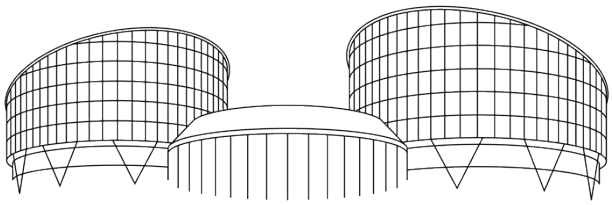

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF BERLADIR AND OTHERS v. RUSSIA

(Application no. 34202/06)

JUDGMENT

STRASBOURG

10 July 2012

FINAL

19/11/2012

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

In the case of Berladir and Others v. Russia,

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

Nina Vajić, *President,*
Anatoly Kovler,
Elisabeth Steiner,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 19 June 2012,

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

PROCEDURE

1. The case originated in an application (no. 34202/06) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by ten Russian nationals, Mr Vasiliy Anatolyevich Berladir, Mr Aleksandr Edmundovich Guryanov, Ms Viktoriya Borisovna Ignatyeva, Mr Yuriy Borisovich Lyakhov, Mr Pavel Anatolyevich Marchenko, Mr Oleg Petrovich Orlov, Mr Andrey Zbignevich Rachinskiy, Mr Yan Zbignevich Rachinskiy, Ms Yelena Zusyevna Ryabinina and Mr Serguey Yuriyevich Trifonov ("the applicants"), on 21 August 2006.

2. The applicants were represented by lawyers of the EHRAC-Memorial Moscow Office. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 17 June 2010 the Court decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1968, 1950, 1944, 1949, 1973, 1953, 1956, 1958, 1955 and 1965 respectively. They live in Moscow.

A. The "Right March" and the counter-march and demonstration

5. In November 2005 the Moscow city administration authorised a public gathering called "the Right March" by a number of non-governmental organisations such as the Movement against Illegal Immigration and the Eurasian Youth Movement. The declared aim of the event was to commemorate the liberation of Moscow from occupation and to express the participants' dissatisfaction with the flow of immigration into Russia. This public event included a parade from the Chistiye Prudy underground station down to Slavyanskaya Square, where a demonstration was held. The event lasted for some two and a half hours and attracted several thousand people, according to the applicants. Reportedly, a number of participants shouted "Russia for Russians, Moscow for Moscovites!" and displayed banners with slogans such as "Let's clean the unwelcome guests out of the city!"; "Chechens, the war is over. It's time to go home!" or "Russia belongs to us!"

6. Following the above event a "steering committee for an anti-fascist march" was formed, which included representatives of various human rights organisations. It was decided to hold a public gathering on 27 November 2005 to mark their opposition to the values proclaimed by the "Right March". The event was planned to progress through several streets in central Moscow to Tverskaya Square (near the Moscow mayor's office), where they would hold a demonstration. On 23 November 2005 the city administration stated that they would give permission only for the demonstration. The administration also wanted it to be held in a different place (Tverskaya Zastava Square) and for one hour instead of two.

7. The organisers did not challenge in court the conditions imposed by the mayor's office. Instead, they preferred to withdraw their application to hold the march as planned, apparently considering that the modified conditions would work against the aims they sought to achieve by holding a public gathering.

8. Instead, the organisers opted to picket Tverskaya Square on the same date (27 November 2005 from 2 p.m. to 4 p.m.) next to the Dolgorukiy monument; they expected that up to fifty people would join the picket (*пикетирование*). There they intended to express their disagreement with the mayor's office as to the location of the previously planned march and demonstration. It does not appear that this new event was meant any longer to be a direct reply to the "Right March".

9. On 23 November 2005 thirteen persons, including one of the applicants (Mr Orlov), gave notice of the event, this time to the district authority, in order to comply with the Public Gatherings Act (see "Relevant domestic law and practice" cited in paragraph 19 below).

10. In a letter of 24 November 2005 referring to the "security of the participants" and the need to avoid causing obstruction to pedestrians and

vehicles, the district authority suggested that this new event also be held in Tverskaya Zastava Square instead of Tverskaya Square from 2 p.m. to 3 p.m. It was explained that under a 1998 order the area around the Dolgorukiy monument was restricted to service vehicles of the mayor's office. The organisers of the new event sent a letter expressing their disagreement with the authorities' decision. On the same day, they informed the mayor's office that they were no longer intending to hold a march and a demonstration as initially planned, in view of the mayor's reply of 23 November 2005.

11. Prior to the date of the event, the organisers did not challenge in court the conditions imposed on the event by the district authority (see, however, the court decisions of 30 March and 3 October 2006 below). Instead, despite the position of the district authority, the organisers decided to hold a public gathering in Tverskaya Square on 27 November 2005 at 2 p.m. The special security squad proceeded to arrest some participants, allegedly without giving them time or opportunity to disperse after a verbal order to do so.

12. The applicants, with fifty other people, were taken to the Tverskoy police station and remained there until 7 p.m., while various records, including administrative offence records, were compiled.

B. Proceedings before the national courts

13. On 29 and 30 November 2005 the Justice of the Peace delivered judgments finding the applicants guilty of a breach of the procedures for public gatherings (Article 20.2 of the Code of Administrative Offences). They were ordered to pay a fine of 1,000 Russian roubles (RUB) (except for the ninth applicant who had to pay RUB 500). The Justice of the Peace referred to the district authority's letter of 24 November 2005 concluding that the public gathering was unlawful.

14. The court held as follows in respect of the first applicant:

> "Under the Public Gatherings Act, a picket means an expression by one person or several people of his or their opinion in public, by way of displaying posters, banners and other means of visual propaganda, albeit without movement or use of sound-amplifying technical means ... It follows from the Act that a right to hold public gatherings entails a corresponding duty of the public authorities. It should be noted that representatives of the relevant public authorities should be appointed to ensure the lawfulness of the event, public safety and public security. Thus, to enable the event participants and the public officers to fulfil their obligations and duties, there should be rules laid down for the event ...
>
> It follows from the material available that despite the orders of the police the event participants refused to stop the picket and thus committed a premeditated administrative offence ... It has not been established that the [applicant] acted as one of the event organisers. However, his actions disclosed a violation of the procedures for public gatherings because he did participate in a picket in a venue which had not

been assigned for this purpose. At the same time, the court notes that he intended to take part in a public event and to express his opinion in relation to issues of general and political interest. He should also have observed the rules laid down for the event. However, failing to respect the circumstances, which were significant for the event and the police orders, he refused to stop the picket."

The court made similar findings in respect of other applicants, except for Mr Orlov.

15. The court added in respect of Mr Orlov as follows:

"...The circumstances of the case and Mr Orlov's actions disclosed a violation of the procedure for a picket because no proper notification had been made to the competent public authority in relation to the picket..."

16. The applicants appealed. By separate appeal decisions taken between 22 February and 10 April 2006 the Tverskoy District Court of Moscow upheld the decisions taken by the Justice of the Peace.

17. In separate proceedings Mr Orlov and another person sought to challenge the position taken by the district authority in its letter of 24 November 2005. In a judgment of 30 March 2006 the Taganskiy District Court of Moscow cited the relevant legislative provisions and concluded that the circumstances of the case did not disclose any violation of those provisions. On 3 October 2006 the Moscow City Court endorsed the above conclusion on appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Russian Constitution

18. Under Article 31 of the Russian Constitution, citizens have a right of peaceful assembly. This right can be limited by a federal statute in so far as it is necessary to protect the constitutional regime, morals, health or rights or interests of others (Article 55 § 3 of the Constitution).

B. The 2004 Public Gatherings Act

19. Under sections 5 and 7 of the 2004 Public Gatherings Act in force at the relevant time, the organiser of a public event (except for an event involving one person) was to inform the competent authority of the event at least ten days in advance (at least three days in advance for a picket (*пикетирование*)). The organiser was required to indicate the purpose of the event, its form, the venue and the itinerary, as well as the date, timing and approximate number of participants.

20. The competent authority was to notify the organiser if it had a reasoned proposal for another venue and/or timing for the event. The

organiser was required to inform the competent authority whether he or she refused or accepted the suggested new venue and/or timing.

21. The event could not take place if the event organiser and authority had not approved the alternative proposal (section 5 § 5).

22. A public event could be stopped if (i) there was a real threat to life or physical integrity of persons or property; (ii) the event participants had acted unlawfully or if the event organiser had knowingly breached the requirements of the Act as regards the conduct of the event (section 16). In such circumstances the representative of the public authority, who should be present at the event, could order the event organiser to put an end to the event. This representative should also explain the reasons for such order and should provide time for compliance with the above order. If the organiser had not complied, the public official could issue the same order to the participants. If both failed to comply, the police was to take the appropriate measures to stop the event (section 17).

23. A public event could not be held in zones close to dangerous industrial objects, the residences of the President of the Russian Federation, court buildings or prisons (section 8).

C. Code of Administrative Offences of 30 December 2001

24. Under Article 20.2 § 2 of the Code a violation of the procedure concerning a public gathering is punishable by a fine.

D. Other legal acts

25. By order no. 1471-RP of 30 December 1998, the Moscow city mayor introduced regulations concerning city-hall parking areas for service vehicles, including on Tverskaya Square, for some eighty vehicles (during weekdays, not Sundays or public holidays).

THE LAW

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

26. The applicants complained that the restrictions on them by the Russian authorities (the change to the event venue and timing, and their prosecution for an administrative offence), had been in breach of Articles 10 and 11 of the Convention.

27. Articles 10 and 11 of the Convention read as follows:

Article 10 (freedom of expression)

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority ...

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

Article 11 (freedom of assembly and association)

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others ...

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. The parties' submissions

1. The Government

28. The Government argued that the present application should be dismissed under Article 35 § 3 (b) of the Convention because the applicants had not suffered any significant disadvantage in view of the small fines which had been imposed on them.

29. As to the substance of the complaint, the Government submitted that the organisers of the public event in the present case had, as required by Russian law, notified the city administration of their intention to hold a public event. In reply, they had been offered the possibility of reconsidering the event's timing and location, as also authorised by Russian law. A change of venue could not breach the applicants' right of assembly. It was reasonable for the Russian authorities to change the venue of a public event and the number of participants. Failure by the organisers or participants to comply with the requirements of the legislation gave rise to a dispersal of the event and prosecution of the organisers in administrative court proceedings.

30. In the Government's submission, the Moscow authority had provided sufficient reasons for disapproving the event venue as suggested by its organisers. Having received the authority's offer to change the event venue and/or timing, the event organisers should have either accepted the offer or abstained from holding the event. In both situations they should have informed the authority. The organisers in the present case had rejected a reasonable proposal based on the position that their event in Tverskaya Square would have obstructed the functioning of a parking area, traffic flow and the passage of pedestrians in the very centre of Moscow city. Also, the event in Tverskaya Square would have contravened section 8 of the Public Gatherings Act, prohibiting public events in certain designated areas. The applicants could have held their event in Tverskaya Zastava Square, which was also in the city centre and had more space. The event participants had been given time to leave Tverskaya Square in order to move to Tverskaya Zastava Square to continue the event. The fines imposed on the applicants were not high or disproportionate. Lastly, the Government argued that there had been no interference with the applicants' right under Article 10 of the Convention.

2. The applicants

31. The applicants submitted that the authorities' suggestion to change the venue of the "demonstration", the forceful termination of the "demonstration", their arrest and the fines imposed in the administrative proceedings constituted an interference with their right of peaceful assembly under Article 11 of the Convention, considered in the light of Article 10. In the applicants' view, the applicable legislation did not meet the quality of law required under the Convention because this legislation did not indicate the scope of a public authority's discretionary power to change or restrict the location or time of a proposed gathering. The legislation did not determine the legal consequences of non-compliance with the authority's alternative proposal regarding the venue and/or timing of the event. It was not clear whether failure to comply with the proposal entailed administrative liability.

32. Nor did the legislation provide for a mechanism for resolving any disagreement arising from such proposal between the event organisers and the authority. The event organisers would normally have no other option but to initiate a potentially cumbersome judicial procedure. It should not have been open to a public authority to change an event venue, thereby impinging upon the very essence of the right of peaceful assembly.

33. There had been no lawful basis for terminating and dispersing the event in the present case. The authority's reasoning expressed in the letter of 24 November 2005 did not make it clear why it was impossible, taking into account a compelling public interest, to hold the event as planned. The authority provided no sufficient reasons for reducing the duration of the

event from two hours to one. The event was planned for a limited number of persons, to be held on a Sunday when the car park was not in use. In any event, it was unlikely there would be any undue disruption to road traffic.

B. The Court's assessment

1. Admissibility

34. Besides a mere reference to the amount of fines against the applicants, the Government have not explained why they consider that the applicants have suffered no "significant disadvantage" (see, among others, *Giuran v. Romania*, no. 24360/04, §§ 21-23, ECHR 2011 (extracts), and *Van Velden v. the Netherlands*, no. 30666/08, §§ 37-39, 19 July 2011). Furthermore, no submissions have been made on two "safeguard clauses" contained in Article 35 § 3 (b). Noting the nature of the issues raised in the present case, which also arguably concerns an important matter of principle, as well as the scope of the limitations, the Court does not find it appropriate to dismiss the present application with reference to Article 35 § 3 (b) of the Convention.

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

2. Merits

36. The Court considers that it is appropriate to examine this case under Article 11 of the Convention, in the light of Article 10.

(a) General principles

37. The Court considers that the right to freedom of assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such society (see *Djavit An v. Turkey*, no. 20652/92, § 56, ECHR 2003-III).

38. The Court reiterates that although a demonstration in a public place may cause some disruption to ordinary life, including disruption of traffic, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of its substance (see *Galstyan v. Armenia*, no. 26986/03, §§ 116 and 117, 15 November 2007; *Bukta and Others v. Hungary*, no. 25691/04, § 37, ECHR 2007-III; *Oya Ataman v. Turkey*, no. 74552/01, §§ 38-42, ECHR 2006-XIII; and *Akgöl and Göl v. Turkey*, nos. 28495/06 and 28516/06, § 43, 17 May 2011).

39. In order to enable the domestic authorities to take the necessary preventive security measures, associations and others organising demonstrations, as actors in the democratic process, should respect the rules governing that process by complying with the regulations in force. Nevertheless, an unlawful situation does not necessarily justify an infringement of freedom of assembly; regulations of this nature should not represent a hidden obstacle to freedom of peaceful assembly as protected by the Convention (see *Samüt Karabulut v. Turkey*, no. 16999/04, § 35, 27 January 2009, with further references).

40. In that connection, the Court has previously considered that notification, and even authorisation, procedures for a public event do not normally encroach upon the essence of the right under Article 11 of the Convention as long as the purpose of the procedure is to allow the authorities to take reasonable and appropriate measures in order to guarantee the smooth conduct of any assembly, meeting or other gathering, be it political, cultural or of another nature (see *Sergey Kuznetsov v. Russia*, no. 10877/04, § 42, 23 October 2008, and *Rai and Evans v. the United Kingdom* (dec.), nos. 26258/07 and 26255/07, 17 November 2009).

41. An authorisation procedure is in keeping with the requirements of Article 11 § 1, if for the purpose of enabling the authorities to ensure the peaceful nature of a meeting. Thus, the requirement to obtain authorisation for a demonstration is not incompatible with Article 11 of the Convention. Since States have the right to require authorisation, they must be able to apply sanctions to those who participate in demonstrations that do not comply with the requirement (see *Ziliberberg v. Moldova* (dec.), no. 61821/00, 4 May 2004, and *Rai and Evans*, cited above).

42. Prior notification serves not only the aim of reconciling the right of assembly with the rights and lawful interests (including the freedom of movement) of others, but also the aim of prevention of disorder or crime. In order to balance these conflicting interests, the institution of preliminary administrative procedures appears to be common practice in Member States when a public demonstration is to be organised (see *Éva Molnár v. Hungary*, no. 10346/05, § 37, 7 October 2008).

43. At the same time, in special circumstances when an immediate response might be justified, for example in relation to a political event in the form of a spontaneous demonstration, to disperse the ensuing demonstration solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, may amount to a disproportionate restriction on freedom of peaceful assembly (see *Bukta and Others*, cited above, §§ 35 and 36).

44. Furthermore, the Court reiterates that strong reasons are required for justifying restrictions on political speech or speech on serious matters of public interest, as broad restrictions imposed in individual cases would

undoubtedly affect respect for freedom of expression in general in the State concerned (see *Karman v. Russia*, no. 29372/02, § 36, 14 December 2006; *Feldek v. Slovakia*, no. 29032/95, § 83, ECHR 2001-VIII; and *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61, ECHR 1999-IV).

45. The Court further reiterates that the Contracting States have a margin of appreciation in making the proportionality assessment under the second paragraph of Article 10 or 11. However, that goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, the Court being empowered to give the final ruling on whether a "restriction" is reconcilable with Convention rights. The expression "necessary in a democratic society" in Article 10 § 2 or 11 § 2 of the Convention implies that the interference corresponds to a "pressing social need" and, in particular, that it is proportionate to the legitimate aim pursued. The Court also notes at this juncture that, whilst the adjective "necessary", within the meaning of Article 10 § 2 or 11 § 2 is not synonymous with "indispensable", it remains for the national authorities to make the initial assessment of the reality of the pressing social need implied by the notion of "necessity" in this context (see *Handyside v. the United Kingdom*, 7 December 1976, § 48, Series A no. 24).

46. When the Court carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review under Article 10 or 11 the decisions that they delivered. This does not mean that it has to confine itself to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; it must look at the interference complained of in the light of the case as a whole and determine, after having established that it pursued a "legitimate aim", whether it was proportionate to that aim and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 11 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 47, *Reports of Judgments and Decisions* 1998-I).

(b) Application of the principles in the present case

(i) Interference

47. First, the Court has to determine the nature and scope of the alleged interference by the State in the present case *vis-à-vis* the applicants. The applicants complained about the application of the notification and endorsement procedure in relation to the event in question, making such non-endorsed event unlawful and, by implication, entailing its dispersal and making participation in it also punishable by law.

48. Having regard to the domestic legislation, the Court observes that at the material time no authorisation was required for public gatherings. The Court agrees with the Government that the Moscow authorities did not ban public events. However, by operation of national law, a public event could not occur lawfully if the event organiser had dismissed a public authority's proposal for another venue and/or timing for the event. If the organiser still proceeded with the event, it could be dispersed (see paragraph 22 above). Under Russian law this course of action, including mere participation in the event, was punishable under the Code of Administrative Offences (see paragraph 24 above).

49. In the present case, the organisers decided to proceed with their event on the scheduled date in the planned location, and the applicants participated in it. It appears that since the dispersal was quite prompt the applicants – together with their fellow participants in the public gathering – did not have sufficient time to manifest their views (see by way of comparison *Éva Molnár*, cited above, § 43). The Court also observes, and it was not disputed by the Government, that the applicants were then taken to a police station, remained there for some hours and were found guilty of an administrative offence in relation to their participation in the public gathering, in a given venue at a given time, which was an unlawful or non-endorsed assembly.

50. In view of these considerations, the Court considers that since the applicants were negatively affected by the situation there has been an interference with the exercise of their freedom of peaceful assembly guaranteed by Article 11 § 1 of the Convention, this right being guaranteed to persons organising as well as participating in a public gathering (see *Djavit An*, cited above, § 56; *Patyi and Others v. Hungary*, no. 5529/05, §§ 25-27, 7 October 2008, and *The United Macedonian Organisation Ilinden and Ivanov v. Bulgaria*, no. 44079/98, § 103, 20 October 2005). In fact, the existence of the interference and the applicants' standing were not disputed by the respondent Government.

51. Thus, the Court has to determine whether the interference in the present case was justified under the second paragraph of Article 11 of the Convention.

(ii) Justification for the interference

52. It is the Court's established case-law that an interference with a person's right to freedom of peaceful assembly and freedom of expression will be in breach of Articles 10 and 11 of the Convention unless it can be justified under paragraphs 2 of these Articles as being "prescribed by law", as pursuing one or more of the legitimate aims listed therein, and as being "necessary in a democratic society" in order to achieve the aim or aims concerned.

53. The Court observes that the interference in the present case was prescribed by law, namely the relevant provisions of the Public Gatherings Act and the Code of Administrative Offences providing for fines to be imposed for breaching the rules of the Act (see paragraphs 20-22 and 24 above).

54. The Court has previously considered that reasonable notification or authorisation procedures for a public event do not normally encroach upon the essence of the right under Article 11 of the Convention as long as the purpose of the procedure is to allow the authorities to take reasonable and appropriate measures in order to guarantee the smooth conduct of a public gathering (see the cases cited in paragraphs 40-41 above). In *Rai and Evans*, also cited above, the Court dismissed as unsubstantiated the applicants' argument that the pre-authorisation requirement was, of itself, a deterrent on demonstrations. The Russian notification-and-endorsement procedure is just one example among others of the variety of systems existing in Europe, and it is not the Court's task to standardise them. Importantly, in cases arising from individual petitions the Court's task is not to review the relevant legislation or an impugned practice in the abstract. Instead, it must confine itself, as far as possible, without losing sight of the general context, to examining the issues raised by the case before it. Here, therefore, the Court's task is not to review, *in abstracto*, the compatibility with the Convention of the above procedure, but to determine, *in concreto*, the effect of the interference, as determined in paragraph 47 above, on the right to freedom of assembly, assessed in the light of freedom of expression (see, as a recent authority, *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, §§ 68-70, 20 October 2011). In the present case, the Court will focus on the proportionality analysis, in particular as regards the administrative offence proceedings against the applicants.

55. The applicants decided to hold a march on 27 November 2005 to mark their opposition to the values proclaimed by another public event (see paragraph 6 above). While being dissatisfied with the authorities' proposal for another venue, the organisers did not challenge it but preferred to withdraw their application. Instead, on 23 November 2005 the organisers opted to picket Tverskaya Square on the same date (27 November 2005), which is the main thrust of the present application before the Court. There they intended to express their disagreement with the mayor's office as to the location of the previously planned march and demonstration.

56. Notably, unlike some other cases before the Court (see, for instance, *Barankevich v. Russia*, no. 10519/03, § 28, 26 July 2007, and *Makhmudov v. Russia*, no. 35082/04, § 66, 26 July 2007), the Russian authorities did not ban the public gathering. Instead, they provided the organisers with a swift reply suggesting another venue. Despite the requirement of the national law (see paragraph 20 above), the organisers failed, without any valid reason, to accept the authorities' proposal thereby rendering more difficult the

authorities' task of ensuring security and taking the necessary preparatory measures for the planned event, within relatively compelling time constraints which were, at least in part, due to the event organisers.

57. Furthermore, the Court observes that under section 5 § 5 of the Public Gatherings Act a public gathering could not take place if the event organiser and the competent public authority had not approved any alternative proposal. The applicants, who were aware of the above, failed to display diligence and placed themselves and other participants in a situation of unlawfulness when they held a public gathering in the planned location. There was no particular urgency or compelling circumstances which could have justified this course of action (see, by way of comparison, *Bukta and Others*, cited above, §§ 35 and 36).

58. The Court reiterates the principle according to which, notwithstanding the acknowledged importance of freedom of expression, Article 10 does not bestow any freedom of forum for the exercise of that right, as regards entry to private property, or even, necessarily, to all publicly owned property (see *Appleby and Others v. the United Kingdom*, no. 44306/98, § 47, ECHR 2003-VI). Moreover, the Court is not convinced that the applicants' preference for the location of the assembly, in the circumstances of the case, outweighed the reasons provided by the authorities. Indeed, the Russian authorities referred to the security of the participants and the need to avoid causing obstruction to pedestrians and vehicles. The Court considers that in the circumstances of the case the national authorities acted within their margin of appreciation and provided sufficient reasons, referring to a legitimate aim, for opposing the event in the planned location.

59. As a general rule, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and it is for the latter to establish the facts on the basis of the evidence before them (see, among other authorities, *Klaas v. Germany*, 22 September 1993, § 29, Series A no. 269). Having examined the domestic decisions, the Court does not find reasons to disagree with their assessment, in particular as regards the alleged obstruction of passage which was a relevant and sufficient reason for the interference.

60. Importantly, it is not overlooked that both before and during the event the applicants were afforded, but did not use, an opportunity to express their views in another venue chosen by the public authority. The applicants could have held their event in Tverskaya Zastava Square, which is also in the city centre and, apparently, had more space. They have not adduced any argument which would convince the Court to doubt that the authorities' alternative proposal was not such as to allow the effective exercise by the applicants of their right to freedom of assembly.

61. In view of the above considerations, the Court does not find it disproportionate that the domestic courts concluded that the applicants'

actions amounted to an administrative offence and imposed small fines on them. The Court considers that the decisions of the national authorities in the present case were based on an acceptable assessment of the relevant facts and contained relevant and sufficient reasons which justified the interference with the applicants' right of assembly and freedom of expression. This interference was proportionate and necessary to prevent disorder or protect the rights and freedoms of others, within the meaning of the second paragraph of Articles 10 and 11.

62. There has therefore been no violation of Article 11 of the Convention, read in the light of Article 10.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the application admissible;

2. *Holds* by five votes to two that there has been no violation of Article 11 of the Convention, read in the light of Article 10.

Done in English, and notified in writing on 10 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges N. Vajić and A. Kovler is annexed to this judgment.

N.A.V.
S.N.

JOINT DISSENTING OPINION OF JUDGES VAJIĆ AND KOVLER

We cannot share the majority's conclusions that there has been no violation of Article 11 of the Convention, read in the light of Article 10, for the following reasons.

First of all, the parties disagreed as to whether the interference was prescribed by law, whether the domestic regulations satisfied the quality-of-law requirement and whether the interference served a legitimate aim and was proportionate.

The applicants saw the operation of the notification-and-endorsement procedure under Russian law as the principal reason for the alleged infringement of their Convention rights. This procedure had a wide scope since it encompassed various types of public event involving more than one person (demonstrations, marches, etc.) and any public area, while a separate prohibitive rule also concerned certain designated areas considered sensitive from a security point of view (see paragraph 19 of the judgment). The procedure had to be complied with irrespective of the number of participants and the planned length of the event.

We agree with the Court's conclusion that the Russian notification-and-endorsement procedure is just one example among others of the variety of systems existing in Europe, and it is not the Court's task to standardise them. Thus, the Court's task is not to review, *in abstracto*, the compatibility with the Convention of the above procedure, but to determine, *in concreto*, the effect of the interference on the right to freedom of assembly, assessed in the light of freedom of expression.

It is common ground between the parties that in the present case the organisers submitted the public gathering notice within the statutory time-limit prior to the planned event. It is also undisputed that the authorities were thus able to make necessary preparations for the event. It is not in dispute between the parties that the issue to be raised during the public gathering in question was part of a political debate on a matter of general and public concern.

No proper reasons were given at the domestic level for reducing the event's duration. As to the venue of the event, while understanding the applicants' preference (a location near the Moscow mayor's office), the Court has reiterated on many occasions the principle according to which, notwithstanding the acknowledged importance of freedom of expression, Article 10 does not bestow any freedom of forum for the exercise of that right, as regards entry to private property, or even, necessarily, to all publicly owned property (see *Appleby and Others v. the United Kingdom*, no. 44306/98, § 47, ECHR 2003-VI). At the same time, the Court has also reiterated that where the location of the assembly is crucial to the participants, an order to change it may constitute an interference with their

freedom of assembly under Article 11 of the Convention, which is at the heart of the present case (see *The United Macedonian Organisation Ilinden and Ivanov v. Bulgaria*, no. 44079/98, § 103, 20 October 2005, and *Van den Dungen v. the Netherlands*, no. 22838/93, Commission decision of 22 February 1995).

The Government's reference to section 8 of the Public Gatherings Act, prohibiting public events in certain designated areas, was not relied upon in the domestic proceedings and was first raised before the Court. At the same time, it should be accepted that in the present case the national authorities provided some reasons for opposing the event in the planned location. As to the grounds mentioned by the Russian authorities, they referred to the security of the participants and the need to avoid causing obstruction to pedestrians and vehicles. They also mentioned that the area around the Dolgorukiy monument was restricted to service vehicles of the mayor's office.

It must be noted that the public event in question related to the allegedly abusive exercise by Moscow authorities of their discretionary powers *vis-à-vis* the right of peaceful assembly of others. In the circumstances of this case, we do not find particularly convincing the domestic authorities' mere reference to the security of participants. We also observe that there is no doubt that the applicants' attitude during the event was a peaceful one. As to the alleged obstruction of passage, it does not appear that the parking area was in use on Sundays (see paragraph 25 of the judgment). It is also noted that under the domestic definition, a "picket" meant a static gathering of people, including a display of posters or banners. Thus, it does not appear that it implied any substantial movement, as compared, for instance, with a march or procession.

It is not overlooked that both before and during the event the applicants were afforded, but did not use, an opportunity to express their views in another venue chosen by the public authority. The Government argued that the applicants could have held their event in Tverskaya Zastava Square, which is also in the city centre and has more space. As a general rule, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and it is for the latter to establish the facts on the basis of the evidence before them (see, among other authorities, *Klaas v. Germany*, 22 September 1993, § 29, Series A no. 269). However, it was not shown in the domestic proceedings, and we could not establish on the basis of the available material, that the authorities' alternative proposal was such as to allow the effective exercise by the applicants of their right to freedom of assembly, especially taking into account the fact that the demonstration was intended to express disagreement with the mayor's office decision as to the location of the previously planned march and demonstration (see paragraph 8 of the judgment).

Secondly, the following considerations concerning judicial review and administrative offence proceedings in the applicants' cases should have had a bearing on the Court's proportionality analysis in the present case.

It appears that the public event could not take place lawfully if the event organiser did not accept the public authority's proposal for another venue and/or timing for the event. The disagreeing applicants were either to abstain from the activity or to expose themselves to the possibility of dispersal and prosecution, without any effective means of obtaining swift judicial review of the administrative decision.

Indeed, the judicial review decisions in the present case were issued after the event and did not contain any adequate proportionality analysis, which is a requirement under Article 11 of the Convention. In fact, it appears that no effective legal remedies were available at the time so as to provide prompt redress in the applicants' situation (see *Alekseyev v. Russia*, nos. 4916/07, 25924/08 and 14599/09, § 98, 21 October 2010). It is not evident that a remedy was sufficiently established and available in practice in November 2005. In particular, it does not appear that there were any specific procedures or time-limits for such cases.

Furthermore, when deciding whether the applicants had committed the relevant administrative offence, the domestic courts had to establish that they had knowingly breached certain provisions of the Public Gatherings Act as regards participation in a public event. It does not appear that it was incumbent on the domestic courts to look into the question whether the authorities' blocking of the event as planned and the corresponding alternative proposal for another venue were lawful or otherwise in conformity with national law or the Convention. Apparently, in the absence of any final judgment on judicial review, the courts dealing with administrative offence cases proceeded on the assumption that the administrative decision was lawful.

Whilst it is true that the respondent State may impose sanctions on those who participate in demonstrations that do not comply with the permissible system of authorisation or notification, we consider that the decisions of the national authorities in the present case did not contain sufficient reasons which could have justified the interference with the applicants' right of assembly and freedom of expression. The fact that the amounts of the fines were relatively small does not detract from the fact that the interference with the applicants' rights was disproportionate and was not necessary to prevent disorder or protect the rights and freedom of others, within the meaning of the second paragraph of Articles 10 and 11.

We conclude that there has been a violation of Article 11 of the Convention, read in the light of Article 10.