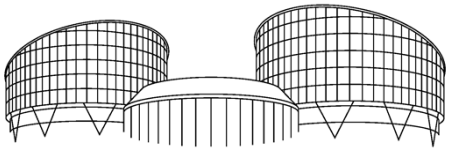

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF KOTOV v. RUSSIA

(Applications nos. 49282/19 and 50346/19)

JUDGMENT

Art 10 and Art 11 • Freedom of expression • Freedom of peaceful assembly • Domestic courts' failure to provide reasons for administrative convictions for participation in unauthorised yet peaceful public events and for posting calls for participation in one such event • Interference not "necessary in a democratic society"
Art 11 • Freedom of peaceful assembly • Disproportionate criminal conviction for repeated violations of established procedure for organising and conducting peaceful public events • Doubts as to conviction's foreseeability • Failure to balance interests at stake
Art 5 § 1 • Unlawful deprivation of liberty
Art 5 § 3 • Excessive length of pre-trial detention in criminal proceedings
Art 5 § 4 • Deficiencies in lawfulness of detention review proceedings
Article 6 § 1 (criminal) • Impartial tribunal • Absence of prosecuting party in administrative-offence proceedings
Article 6 §§ 1 (criminal) and 3 (d) • Fair hearing • Restrictions on the right to examine witnesses
Art 8 • Home • Unlawful search of applicant's home • Lack of adequate safeguards • Absence of relevant or sufficient reasons
Art 1 P1 • Peaceful enjoyment of possessions • Retention of personal belongings not related to the applicant's case seized during the search of his home

Prepared by the Registry. Does not bind the Court.

STRASBOURG

26 November 2024

FINAL

26/02/2025

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

In the case of Kotov v. Russia,

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

Jolien Schukking*, President*,
Georgios A. Serghides,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis,
Andreas Zünd,
Diana Kovatcheva*, judges*,
and Milan Blaško, *Section Registrar,*

Having regard to:

the applications (nos. 49282/19 and 50346/19) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Konstantin Aleksandrovich Kotov ("the applicant"), on 9 and 7 September 2019 respectively;

the decision to give notice to the Russian Government ("the Government") of the complaints concerning the applicant's administrative and criminal convictions for participation in, and calls to participate in, unauthorised public events, his allegedly unlawful and unjustified detention and the defective review in that regard, the lack of impartiality of the domestic courts and of a fair trial, an unlawful search, the lack of effective remedies, and an alleged violation of his property rights, and to declare the remainder of the applications inadmissible;

the applicant's observations;

the decision of the President of the Section to appoint one of the elected judges of the Court to sit as an *ad hoc* judge, applying by analogy Rule 29 § 2 of the Rules of Court (see *Kutayev v. Russia*, no. 17912/15, §§ 5-8, 24 January 2023);

Having deliberated in private on 22 October 2024,

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

INTRODUCTION

1. The case concerns the applicant's administrative and criminal convictions for participation in, and for calls to participate in, several unauthorised public events. It raises various issues regarding, in particular, his prosecution, his detention, the search of his apartment, respect for his property and the fairness of the judicial proceedings.

THE FACTS

2. The applicant was born in 1985 and lives in Moscow. He was represented by Mr N. Zboroshenko, a lawyer practising in Moscow.

3. The Government were initially represented by Mr A. Fedorov, former Representative of the Russian Federation to the European Court of Human Rights, and later by his successor in that office, Mr M. Vinogradov.

4. The facts of the case may be summarised as follows.

5. On 2 March 2019 the applicant participated in an unauthorised public event in Moscow in support of a political activist. On 7 March 2019, the Nikulinskiy District Court of Moscow, in a decision upheld on appeal by the Moscow City Court on 4 April 2019, convicted the applicant under Article 20.2 § 5 of the Code of Administrative Offences ("the CAO") and sentenced him to a fine of 20,000 Russian roubles (RUB).

6. On 13 May 2019 the applicant participated in an unauthorised public event in Moscow to protest against politically motivated prosecutions. On 15 May 2019 the Meshchanskiy District Court of Moscow, in a decision upheld on appeal by the Moscow City Court on 30 May 2019, convicted the applicant under Article 20.2 § 8 of the CAO and sentenced him to five days' detention.

7. On 12 June 2019 the applicant participated in an unauthorised rally in Moscow in support of I.G., an investigative journalist from *Meduza*, an online opposition newspaper. On 27 June 2019 the Presnenskiy District Court of Moscow, in a decision upheld on appeal by the Moscow City Court on 6 August 2019, convicted the applicant under Article 20.2 § 6.1 of the CAO and sentenced him to a fine of RUB 20,000.

8. In July 2019 the applicant posted on Facebook a call to participate in a peaceful assembly related to the elections to the Moscow City Duma on 19 July 2019. On 24 July 2019 the Tverskoy District Court of Moscow, in a decision upheld on appeal by the Moscow City Court on 26 July 2019, convicted the applicant under Article 20.2 § 2 of the CAO and sentenced him to ten days' detention.

9. On 10 August 2019 the applicant participated in an unauthorised public event in Moscow in support of unregistered candidates for election to the Moscow City Duma.

10. On 12 August 2019 the applicant was arrested on suspicion of repeated violations of the procedure for organising or conducting public events and was remanded in custody.

11. On 5 September 2019 the Tverskoy District Court of Moscow, in a decision upheld on appeal by the Moscow City Court on 14 October 2019, convicted the applicant as charged under Article 212.1 of the Criminal Code and sentenced him to four years' imprisonment.

12. The applicant lodged a complaint with the Constitutional Court.

13. On 27 January 2020 the Constitutional Court held that the applicant's conviction should be reviewed in accordance with the principles established in its ruling on the interpretation of Article 212.1 of the Criminal Code. That decision reads as follows:

> "2.1. ... when a prosecution has been brought under Article 212.1 of the Criminal Code of the Russian Federation for a violation of the established procedure for organising or conducting an assembly, rally, demonstration, march or picket, courts should bear in mind that the threat posed by such a violation must be real and be confirmed by specific actions of the person being held criminally liable, indicating that they created a real danger to the health of citizens, the property of individuals or legal entities, the environment, public order or public safety, or to other values protected by the Constitution (provocative calls to violate existing law, aggressively disobeying authorised officials' lawful orders, using masks or other means specifically designed to conceal the person or make the identification difficult, and so on).
>
> 3. As can be seen from the judgments in the case of Mr Kotov, the court of general jurisdiction, in sentencing him to imprisonment for a term approaching the upper limit of the sanction for the offence in question, proceeded on the basis that his actions posed a real threat of harm to the health of citizens, the property of individuals or legal entities, the environment, public order and public safety. In doing so, the court did not address the issues of whether the harm caused, or the threat of harm, was significant or whether the public event in question had lost its peaceful character as a result of the applicant's violation of the procedure for its organisation or conduct. However, it is the presence of any of the above circumstances and the related proper assessment of the relevant evidence – as follows from Article 212.1 of the Criminal Code of the Russian Federation according to its constitutional and legal meaning as set out in ruling no. 2-P of the Constitutional Court of the Russian Federation of 10 February 2017 – that are a necessary condition for a sentence of imprisonment to be imposed for an offence provided for by this Article."

14. On 2 March 2020 the Second Appellate Court of General Jurisdiction quashed the appeal decision of 14 October 2019, remitted the criminal case for a fresh examination and remanded the applicant in custody. The court held that the previous appellate court had not considered the arguments put forward by the applicant's lawyers as to alleged violations of criminal procedure or as to the rights of the defence. In particular, it had not duly examined the applicant's arguments that the investigation had been incomplete, nor had it considered the applicant's requests for an examination of additional evidence which he said confirmed his innocence. It had also failed to sufficiently describe why it had only examined five witnesses and had refused to summon other witnesses. Lastly, the Second Appellate Court held that it was unnecessary to consider the applicant's arguments concerning the Constitutional Court's ruling of 27 January 2007 and the interpretation of Article 212.1 of the Criminal Code as they would be examined at the new hearing before the Moscow City Court.

15. On 20 April 2020 the Moscow City Court convicted the applicant as charged. The court held that the applicant had repeatedly been found guilty under Article 20.2 of the CAO of participation in unauthorised public events,

on 2 March, 13 May, 12 June and 19 July 2019, as confirmed by the relevant judicial decisions. The decision further reads as follows:

> "According to the existing law, repeated similar administrative offences committed by the same person clearly show that the administrative measures imposed were insufficient to deal with such offences which, together with other factors, can be considered a significant reason for the criminalisation of those actions; those actions, while remaining administrative offences, by the nature and degree of the resulting danger to the public, are similar to criminally punishable acts and under certain conditions are capable of causing serious harm to social relations under the protection of the criminal law.
>
> In these circumstances, Mr Kotov's criminal liability for a further premediated violation of the rules governing public events on 10 August 2019 is fully compatible with the criterion of repetition, is appropriate in view of the public danger of the offence and is based on the need to protect human rights and freedoms, public order and other constitutional values and hence fulfils the constitutional and legal aims ..."

16. The court further held that the applicant had ignored the lawful orders of the police officers to disperse and provided the following analysis of whether the assemblies in which the applicant had participated had been peaceful or not:

> "As can be seen from the case file, the public events in which Mr Kotov took part ... were not authorised by the executive authorities in accordance with the established procedure, resulting in the impossibility for law-enforcement agencies to fulfil their duty to ensure public order, and accordingly posed a threat to public safety in the event of any large-scale accidents.
>
> Moreover, as established by this court, on 10 August 2019 the participants in the unauthorised demonstration, including Mr Kotov, obstructed the traffic ... violating the rights of those who were not participating in this public event.
>
> Furthermore, the indictment refers to the particular constitutional values which were affected by the actions of the participants in the unlawful event in the circumstances described ...
>
> The analysis of the case file clearly demonstrates the disruptive behaviour of Mr Kotov and other participants in the unauthorised events.
>
> In particular, on 10 August 2019 ... Mr Kotov chanted slogans ... aimed at compromising authority and disturbing State power in Russia ... and undermining the constitutional order.
>
> In addition, the choice of location for the unauthorised event – near the President's Administration building – as well as the significant number of participants – more than 1,500 – [is] also evidence of the destructive nature of the aims pursued and the methods used by the organisers of the unauthorised event.
>
> ... there is enough evidence to conclude that there was a risk that Mr Kotov, as a participant in a mass event, might cause serious harm to the health and property of others, the environment, public order and safety or other values protected by the Constitution. In particular, this evidence includes:
>
> - the significant number of participants;
>
> - the destructive nature of their behaviour;

- the disregard of the law and refusals to follow lawful orders of police officers;

- the choice of the venue – the capital's city centre, the location of many agencies vital to the normal functioning of the State;

- calls to overthrow the legitimate government;

- the violation of the rights of those who were not participating in the event; and

- the obstruction of the normal functioning of the transport and urban services."

17. The court sentenced the applicant to one year and six months' imprisonment, holding that it was unlikely that his behaviour would change without social isolation.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

18. In accordance with section 7 of the Federal Law on Assemblies, Meetings, Demonstrations, Marches and Pickets (no. FZ-54 of 19 June 2004 – "the Public Events Act"), notification of a public event (except for a gathering or solo picketing) must be submitted by its organiser in writing to the executive body of the constituent entity of the Russian Federation or the municipal authorities no earlier than fifteen days and no later than ten days prior to the scheduled date of the event.

19. The relevant provisions of the Code of Administrative Offences of 30 December 2001 (no. 195-FZ – "the CAO") at the material time read as follows:

Article 20.2. Violation of the established procedure for organising or conducting public gatherings, meetings, demonstrations, marches or pickets

"1. A violation by the organiser of a public event of the established procedure for organising or conducting public gatherings, meetings, demonstrations, marches or pickets, except in the cases provided for in paragraphs 2 to 4 of this Article, shall be punishable by an administrative fine of between 10,000 and 20,000 roubles or community service for a term of up to forty hours for individuals; an administrative fine of between 15,000 and 30,000 roubles for officials; or an administrative fine of between 50,000 and 100,000 roubles for legal entities.

2. The organisation or conduct of a public event without submitting a notification on holding a public event in accordance with the established procedure, except in the cases provided for by paragraph 7 of this Article, shall be punishable by an administrative fine of between 20,000 and 30,000 roubles, or community service for a term of up to fifty hours, or administrative detention for a term of up to ten days for individuals; an administrative fine of between 20,000 and 40,000 roubles for officials; or an administrative fine of between 70,000 and 200,000 roubles for legal entities.

3. Any actions (or omissions), provided for in paragraphs 1 and 2 of this Article, resulting in interference with the functioning of essential services, transport or social infrastructure, communication networks, the movement of pedestrians and (or) vehicles or the access of citizens to residential premises or to means of transport or social infrastructure or resulting in the norms of maximum occupancy of the relevant area (or premises) being exceeded, shall be punishable by an administrative fine of between

30,000 and 50,000 roubles, or community service for a term of up to one hundred hours, or administrative detention for a term of up to fifteen days for individuals; an administrative fine of between 50,000 and 100,000 roubles for officials; or an administrative fine of between 250,000 and 500,000 roubles for legal entities.

4. Any actions (or omissions) provided for in paragraphs 1 and 2 of this Article which have caused harm to human health or property, if those actions (or omissions) cannot be regarded as a criminally punishable act, shall be punishable by an administrative fine of between 100,000 and 300,000 roubles, or community service for a term of up to two hundred hours, or administrative detention for a term of up to twenty days for individuals; by an administrative fine of between 200,000 and 600,000 roubles for officials; or an administrative fine of between 400,000 and 1,000,000 roubles for legal entities.

5. A violation by a participant in a public event of the established procedure for conducting public gatherings, meetings, demonstrations, marches or pickets, except in cases provided for by paragraph 6 of this Article, shall be punishable by an administrative fine of between 10,000 and 20,000 roubles or community service for a term of up to forty hours.

6. Any actions (or omissions) provided for by paragraph 5 of this Article, which have caused harm to human health or property, if those actions (or omissions) do not entail a criminally punishable act, shall be punishable by an administrative fine of between 150,000 and 300,000 roubles, or community service for a term of up to two hundred hours, or administrative detention for a term of up to fifteen days.

6.1. Participation in an unauthorised gathering, meeting, demonstration, march or picket that obstructs the functioning of essential services, transport or social infrastructure, communication networks, the movement of pedestrians and/or vehicles, or the access of individuals to residential premises, means of transport or social infrastructure, shall be punishable by an administrative fine of between 10,000 and 20,000 roubles, or community service for a term of up to one hundred hours, or administrative detention for a term of up to fifteen days for individuals; an administrative fine of between 50,000 and 100,000 roubles for officials; or by an administrative fine of between 200,000 and 300,000 roubles for legal entities (...)

8. Repeated administrative offences under paragraphs 1 to 6.1 of this Article, if such actions cannot be regarded as a criminal act, shall be punishable by an administrative fine of between 150,000 and 300,000 roubles, or community service for a term of between forty and two hundred hours, or administrative detention for a term of up to thirty days, for individuals; an administrative fine of between 200,000 and 600,000 roubles for officials; or an administrative fine of between 500,000 and 1,000,000 roubles for legal entities."

20. Article 212.1 of the Criminal Code of the Russian Federation of 13 June 1996 (no. 63-FZ) provides as follows:

Article 212.1. Repeated violation of the established procedure for organising or conducting public gatherings, meetings, demonstrations, marches or pickets

"A violation of the established procedure for organising or conducting public gatherings, meetings, demonstrations, marches or pickets, if such an act is committed repeatedly, shall be punishable by a fine of between 600,000 and 1,000,000 roubles or an amount equal to two to three years of wages or other income of the convicted person, community service for a term of up to 480 hours, correctional labour for a term of

between one and two years, or compulsory labour for a term of up to five years, or imprisonment for the same term.

Note: A violation of the established procedure for organising or conducting public gatherings, meetings, demonstrations, marches or pickets committed by a person repeatedly shall be considered a violation of the established procedure for organising or conducting public gatherings, meetings, demonstrations, marches or pickets, if the person in question has previously been found administratively liable for administrative offences provided for in Article 20.2 of the Code of Administrative Offences of the Russian Federation, more than twice within 180 days."

21. The relevant parts of the Constitutional Court's ruling no. 2-P delivered on 10 February 2017, "on the case relating to constitutionality of the provisions of Article 212.1 of the Criminal Code of the Russian Federation in connection with the complaint of Mr Dadin", read as follows:

"4.2. Repeated (multiple) homogeneous (similar) administrative offences committed by the same person are objective evidence that the available administrative and legal means to deal with such acts have been insufficient, and, together with other factors, can be considered a constitutionally significant reason for the criminalisation of the relevant actions (or omissions), which, while remaining administrative offences by their legal character, their nature and the degree of risk to the public, are close to criminal acts and under certain conditions may seriously damage social relations protected by criminal law.

5.2. ... Accordingly, violations of the established procedure for organising or conducting public gatherings, meetings, demonstrations, marches or pickets, giving rise to criminal liability under Article 212.1 of the Criminal Code of the Russian Federation, may be taken into account only if they are confirmed by judicial decisions imposing administrative liability on the person concerned.

5.5. ... The choice of criminal penalty and the determination of its scope in respect of a particular person who has committed an offence under Article 212.1 of the Criminal Code of the Russian Federation must be based on the real degree of risk to the public brought about by the act committed; this does not imply deprivation of liberty in cases where the violation of the established procedure for organising or conducting a public event was not associated with the loss of its peaceful nature, and does not fall within the scope of the offence under Article 212 ('Mass disorder') of the Criminal Code of the Russian Federation, or with significant harm or a real threat of significant harm to human health, the property of individuals or legal entities, the environment, public order, public safety or other values protected by the Constitution."

22. The Constitutional Court held that Article 212.1 of the Criminal Code did not contradict the Constitution of the Russian Federation, since, in its constitutional and legal meaning in the current system of legal regulation, the provisions contained therein:

"- allow criminal prosecution for a violation of the established procedure for organising or conducting public gatherings, meetings, demonstrations, marches or pickets with regard to a person who has previously been found administratively liable on at least three occasions within 180 days for administrative offences under Article 20.2 of the Code of Administrative Offences of the Russian Federation, if that person, within the period during which he or she is considered to have been subject to administrative punishment for the administrative offences in question, has again

violated the established procedure for organisation or conduct of public gatherings, meetings, demonstrations, marches or pickets;

- imply that a person may be held criminally liable for an offence under this Article only if the violation of the established procedure for organising or conducting public gatherings, meetings, demonstrations, marches or pickets has resulted in harm or a real threat of harm to human health, the property of individuals or legal persons, the environment, public order, public safety or other values protected by the Constitution;

- exclude the possibility of finding a person criminally liable for a violation of the established procedure for organising or conducting public gatherings, meetings, demonstrations, marches or pickets where, at the time of committing the act in question, there were no judicial decisions in force holding him or her liable for administrative offences under Article 20.2 of the Code of Administrative Offences of the Russian Federation at least three times within 180 days;

- allow a person to be held criminally liable for violating the established procedure for organising or conducting public gatherings, meetings, demonstrations, marches or pickets under this Article only if the act committed was intentional in nature;

- imply that the factual circumstances established by judicial decisions in cases of administrative offences that have entered into force do not in themselves predetermine the conclusions of the court on the guilt of the person in respect of whom they were delivered as regards the offence provided for in this Article; such guilt must be established by a court in accordance with the procedures provided for by criminal procedural law on the basis of all evidence, including items which were not examined in the course of the proceedings concerning administrative offences committed by the person in question;

- imply the possibility of sentencing a person to imprisonment only on condition that the violation of the established procedure for organising or conducting public gatherings, meetings, demonstrations, marches or pickets resulted in the loss of the peaceful nature of the public event (if the relevant violation does not fall within the scope of an offence under Article 212 (‘Mass disorder’) of the Criminal Code) or significant harm or a real threat of significant harm to the human health or property of individuals or legal entities, the environment, public order, public safety or other values protected by the Constitution, bearing in mind that without such a punishment it will be impossible to achieve the purposes of criminal liability for an offence provided for by this Article.”

THE LAW

I. JURISDICTION

23. The Court observes that the facts giving rise to the alleged violations of the Convention occurred prior to 16 September 2022, the date on which the Russian Federation ceased to be a party to the Convention. The Court therefore decides that it has jurisdiction to examine the present application (see *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, §§ 68-73, 17 January 2023, and *Pivkina and Others v. Russia* (dec.), nos. 2134/23 and 6 others, § 46, 6 June 2023).

II. JOINDER OF THE APPLICATIONS

24. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

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

25. The applicant complained that his administrative and criminal convictions for repeated participation in unauthorised demonstrations and for his calls for the public to participate in unauthorised public events had breached his right to freedom of expression and assembly. He relied on Articles 10 and 11 of the Convention, which read as follows:

Article 10

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

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

Article 11

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

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

A. Admissibility

26. The Court notes that these complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The applicant's administrative convictions

27. The applicant submitted that his repeated administrative convictions constituted disproportionate interference with his right to freedom of expression and peaceful assembly.

28. The Government did not submit any observations.

29. Before his criminal prosecution, the applicant was convicted on several occasions under the CAO for participation in unauthorised public events and for posting calls to participate in one such public event (see the table in Appendix). The Court refers to the principles established in its case-law regarding freedom of expression and assembly (see, as regards Article 10, *Elvira Dmitriyeva v. Russia*, nos. 60921/17 and 7202/18, §§ 66-90, 30 April 2019, and as regards Article 11, *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, §§ 142-160, ECHR 2015, with further references) and the proportionality of the interference (see *Oya Ataman v. Turkey*, no. 74552/01, §§ 35-37, ECHR 2006-XIV, and *Hyde Park and Others v. Moldova*, no. 33482/06, §§ 27-29, 31 March 2009).

30. In the leading cases of *Elvira Dmitriyeva* (cited above), *Frumkin v. Russia* (no. 74568/12, 5 January 2016), *Navalnyy and Yashin v. Russia* (no. 76204/11, 4 December 2014) and *Kasparov and Others v. Russia* (no. 21613/07, 3 October 2013), the Court found a violation of the Convention in respect of issues similar to those in the present case.

31. As in the above-mentioned cases, the applicant was convicted under the CAO for participation in unauthorised peaceful demonstrations and for publishing a call to participate in one such demonstration. The courts failed to provide any reasons as to why the demonstrations in question were considered to have been violent or to duly analyse the applicant's conduct during the events in question. In addition, the courts did not sufficiently explain why the applicant should be punished for making calls to take part in a peaceful assembly (see *Elvira Dmitriyeva*, cited above, § 89). Thus, the Court has not found any fact or argument capable of persuading it to reach a different conclusion as to the merits of these complaints. Having regard to its case-law on the subject, the Court considers that in the instant case the interferences with the applicant's freedom of expression and assembly were not "necessary in a democratic society".

32. These complaints disclose a breach of Articles 10 and 11 of the Convention.

33. The Court further notes that the applicant's criminal conviction for repeated violations of the established procedure for organising and conducting public events requires a separate and more detailed analysis.

2. The applicant's criminal conviction

(a) The parties' submissions

34. The applicant submitted that Article 212.1 of the Criminal Code was not formulated with sufficient clarity and that the domestic courts had interpreted its provisions in a wide manner in breach of the "quality of law" requirement. He further argued that the interference had not pursued any legitimate aim as the domestic courts had failed to adequately assess the impact of his actions on the rights of others or on public safety. Lastly, he alleged that he had participated in, and had made calls to participate in, peaceful assemblies, and therefore there had not been any reason to criminally prosecute him and the authorities had failed to provide "relevant" and "sufficient" reasons for such prosecution.

35. The Government did not submit any observations.

(b) The Court's assessment

(i) The scope of the applicant's complaints

36. The Court considers that the complaint falls to be examined under Article 11 (see also *Frumkin*, cited above, § 81).

(ii) General principles

37. The right to freedom of assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society. Thus, it should not be interpreted restrictively (see *Kudrevičius and Others*, cited above, § 91, and *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 98, 15 November 2018).

38. Article 11 of the Convention only protects the right to "peaceful assembly", a notion which does not cover a demonstration where the organisers and participants have violent intentions. The guarantees of Article 11 therefore apply to all gatherings except those where the organisers and participants have such intentions, incite violence or otherwise reject the foundations of a democratic society (see *Kudrevičius and Others*, cited above, § 92).

39. Even if there is a real risk that a public demonstration might result in disorder as a result of developments outside the control of those organising it, such a demonstration does not as such fall outside the scope of paragraph 1 of Article 11, and any restriction placed thereon must be in conformity with the terms of paragraph 2 of that provision (ibid., § 94).

40. 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 11 the decisions they took. This does not mean that it has to confine itself to ascertaining whether the 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 answered a "pressing social need" and, in particular, whether it was proportionate to that aim and whether the reasons adduced by the national authorities to justify it were "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 Articles 10 and 11 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see *Kudrevičius and Others*, cited above, § 143, and *Körtvélyessy v. Hungary*, no. 7871/10, § 26, 5 April 2016).

(iii) Application of the general principles to the present case

(α) Existence of interference

41. The Court has previously held that applicants' convictions for participation in unauthorised public events amounted to an interference with their rights to freedom of assembly (see *Navalnyy and Yashin*, cited above, § 52). In the present case, the applicant was convicted under the Criminal Code for repeated violations of the procedure for organising or conducting demonstrations, therefore, the applicant's conviction amounted to an interference with his right to freedom of assembly.

42. An interference with the right to freedom of peaceful assembly will constitute a breach of Article 11 unless it is "prescribed by law", pursues one or more legitimate aims under paragraph 2 and is "necessary in a democratic society" for the achievement of the aim or aims in question (see *Kudrevičius and Others*, cited above, § 102, and *Laguna Guzman v. Spain*, no. 41462/17, § 44, 6 October 2020).

(β) Whether the interference was lawful

43. The Court observes at the outset that the contested measure had a basis in Article 212.1 of the Criminal Code. In particular, Article 212.1 provides for criminal liability for breaches of the established procedure for organising and conducting public events, in particular for breaching the requirements of Article 20.2 of the CAO, which prohibits the organisation or conduct of a public event without submitting a notification under the established procedure, under threat of administrative sanctions, and also provides for punishment in the case of repeated violations of the procedure for organising or conducting a public event (see paragraphs 19 and 20 above).

44. The expressions "prescribed by law" and "in accordance with the law" in Articles 8 to 11 of the Convention not only require that the impugned measure should have a legal basis in domestic law, but also refer to the quality of the law in question, which should be accessible to the person concerned and foreseeable as to its effects (see *Kudrevičius and Others*, cited above, § 108). In that connection, the Court notes that Article 212.1 of the Criminal

Code does not contain any detailed reference to the specific actions which constitute the offence of repeated violation of the procedure for organising or conducting public events. Its provisions contain a blanket reference to Article 20.2 of the CAO. Using the "blanket reference" or "legislation by reference" technique in criminalising acts or omissions is not in itself incompatible with the Convention. The referencing provision and the referenced provision, read together, must enable the individual concerned to foresee, if need be with the help of appropriate legal advice, what conduct would make him or her criminally liable. The most effective way of ensuring clarity and foreseeability is for the reference to be explicit, and for the referencing provision to set out the constituent elements of the offence. Moreover, the referenced provisions may not extend the scope of criminalisation as set out by the referencing provision. In any event, it is up to the court applying both the referencing provision and the referenced provision to assess whether criminal liability was foreseeable in the circumstances of the case (see *Advisory opinion concerning the use of the "blanket reference" or "legislation by reference" technique in the definition of an offence and the standards of comparison between the criminal law in force at the time of the commission of the offence and the amended criminal law* [GC], request no. P16-2019-001, Armenian Constitutional Court, § 74, 29 May 2020).

45. Taking the provisions of Article 212.1 of the Criminal Code and Article 20.2 of the CAO as a whole, the Court notes that in the applicant's case the domestic courts interpreted them in broad terms and without a sufficient degree of individualisation.

46. In particular, the Constitutional Court has called on the domestic courts to assess whether there had been any harm or a real threat of harm as a result of the violation of the public events procedure and whether the offence had been intentional. It has also held that imprisonment should be ordered only if a demonstration was not peaceful or the harm or real threat of harm was significant. When holding the organisers liable for a breach of Article 212.1 of the Criminal Code, the domestic courts are accordingly required to make sure that those criteria are satisfied.

47. However, in the present case, the domestic courts did not indicate which of the applicant's actions had caused harm or whether there had been any real threat of harm at all, nor did they adequately explain why the events in which the applicant was involved were not peaceful. The Court notes the lack of any acknowledgment that the acts imputed to the applicant, namely the chanting of anti-government slogans, were by themselves protected by Articles 10 and 11 of the Convention. An order to stop those actions – had they truly occurred – would have required strong justification in order to be lawful. The courts dispensed with those considerations (see *Nemtsov v. Russia*, no. 1774/11, § 77, 31 July 2014). They did not therefore sufficiently demonstrate that the applicant's actions were in breach of the

requirements of Article 212.1 of the Criminal Code, and therefore punishable under that provision, contrary to the position set out in the Constitutional Court's ruling.

48. Therefore, it is doubtful that the application of the provisions of Article 212.1 of the Criminal Code by the domestic courts in the applicant's case could be deemed sufficiently foreseeable.

49. In any event, the questions in this case are closely related to the broader issue of whether the interference was "necessary in a democratic society". In particular, the Court must ascertain whether the restrictions on the applicants' activities corresponded, in principle, to a "pressing social need", and whether they were proportionate to the aims sought to be achieved (see *Koretskyy and Others v. Ukraine*, no. 40269/02, § 49, 3 April 2008; *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan*, no. 37083/03, § 65, ECHR 2009; and *Ecodefence and Others v. Russia*, nos. 9988/13 and 60 others, § 118, 14 June 2022).

(γ) Whether the interference pursued a legitimate aim

50. The Court is prepared to accept that in principle in circumstances comparable to those of the present case, restrictions on freedom of expression and peaceful assembly may serve to protect the rights of others with a view to preventing disorder and maintaining an orderly flow of traffic (see *Éva Molnár v. Hungary*, no. 10346/05, § 34, 7 October 2008).

(δ) Whether the interference was "necessary in a democratic society"

51. In the present case, the applicant's conviction was based on his participation in several unauthorised demonstrations and his call to take part in one such demonstration. The Court reiterates that an unlawful situation, such as the staging of a demonstration without prior authorisation, does not necessarily justify an interference with a person's right to freedom of assembly (see *Kudrevičius and Others*, cited above, § 150, and the cases cited therein). In particular, where 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 (see *Oya Ataman*, cited above, § 42; *Bukta and Others v. Hungary*, no. 25691/04, §§ 34-36, ECHR 2007-III; *Fáber v. Hungary*, no. 40721/08, § 49, 24 July 2012; *Berladir and Others v. Russia*, no. 34202/06, § 38, 10 July 2012; *Malofeyeva v. Russia*, no. 36673/04, §§ 136-37, 30 May 2013; and *Kasparov and Others*, cited above, § 91). Whether such a demonstration is objectionable and what, if any, measures it calls for on the part of the police should primarily depend on the seriousness of the nuisance it was causing (see *Navalnyy and Yashin*, cited above, § 62).

52. In order to establish whether an applicant may claim the protection of Article 11, the Court takes into account (i) whether the assembly was intended to be peaceful or whether the organisers had violent intentions; (ii) whether the applicant demonstrated violent intentions when joining the assembly; and (iii) whether the applicant inflicted bodily harm on anyone (see *Shmorgunov and Others v. Ukraine*, nos. 15367/14 and 13 others, § 491, 21 January 2021). It notes that where both sides – demonstrators and police – were involved in violent acts, it is sometimes necessary to examine who started the violence (see *Primov and Others v. Russia*, no. 17391/06, § 157, 12 June 2014). Moreover, in its ruling the Constitutional Court explicitly stated that the domestic courts should pay particular attention to the analysis of the peaceful character of assemblies and take into account all available pieces of evidence, even those relating to previous administrative convictions which served as grounds for conviction (see paragraph 22 above).

53. In the present case, however, the applicant's conviction was based on speculative reasoning about potential "large-scale accidents", without substantiating the real likelihood of such incidents taking place and the applicant's supposed contribution. This suggests a form of collective responsibility which is not permissible under Article 11. The domestic courts held that the applicant's conduct had not been peaceful because he had chanted slogans and had ignored the lawful orders of police officers to disperse, the demonstration had comprised a significant number of participants and had been conducted in the Russian capital (see paragraph 16 above). However, it was not convincingly shown in the judicial decisions that either the applicant, or any other of the participants in the demonstrations had had any violent intention, that the applicant had ever demonstrated any threat to the health, life or property of others by his actions, and, lastly, that he had caused any harm (see *Laurijsen and Others v. The Netherlands*, nos. 56896/17 and 4 others, §§ 49, 56-58 and 65, 21 November 2023).

54. The burden of proving the violent intentions of the organisers of a demonstration lies with the authorities (see *Christian Democratic People's Party v. Moldova (no. 2),* no. 25196/04, § 23, 2 February 2010). In the case at hand, the authorities failed to demonstrate that the applicant had been violent or had caused any harm. The fact that certain unspecified slogans were chanted, the orders of police officers to disperse were ignored, there were a significant number of participants or the demonstration took place in the Russian capital cannot constitute *per se* evidence that the applicant's conduct posed any real threat to safety or that he had any intention to cause harm, as the Court has already found above (see paragraph 31 above).

55. As regards the last ground for conviction, namely the blocking of the road, the Court recalls that physical conduct purposely obstructing traffic and the ordinary course of life in order to seriously disrupt activities carried out by others is not at the core of that freedom as protected by Article 11 of the Convention (see *Kudrevičius and Others*, cited above, § 97). In the present

case, the courts merely referred to the obstruction of traffic; they did not give any concrete examples, nor did they analyse to what extent and in what manner the participants had blocked the traffic.

56. As regards the applicant's call published on the internet to participate in one of the unauthorised demonstrations, he invited the public to participate in a peaceful assembly relating to elections to the Moscow City Duma, a matter of public concern. Very strong reasons are required for justifying the restrictions in such case (see *Feldek v. Slovakia*, no. 29032/95, § 83, ECHR 2001-VIII). In the present case, however, the domestic courts did not provide any detailed analysis of this ground for the applicant's conviction (see also paragraph 31 above).

57. Therefore, the demonstration referred to by the applicant in his call posted on the internet and the other demonstrations in which he participated were undeniably peaceful, and so was the applicant's conduct in the course of those events. However, the applicant was arrested and sentenced to a prison term without any assessment of the disturbance he had caused, merely because he had marched without authorisation and had allegedly ignored police orders to stop. Accordingly, there was no "pressing social need" to prosecute him (see also *Kasparov and Others v. Russia (no. 2)*, no. 51988/07, § 31, 13 December 2016).

58. Lastly, the nature and severity of the penalties imposed are also factors to be taken into account when assessing the proportionality of an interference in relation to the aim pursued. Where the sanctions imposed on the demonstrators are criminal in nature, they require particular justification. A peaceful demonstration should not, in principle, be rendered subject to the threat of a criminal sanction, and notably to deprivation of liberty. Thus, the Court must examine with particular scrutiny cases where sanctions imposed by the national authorities for non-violent conduct involve a prison sentence (see *Kudrevičius and Others*, cited above, § 146, and *Chernega and Others v. Ukraine*, no. 74768/10, § 221, 18 June 2019).

59. In this context, the severity of the measures applied against the applicant was entirely devoid of any justification. He was not accused of violent acts; his motives for walking in the road and obstructing traffic were left unexplained by the domestic judgments. In those circumstances, the measures taken against him were grossly disproportionate to the aim pursued. There was no "pressing social need" to sentence him to one year and six months' imprisonment (see also *Frumkin*, cited above, § 140).

60. The Constitutional Court has held that sentencing a person to imprisonment was only possible in cases where an assembly had not been peaceful, where significant harm had been inflicted, or where there had been a real threat of significant harm (see paragraph 22 above). As established above, no indication of violence or real threat of harm was identified by the authorities in the present case. The domestic courts did not provide any detailed analysis as to the severity of the sanction they had chosen, stating in

a concise manner that the applicant needed to be isolated without further explanation (see paragraph 17 above).

61. Moreover, the applicant's arrest, detention and ensuing criminal conviction for repeated violations of the procedure for organising and conducting public events discouraged him and others from participating in open political debate, all the more so since the applicant had already been convicted and punished under administrative law for the same events. Therefore, the sanction imposed on the applicant was disproportionate.

(ε) Conclusion

62. The foregoing considerations as a whole lead the Court to the conclusion that, even accepting that the interference in the present case pursued a legitimate aim, the measures applied to the applicant were disproportionate to this aim. Moreover, the Court has doubts as to the foreseeability of the applicant's criminal conviction, having regard to the failure of the domestic courts to follow the guidelines given by the Constitutional Court for the application of the relevant criminal law provision. The applicant was punished for making a call to participate in, and participating in, peaceful demonstrations and chanting anti-government slogans, acts protected by the Convention. The courts did not devote sufficient effort to balancing the applicant's legitimate interests against any damage that his conduct could cause to other public or private interests.

63. There has accordingly been a violation of Article 11 of the Convention, on account of the applicant's criminal conviction for repeated violations of the established procedure for organising and conducting public events.

IV. OTHER ALLEGED VIOLATIONS UNDER WELL-ESTABLISHED CASE-LAW

64. The applicant submitted other complaints which also raised issues under the Convention and Protocol No. 1, given the relevant well-established case-law of the Court (see Appendix).

65. The Government did not provide any observations.

66. These complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor are they inadmissible on any other ground. Accordingly, they must be declared admissible.

67. Having examined all the material before it, the Court concludes that these complaints also disclose violations of the Convention in the light of its findings in *Idalov v. Russia* [GC], no. 5826/03, §§ 154-58, 22 May 2012, as regards the lengthy review of detention matters (Article 5 § 4); *Dirdizov v. Russia*, no. 41461/10, §§ 101-11, 27 November 2012, as to unjustified pre-trial detention (Article 5 § 3); *Karelin v. Russia*, no. 926/08, §§ 58-85, 20 September 2016, concerning the absence of a prosecuting party in the

proceedings under the CAO (Article 6 § 1); *Frumkin*, cited above, §§ 153-68, relating to the right to examine witnesses on whose statements the applicant's conviction was based (Article 6 §§ 1 and 3 (d)); *Butkevich v. Russia*, no. 5865/07, §§ 63-65, 13 February 2018; *Tsvetkova and Others v. Russia*, nos. 54381/08 and 5 others, §§ 115-31, 10 April 2018; and *Korneyeva v. Russia*, no. 72051/17, §§ 34-36, 8 October 2019, as to various aspects of unlawful deprivation of liberty of organisers of or participants in public assemblies (Article 5 § 1); and, finally, *Kruglov and Others v. Russia*, nos. 11264/04 and 15 others, §§ 107-46, 4 February 2020, regarding an unlawful search and a violation of the applicant's property rights (Article 8 of the Convention and Article 1 of Protocol No. 1).

68. In view of the above findings, the Court considers that there is no need to deal separately with the complaint under Article 13 of the Convention about the lack of effective domestic remedies to complain about the unlawful search (compare *Kruglov and Others v. Russia*, cited above, § 146).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. 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

70. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

71. The Government did not provide any comments.

72. The Court awards the applicant EUR 9,750 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

73. The applicant also claimed EUR 13,400 for the costs and expenses incurred before the domestic courts and EUR 5,100 for those incurred before the Court.

74. The Government did not provide any comments.

75. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 18,500 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Holds* that it has jurisdiction to deal with the applicant's complaints as they relate to facts that took place before 16 September 2022;

3. *Declares* the complaints under Articles 5, 6, 8, 10, 11 and 13 of the Convention and Article 1 of Protocol No. 1 admissible;

4. *Holds* that there has been a violation of Articles 10 and 11 of the Convention on account of the applicant's administrative convictions;

5. *Holds* that there has been a violation of Article 11 of the Convention on account of the applicant's criminal conviction;

6. *Holds* that there have been violations of Articles 5, 6 and 8 of the Convention and Article 1 of Protocol No. 1 as regards the other complaints raised under the well-established case-law of the Court (see Appendix);

7. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

8. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 9,750 (nine thousand seven hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 18,500 (eighteen thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

9. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 November 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Jolien Schukking President

APPENDIX

List of complaints falling under well-established case-law

No.	Article	Complaint
Application no. 49282/19		
1.	Article 5 § 1 - unlawful deprivation of liberty	Arrest and detention from 13/05/2019 to 15/05/2019 and on 12/06/2019 for the sole purpose of drawing up an administrative offence record
2.	Article 6 § 1 - lack of impartiality of the tribunal in view of the absence of a prosecuting party in administrative-offence proceedings	No prosecutor either at first instance or in the appellate courts, in both sets of proceedings - final decisions: Moscow City Court, 30/05/2019 and 06/08/2019
3.	Article 6 § 1 and 6 § 3 (d) - unfair trial in view of restrictions on the right to examine witnesses	Inability to cross-examine police officers who arrested the applicant and drew up the administrative records in the administrative-offence proceedings (both sets of proceedings)
4.	Article 11 § 2 - disproportionate measures against organisers of and participants in public assemblies	Administrative convictions under Article 20.2 §§ 6.1 and 8 of the CAO for participation in unauthorised demonstrations on 13/05/2019 and 12/06/2019 in Moscow; final decisions: Moscow City Court, 30/05/2019 and 06/08/2019, detention of 5 days and fine of 20,000 Russian roubles (RUB)
Application no. 50346/19		
1.	Article 5 § 1 - unlawful deprivation of liberty	Arrest and detention on 24/07/2019 for the sole purpose of drawing up an administrative offence record Arrest and detention between 10 and 11/08/2019 for the sole purpose of drawing up an administrative offence record; deprivation of liberty on 12/08/2019 for participating in unauthorised demonstrations; no consent from the head of the Main Investigation Committee of Moscow for the request to remand the applicant in custody under Law no. FZ-67 on election rights as the applicant was a member of an election commission with the casting vote
2.	Article 5 § 3 - excessive length of pre-trial detention as regards criminal proceeding	12/08/2019 to 05/09/2019 and 02/03/2020 to 20/04/2020, Tverskoy District Court of Moscow, Moscow City Court, Second Appellate Court of General Jurisdiction, 25 days and 1 month and 19 days, insufficient reasons provided by the courts
3.	Article 5 § 4 - deficiencies in the proceedings for review of the lawfulness of detention	After the quashing of the applicant's conviction by the Second Appellate Court on 02/03/2020 and its decision to remand the applicant in custody, the applicant and his lawyers filed several requests for release which were not examined

4.	Article 6 § 1 - lack of impartiality of the tribunal in view of the absence of a prosecuting party in administrative-offence proceedings	No prosecutor either at first instance or before the appellate courts in proceedings regarding calls to participate in an unauthorised demonstration - final decision: Moscow City Court, 26/07/2019
5.	Article 6 § 1 and Article 6 § 3 (d) - unfair trial in view of restrictions on the right to examine witnesses	Inability to cross-examine in open court police officers on whose written statements the applicant's conviction was based in proceedings regarding calls to participate in an unauthorised demonstration
6.	Article 8 § 1 - unlawful search	Search of the applicant's apartment on 13/08/2019; date of authorisation: 13/08/2019, Main Investigative Department of the Investigative Committee of Russia for Moscow; Presnenskiy District Court of Moscow, 15/08/2019, Moscow City Court, 04/09/2019; no adequate and sufficient safeguards against abuse: broad terms/wide content and scope of the search warrant (objects and documents not specific enough to restrict the police's discretion), no relevant or sufficient reasons to justify the search: no evidence supporting the search authorisation, no relevant or sufficient reasons to justify the search: minor severity of the offence, particular circumstances: manner of the search (at night)
7.	Article 10 § 1 - conviction for making calls to participate in public events	Administrative conviction under Article 20.2 § 2 of the CAO for calls to participate in an unauthorised demonstration on 19/07/2019 regarding local elections, published on Facebook; final decision: Moscow City Court, 26/07/2019, detention of 10 days
8.	Article 13 - lack of any effective remedy in domestic law	No effective remedies as regards the unlawful search
9.	Article 1 of Protocol No. 1 - interference with peaceful enjoyment of possessions	Personal belongings not related to the applicant's criminal case were seized during the search, in particular, his mobile phone, and were not returned