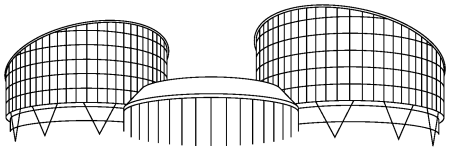

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF NAVALNYY v. RUSSIA

(Applications nos. 29580/12 and 4 others - see appended list)

JUDGMENT

STRASBOURG

2 February 2017

Referral to the Grand Chamber

29/05/2017

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Navalnyy v. Russia,

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

Luis López Guerra, *President,*
Helena Jäderblom,
Helen Keller,
Dmitry Dedov,
Branko Lubarda,
Pere Pastor Vilanova,
Alena Poláčková, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 5 January 2017,

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

PROCEDURE

1. The case originated in five applications (nos. 29580/12, 36847/12, 11252/13, 12317/13 and 43746/14) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Aleksey Anatolyevich Navalnyy ("the applicant"), on 14 May 2012, 28 May 2012, 30 November 2012, 14 January 2013 and 6 June 2014 respectively.

2. The applicant was represented by Mr K. Terekhov and Ms O. Mikhaylova, lawyers practising 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 applicant complained that his arrest at public events on seven occasions had violated his freedom of peaceful assembly and right to liberty. He alleged that the administrative proceedings before the domestic courts had fallen short of guarantees of a fair hearing.

4. On 28 August 2014 the applications were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1976 and lives in Moscow.

6. The applicant is a political activist, opposition leader, anti-corruption campaigner and popular blogger. These five applications concern his arrests on seven occasions at different public events.

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

A. The applicant's arrest on 5 March 2012

8. On 5 March 2012 the applicant took part in a meeting at Pushkinskaya Square, Moscow, which began at 7 p.m. It was devoted to the allegedly rigged presidential elections in Russia and had been approved by the municipal authorities.

9. At the end of the meeting, at 9 p.m., State Duma deputy Mr P. addressed the participants, inviting the public to stay after the meeting for informal consultations, which began at about 9.30 p.m. and were attended by some 500 people. According to the applicant, he stayed among others at Pushkinskaya Square for a meeting with the deputy; they remained peacefully within the pedestrian area of the square and did not obstruct the traffic or access. According to the Government, the applicant was holding an irregular gathering without prior notification and was shouting political slogans.

10. At 10.45 p.m. the police arrived and arrested the applicant, among many others. He was taken to the Tverskoy District police station.

11. On the same evening two policemen drew up a report on the administrative offence, stating that the applicant had been arrested at 10.45 p.m. "in a fountain" at Pushkinskaya Square; that he had taken part in an irregular public gathering and that he had ignored police orders to disperse. The applicant was charged with a breach of the established procedure for conducting public events, an offence under Article 20.2 of the Code of Administrative Offences. The applicant was released at 12.15 a.m. on 6 March 2012.

12. On 15 March 2012 the Justice of the Peace of Circuit no. 369 of the Tverskoy District examined the administrative charges against the applicant. The applicant challenged the authenticity of the police reports and the witness statement of the two police officers on the grounds that he had been arrested by different police officers, but his objection was dismissed. On the basis of the written statements and testimony of two police officers the Justice of the Peace found the applicant guilty of taking part in an irregular public gathering conducted without prior notification and fined the applicant under Article 20.2 of the Code of Administrative Offences 1,000 Russian roubles (RUB), at the material time equivalent to about 25 euros (EUR).

13. On 10 April 2012 the Tverskoy District court of Moscow examined the applicant's appeal. The applicant was absent, but he was represented by a lawyer. The court examined one more eyewitness, a journalist, who

testified that before being arrested the applicant was standing "in a fountain, holding hands with others" and chanting political slogans. He also testified that the police officers who had placed the applicant in the police bus were the same officers who had signed the report and who had appeared at the first-instance hearing. The court examined two video recordings submitted by the applicant. It found that the State Duma deputy had indeed called a public meeting, but concluded that at the time of his arrest the applicant was not meeting the deputy but was participating in a protest assembly. It upheld the judgment of 15 March 2012.

B. The applicant's two arrests on 8 May 2012

14. On 8 May 2012 the applicant took part in an overnight "walkabout", an informal gathering whereby activists met at a public venue to discuss current affairs. On this occasion, several dozen activists met up to discuss the inauguration of Mr Putin as President of Russia the previous day. On 8 May 2012 some areas of central Moscow were restricted for traffic and pedestrians due to the presidential inauguration and the Victory Day festivities.

15. At 4.30 a.m., according to the applicant, or at 4 a.m., according to the Government, the applicant was walking down Lubyanskiy Proyezd, accompanied by about 170 people. The group stopped on the stairs of a public building for a group photograph. While the applicant was taking the photograph he was arrested by the riot police. At 8 a.m. he was taken to a police station where an administrative offence report was drawn up. The applicant was charged with a breach of the established procedure for conducting public events, an offence under Article 20.2 of the Code of Administrative Offences. The applicant was released at 10.50 a.m. on that day.

16. On the same day, at 11.55 p.m., according to the Government, or at 11 p.m., according to the applicant, the applicant was walking down Bolshaya Nikitskaya Street in a cluster of about fifty people. According to the applicant, they stayed on the pavement, had no banners or sound equipment, and were causing no nuisance. They were surrounded by the riot police and the applicant was arrested without any order or warning.

17. At 11.58 p.m. on the same day the applicant was taken to a police station where an administrative offence report was drawn up. He was charged with a breach of the established procedure for conducting public events, an offence under Articles 20.2 § 2 of the Code of Administrative Offences. The applicant was released at 2.50 a.m. on 9 May 2012.

18. On 30 May 2012 the Justice of the Peace of Circuit no. 387 of the Basmannyy District examined the charges concerning the applicant's administrative offence at Lubyanskiy Proyezd. The applicant was absent from the proceedings, but he was represented by his legal counsel, who

contested the applicant's participation in an irregular assembly and claimed that the latter had not chanted any slogans. He asked the Justice of the Peace to admit video evidence and to examine certain eyewitnesses, but she refused to do so. On the basis of written statements by two police officers the Justice of the Peace found the applicant guilty of taking part in a meeting conducted before 7 a.m., in breach of regulations, and fined him under Article 20.2 of the Code of Administrative Offences RUB 1,000. This judgment was delivered in full on 1 June 2012. It was upheld on 6 July 2012 by the Basmannyy District Court of Moscow.

19. On 1 June 2012 the Justice of the Peace of Circuit no. 380 of the Presnenskiy District examined the administrative charges concerning the applicant's administrative offence at Bolshaya Nikitskaya Street. The applicant was absent from the proceedings, but he was represented by his legal counsel, who contested the applicant's participation in an irregular assembly and claimed that the latter had not chanted any slogans. The Justice of the Peace questioned the police officer who had arrested the applicant and three eyewitnesses. The police officer testified that he had arrested the applicant because he was walking in a big group of people, obstructing traffic and chanting political slogans. The eyewitnesses testified that the applicant was walking down the street among about fifty or sixty people, and that the police had blocked their way and had arrested them without any warning; they denied hearing any slogans or amplified sound. The Justice of the Peace refused to admit video evidence and dismissed the eyewitness statements on the grounds that they were likely to be the applicant's supporters and were therefore biased. The applicant was found guilty of taking part in a meeting conducted in breach of regulations and was fined under Article 20.2 of the Code of Administrative Offences RUB 1,000. This judgment was upheld on 25 June 2012 by the Presnenskiy District Court of Moscow.

C. The applicant's arrest on 9 May 2012

20. On 9 May 2012 the applicant arrived at 5 a.m. at Kudrinskaya Square in Moscow to take part in an informal meeting with a State Duma deputy and to attend the Victory Day festivities. He was among 50 to 100 people "walking about" and discussing current affairs. According to the applicant, this gathering was not a demonstration: there had been no banners, no noise, and no one was chanting any slogans or giving speeches.

21. At 6 a.m. riot police arrived at the site of the meeting and arrested the applicant without any orders or warning. The applicant submitted a video recording of his arrest.

22. At 8.50 a.m. on the same day the applicant was taken to the Strogino District police station. At 11.50 a.m. the applicant was searched and then an administrative offence report was drawn up. According to the applicant, he

was detained at the police station for more than three hours before he was brought before a Justice of the Peace. The Government confirmed that the applicant had been detained pending trial, but did not specify the time.

23. At an unidentified time on the same day the applicant was brought before the Justice of the Peace of Circuit no. 375 of the Presnenskiy District of Moscow. The Justice of the Peace refused the applicant's requests for the police officers who had arrested him to be called and examined, and for video evidence to be admitted, but granted his request for three eyewitnesses to be examined. The witnesses testified that there had been a public meeting with a State Duma deputy to discuss current political developments; that no one had chanted slogans or made noise or obstructed traffic; and that the police had not given any orders or warnings before arresting the applicant. On the basis of the written statements of two police officers the court established that the applicant had taken part in an irregular public meeting and had disobeyed a lawful order from the police to disperse. It also found that the applicant had chanted the slogans "Russia without Putin!" and "Putin is a thief!" and had refused to leave the square, which needed to be cleared for the Victory Day festivities. The Justice of the Peace has rejected the statements of three eyewitnesses, on the grounds that they had different estimates of the number of people present at the venue, the number of police officers who arrested the applicant, and the time of his arrival at the meeting. The applicant was found guilty of disobeying the lawful order of the police, in breach of Article 19.3 of the Code of Administrative Offences, and was sentenced to fifteen days' administrative detention.

24. On 10 May 2012 the applicant lodged an appeal.

25. On 12 December 2012 the Presnenskiy District Court of Moscow examined the appeal. The applicant asked for the police officers on whose reports and statements the Justice of the Peace had based the judgment to be cross-examined, as well as eight eyewitnesses, and for the video recording of the arrest to be admitted as evidence. The court dismissed these requests and upheld the judgment of 9 May 2012.

D. The applicant's arrest on 27 October 2012

26. On 27 October 2012 the applicant held a static demonstration ("picket", *пикетирование*), which was a part of series of pickets held in Moscow in front of the Russian Investigation Committee to protest "against repressions and torture". According to the applicant, his demonstration was a solo picket (*одиночное пикетирование*) which was not subject to a prior notification to the competent public authority. In total, about thirty people consecutively took part in this event.

27. At 3.30 p.m. the police arrested the applicant. According to the applicant, at the moment of arrest he had finished picketing and was

walking down the street on the pavement; he was not chanting or carrying any banners, but he was being followed by some people including journalists whose number he estimated as "two dozen". According to the Government, the applicant had organised an irregular march without prior notification. The applicant was taken to the police station at 4.10 p.m. He was charged with a breach of the established procedure for conducting public events, an offence under Article 20.2 of the Code of Administrative Offences. He was released at 7.17 p.m. the same day.

28. On 30 October 2012 the Justice of the Peace of Circuit no. 387 of Basmannyy District examined the charges. She examined three eyewitnesses called at the applicant's request, but his request for the police officers who had arrested him to be called and examined was refused. The applicant's request for a video recording of the relevant events to be admitted as evidence was also refused, as was the request for a written report from an NGO that had observed the pickets to be admitted in evidence. At the applicant's request the Justice of the Peace examined three eyewitnesses, who testified that the applicant, after he ended his picket, walked down the street while speaking with a fellow activist, surrounded by journalists; he remained on the pavement, did not chant slogans, and carried no banners; several other participants in the picket remained standing with their banners, at a certain distance from each other; the police arrested the applicant without any warning or explanation. On the basis of the written reports by two police officers the Justice of the Peace found the applicant guilty of taking part in a march which had not been duly notified to the authorities and fined him under Article 20.2 of the Code of Administrative Offences RUB 30,000 (at the material time equivalent to about EUR 740). She dismissed the witness statements in the applicant's favour on the grounds that they contradicted the evidence in the case file.

29. On 7 December 2012 the Basmannyy District Court upheld the judgment of 30 October 2012.

E. The applicant's two arrests on 24 February 2014

30. On 24 February 2014 at 12 noon the applicant went to the Zamoskvoretskiy District Court of Moscow to attend the hearing of the activists on trial for participation in mass disorders at Bolotnaya Square in Moscow on 6 May 2012. On that day the judgment was to be delivered at a public hearing. The court-house was cordoned off by the police, and the applicant could not get in. He therefore remained outside among other members of the public wishing to attend the hearing. According to the applicant he was standing there silently, but the police suddenly rushed into the crowd and arrested him, without any order, warning or pretext. According to the official version, he was holding an irregular gathering and was chanting political slogans.

31. At 12.50 p.m. on the same day the applicant was taken to the police station. He was charged with a breach of the established procedure for conducting public events, an offence under Article 20.2 of the Code of Administrative Offences. The applicant was released at 3 p.m. the same day.

32. Later that day, at about 7.45 p.m., the applicant took part in a public gathering following the pronouncement of the judgment concerning mass disorders at Bolotnaya Square in which several activists had been sentenced to prison terms. The gathering of about 150 participants took place at Tverskaya Street. The applicant was arrested while he was standing on the pavement talking to a journalist. According to the applicant he had received no order or warning, and he did not resist the police. According to the police report, when the applicant was being seated in the police vehicle he was waving at the crowd trying to attract media attention, thus demonstrating refusal to comply with the police order and resisting the officers in the performance of their duties.

33. At 8.20 p.m. the applicant was taken to the Tverskoy District police station, where an administrative offence report was drawn up. The applicant was charged with disobeying a lawful order of the police, an offence under Article 19.3 of the Code of Administrative Offences. He was remanded in custody.

34. On the following day, 25 February 2014, at an unidentified time, the applicant was brought before the judge of the Tverskoy District Court, who examined the charges under Article 19.3 of the Code of Administrative Offences. The applicant's request for two eyewitnesses to be examined was granted. They testified that the police had not given the applicant any orders or warnings before proceeding to his arrest. The court admitted and examined the video recording of the contested events and questioned the two police officers on whose reports the charges were based. The court established that the applicant had taken part in an irregular meeting and had disobeyed the lawful order of the police to disperse. The applicant was found guilty of disobeying a lawful order of the police, in breach of Article 19.3 of the Code of Administrative Offences, and was sentenced to seven days' administrative detention.

35. On 7 March 2014 the Zamoskvoretskiy District Court examined the charges relating to the applicant's alleged participation on 24 February 2014 in an unauthorised public gathering in front of the Zamoskvoretskiy District Court. The applicant requested that two eyewitnesses present at the court-house and the two policemen on whose reports the charges were based be examined. These requests were dismissed. The court admitted a video recording of the contested events, but decided not to take cognisance of its content because it had no date and because it had not reproduced a full sequence of events. On the basis of the written reports by two police officers the judge found the applicant guilty of taking part in a meeting which had not been notified to the competent authority in accordance with the

procedure provided by law, and fined him under Article 20.2 of the Code of Administrative Offences RUB 10,000 (equivalent to about EUR 200).

36. On 24 March 2014 the Moscow City Court upheld the judgment of 25 February 2014.

37. On 22 May 2014 the Moscow City Court upheld the judgment of 7 March 2014.

II. RELEVANT DOMESTIC LAW AND PRACTICE

38. For a summary of the relevant domestic law see *Kasparov and Others v. Russia* (no. 21613/07, § 35, 3 October 2013); *Navalnyy and Yashin v. Russia* (no. 76204/11, §§ 43-44, 4 December 2014); and *Novikova and Others v. Russia* (nos. 25501/07, 57569/11, 80153/12, 5790/13 and 35015/13, §§ 67-69, 26 April 2016).

THE LAW

I. JOINDER OF THE APPLICATIONS

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

II. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

40. The applicant complained that his arrest on seven occasions in relation to his alleged participation in irregular public events, his detention and convictions for administrative offences had violated his right to freedom of peaceful assembly guaranteed by Article 11 of the Convention, which reads as follows:

> "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

41. 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

42. The Government considered that the interference with the applicant's freedom of peaceful assembly had complied with domestic law and was necessary for the prevention of disorder and crime. They claimed that on all seven occasions the applicant had attempted to conduct unauthorised public gatherings, which the police had lawfully intercepted, and that the competent courts had justifiably found him guilty of administrative offences. They did not consider that on any of these occasions there had been special circumstances absolving the protestors from compliance with the requirement of prior notification of their assembly. They challenged the applicant's allegations that those assemblies had not caused any noise or nuisance as unlikely, given the size of the groups at issue and the presence of the media. Finally, they considered that the measures taken against the applicant, in particular the administrative sanctions, had been proportionate, regard being had to the persistent and deliberate character of his offences. They gave examples of other, lawful public events in which the applicant had participated without any interference.

43. The applicant maintained that the authorities had interfered with his right to freedom of peaceful assembly by interrupting the gatherings and arresting him, and by imposing administrative liability for breaches of procedure for conducting public events. He accepted that on 5 March 2012, twice on 8 May 2012, on 9 May 2012 and once on 24 February 2014 (the episode on Manezhnaya Square) he had taken part in gatherings which had not been notified to the authorities. However, he considered that in view of their immediate connection with current political developments, their small scale, and the absence of risk to public order, the authorities could be expected to show tolerance for these gatherings. As regards two other occasions, he contested that an irregular gathering had taken place. In particular, on 27 October 2012 he was arrested on a pretext that he was holding a march, whereas he was merely walking away from the venue of a picket. Likewise, on 24 February 2014 at 12 noon he was arrested while waiting in front of the court-house because he wished to attend the pronouncement of the judgment in a high-profile case. This gathering, if it was classified as one, could not have been foreseen or notified to the

authorities, and it caused no disturbance which would have merited its dispersal, arrests or the ensuing prosecution. According to the applicant, on each of these occasions the authorities' response had been grossly disproportionate and in violation of Article 11 of the Convention.

2. The Court's assessment

(a) Whether there was interference with the exercise of the freedom of peaceful assembly

44. The Court observes that in the present case the Government did not dispute the existence of an interference with the right to peaceful assembly. The Court considers that there was an interference on each of the seven occasions, irrespective of whether it accepts the applicant's or the Government's version of events. In particular, on 5 March 2012 the applicant was arrested shortly after a political rally when the participants had refused to leave the venue; on both 8 May (twice) and 9 May 2012 he was arrested during "walkabout" gatherings held as a protest against the presidential inauguration; and on 24 February 2014 in the evening he was arrested at a protest rally conducted in response to the judgment in the "Bolotnaya" case. On these occasions, the dispersal of the gatherings and the applicant's arrest constituted an interference with his right of peaceful assembly, as did the ensuing administrative charges brought against him.

45. As regards the events in front of the court-house on 24 February 2014 at 12 noon, the Court notes that the applicant and other members of the public went to the Zamoskvoretskiy District Court intending to attend the pronouncement of the judgment in a criminal case which they considered to be political. By appearing at the hearing they meant to demonstrate the involvement of civil society and its solidarity with the activists, whom they regarded as political prisoners. The common cause which brought these people to the court-house – to express personal involvement in a matter of public importance – distinguished this unintended gathering from a random agglomeration of individuals each pursuing their own cause, such as a queue to enter a public building. It is also to be distinguished from a situation where a passer-by gets accidentally mixed up with a demonstration and may be mistaken for someone taking part in it (see *Kasparov and Others*, cited above, § 72). The Court reiterates that Article 11 of the Convention covers both private meetings and meetings in public places (see *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 91, ECHR 2015), and that the protection of personal opinions is one of the objectives of freedom of peaceful assembly as enshrined in Article 11 of the Convention (see *Ezelin v. France*, 26 April 1991, § 37, Series A no. 202). The Court therefore finds that in this episode there has been an interference with the applicant's right to freedom of assembly.

46. Similar reasons apply to the episode of 27 October 2012 when the applicant was walking away from the venue of a picket. In certain situations, in particular where solo pickets are concerned, the Court may find it more appropriate to examine the interference under Article 10 of the Convention, interpreted in the light of Article 11 (see *Novikova and Others*, cited above, § 91). However, in the present case, by holding the picket the applicant was seeking not only to express his opinion in front of the Investigative Committee, but to do so together with other demonstrators, even if they were not doing it simultaneously (see *Schwabe and M.G. v. Germany*, nos. 8080/08 and 8577/08, § 101, ECHR 2011 (extracts)). The authorities, for their part, did not acknowledge the causal link between the picket and the applicant's arrest, and charged him with holding an irregular march. The Court therefore considers that on any interpretation in this episode there has been an interference with the applicant's right to freedom of assembly.

(b) Whether the interference was justified

47. The Court observes that the measures taken against the applicant, in particular the halting of the assemblies or perceived assemblies, his arrest and the administrative charges, were based in each case on the finding that he had held an irregular gathering and had not complied with police orders to end it. This applies irrespective of whether charges were subsequently brought under Article 20.2 or Article 19.3 of the Code of Administrative Offences. In fact, the Court observes that these two provisions were applied interchangeably to identical situations, and it does not discern any substantive grounds for the choice of the legal provision in each episode.

48. The applicant contested the lawfulness of the measures taken against him. He contested, in particular, that he had been in breach of the procedure for holding a public event. The Court considers that at least on two occasions – on 27 October 2012 and 24 February 2014 at 12 noon – the existence of a public event subject to a notification requirement had not been convincingly established. However, the Court will not examine whether the measures taken against the applicant in each of these episodes were prescribed by law, because in any event they were not proportionate to the alleged legitimate aim put forward by the Government.

49. It 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 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 (see *Oya Ataman v. Turkey*, no. 74552/01, § 42, ECHR 2006-XIV; *Bukta*

and Others v. Hungary, no. 25691/04, § 34, 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).

50. The present case is identical to several other Russian cases where the Court has found violations of Article 11 of the Convention because of the police stopping and arresting protestors for the sole reason that their demonstration as such had not been authorised, the formal unlawfulness of the gathering being the main justification for the administrative charges (see *Malofeyeva*, §§ 136-39; *Kasparov and Others*, § 95; *Navalnyy and Yashin*, § 65, and *Novikova and Others*, all cited above). The Court considers that the aforementioned cases, compounded by the seven episodes in this case, suggest the existence of a practice whereby the police would interrupt such a gathering, or even a perceived gathering, and arrest the participants as a matter of routine.

51. As in those cases, the gatherings in the present case were undeniably peaceful, and so was the applicant's conduct. However, they were dispersed and the applicant was arrested and convicted of administrative offences without any assessment of the disturbance the gatherings had caused, merely because they lacked authorisation and had persisted despite the police's orders to stop. The Court finds no grounds to distinguish this case from those cited above, or to depart from its findings made therein. Even assuming that the applicant's arrests and administrative sentences complied with domestic law and pursued one of the legitimate aims enumerated in Article 11 § 2 of the Convention – presumably prevention of disorder – the Government failed to demonstrate that there existed a "pressing social need" to interrupt the gatherings, arrest the applicant and, in particular, to sentence him on two occasions to a term of imprisonment, albeit short.

52. Moreover, the measures also had serious potential to deter other opposition supporters and the public at large from attending demonstrations and, more generally, from participating in open political debate. Their chilling effect was further amplified by the fact that they targeted a well-known public figure, whose deprivation of liberty was bound to attract wide media coverage.

53. There has accordingly been a violation of Article 11 of the Convention on account of all seven episodes complained of.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

54. The applicant complained that his arrest on seven occasions had been unlawful and arbitrary. He also complained that on two of those occasions – on 9 May 2012 and on 24 February 2014 – he had been unjustifiably detained pending the administrative proceedings. He relied on Article 5 § 1 of the Convention, which reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> (b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

A. Admissibility

55. 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

56. The Government alleged that the applicant's arrest had been lawful and necessary for the purpose of bringing him to justice in relation to the administrative offences. They indicated that escorting him to the police stations had been necessary in each case because the administrative reports could not be drawn up on the spot. As for the administrative detention, its duration did not exceed three hours from the moment of bringing to the

police station, except for two occasions when the applicant was charged with offences punishable by deprivation of liberty, in which cases his detention fell within the forty-eight hours' time-limit permitted in such cases.

57. The applicant maintained that his arrest had been arbitrary on all seven occasions. He alleged that the public events at issue were not of such a scale as to affect public order, and in any event the breach of public order was not imputed to him in the domestic proceedings. Moreover, even if the police believed otherwise there had been no reason why the administrative offence reports could not be drawn up on the spot, as provided by Article 27.2 of the Code of Administrative Offences. In addition to that, on 9 May 2012 and on 24 February 2014 he was detained for over three hours, in breach of the statutory time-limit, although there had been no exceptional circumstances justifying not releasing him pending trial.

2. The Court's assessment

58. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 of the Convention essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. However, the "lawfulness" of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent individuals from being deprived of their liberty in an arbitrary fashion. Furthermore, the list of exceptions to the right to liberty secured in Article 5 § 1 of the Convention is an exhaustive one, and only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely to ensure that no one is arbitrarily deprived of his liberty (see *Giulia Manzoni v. Italy*, 1 July 1997, § 25, Reports 1997-IV).

59. It has not been disputed that on seven occasions the applicant was deprived of his liberty within the meaning of Article 5 § 1 of the Convention, from the time of his arrest and until his release or, on two occasions, until transfer to court. The Government submitted that his arrest and detention had the purpose of bringing him before the competent legal authority on suspicion of an administrative offence, and thus fell within the ambit of Article 5 § 1 (c) of the Convention.

60. The Court has previously examined complaints brought by people arrested in similar circumstances, including one by the applicant. In those cases the police interrupted irregular but peaceful gatherings, arrested the participants, and escorted them to police stations to have administrative offence reports drawn up. The Court noted, in particular, that under Article 27.2 of the Code of Administrative Offences the applicants could only be escorted to a police station if the reports could not be drawn up at

the place where the offence had been discovered. However, no reasons had been given in those cases for not doing this on the spot, which led to the finding that the arrest and escort to the police station had constituted an arbitrary and unlawful deprivation of liberty (see *Navalnyy and Yashin*, cited above, §§ 68 and 93-97, and, *mutatis mutandis*, *Novikova and Others*, cited above, §§ 182-83 and 226-27). Furthermore, once the administrative offence reports had been drawn up at the police station, the objective of escorting would have been met and further remand in custody pending the judicial hearing would require specific justification, such as the demonstrated risk of absconding or obstructing the course of justice. In the absence of any explicit reasons for not releasing the applicant, the Court considered the detention pending trial unjustified and arbitrary even though it fell within the forty-eight-hour time-limit provided for by Article 27.5 § 3 of the Code of Administrative Offences (see *Navalnyy and Yashin*, cited above, § 96, and *Frumkin v. Russia*, no. 74568/12, § 150, 5 January 2016).

61. Having regard to the material in its possession, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Indeed, on none of the seven occasions was there a reason, explicit or implied, why the administrative offence report could not be drawn up on the spot. In addition, on 9 May 2012 the applicant was detained for an unstated number of hours before being brought before the Justice of the Peace on the same day, and on 24 February 2014 he was detained overnight before being brought before the judge, without explicit reasons being given for not releasing him before the trial, merely because he had been charged with offences punishable by a prison term. Neither the Government nor any other domestic authorities have provided any justification as required by Article 27.3 of the Code, namely that it was an "exceptional case" or that it was "necessary for the prompt and proper examination of the alleged administrative offence". In the absence of any explicit reasons given by the authorities for not releasing the applicant, the Court considers that his detention pending trial on 9 May 2012 and 24 February 2014 was unjustified and arbitrary.

62. There has accordingly been a violation of Article 5 § 1 of the Convention on account of the applicant's arrest on seven occasions and his pre-trial detention on two occasions.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

63. The applicant complained of a violation of Article 6 §§ 1, 2 and 3 (d) of the Convention. He alleged that on all seven occasions the proceedings in which he was convicted of an administrative offence fell short of the guarantees of a fair hearing, in particular the principles of equality of arms, adversarial proceedings, independence and impartiality of the tribunal, and

the presumption of innocence. Article 6 of the Convention in so far as relevant, provides as follows:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal ...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him ..."

A. Admissibility

64. The Government contested the applicability of Article 6 of the Convention to the administrative proceedings in the present case.

65. The Court has previously held that the offence set out in Article 19.3 of the Code of the Administrative Offences should be classified as "criminal" for the purposes of the Convention (see *Malofeyeva*, cited above, §§ 99-101; *Nemtsov v. Russia*, no. 1774/11, § 83, 31 July 2014; *Navalnyy and Yashin*, cited above, § 78; and *Frumkin*, cited above, §§ 154-56), as should the offence under Article 20.2 of the Code (see *Kasparov and Others*, cited above, §§ 37-45, and *Mikhaylova v. Russia*, no. 46998/08, §§ 57-69, 19 November 2015). The Court sees no reason to reach a different conclusion in the present case, and considers that the proceedings fall to be examined under the criminal limb of Article 6 of the Convention.

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

B. Merits

1. The parties' submissions

67. The applicant alleged that in all seven sets of administrative proceedings he had not been given a fair hearing. He complained that the courts had refused to call and examine the witnesses he had requested, and in five sets of proceedings they had refused to admit the video recordings of his arrest in evidence. Furthermore, the courts had not respected the principle of equality of arms in that they had rejected the statements in the applicant's favour as false while giving weight to those of the police officers. As regards two sets of proceedings – concerning the episodes of

9 May 2012 and 27 October 2012 – he formulated an additional complaint that the courts had discharged the function of the prosecution, in accordance with the administrative procedure, but contrary to the principles of equality of arms and independence of the tribunal.

68. The Government maintained that the proceedings in the applicant's administrative cases had complied with Article 6 of the Convention. They argued that the applicant had been given a fair opportunity to state his cases and to have the relevant witnesses called and cross-examined. The Government contested that the domestic courts had taken on the function of the prosecution. They claimed that the administrative offence case files had been prepared by the police, who had collected the evidence and had presented charges in writing, whereas the court had resolved the cases as an independent adjudicator.

2. The Court's assessment

69. The Court observes that the circumstances surrounding the applicant's arrest were disputed by the parties to the administrative proceedings in all seven cases. In the proceedings concerning the episode of 5 March 2012 the applicant claimed, in particular, that the two police officers who had drawn up the administrative offence report were not the same officers who had arrested him. In the proceedings concerning the episodes of 8 and 9 May 2012 and the evening of 24 February 2014 the applicant contested that the gatherings in question had caused a disturbance and denied that he had been given a warning or an order to disperse before being arrested. In two other sets of proceedings – concerning the episodes of 27 October 2012 and of 24 February 2014 at 12 noon – the applicant contested that there had been any public gathering at all within the meaning of the Public Events Act and claimed that he had been arrested without any warning or pretext. It follows that each set of proceedings involved a dispute over the key facts, and it was incumbent on the domestic courts to resolve these disputes in a fair and adversarial manner.

70. The Court observes that in the proceedings concerning the episode of 5 March 2012 the Justice of the Peace examined only two police officers whose identity had been disputed by the applicant and refused to call other witnesses. However, the appeal court had justifiably found this evidence insufficient and had also examined a private individual – a journalist – who had been an eyewitness to the applicant's arrest. The latter had confirmed the police officers' identity. In addition, the same appeal court examined the video recording submitted by the applicant, and on the basis of all the evidence found the officers' identity established. The Court has no reason to find the manner in which the appeal court had assessed the evidence relating to the officers' identity arbitrary or manifestly unreasonable, and it notes that the applicant did not have any other grievances in relation to this set of proceedings.

71. By contrast, the courts in the six other sets of proceedings decided to base their judgments exclusively on the versions of events put forward by the police. They systematically failed to check the factual allegations made by the police, having refused the applicant's requests for additional evidence such as video recordings to be admitted, or for witnesses to be called, in the absence of any obstacles to doing so. Moreover, when the courts did examine witnesses other than the police officers, they automatically presumed bias on the part of all witnesses who had testified in the applicant's favour; on the contrary, the police officers were presumed to be parties with no vested interest.

72. The Court has already examined a number of cases concerning administrative proceedings against individuals charged with breaching rules of conduct of public events or with failing to obey police orders to disperse. It found that in those proceedings the Justices of the Peace had accepted the submissions of the police readily and unequivocally and had denied the applicants any opportunity to adduce any proof to the contrary. It held that in the dispute over the key facts underlying the charges where the only witnesses for the prosecution were the police officers who had played an active role in the contested events it was indispensable for the courts to use every reasonable opportunity to check their incriminating statements (see *Kasparov and Others*, § 64; *Navalnyy and Yashin*, § 83; and *Frumkin*, § 165, all cited above). Failure to do so ran contrary to the fundamental principles of criminal law, namely *in dubio pro reo* (see *Frumkin*, cited above, § 166, and the cases cited therein). It also found that by dismissing all evidence in the defendant's favour without justification the domestic courts had placed an extreme and unattainable burden of proof on the applicant, contrary to the basic requirement that the prosecution has to prove its case and to one of the fundamental principles of criminal law, namely *in dubio pro reo* (see *Nemtsov*, cited above, § 92).

73. The Court considers that the six sets of administrative proceedings in this case were all flawed in a similar way; they resulted in judicial decisions which were not based on an acceptable assessment of the relevant facts. Moreover, the courts did not require the police to justify the interference with the applicants' right to freedom of assembly, which included a reasonable opportunity to disperse when such an order is given (see *Frumkin*, cited above, § 166, and *Nemtsov*, cited above, § 93).

74. On the basis of the foregoing considerations the Court concludes that the administrative proceedings concerning both episodes of 8 May 2012, the episodes of 9 May and 27 October 2012, and both episodes of 24 February 2014, were all conducted in violation of his right to a fair hearing. In view of this finding, the Court does not consider it necessary to address the remainder of the applicants' complaints under Article 6 §§ 1 and 3 (d) of the Convention in respect of these six sets of proceedings.

75. There has accordingly been no violation of Article 6 § 1 of the Convention as regards the administrative proceedings concerning the events of 5 March 2012 and a violation of Article 6 § 1 of the Convention in the remaining six sets of administrative proceedings.

V. ALLEGED VIOLATION OF ARTICLES 14 AND 18 OF THE CONVENTION

76. The applicant complained that his arrest, detention and administrative charges had pursued the aim of undermining his right to freedom of assembly, for political reasons. He complained of a violation of Articles 14 and 18 of the Convention, which read as follows:

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 18

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

77. In their submissions under this head the parties reiterated their arguments as regards the alleged interference with the right to freedom of assembly, the reasons for the applicant's deprivation of liberty, and the guarantees of a fair hearing in the administrative proceedings.

78. The Court notes that these complaints are linked to the complaints examined above under Articles 5 and 11 of the Convention and must therefore likewise be declared admissible.

79. The Court has found above that the applicant's arrest and administrative detention had the effect of preventing and discouraging him and others from participating in protest rallies and actively engaging in opposition politics (see paragraph 52 above), and has found a violation of Articles 5 and 11 of the Convention. In view of this, the Court considers that it is not necessary to examine whether, in the present case, there has been a violation of Article 18 of the Convention in conjunction with Articles 5 or 11 of the Convention, or of Article 14 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. 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

81. The applicant claimed 121,000 euros (EUR) in respect of non-pecuniary damage he had allegedly sustained as a result of his seven arrests, detention and the related administrative proceedings and sanctions. He also claimed EUR 1,025 in respect of pecuniary damage, which represented the total amount of the fines he had had to pay as penalties in his administrative cases.

82. The Government contested the non-pecuniary claims as unreasonable and excessive. They also objected to the award in respect of pecuniary damage on the grounds that this would be tantamount to setting aside the domestic judgments.

83. The Court has found a violation of Articles 5, 6 and 11 of the Convention and considers that, in the circumstances, the applicant's suffering and frustration cannot be compensated for by the mere finding of a violation. Making its assessment on an equitable basis, it awards the applicant EUR 50,000 in respect of non-pecuniary damage.

84. As regards his pecuniary claims, the Court notes that the fines imposed in the administrative proceedings were penalties incurred by the applicant in connection with the exercise of his right to freedom of assembly. The Court found a violation of Article 11 of the Convention in relation to each of these episodes, having established that the measures taken against the applicant, including the administrative liability, had not been necessary in a democratic society. Given the direct link between the violation found and the pecuniary damage sustained by the applicant, the Court awards him EUR 1,025 under this head.

B. Costs and expenses

85. The applicant claimed EUR 1,053 on account of postal expenses incurred before the Court in relation to the proceedings in four applications. He also claimed EUR 10,100 for his legal representation by Mr Terekhov in four applications and the equivalent of EUR 1,500 for his legal representation by Ms Mikhaylova in one application. He submitted contracts and receipts indicating the lawyers' fees, as well as the relevant postal receipts.

86. The Government objected on the grounds that compensation for costs and expenses in this case would be tantamount to setting aside the domestic judgments.

87. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses in so far as it has been shown that

these have been actually and necessarily incurred and are reasonable as to quantum. Moreover, awards for costs and expenses are linked to the finding of a violation of the Convention, violations of Article 6 of the Convention not being an exception (see *Volkov and Adamskiy v. Russia*, nos. 7614/09 and 30863/10, §§ 68 and 71, 26 March 2015). The Court therefore dismisses the Government's objection that an award for costs and expenses would be tantamount to setting aside the domestic judgment in question. In the present case, which involved five applications before the Court, there has been a violation of Articles 5, 6 and 11 of the Convention. Regard being had to the documents in its possession and the above-mentioned criteria, the Court considers it reasonable to award the claimed amounts in full. It awards the applicant EUR 12,653 in respect of costs and expenses for the proceedings before the Court.

C. Default interest

88. 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

1. *Decides*, unanimously, to join the applications;

2. *Declares*, unanimously, the applications admissible;

3. *Holds*, unanimously, that there has been a violation of Article 11 of the Convention on account of all seven episodes complained of;

4. *Holds*, unanimously, that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's arrest on seven occasions and his pre-trial detention on two occasions;

5. *Holds*, unanimously, that there has been no violation of Article 6 § 1 of the Convention as regards the administrative proceedings concerning the events of 5 March 2012;

6. *Holds*, unanimously, that there has been a violation of Article 6 § 1 of the Convention as regards the remaining six sets of administrative proceedings;

7. *Holds*, unanimously, that there is no need to examine the remainder of the complaints under Article 6 of the Convention as regards the aforementioned six sets of administrative proceedings;

8. *Holds*, by four votes to three, that there is no need to examine the complaint under Article 18 in conjunction with Article 5 of the Convention;

9. *Holds*, unanimously, that there is no need to examine the complaint under Article 18 in conjunction with Article 11 of the Convention;

10. *Holds*, unanimously, that there is no need to examine the complaint under Article 14 of the Convention;

11. *Holds*, by six votes to one,

(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 50,000 (fifty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,025 (one thousand and twenty-five euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(iii) EUR 12,653 (twelve thousand six hundred and fifty-three 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;

12. *Dismisses*, by six votes to one, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 2 February 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Luis López Guerra
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) Joint partly dissenting opinion of Judges Lopez Guerra, Keller and Pastor Vilanova;

(b) Partly dissenting opinion of Judge Keller.

L.L.G.
F.A.

JOINT PARTLY DISSENTING OPINION OF JUDGES LÓPEZ GUERRA, KELLER AND PASTOR VILANOVA

1. As regards the applicant's allegations under Article 18 of the Convention taken together with Article 5, we are regretfully unable to subscribe to the majority's conclusion that it was not necessary to examine this complaint in the present case. For the reasons set out below, we consider that this matter warranted a more detailed examination by the Court.

2. Article 18 of the Convention, as Judge Keller has written elsewhere, may be an accessory provision (as was made clear, for example, in *Gusinskiy v. Russia*, no. 70276/01, § 73, ECHR 2004-IV). However, this does not mean that there is no need to examine complaints made under that provision where the Court finds a violation of the Convention right or freedom in conjunction with which it has been invoked. Article 18 protects a legal interest separate from that protected by, for example, Article 5 of the Convention; any other conclusion would deprive the provision of a reasonable and independent scope of application (compare, in overall terms, the partly dissenting opinion of Judge Keller in *Kasparov v. Russia*, no. 53659/07, § 3, 11 October 2016)[1].

3. The separate legal interest protected by Article 18 is the prevention of "a specific injustice, namely the undermining of Convention rights whereby legitimate justifications are improperly invoked as a pretext in order to conceal an ulterior motive" (see the partly dissenting opinion of Judge Keller in *Kasparov*, cited above, § 4, with further references to the *travaux preparatoires* of the Convention[2]). For example, the Court has found that Article 18 was violated where a prominent opposition politician was deprived of her liberty without proper justification (*Tymoshenko v. Ukraine*, no. 49872/11, § 300, 30 April 2013) and where measures were taken against an oppositional actor to "silence or punish the applicant for criticising the Government" (*Ilgar Mammadov v. Azerbaijan*, no. 15172/13, §§ 142-43, 22 May 2014). In short, the provision serves to address the abusive

[1] See also Keller, Helen and Heri, Corina, "Selective Criminal Proceedings and Article 18 of the European Convention on Human Rights' Untapped Potential to Protect Democracy", in *Human Rights Law Journal* (2016), 1-10, at 8.

[2] Statement by Pierre-Henri Teitgen (France), orally presenting the report of the Legal Committee at the first session of the Consultative Assembly of the Council of Europe, in "Collected Edition of the 'Travaux Preparatoires' of the European Convention on Human Rights, Volume I: Preparatory Commission of the Council of Europe, Committee of Ministers, Consultative Assembly (11 May-13 July 1949)", Martinus Nijhoff, The Hague, 1975, 130; see also the statement by Lodovico Benvenuti (Italy) at the first session of the Consultative Assembly of the Council of Europe, Strasbourg, 8 September 1949, in "Collected Edition of the 'Travaux Preparatoires' of the European Convention on Human Rights, Volume I", cited above, 179-80. Compare, for more, Keller, Helen and Heri, Corina (2016), cited above, at 3.

limitation of the rights of oppositional actors with the aim of silencing them (see, in overall terms, the partly dissenting opinion of Judge Keller in *Kasparov*, cited above, § 4).

4. Against this background, and while the proceedings against the applicant in the present case were admittedly administrative in nature and the duration of his deprivation of liberty was not particularly long in any of the instances concerned, we are concerned about the repetitive and targeted nature of the violations of Article 5, in particular, found in this case. The repetitive, systematic or targeted arrest of activists such as the applicant can have a chilling effect on political expression and stifle the activity of oppositional actors. As a result, depriving individuals such as the applicant of their liberty without further justification as a method of supressing criticism falls squarely within the scope of Article 18 of the Convention.

5. Given the above, and in the light of all the circumstances of the case, we are convinced that the applicant has established a prima facie case of a violation of his rights under Article 18. He has credibly argued that his repeated arrests were linked to a hidden agenda to silence and intimidate him as a political dissident, in particular given the nature of his activities and the number of unjustified arrests that he endured during a relatively short period of time. Admittedly, the level of proof necessary in order for the Court to find a violation of Article 18 on the merits is a relatively high one, albeit one that has been subject to much-needed mitigation in recent years[3]. However, in the present case the Court did not even enter into an examination on the merits, thus perpetuating the sidelining that Article 18 has suffered elsewhere in the Court's case-law.

6. We consider that the majority's approach to Article 18 in this case does not do justice to the provision itself, which has once again been deprived of a reasonable scope of application. It also negates the fact that the applicant's rights – hence, the rights of a prominent oppositional actor – were violated in conspicuously repeated fashion. The fact that the Court found violations of Articles 5, 6 and 11 in this case does not do justice to the abusive aspect of this case. Therefore, we cannot agree with the majority's decision to acknowledge that "the applicant's arrest and administrative detention had the effect of preventing and discouraging him and others from participating in protest rallies and actively engaging in opposition politics" (see paragraph 79 of the majority's judgment), which would seem to fall squarely under Article 18, but not to examine Article 18 on the merits.

[3] See Keller, Helen and Heri, Corina, cited above, especially 4-5, for an in-depth exploration.

PARTLY DISSENTING OPINION OF JUDGE KELLER

1. To my regret, I am unable to agree with my colleagues in the matter of the awards made under Article 41 of the Convention in the present case. For the reasons set out below, I consider that the amount awarded to the applicant in respect of non-pecuniary damage was insufficient.

2. At first sight, admittedly, the amount awarded to the applicant in the light of the violations of Articles 5, 6 and 11 of the Convention found in the present judgment is a generous one. My colleagues granted the applicant EUR 50,000 in respect of non-pecuniary damage. However, while I agree with the majority that it was certainly necessary to make an award in this respect given the frustration and suffering endured by the applicant, I do not agree with the manner in which the award was calculated.

3. In this regard, I would like to draw a parallel with the 2016 *Frumkin v. Russia* case (no. 74568/12, ECHR 2016). While all of the Court's judgments and decisions are made on the basis of the individual circumstances and allegations at stake in a particular case, and there is no system of binding precedent in the Strasbourg case-law, it is nonetheless possible to use that judgment to illustrate the point to be made here. The relevance of the *Frumkin* judgment stems from the fact that the allegations made against the respondent State therein concern a matter similar to that at stake here, and the violations of the Convention found are comparable. In addition, both cases concern the same respondent State. However, the applicant in *Frumkin* was awarded EUR 25,000 in respect of the violations of Articles 5, 6 and 11 of the Convention found in that case (see *Frumkin*, cited above, § 182). This is interesting for present purposes because the applicant in *Frumkin* brought one application complaining about his arrest, detention and conviction stemming from one public assembly. In the case before it here, however, the Court is considering five separate applications brought by the applicant concerning his arrest on seven occasions at different public events (see paragraph 6 of the majority judgment in the present case).

4. This comparison brings me to the reason why I could not vote with the majority in this case as regards the award made under Article 41. The reason is that, although Mr Navalnyy's rights were violated in the context of seven different arrests, he was awarded just twice the amount of compensation awarded to an applicant whose rights were violated on only one occasion, as shown by the example of the *Frumkin* case. In effect, each of Mr Navalnyy's arrests was compensated for by less than a third of the amount by way of just satisfaction that Mr Frumkin received for the violations of his rights suffered in conjunction with his arrest. While the awards made under Article 41 depend on a number of factors, and no two cases are identical in this or other regards, this is a glaring difference that accordingly demands an explanation. The question here, then, is whether it

is justified to reduce the amount of compensation awarded to Mr Navalnyy for the individual violations of his rights in the light of the fact that they occurred on multiple occasions.

5. In this regard, I would like to point out that the *ratio* of Rule 42 § 1 of the Rules of Court of 14 November 2016, which permits the joinder of two or more applications at the request of the parties or of the Court's own motion, is not and cannot be to prejudice the applicants' complaints or minimise States' responsibility, but to promote a more efficient Court.

6. As a result, in my opinion, there can be no justification for lowering the amount of the award made under Article 41 where repeated violations are in issue. The majority's approach devalues the gravity of the individual violations of his rights suffered by the applicant, and seems to negate the seriousness of the fact that the authorities repeatedly targeted the applicant, a political dissident and activist. There is no reason why it should be more affordable for States to violate an individual's rights in bulk.

APPENDIX

List of applications

1. 29580/12 – Navalnyy v. Russia
2. 36847/12 – Navalnyy v. Russia
3. 11252/13 – Navalnyy v. Russia
4. 12317/13 – Navalnyy v. Russia
5. 43746/14 – Navalnyy v. Russia