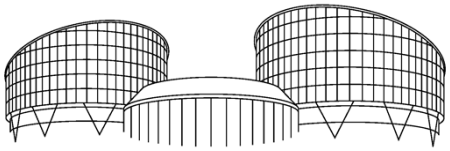

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF YAROSLAV BELOUSOV v. RUSSIA

(Applications nos. 2653/13 and 60980/14)

JUDGMENT

STRASBOURG

4 October 2016

FINAL

06/03/2017

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

In the case of Yaroslav Belousov v. Russia,

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

Luis López Guerra, *President,*
Helena Jäderblom,
Helen Keller,
Dmitry Dedov,
Branko Lubarda,
Georgios A. Serghides,
Pere Pastor Vilanova, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 6 September 2016,

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

PROCEDURE

1. The case originated in two applications (nos. 2653/13 and 60980/14) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Yaroslav Gennadiyevich Belousov ("the applicant"), on 20 December 2012 and 2 September 2014 respectively.

2. The applicant was represented by Mr D.V. Agranovskiy, a lawyer practising in Elektrostal. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

3. The applicant complained about his prosecution and conviction for participation in mass disorder. He claimed that his pre-trial detention was not based on relevant and sufficient reasons and complained that various aspects of his detention had amounted to a degrading treatment. He also complained that he did not receive a fair hearing in the criminal proceedings and alleged a violation of his right to freedom of expression and his right to freedom of peaceful assembly.

4. On 10 September 2013 and 13 October 2014 the applications were communicated to the Government. The applications were granted priority under Rule 41 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1991 and lives in Moscow.

6. On 6 May 2012 the applicant was arrested during the dispersal of a political rally at Bolotnaya Square in Moscow. He was found guilty of failure to obey lawful police orders, an offence under Article 19.3 of the Code of Administrative Offences, and was subsequently charged with participation in mass disorder and with having committed violent acts against police officers, criminal offences provided for by Articles 212 § 2 and 318 § 1 of the Criminal Code. He was detained and tried on these charges and was convicted to a prison term of two years and three months.

A. The public assembly of 6 May 2012

7. The background facts relating to the planning, conduct and dispersal of the assembly at Bolotnaya Square are set out in more detail in the judgment *Frumkin v. Russia* (no. 74568/12, §§ 7-65, 5 January 2016). The parties' submissions on the circumstances directly relevant to the present case are set out below.

8. On 23 April 2012 five individuals (Mr I. Bakirov, Mr S. Davidis, Ms Y. Lukyanova, Ms N. Mityushkina and Mr S. Udaltsov) submitted notice of a public demonstration to the mayor of Moscow. The aim of the demonstration was "to protest against abuses and falsifications in the course of the elections to the State Duma and of the President of the Russian Federation, and to demand fair elections, respect for human rights, the rule of law and the international obligations of the Russian Federation".

9. On 3 May 2012 the Moscow Department of Regional Security approved the route from Kaluzhskaya Square, down Bolshaya Yakimanka Street and Bolshaya Polyanka Street, followed by a meeting at Bolotnaya Square, noting that the organisers had provided a detailed plan of the proposed events. The march was to begin at 4 p.m., and the meeting had to finish by 7.30 p.m. The number of participants was indicated as 5,000.

10. On 4 May 2012 the First Deputy Head of the Moscow Department of Regional Security held a working meeting with the organisers of the demonstration at Bolotnaya Square, at which they discussed the security issues. The organisers and the authorities agreed that the assembly layout and the security arrangements would be identical to the previous public event organised by the same group of opposition activists on 4 February 2012. On that occasion, the venue of the meeting had included the park at Bolotnaya Square and the Bolotnaya embankment.

11. On 5 May 2012 the Tsentralnyy District Prosecutor's Office of Moscow issued a warning to two of the organisers, Mr Davidis and

Mr Udaltsov, against exceeding the notified number of participants and against erecting camping tents at the meeting venue, an intention allegedly expressed by the organisers at the working meeting.

12. On the same day the Moscow Department of the Interior published on its website the official information about the forthcoming demonstration on 6 May 2012, including a map. The map indicated the route of the march, the traffic restrictions and an access plan to Bolotnaya Square; it delineated the area allotted to the meeting, which included the park at Bolotnaya Square. Access to the meeting was marked through the park.

13. On the same day the Police Chief of the Moscow Department of the Interior adopted a plan for safeguarding public order in Moscow on 6 May 2012 (the "security plan"). In view of the forthcoming authorised demonstration at Bolotnaya Square and anticipated attempts by other opposition groups to hold unauthorised public gatherings, it provided for security measures in Moscow city centre and set up operational headquarters to implement them. The police units assigned to police the march and the meeting counted 2,400 riot police officers, of which 1,158 were on duty at Bolotnaya Square. They were instructed, in particular, to search the demonstrators to prevent them from taking tents to the site of the meeting and to obstruct access to Bolshoy Kamenyy bridge, diverting the marchers to Bolotnaya embankment, the place of the meeting. The adjacent park at Bolotnaya Square had to be cordoned off.

14. At about 1.30 p.m. on 6 May 2012 the organisers were allowed access to the meeting venue to set up their stage and sound equipment. The police searched the vehicles delivering the equipment and seized three tents found amid the gear. They arrested several people for bringing the tents.

15. At the beginning of the march, the organisers signed an undertaking to ensure public order during the demonstration and gave assurances to the police that the limits on the place and time allocated for the assembly would be respected and that no tents would be placed on Bolotnaya Square.

16. The march began at 4.30 p.m. at Kaluzhskaya Square. It went down Yakimanka Street peacefully and without disruption. The turnout exceeded expectations, but there is no consensus as to the exact numbers. The official estimate was that there were 8,000 participants, whereas the organisers considered that there were about 25,000. The media reported different numbers, some significantly exceeding the above estimates.

17. At about 5 p.m. the march approached Bolotnaya Square. The leaders found that the layout of the meeting and the placement of the police cordon did not correspond to what they had anticipated. Unlike on 4 February 2012, the park at Bolotnaya Square was excluded from the meeting venue, which was limited to Bolotnaya embankment.

18. Faced with the police cordon and unable to access the park, the leaders of the march – Mr S. Udaltsov, Mr A. Navalnyy, Mr B. Nemtsov and Mr I. Yashin – stopped and demanded that the police open access to the

park. The cordon officers did not enter into any discussion with the protest leaders and no senior officer was delegated to negotiate. After about fifteen minutes of attempting to engage with the cordon officers, at 5.16 p.m. the four leaders announced that they were going on a "sit-down strike" and sat on the ground. The people behind them stopped, although some people continued to go past them towards the stage.

19. Between 5.20 p.m. and 5.45 p.m. two State Duma deputies tried to negotiate the enlargement of the restricted area by moving the police cordon behind the park along the lines expected by the organisers. At the same time the Ombudsman of the Russian Federation, at the request of police, attempted to persuade the leaders of the sit-in to resume the procession and to head towards the meeting venue at Bolotnaya embankment where the stage had been set up. During that time no senior police officer or municipal official came to the site of the sit-down protest, and there was no direct communication between the authorities and the leaders of the sit-in.

20. At 5.50 p.m. the crowd around the sit-down protest built up, which caused some congestion, and the leaders abandoned the protest and headed towards the stage, followed by the crowd.

21. At 5.55 p.m. the media reported that the police authorities were regarding the strike as a provocation of mass disorder and were considering prosecuting those responsible for it.

22. At the same time a commotion near the police cordon occurred at the place vacated by the sit-down protest, and the police cordon was broken in several places. A crowd of about 100 people spilled over into the empty space beyond the cordon. Within seconds the police restored the cordon, which was reinforced by an additional riot police force. Those who found themselves outside the cordon wandered around, uncertain what to do next. Several people were apprehended, others were pushed back inside the cordon, and some continued to loiter outside or walked towards the park. The police cordon began to push the crowd into the restricted area and advanced by several metres, pressing it inwards.

23. At 6 p.m. Ms Mityushkina, on police instructions, announced from the stage that the meeting was now over, but apparently her message was not heard by most of the demonstrators or the media reporters broadcasting from the spot. The live television footage provided by the parties contained no mention of her announcement.

24. At the same time a Molotov cocktail was launched from the crowd at the corner of Malyy Kamennyy bridge over the restored police cordon. It landed outside the cordon and a passer-by's trousers caught fire. It was promptly extinguished by the police.

25. At 6.15 p.m. at the same corner of Malyy Kamennyy bridge the riot police began breaking into the demonstration to split up the crowd. Running in tight formations, they pushed the crowd apart, arrested some people, confronted others, and formed new cordons to isolate sections of the crowd.

Some protesters held up metal barriers and aligned them so as to resist the police, threw various objects at the police, shouted and chanted "Shame!" and other slogans, and whenever the police apprehended someone from among the protesters they attempted to pull them back. The police applied combat techniques and used truncheons.

26. At 6.20 p.m. Mr Udaltsov climbed onto the stage at the opposite end of the square to address the meeting. At this point, he was arrested. Mr Navalnyy attempted to go up onto the stage, but he was also arrested, and so was Mr Nemtsov, five minutes later.

27. Meanwhile, at the Malyy Kamennyy bridge the police continued dividing the crowd and began pushing some sections away from the venue. Through loudspeakers they asked the participants to leave for the metro station. The dispersal continued for at least another hour until the venue was fully cleared of all protesters.

28. On the same day the Investigative Committee of the Russian Federation opened a criminal investigation into the suspected mass disorder and violent acts against the police (Articles 212 § 2 and 318 § 1 of the Criminal Code).

29. On 28 May 2012 an investigation was also launched into the criminal offence of organising mass disorder (Article 212 § 1 of the Criminal Code). The two criminal cases were joined on the same day.

30. On 24 May 2013 the first criminal case against twelve individuals suspected of participation in mass disorder, including the applicant, was transferred to the Zamoskvoretskiy District Court of Moscow for the determination of criminal charges (the first "Bolotnaya" case).

31. On 21 February 2014 the Zamoskvoretskiy District Court of Moscow pronounced a judgment in the first Bolotnaya case. It found eight individuals, including the applicant, guilty of participation in mass disorder and of violent acts against police officers during the public assembly on 6 May 2012. They received prison sentences of between two and a half and four years; one of them was released on parole. The applicant was sentenced to two years and six months' imprisonment. Three co-defendants had previously been pardoned under the Amnesty Act and a fourth had his case disjoined from the main proceedings. This judgment was upheld by the Moscow City Court on 20 June 2014. It reduced the applicant's prison sentence to two years and three months.

32. On 24 July 2014 the Moscow City Court found Mr Udaltsov and Mr Razvozzhayev guilty of organising mass disorder on 6 May 2012 and sentenced them to four and a half years' imprisonment. On 18 March 2015 the Supreme Court of the Russian Federation upheld the judgment of 24 July 2014, with amendments.

33. On 18 August 2014 the Zamoskvoretskiy District Court of Moscow examined another "Bolotnaya" case and found four persons guilty of participating in the mass disorder and of committing violent acts against

police officers during the demonstration on 6 May 2012. They received prison sentences of between two and a half and three and a half years; one of them was released on parole. This judgment was upheld by the Moscow City Court on 27 November 2014.

B. The applicant's arrest and pre-trial detention

34. At the time of arrest the applicant was a student at the political science faculty of the Moscow State University and lived with his wife and their child born in 2011. On 6 May 2012 he arrived at Bolotnaya Square to take part in the demonstration and, according to him, he did not take part in any disorder or clashes with the police, although he was in the area where clashes occurred. At one point during the dispersal of the demonstration he picked up from the ground a small round yellow object and threw it over the heads of the protesters in the direction of the police. He was arrested shortly after that. There is no information as to whether he was detained on that day.

35. On 17 May 2012 the applicant was charged with non-compliance with a lawful order by a police officer on 6 May 2012. He was found guilty of the offence provided by Article 19.3 of the Code of Administrative Offences and was sentenced to 24-hours' detention.

36. Until 9 June 2012 the applicant continued to study at the university while living with his family at his usual address. On the latter date he was detained on suspicion of having participated in mass disorders on 6 May 2012.

37. On 11 June 2012 the Basmannyy District Court examined and granted the request to detain the applicant pending criminal investigation. It reasoned as follows:

> "In assessing the circumstances under investigation, [the court takes account of] the submitted materials and the indicated information in their integrity, as well as the personality of [the applicant], who is suspected of having committed criminal offences one of which is characterised as grave and the other of medium gravity, punishable by up to two years of deprivation of liberty, and therefore giving sufficient reasons to believe that the applicant is likely to abscond, to continue his criminal activity, to destroy evidence, or to otherwise obstruct the investigation of the criminal case."

38. The court dismissed the applicant's request for an alternative preventive measure, including bail of 500,000 Russian roubles (RUB), and personal guarantees of several state officials and found that his release was not required on health grounds. It ordered the applicant's detention until 6 July 2012. On 2 July 2012 the Moscow City Court upheld the detention order.

39. On 18 June 2012 charges were brought against the applicant under Articles 212 § 2 (participation in mass disorder) and 318 § 1 (violence against a public official) of the Criminal Code. He was accused, in

particular, of shouting slogans and throwing an unidentified small round yellow object that had hit the police officer's shoulder.

40. On 3 July 2012 the Basmannyy District Court examined the investigator's request to extend the term of the applicant's detention by four months. The applicant asked for another preventive measure pending trial. He offered bail of RUB 500,000 or the personal guarantees of a State Duma deputy, two Moscow municipal deputies and one academic. His request for an alternative preventive measure was supported by petitions signed by six Moscow municipal deputies and three personal references from his place of residence and the university. The applicant also made a plea for release on health grounds, having provided medical certificates confirming that he was suffering from a high-degree myopia and asthma. On the same day the court found that the circumstances that had justified the detention order had not changed and, referring to the gravity of the charges and the complexity of the investigation, extended the applicant's detention until 6 November 2012. This extension order was upheld by the Moscow City Court on 6 August 2012.

41. On 29 October 2012 the Basmannyy District Court granted another extension of the applicant's detention, until 6 March 2013, essentially on the same grounds and noting that the circumstances that had justified the detention order had not changed. This extension order was upheld by the Moscow City Court on 26 November 2012.

42. On 7 November 2012 the charges against the applicant were updated with a statement that the applicant's and others' acts had cumulatively caused the police officer a haematoma on the head, leg and shoulder. The classification of the offences remained unchanged.

43. On 1 March 2013 the Basmannyy District Court granted a new extension of the applicant's detention, until 9 June 2013, essentially on the same grounds as before and noting that the circumstances that had justified the detention order had not changed. On 10 April 2013 the Moscow City Court upheld this extension order.

44. On 23 April 2013 the Moscow City Court examined a fresh request for the extension of the applicant's detention and granted it until 6 July 2013. The decision read as follows:

> "The materials presented [by the investigator] reveal that the grounds for choosing the preventive measure in respect of [the applicant] were not only the gravity of the charges but also the information about the personality of [the applicant] who could abscond from the investigation and trial, threaten witnesses, or otherwise obstruct the proceedings in the case, if released.
>
> The aforementioned grounds ... have not changed, have not lost their relevance to date, and the circumstances of the case [and] the nature of the crime committed by [the applicant] lead the court to conclude that the need for the [pre-trial detention] has not, at this stage, ceased to exist ...

> This term is reasonable, [it] is justified by the objective circumstances, it is not in conflict with the term of the pre-trial investigation, also extended on the same grounds ...
>
> In accordance with the Constitutional Court's [case-law], the proportionality of the preventive measure to the [gravity of the] charges imputed to [the applicant] show that in this case the public interests, in particular those related to the criminal investigation, override the importance of the principle of respect of individual liberty."

45. On 24 May 2013 the applicant's criminal case was transferred to the Zamoskvoretskiy District Court for the determination of criminal charges.

46. On 30 May 2013 the Moscow City Court upheld the extension order of 23 April 2013.

47. On 6 June 2013 the latter court granted another extension of the applicant's detention until 24 November 2013. This decision concerned eleven defendants and read, in so far as relevant, as follows:

> "... the court concludes that the preventive measure in respect of [all defendants] ... is to remain unchanged because the reasons taken into account when these measures were chosen have not ceased to exist and have not changed ...
>
> ... [the defendants] are accused of [grave crimes punishable by prison sentences] ...
>
> Regard being had to all the available information about the personality of [the defendants] and the nature of the criminal offences imputed to each of them, the court still has sufficient grounds to believe that the said defendants, if at liberty, may flee the trial or otherwise obstruct the course of justice, [motivated by] the gravity of the charges.
>
> ... no other measures of restraint would secure the aims and goals of the judicial proceedings ...
>
> The court takes into account the arguments of Mr Akimenkov, Mr Belousov and Mr Barabanov and their counsel concerning the health problems which occurred in custody, but notes that no documentary evidence that these defendants have diseases threatening their life or health and incompatible with the detention in custody have been provided."

48. On 2 July 2013 the Moscow City Court upheld the extension order of 6 June 2013.

49. On 6 August 2013, during the court hearing the applicant made an application for release which was dismissed by the Zamoskvoretskiy District Court on the same day.

50. On 11 September 2013 the Ombudsman of the Russian Federation applied to the Presidium of the Moscow City Court with a complaint about the extension of the applicant's pre-trial detention, and requested an alternative preventive measure for him.

51. On 22 October 2013 the applicant applied for release on the grounds of his child's medical condition, as well as the deterioration of the applicant's own health. This application was supported by several prominent public personages, including university professors, the dean of the faculty of political science and a State Duma deputy, all of whom

provided personal guarantees. On 2 October 2013 the Zamoskvoretskiy District Court rejected this application.

52. On 1 November 2013 the Moscow City Court refused the Ombudsman's request of 11 September 2013.

53. On 19 November 2013 the Zamoskvoretskiy District Court granted another extension of detention in respect of nine defendants, including the applicant. It ordered their detention until 24 February 2014 on the grounds of the gravity of the charges. It held, in particular, as follows:

> "[The defendants] are charged with a criminal offence provided for by Article 212 § 2 of the Criminal Code, which belongs to the category of grave crimes punishable by a prison sentence of over three years. Furthermore, [some defendants] are charged with a criminal offence provided for by Article 318 § 1 of the Criminal Code, also punishable by a prison sentence of over three years.
>
> Despite the defendants being registered as having permanent addresses in the Russian Federation, the analysis of the overall information about [the defendants'] personalities, and the nature of the offences imputable to them, give the court sufficient grounds to consider that the defendants, if the preventive measure is changed to another one not involving deprivation of liberty, may flee the trial or otherwise obstruct the course of justice, [motivated by] the gravity of the charges ... the reasons taken into account when these measures were chosen have not ceased to exist and have not changed ..."

54. On 17 December 2013 the Moscow City Court upheld the extension order of 19 November 2013.

C. Conditions of detention and medical assistance

55. The applicant has high-degree myopia. According to a 2009 medical certificate, his eyesight in the right eye was minus 10 dioptres, and on the left eye minus 6 dioptres.

56. From 19 June 2012 to 29 June 2013 the applicant was detained in remand prison IZ-77/5, and from 29 June 2013 he was held in IZ-77/2. Upon his arrival at the remand prisons the applicant was subjected to medical checks which did not reveal any health issues.

57. The parties agree that on most days the number of inmates in the cell did not exceed the design capacity. They also agree that the size of the cells and the number of detainees allowed the applicant four square metres of personal space and that the applicant had an individual sleeping place in every cell.

58. The parties provided the following accounts of the conditions in these cells. According to the applicant, the cells were inadequately lit and ventilated, excessively hot in summer and cold in winter, all with a lavatory pan separated from the living space by a chin-high plastic partition providing insufficient privacy. The applicant alleged that he had been constantly exposed to cigarette smoke, and although the window in the cell could be opened it gave onto a courtyard used for incinerating rubbish,

letting in fumes. Therefore the cell constantly lacked fresh air, and the forced ventilation could not compensate for it. Outdoor exercise was limited to one hour per day. The applicant also claimed that the window was too high to give sufficient light for reading or working with documents. Finally, he alleged that access to drinking water was conditional on the purchase of an electric kettle.

59. According to the Government, the artificial light in the cells was maintained at 100 watts round the clock except at night, from 10 p.m. to 6 a.m., when it was 75 watts; they provided measurement tables for this detention centre created in August 2013, which stated that the brightness in the cells was between 149 and 454 lux, the temperature in the cells between 26°C and 29°C, and the humidity between 36% and 45%. They indicated that in IZ-77/5 the detainees had access to a gym upon their written request.

60. On 11 July 2012 the applicant applied in writing to the head of the facility for a medical examination. He alleged that he had been suffering from asthma and high-degree myopia. On 20 September 2012 he made a similar application to the investigator of the criminal case.

61. On 3 October 2012 the investigator granted the applicant's request for a medical examination. This decision read as follows:

> "... the performance of a medical examination ... falls outside the competence of the investigating bodies ...
>
> However, given that the state of health of the accused Mr Belousov is of importance to the present criminal case, the investigating bodies have sent the relevant request to the administration of [IZ-77/5] stating the need to carry out, in the shortest possible time, the medical examination of the accused Mr Belousov, the results of which are to be submitted to the investigating bodies for inclusion in the criminal case file."

62. It appears that the medical examination was not carried out.

63. On 28 November 2012 and 11 January 2013 the public commission for the monitoring of detention facilities visited IZ-77/5, and, according to the Government, the applicant made no complaints about the conditions of detention or the lack of medical assistance on either occasion.

64. On 3 September 2013 the applicant had a hypertension crisis during a court hearing. An ambulance was called and provided him with the necessary assistance.

65. Following his complaints of headaches, on 6 September 2013 the applicant was placed in the medical ward of IZ-77/2. Upon admission, the applicant was diagnosed with hypertension. He remained in the medical ward for a period of at least two months for his blood pressure to be monitored.

66. The applicant alleged that the conditions in IZ-77/2 were poor, in particular on account of the lack of outdoor exercise and inadequate sanitary arrangements. He specified that the lavatory pan was separated from the living space by a chest-high partition providing insufficient privacy.

According to the applicant's letter of 30 July 2013, he had not been able to have a shower since his transfer to IZ-77/2.

67. According to the Government, the conditions in the cells of IZ-77/2 were as follows: the toilet was separated by a solid partition from the rest of the cell and ensured the necessary privacy; the state of the sanitary facilities was satisfactory; the cells were treated for disinfection and pest-control once every three months and whenever necessary; the applicant was entitled to one hour's outdoor exercise per day; the cell was cleaned and the bedding changed once a week; the cells were equipped with forced ventilation and could be aired through a hinged window pane. Artificial light was provided at 100 watts by day and 75 watts by night. The glazed windows let in sufficient daylight.

68. Pursuant to the request of the applicant's counsel filed on an unidentified date, on 31 January 2014 the applicant was examined by an ophthalmologist and was diagnosed with high-degree myopia (minus 13 dioptres on both eyes).

D. Transfer between the detention centre and the court-house

69. During the hearing of the applicants' criminal case, which began in July 2013, the applicant and his co-defendants were regularly transferred from the remand prisons to the court-house and back. All the defendants attended the hearings on three or four consecutive days every week. According to the Government, the applicant's trial involved ninety-one court hearings, and it appears that the applicant was transferred to attend all of them. A typical schedule on a hearing day is represented by the following two-week extract submitted by the applicant:

	02/07/2013	**03/07/2013**	**04/07/2013**	**09/07/2013**	**10/07/2013**	**11/07/2013**
Wake up	5 a.m.	6 a.m.	7 a.m.	6.20 a.m.	6.20 a.m.	6.20 a.m.
Assembly before transfer	6.10 a.m.	7.45 a.m.	8 a.m.	7.30 a.m.	7.40 a.m.	7.30 a.m.
Board the van	9.30 a.m.	9.30 a.m.	9.30 a.m.	9.30 a.m.	9.30 a.m.	9.30 a.m.
Arrival at the court-house	10 a.m.	10 a.m.	10 a.m.	10 a.m.	10 a.m.	10 a.m.
End of hearing	5 p.m.	adjourned	7 p.m.	5 p.m.	6 p.m.	3 p.m.
Board the van	8 p.m.	8 p.m.	8 p.m.	9 p.m.	8.30 p.m.	5 p.m.
Arrival at IZ-77/2	9 p.m.	9 p.m.	9 p.m.	10.30 p.m.	9.30 p.m.	7 p.m.
Brought to the cell	11.40 p.m.	10.30 p.m.	00.10 p.m.	11.10 p.m.	10.45 p.m.	7.40 p.m.

70. According to the applicant, this schedule left him insufficient time for sleep between the court hearings, gave him no time to prepare for the next day's hearing, and deprived him of hot meals.

71. He further alleged that the conditions in the prison assembly rooms and in the transfer van (*«автозак»*) had been appalling, in particular owing to overcrowding. He claimed that he was cramped together with other detainees and their belongings in a small tin cabin without windows, ventilated only through a roof hatch. The benches were spaced at 30 cm, and the detainees had to get in and out by walking on others. Smoking was allowed, which caused further discomfort, especially to non-smokers. Occasionally, they were transferred in vans divided into tight individual metal cubicles. In both types of vans the cabin overheated in the summer and froze in cold weather. The transfer lasted for two to six hours depending on the number of pick-up points and traffic conditions. There was no opportunity to use a toilet during the transfer, even at other pick-up points where the van could wait for hours.

72. At the Moscow City Court before and after the hearings the applicant and his co-defendants were held in convoy cells. According to the applicant, these were poorly lit and often overcrowded, and access to a toilet was subject to the availability of a convoy officer. Some of the convoy cells on the ground floor of the court-house were as small as two square metres, and each could be shared by two detainees. The applicants' account was supported by witness statements submitted by his co-defendant Mr Kavkazskiy and those given by his three fellow inmates, unrelated to the present case; their detailed accounts of the prison transfers in the relevant period, as well as of the convoy cells at the Moscow City Court, were consistent with the applicant's submissions.

73. According to the Government, the morning transfer to the court-house did not exceed 1.5 hours, and the transfer back lasted for up to three hours because of the evening traffic. Also, the applicant's schedule allowed for eight hours of uninterrupted sleep. They indicated that the wake-up time at the detention centres was 6 a.m., the pickup would take place at 8 a.m., and the drop-off after the hearing at 9.30 p.m.; assembly before and after the transfer did not exceed 30 minutes. All the detainees were provided with packed meals for the whole day out at the court-house, and they were given hot water at lunchtime. They further indicated that the vans used for the transfer were 2009-2011 models of KAMAZ-4308-AZ, KAMAZ-OTS-577489-AZ (both designed for 32 detainees), GAZ-326041-AZ (designed for seven detainees), and GAZ-3309-AZ (designed for 19 detainees). As regards the convoy cells at the Moscow City Court, they submitted that the applicant and his co-defendants were detained in convoy area of the court-house, which included four cells measuring 12 square metres each and toilets, including a wheelchair-accessible one, which the detainees could use on demand, accompanied by the convoy. They submitted that the cells had adequate light and ventilation, and that they were furnished with tables and benches. During the intervals in the hearing the defendants could use an electric kettle to boil water.

E. Conditions in the courtroom

74. On 6 June 2013 the court proceedings began in hearing room no. 338 of the Moscow City Court. The latter court lent its premises to the Zamoskvoretsky District Court so as to accommodate all the participants in the proceedings, the public and the press. In that hearing room ten defendants were held in a glass cabin measuring 3.2 m x 1.7 m x 2.3 m (height). The Government submitted that the glass cabin was a permanent courtroom installation consisting of a steel frame and sheets of bulletproof glass, with a partition inside, a steel mesh ceiling and a secure door; the cabin was equipped with benches. The walls of the cabin had slots allowing documents to be passed between the defendants and their counsel; ventilation outlets were at floor level, and near the dock was an air conditioner. The cabin was equipped with microphones allowing for consultations with counsel and facilitating the defendants' participation in the proceedings. The Government specified that convoy officer guarded the cabin on both sides, supervised the defendants and intercepted any attempts of "contact with outsiders", but the defendants could communicate with their counsel with the court's permission.

75. The applicant submitted that the glass cabin lacked space and ventilation and that it was virtually soundproof, hampering the defendants' participation in the proceedings and their communication with counsel. The benches had no backrests, and the lack of space made it impossible to have documents; it was impossible to consult counsel or the case file during the hearing. The applicant also submitted that the video evidence examined at the hearing could not be seen by him from the cabin because of the distance between the cabin and the screen and his poor eyesight.

76. In August 2013 the proceedings moved to hearing room no. 635 of the Moscow City Court. This hearing room was equipped with two glass cabins similar to the one in hearing room no. 338, except that there were no slots in them. Each cabin measured 4 m x 1.2 m x 2.3 m (height). From 2 August 2013 one of the defendants was no longer placed in the glass cabin owing to a change in the measure of restraint for him. The nine remaining defendants were divided between the two cabins.

77. From mid-September 2013 to the end of 2013 the hearings continued on the premises of the Nikulinskiy District Court of Moscow (hearing room no. 303), and in January and February 2014 at the Zamoskvoretskiy District Court (hearing room no. 410). These hearing rooms were equipped with metal cages in which the nine defendants (from 19 December 2013 eight), including the applicant, sat during the hearings. According to the photographs submitted by the applicants, the dimensions of the cages were similar to the glass cabins described above and, likewise, they were not equipped with any furniture other than benches.

F. The applicant's trial

78. On 6 June 2013 the Zamoskvoretskiy District Court of Moscow began a preliminary hearing of the criminal case against ten participants in the public assembly at Bolotnaya Square charged with participation in mass disorders and violent acts against police officers. On 18 June 2013 the same court began the hearing on the merits.

79. On 13 November 2013 police officer F., the victim of the applicant's assault, was examined as a witness. He testified that the applicant had thrown an unidentified yellow object which had hit him on the shoulder and caused him pain. The applicant asked for F.'s statements made during the investigation, which contained no mention of the yellow object or the applicant, to be read out in court. The applicant pointed out that no identification parade had been held during the investigation to enable F. to identify the person who had assaulted him; instead, the applicant and F. had been questioned in confrontation, whereby the applicant had been the only person introduced to F. as the likely perpetrator. The court refused the applicant's request for F.'s statements to be read out.

80. On 21 February 2014 the Zamoskvoretskiy District Court of Moscow pronounced judgment. It found, in particular, as follows:

> "Between 4 p.m. and 8 p.m. on 6 May 2012 ... at Bolotnaya Square ... unidentified persons ... called those present [at the venue] to move outside the agreed meeting venue, to defy the lawful orders of the police ..., to use violence ... which led to mass disorder accompanied by the use of violence against public officials in connection with the performance of their duties [and] the destruction of property.
>
> On the same day at 5 p.m. at the latest [the defendants] acquired the criminal intent to participate in mass disorder and to use violence ...
>
> Thus, in furtherance of this criminal intent, at an unidentified time and place Mr Belousov acquired an unidentified solid yellow round object with the intention of using it to cause violence against officials ...
>
> ... together with other participants ... Mr Belousov repeatedly chanted anti-government slogans.
>
> Moreover ... the participants in the mass disorder threw chunks of tarmac, stones, sticks and other objects at the police ... which hit them on various body parts, and [the defendants] ... [who] participated in the mass disorder ... implemented their criminal intent to use violence against public officials ... applied physical force not endangering life or health of those [officials] ...
>
> Mr Belousov used violence not endangering the life or health of [Mr F.] ...
>
> Between 5 p.m. and 8.10 p.m. on 6 May 2012 ... unidentified participants in the mass disorder deliberately administered at least three blows and kicks to [F.'s] head, body and limbs, after which Mr Belousov ... deliberately targeting [F.], threw an unidentified solid yellow round object, which hit [F.] on the upper right side of the chest, causing him physical pain.
>
> As a result of Mr Belousov and other unidentified persons' actions [F.] sustained physical pain and injuries in the form of bruising and abrasion of the soft tissues of the

parietal region, bruising of the ... left forearm, abrasion on the ... right shin, [all of] which, assessed individually or cumulatively, constituted injuries not endangering life or health, and not entailing short-term health impairment or minor durable professional incapacitation ...

Mr Belousov ... pleaded not guilty and testified that ... he wanted to see why the meeting was not starting [and] went to Malyy Kamennyy Bridge ... [he] saw the riot police cordon ... [and officers] arresting some [participants] ... [he] was looking to leave and went to the middle of Bolotnaya Square and saw a girl who tripped on something and nearly fell. Without looking at it closely he picked it up from the ground; it felt soft and slimy ... and threw it away without aiming it at anyone ... he joined hands with other protesters chanting "One for all and all for one!", "United, we are invincible!". At this moment three police officers ran up to him, grabbed him and carried him to the police vehicle ...

Police officer [F.] testified that ... after the cordon was restored ... he was heading into the crowd to arrest offenders ... somebody hit him three times on the head ... then he felt a blow from a heavy object on his shoulder. From the corner of his eye he saw [Mr Belousov] take a swing and toss something ... like a billiard ball.

... Mr Belousov was filmed at the moment he threw a yellow object at the police ...

The [defendants'] argument that no mass disorder took place is considered by the court unsubstantiated because ... as a result of the premeditated actions of a group of individuals who organised ... obstruction to the demonstrators' march on their way to the intended meeting venue where the stage was, which caused discontent among the protesters towards ... the police ... those who were leading the march and who were able to make an unhindered approach to the meeting venue changed their tactics and called for ... a sit-in, hoping thus to secure a decision to change the placement of the cordon to their advantage and to extend their area beyond what had been agreed ... As a result ... the protesters forced their way through the police cordon ... public order was disrupted ... because of the larger crowd, uncontrollable and incited by organised groups ... conditioned the applicants' intent to participate in such actions, accompanied by chunks of tarmac and plastic bottles being thrown and violence towards the police otherwise being used. Conscious of their participation in spontaneously erupted disorder and wishing to take part in it, the defendants joined the mass movement ...

... the court takes into account the nature and the degree of [the applicant's] involvement in the mass disorder ... and considers it possible to give him a sentence below the minimum punishment provided for by Article 212 § 2."

81. The applicant was sentenced to two years and six months' imprisonment, calculated on the basis of a two-year prison term under Article 212 of the Criminal Code partly concurrent with a one-year prison term under Article 318 of the Criminal Code. The applicant's pre-trial detention counted towards the prison sentence.

82. The applicant appealed. He contested the first-instance court's finding that mass disorder had taken place, and alleged that there had only been isolated clashes between the protesters and the police, caused by the authorities' last-minute decision to alter the layout of the meeting venue and aggravated by their excessive crowd-control measures. He denied that the object he threw hit anybody; he alleged a breach of procedure for

questioning in confrontation with the victim, police officer F., and complained that the court had refused to have the records of the latter's interrogation conducted during the investigation read out. He also complained about the conditions in which he was escorted to the courtroom, the intensity of the hearing schedule, and that he had been placed in a glass cabin during the trial, claiming that it hindered his communication with counsel.

83. On 20 June 2014 the Moscow City Court upheld the first-instance judgment, also reducing his prison sentence to two years and three months, comprising a one-year-and-nine-month term under Article 212 of the Criminal Code and a nine-month term under Article 318 of the Criminal Code, to run partly concurrently.

84. On 8 September 2014 the applicant was released after serving his prison term.

II. RELEVANT DOMESTIC LAW AND PRACTICE

85. The Criminal Code of the Russian Federation provides as follows:

Article 212 Mass disorder

"1. The organisation of mass disorder accompanied by violence, riots, arson, destruction of property, use of firearms, explosives and explosive devices, as well by armed resistance to a public official, shall be punishable by four to ten years' deprivation of liberty.

2. The participation in the types of mass disorder provided for by paragraph 1 of this Article shall be punishable by three to eight years' deprivation of liberty.

3. The instigation of mass disorder provided for by paragraph 1 of this Article, or the instigation of participation in it, or the instigation of violence against citizens, shall be punishable by restriction of liberty for up to two years, or community works for up to two years, or deprivation of liberty for the same term."

Article 318 Use of violence against a public official

"1. The use of violence not endangering life or health, or the threat to use such violence against a public official or his relatives in connection with the performance of his or her duties shall be punishable by a fine of up to 200,000 roubles or an equivalent of the convicted person's wages for 18 months, or community works for up to five years, or up to five years' deprivation of liberty ..."

86. For a summary of the relevant domestic law provisions governing the conditions and length of pre-trial detention, see the cases of *Dolgova v. Russia* (no. 11886/05, §§ 26-31, 2 March 2006), and *Lind v. Russia* (no. 25664/05, §§ 47-52, 6 December 2007).

87. For a summary of the applicable regulations and the European standards for prison conditions, see *Ananyev and Others v. Russia* (nos. 42525/07 and 60800/08, §§ 55 et seq., 10 January 2012).

THE LAW

I. JOINDER OF THE APPLICATIONS

88. Given their common factual and legal background, the Court decides that the two applications should be joined pursuant to Rule 42 § 1 of the Rules of Court.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION DURING PRE-TRIAL DETENTION

89. The applicant submitted a number of complaints under Article 3 of the Convention referring to various aspects of his pre-trial detention. In particular, he complained about the conditions of his detention in remand prisons. Next, he alleged that he had not received adequate medical assistance while in detention. Further, he complained about the conditions of his transfer to and from the court-house and the conditions of detention in the assembly section of the remand prisons and the convoy room of the Moscow City Court. Article 3 of the Convention reads as follows:

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

A. Admissibility

90. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Conditions of detention in the remand prisons

91. The applicant alleged that the poor conditions of his detention were in violation of Article 3 of the Convention. The parties' submissions as regards the material conditions of detention have been summarised in paragraphs 56-59 and 66-67 above. The main facts relevant to the assessment of the conditions of detention, in particular the size of the cells, the number of inmates detained there concurrently with the applicants, and the sanitary and hygiene arrangements were not in dispute between the parties. Nevertheless, they disagreed whether these conditions had amounted to degrading treatment within the meaning of Article 3 of the Convention. The applicant maintained, in particular, that four square metres of personal space had been insufficient to avoid overcrowding, and that it

was aggravated by other factors, such as inadequate ventilation and lighting, incomplete separation of the lavatory from the living space and the daily one-hour limit on outdoor exercise per day. The Government, on the contrary, contended that the applicant's detention conditions had been in conformity with the standards applicable in respect of personal space, light, room temperature, sanitary facilities and hygiene arrangements.

92. The Court has consistently stressed that to fall under Article 3 of the Convention the suffering and humiliation involved in the deprivation of liberty must go beyond that inevitable element of suffering and humiliation connected with detention. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI, and *Popov v. Russia*, no. 26853/04, § 208, 13 July 2006).

93. When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II, and *Idalov v. Russia* [GC], no. 5826/03, § 94, 22 May 2012). The length of time a person is detained in the particular conditions also has to be considered (see, among other authorities, *Alver v. Estonia*, no. 64812/01, 8 November 2005).

94. A serious lack of space in a prison cell weighs heavily as an aspect to be taken into account for the purpose of establishing whether the impugned detention conditions were "degrading" from the point of view of Article 3 of the Convention (see *Karalevičius v. Lithuania*, no. 53254/99, § 36, 7 April 2005, and *Ananyev and Others*, cited above).

95. In the present case, the Court observes that during the whole period of his detention the applicant was held in cells that allowed him about four square metres of personal space. He was provided with an individual bed, and he never alleged that the arrangements of the cells, because of their fixtures such as tables, beds and toilets, impeded him from moving freely within the cell (compare *Vladimir Belyayev v. Russia*, no. 9967/06, § 34, 17 October 2013; and, by contrast, *Yevgeniy Alekseyenko v. Russia*, no. 41833/04, § 87, 27 January 2011; and *Manulin v. Russia*, no. 26676/06, § 46, 11 April 2013).

96. Furthermore, the Court notes that lavatories in the cells were separated from the living space, although the partition did not reach the ceiling. Also, in remand prisons IZ-77/5 and IZ-77/2 each cell where the applicant was detained had unobstructed access to natural light. Windows were not fitted with metal shutters or other contraptions preventing natural light from penetrating into the cell. Where available, a small window pane

could be opened for fresh air. Cells were additionally equipped with artificial lighting and ventilation.

97. In the light of the parties' submissions the Court also considers it established that the applicant was allowed a one-hour period of outdoor exercise daily. Cold running water was normally available in the cells and detainees had access to showers once every seven days. The Court has also taken note of the photographs showing the interior of the remand prisons in question, the recreation yard, the dormitory cells and their sanitary facilities, which do not appear to be in an especially bad state of repair or cleanliness.

98. The Court acknowledges that the conditions of detention of the applicant fell short of the Minimum Standard Rules for the Treatment of Prisoners, the European Prison Rules and the recommendations of the Committee for the Prevention of Torture in some aspects, including in particular an insufficient frequency of hot showers and restricted out-of-cell activities, as well as restricted access to drinking water. Nevertheless, taking into account the cumulative effect of those conditions, the Court does not consider that the conditions of the applicant's detention, although far from adequate, reached the threshold of severity required to characterise the treatment as inhuman or degrading within the meaning of Article 3 of the Convention (see, for similar reasoning, *Fetisov and Others v. Russia*, nos. 43710/07, 6023/08, 11248/08, 27668/08, 31242/08 and 52133/08, §§ 137-38, 17 January 2012, and compare *Vladimir Belyayev*, cited above, § 36).

99. The Court therefore concludes that there has been no violation of Article 3 of the Convention in respect of the conditions of detention in the remand prisons.

2. Alleged failure to provide adequate medical assistance

100. The applicant alleged that the authorities had failed to provide him with medical assistance in relation to his health issues. He complained, in particular, that during his pre-trial detention he was not provided with necessary medical assistance in relation to his asthma, progressing myopia, and hypertension. He pointed out that no medical examination had been carried out in response to the investigator's request of 3 October 2012 (see paragraph 61 above). The Government submitted that the applicant had been examined on admission to the remand prisons on 19 and 21 June 2012 and 29 June 2013, and that his condition had been found to be normal. They provided copies of his medical certificates concerning the prison admission health-checks of 19 and 21 June 2012 and the documents concerning his long-term supervision in the prison hospital which began on 9 September 2012.

101. The Court notes that, according to the medical reports, the applicant had a high-degree myopia, which had indeed progressed between 2009 and 2014. However, the Court has insufficient proof that the deterioration had

occurred, or was aggravated, during his detention in 2012-13, as the applicant alleged. It further notes that the applicant made no health complaints to the members of the public commission for the monitoring of detention facilities who visited him on 28 November 2012 and 11 January 2013. Accordingly, as regards myopia and asthma, it finds no evidence to support the allegations that the gravity and urgency of these health issues had called for immediate measures. Therefore no conclusions may be drawn from the fact that the investigator's request of 3 October 2012 was not followed up. When the applicant later required emergency help, he received it promptly. In particular, on 3 September 2013 an ambulance was called because the applicant had a hypertension crisis, and he was placed in the prison medical ward for long-term monitoring of this condition. Nothing in the case file suggests that those measures were insufficient in that situation.

102. It follows that the Russian authorities have complied with their positive obligations to provide the applicant with appropriate medical assistance, and accordingly there has been no violation of Article 3 of the Convention in this respect.

3. Conditions of transfer to and from the court-house

103. The applicant alleged that his transfers from the remand prisons to the court-house and back had amounted to inhuman and degrading treatment. He complained about the frequency and the length of those transfers, of appalling conditions at the prison assembly sections and in the police vans, and about the intensity of the schedule, that did not leave him sufficient time for sleep. He claimed that the combination of the above factors led to physical exhaustion and emotional fatigue.

104. The parties' submissions as regards the time and the frequency of the transfers and the conditions in the assembly sections, convoy cells and prison vans are summarised in paragraphs 69-73 above.

105. The Court will examine these complaints in the light of the general principles outlined in paragraphs 92-93 above, and set out in its case-law regarding the transport of detainees (see *Khudoyorov v. Russia*, no. 6847/02, §§ 112-20, ECHR 2005-X (extracts); *Starokadomskiy v. Russia*, no. 42239/02, §§ 54-60, 31 July 2008; *Svetlana Kazmina v. Russia*, no. 8609/04, §§ 76-79, 2 December 2010; *Idalov*, cited above, §§ 103-08; *Yevgeniy Gusev v. Russia*, no. 28020/05, §§ 56-68, 5 December 2013; and *M.S. v. Russia*, no. 8589/08, §§ 74-77, 10 July 2014).

106. The Government's submissions as regards the duration of the journeys to and from the court-house and the intensity of the transfer schedule were at variance with the applicant's submissions. First, they contested the overall time of the transfer and the associated procedures. According to the Government, on hearing days the applicant would be woken up at 6 a.m. and would arrive back at the remand prisons at 9.30 p.m., and thus would be allowed eight hours of sleep every day.

However, the Court notes the applicant's allegations that after the arrival at the remand prison the detainees would have to wait in the assembly section for up to two hours to go through security checks. The Court takes note of the Government's assertion that the prison assembly time did not exceed 30 minutes, but finds that this is not supported by evidence, unlike the applicant's claims, which were corroborated by witness statements. Moreover, the Government did not specify the time allowed for a meal and personal hygiene after the applicant arrived back in the cell. Apart from those basic necessities, the applicant also pointed out the need to prepare for the next day's court hearing. The Court therefore accepts that even on the basis of the Government's submissions the applicant's schedule on the days of the court hearings did not allow for sufficient rest and sleep (see *Yevgeniy Gusev*, cited above, § 57).

107. The Court further notes that the Government made no submission as to the conditions in the prison assembly sections. It therefore accepts the applicant's allegation of overcrowding and generally poor conditions in those places. As regards the convoy cells at the Moscow City Court, the Government only submitted information as regards the convoy area on the fifth floor, without addressing the allegations of overcrowding or commenting on the conditions of the cells on the ground floor of the court-house. The Court therefore accepts the applicant's allegations that at least on some occasions he was confined in cramped conditions with restricted access to a toilet, and that he spent several hours a day in those conditions.

108. As regards the duration of the journey, the Government claimed that it lasted for one and a half hours in the morning and three hours in the evening, a statement not supported by any documents and contested by the applicant as gravely underestimated. The applicant and his co-defendants, for their part, gave detailed and concordant accounts of the timing and the circumstances of their transfers, and corroborated them by three witness statements. On the basis of all the evidence before it the Court finds it established that the length of the applicant's journey sometimes exceeded five hours. Moreover, even assuming that the Government's submissions were accurate, this duration could not be considered negligible for a journey in cramped and generally poor conditions, given that the applicants had to endure it twice a day for three or four consecutive days a week.

109. The Court further notes that the Government provided no detailed description of the conditions in the transfer vans where the applicant was transported, other than indicating the models of the vans and the number of detainees they were designed for. The applicant submitted that on different days he was transported in different types of vans, which were almost invariably overcrowded. Even though he was unable to specify the size of the vans and the number of inmates carried in them, the description of the seating arrangements is sufficient for the Court to accept that the detainees

were transported in cramped conditions. Moreover, on certain occasions the applicant was transported in vans divided into tight single-occupancy compartments, transport arrangements already found by the Court incompatible with Article 3 of the Convention (see *M.S. v. Russia*, cited above, §§ 74-77). It also considers it established that these vans lacked adequate ventilation, heating and cooling systems, and that there was no opportunity to use the toilet. The combination of these elements has compounded the negative effects of poor transfer conditions, which increased in proportion to the duration of the journeys to and from the court-house (see *Idalov*, cited above, § 103).

110. The Court considers that in the present case the cumulative effect of lengthy transfers in difficult conditions extended by containment in the prison assembly section and the convoy area at the court-house and aggravated by inadequate sleep must have been of an intensity such as to induce in the applicant physical suffering and mental fatigue. The above treatment occurred for seven months during the applicant's trial, a time when he most needed his powers of concentration and mental alertness (see *Khudoyorov*, cited above, § 119).

111. The Court therefore concludes that the applicant was subjected to inhuman and degrading treatment contrary to Article 3 of the Convention. Accordingly, there has been a violation of that provision.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE CONFINEMENT IN GLASS CABINS AND METAL CAGES DURING THE COURT HEARING

112. The applicant complained that his confinement in glass cabins and metal cages during the court hearing amounted to degrading treatment. He relied on Article 3 of the Convention.

A. Admissibility

113. The Government claimed that the applicant's complaint under Article 3 of the Convention as regards the confinement in glass cabins was lodged out of time. They pointed out, in particular, that the six-month time-limit should have been calculated from the day when the alleged ill-treatment ceased, and not from the end of the criminal proceedings, because the court of appeal was not capable of providing a remedy against courtroom arrangements during the first-instance trial. Thus, they contended that in relation to the confinement in glass cabins the six-month period began to run on an unidentified date in September 2013 when the proceedings moved to different court premises, where the defendants were confined in metal cages and therefore the conditions were different. In

relation to the latter the six-month time-limit should have run from the day following the end of the first-instance trial.

114. The Court accepts that the applicant's confinement in glass cabins and in metal cages were two distinct periods with materially different conditions of detention, which cannot be regarded as a continuous situation for the purpose of calculating the six-month time-limit set forth in Article 35 § 1 of the Convention. It notes that the alleged ill-treatment took place during the first-instance hearing, which finished on 21 February 2014, and the applicant did not allege that this treatment had continued during the appeal hearing. The Court acknowledges the Government's submission that no remedy was available to the applicant in relation to the courtroom arrangements, in particular that the appeal court was not capable of providing redress in relation to the alleged violation. It therefore agrees with the Government that the six-month time-limit in this case should be calculated from the date when the alleged treatment ceased. The Court further notes that the applicant lodged the complaint about the placement in the glass cabins on 19 August 2013, and it was communicated to the Government as a part of application no. 2653/13 on 13 September 2013 while the applicant still had to occupy a glass cabin. As for the complaint about the placement in metal cages, it was lodged on 2 September 2014 as a part of application no. 60980/14, that is more than six months after the end of the first-instance trial.

115. The Court therefore considers that the applicant has missed the time-limit for lodging his complaint under Article 3 of the Convention about the placement in metal cages. It must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention (see *Grishin v. Russia*, no 30983/02, § 83, 15 November 2007).

116. The Court finds that the applicant has complied with the six-month rule as regards the complaint about the placement in the glass cabins. It notes that the latter complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

117. The parties' descriptions of the conditions in the courtrooms are summarised in paragraphs 74-77 above.

118. The applicant alleged that his confinement in glass cabins had amounted to degrading treatment. He complained, in particular, about the cramped conditions in the cabins in hearing rooms nos. 338 and 635 of the Moscow City Court and pointed out the difficulties these installations caused for his participation in the proceedings and communication with

counsel. He alleged that on multiple occasions during the trial he complained to the court about the discomfort and the difficulties caused by his placement in these security installations.

119. The Government considered that the security installations in question neither constituted degrading treatment nor caused significant discomfort. They submitted, in particular, that all detainees who were in pre-trial detention were routinely placed either in metal cages or in the glass cabins which were progressively replacing the metal cages in courtrooms. They considered that, unlike the metal cages, the glass cabins did not have an appearance that could by itself raise issues under Article 3 of the Convention. They further submitted that after the initial complaints about the cramped conditions in hearing room no. 338, the trial was moved to hearing room no. 635, where the defendants had more space because there were two cabins.

2. The Court's assessment

(a) General principles

120. As the Court has repeatedly stated, Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, among many other authorities, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

121. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, for example, *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX). The public nature of the treatment may be a relevant or an aggravating factor in assessing whether it is "degrading" within the meaning of Article 3 of the Convention (see, *inter alia*, *Tyrer v. the United Kingdom*, 25 April 1978, § 32, Series A no. 26; *Erdoğan Yağız v. Turkey*, no. 27473/02, § 37, 6 March 2007; and *Kummer v. the Czech Republic*, no. 32133/11, § 64, 25 July 2013).

122. In the context of courtroom security arrangements, the Court has stressed that the means chosen for ensuring courtroom order and security must not involve measures of restraint which by virtue of their level of severity or by their very nature would bring them within the scope of Article 3 of the Convention, as there can be no justification for torture or inhuman or degrading treatment or punishment (see *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, § 127, ECHR 2014 (extracts)). It found, in particular, that confinement in a metal cage was

contrary to Article 3 of the Convention, having regard to its objectively degrading nature (ibid., §§ 135-38).

(b) Application of these principles in the present case

123. In the present case the Court is called on to examine the confinement in a glass cabin for compliance with Article 3 of the Convention, and the main question here is whether the treatment at issue attains the minimum degree of severity to enable it to fall within the ambit of this provision.

124. The Court considers that glass cabins do not have the harsh appearance of metal cages, the very exposure in which to the public eye is capable of undermining the defendants' image and of arousing in them feelings of humiliation, helplessness, fear, anguish and inferiority. It also notes that glass installations are used in courtrooms in other member States (see *Svinarenko and Slyadnev*, cited above, § 76), although their designs vary from glass cubicles to glass partitions, and in the majority of the States their use is reserved for high-security hearings.

125. The Court agrees with the Government that, generally speaking, the placement of defendants behind glass partitions or in glass cabins does not in itself involve an element of humiliation sufficient to reach the minimum level of severity, as is the case with metal cages. This level may be attained, however, if the circumstances of their confinement, taken as a whole, would cause them distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention (see *Kudła*, cited above, §§ 92-94). The Court will therefore scrutinise the overall circumstances of the applicants' confinement in the glass cabins to determine whether the conditions there reached, on the whole, the minimum level of severity required to characterise his treatment as degrading within the meaning of Article 3 of the Convention.

126. As regards the hearing room no. 338, the Court observes that ten defendants were held in a glass cabin measuring 5.4 square metres, a setting that left virtually no space between them. They had to endure the court hearing in these conditions for several hours three days a week for a period of about two months. Furthermore, the applicants' trial was a high-profile case closely followed by national and international mass media, so the applicants were permanently exposed to the public at large in this cramped setting. These elements are sufficient for the Court to conclude that the conditions in hearing room no. 338 of Moscow City Court amounted to degrading treatment in breach of Article 3 of the Convention.

127. As regards their subsequent detention in hearing room no. 635, the Court observes that the two-cabin arrangement allowed the applicant at least 1.2 square metres of personal space, thus avoiding the inconvenience and humiliation of extreme overcrowding. The Court has insufficient evidence that ventilation, heating or cooling of the glass cabins in hearing room

no. 635 were inadequate. As regards the alleged hindrance these installations caused to the applicants' participation in the proceedings and their communication with legal counsel, they may be considered as elements contributing to the defendants' anxiety and distress, but taken alone they are not sufficient to pass the threshold of Article 3 of the Convention. The Court therefore concludes that the conditions in hearing room no. 635 of Moscow City Court did not attain the minimum level of severity prohibited by Article 3 of the Convention.

128. Having regard to the foregoing, the Court finds that there has been a violation of Article 3 of the Convention on account of the conditions of detention in hearing room no. 338 of the Moscow City Court, and no violation of Article 3 of the Convention as regards the conditions of detention in hearing room no. 635 of the same court.

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

129. The applicant complained under Article 5 § 1 of the Convention that his pre-trial detention was not based on a "reasonable suspicion" that he had committed a criminal offence. He also complained that his pre-trial detention had not been justified by "relevant and sufficient reasons", as required by Article 5 § 3 of the Convention. Article 5 of the Convention, in so far as relevant, reads as follows:

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

A. Admissibility

130. As regards the alleged unlawfulness of the applicant's detention, the Court notes that the Basmannyy District Court of Moscow ordered his detention, which was subsequently extended on several occasions by the same court and, after the case had been submitted for trial, by the Zamoskvoretskiy District Court of Moscow. The domestic courts acted

within their powers in making those decisions and there is nothing to suggest that they were invalid or unlawful under domestic law. Accordingly, the applicant's detention was imposed and extended in accordance with a procedure prescribed by law.

131. As regards the allegation that the applicant's detention was not based on a reasonable suspicion that he had committed criminal offences, his complaint under Article 5 § 1 of the Convention overlaps to a large extent with his complaint under Article 5 § 3 of the Convention about the authorities' failure to adduce relevant and sufficient reasons justifying the extensions of his detention pending criminal proceedings. The Court reiterates that Article 5 § 1 (c) of the Convention is mostly concerned with the existence of a lawful basis for detention within criminal proceedings, whereas Article 5 § 3 of the Convention deals with the possible justification for such detention. The Court deems it more appropriate to deal with this complaint under Article 5 § 3 of the Convention (see *Khodorkovskiy v. Russia*, no. 5829/04, § 165, 31 May 2011; *Taranenko v. Russia*, no. 19554/05, § 46, 15 May 2014; and *Kovyazin and Others v. Russia*, nos. 13008/13, 60882/12 and 53390/13, § 71, 17 September 2015).

132. As regards the applicant's complaint of violation of Article 5 § 3 of the Convention, the Court finds that it is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that this part of the application is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

133. The parties made essentially the same submissions under Article 5 of the Convention as in *Kovyazin and Others* (cited above, §§ 73-74). The relevant general principles applicable in this case have been summarised by the Court in the same judgment (ibid., §§ 75-78).

134. The period of detention to be taken into consideration in this case started on 9 June 2012, the date of the applicant's arrest, and ended on 21 February 2014, the date of his conviction by the first-instance court. Accordingly, the period to be taken into consideration was one year and eight and a half months. Having regard to this considerable length of detention in the light of the presumption in favour of release, the Court finds that the Russian authorities were required to put forward very weighty reasons for keeping the applicant in detention for such an extended period of time.

135. It follows from the applicant's detention orders and the Government's observations that the primary reason for his detention was the gravity of the charges. Firstly, the domestic court considered that the applicant, faced with the risk of a prison term, was likely to abscond, tamper with the witnesses, or interfere with administration of justice. Secondly,

they seemed to suggest that the very nature of the offences in question revealed certain dangerous features of the applicant's personality, making him likely to reoffend and generally calling for caution.

136. The Court has previously examined similar complaints lodged by the applicant's co-defendants and found a violation of their rights set out in Article 5 § 3 of the Convention (see *Kovyazin and Others*, cited above, §§ 82-94). The Court noted, in particular, the domestic courts' reliance on the gravity of the charges as the main factor for the assessment of the applicant's potential to abscond, reoffend or obstruct the course of justice, and their reluctance to devote proper attention to a discussion of each applicant's personal situation or to have proper regard to the factors pointing in favour of his release. It also noted the use of collective detention orders without a case-by-case assessment of the grounds for detention in respect of each co-defendant and the failure to thoroughly examine the possibility of applying another, less rigid, measure of restraint, such as bail.

137. Having regard to the material in its possession, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Indeed, the specific acts imputed to the applicant – shouting political slogans (classified as a grave offence) and throwing an unidentified yellow object which hit a police officer, causing no lasting harm (classified as a medium-gravity offence), were not of a gravity justifying the pre-trial detention in itself, especially at the advanced stages of the proceedings (see *Kovyazin and Others*, cited above, § 84, and the cases cited therein). Moreover, the applicant's detention was extended by the same collective orders as those of his co-defendants, without any individual assessment of his situation (ibid., §§ 92-93).

138. There has accordingly been a violation of Article 5 § 3 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

139. The applicant submitted a number of complaints under Article 6 of the Convention referring to various aspects of his trial. He referred to his confinement in glass cabins during the court hearing and the intensive schedule of those hearings, and alleged that he did not have adequate time and facilities for the preparation of his defence and that he could not effectively defend himself in person or through legal assistance. He also claimed that his right to examine or have examined witnesses against him had been unduly restricted. The applicant relied on Article 6 §§ 1 and 3 (b), (c) and (d) of the Convention, which, in so far as relevant, reads as follows:

> "1. In the determination ... of any criminal charge against him, everyone is entitled to a fair and public hearing ...

3. Everyone charged with a criminal offence has the following minimum rights ...

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him ..."

A. Admissibility

140. The Government expressed doubt about the existence of effective remedies against the alleged violations, in particular about the capacity of the appeal court to provide relief in respect of the grievances about the placement in the glass cabin and the intensity of the court hearings. They suggested that the applicant might have missed the six-month time-limit if it is calculated from the date of the first-instance judgment. The applicant considered that he had complied with the six-month rule.

141. The Court notes that these complaints were included in the applicant's points of appeal as grounds for his request to reverse the first-instance judgment. The Court has no reason to doubt that the appeal instance had competence and discretion to remit the case for fresh examination by the first-instance court on any of these grounds if it found that they had led to a breach of the right to a fair hearing. It therefore was capable of providing an effective remedy for the alleged violation of Article 6 of the Convention. Accordingly, the applicant has complied with the time-limit for lodging this part of the application before the Court.

142. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

143. The applicant alleged that the proceedings in his criminal case fell short of important guarantees of a fair hearing. He complained, in particular, that his confinement in glass cabins during the court hearings hindered his participation in the trial, in particular because the glass partition reduced visibility and audibility and made confidential exchanges with legal counsel impossible; the interior arrangement of the cabins also made it awkward to handle and read documents. The applicant further complained that the intensive schedule of the court hearings and late arrivals back at the

detention facility did not leave him sufficient time to prepare for the next day's hearings. The lack of sleep compounded by lengthy transfers from the detention facility in difficult conditions led to physical exhaustion and diminished his ability to participate in the proceedings and to defend himself effectively. Finally, he complained that the court had not examined his objection to the admissibility and reliability of the witness testimony of police officer F., and did not allow that officer's statement made during the investigation to be read out in court.

144. The Government contested these allegations. They contended that the applicant's capacity to participate in the proceedings had not been affected by the glass cabins because the latter were equipped with loudspeakers and microphones. They also did not consider the schedule of the court hearings excessively intensive, referring to the complexity of the case and the need to strike an appropriate balance between the need to expedite the proceedings and the interests of proper administration of justice. They pointed out that the applicant's requests for intervals during the hearing to allow for preparations and consultations had usually been granted. They further contended that the applicant had been given ample opportunity to examine Mr F. after he had testified at the hearing. Moreover, his testimony was corroborated by three other witnesses and the video recording. As for the alleged breach of criminal procedure during the investigation as concerned witness F., the court did not refer to any investigative acts in its judgment but relied only on F.'s testimonies.

2. The Court's assessment

145. The Court notes that the applicant raised three distinct issues relying on specific guarantees of Article 6 § 3 of the Convention as well as on the general right to a fair hearing provided for by Article 6 § 1 of the Convention. As the requirements of Article 6 § 3 of the Convention are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 § 1 of the Convention (see, among many other authorities, *Van Mechelen and Others v. the Netherlands*, 23 April 1997, § 49, Reports of Judgments and Decisions 1997-III), the Court will examine each of these complaints under those two provisions taken together.

146. The applicant contended that the courtroom arrangement with glass cabins in which he sat throughout the trial not only constituted degrading treatment but also hindered his participation in the hearing and hampered contact with his legal counsel. The Court notes that in the present case the glass cabins were permanent courtroom installations, places designated for the accused in criminal proceedings. Apparently they were intended as an improvement on the metal cage arrangement otherwise used in the Russian courts as a matter of routine (see *Khodorkovskiy*, cited above, §§ 123 et seq., and *Svinarenko and Slyadnev*, cited above, § 122). It appears from the

Government's submissions that all defendants are still systematically placed in a metal cage or a glass cabin as long as they are in custody.

147. The Court has found above that in hearing room no. 338 of the Moscow City Court the applicant was confined in an overcrowded glass cabin, and found a violation of Article 3 of the Convention on that account (see paragraph 126 above). The Court would find it difficult to reconcile the degrading treatment of the defendant during the judicial proceedings with the notion of a fair hearing, regard being had to the importance of equality of arms, the presumption of innocence, and the confidence which the courts in a democratic society must inspire in the public, above all in the accused (see, *mutatis mutandis*, *De Cubber v. Belgium*, 26 October 1984, § 26, Series A no. 86, and *Svinarenko and Slyadnev*, cited above, § 131). It follows that for the first two months of the trial the court hearings in the applicant's case were conducted in breach of Article 6 of the Convention.

148. In hearing room no. 635, however, the overcrowding problem was resolved, but the alleged impediments to the defendants' participation in the proceedings and to their legal assistance remained (see paragraphs 126-28 above). The Court will therefore examine whether the applicant's being placed in the glass cabin during this period had been detrimental to the fairness of the hearing, despite its compliance with Article 3 of the Convention.

149. The Court reiterates that a measure of confinement in the courtroom may affect the fairness of a hearing guaranteed by Article 6 of the Convention, in particular it may have an impact on the exercise of an accused's rights to participate effectively in the proceedings and to receive practical and effective legal assistance (see *Svinarenko and Slyadnev*, cited above, § 134, and the cases cited therein). It has stressed that an accused's right to communicate with his lawyer without the risk of being overheard by a third party is one of the basic requirements of a fair trial in a democratic society; otherwise legal assistance would lose much of its usefulness (see *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 97, 2 November 2010, with further references).

150. The Court is mindful of the security issues a criminal court hearing may involve, especially in a large-scale or sensitive case. It has previously emphasised the importance of courtroom order for a sober judicial examination, a prerequisite of a fair hearing (see *Ramishvili and Kokhreidze v. Georgia*, no. 1704/06, § 131, 27 January 2009). However, given the importance attached to the rights of the defence, any measures restricting the defendant's participation in the proceedings or imposing limitations on his or her relations with lawyers should only be imposed in so far as is necessary, and should be proportionate to the risks in a specific case (see *Van Mechelen and Others*, cited above, § 58, and *Sakhnovskiy*, cited above, § 102).

151. In the present case, the applicant and his co-defendants were separated from the rest of the hearing room by glass, a physical barrier which to some extent reduced their direct involvement in the hearing. Moreover, this arrangement made it impossible for the applicant to have confidential exchanges with his legal counsel, to whom he could only speak through a microphone and in close proximity to the police guards. It is also of relevance that the cabin was not equipped to enable the applicant to handle documents or take notes.

152. The Court considers that it is incumbent on the domestic courts to choose the most appropriate security arrangement for a given case, taking into account the interests of administration of justice, the appearance of the proceedings as fair, and the presumption of innocence; they must at the same time secure the rights of the accused to participate effectively in the proceedings and to receive practical and effective legal assistance. In the present case, the use of the security installation was not warranted by any specific security risks or courtroom order issues but was a matter of routine. As follows from the parties' submissions, the trial court had no discretion to order the defendants' placement outside the cabin, although it could change the courtroom for another one, with more cabins. The trial court did not seem to recognise the impact of these courtroom arrangements on the applicant's defence rights, and did not take any measures to compensate for these limitations. Such circumstances prevailed for the whole duration of the first-instance hearing, which lasted for over eight months, including seven months in hearing room no. 635, and could not but adversely affect the fairness of the proceedings as a whole.

153. It follows that during the first-instance hearing the applicant's rights to participate effectively in the proceedings and to receive practical and effective legal assistance had been restricted, and these restrictions had been neither necessary nor proportionate. The Court concludes that the criminal proceedings against the applicant were conducted in violation of Article 6 §§ 1 and 3 (b) and (c) of the Convention.

154. In view of this finding, the Court does not consider it necessary to address the remainder of the applicants' complaints under Article 6 §§ 1 and 3 (b) and (d) of the Convention.

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

155. The applicant alleged a violation of his right to freedom of expression and to freedom of peaceful assembly. He complained, in particular, of disruptive security measures implemented at the site of the meeting at Bolotnaya Square, and claimed that his ensuing prosecution and criminal conviction for participation in mass disorders had been unlawful

and arbitrary, had pursued political aims, and had been disproportionate. He relied on Articles 10 and 11 of the Convention, which read as follows:

Article 10

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

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

Article 11

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

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

A. Admissibility

156. In so far as the applicant complained about the general actions of the police taken to safeguard public order during the assembly, the Government alleged that the applicant had not brought these complaints before the domestic courts. They therefore asked the Court to declare this part of the application inadmissible on the grounds of the applicant's failure to exhaust domestic remedies, or for failure to comply with the six-month time-limit.

157. The applicant contended that the questions relating to the origin of mass disorders at the site of the rally had been repeatedly raised during the first-instance trial and in the points of appeal. The courts, however, avoided the examination of crucial issues, such as who had given the order to alter the agreed meeting layout and whether the ensuing standoff between the protesters and the police could have been de-escalated by other means than termination and dispersal of the meeting. The applicant therefore considered that this complaint had been made before, if not dealt with by, the domestic

courts; he considered that he had complied with the admissibility criteria in respect of this complaint.

158. The Court observes that the applicant in the present case was convicted of having perpetrated mass disorder. This was the disorder which interrupted the assembly. Attribution of responsibility for the disorder was therefore a central question in the determination of the applicant's criminal charges. In such circumstances, the complaint about the authorities' role in the occurrence of the disorder is inseparable from the one concerning the lack of justification for the applicant's criminal liability. For this reason, the Court is not required in this case to assess the authorities' alleged failure to discharge their positive obligation in respect of the conduct of the assembly at Bolotnaya Square as a separate issue under Article 11 of the Convention. It will examine whether the measures taken against the applicant personally complied with Article 11 of the Convention in the light of all the materials submitted by the parties concerning the planning, conduct and dispersal of the assembly (see *Frumkin*, cited above, §§ 100-01 and 134, where a separate issue was distinguished in relation to a protester not accused of mass disorders). There is therefore no need to examine whether the applicant has complied with the admissibility criteria as regards the complaint about the general actions of the police in relation to the assembly.

159. The Court notes that the complaint about the applicant's prosecution and criminal conviction, lodged under Articles 10 and 11 of the Convention, is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The Government

160. The Government contended that the disorder at Bolotnaya Square had occurred when some of the organisers and participants had refused to follow the agreed plan, disregarded the police instructions to proceed to the designated venue at Bolotnaya embankment, and sat on the ground causing scuffles and disorder. The intervention of the police had been justified since the assembly had ceased to be "peaceful" within the meaning of Article 11 of the Convention. In dispersing the protesters, the police had not resorted to excessive force: only police truncheons had been used; only the most aggressive perpetrators had been targeted; and no tear gas or smoke bombs had been deployed.

161. They considered that there had been no interference with the exercise of the applicant's right to peaceful assembly, and argued that the criminal charges against him related to acts of violence unconnected with

the exercise of freedom of expression or freedom of assembly. Moreover, the criminal proceedings against the applicant began only several weeks after the rally, and his prosecution could thus not retroactively interfere with his participation in the assembly.

162. They further submitted that both the authorities' handling of the assembly as a whole and the individual measures taken against the applicant personally had complied with domestic law, were necessary "for the prevention of disorder or crime" and "for the protection of the rights and freedoms of others" and remained strictly proportionate. They maintained that the applicant's conviction had been justified in view of the serious threat of mass disorders, and that the sentence imposed on him had not been disproportionate to the risk he posed to the public order and well-being of the peaceful participants in the assembly.

163. The Government concluded that in the particular circumstances of this case, regard being had to the context of mass disorders, the measures taken against the applicant had been justified under Article 11 § 2 of the Convention.

(b) The applicant

164. The applicant submitted that on 6 May 2012 he came to take part in a peaceful meeting which had been authorised by the Moscow authorities. He pointed out that the officially published map of the assembly had indicated that the meeting venue would include the park of Bolotnaya Square, and that the authorities had not given notice to the participants of the change of the venue layout. The unexpected placement of the police cordon near Malyy Kamennyy bridge had narrowed down the passage to the meeting venue, which had caused confusion and overcrowding in that area. During the criminal proceedings the applicant and his co-defendants asked the officials examined as witnesses to indicate by whom and for what reason an order had been given for the meeting layout to be changed, but no one could answer those questions. The applicant denied that any mass disorders had taken place at Bolotnaya Square, or that the protesters had intended to break through the cordon. He alleged that the episodes of disorderly behaviour and the clashes between the protesters and the police had been isolated incidents caused by the unannounced change of plan and aggravated by the excessive use of force by the police.

165. The applicant insisted that he was a peaceful law-abiding individual and his conduct during the assembly had remained non-violent, even though he had been in the area where scuffles and clashes had occurred. He admitted to having picked up a yellow object from the ground, which he described as "soft and slimy", but only to throw it out of his way, not to aim it at anyone in particular. The applicant did not see where the object landed, and he was not convinced by the evidence presented at the trial that it had indeed hit the policeman; the object itself had been neither found nor

identified. He considered that his prosecution, criminal conviction, and especially the lengthy prison sentence, had been unlawful and out of proportion, considering that the acts he had committed were benign. He explained the severity of his punishment by political reasons, suggesting that a widely reported criminal case would serve as a deterrent to others from taking part in public assemblies.

2. The Court's assessment

(a) The scope of the applicant's complaints

166. The Court notes that, in the circumstances of the case, Article 10 of the Convention is to be regarded as a *lex generalis* in relation to Article 11 of the Convention, a *lex specialis* (see *Ezelin v. France*, 26 April 1991, § 35, Series A no. 202, and *Kasparov and Others v. Russia*, no. 21613/07, §§ 82-83, 3 October 2013). Accordingly, the Court will examine this complaint under Article 11 of the Convention.

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

(b) Whether there has been an interference with the exercise of the right to freedom of peaceful assembly

168. The Court reiterates that Article 11 of the Convention only protects the right to "peaceful assembly", a notion which does not cover a demonstration where the organisers and participants have violent intentions (see *Stankov and the United Macedonian Organization Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 77, ECHR 2001-IX). The guarantees of Article 11 of the Convention therefore apply to all gatherings except those where the organisers and participants have such intentions, incite violence or otherwise reject the foundations of a democratic society (see *Sergey Kuznetsov v. Russia*, no. 10877/04, § 45, 23 October 2008; *Alekseyev v. Russia*, nos. 4916/07, 25924/08 and 14599/09, § 80, 21 October 2010; *Fáber v. Hungary*, no. 40721/08, § 37, 24 July 2012; *Gün and Others v. Turkey*, no. 8029/07, § 49, 18 June 2013; *Taranenko*, cited above, § 66; and *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 92, ECHR 2015). It is therefore necessary to determine whether the facts of the present case fall within the ambit of Article 11 of the Convention.

169. The Government argued that the applicant's punishment for participation in mass disorder and using violence against the police officer related to acts unconnected with the exercise of the right to freedom of expression and the right to freedom of assembly. The Court observes that

the acts imputed to the applicant included chanting anti-government slogans during the dispersal of the assembly and throwing an unidentified round yellow object in the direction of the police cordon; the object hit police officer F. causing no injury. The Court has previously examined a number of cases where the demonstrators had engaged in acts of violence and found that the demonstrations in questions had been within the scope of Article 11 of the Convention on the basis that the organisers of these assemblies had not expressed violent intentions and there were no grounds to believe that the assemblies were not meant to be peaceful. The Court found that the applicants in those cases enjoyed the protection of Article 11 of the Convention and examined whether the measures taken against them were justified under the second paragraph of this provision. In one of these cases it found a violation of Article 11 of the Convention on account of a disproportionate sentence imposed on the applicant for attending a demonstration and throwing stones at the security forces (see *Gülcü v. Turkey*, no. 17526/10, §§ 91-97, 19 January 2016). In other cases it found that the authorities' response to violence had been proportionate and complied with Article 11 of the Convention (see *Osmani and Others v. the former Yugoslav Republic of Macedonia* (dec.), no. 50841/99, ECHR 2001-X; *Protopapa v. Turkey*, no. 16084/90, §§ 104-12, 24 February 2009; and *Primov and Others v. Russia*, no. 17391/06, §§ 156-63, 12 June 2014).

170. In the present case, the Government argued that the disruption of the previously peaceful assembly had been engineered by the organisers to stir up political unrest. They accused the assembly leaders of encouraging the protesters to bring tents to set up an illegal campsite and of breaking through the police cordon with the intention of marching outside the officially designated venue. Only the first of those two claims is supported by evidence: the police had indeed intercepted several attempts to bring tents to Bolotnaya Square. Also, Mr Udaltsov has called on the protesters to begin an "indefinite protest action" on the site of the cancelled meeting, although this could be a reaction to the developments on the spot. On any interpretation, the authorities' fear of an illegal long-term campsite being erected in the park of Bolotanaya Square had some foundation.

171. As regards the breaking through the police cordon, nothing in the case file confirms that that was the organisers' desired outcome. On the contrary, the Court has previously found that the sit-in began because of the unexpected change of the venue layout, of which the police had not informed the organisers (see *Frumkin*, cited above, §§ 113-16). The march leaders spent about 45 minutes peacefully waiting for the confusion about the placement of the cordon to be resolved, to no avail. Above all, whatever the organisers' intentions were, they made no call for violence and showed no signs that they had been prepared for it. The security screening at the entrances to the assembly venue, which was rather thorough, did not detect

the presence of weapons or other objectionable equipment carried by the protesters, apart from a handful of tents, possibly prohibited but inherently harmless items. The round yellow object tossed by the applicant in the instant case remained unidentified but appeared, by all accounts, innocuous (compare with *Primov and Others*, cited above, §§ 158-59, where the protesters carried iron rods, wooden sticks, knives and firearms). The fact that the applicant was chanting political slogans like "One for all and all for one!" or "United, we are invincible!" cannot be taken as evidence that he had violent intentions.

172. In view of the foregoing, the Court considers that the assembly at Bolotnaya Square fell within the scope of Article 11 of the Convention and accepts that the applicant enjoyed the protection of this provision. It also finds that the applicant's prosecution and criminal conviction for participation in mass disorder constituted an interference with the exercise of the freedom of assembly.

(c) Whether the interference was "prescribed by law", pursued a legitimate aim and was "necessary in a democratic society"

173. The applicant contested that the events which took place at Bolotnaya Square constituted mass disorder within the meaning of Article 212 of the Criminal Code, and that his own acts could qualify as participation in such disorder. He insisted that the assembly as a whole had remained peaceful while the police had used excessive force against the protesters, which led to some isolated clashes; in any event, there had been no disorder of a scale required to fall under this provision. The Government, on the contrary, alleged that the clashes had been the product of a premeditated and organised plot by the assembly leaders, and only the timely and efficient intervention by the police had prevented the escalation of violence to extreme and devastating consequences.

174. The court observes that Russian law does not contain a definition of "mass disorder", and it accepts that this term might be imprecise, akin to "riot" or "breach of public order", which it has already examined in a similar context (see *Kudrevičius and Others*, cited above, §§ 113-14). Having noted that it would be unrealistic to require a legislator to formulate general rules without some degree of abstraction, the Court considered that the requirement of lawfulness would be satisfied if the domestic courts' interpretation of these terms was neither arbitrary nor unpredictable, and if their use bore reasonable relation to the circumstances at hand.

175. In the present case, the Court is sensitive to the applicant's arguments that the incidents of disorderly behaviour and violence were localised and, moreover, that they were compounded by the authorities' own conduct. Even so, it was the scale rather than the nature of the events that might have placed them at the limit of Article 212 of the Criminal Code, but the applicability of this provision was not entirely inconceivable. Even if the

Court were to disagree with the domestic courts' assessment of the situation, it considers that they took their decision after a thorough assessment of all the relevant evidence and within the margin of their judicial discretion. As such, the applicant's criminal conviction may not be considered "unlawful" on the grounds put forward by the applicant. The question whether it was justified to apply this provision to the applicant personally will be examined under the head of proportionality (see paragraph 177 et seq. below).

176. Turning to the existence of a legitimate aim, the Court accepts that the authorities pursued the legitimate aims of preventing disorder and crime and the protection of the rights and freedoms of others.

177. As to whether the applicant's criminal conviction was "necessary in a democratic society", the Court notes that the applicant was found guilty of two criminal offences, namely participation in mass disorder (Article 212 of the Criminal Code) and of violent acts against police officers (Article 318 of the Criminal Code). Under these provisions he was sentenced to two years and three months' imprisonment for attending an authorised public assembly, chanting anti-government slogans, and throwing an unidentified small round object which hit a police officer on the shoulder and caused him pain. It is noteworthy that the sentence under Article 318 for using violence against a public official, namely for throwing the yellow object, that of nine months' imprisonment, although already a severe one, was significantly more lenient than the partly concurrent twenty-one-month sentence for participation in mass disorder.

178. The main justification advanced by the Government for such a harsh sentence was the serious risk of potential civil unrest, in particular the threat to political stability and public order. The gravity of the punishment was thus attributable to the general context in which the applicant had assaulted the policeman, and not to the harm he had actually caused. In any event, the physical damage caused by the yellow object to officer F. was limited to short-term pain. Regard being had to other acts imputed to the applicant, it turns out that the applicant's staying at the site of the rally and chanting anti-government slogans accounted for a staggering one-and-a-half-year addition to his prison term. These acts, unlike tossing the yellow object, were peaceful and constituted protest, a form of expression protected by Article 10 of the Convention (see *Taranenko*, cited above, § 70, and the cases cited therein). If the domestic courts were to take into account that the applicant had committed those acts in connection with the exercise of freedom of expression and freedom of assembly, they should have considered it a mitigating factor. Quite to the contrary, they penalised the applicant for the political message he intended to express by his presence at the venue and by chanting non-violent political slogans.

179. The Court accepts that there may have been a number of individuals in the crowd who contributed to the onset of clashes between the

protesters and the police. In the present case, the Court considers it crucial that the applicant was not found to be among those responsible for the initial acts of aggression; he threw the yellow object at the height of the clashes, when the police were already arresting the protesters. The domestic courts also noted that the applicant's participation in mass disorder had been insignificant and gave him on that basis a sentence below the three-year statutory minimum, although still an extremely heavy one.

180. Given the applicant's minor role in the assembly and his only marginal involvement in the clashes, the Court does not consider that the risks referred to by the Government – potential civil unrest, political instability and threat to public order – had any personal relation to the applicant. These reasons could not therefore justify the sentence of two years and three months, which was, moreover, served in full. The Court considers that there was no "pressing social need" to sentence the applicant to a prison term of this duration.

181. It must be stressed, moreover, that the applicant's criminal conviction, and especially the severity of his sentence, could not but have had the effect of discouraging him and other opposition supporters, as well as the public at large, from attending demonstrations and, more generally, from participating in open political debate. The chilling effect of his sanction was further amplified by the large-scale proceedings in this case which attracted widespread media coverage.

182. The Court concludes that in view of the severity of the sanction imposed on the applicant his criminal conviction was a measure grossly disproportionate to the legitimate aims of preventing disorder and crime and the protection of the rights and freedoms of others, and it was therefore not necessary in a democratic society.

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

VII. ALLEGED VIOLATION OF ARTICLE 18 OF THE CONVENTION

184. The applicant complained under Article 18 of the Convention that the criminal proceedings against him had pursued the aim of undermining his right to freedom of assembly. The Court considers that this complaint falls to be examined under Article 18 in conjunction with Article 11 of the Convention. Article 18 of the Convention reads as follows:

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

185. In their submissions under this head the parties reiterated their arguments as regards the alleged interference with the right to freedom of assembly.

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

187. It has found above that the applicant's criminal conviction was not necessary in a democratic society and that this had had an effect of preventing or discouraging him and others from participating in protest rallies and engaging actively in opposition politics (see paragraphs 180-81 above).

188. Having regard to those findings, the Court considers that the complaint under Article 18 in conjunction with Article 11 of the Convention raises no separate issue and it is not necessary to examine whether, in this case, there has been a violation of that provision.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

189. 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

190. The applicant claimed 1,000,000 euros (EUR) in respect of non-pecuniary damage.

191. The Government contested this claim as unreasonable and excessive.

192. The Court observes that it has found a violation of Articles 3, 5, 6, and 11 of the Convention in respect of the applicant. In these circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, it awards the applicant EUR 12,500 in respect of non-pecuniary damage.

193. Furthermore, the Court refers to its settled case-law to the effect that when an applicant has suffered an infringement of his rights guaranteed by Article 6 of the Convention, he should, as far as possible, be put in the position in which he would have been had the requirements of that provision not been disregarded, and that the most appropriate form of redress would, in principle, be the reopening of the proceedings, if requested (see, *mutatis mutandis*, *Öcalan v. Turkey* [GC], no. 46221/99, § 210 *in fine*, ECHR 2005-IV, and *Sakhnovskiy*, cited above, § 112). This applies to the applicant in the present case. The Court notes, in this connection, that Article 413 of the Code of Criminal Procedure provides a basis for the

reopening of the proceedings if the Court finds a violation of the Convention.

B. Costs and expenses

194. The applicants did not submit any claims under this head. Accordingly, there is no call to award him any sum on that account.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the complaints raised under Article 3 of the Convention concerning the conditions of detention and transfer, the alleged failure to provide medical assistance and the placement in the glass cabins in courtrooms, and under Articles 5, 6, 10, 11 and 18 of the Convention admissible and the remainder of the applications inadmissible;

3. *Holds* that there has been no violation of Article 3 of the Convention in respect of the conditions of detention in the remand prisons;

4. *Holds* that there has been no violation of Article 3 of the Convention as regards the alleged failure to provide the applicant with the adequate medical assistance;

5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the conditions of transfer to and from the court-house;

6. *Holds* unanimously, that there has been a violation of Article 3 of the Convention on account of confinement in a glass cabin in hearing room no. 338 of the Moscow City Court;

7. *Holds* that there has been no violation of Article 3 of the Convention on account of confinement in a glass cabin in hearing room no. 635 of the Moscow City Court;

8. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

9. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (b) and (c) of the Convention;

10. *Holds* that there is no need to examine the remaining complaints under Article 6 of the Convention;

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

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

13. *Holds*
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 12,500 (twelve thousand five hundred euros) plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 4 October 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Luis López Guerra President