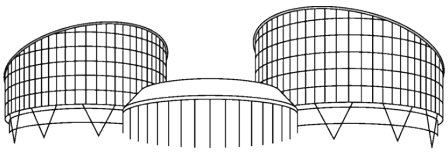

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KASPAROV AND OTHERS v. RUSSIA

(Application no. 21613/07)

JUDGMENT

STRASBOURG

3 October 2013

FINAL

17/02/2014

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

In the case of Kasparov and Others v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 10 September 2013,

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

PROCEDURE

1. The case originated in an application (no. 21613/07) 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 nine Russian nationals, Mr Garri Kimovich Kasparov, Mr Aleksey Valeryevich Tarasov, Mr Nikolay Vladimirovich Kharlamov, Mr Nikolay Viktorovich Kalashnikov, Mr Andrey Pavlovich Toropov, Mr Aleksandr Viktorovich Stelmakh, Mr Yuriy Nikolayevich Orel, Mr Vyacheslav Viktorovich Melikhov and Ms Oksana Anatolyevna Chelysheva ("the applicants"), on 24 May 2007.

2. The applicants were represented by Ms K. Moskalenko (the first, the third and the ninth applicants), Ms O. Mikhaylova (the second applicant), Ms O. Polozova (the fourth applicant) and Ms N. Kotenochkina (the fifth, sixth, seventh and eighth applicants), lawyers practicing in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged a violation of Articles 10 and 11 of the Convention in that the authorities had prevented them from taking part in a public assembly in Moscow on 14 April 2007. All except the ninth applicant also complained of a violation of Article 6 of the Convention in the ensuing administrative proceedings against them.

4. On 4 January 2011 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 applicants' dates of birth and places of residence are listed below:

(1) Mr Kasparov was born in 1963 and lives in Moscow;

(2) Mr Tarasov was born in 1968 and lives in Moscow;

(3) Mr Kharlamov was born in 1973 and lives in Moscow;

(4) Mr Kalashnikov was born in 1971 and lives in Moscow;

(5) Mr Toropov was born in 1973 and lives in Orudyevo, in the Moscow Region;

(6) Mr Stelmakh was born in 1978 and lives in Moscow;

(7) Mr Orel was born in 1968 and lives in Moscow;

(8) Mr Melikhov was born in 1972 and lives in Korolev, in the Moscow Region;

(9) Ms Chelysheva was born in 1967 and lives in Nizhniy Novgorod.

6. The facts of the case, as submitted by the parties, may be summarised as follows.

1. Demonstration of 14 April 2007

7. In 2007 the first applicant, together with other individuals representing a coalition of opposition groups, intended to take part in an anti-government rally to campaign before the forthcoming parliamentary elections. The demonstration became known as the March of Dissenters; it was organised by three individuals, none of whom are applicants in the present case. On 30 March 2007 they submitted notice of a public demonstration to the mayor of Moscow. They indicated, in particular, that a meeting would be held at 12 noon on 14 April 2007 in Novopushkinskiy Park, which would last until 1.30 p.m. and would be followed by a march via Tverskaya Street and Okhotnyy Ryad Street to Teatralnaya Square. The march was to end at 2 p.m. They estimated that about 2,000 people would take part in the event. The notice stated that the proposed demonstration was intended "to express the demands of Russian citizens for the urgent reinstatement of the full scope of citizens' electoral rights, through the abolition of the legislative amendments of recent years".

8. On 5 April 2007 the Department for Liaison with Security Authorities of the Moscow Government informed the organisers that the event was liable to disrupt the functioning of urban services and the movement of passers-by. Therefore, authorisation could only be granted for a meeting at the foot of the Griboyedov monument on Chistoprudnyy Boulevard (a different location in central Moscow) between 12 noon and 1.30 p.m.; the number of participants could not exceed 1,000, the maximum capacity of the venue. No march was authorised.

9. On 6 April 2007 the organisers resubmitted the notice, proposing four alternative routes for the march, all in central Moscow, and agreeing to limit the number of participants to 1,000.

10. On 10 April 2007 the Department for Liaison with Security Authorities of the Moscow Government informed the organisers that none of the alternatives could be accepted, for the same reasons as the refusal of the original proposal. It suggested that the organisers hold the event at an aeronautical club in one of the Moscow suburbs.

11. The documents submitted by the Government reveal that on 14 April 2007 the Moscow police were reinforced by special units of the riot police ("OMON") brought in specially from twenty-nine regions of Russia "to protect public order and security" on that day.

12. According to the Government, on 14 April 2007 at about 11.40 a.m. groups of people started gathering near Pushkinskaya Square. A group of about twenty persons, including the first eight applicants, started marching down Tverskaya Street while shouting anti-government slogans. The total number of people who took part in this unauthorised march was about fifty. According to the Government, the applicants were arrested as they tried to pass from Tverskaya Street onto Red Square. The Government originally alleged that the march down Tverskaya Street had begun at 1.30 p.m., as had been indicated in the police reports, but they subsequently submitted that the applicants had been arrested at 1 p.m. and brought to the police station at 1.30 p.m.

13. The applicants claimed that they had not staged a demonstration in Tverskaya Street, but had happened to be there for different reasons. Mr Kasparov, Mr Tarasov and Mr Toropov claimed that at 12 noon they had been walking peacefully down Tverskaya Street towards the place of the authorised meeting at the Griboyedov monument. The applicants did not specify the number of people walking alongside them. They claimed that their way had been barred by the riot police who were blocking off several streets in central Moscow. The applicants claimed that at this stage all pedestrians, both aspiring protesters and unsuspecting passers-by, had been pushed back, surrounded and indiscriminately beaten up by the riot police, before being arrested and taken in police vans to different police stations.

14. Mr Stelmakh claimed that he had not been heading to a meeting but had been walking down Tverskaya Street with his friends; when he saw the riot police dispersing a crowd and arresting people he had dropped into the "Russkoye Bistro" café, where he was arrested at about 12 noon.

15. Four other applicants denied any connection with the march. Mr Kharlamov claimed that he had had no intention of participating in a public event; he had been arrested when he came out of a shop near Pushkinskaya Square after having collected his mobile phone, which was being repaired. Mr Kalashnikov claimed that he had been arrested when he was heading to a local McDonald's restaurant to meet a friend. Mr Orel also

submitted that he had been heading to McDonald's but could not get there because the street was closed off by the riot police; he too had dropped in to the "Russkoye Bistro" café on Tverskaya Street, where he had been arrested. Mr Melikhov also said that he had been heading to McDonald's but could not get there and had been arrested in Tverskaya Street.

16. The applicants claimed that there had been at least thirty other people in the police van, all of whom had been arrested at the same time as them.

17. When the applicants arrived at the police station, reports on their administrative arrest were drawn up in accordance with Article 27.4 of the Code of Administrative Offences. The first to eighth applicants were charged with the administrative offence of breaching the regulations on holding demonstrations. The administrative proceedings in their cases are described below.

18. On 17 April 2007 the first applicant received a letter from the Federal Security Service summoning him for an interview, following a media appeal broadcast on 8 April 2007 by the radio station Ekho Moskvy, in which he had called on listeners to take part in the demonstration on 14 April 2007. It was suggested that such statements could constitute the criminal offence of incitement to extremist activities. There is no information on any follow-up to this interview.

2. Administrative proceedings concerning the first applicant

19. After his arrest on 14 April 2007 the first applicant was taken to the police station and was then brought before the Justice of the Peace of Circuit no. 369 of the Tverskoy District of Moscow. He was charged with a breach of the established procedure for conducting public assemblies, an offence under Article 20.2 § 2 of the Administrative Offences Code.

20. The hearing of the administrative case was fixed for 5.30 p.m. on the same day. The applicant filed two motions to have the hearing adjourned in order to have sufficient time to prepare his defence, but the Justice of the Peace noted the insignificant volume of the case file (five pages) and decided to hold the hearing on the same day, having postponed it first by forty-five minutes and then by an additional twenty minutes.

21. At 6.30 p.m. on the same day the Justice of the Peace examined the charges. At the hearing the first applicant was represented by a lawyer. The applicants alleged that no members of the public had been allowed in the courtroom during the hearing, as the building had been cordoned off by the police. The first applicant's counsel, Ms Moskalenko, filed a motion to have the hearing opened to the public. The Justice of the Peace issued a decision stating that the hearing was open to the public.

22. At the beginning of the hearing the applicant filed a motion to call and examine six eyewitnesses, four of whom had been arrested at the same time as him. The Justice of the Peace rejected the motion, holding that it

was premature to call witnesses before the applicant and the police had been questioned.

23. The Justice of the Peace examined the police report, according to which the first applicant had been arrested at 1.30 p.m. while "walking in a big group of people shouting anti-government slogans". She also questioned Mr I., the policeman who had arrested the applicant and drawn up the report. The latter testified that because of the public manifestations expected to take place between 12 noon and 4 p.m. on 14 April 2007 he had received an instruction to safeguard public order at 19 Tverskaya Street, in particular to stop any organised groups of people heading in the direction of Red Square. He also testified that Mr Kasparov had been walking in a group of about fifty to sixty people and, following the instructions to disperse the unauthorised demonstration, which was threatening to spill over into the security perimeter of Red Square, he had arrested him. The applicant claimed that the policeman had given the wrong place and time of the arrest, and reiterated the request to question the eyewitnesses, stating that the persons in question were waiting outside the court and were ready to be called. The Justice of the Peace rejected the motion on the grounds that the persons concerned had not been mentioned in the police report and that the facts were sufficiently clear to determine the charges. The court accepted the version of events put forward by the police, finding as follows:

> "Assessing the testimony by [Mr I.], the court finds it credible because [Mr I.] was performing his professional duties; he had not been acquainted with the applicant and had no reason to slander him; he [was a party] with no vested interest."

24. The Justice of the Peace referred to the Moscow authorities' decision of 5 April 2007 and concluded that on 14 April 2007 the first applicant had attempted to take part in an unauthorised demonstration at 19 Tverskaya Street, where he had been arrested. The applicant was found to have acted in breach of the regulations on holding demonstrations and was convicted of an administrative offence under Article 20.2 of the Administrative Offences Code. He had to pay a fine of 1,000 Russian roubles (RUB, about 25 euros (EUR)).

25. The applicant appealed to the Tverskoy District Court of Moscow. He contested the facts as established at first instance, claimed that the hearing had not been held in public and alleged that he had not been given a chance to prepare his defence or to present his case adequately.

26. On 14 May 2007 the Tverskoy District Court examined the applicant's appeal. It upheld the first-instance judgment, reiterating that the applicant had participated in an unauthorised demonstration and that he had been marching in a group of people chanting anti-government slogans. It also noted that there had been no proof that the first-instance hearing had not been held in public or that the applicant had not been given sufficient time to prepare his defence, since he had had two hours to do so.

3. Administrative proceedings concerning the second to eighth applicants

27. The administrative proceedings concerning each of these applicants were conducted at first instance by the Justice of the Peace of Circuit no. 369 of the Tverskoy District of Moscow. Like the first applicant, they were individually convicted of having breached the procedure for the conduct of public assemblies, an administrative offence under Article 20.2 of the Administrative Offences Code, and had to pay a fine of RUB 1,000 each. During the trial all of them contested the police reports, in particular as regards the time and circumstances of their arrest, and requested the court to call and examine eyewitnesses. The Justice of the Peace found, however, that the facts were sufficiently established in each case and rejected the requests. The decisions and the reasons given by the court were essentially the same as in the first applicant's case.

28. The fifth applicant's case was examined in the absence of the applicant and his lawyer because the court had rejected a motion lodged by him for the proceedings to be adjourned, finding that it was possible to proceed without the applicant and his lawyer.

29. The first-instance judgments were given on the following dates: in the second, third, fourth and sixth applicants' cases on 16 April 2007; in the fifth applicant's case on 22 May 2007; and in the seventh and eighth applicants' cases on 25 April 2007.

30. The applicants subsequently appealed unsuccessfully to the Tverskoy District Court of Moscow. The reasons given by the appeal court were essentially the same as in the first applicant's case. The appeal decisions in the applicants' cases were given on 14 May 2007, with the exception of the appeal decision in the fifth applicant's case which was given on 11 July 2007.

4. The complaint lodged by the ninth applicant

31. The ninth applicant alleged that on 14 April 2007 she had been heading to the meeting at the Griboyedov monument. At Sretenskiye Vorota Square she and other pedestrians had been attacked by a unit of the riot police. The applicant had seen a policeman hitting a man with a truncheon and had intervened to try to stop the beating, but the policeman had kicked her on her left leg. She had been badly hurt and therefore could not go to the meeting. Later on the same day she had sought medical help at Moscow City Clinic no. 137, where she had been diagnosed with a haematoma of the left ankle.

32. On 16 April 2007 the applicant filed a complaint with the Moscow prosecutor's office requesting that criminal proceedings be brought against the policemen who had used force against her.

33. On 6 July 2007 the Meshchanskiy Inter-District Prosecutor's Office decided to dispense with a criminal investigation into the incident.

34. On 18 March 2011 the same prosecutor's office quashed the above decision and remitted the file for additional investigation. Instructions were given to question the applicant and the three named eyewitnesses, to obtain the medical documents and to conduct a forensic examination. There is no information as to the outcome of those proceedings.

II. RELEVANT DOMESTIC LAW

35. The relevant provisions of the Code of Administrative Offences of 30 December 2001, as in force at the material time, read as follows:

Article 20.2 Breaches of the established procedure for the organisation or conduct of public gatherings, meetings, demonstrations, marches or pickets

"1. Breaches of the established procedure for the organisation of public gatherings, meetings, demonstrations, marches or pickets shall be punishable by an administrative fine of between ten and twenty times the minimum wage, payable by the organisers.

2. Breaches of the established procedure for the conduct of public gatherings, meetings, demonstrations, marches or pickets shall be punishable by an administrative fine of between RUB 1,000 and RUB 2,000 for the organisers, and between RUB 500 and RUB 1,000 for the participants."

Article 27.2 Escorting of individuals

"1. The escorting or the transfer by force of an individual for the purpose of drawing up an administrative offence report, if this cannot be done at the place where the offence was discovered and if the drawing-up of a report is mandatory, shall be carried out:

(1) by the police ...

...

2. The escort operation shall be carried out as quickly as possible.

3. The escort operation shall be recorded in an escort operation report, an administrative offence report or an administrative detention report. The escorted person shall be given a copy of the escort operation report if he or she so requests."

Article 27.3 Administrative arrest

"1. Administrative arrest or short-term restriction of an individual's liberty may be applied in exceptional cases if this is necessary for the prompt and proper examination of the alleged administrative offence or to secure the enforcement of any penalty imposed by a judgment concerning an administrative offence. ...

...

3. Where the detained person so requests, his family, the administrative department at his place of work or study and his defence counsel shall be informed of his whereabouts.

...

5. The arrested person shall have his rights and obligations under this Code explained to him, and the corresponding entry shall be made in the administrative arrest report."

Article 27.4 Administrative arrest report

"1. The administrative arrest shall be recorded in a report ...

2. ... If he or she so requests, the arrested person shall be given a copy of the administrative arrest report."

Article 27.5 Duration of administrative arrest

"1. The duration of the administrative arrest shall not exceed three hours, except in the cases set out in paragraphs 2 and 3 of this Article.

2. Persons subject to administrative proceedings concerning offences involving unlawful crossing of the Russian border ... may be subject to administrative arrest for up to 48 hours.

3. Persons subject to administrative proceedings concerning offences punishable, among other administrative sanctions, by administrative detention may be subject to administrative arrest for up to 48 hours ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

36. The first to eighth applicants complained of a violation of the right to a fair and public hearing in the determination of the administrative charges against them. They relied on Article 6 § 1 of the Convention, which provides:

"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. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic

society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

A. Admissibility

1. Applicability of Article 6

37. The Government requested the Court to declare this complaint inadmissible as being incompatible *ratione materiae* with the provisions of the Convention. They argued that Article 6 was inapplicable to the administrative proceedings; the applicants' cases did not concern the determination either of their civil rights and obligations or of criminal charges against them. They argued that the offence under Article 20.2 of the Code of Administrative Offences was not punishable by administrative detention, a fact which distinguished the present case from *Ziliberberg v. Moldova* (no. 61821/00, § 34, 1 February 2005). The Government also pointed out that the administrative offence in question fell within the jurisdiction of the Justice of the Peace, a judicial authority competent to adjudicate in cases concerning criminal offences carrying a maximum sentence of up to three years' imprisonment, as well as in civil disputes and administrative matters.

38. The applicants contended, on the other hand, that the criminal limb of Article 6 was applicable to the proceedings at issue. They referred to the criteria set out in *Engel and Others v. the Netherlands* (8 June 1976, §§ 82-83, Series A no. 22), and claimed that the offences they had been convicted of were essentially criminal despite their classification in domestic law as administrative. They also referred to *Ziliberberg*, cited above, claiming that in that case the Court had found Article 6 to be applicable to proceedings concerning an administrative offence similar to the one at issue in the present case. They did not share the Government's view that the present case was to be distinguished from the aforementioned case either on the ground suggested by the Government or on any other ground.

39. The Court reiterates that the applicability of Article 6 falls to be assessed on the basis of the three criteria outlined in the Engel judgment (see *Engel and Others*, cited above, §§ 82 and 83). In order to determine whether an offence qualifies as "criminal" for the purposes of the Convention, it is first 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, among other authorities, *Öztürk v.Germany*, 21 February 1984, § 50, Series A no. 73;

Demicoli v. Malta, 27 August 1991, §§ 31-34, Series A no. 210; and *Galstyan v. Armenia*, no. 26986/03, §§ 55-60, 15 November 2007).

40. In addition, even though the Court's established jurisprudence regards the second and third criteria laid down in Engel as alternative and not necessarily cumulative, this does not exclude that a cumulative approach may be adopted where separate analysis of each criterion does not make it possible to reach a clear conclusion as to the existence of a criminal charge (see *Ezeh and Connors v. the United Kingdom* [GC], nos. 39665/98 and 40086/98, § 86, ECHR 2003-X).

41. In Russian domestic law, a breach of the regulations on holding a public assembly is classified as an "administrative offence". The Court has previously examined the sphere defined in certain legal systems as "administrative" and found that it embraces some offences that are criminal in nature but too trivial to be governed by criminal law and procedure (see *Palaoro v. Austria*, 23 October 1995, §§ 33-35, Series A no. 329-B). Where this is the case, the indication afforded by national law is not decisive for the purpose of Article 6 and the very nature of the offence in question is a factor of greater importance (see *Campbell and Fell v. the United Kingdom*, 28 June 1984, § 71, Series A no. 80; *Weber v. Switzerland*, 22 May 1990, § 32, Series A no. 177; and *Menesheva v. Russia*, no. 59261/00, §§ 96-98, ECHR 2006-III).

42. As regards the nature of the offence committed by the applicants, Article 20.2 of the Code of Administrative Offences makes it a punishable offence to participate in an unauthorised demonstration. That provision regulates offences against public order and is designed to regulate the manner in which demonstrations are held. Accordingly, the legal rule infringed by the applicant is directed towards all citizens and not towards a given group possessing a special status. The Court therefore concludes that the offence was of a general character.

43. The Court further notes that the applicants were sentenced to a fine, which the Government considered a trivial penalty. The Court notes that the applicants in the instant case were fined the equivalent of EUR 25, the maximum penalty under the applicable provision. More importantly, the fines payable in the present case were not intended as pecuniary compensation for damage but were punitive and deterrent in nature, which is also a characteristic of criminal penalties (see *Öztürk*, cited above, § 53).

44. Furthermore, the Court notes that the applicants in the present case were arrested and taken into police custody for around two hours. As a matter of principle, it attaches particular importance to any form of deprivation of liberty when it comes to defining what constitutes the "criminal" sphere (see *Ziliberberg*, cited above, § 34). In this case, moreover, the Court observes that the applicants were subjected to an administrative arrest under Article 27.3 of the Code of Administrative Offences, a measure which has stronger criminal connotations than the

escorting of an individual to the police station as provided for by Article 27.2 of the Code.

45. These considerations are sufficient for the Court to establish that the offence of which the first to eighth applicants were convicted can be classified as "criminal" for the purposes of the Convention. It follows that Article 6 applies.

2. Conclusion as to admissibility

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

B. Merits

1. The parties' submissions

47. Although they considered that the administrative proceedings fell outside the scope of Article 6, the Government claimed that the applicants had been provided with all the guarantees of a fair hearing. In particular, the principle of equality of arms had been ensured in that the Justice of the Peace had examined both parties' submissions, having taken cognisance of the applicants' account of events as well as that of the police. They also contended that the proceedings before the Justice of the Peace had been conducted in public, as required by Article 24.3 of the Code of Administrative Offences; the Justice of the Peace had confirmed this by a separate decision in the first applicant's case, following a motion to have the hearing opened to the public. The decision expressly stated that the hearing was open to the public. The Government contested the first applicant's allegation that members of the public had been stopped by the police in front of the court building, arguing that the applicants' allegations related to a time when the proceedings had not yet begun, given that at 6 p.m. the first applicant and his lawyers had been preparing for the hearing. Furthermore, at his request the first applicant had been given an additional forty-five minutes to prepare for the hearing.

48. The Government further contended that the applicants had been found guilty on the basis of ample evidence, including the police reports and the testimonies of the police officers as well as the documents provided by the Government of Moscow relating to the application to hold the public event on 14 April 2007. As regards the refusal to call witnesses at the applicants' request, the court had stated that there was no need to examine them because the evidence in the file was sufficient to establish the

circumstances of the case; the Government subscribed to that finding, which it considered to be reasonable.

49. Finally, they pointed out that the applicants' appeals against the first-instance decisions had been examined by the Tverskoy District Court. Thus the applicants had been able to avail themselves of a judicial hearing of their cases, with all the pertinent guarantees, at two instances.

50. The applicants, for their part, argued that the proceedings concerning the administrative offences had failed to comply with the guarantees of a fair and public hearing, alleging that the principle of equality of arms had not been secured in that the witnesses for the defence had not been called, and that the public had been excluded from the trial of the first applicant.

51. In the first applicant's case, they also claimed that he had not been given sufficient time to prepare his defence because the judge had refused to adjourn the hearing and had given the applicant and his counsel only twenty minutes to prepare. The first applicant also claimed that the charges against him had not been specified before the trial, as only a general reference had been made to Article 20.2 of the Code without any indication as to which of the four offences covered by that Article he was accused of; this had also been an impediment to preparing his defence. He further complained that at the hearing no witnesses had been called and examined, except for the officer who had arrested the first applicant. The applicant's request to call other eyewitnesses had been rejected on the grounds that it was unnecessary. The first applicant contested the Government's claim that the proceedings in his case had been held in public. He submitted, in particular, that even his two lawyers had been denied access to the courthouse, although they had had authority forms to represent him in the proceedings. Following the motion to allow admission at least to the family the court had indeed issued the decision to which the Government had referred, to the effect that the proceedings were already open to the public, but the police had nevertheless continued to cordon off the courthouse.

52. The second applicant indicated that prior to his trial he had not been given a copy of the police report concerning the administrative charges he was facing. He also complained that the court had refused to call and examine the eyewitnesses, in particular the first and the fourth applicants and the policeman who had drawn up the report in his case, on the grounds that there had been sufficient evidence in the case file.

53. The third and fourth applicants alleged that they had been wrongly convicted of an administrative offence as the result of an error by the police. Neither of them had had any intention of taking part in the meeting but had happened to be passing by: the third applicant had been arrested after collecting his mobile phone from a local service shop, and the fourth applicant had been on his way to a private appointment. The third applicant had presented the shop receipts to the court but they had been dismissed as irrelevant. Moreover, in both cases the court had refused to call and examine

the eyewitnesses and the policemen who had drawn up the report. Both applicants had been convicted of an administrative offence on the basis of the police report alone and had been deprived of any opportunity of proving their innocence.

54. The fifth applicant submitted that the administrative proceedings had been conducted in his absence because the court had dismissed his request to adjourn the proceedings on medical grounds, having found that his presence was unnecessary. He had therefore been given no chance at all to state his case before a court at the crucial moment of establishment of the facts at first instance.

55. The sixth, seventh and eighth applicants complained that the court had not verified their version of events and had not taken cognisance of the fact that they had contested the time and the circumstances of their arrest.

2. The Court's assessment

56. The Court notes that all the applicants alleged a violation of Article 6 § 1 because of the generally unfair manner in which the domestic courts had established the relevant facts underlying the charges against them. In particular, they claimed that the courts had not given them a chance of pleading their case, by dismissing all the evidence and witnesses capable of supporting the applicants' version of events. In the case of the fifth applicant the court, furthermore, had not heard evidence from the applicant himself because it had decided to proceed in his absence.

57. The Court reiterates that the admissibility of evidence is primarily governed by the rules of domestic law. As a general rule, it is for the national courts to assess the evidence before them as well as the relevance of the evidence which defendants seek to adduce (see, among other authorities, *Barberà, Messegué and Jabardo v. Spain*, 6 December 1988, § 68, Series A no. 146). More specifically, Article 6 § 3 (d) leaves it to them, again as a general rule, to assess whether it is appropriate to call witnesses, in the "autonomous" sense given to that word in the Convention system (see *Asch v. Austria*, 26 April 1991, § 25, Series A no. 203).

58. It remains the task of the Court, however, to ascertain whether the proceedings, considered as a whole, were fair as required by Article 6 § 1 (see *Delta v. France*, 19 December 1990, § 35, Series A no. 191, and *Vidal v. Belgium*, 22 April 1992, § 33, Series A no. 235-B). In the context of the taking of evidence, the Court has paid particular attention to compliance with the principle of equality of arms. It has held, in particular, that it is one of the fundamental aspects of a fair hearing and that it implies that the applicant must be "afforded a reasonable opportunity to present his case under conditions that do not place him at a disadvantage *vis-à-vis* his opponent" (see *Bulut v. Austria*, 22 February 1996, § 47, *Reports of Judgments and Decisions* 1996-II). Therefore, even though it is normally for the national courts to decide whether it is necessary or advisable to call a

witness, there might be exceptional circumstances which could prompt the Court to conclude that the failure do so was incompatible with Article 6 (see *Bricmont v. Belgium*, 7 July 1989, § 89, Series A no. 158, and *Destrehem v. France*, no. 56651/00, § 41, 18 May 2004).

59. In order to decide whether the applicants in the instant case were afforded the opportunity to present their case without being placed at a disadvantage *vis-à-vis* the prosecution, and whether the proceedings were conducted fairly, the Court will first examine what constituted the basis of the applicants' conviction (see, *mutatis mutandis*, *Destrehem*, cited above, § 43).

60. Turning to the first applicant's case, the Court observes that Mr Kasparov was brought before the Justice of the Peace after being apprehended in Tverskaya Street, allegedly for taking part in an unauthorised march. It observes, next, that the circumstances surrounding his arrest, such as the purpose of his being there, the time of the alleged march and even the time and the exact place of the arrest were in dispute between the parties.

61. Uncertainty on these points remains to date. In the proceedings before the Court, the respondent Government alleged that the march down Tverskaya Street began at 1.30 p.m., but in another part of their observations they submitted that the crowd had started to gather for the march at 11.40 a.m., and that the applicants had been arrested at 1 p.m. and had been brought to the police station at 1.30 p.m. This timeframe is consistent with the applicants' version of events and not with what the police reported.

62. In the proceedings before the Justice of the Peace, Mr Kasparov contended that he had been walking with a small group of people towards the Griboyedov monument, the venue for a meeting that had been duly authorised by the Moscow authorities. The police, on the other hand, alleged that Mr Kasparov had not simply been walking but had been taking part in an unauthorised demonstration, and they insisted that he had been doing so at a time when the event at the Griboyedov monument had ended. Another controversy between the parties relates to the place of arrest. According to the police, the applicants, including the first applicant, were arrested when the demonstration threatened to spill over into Red Square, a designated high-security area. The first applicant, meanwhile, claimed that he had been arrested in Tverskaya Street when he and his companions had reached the security barrier set up by the riot police at a considerable distance from Red Square.

63. The Court has previously held that in circumstances where the applicant's conviction was based primarily on the assumption of his being in a particular place at a particular time, the principle of equality of arms and, more generally, the right to a fair trial, imply that the applicant should be afforded a reasonable opportunity to challenge the assumption effectively

(see *Popov v. Russia*, no. 26853/04, § 183, 13 July 2006, and *Polyakov v. Russia*, no. 77018/01, §§ 34-37, 29 January 2009).

64. In the first applicant's case, however, the court rejected the attempts by the applicant to clarify the time and place of his arrest, although these facts were central to the determination of the administrative charges. Presented with two irreconcilable statements, the Justice of the Peace decided to base the judgment exclusively on the version put forward by the police because they had been a "party with no vested interest". However, the Court considers that, given the significance of the disputed facts for the outcome of the case and the role of the police officer who arrested the applicant and drew up the report, it was indispensable for the Justice of the Peace to exhaust every reasonable possibility of finding out exactly when and where the first applicant had been arrested.

65. The Court notes that calling the eyewitnesses who could have shed light on these events would have been a straightforward matter. Their names and addresses were known; four of them had been arrested at the same time as the applicant, and they were, according to the applicant's counsel, waiting outside the court to give evidence. In any event, the Justice of the Peace did not refer to any technical obstacles to finding these persons. She simply considered it superfluous to the proceedings.

66. The Court cannot but conclude that the Justice of the Peace accepted the submissions of the police readily and unequivocally and denied the first applicant any possibility of adducing any proof to the contrary. The Court recognises that the charges against the applicant were rather trivial and that the proceedings concerning such matters are meant to be conducted expeditiously. However, taking into account the fact that the applicant's conviction was founded upon conflicting evidence against him, the Court finds that the domestic courts' unreserved endorsement of the police report and their refusal to examine the defence witnesses without any regard to the relevance of their statements led to a limitation of the defence rights incompatible with the guarantees of a fair hearing (see *Popov*, cited above, § 188). Accordingly, there has been a breach of the principles enshrined in Article 6 of the Convention.

67. The Court further notes that the other applicants' trials were all conducted in a virtually identical manner, that is, without giving the applicants any possibility of adducing evidence in support of their version of events. In the fifth applicant's case, this circumstance was further aggravated by the fact that the court did not consider his, or his lawyer's, presence necessary for the conduct of the proceedings.

68. Having regard to the foregoing conclusion and the particular circumstances of the present case, the Court considers it unnecessary to examine the first applicant's complaints that there was no public hearing and that he had insufficient time to prepare his defence, or the second

applicant's complaint that he was not given access to the police report prior to the court hearing.

69. In view of the foregoing, the Court concludes that there has been a violation of Article 6 § 1 of the Convention in respect of the first eight applicants.

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

70. The applicants complained that the authorities' conduct on 14 April 2007 had interfered with their right to freedom of expression and their right to freedom of peaceful assembly, guaranteed by Articles 10 and 11 of the Convention respectively. Those provisions read as follows:

Article 10 (freedom of expression)

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

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

Article 11 (freedom of assembly and association)

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

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

A. Admissibility

1. The first, second and fifth applicants

71. The Court notes that in so far as Mr Kasparov, Mr Tarasov and Mr Toropov are concerned, this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. The third, fourth, sixth, seventh and eighth applicants

72. The Court notes that in making their complaints under Article 10 and 11 these applicants denied that they had had any intention of taking part in a public assembly on 14 April 2007, either on Tverskaya Street, at the Griboyedov monument or elsewhere. They all claimed before the domestic courts and in their applications to the Court to have been arrested by mistake, simply because they had accidentally and by mischance found themselves in the midst of the attempts to break up the demonstration on Tverskaya Street. They have therefore not made out a prima facie case of interference with their freedom of expression or freedom of assembly.

73. It follows that this part of the application by Mr Kharlamov, Mr Kalashnikov, Mr Stelmakh, Mr Orel and Mr Melikhov is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

3. The ninth applicant

74. The Court notes at the outset that in setting out her complaints of ill-treatment this applicant did not allege, expressly or implicitly, a violation of Article 3 of the Convention. Under Articles 10 and 11 of the Convention she claimed that the injury allegedly inflicted on her by the police had prevented her from taking part in an authorised public meeting at the Griboyedov monument. The Court further observes that she attempted to lodge a criminal complaint against the policeman who, as she alleged, had kicked her on the ankle; however, apart from a copy of her complaint she provided the Court with no further material in support of her version of events, not even a witness statement by any persons who might have been with her at the time. It should be noted that the alleged assault on the ninth applicant was a separate event from the arrest of the other applicants and took place at a different location. Therefore it cannot be said that her allegations are corroborated by the account of events given by the other applicants. As the file stands, the Court cannot even establish that the police did in fact disperse the authorised meeting at the Griboyedov monument. Moreover, the applicant did not attempt to lodge a civil-law complaint

specifically alleging a violation of her right to peaceful assembly on that occasion, thus failing to exhaust domestic remedies for the purposes of Article 11 of the Convention or to substantiate her allegations.

75. 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.

B. Merits

1. The parties' submissions

76. As regards the scope of the case, Mr Kasparov, Mr Tarasov and Mr Toropov submitted that this case should be considered under Article 10 of the Convention as a separate issue from that under Article 11. They alleged that one of the reasons for their arrest was that they had been chanting "Putin go away" while walking down Tverskaya Street, and that their case was to be distinguished on that ground from other cases concerning restrictions on demonstrations in which the Court had ruled that an Article 10 complaint was subsumed by a complaint under Article 11.

77. The applicants further argued that there has been interference with their freedom of peaceful assembly and freedom of expression. They alleged that their arrest on 14 April 2007 had prevented them from attending the meeting at the Griboyedov monument, an event authorised by the Moscow authorities. Moreover, the administrative liability imposed on them following the arrest also constituted disproportionate interference with their Convention rights.

78. As regards the lawfulness of the interference, the applicants contested the reasons given by the authorities for their arrest, in particular the allegation that they had been trying to enter Red Square, which was a designated security area. They referred to their original notice of the march and pointed out that the proposed route ran along Tverskaya Street, turning in to Teatralnaya Square, away from Red Square. They therefore contended that even if the police had perceived the demonstrators to be marching down Tverskaya Street in the direction of Red Square, they should not have assumed that they were going to penetrate the security area.

79. The Government pointed out that neither the event organisers nor any other interested parties had challenged the Moscow authorities' decision of 5 April 2007 concerning the proposed event. Instead they had gone ahead with the march without authorisation. The Government contested, in particular, the allegation that the applicants had merely been walking to the venue of the authorised meeting at the Griboyedov monument. They also disagreed with the applicants about the time of the arrest, in particular as to whether it had taken place before or after the authorised meeting. The Government first insisted that the applicants had been arrested at 1.30 p.m.,

when the meeting had already ended, with the exception of Mr Melikhov (the eighth applicant), who had been arrested at 12.05 p.m. on Tverskaya Street, and Mr Kharlamov (the third applicant), who had been arrested at 1 p.m. on Pushkinskaya Square. They subsequently indicated that all the applicants had been arrested at 1 p.m. and had been brought to the police station at 1.30 p.m. They challenged the applicants' submissions on this point as inconsistent, pointing out that Mr Kasparov had indicated 12 noon as the time of his arrest, whereas Mr Tarasov had initially stated 1 p.m. and had only later changed it to 12 noon.

80. The Government further contested the allegation that any chance passers-by had been detained or restrained by the police. In particular, there had been no complaints from alleged random victims of indiscriminate police actions. As to the applicants, all of them had knowingly and intentionally participated in an unauthorised march.

81. The Government accepted that the applicants' arrest and their conviction of an administrative offence had constituted interference with their freedom of assembly. However, they maintained that those measures had been lawful, had pursued the legitimate aim of maintaining public order and had been proportionate to that aim for the purposes of Article 11 § 2 of the Convention. They claimed, in particular, that the applicants had been offered a different venue at which to conduct a public event on the requested date and that the proposed changes had seemingly been accepted by the event organisers. Moreover, the authorised meeting had indeed taken place at the Griboyedov monument, and the applicants could have participated in it. Instead, the applicants had pursued the itinerary indicated in the original request, walking on the pavement and on the road, obstructing pedestrians and traffic, and had then tried to enter Red Square. Given that this route had not been agreed with the Moscow authorities, the police could not have foreseen that the march would take place there and then and therefore could not have taken measures to maintain public order and safety. That was why the applicants, who were ignoring the police warnings, had had to be arrested. This had also justified imposing an administrative sanction on them which, moreover, had been relatively mild.

2. The Court's assessment

(a) The scope of the applicant's complaints

82. The Court notes that, in the circumstances of the case, Article 10 is to be regarded as a *lex generalis* in relation to Article 11, a *lex specialis* (see *Ezelin v. France*, 26 April 1991, § 35, Series A no. 202). The Court takes cognisance of the applicants' request to examine these as two separate issues because of the particular circumstances of the case. It observes that the administrative charges brought in this case referred, *inter alia*, to the applicants' having chanted anti-government slogans during an unauthorised

demonstration. This complaint, falling in principle under Article 10, is similar in scope to those examined in *Galstyan* (cited above, §§ 95-96 and § 100), where the applicant was arrested and convicted because of his behaviour during a political demonstration, and *Sergey Kuznetsov v. Russia*, (no. 10877/04, § 23, 23 October 2008), where the applicant was charged with an administrative offence for distributing offensive leaflets during a picket. In these and other cases the Court found it unnecessary to consider the complaint under Article 10 separately from that under Article 11 of the Convention. There are no reasons to depart from that principle in the present case.

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

(b) Whether there was interference with the exercise of the freedom of peaceful assembly and whether the interference was justified

84. The Court reiterates that the interference does not need to amount to an outright ban, legal or *de facto*, but can consist in various other measures taken by the authorities. The term "restrictions" in Article 11 § 2 must be interpreted as including both measures taken before or during an assembly and those, such as punitive measures, taken afterwards (see *Ezelin*, cited above, § 39). For instance, a prior ban can have a chilling effect on the persons who intend to participate in a rally and thus amount to an interference, even if the rally subsequently proceeds without hindrance on the part of the authorities (see *Bączkowski and Others v. Poland*, no. 1543/06, § 66-68, 3 May 2007). A refusal to allow an individual to travel for the purpose of attending a meeting amounts to an interference as well (see *Djavit An v. Turkey*, no. 20652/92, §§ 59-62, ECHR 2003-III). So too do measures taken by the authorities during a rally, such as dispersal of the rally or the arrest of participants (see *Oya Ataman v. Turkey*, no. 74552/01, §§ 7 and 30, ECHR 2006-XIII, and *Hyde Park and Others v. Moldova*, no. 33482/06, §§ 9, 13, 16, 41, 44 and 48, 31 March 2009), and penalties imposed for having taken part in a rally (see *Ezelin*, cited above, § 41; *Osmani and Others v. "the former Yugoslav Republic of Macedonia"* (dec.), no. 50841/99, ECHR 2001-X; *Mkrtchyan v. Armenia*, no. 6562/03, § 37, 11 January 2007; *Galstyan*, cited above, §§ 100-02; *Ashughyan v. Armenia*, no. 33268/03, §§ 75-77, 17 July 2008; and *Sergey Kuznetsov*, cited above, § 36).

85. The Court considers in that connection that irrespective of whether Mr Kasparov, Mr Tarasov and Mr Toropov were heading to an authorised public gathering, as they alleged, or were already in the process of conducting an unauthorised rally, as the Government claimed, their arrest

constituted an interference with their right of peaceful assembly, as did the ensuing administrative charges brought against them. The Court observes, moreover, that the Government did not dispute the existence of the interference with the right to peaceful assembly in the present case.

86. The Court reiterates that the right to freedom of assembly is a fundamental right in a democratic society and is one of the foundations of such a society (see among numerous authorities, *Galstyan*, cited above, § 114). This right, of which the protection of personal opinion is one of the objectives, is subject to a number of exceptions which must be narrowly interpreted and the necessity for any restrictions must be convincingly established. When examining whether restrictions on the rights and freedoms guaranteed by the Convention can be considered "necessary in a democratic society" the Contracting States enjoy a certain but not unlimited margin of appreciation. An interference will be considered "necessary in a democratic society" for a legitimate aim if it answers a "pressing social need" and, in particular, if it is proportionate to the legitimate aim pursued and if the reasons adduced by the national authorities to justify it are "relevant and sufficient" (see, for example, *Coster v. the United Kingdom* [GC], no. 24876/94, § 104, 18 January 2001 and *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 101, ECHR 2008). It is, in any event, for the Court to give a final ruling on the restriction's compatibility with the Convention and this is to be done by assessing the circumstances of a particular case (see *Osmani and Others*, cited above).

87. In the light of these principles the Court will examine whether the interference with the applicants' right to peaceful assembly was lawful, pursued a legitimate aim and was necessary in a democratic society.

88. As regards the lawfulness of the applicants' arrest and the subsequent administrative charges brought against them, the parties' diverging views on this point are rooted in their conflicting accounts of the factual circumstances of the case. The three applicants claimed that they had been walking to the authorised public event at the Griboyedov monument, and there had therefore been no grounds for their arrest, whereas the Government claimed that they had had to be arrested because they had been conducting a demonstration in breach of the regulations and because they were threatening to break through the security perimeter of Red Square. The Court has already found that the domestic courts made no attempt to establish the precise circumstances of the applicants' arrest, such as the time and the place, in order to verify whether it had been necessary to stop them (see paragraphs 60-62 and 66 above). In the absence of sufficient factual material to resolve this controversy the Court is unable to accept either party's version of events as a basis for deciding whether the authorities acted lawfully. In any event, it considers that in this case the issue of compliance with the law is indissociable from the question whether the

interference was "necessary in a democratic society". It will therefore examine this issue below (*see Christian Democratic People's Party v. Moldova,* no. 28793/02, § 53, ECHR 2006-II).

89. Turning to the existence of a legitimate aim, the Court will accept that the applicants' arrest and their conviction of an administrative offence had pursued the legitimate aim of maintaining public order, as the Government claimed.

90. To assess whether the interference was "necessary in a democratic society" the Court will examine the proportionality of the interference in the light of the reasons given by the domestic courts. It observes that, according to the domestic judgments, the applicants were "walking in a big group of people shouting anti-government slogans", that this constituted a public demonstration that had not been approved by the Moscow authorities and that the applicants were therefore in breach of Article 20.2 of the Code of Administrative Offences. It follows that in the domestic courts' view it was the lack of permission to stage a public demonstration that served as grounds for charging them with administrative offences.

91. The Court reiterates that although it is not *a priori* contrary to the spirit of Article 11 if, for reasons of public order and national security, a High Contracting Party requires that the holding of meetings be subject to authorisation, an unlawful situation, such as the staging of a demonstration without prior authorisation, does not justify an infringement of freedom of assembly (see *Cisse v. France*, no. 51346/99, § 50, ECHR 2002-III, and *Oya Ataman*, cited above, §§ 37 and 39). While rules governing public assemblies, such as the system of prior notification, are essential for the smooth conduct of public events since they allow the authorities to minimise the disruption to traffic and take other safety measures, their enforcement cannot become an end in itself. In particular, where irregular demonstrators do not engage in acts of violence the Court has required that the public authorities show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance (ibid., § 42; see also *Bukta and Others v. Hungary*, no. 25691/04, § 34, ECHR 2007-III; *Fáber v. Hungary*, no. 40721/08, § 49, 24 July 2012, and *Berladir and Others v. Russia*, no. 34202/06, § 38, 10 July 2012).

92. Turning to the Government's argument that the applicants were arrested because of the risk of the demonstration spilling over into the security area of Red Square, it must be noted that these reasons were also cited by the policemen who gave testimony. However, the police reports did not mention any such risk and, in any event, it did not form part of the reasoning given by the Justice of the Peace or the Tverskoy District Court. Moreover, the Court notes that the place of arrest set out in the judgments, 19 Tverskaya Street, is about 1.4 km away from the nearest approach to Red Square. Given the modest size of the group (estimated by the police as fifty

to sixty persons) and the undeniably peaceful character of the march, the Court is not persuaded that the threat of the marchers penetrating the security area was imminent.

93. The Government's allegation that the police had resorted to arresting the protesters because they were taken aback by the unforeseeable and unauthorised demonstration and were otherwise unable to cope is inconsistent with the facts established by the domestic courts. In particular, a policeman testified that the authorities had anticipated a rally at the time and place where the applicants were arrested, and measures had been taken to cordon off the area in advance of the march (see paragraph 23 above). Clear instructions had been given to the police officers who took part in the riot control operation specifically planned for the event. Moreover, the documents submitted by the Government reveal that reinforcements from the riot police had been brought in for the day from twenty-nine regions of Russia precisely because of the expected demonstration (see paragraph 11 above). These preparations should undoubtedly have enabled the police to divert a march of this scale from the high-security area.

94. Other considerations put forward by the Government in their observations, such as the nuisance caused by the protesters walking on the pavement and on the road and obstructing pedestrians and traffic, were not mentioned in the police reports or domestic judgments either. It therefore appears that they had no impact on the decisions taken in the applicants' case. Moreover, given the heavy police presence, it should have been possible to maintain public order and safety without resorting to arrests.

95. It follows that the applicants were arrested and charged with administrative offences for the sole reason that the authorities perceived their demonstration to be unauthorised. The Court therefore concludes that the Government have failed to demonstrate that there existed a "pressing social need" to arrest them.

96. In view of the above, the Court considers that in the instant case the police's forceful intervention was disproportionate and was not necessary for the prevention of disorder within the meaning of the second paragraph of Article 11 of the Convention. In these circumstances, the fact that the applicants were subsequently charged with administrative offences does not require a separate assessment.

97. In the light of the foregoing the Court concludes that there has been a violation of Article 11 of the Convention as regards Mr Kasparov, Mr Tarasov and Mr Toropov.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

98. Lastly, the applicants made complaints under Articles 7 and 18 of the Convention. The Court has examined these complaints as submitted by the applicants. However, in the light of all the material in its possession, and

in so far as the matters complained of are within its competence, it 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

99. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

100. The applicants claimed 10,000 euros (EUR) each in respect of non-pecuniary damage.

101. The Government contested these claims as unreasonable and excessive. They considered that the sums related to the applicants' allegations of inhuman and degrading treatment at the hands of the police, thus falling outside the scope of this application.

102. The Court observes that it has found a violation of Article 6 in respect of the first eight applicants, and also a violation of Article 11 in respect of Mr Kasparov, Mr Tarasov and Mr Toropov. It further notes that the applicants expressly referred to Articles 6 and 11 in their claims for just satisfaction. Contrary to what the Government suggested, the applicants' claims for just satisfaction were not based on their grievances about the "rough treatment" meted out to them during their arrest and their humiliation in the administrative proceedings. Their claims for non-pecuniary damage essentially reiterated their substantive complaints in respect of which a violation has been found.

103. In these circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, it makes the following awards in respect of non-pecuniary damage:

- to Mr Kasparov, Mr Tarasov and Mr Toropov: EUR 10,000 each, plus any tax that may be chargeable on that amount;
- to Mr Kharlamov, Mr Kalashnikov, Mr Stelmakh, Mr Orel and Mr Melikhov: EUR 4,000 each, plus any tax that may be chargeable on that amount.

B. Costs and expenses

104. The applicants also claimed reimbursement of the costs and expenses incurred before the domestic courts and the Court, in particular the fees of the three lawyers, Ms Moskalenko, Ms Mikhaylova and Ms Polozova, in the amount of EUR 3,500 each.

105. The Government contested the applicants' claims for costs and expenses on the grounds that they had not presented a legal services agreement with their counsel under which they would be obliged to pay the sums claimed.

106. According to the Court's case-law, an applicant is entitled to reimbursement of his or her costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court observes that Ms Moskalenko, Ms Mikhaylova and Ms Polozova represented five of the nine applicants throughout the proceedings before the Court; in particular, they submitted their applications and filed written observations on their behalf. The Court therefore grants the applicants' claim relating to their legal representation before the Court and makes an aggregate award of EUR 10,500, plus any tax that may be chargeable. The amount awarded shall be payable into Ms Mikhaylova's bank account directly, as requested by the applicants.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the first eight applicants' complaint under Article 6 and the first, second and fifth applicants' complaints under Articles 10 and 11 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 of the Convention as regards the first eight applicants;

3. *Holds* that there has been a violation of Article 11 of the Convention as regards the first, second and fifth applicants;

4. *Holds* that there is no need to examine the complaint under Article 10 of the Convention;

5. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable to the applicants, to the first, second and fifth applicants each in respect of non-pecuniary damage;

(ii) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, to the third, fourth, sixth, seventh and eighth applicants each in respect of non-pecuniary damage;

(iii) EUR 10,500 (ten thousand five hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the bank account of Ms Mikhaylova;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

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

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President