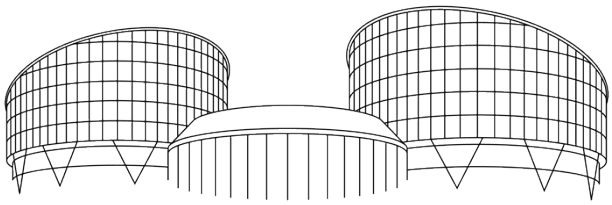

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF MALOFEYEVA v. RUSSIA

(Application no. 36673/04)

JUDGMENT

STRASBOURG

30 May 2013

FINAL

30/08/2013

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

In the case of Malofeyeva v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Ksenija Turković,
Dmitry Dedov, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 7 May 2013,

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

PROCEDURE

1. The case originated in an application (no. 36673/04) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Ms Antonina Vasilyevna Malofeyeva ("the applicant"), on 12 August 2004.

2. The Russian Government ("the Government") were represented by Mr A. Savenkov and then by Mr G. Matyushkin, acting and current Representatives of the Russian Federation at the European Court of Human Rights respectively.

3. The applicant alleged that she had not been promptly informed of the reasons for her arrest on 27 November 2003 and that her appeal against the detention order of the same date had not been examined speedily; that her detention from 7 to 14 June 2005 had been arbitrary; that the related administrative offence proceedings had not been public and fair; and that the dispersal of the demonstration and her conviction in the above proceedings had also impinged upon her freedom of expression and freedom of assembly. She referred to Articles 5, 6, 10 and 11 of the Convention.

4. On 18 March 2008 the application was communicated 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

5. The applicant was born in 1953 and lives in Irkutsk.

A. Criminal proceedings against the applicant

6. In 2003 the applicant was charged with fraud relating to the alleged misappropriation of money in the private company she had worked for. Her case was brought before the Kuybyshevskiy District Court of Irkutsk. In the course of the trial, the applicant dismissed several legal-aid lawyers and, eventually, the trial court appointed lawyer V. as defence counsel. During the court proceedings before the District Court an issue arose as to the applicant's mental state and ability to stand trial. Thus, on 14 October 2003 after hearing the parties (including the applicant and lawyer V.), the District Court decided that the applicant should undergo an out-patient psychiatric examination in the regional psychiatric hospital. However, the applicant refused to comply with this court order.

7. A trial hearing was accordingly scheduled for 27 November 2003, *inter alia*, to settle the issue of the examination. The applicant did not appear for which reason, the same day, the District Court ordered the applicant's detention. The court held as follows:

> "Having heard the prosecutor, the defendant and lawyer V., in the criminal case on fraud charges against the defendant ...
>
> The prosecutor has requested the court to order [the applicant's] detention because she has been obstructing the court proceedings by refusing to undergo a psychiatric examination and has failed to attend the hearing without a valid excuse.
>
> Article 247 of the Code of Criminal Procedure authorises a court to order that a defaulting defendant be brought before the court or to order or vary a preventive measure. Article 97 of the Code authorises a court to order a preventive measure if there is a risk that the defendant would obstruct the proceedings ...
>
> The court observes that despite a court order of 14 October 2003 the defendant refused to undergo a psychiatric examination ... In addition, having been informed of the date and time of this hearing, she failed to attend it and did not provide any valid excuse. Having come to the court's registry on the same day, she submitted a request there and left the court building. These facts disclose that the applicant is obstructing the proceedings, which justifies her placement in custody. The court also takes into account that she is charged with a serious criminal offence ... The court orders her arrest and detention in Irkutsk remand centre."

8. By a separate decision issued on the same date, the District Court ordered that the applicant should be placed in the regional psychiatric hospital for the purpose of the in-patient psychiatric examination.

9. On the evening of the same day, the applicant was arrested at her home and was taken to a police station. The arrest record, which was compiled at the police station, reads as follows:

> "Grounds and reasons for arrest: a court order
>
> ...
>
> [pre-printed text] I have been informed of my rights under Article 46 § 4 of the Code of Criminal Procedure: (1) to be informed of the nature of the accusation against me, to receive a copy of a decision to institute criminal proceedings against me, or a copy of the arrest record, or a copy of a detention order against me; ...
>
> My comment regarding the arrest: [the applicant's signature] My arrest is unlawful; I have not had access to the document in which the grounds for my arrest are stated ..."

10. Later the same evening she was placed in Irkutsk remand centre.

11. On 28 November 2003 the applicant appealed against the detention order of 27 November 2003 to the Irkutsk Regional Court. According to the applicant, without a copy of the detention order she could only make a preliminary statement of appeal. She dispatched her appeals both to the District Court (received on 2 December 2003) and to the Regional Court (received on 3 December 2003).

12. On 2 December 2003 the applicant was served with a copy of the detention order of 27 November 2003.

13. On 4 December 2003 the applicant's next of kin retained lawyer Sh. who lodged, on the same day, an additional appeal against the detention order. The applicant was provided with a copy of the lawyer's appeal and, on 10 December 2003, lodged a request to be brought to the appeal hearing.

14. On 10 December 2003 the Regional Court returned the appeal to the District Court to enable the latter to inform the other parties to the criminal proceedings of the appeal. This was done on 19 December 2003.

15. The psychiatric examination of the applicant took place from 10 to 15 December 2003 in the regional psychiatric hospital in Irkutsk. On 16 December 2003 the medical panel issued a psychiatric report indicating that it was not possible to draw a clear conclusion as to the applicant's mental state and ability to stand trial. The panel recommended further examination in Moscow psychiatric hospital.

16. On 16 or 19 December 2003 the applicant submitted (to the District or Regional Court) a document dated 10 December 2003 by which Mr G., head officer of the medical unit of the remand centre, indicated that it would be opportune to examine whether the applicant could be released from detention.

17. On 22 December 2003 the District Court again submitted the applicant's and her lawyers' appeals to the Regional Court. They were received by the Regional Court on 23 December 2003.

18. On 25 December 2003 the District Court held a trial hearing, during which it dismissed counsel's application for release and ordered a new psychiatric examination of the applicant in Moscow psychiatric hospital.

19. On an unspecified date, lawyer Sh. submitted to the Regional Court a letter dated 25 December 2003 by which the Regional Department of Justice indicated that the relevant official registers contained no information about the applicant's court-appointed lawyer, advocate V.

20. The applicant withdrew on 5 January 2004 her request to be brought to the appeal hearing concerning the detention order of 27 November 2003.

21. On 7 January 2004 the applicant was transferred to Moscow for a psychiatric examination.

22. In respect of the applicant's appeal against the detention order of 27 November 2003 and according to the Government, "due to the winter holiday period the appeal hearing was listed in the Regional Court for 8 January 2004". On that date, the Regional Court, however, returned the file to the District Court for an "internal inquiry". Apparently, the reason for this adjournment was the need to verify whether the applicant had legal assistance during the hearing on her pre-trial detention on 27 November 2003 and whether Ms V. was a professional advocate.

23. On 19 January 2004 Ms V. submitted a written statement confirming that she was a professional advocate and that she had attended court hearings in the applicant's criminal case "on 14 October and 17 November 2003".

24. On an unspecified date, the President of the District Court obtained a certificate from Mr G., indicating that the applicant was fit for detention and was receiving the necessary medical care in the remand centre.

25. After the inquiry requested by the Regional Court, on 4 February 2004 the detention file was returned to that court. The appeal hearing was scheduled for 26 February 2004.

26. On 26 February 2004 the Regional Court heard the prosecutor and counsel, and upheld the detention order of 27 November 2003. The appeal court held that the certificate submitted by the defence was not sufficient to warrant the applicant's immediate release from detention because another certificate issued by the same detention centre confirmed that the applicant was fit for detention, although she needed a gynaecological consultation, which could be carried out at a later date.

27. In April 2004 the Regional Court examined and dismissed the applicant's request for a supervisory review in respect of the appeal decision of 26 February 2004. The court noted that V. had been present at the first-instance hearing on the applicant's detention and that reference to the applicant's own presence had been a clerical error.

28. The applicant was released in May 2004.

29. By judgment of 21 September 2007 the Kuybyshevskiy District Court of Irkutsk acquitted the applicant of the fraud charges. On 28 July 2008 the Irkutsk Regional Court upheld the judgment.

B. Administrative offence proceedings against the applicant

1. The demonstration in Moscow and the applicant's arrest

30. In May 2005 after the applicant had been released from detention but while the criminal case against her was still pending (see paragraphs 6-29 above), the applicant and two others, Ms I. and Ms B., decided to stage a static demonstration (*пикетирование*) in front of various public authorities in Moscow, including the Supreme Court of the Russian Federation to protest against the allegedly "unlawful actions of public authorities and corruption". As the applicant puts it, this demonstration related to "the persistent difficulties in relation to pending cases involving law enforcement agencies and courts, in particular in the Irkutsk Region, and the failure of the local authorities to deal with their grievances".

31. On 30 May 2005 they sent a telegram to the Moscow Mayor's Office informing the authorities' of their intention to stage static demonstrations between 3 and 16 June 2005. On 31 May 2005 the Mayor's Office acknowledged receipt of this telegram.

32. On 7 June 2005 at 9.30 a.m. the applicant and her friends placed themselves on a pavement separated from the building of the Federal Judges Qualifications Board by a road. Ms I. and Ms B. unfolded banners/posters containing their message. At 9.45 a.m. they were approached by several police officers, one of whom asked them to show documents justifying their demonstration. The applicant explained to the officer that they needed no "authorisation" and produced the telegram message sent to the mayor's office and the "certified" copy of the telegram (apparently bearing the mayor's office stamp).

33. Nevertheless, the police officer told the applicant and her friends to cease their demonstration and follow them to the police station. As the applicant and her friends refused to comply with this, the officer compelled them to follow him to the police station. At an unspecified hour an arrest record was drawn up. It read as follows:

> "[The applicant] was brought to the police station at 9.45 a.m. in relation to an administrative offence under Article 19.3 of the Code of Administrative Offences for the purpose of compiling a record (Article 27.3 of the Code).
>
> The person concerned has been informed of her rights and obligations under Article 25.1 of the Code: [in the applicant's handwriting] I have not been informed of my rights and I do not understand them ..."

34. While in the police station, the applicant made a written statement, which read as follows:

> "I came to Moscow to protect my rights against various law enforcement agencies. As follows from my notification to the authorities on 30 May 2005, I was holding a static demonstration at 9.45 a.m. in conformity with the Public Gatherings Act.
>
> I have been arrested by a person wearing a police uniform who refused to introduce himself and to show his licence ...Without explaining the actual reasons for my arrest, [the officers] told me that their superior had ordered that we be taken to the police station ... Under section 18 of the Public Gatherings Act the police should not impede the exercise of the right to freedom of assembly ... There were no reasons to stop and disperse the demonstration under section 15 of the Act ... The officer refused my request to call my next of kin and to inform them of my arrest ..."

35. The police then compiled an administrative offence report, which read as follows:

> "Time, place and circumstances of the administrative offence: on 7 June 2005 [the applicant] held a non-authorised demonstration ...
>
> S/he has therefore committed the following administrative office: Article 19.3 of the Code of Administrative Offences ...
>
> The person concerned has been informed of the rights and obligations listed in Article 25.1 of the Code: [in the applicant's handwriting] I have not been informed of my rights and do not understand them ...
>
> A copy of this document has been given to the person concerned.
>
> [in the applicant's handwriting] I have not been given [a copy], despite my request."

2. Court proceedings

36. Thereafter, the police decided that the applicant and her friends should be brought before the Justice of the Peace in the 375th Circuit of the Arbatskiy District of Moscow. The judge was informed of the incoming cases and scheduled their examination for 5 p.m.

37. A photocopy of a document dated 11 June 2004 and signed by the President of the Presnenskiy District Court indicates that under the regulations of that court the public had access to the premises until 6 p.m. during weekdays. It appears that the office of the justice of the peace who dealt with the applicant's case was situated in the same building.

38. According to the applicant, she and her friends were brought to the premises of the Presnenskiy District Court some time after 7 p.m. The judge first examined Ms I.'s case, in which the applicant acted as a lay defender. The examination of the applicant's case started at or around 10 p.m. and lasted some minutes. The judge granted the applicant's request to have access to the case file but the applicant unsuccessfully sought an adjournment to have time to study the case file and to prepare her defence.

39. The judge found the applicant guilty of non-compliance with a lawful order by a police officer, an offence under Article 19.3 of the Code of Administrative Offences. The applicant was sentenced to seven days of detention, to be counted from the moment of her arrest on the same morning. The court held as follows:

> "... [pre-printed text] I understand my rights under Article 25.1 of the CAO. I have no challenges or requests.
>
> [in the applicant's handwriting] I have lodged a request and challenged the judge but these motions have not been examined.
>
> The court has established the following:
>
> On 7 June 2005 [the applicant] failed to comply with a lawful order by police officers ... and failed to end a non-authorised demonstration in front of the Supreme Court of Russia ... The defendant has pleaded not guilty ...
>
> The court has granted [the applicant's] request to have her co-participants in the demonstration as lay defenders in these proceedings. The court has dismissed her request to obtain external video recordings of the building of the Supreme Court since there is no reason to doubt the veracity of the administrative offence record, in particular as regards the commission of the offence, its place and circumstances.
>
> Mr S., police officer, has been heard as a witness and has made the following statement. He and his colleagues asked the demonstration participants to show documents relating to the authorisation of the public event. [The applicant] handed over a telegram. Since there were doubts as to the authenticity of the document, [the applicant] and the other two were asked to show their identity documents. Since they refused, despite several warnings, the police took them to the police station to determine their identities and to determine the circumstances relating to the lawfulness of the demonstration. Since [the applicant] and the others refused to follow the police, they were compelled to do so ...
>
> The court has seen the documents mentioned above, and notes that they have been amended. The court accepts that in the circumstances the police officers had sufficient reasons to doubt the authenticity of the documents. Therefore, their order to the persons concerned to accompany them to the police station was lawful and justified. It is also so in view of the defendants' refusals to show identity documents.
>
> The court rejects [the applicant's] allegation that she was not asked to show her identity documents ... Her refusal to show an identity document and to go with the police officers to the police station discloses non–compliance with lawful orders by police officers ..."

Ms I. and Ms B. were sentenced to five and six days of detention respectively.

40. The applicant was released on 14 June 2005, having served the sentence imposed by the justice of the peace.

41. The applicant and her friends appealed against the judgments of 7 June 2005 to the Presnenskiy District Court of Moscow. On 24 June 2005

the applicant was notified of the date and time of the appeal hearing. On 27 June 2005 the applicant asked that her lay defenders be informed of the date, time and place of the appeal hearing.

42. On 27 June 2005 the District Court examined the applicant's appeal and upheld the judgment of 7 June 2005 against her. The court held as follows:

> "On 7 June 2005 [the applicant] held a non-authorised demonstration and held a banner containing a very negative assessment of the professional activity of the Prosecutor General, the President of the Supreme Court and the Minister of Justice. She refused to comply with lawful orders to end the violation of the public order, threatened police officers with prosecution, thereby resisting a lawful order by police officers ... Under sections 5 and 12 of the Public Gatherings Act one has a right to assemble at a venue and at an hour previously indicated in a notification to the competent authority ... Section 8 of the Act prohibits public events in the immediate vicinity of court buildings. Section 17 of the Act provides that failure to comply with a lawful order of the police or resistance to the police entails the liability of the persons concerned ..."

43. On 1 July 2005 the District Court examined Ms I.'s appeal and discontinued the administrative offence case against her, holding as follows:

> "... The record of the administrative offence indicates that the defendant refused to comply with the repeated orders of the police officers ... However, the record contains no indication of the content of such orders. The reports made by the police officers state that the defendant had been arrested in relation to a non-authorised demonstration. Mr P., police officer, has explained to the appeal court that the administrative case concerned unlawful demonstrating. In view of the above, the appeal court considers that the administrative proceedings were initiated against the defendant in relation to a fact falling with the scope of Article 20.2 of the CAO [Code of Administrative Offences] ... The court considers that sufficient evidence was not adduced at first instance to find the defendant guilty of the offence under Article 19.3 of the CAO ... "

44. On 6 July 2005 the District Court quashed the first-instance judgment in respect of Ms B. and discontinued the administrative offence case against her, holding as follows:

> "... It follows from reports made by police officers that the defendant was arrested after [the group] had attempted to carry out a non-authorised demonstration; she failed to comply with repeated orders of police officers and shouted ... The record of the administrative offence refers to unlawful demonstrating falling within the scope of Article 20.2 of the CAO ... The record was not signed by the head officer. The court considers that sufficient evidence was not adduced at first instance to find the defendant guilty of the offence under Article 19.3 of the CAO ..."

45. The applicant lodged numerous complaints against the justice of the peace who convicted her. By a letter of 5 September 2005 the District Court dismissed her complaint, indicating that, as explained by the justice of the peace, he had examined the cases against the applicant and her friends between 5 p.m. and 10 p.m. on 7 June 2005.

3. Conditions of detention

46. According to the applicant, from 7 to 9 June 2005 she was kept in the police station without food or drink. The cell had no windows or system of ventilation. She had no access to a toilet and had to urinate in the presence of other detainees, including male detainees. From 9 to 14 June 2005 she was kept in a detention facility, in which, despite her illnesses, she was forced to clean the premises.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Detention pending criminal proceedings

47. Article 97 of the Code of Criminal Procedure (CCrP) provided at the relevant time that an investigator or a court could order a preventive measure, for instance detention, if there were sufficient grounds to consider that the defendant would flee investigation or trial, would continue his criminal activity or would threaten a witness or otherwise obstruct the proceedings. Article 247 of the CCrP provided that a court was empowered to order that the defaulting defendant be brought to the trial, or to order or vary a preventive measure.

B. Public Gatherings Act (Federal Law no. 54-FZ of 19 June 2004)

48. Section 7 of the Act provided, at the time, as follows:

> "1. A person organising a public gathering (except for a meeting or a static demonstration (*пикетирование*)) should notify in writing the competent public authority not earlier than fifteen and not later than ten days before the date of the event ... For a static demonstration by several people notification may be made no later than three days before the demonstration ...
>
> 3. A notification should contain a reference to
>
> 1) the aim of the event;
>
> 2) the type of the event;
>
> 3) the venue(s) and itineraries;
>
> 4) the date and time of the event;
>
> 5) the expected number of participants; ...
>
> 7) the full name, contact address and telephone number of the event organiser ..."

49. Section 12 of the Act provided for the following procedure on the part of the competent public authority following receipt of the notification:

> "1. The authority should process as follows:
>
> 1) acknowledge in writing receipt of the notification and indicate the date and time of receipt;
>
> 2) inform the event organiser ... (on the same day – in the case of a notification received less than five days before a static demonstration by several people) of any alternative proposal concerning the event venue and/or time ..."

50. An organiser of a public gathering had the following obligations under the Act:

> "4. ...1) submit a notification of the public event in conformity with the requirements of section 7 ...;
>
> 2) inform ... the public authority in writing whether the alternative proposal concerning the event time and/or venue was accepted; ...
>
> 6) suspend the event or end it if the event participants committed unlawful actions;
>
> 5. The organiser of the event is not allowed to proceed with it if the above notification was not submitted in conformity with the time-limit or if the authority's alternative proposal for another venue and/or time for the event was not settled with the public authority ..."

51. A public event could be held in any suitable venue. No public event could be held in the immediate vicinity of court buildings (section 8).

C. Code of Administrative Offences (CAO)

1. Material law

52. Non-compliance with a lawful order by a police officer, given within the scope of his or her professional duties, is punishable by a fine or administrative detention of up to fifteen days (Article 19.3 of the CAO).

53. Violation of the rules or procedure for organising or participating in a public gathering (a meeting, demonstration or static demonstration) is punishable by a fine (Article 20.2 of the CAO).

2. Procedural law

54. A person who is prosecuted in administrative offence proceedings has the following rights: to have access to the case file, to make submissions, to adduce evidence, to lodge requests and to legal assistance (Article 25.1 of the CAO). The administrative case should be examined in the presence of this person (ibid.).

55. A defendant in an administrative case may be assisted by an advocate or another person chosen by the defendant (Article 25.5 of the CAO).

56. In exceptional circumstances relating to the needs for a proper and expedient examination of the administrative case, the person concerned may be placed under administrative arrest (*административное задержание*) (Article 27.3 of the CAO). The arrestee should be informed of his rights and obligations; this notification should be mentioned in the arrest record.

57. Depending on the type of offence, the competent public authority (for instance, the police) should compile the administrative offence file (including arrest record, administrative offence record, personal search record) and transmit it to the competent court for examination. The file should be sent within one day, or immediately if administrative detention or deportation may be incurred (Article 28.8 of the CAO).

58. A court should examine the administrative case within fifteen days, to which one month may be added if additional evidence is needed. However, if the administrative charge concerns an offence punishable by administrative detention, the case should be examined on the day when the administrative record was submitted to the court or within forty-eight hours of the defendant's arrest (Article 29.6 of the CAO).

59. Administrative cases should be examined at a public hearing, except in cases relating to State or other protected secrets or where it is necessary to protect the honour or reputation of the person(s) participating in the proceedings (Article 24.3 of the CAO).

60. Chapter 25 of the CAO entitled "Participants in administrative offence proceedings, their rights and obligations" lists the following participants: the defendant, the victim, legal representatives of a person or a legal entity, a witness, a defender or a representative, an attesting witness, an expert, a translator and a prosecutor. Article 25.11 provides that a public prosecutor may institute administrative offence proceedings; to take part in the examination of the case, to make requests, to deliver opinions; to appeal against the court decision, as well as "to carry out other actions prescribed by law".

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 2 OF THE CONVENTION

61. The applicant complained under Article 5 of the Convention that she had not been promptly informed of the reasons for her arrest on 27 November 2003.

62. Article 5 § 2 of the Convention reads as follows:

> "... 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

A. Admissibility

63. The Court notes that this part of 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.

B. Merits

1. The parties' submissions

64. The applicant submitted that she had not been present at the detention hearing on 27 November 2003, that she had been arrested on the same evening and had not been given a copy of the detention order. She became aware of the reasons for her arrest only on 2 December 2003 when she was given a copy of the detention order of 27 November 2003. The court order of the same date for her in-patient examination in a psychiatric hospital was only given to her in 2004.

65. The Government argued that, as the arrest record compiled on 27 November 2003 showed, the applicant had been informed of the reasons and grounds for her arrest.

2. The Court's assessment

66. The Court reiterates that Article 5 § 2 contains the elementary safeguard that any person arrested should know why he is being deprived of his liberty. This provision is an integral part of the scheme of protection afforded by Article 5: by virtue of paragraph 2 any person arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to apply to a court to challenge its lawfulness in accordance with paragraph 4. Whilst this information must be conveyed "promptly", it need not be related in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed were sufficient is to be assessed in each case according to its special features (see, among others, *Ladent v. Poland*, no. 11036/03, § 63, 18 March 2008, and *Van der Leer v. the Netherlands*, 21 February 1990, §§ 30 and 31, Series A no. 170-A).

67. The Court has had regard to the circumstances of the case, as well as the type of the deprivation of liberty in question. The Court reiterates in this

connection that the applicability of one ground listed in Article 5 § 1 does not necessarily preclude the applicability of another and detention may be justified under more than one sub-paragraph of that provision (see, for instance, *Harkmann v. Estonia*, no. 2192/03, § 35, 11 July 2006). Although the parties have not taken a stance on this issue, the Court considers that, in view of the circumstances of the case and the wording of the detention order, the applicant's arrest and detention were effected on the grounds mentioned in Article 5 § 1 (b) and (c) the Convention.

68. Undoubtedly, by November 2003 the applicant, who was charged with a criminal offence and was standing trial, had been informed of the nature and cause of the "accusation" against her, within the meaning of Article 6 § 2 of the Convention, as well as of the "charge" against her within the meaning of Article 5 § 2. However, the Court considers that the above was not sufficient to also comply with the promptness guarantee as to "the reasons for [the] arrest", which are also mentioned in Article 5 § 2 of the Convention.

69. The Court observes that the applicant was arrested on 27 November 2003 under a court order issued on the same date because it was considered that she had failed to comply with an earlier court order requiring her out-patient psychiatric examination (see paragraph 6 above) and because she had obstructed the court proceedings in the criminal case against her by failing to attend the hearing on 27 November 2003 without a valid excuse.

70. Having examined the available material, including the arrest record, the Court finds it established that the applicant was not present at the hearing on 27 November 2003. A lawyer was, however, present for the defence (see paragraphs 7, 23 and 27 above). It appears that this lawyer had been appointed as legal-aid counsel in the applicant's criminal case. There is no indication, and the Government have not suggested, that counsel promptly informed the applicant of the reasons for her arrest. In any event, the obligation to inform under Article 5 § 2 is on the national authorities. In addition, in the absence of any argument or evidence to the contrary, the Court is prepared to accept the applicant's submission that she first became aware of the contents of the detention order on 2 December 2003, that is, several days after the actual arrest. Also, it has not been contested that the applicant was not promptly provided with a copy of the court order requiring her placement in a psychiatric hospital for an in-patient psychiatric examination there (see paragraph 12 above).

71. It is observed that the arrest record compiled on 27 November 2003 contained reference to "a court decision" as the ground for arrest, without any further detail (see paragraph 9 above). Arguably, this reference related to one of the above court orders. It does not transpire that before 2 December 2003 the applicant received information about the essential legal and factual grounds for her deprivation of liberty, so as to be able, if she saw fit, to challenge its lawfulness in accordance with paragraph 4. In

the Court's view, prompt knowledge of the reasons for the deprivation of liberty was relevant for the purposes of the applicant's appeal against the detention order and/or the court order requiring her placement in the psychiatric hospital.

72. Thus, the Court concludes that, while the applicant was aware of the charges against her, it has not been shown that she was "promptly" informed of the reasons for her arrest.

73. There has accordingly been a violation of Article 5 § 2 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

74. The applicant also complained under Article 5 of the Convention that her appeal against the detention order of 27 November 2003 had not been examined speedily. The Court will examine this complaint under Article 5 § 4 of the Convention, which reads as follows:

> "... 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Admissibility

75. The Court notes that this part of 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.

B. Merits

1. The parties' submissions

76. The applicant argued that the appeal proceedings in respect of the detention order of 27 November 2003 took over eighty days, which was incompatible with the "speediness" requirement under Article 5 § 4 of the Convention.

77. The respondent Government argued that one period of delay (from 28 November to 10 December 2003) was due to the applicant's failure to submit an appeal against a detention order through the first-instance court, as required by law. It was then incumbent on that court to notify the other parties of the appeal. Another delay was caused by the winter holiday period, while another delay in January-February 2004 was due to the need to obtain further submissions and documents concerning defence counsel at first instance and the applicant's state of health.

2. The Court's assessment

(a) General principles

78. The Court reiterates that Article 5 § 4 of the Convention proclaims the right to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful (see *Baranowski v. Poland* [GC], no. 28358/95, ECHR 2000). There is a special need for a swift decision determining the lawfulness of detention in cases where a trial is pending, because the defendant should benefit fully from the principle of the presumption of innocence (see *Iłowiecki v. Poland*, no. 27504/95, § 76, 4 October 2001).

79. Article 5 § 4 does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention. However, where domestic law provides for a system of appeal, the appellate body must also comply with the requirements of Article 5 § 4, including the speediness of the review by the appellate body of a detention order imposed by the lower court (see *Lebedev v. Russia*, no. 4493/04, § 96, 25 October 2007). At the same time, the standard of "speediness" is less stringent when it comes to the proceedings before the court of appeal. The Court reiterates in this connection that the right of judicial review guaranteed by Article 5 § 4 is primarily intended to avoid arbitrary deprivation of liberty. Where detention is authorised by a court, subsequent proceedings are not so much concerned with arbitrariness, but provide additional guarantees aimed primarily at an evaluation of the appropriateness of continuing the detention. Therefore, the Court would be less concerned with the speediness of the proceedings before the court of appeal, if the detention order under review was imposed by a court and on condition that the procedure followed by that court had a judicial character and afforded to the detainee the appropriate procedural guarantees (ibid.).

(b) Application of the principles to the present case

80. The relevant detention order was issued on 27 November 2003. The Court observes that the applicant's preliminary appeal dated 28 November 2003 was received by the District Court on 2 December 2003; the full statement of appeal was lodged by a lawyer on 4 December 2003. The appeal was examined and dismissed on 26 February 2004. Therefore, the appeal proceedings took two months and twenty-five days.

81. First, the Court observes that the applicant and then her lawyer lodged appeals, as required under Russian law, with the first-instance court to enable it to inform the other party/parties to the proceedings (see paragraphs 11 and 13 above). It is true that, having lodged on 10 December 2003 a request to be brought to the appeal hearing, the applicant withdrew this request on 5 January 2004. However, that withdrawal was due to the

authorities' decision to transfer her to an institution in another town for a psychiatric examination (see paragraphs 20-21 above). Overall, the Court considers that the defence in the present case should not be held responsible for any significant delay.

82. On the other hand, the Court reiterates that it is incumbent on the respondent State to organise its legal system in such a way which allows for the speedy examination of detention-related issues. The fact that part of the period in question fell on public holidays cannot in itself serve as a valid reason for a delay such as in the present case (see *Abidov v. Russia*, no. 52805/10, § 61, 12 June 2012).

83. While the Court accepts that proper review of detention in the present case could have required collection of additional observations and documents relating to the applicant's medical condition or legal assistance at first instance, the Court is not satisfied that the appeal proceedings in the present case were completed speedily, in particular taking into account the unjustified delays after 23 December 2003 (see paragraph 17 above).

84. Lastly, it is noted that pending appeal against the initial detention order, on 25 December 2003 the District Court examined and dismissed the lawyer's application for the applicant's release. However, the availability of such recourse did not absolve the national authorities from their obligation to decide "speedily" on the validity of the detention order of 27 November 2003 (see *Starokadomskiy v. Russia*, no. 42239/02, § 85, 31 July 2008).

85. In view of the above considerations, the Court concludes that there has been a violation of Article 5 § 4 of the Convention on account of the length of the appeal proceedings in relation to the detention order of 27 November 2003.

III. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION IN RELATION TO THE ADMINISTRATIVE OFFENCE PROCEEDINGS AGAINST THE APPLICANT

86. The applicant complained that her detention from 7 to 14 June 2005 had been unlawful, in breach of Article 5 § 1 of the Convention, which 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:
>
> (a) the lawful detention of a person after conviction by a competent court;..."

Admissibility

87. The applicant argued in substance that her detention following her conviction under the judgment of 7 June 2005 had been arbitrary since there

had been no reason to prosecute her under Article 19.3 of the Code of Administrative Offences, which, unlike Article 20.2 of the same Code, allowed detention as a penalty.

88. The Government argued that the applicant's administrative detention resulted from a lawful court order, by which she had been found guilty of an administrative offence.

89. The Court reiterates that Article 5 § 1 of the Convention requires that detention should be "lawful", including compliance with "a procedure prescribed by law". The Convention here essentially refers back to national law and states the obligation to conform to the substantive and procedural rules thereof (see *Benham v. the United Kingdom*, 10 June 1996, § 40, *Reports of Judgments and Decisions* 1996-III). A period of detention will in principle be lawful if it is carried out pursuant to a court order (ibid., § 42).

90. However, the Convention also requires that any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect individuals from arbitrariness (see, among others, *Saadi v. the United Kingdom* [GC], no. 13229/03, §§ 67-74, ECHR 2008).

91. For instance, in *Tsirlis and Kouloumpas v. Greece* (judgment of 29 May 1997, §§ 59-63, Reports of Judgments and Decisions 1997-III) the Court considered that the applicants' detention (thirteen and twelve months respectively) following their conviction on charges of insubordination had had no basis under domestic law and had been arbitrary. In deciding on the issue of the applicants' criminal liability, and thus on the lawfulness of their detention, the military authorities had "blatantly ignored" the relevant domestic case-law.

92. In another case (*Menesheva v. Russia*, no. 59261/00, § 99, ECHR 2006-III) the respondent Government accepted that the administrative offence proceedings against the applicant had been defective both under domestic law and the Convention. In this case, the higher court quashed the trial judgment stating that "the judge who convicted the applicant had not examined the circumstances of the case and had not established whether she was guilty of any administrative offence". For its part, the Court considered, under Article 6 of the Convention, that the above corroborated the applicant's allegations that there had been no adversarial proceedings as such and that even the appearances of a trial had been neglected to the extent that she did not get a chance to find out the purpose of her brief appearance before the trial judge. Having regard to the above findings, the Court also held, under Article 5 § 1 of the Convention, that while the ensuing period of detention had been carried out on the order of a judge who was in principle competent to take the decision in issue, the judge had exercised his authority in manifest opposition to the procedural guarantees provided for by the Convention. Therefore, the ensuing detention order was inconsistent with the general protection from arbitrariness guaranteed by Article 5 of the Convention (ibid., § 92).

93. Turning to the present case, the Court observes that on 7 June 2005 the applicant was brought before the judge, who held a hearing and ruled that she had committed the offence of non-compliance with a lawful order by a public official, an administrative offence under Article 19.3 of the Code of Administrative Offences, and sentenced her to seven days' detention. Thus, the applicant was deprived of liberty "after conviction by a ... court" under Article 5 § 1 (a) of the Convention.

94. The applicant argued that she had been wrongly convicted of the offence under Article 19.3 of the CAO, and alleged various procedural shortcomings in the administrative offence proceedings (see below under Article 6 of the Convention).

95. The Court considers that the seven-day detention was imposed on 7 June 2005 pursuant to the order of a judge who was in principle competent to take the decision in issue (see, by way of comparison, *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 462, ECHR 2004-VII; and *Jorgic v. Germany*, no. 74613/01, § 72, ECHR 2007-III). Furthermore, it cannot be considered on the basis of the available material that the ensuing period of detention was tainted by any irregularities or arbitrariness, which were comparably serious as those identified by the Court in the cases of *Menesheva* or *Tsirlis and Kouloumpas* (see also, by way of comparison, *Niyazov v. Russia*, no. 27843/11, §§ 175-186, 16 October 2012). Therefore, the applicant's detention was consistent with the general protection from arbitrariness guaranteed by Article 5 of the Convention. The Court's findings below under Article 6 of the Convention are without prejudice to the above conclusion.

96. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION IN THE ADMINISTRATIVE OFFENCE PROCEEDINGS AGAINST THE APPLICANT

97. The applicant complained under Article 6 of the Convention that in the proceedings concerning the alleged administrative offence she had not had a fair and public hearing. The relevant parts of Article 6 of the Convention read as follows:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(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;..."

A. Admissibility

98. The Court observes that the applicant was found guilty of an offence under the Russian Code of Administrative Offences. The applicant was deprived of her liberty for seven days and was locked up in the detention centre for the term of her sentence.

99. While the parties made no specific comments on the applicability of Article 6 to the administrative proceedings in question, the Court finds it relevant to reiterate that in order to determine whether an offence qualifies as "criminal" for the purposes of Article 6 the Convention, it is necessary to ascertain whether or not the provision defining the offence belongs, in the legal system of the respondent State, to criminal law; next the "very nature of the offence" and the degree of severity of the penalty risked must be considered (see *Menesheva,* cited above, § 95). Loss of liberty imposed as punishment for an offence belongs in general to the criminal sphere, unless by its nature, duration or manner of execution it is not appreciably detrimental (see *Engel and Others v. the Netherlands*, 8 June 1976, §§ 82-83, Series A no. 22, and *Ezeh and Connors v. the United Kingdom* [GC], nos. 39665/98 and 40086/98, §§ 69-130, ECHR 2003-X).

100. The applicant was convicted of the offence, which was punishable by detention, the purpose of the sanction being purely punitive. This offence should be classified as "criminal" for the purposes of the Convention. It follows that Article 6 applies (see also *Menesheva,* cited above, §§ 94-98).

101. The Court also considers that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. Thus, it should be declared admissible.

B. Merits

1. The parties' submissions

102. The applicant alleged that she had not been informed about the nature and cause of the accusation against her; had not been given copies of the material in the administrative file; that the hearing on 7 June 2005 was not public; and that she had no legal assistance in the appeal proceedings and could not properly prepare her appeal against the order of 7 June 2005.

103. The Government submitted that the applicant's administrative case was lawfully examined by a justice of the peace; the judge had granted her request to have access to the administrative file; the court proceedings had been held in public and were fair and adversarial. The applicant had been informed of the date of the appeal hearing; had not specified the name and contact details of a lawyer to be informed. In any event, the Code of Administrative Offences did not require a judge to ensure the presence of a lawyer in an administrative case.

2. The Court's assessment

104. The Court will examine whether the "public hearing" requirement was complied with in the present case, before turning to the applicant's specific allegations relating to the fairness of the administrative offence proceedings against her.

(a) Public hearing

105. The Court reiterates that the public character of court hearings constitutes a fundamental principle enshrined in Article 6 § 1 (see *Galstyan v. Armenia*, no. 26986/03, § 80, 15 November 2007). The accused's right to a public hearing is not only an additional guarantee that an endeavour will be made to establish the truth but also helps to ensure that he is satisfied that his case is being determined by a tribunal whose independence and impartiality he may verify. The public character of proceedings before judicial bodies protects litigants against the administration of justice in secret without public scrutiny; it is also one of the means whereby confidence in the courts, superior and inferior, can be maintained. By rendering the administration of justice visible, publicity contributes to the achievement of the aim of Article 6 § 1, namely, a fair trial (ibid.).

106. The applicant alleged that her trial after court opening hours had been *de facto* closed to the public. Without contesting the factual assertions made by the applicant, the Government stated that the trial had been public.

107. The Court notes that the Code of Administrative Offences provided for a public hearing in administrative cases (see paragraph 59 above). It does not follow from the text of the first-instance judgment that the hearing was public. The Court has taken note of the document submitted by the applicant, which states that the court premises had to be vacated by 6 p.m. (see paragraph 37 above). In the absence of the Government's argument or evidence to the contrary, the Court accepts that the applicant was taken to the court and that the trial started after court opening hours, probably between 9 p.m. and 10 p.m. In view of the above, the Court considers that the applicant's trial was not held in public.

108. The Court considers that the right to a public hearing would be illusory if a Contracting State's legal system allowed court hearings which were public in form but were not actually accessible to the public, including

because of the time and venue of the hearing (see *Galstyan*, cited above, § 81). The Government have not put forward, and the Court does not find, any valid reasons for dispensing with a public hearing in the applicant's administrative case. Nor did the respondent Government specify whether the appeal hearing in the present case was public and whether it could thus have remedied the alleged violation at first instance.

109. The Court concludes that in the circumstances of the present case there has been a violation of Article 6 § 1 of the Convention as far as the applicant's right to a public hearing is concerned.

(b) Fair hearing

110. The Court reiterates that the main thrust of the applicant's complaint under Article 6 of the Convention relates to the requirements concerning notification of the accused of the charges against her and adequate time and facilities to prepare a defence.

(i) General principles

111. The Court reiterates that Article 6 of the Convention guarantees the right to a fair hearing, and the Court's task is to ascertain whether the proceedings as a whole, including the way in which evidence was obtained and heard, were fair (see *Bykov v. Russia* [GC], no. 4378/02, § 88, 10 March 2009). Regard must be had to whether the rights of the defence were respected. It must be examined in particular whether the applicant was given the opportunity of challenging the evidence and of opposing its use (see *Bykov*, cited above, § 90). It is a fundamental aspect of the right to a fair trial that criminal proceedings should be adversarial and that there should be equality of arms between the prosecution and defence (see *Rowe and Davis v. the United Kingdom* [GC], no. 28901/95, § 60, ECHR 2000-II).

112. The Court also reiterates that the requirements of Article 6 § 3 are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 § 1 (see *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 94, 2 November 2010). Under paragraph 3 (a) of Article 6 of the Convention, any person charged with a criminal offence has the right to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him (see *Hermi v. Italy* [GC], no. 18114/02, § 68, ECHR 2006-XII). Article 6 § 3 (b) guarantees the accused "adequate time and facilities for the preparation of his defence" and therefore implies that the substantive defence activity on his behalf may comprise everything which is "necessary" to prepare the main trial. The accused must have the opportunity to organise his defence in an appropriate way and without restriction as to the possibility to put all relevant defence arguments before the trial court and thus to influence the outcome of the proceedings. Furthermore, the facilities which everyone charged with a

criminal offence should enjoy include the opportunity to acquaint himself for the purposes of preparing his defence with the results of investigations carried out throughout the proceedings (see *Moiseyev v. Russia*, no. 62936/00, § 220, 9 October 2008, and *Galstyan*, cited above, § 84). The issue of adequacy of time and facilities afforded to an accused must be assessed in the light of the circumstances of each particular case.

(ii) Application of the principles in the present case

113. The applicant argued that she had not been properly informed of the charges against her and that she had not been able to receive copies of the documents in the administrative offence file. The Government claimed that the applicant's case was not a complex one, and that the period of the trial had been sufficient, taking into account that she had not sought legal assistance.

114. The Court observes that the pre-trial procedure in the applicant's case lasted from 10 a.m. to 7 p.m. The administrative offence record, which was compiled and signed by the applicant during this period of time, indicates that she had committed the offence under Article 19.3 of the CAO because she had held an unlawful demonstration. In the ensuing court proceedings, on the same evening, the first-instance court dismissed the applicant's request for an adjournment and found her liable for the offence under Article 19.3 of the CAO.

115. The applicant's case was examined in an expedited procedure under the CAO: in cases concerning an administrative charge for an offence punishable by administrative detention, the police were to transmit the administrative offence file to a court immediately after having compiled it, and the court was to examine the case on the same day or within forty-eight hours of the defendant's arrest (see paragraphs 57 and 58 above). The Court reiterates, however, that recourse to that procedure when a "criminal charge" must be determined is not in itself contrary to Article 6 of the Convention as long as the procedure provides the necessary safeguards and guarantees (see *Borisova v. Bulgaria*, no. 56891/00, § 40, 21 December 2006).

116. Turning to the question of procedural guarantees, the Court notes that there was an oral hearing at which the applicant and her lay defenders (co-participants in the demonstration) participated. The justice of the peace heard representations from the applicant. A police officer was interviewed, apparently, as a witness. At the same time, it is noted that the CAO did not require in the circumstances the mandatory participation of a public prosecutor, who would present the case against the defendant before a judge (see paragraph 60 above). The police were in charge of compiling the administrative offence file before transmitting it to a court (see paragraph 57 above). It appears that the accusation against the applicant was both presented and examined by the justice of the peace.

117. In view of the above considerations, the Court concludes that there was no prosecuting authority, strictly speaking, to articulate the charges against the defendant at the trial in the proceedings before the first-instance judge. In describing the circumstances of the offence the court stated in its judgment that the applicant had failed to end an unlawful demonstration and to comply with a lawful order by police officers (to show an identity document and to follow the police to the police station). In such circumstances, even accepting that the applicant was promptly informed of the legal classification of the "accusation" against her under Article 19.3 of the CAO, the Court is not satisfied that she was afforded an adequate opportunity to prepare her defence on account of the uncertainty as to the exact factual circumstances of the actions or omissions held against her. Thus, the Court considers that the applicant was not properly informed of "the nature and cause of the accusation" against her and was not afforded "adequate time and facilities" for the preparation of her defence.

118. The above situation was aggravated by the fact that the appeal court reviewed the description of the circumstances, stating that the applicant had held an unlawful demonstration and held a banner containing a negative assessment of the professional activity of the Prosecutor General, the President of the Supreme Court and the Minister of Justice. It was also noted in the appeal decision that the applicant had refused to comply with lawful orders to end the violation of the public order and threatened the police officers with prosecution, thereby committing the offence of resisting a lawful order by the police. It has not been argued, and the Court does not consider, that the appeal proceedings in the present case rectified the alleged shortcomings identified in the first-instance trial.

119. Accordingly, while it should have been clear to the applicant from the outset that she was prosecuted under Article 19.3 of the CAO, the circumstances of the case disclose that she was not afforded an adequate opportunity to put forward a viable defence.

120. The foregoing considerations are sufficient for the Court in present case to conclude that there has been a violation of Article 6 §§ 1 and 3 of the Convention.

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

121. The applicant complained that the dispersal of the demonstration by the police and her arrest and prosecution for an administrative offence had been in breach of Articles 10 and 11 of the Convention.

122. 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 and regardless of frontiers. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

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

Article 11 (freedom of assembly and association)

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

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

A. Submissions by the parties

1. The Government

123. The respondent Government argued that the circumstances of the case disclosed no interference with the applicant's rights under Articles 10 and 11 of the Convention because she had been prosecuted for non-compliance with a lawful order by a public official (to show an identity document) rather than for breaching regulations concerning public gatherings.

124. At the same time, by way of addition to the findings made in the domestic decisions, the Government submitted that the applicant had breached sections 7 and 8 of the Public Gatherings Act which lay down the rules for notifying the authorities of a public event. Namely, by making such notification by telegram and omitting to provide contact details, the applicant had deprived the competent authority of the opportunity to suggest another venue and/or time for the planned events, including the one which was held on 7 June 2005. The applicant was informed in writing that she

should notify the district authority in Moscow in a proper fashion. No such notification was made in relation to the demonstration held on 7 June 2005.

125. The Government also argued that, even assuming there had been interference with the applicant's rights, such interference was prescribed by sections 7 and 8 of the Public Gatherings Act; it aimed at ensuring public safety, preventing disorder and protecting the rights of others. The interference had been necessary since the applicant had made unsubstantiated statements accusing judges of criminal offences, attacking their reputation and honour, and thus undermining the authority of the judiciary. The dispersal of the demonstration had also been justified, since the applicant and others had acted in violation of the Public Gatherings Act. In any event, the Public Gatherings Act expressly prohibited public events in the immediate vicinity of court buildings, including the buildings of the Supreme Court of Russia.

2. The applicant

126. The applicant argued that the dispersal of the demonstration and the ensuing administrative offence proceedings (arrest and detention) constituted an interference with her rights under Articles 10 and 11 of the Convention. Restating her arguments under Articles 5 and 6, she concluded that there had also been a violation of Articles 10 and 11 of the Convention in the present case.

B. The Court's assessment

1. Admissibility

127. The Court notes that this part of 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

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

(a) Interference

129. The Court notes the Government's argument that the reason for the applicant's arrest (and, by implication, the dispersal of the demonstration) was the alleged refusal to comply with orders given by the police (Article 19.3 of the CAO). At the same time, it is noted that the administrative offence record indicates that the applicant committed the offence under Article 19.3 of the CAO because she held a non-authorised demonstration.

By a court decision the applicant was found liable for "non-compliance with a lawful order by a police officer". In describing the circumstances of the offence the court stated that the applicant had failed to end an unlawful demonstration and to comply with a lawful order by police officers (to show an identity document and to follow the police to the police station).

130. Having regard to the context of the present case, the dispersal of the demonstration, the findings made by the domestic authorities and the penalty imposed on the applicant, the Court considers that the relevant facts disclose an interference which was sufficiently linked to the applicant's exercise of her right to freedom of peaceful assembly under Article 11 of the Convention, considered in conjunction with her freedom of expression under Article 10 of the Convention.

(b) Justification of the interference

131. The Court should assess whether the above "interference" was justified in the present case. The parties disagreed as to whether the interference was prescribed by law and served a legitimate aim. However, the Court decides to dispense with ruling on the issue of lawfulness because, in any event, the interference fell short of being necessary in a democratic society, for the reasons set out below (see, for a similar approach, *Christian Democratic People's Party v. Moldova*, no. 28793/02, § 53, ECHR 2006-II).

132. The Court reiterates that 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). 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).

133. In fact, both the findings of the national courts and the Government's observations before the Court contain contradictory submissions as to the nature of the actions held against the applicant in the administrative offence proceedings (see paragraphs 35, 39, 42 and 123-125 above). The arrest record referred to the alleged refusal to comply with orders given by the police (Article 19.3 of the CAO) whereas the administrative offence record indicated that the applicant had committed the offence under Article 19.3 of the CAO because she held a non-authorised demonstration. As already mentioned, the court described the circumstances of the offence stating that the applicant had failed to end an unlawful demonstration and to comply with a lawful order by police officers (to show an identity document and to follow the police to the police station). As stated above in the context of Article 6 of the Convention, for its part, the appeal court found it pertinent to amend the description of the circumstances, stating that the applicant had held an unlawful demonstration and held a banner containing a very negative assessment of the professional activity of high-ranking public officials. It was also noted in the appeal decision that the applicant had refused to comply with lawful orders to end the violation of the public order and threatened police officers with prosecution, thereby committing the offence of resisting a lawful order by the police.

134. It follows that the applicant was arrested and the demonstration was dispersed because the applicant had refused (i) to stop this "non-authorised" demonstration, and (ii) to show her identity document and to follow the police to the police station.

135. As to the first ground, it is noted that the domestic decisions do not contain any clear findings that, as suggested by the respondent Government before the Court, the applicant had breached the requirements of the Public Gatherings Act, for instance on account of the notification by telegram, her alleged omission to provide sufficient contact details, or whether the demonstration had indeed taken place in the area expressly prohibited by section 8 of the Act, that is, in the "immediate vicinity" of "court buildings". The appeal court merely mentioned this provision, without drawing any conclusions relating to the circumstance of the applicant's case under Article 19.3 of the CAO (see paragraph 42 above). Nor do the domestic decisions contain any findings that the above alleged breaches justified the dispersal of the demonstration. While these issues were relevant, the courts did not take any clear stance on them in the administrative offence proceedings.

136. Therefore, the Government's arguments concerning the alleged non-compliance with the notification requirements of the Public Gatherings Act cannot weigh in the Court's proportionality analysis in the present case

(see *Bukta and Others v. Hungary*, no. 25691/04, § 34, ECHR 2007-III, and *Fáber v. Hungary*, no. 40721/08, § 49, 24 July 2012). In any event, the Court reiterates that there may be circumstances in which the formal unlawfulness of a peaceful public assembly is not sufficient to justify its dispersal (see *Bukta and Others*, cited above, §§ 35-36, and *Oya Ataman v. Turkey*, no. 74552/01, §§ 38-42, ECHR 2006-XIII). The Court also reiterates that the Contracting States can impose limitations on holding a demonstration in a given place for public security reasons (see *Disk and Kesk v. Turkey*, no. 38676/08, § 29, 27 November 2012). Nevertheless, 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 (ibid.).

137. In the present case, the demonstration involved only three persons. For the Court, it is difficult to conceive that such an event could have generated the gathering of a significant crowd warranting specific (for instance, security) measures on the side of the authorities. Also, it is not without interest that the proceedings against the other two participants in the demonstration were discontinued, inter alia, because no related violations were established.

138. Furthermore, the Court cannot deal with the Government's argument suggesting that the demonstration had to be dispersed in order to put an end to unsubstantiated accusations in respect of judges and in order to protect their reputation and honour. This justification was never mentioned in the domestic proceedings and did not justify the interference with the applicant's rights.

139. As to the second ground mentioned in paragraph 134 above, even accepting that the applicant had indeed failed to comply with a lawful order concerning her identity document, the national authorities themselves linked, in practice, the administrative case against the applicant to her exercise of her freedom of assembly. In that context, it had to be convincingly shown that the immediate dispersal of the peaceful demonstration (which is presumed to be lawful for the reasons stated above) and the applicant's arrest and prosecution were necessary.

140. It is noted in that connection that under the CAO administrative arrest required "exceptional circumstances" relating to the need for a proper and expedient examination of the administrative case (see paragraph 56 above). The domestic courts did not assess this issue in any noticeable way. Nor has it been convincingly shown before this Court that the applicant's arrest and ensuing detention for several hours were properly justified and constituted a proportionate reaction on the part of the authorities.

141. The Court finds it regrettable that the national courts in the administrative offence procedure in the present case did not assess the

applicant's situation, including the penalty to be imposed, taking into account the relevant principles under Articles 10 and 11 of the Convention (see, for comparison, *Alim v. Russia*, no. 39417/07, § 95, 27 September 2011). It cannot be said that the national authorities adduced reasons which could be accepted as "relevant and sufficient".

142. In view of the above considerations and bearing in mind the Court's above findings under Article 6 of the Convention, the Court concludes that the interference with the applicant's right to freedom of assembly, taken together with her right to freedom of expression, in the present case was disproportionate.

143. There has therefore been a violation of Article 11 of the Convention, assessed in the light of its Article 10.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

144. The applicant also complained under Article 3 of the Convention about the allegedly appalling conditions of her detention from 7 to 14 June 2005 (see paragraph 46 above). The Court notes that the complaint was first raised in substance before it on 22 December 2005. Assuming, in the applicant's favour, that she had no specific remedies to exhaust, the Court concludes that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention (see *Norkin v. Russia* (dec.), no. 21056/11, §§ 15-25, 5 February 2013).

145. Lastly, the Court notes that the applicant made a number of others complaints and referred to Articles 3, 5, 6 and 13 of the Convention, as well as Article 1 of Protocol No. 1. The Court has examined the above grievances as submitted by the applicant. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

146. 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."

147. The applicant did not submit, within the time-limit set by the Court, a claim for just satisfaction. Accordingly, the Court considers that there is no call to award her any sum on that account.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously admissible the complaints concerning notification of the reasons for arrest on 27 November 2003, speediness of review in respect of the detention order of 27 November 2003, fairness of the administrative offence proceedings, and the rights to freedom of assembly and freedom of expression;

2. *Declares* by a majority the remainder of the application inadmissible;

3. *Holds* unanimously that there has been a violation of Article 5 § 2 of the Convention;

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

5. *Holds* unanimously that there has been a violation of Article 6 §§ 1 and 3 of the Convention on account of the lack of a public hearing and in relation to the applicant's right to be informed of the nature and cause of the accusation against her, and the right to have adequate time and facilities for the preparation of her defence;

6. *Holds* unanimously that there has been a violation of Article 11 of the Convention, assessed in the light of its Article 10.

Done in English, and notified in writing on 30 May 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Isabelle Berro-Lefèvre
President