]. In addition, the police must only use more dangerous means of response when less dangerous ones have proved ineffective, following a scale of continuum of force that must be set out in the law and include verbal commands, use of hands and bodily force, water cannon, tear gas and other chemical agents, batons or other impact weapons, dogs, plastic or rubber bullets and other non-lethal projectiles, and finally deadly force[15]. Furthermore, especially dangerous means, such as gas grenades, must be used in strict accordance with the applicable technical instructions to avoid unnecessary harm, and in particular must not be fired "directly at humans". The police officers in Dagestan did the opposite. The gas grenades were fired "in the direction of the crowd", which means that they were fired in a prohibited manner (see paragraphs 66 and 71). Moreover, they were fired indiscriminately, without regard for the life and well-being of those demonstrators who were not aggressive and without following any order of precedence with regard to other less dangerous means[16]. This conduct

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OEA/Ser.L/V/II, Doc. 66, paragraph 139, Report on the Situation of Human Rights Defenders in the Americas, 7 March 2006, OEA/Ser.L/V/II.124, Doc. 5 rev. 1, para. 58, and Chapter IV, Annual Report 2002, Vol. III "Report of the Office of the Special Rapporteur for Freedom of Expression," OEA/Ser. L/V/II. 117, Doc. 5 rev. 1, paragraph 34; see also, finally, the opinion of Judge Pinto de Albuquerque in *Fáber v. Hungary*, no. 40721/08, 24 July 2012, reiterated in the opinion of Judges Raimondi, Jočienė and Pinto de Albuquerque in *Kudrevičius and Others v. Lithuania*, no. 37553/05, 26 November 2013, and the opinion of Judges Pinto de Albuquerque, Turković and Dedov in *Taranenko v. Russia*, no. 19554/05, 15 May 2014).

14. See *Zilberberg v. Moldova* (dec.), no. 61821/00, 4 May 2004, and *Ezelin v. France*, 26 April 1991, Series A no. 202; see also the Venice Commission and OSCE/ODIHR Guidelines, 2010, cited above, paragraphs 25, 71, 111, 159, 164 and 167 of the explanatory notes; the Joint Opinion on the Public Assembly Act of the Republic of Serbia by the Venice Commission and OSCE/ODIHR, cited above, § 48; the Joint Opinion on the Amendments to the Law on the Right of Citizens to Assemble Peaceably, Without Weapons, to Freely Hold Rallies and Demonstrations of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, CDL-AD(2008)025, § 48; the Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria, cited above, § 60; the Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 2012, cited above, paragraph 25; the Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 2013, cited above, paragraph 27; and the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 2011, cited above, paragraphs 42 and 61.

15. See the Venice Commission and OSCE/ODIHR Guidelines, 2010, cited above, guideline 5.5 and paragraphs 171-172 of the explanatory notes, and the OSCE Guidebook on Democratic Policing, cited above, paragraphs 65-74.

16. As the former Council of Europe Human Rights Commissioner stressed in a letter to the Russian Government of November 2011, this seems to be part of a general pattern of

breached not only Russian law (see paragraph 71), but also the European standard established by the Court in the *Abdullah Yaşa and Others* case[17].

The proportionality of the police dispersal of the demonstration

14. To justify the conduct of the police, the Government portrayed this case as an extreme example of uncontrolled violence by a mob of dangerous people who attacked the police officers first with stones, knives and even gunfire. The evidence in the file does not support this claim. But even assuming this scenario were true, the police dispersal of the demonstration, and the force used during it, would have been disproportionate[18].

15. As a matter of principle, the dispersal of assemblies should be a measure of last resort, and a mere failure to comply with formal requirements for the exercise of freedom of assembly does not justify such a drastic measure[19]. If dispersal is deemed absolutely necessary in view of a clear and imminent danger of public disorder, crime or other infringement of the rights of others, the assembly organisers and participants should be clearly informed prior to any police intervention and be given reasonable time to disperse[20]. In the dispersal of violent assemblies, law-enforcement officials may use firearms only in self-defence or in defence of others against the imminent threat of death or serious injury and when less dangerous means have not been effective[21]. In these circumstances,

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conduct on the part of the police in the Russian Federation, who often exceed their authority when dealing with protest rallies. The words used by the Commissioner were the following: "Force has often been used – at times excessively – and participants in assemblies have been apprehended and brutally treated, even during peaceful events."

17. *Abdullah Yaşa and Others*, cited above, §§ 45 and 47.

18. The subsequent arrest and detention of the first and third applicants may be considered justified in view of the preliminary factual elements provided to the Sovetskiy District Court of Makhachkala and the Supreme Court of Dagestan, which could be sufficient to comply with the standard of "reasonable suspicion" (see paragraphs 49 and 88). While noting the sparse nature of the reasons given by the domestic courts, we are still able to follow the majority on this point.

19. See *Bukta and Others v. Hungary*, no. 25691/04, § 36, 17 July 2007; *Balçik and Others v. Turkey*, 25/02 §§ 49-53, 29 November 2007; and *Biçici v. Turkey*, no. 30357/05, §§ 55-56, 27 May 2010; see also the Venice Commission and OSCE/ODIHR Guidelines, 2010, cited above, paragraph 165 of the explanatory notes, and the Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 2012, cited above, paragraph 29.

20. See the Venice Commission and OSCE/ODIHR Guidelines, 2010, cited above, paragraph 168 of the explanatory notes.

21. The overreaching principle in respect of the use of deadly weapons by law-enforcement officials during public assemblies is self-defence. Reference to riot control in this context is misleading and should be avoided (also pointing to this interpretation, see the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, cited above, paragraphs 138 and 139, and the OSCE Guidebook on Democratic Policing, cited above, paragraph 66).

law-enforcement officials must identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would create a risk of death or serious injury to law-enforcement officials or other persons[22]. The Government have not provided the Court with any evidence that these preventive measures were taken by the police before they opened fire against the demonstrators. Furthermore, the considerable amount of ammunition used by the police, in contrast to the rudimentary means of attack allegedly used by the demonstrators, clearly shows the disproportionate character of the police action. Even in the scenario described by the Government, the police action would have exceeded the permissible limits of self-defence.

16. Finally, sufficient administrative controls to ensure police accountability for the use of force and firepower during public assemblies, such as an ammunition registration and control system and a communications records system to monitor operational orders, those responsible for them and those carrying them out, must be put in place[23]. The Government did not even attempt to argue that such measures exist in Dagestan.

Conclusion

17. Demonstrators in Dagestan have a hard time making their critical view of the administration publicly known. They even face the risk of being killed when they do so. It is the task of this Court to protect the freedom of assembly and expression of these courageous women and men, and not to condone the police lack of professionalism and defiance of the law. That is why we have concluded that there has been a violation of Article 11 of the Convention also with regard to the way in which the demonstration of 25 April 2006 was dispersed. The evidence speaks for itself: the police dispersal action was tantamount to brutal repression of the demonstrators. In fact, that was the most serious grievance caused to the demonstrators by the public authorities of the respondent State, exceeding even the previous arbitrary conduct of the district administration. We could not turn a blind eye to the most serious grievance in the case, because behaviour that gets rewarded gets repeated.

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22. Principles 9, 13 and 14 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990, and the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, cited above, paragraph 62. Recommendation No. R (2000) 10 of the Committee of Ministers of the Council of Europe, which adopted the European Code of Police Ethics, does not contain specific guidelines on the use of force before, during and after assemblies.

23. See the Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 2012, cited above, paragraph 36, and the Report on the situation of human rights defenders in the Americas, 2006, cited above, paragraph 68.