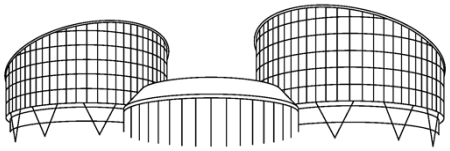

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF TARANENKO v. RUSSIA

(Application no. 19554/05)

JUDGMENT

STRASBOURG

15 May 2014

FINAL

13/10/2014

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Taranenko v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Paulo Pinto de Albuquerque,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 8 April 2014,

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

PROCEDURE

1. The case originated in an application (no. 19554/05) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Ms Yevgeniya Vladimirovna Taranenko ("the applicant"), on 12 April 2005.

2. The applicant was represented by Ms E. Liptser, a lawyer 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 alleged, in particular, that she had been detained in inhuman conditions, that her detention had been excessively long and that her prosecution and conviction for participation in a protest action against the President's policies had violated her rights to freedom of expression and freedom of assembly.

4. On 16 March 2009 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1981 and lives in Moscow.

A. Events leading to the applicant's arrest and prosecution

1. Media reports

6. The media reported that on 14 December 2004 a group of about forty members of the National Bolsheviks Party (also referred to herein as "the Party") occupied the reception area of the President's Administration building in Moscow and locked themselves in an office on the ground floor.

7. They asked for a meeting with the President, the deputy head of the President's Administration Mr Surkov, and the President's economic advisor Mr Illarionov. They waved placards with "Putin, resign!" («Путин, уйди!») written on them through the window and distributed leaflets with a printed address to the President that listed ten ways in which he had failed to uphold the Russian Constitution, and a call for his resignation.

8. The intruders stayed in the office for an hour and a half until the police broke through the door. During the arrest**,** they did not offer any resistance to the authorities.

2. The applicant's version of events

9. According to the applicant, she was not a member of the National Bolsheviks Party. She was writing a master's thesis in sociology on forms of activity of radical political movements in modern Russia. On 14 December 2004 one of the members of the National Bolsheviks Party told her about the direct action in the President's Administration building planned for that day. She came to witness the protest action in order to collect information for her thesis. She did not take part in the occupation of the office, but merely watched the action, took notes and pictures.

3. The prosecution's case

10. The indictment of the applicant states that at 12.30 p.m. on 14 December 2004 forty Party members effected an unauthorised entry into the reception area of the building used by the President of the Russian Federation's Administration. Some of them pushed back the guards at the entrance and occupied room no. 14 on the ground floor. They locked themselves in, blocked the door with a heavy safe and let other members of their group enter through the window.

11. Until the police arrived, the Party members, including the applicant, waved placards through the office window, threw out leaflets and chanted slogans calling for the President's resignation. They stayed in the office for approximately one hour, destroyed office furniture and equipment and damaged the walls and the ceiling.

B. The criminal proceedings against the applicant

1. Decisions concerning the extension of a custodial measure

12. On 14 December 2004 the applicant was arrested.

13. On 16 December 2004 the Khamovnicheskiy District Court of Moscow ordered the applicant's detention on the grounds that she was suspected of an especially serious criminal offence, might abscond, reoffend, interfere with the witnesses or obstruct the investigation in some other way.

14. On 22 December 2004 the applicant was charged with the attempted violent overthrow of the State (Article 278 of the Criminal Code) and intentional destruction and degradation of others' property in public places (Articles 167 § 2 and 214).

15. On the same date the applicant asked to be released, referring to her clean criminal record, permanent residence in Moscow and permanent employment as a school teacher.

16. On 24 December 2004 the investigator refused her request, referring to the gravity of the charges, the absence of a registered residence in Moscow and the risk that she might abscond.

17. On 7 February 2005 the Zamoskvoretskiy District Court of Moscow extended the applicant's detention until 14 April 2005, finding that the grounds on which the preventive measure had previously been imposed still persisted and there was no reason to vary the preventive measure.

18. On 15 February 2005 the charges against the applicant were amended to that of a charge of participation in mass disorder, an offence under Article 212 § 2 of the Criminal Code.

19. On 8 April 2005 the Zamoskvoretskiy District Court extended the applicant's detention until 14 July 2005, referring to the gravity of the charge and the risk that she might abscond or interfere with the investigation.

20. On 7 June 2005 the investigation was completed and thirty-nine people, including the applicant, were committed for trial.

21. On 30 June 2005 the Tverskoy District Court of Moscow held a preliminary hearing. It rejected the defendants' requests to be released. It stated that it had taken into account the defendants' characters, their young age, frail health, family situation and stable way of life. However, it found, referring to the gravity of the charges, that "the case file gives sufficient reasons to believe that, once released, the defendants would flee or interfere with the trial". It therefore ordered that all defendants should remain in custody. On 17 August 2005 the Moscow City Court rejected appeals lodged by several of the applicant's co-defendants.

22. On 27 July 2005 the applicant and her co-defendants lodged applications for release. On 27 July 2005 the Tverskoy District Court rejected the applications, finding that their detention was lawful and

justified. In particular, it noted that their detention had been extended by the court order of 30 June 2005 and, under the Code of Criminal Procedure, that order was valid for six months. On 5 October 2005 the Moscow City Court upheld the decision on appeal.

23. On 3 August 2005 the applicant and her co-defendants filed new applications for release. On 10 August 2005 the Tverskoy District Court rejected the applications. It held:

> "The court takes into account the defence's argument that an individual approach to each defendant's situation is essential when deciding on a preventive measure.
>
> Examining the grounds on which ... the court ordered and extended detention in respect of all the defendants without exception ... the court notes that these grounds still persist today. Therefore, having regard to the state of health, family situation, age, profession and character of all the defendants, and to the personal guarantees offered by certain private individuals and included in the case file, the court concludes that, if released, each of the applicants might abscond or obstruct justice in some other way...
>
> In the court's view, in these circumstances, having regard to the gravity of the charges, there are no grounds for varying or revoking the preventive measure in respect of any defendant..."

24. On 2 November 2005 the Moscow City Court upheld the decision on appeal.

2. The conviction

25. During the trial the applicant and her co-defendants stated that they had taken part in a peaceful protest against President Putin's policies. According to the plan of the protest action agreed in advance, they were to go to the President's Administration building to meet officials and hand over a petition that listed the President's ten failures to comply with the Constitution and contained a call for his resignation. They were then to talk to journalists. On 14 December 2004 they had entered the reception area of the President's Administration building as planned and had gone into a vacant office on the ground floor. The guards had followed them and had hit those who had lagged behind, had pushed them into the office and had shut the door behind them. The guards had threatened to use force against the protesters. Taking fright, the protesters had locked the office door and blocked it with a metal safe. They had chanted slogans and distributed leaflets through the windows, thereby expressing their opinions about important political issues. They denied destroying any furniture or offering resistance to the police. They claimed that the furniture had been destroyed by the police officers who had broken down the door and arrested them.

26. The employees and the guards of the President's Administration stated that on 14 December 2004 a group of about forty people had rushed into the President's Administration's reception area. They had pushed one of the guards aside, had scurried through the metal detectors and had jumped over tables and chairs. They had run into one of the offices, had

locked the door and had started to chant political slogans. The police had arrived and ordered that the office be vacated. As the protesters had failed to comply, the police had broken down the door and arrested them. Some of the witnesses stated that the protesters had showed resistance to the police, in particular by preventing them from forcing open the door.

27. The police officers who had participated in the arrest stated that before breaking the door down they had ordered that the premises be vacated. Having received no response, they had forced open the door and had arrested the protesters. They denied breaking any furniture in the office, stating that it had been damaged before their arrival.

28. On 8 December 2005 the Tverskoy District Court found the applicant and her co-defendants guilty of participation in mass disorder. It found it established that the defendants had unlawfully entered the President's Administration building without complying with the requisite entry formalities. In particular, they had bypassed identity and security checks and had pushed aside the guard who had attempted to stop them. They had then proceeded to one of the offices without being registered at the reception desk and without complying with the guards' lawful demands to leave the premises. In view of their unlawful and aggressive behaviour, they could not argue that they had participated in a peaceful political action. The court also held as follows:

> "[The defendants], acting in conspiracy, committed serious breaches of public safety and order by disregarding established norms of conduct and showing manifest disrespect for society... They effected an unauthorised entry into the reception area of the President of the Russian Federation's Administration building and took over office no. 14 on the ground floor... They then blocked the door with a heavy metal safe and conducted an unauthorised meeting, during which they waved the National Bolsheviks Party flag and placards, threw anti-[Putin] leaflets out [of windows] and issued an unlawful ultimatum by calling for the President's resignation, thereby destabilising the normal functioning of the President's Administration and preventing its reception personnel from performing their service duties, namely ... reception of members of the public and examination of applications from citizens of the Russian Federation...
>
> While performing the above disorderly acts [the defendants] ... destroyed and damaged property in the offices of the reception area of the President's Administration building..."

29. In respect of the applicant, the court noted that it was irrelevant whether she had joined the direct action for academic or other purposes. It had been established that she had directly participated in the mass disorder together with the others. Taking into account the fact that the defendants had voluntarily compensated the pecuniary damage in the amount of 74,707.08 Russian roubles (approximately 2,200 euros) caused by their actions and that the applicant had positive character references, the court sentenced her to three years' imprisonment, but suspended the sentence and put her on three years' probation. She was immediately released.

30. In her appeal submissions the applicant complained, in particular, that she had been convicted, in breach of Article 10 of the Convention, for her participation in a peaceful assembly and for public expression of her opinions about important political issues.

31. On 29 March 2006 the Moscow City Court upheld the judgment on appeal.

C. Conditions of detention

32. From 16 December 2004 to 8 December 2005 the applicant was held in detention facility no. IZ-77/6 in Moscow.

33. According to the applicant, her cell, which accommodated forty inmates, was overcrowded. The applicant suffered from psoriasis (a skin disease), chronic pyelonephritis (a kidney infection), chronic bronchitis and allergies. She did not receive medical treatment appropriate for her conditions.

34. According to the Government, from 17 to 20 December 2004 the applicant was held in cell no. 307, which measured 132.1 sq. m and housed thirty-two inmates. From 20 December 2004 to 13 October 2005 and from 21 October to 8 December 2005 the applicant was held in cell no. 303, which measured 123.4 sq. m and housed twenty-seven to thirty inmates. From 13 to 21 October 2005 the applicant was held in cell no. 120, which measured 22.9 sq. m and housed two inmates. The applicant had a separate bunk at all times and was provided with bedding. In support of their position, the Government submitted certificates issued by the remand centre governor on 25 June 2009 and selected pages from the prison population register which recorded, for each day, the number of sleeping bunks and the number of inmates in each of the remand centre's cells.

35. Relying on certificates of the same date from the remand centre governor, the Government further submitted that all cells had been equipped with toilet facilities which were separated from the living area by a partition. There had been forced ventilation in the cells. The windows had been large and had not been blocked by shutters. The cells had had sufficient artificial light, which had been located so as not to disturb the inmates' sleep. There had been no insects or rodents in the detention facility, as all the cells had been disinfected every month. Hot food had been served three times a day. Inmates had been able to take an hour-long daily walk in the exercise yards. They had been allowed to take a shower at least once a week.

36. Relying on the applicant's medical records, the Government submitted that the applicant had been regularly examined by specialist doctors and had been prescribed treatment when necessary.

II. RELEVANT DOMESTIC LAW

37. Participation in mass disorder accompanied by violence, riots, arson, destruction of property, use of firearms or explosives or armed resistance to the authorities is punishable by three to eight years' imprisonment (Article 212 § 2 of the Criminal Code).

38. For a summary of the relevant domestic law provisions governing the conditions and length of pre-trial detention, see the cases of *Dolgova v. Russia*, no. 11886/05, §§ 26-31, 2 March 2006, and *Lind v. Russia*, no. 25664/05, §§ 47-52, 6 December 2007.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

39. The applicant complained that the conditions of her detention from 16 December 2004 to 8 December 2005 in remand centre no. IZ-77/6 in Moscow had been in breach of Article 3 of the Convention, which provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

40. The Government submitted that the conditions of the applicant's detention had been satisfactory. The number of inmates in her cells had been below their design capacity and she had been provided with an individual bunk and bedding at all times. The cells had had both natural and artificial light and forced ventilation. All health and safety and hygiene standards had been met. Inmates had received food three times a day. The applicant had received medical treatment appropriate for her conditions. In sum, the conditions of her detention had been compatible with Article 3.

41. The applicant maintained her claims.

42. The Court notes that the applicant did not describe the conditions of her detention in much detail. Nor did she challenge the description of the conditions submitted by the Government, who asserted that the personal space afforded to her had exceeded four square metres and that the medical treatment she received had been appropriate for her conditions (see paragraphs 34 to 36 above). In such circumstances, the Court considers, on the basis of the information provided by the parties, that the conditions of the applicant's detention did not reach the threshold of severity to fall within the ambit of Article 3 of the Convention.

43. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

44. The applicant complained under Article 5 § 1 (c) of the Convention that there had been no grounds to detain her and that the domestic courts had not had due regard to the defence's arguments. Under Article 5 § 3, she complained of a violation of her right to trial within a reasonable time and alleged that the detention orders had not been based on sufficient reasons. The relevant parts of Article 5 read 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:
>
> ...
>
> (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;
>
> ...
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial ..."

A. Admissibility

45. As regards the applicant's complaint that her detention was unlawful, the Court notes that on 16 December 2004 the Khamovnicheskiy District Court of Moscow ordered the applicant's remand in custody. The applicant's detention was subsequently extended on several occasions by the domestic courts.

46. The domestic courts acted within their powers in making those decisions and there is nothing to suggest that they were invalid or unlawful under domestic law. The question of whether the reasons for the decisions were sufficient and relevant is analysed below in connection with the issue of compliance with Article 5 § 3 (compare *Khudoyorov v. Russia*, no. 6847/02, §§ 152 and 153, ECHR 2005-X (extracts)).

47. The Court finds that the applicant's detention was compatible with the requirements of Article 5 § 1 of the Convention. It follows that this complaint must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

48. As regards the applicant's complaint of a violation of her right to trial within a reasonable time or to release pending trial, the Court finds that it 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

49. The applicant submitted that the domestic courts had not advanced "relevant and sufficient" reasons to hold her in custody for almost a year. The domestic authorities had extended her detention relying essentially on the gravity of the charge without examining her individual situation or demonstrating the existence of specific facts in support of their conclusion that she might abscond, interfere with the investigation or reoffend. She also referred to the case of *Dolgova v. Russia (cited above)* lodged by her co-defendant, where a violation of Article 5 § 3 had been found in similar circumstances.

50. The Government submitted that the decisions to remand the applicant in custody had been lawful and well-reasoned. She had been charged with a serious criminal offence of mass disorder committed by an organised group and accompanied by riots and destruction of property. Her pre-trial detention had therefore been justified.

51. The Court observes that the applicant was remanded in custody on 14 December 2004. On 8 December 2005 the trial court convicted her of a criminal offence, put her on probation and immediately released her. The period to be taken into consideration lasted almost twelve months.

52. The Court has already, on a large number of occasions, examined applications against Russia raising similar complaints under Article 5 § 3 of the Convention and found a violation of that Article on the grounds that the domestic courts extended an applicant's detention relying essentially on the gravity of the charges and using stereotyped formulae without addressing his or her specific situation or considering alternative preventive measures (see, among many others, *Khudoyorov, cited above*; *Mamedova v. Russia*, no. 7064/05, 1 June 2006; *Pshevecherskiy v. Russia*, no. 28957/02, 24 May 2007; *Shukhardin v. Russia*, no. 65734/01, 28 June 2007; *Belov v. Russia*, no. 22053/02, 3 July 2008; *Aleksandr Makarov v. Russia*, no. 15217/07, 12 March 2009; *Lamazhyk v. Russia*, no. 20571/04, 30 July 2009; *Makarenko v. Russia*, no. 5962/03, 22 December 2009; *Gultyayeva v. Russia*, no. 67413/01, 1 April 2010; *Logvinenko v. Russia*, no. 44511/04, 17 June 2010; *Sutyagin v. Russia*, no. 30024/02, 3 May 2011; *Romanova v. Russia*, no. 23215/02, 11 October 2011; and *Valeriy Samoylov v. Russia*, no. 57541/09, 24 January 2012).

53. The Court further notes that it has previously examined similar complaints lodged by the applicant's co-defendants and found a violation of their rights set out in Article 5 § 3 of the Convention (see *Dolgova v. Russia*, cited above, §§ 38-50; *Lind v. Russia*, cited above, §§ 74-86; *Kolunov v. Russia*, no. 26436/05, §§ 48-58, 9 October 2012; *Zentsov and*

Others v. Russia, no. 35297/05, §§ 56-66, 23 October 2012; *Manulin v. Russia*, no. 26676/06, §§ 55-62, 11 April 2013; and *Vyatkin v. Russia*, no. 18813/06, §§ 50-57, 11 April 2013). In each case the Court noted, in particular, the domestic courts' reliance on the gravity of the charges as the main factor for the assessment of the applicant's potential to abscond, reoffend or obstruct the course of justice, their reluctance to devote proper attention to a discussion of the applicant's personal situation or to have proper regard to the factors pointing in favour of his or her release, the use of collective detention orders without a case-by-case assessment of the grounds for detention in respect of each co-defendant and the failure to thoroughly examine the possibility of applying another, less rigid, measure of restraint, such as bail.

54. Having regard to the materials 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, the domestic courts inferred the risks of absconding, reoffending or interfering with the proceedings essentially from the gravity of the charge against the applicant. They did not point to any aspects of the applicant's character or behaviour that would justify their conclusion that she presented such risks. They gave no heed to important and relevant facts supporting the applicant's petitions for release and reducing the above risks, such as her clean criminal record, permanent place of residence and employment. Nor did they consider the possibility of ensuring the applicant's attendance by the use of a more lenient preventive measure. Finally, after the case had been submitted for trial in June 2005 the domestic courts issued collective detention orders, using the same summary formula to refuse the applications for release and extend the pre-trial detention of thirty-nine people, notwithstanding the defence's express request that each detainee's situation be dealt with individually.

55. Having regard to the above, the Court considers that by failing to address specific facts or consider alternative "preventive measures" and by relying essentially on the gravity of the charges, the authorities extended the applicant's detention on grounds which, although "relevant", cannot be regarded as "sufficient". In these circumstances it is not necessary to examine whether the proceedings were conducted with "special diligence".

56. There has accordingly been a violation of Article 5 § 3 of the Convention.

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

57. The applicant complained that her arrest, the detention pending trial and the sentence imposed on her at the end of the criminal proceedings had violated her right to freedom of expression under Article 10 of the

Convention and her right to freedom of assembly under Article 11 of the Convention. These Articles 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

58. 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. Submissions by the parties

59. The Government submitted that the applicant, together with other members of the National Bolsheviks Party, had effected a forcible and unauthorised entry into the premises of the President's Administration and had destroyed State property there. Their protest had not therefore been peaceful. The purpose of their actions had been to attract attention to the unlawful activities of the National Bolsheviks Party, rather than to express opinions or impart information or ideas. Instead of expressing their opinions

in one of the ways permitted by Russian law – such as at a public gathering, meeting, demonstration, march or a picket – they had acted in a manner constituting a criminal offence. The prosecution of the applicant for that criminal offence had not therefore interfered with her freedom of expression.

60. The Government further argued that the applicant had not been persecuted for her political opinions or demands. She had been prosecuted for participation in mass disorder involving destruction of State property. Her arrest, detention and conviction had therefore pursued the legitimate aims of protecting public order, resuming the normal functioning of the President's Administration, and investigating criminal offences and punishing those responsible.

61. The applicant submitted that she had participated in a protest against the President's policies, which in her opinion violated citizens' rights. The participants in the protest action of 14 December 2004 had considered that a petition addressed to the President's Advisor might be more effective than any of the methods of public assembly – such as public gatherings, meetings, demonstrations, marches or pickets – suggested by the Government. She argued in that connection that Article 10 protected not only the substance of the ideas and information expressed, but also the form in which they were conveyed.

62. The applicant further submitted that the protest action had been a peaceful one. The participants had entered the President's Administration building with the aim of handing over a petition. Given that their protest had taken place in a locked office, their actions could not be classified as mass disorder under Russian criminal law. They had not destroyed any property; the property had been in fact damaged by the arresting police officers. The participants in the protest had moreover compensated the damage in full. In those circumstances, her arrest, remand in custody for a year and the sentence imposed on her – three years' imprisonment, suspended for three years – had been disproportionate to any legitimate aim.

2. The Court's assessment

(a) General principles

63. According to the Court's well-established case-law, freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness, without which there is no "democratic society" (see

Handyside v. the United Kingdom, 7 December 1976, § 49, Series A no. 24, and *Jersild v. Denmark*, 23 September 1994, § 37, Series A no. 298).

64. Moreover, Article 10 protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed (see *Oberschlick v. Austria (no. 1),* 23 May 1991, § 57, Series A no. 204; *Thoma v. Luxembourg*, no. 38432/97, § 45, ECHR 2001-III; and *Women On Waves and Others v. Portugal*, no. 31276/05, § 30, 3 February 2009).

65. Similarly, 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 *Djavit An v. Turkey*, no. 20652/92, § 56, ECHR 2003-III, and *Barraco v. France*, no. 31684/05, § 41, 5 March 2009). A balance must be always struck between the legitimate aims listed in Article 11 § 2 and the right to free expression of opinions by word, gesture or even silence by persons assembled on the streets or in other public places (see *Ezelin v. France*, 26 April 1991, § 52, Series A no. 202).

66. However, Article 11 of the Convention only protects the right to "peaceful assembly". That notion does not cover a demonstration where the organisers and participants have violent intentions (see *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 77, ECHR 2001-IX, and *Galstyan v. Armenia*, no. 26986/03, § 101, 15 November 2007). Nonetheless, even if there is a real risk of a public demonstration resulting in disorder as a result of developments outside the control of those organising it, such a demonstration does not fall outside the scope of Article 11 § 1, but any restriction placed on such an assembly must be in conformity with the terms of paragraph 2 of that Article (see *Schwabe and M.G. v. Germany*, nos. 8080/08 and 8577/08, § 103, ECHR 2011 (extracts)).

67. To sum up, the Court reiterates that any measures interfering with freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles do a disservice to democracy and often even endanger it (see *Fáber v. Hungary*, no. 40721/08, § 37, 24 July 2012).

(b) Application to the present case

(i) Applicable Convention provision

68. The Court notes that the issues of freedom of expression and freedom of peaceful assembly are closely linked in the present case. Indeed, the protection of personal opinions, secured by Article 10 of the Convention, is one of the objectives of freedom of peaceful assembly as enshrined in Article 11 of the Convention (see *Ezelin,* cited above, § 37; *Djavit An,* cited above, § 39; *Women On Waves and Others,* cited above, § 28; *Barraco,* cited above, § 26; and *Palomo Sánchez and Others v. Spain*

[GC], nos. 28955/06, 28957/06, 28959/06 and 28964/06, § 52, ECHR 2011).

69. The parties submitted arguments under Articles 10 and 11 together. The Court, however, considers that the thrust of the applicant's complaint is that she was convicted for protesting, together with other participants in the direct action, against the President's policies. The Court therefore finds it more appropriate to examine the present case under Article 10, which will nevertheless be interpreted in the light of Article 11 (see *Women On Waves and Others*, cited above, § 28).

(ii) Existence of an interference

70. The Court has previously held that protests can constitute expressions of opinion within the meaning of Article 10. Thus, protests against hunting involving physical disruption of the hunt or a protest against the extension of a motorway involving a forcible entry into the construction site and climbing into the trees to be felled and onto machinery in order to impede the construction works were found to constitute expressions of opinion protected by Article 10 (see *Steel and Others v. the United Kingdom*, 23 September 1998, § 92, *Reports of Judgments and Decisions* 1998-VII, and *Hashman and Harrup v. the United Kingdom* [GC], no. 25594/94, § 28, ECHR 1999-VIII). The arrest and detention of protesters therefore constituted an interference with the right to freedom of expression (ibid.). The arrest of students who, during an official ceremony at a university, shouted slogans and raised banners and placards protesting against various practices of the university administration which they considered to be anti-democratic also constituted an interference with the right to freedom of expression (see *Açık and Others v. Turkey*, no. 31451/03, § 40, 13 January 2009).

71. The applicant in the present case was arrested at the scene of a protest action against the President's policies. She was part of a group of about forty people who forced their way through identity and security checks into the reception area of the President's Administration building and locked themselves in one of the offices, where they started to wave placards and to distribute leaflets out of the windows. She was charged with participation in mass disorder in connection with her taking part in the protest action and remanded in custody for a year, at the end of which time she was convicted as charged and sentenced to three years' imprisonment, suspended for three years. The Court considers that her arrest, detention and conviction constituted interference with the right to freedom of expression.

(iii) Justification for the interference

72. In order for the interference to be justified under Article 10, it must be "prescribed by law", pursue one or more of the legitimate aims listed in the second paragraph of that provision and be "necessary in a democratic

society" – that is to say, proportionate to the aim pursued (see, for example, *Steel and Others,* cited above, § 89, and *Lucas v. the United Kingdom* (dec.), no. 39013/02, 18 March 2003).

73. It is not contested that the interference was "prescribed by law", notably Article 212 § 2 of the Criminal Code, and "pursued a legitimate aim", that of preventing disorder and protecting the rights of others, for the purposes of Article 10 § 2. The dispute in the case relates to whether the interference was "necessary in a democratic society".

74. The test of necessity in a democratic society requires the Court to determine whether the "interference" complained of corresponded to a "pressing social need", whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authorities to justify it were relevant and sufficient. In assessing whether such a "need" exists and what measures should be adopted to deal with it, the national authorities are left a certain margin of appreciation. This margin of appreciation is not, however, unlimited, but goes hand in hand with European supervision by the Court, whose task it is to give a final ruling on whether a restriction is reconcilable with freedom of expression as protected by Article 10. The Court's task in exercising its supervisory function is not to take the place of the national authorities, but rather to review under Article 10, in the light of the case as a whole, the decisions they have taken pursuant to their margin of appreciation. In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see, among many others, *Jerusalem v. Austria*, no. 26958/95, § 33, ECHR 2001-II, and *Krasulya v. Russia*, no. 12365/03, § 34, 22 February 2007).

75. In assessing the proportionality of the interference, the nature and severity of the penalties imposed are also factors to be taken into account (see *Ceylan v. Turkey* [GC], no. 23556/94, § 37, ECHR 1999-IV; *Tammer v. Estonia*, no. 41205/98, § 69, ECHR 2001-I; and *Skałka v. Poland*, no. 43425/98, § 38, 27 May 2003).

(α) "Pressing social need"

76. The Court will first examine whether the "interference" complained of corresponded to a "pressing social need".

77. It notes that the applicant and the other participants in the protest action wished to draw the attention of their fellow citizens and public officials to their disapproval of the President's policies and their demand for his resignation. This was a topic of public interest and contributed to the debate about the exercise of presidential powers. The Court reiterates in this connection that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or debates on questions of public interest. It has been the Court's consistent approach to require very strong reasons

for justifying restrictions on political debate, for broad restrictions imposed in individual cases would undoubtedly affect respect for the freedom of expression in general in the State concerned (see *Feldek v. Slovakia*, no. 29032/95, § 83, ECHR 2001-VIII, and *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61, ECHR 1999-IV).

78. That being said, the Court reiterates that, notwithstanding the acknowledged importance of freedom of expression, Article 10 does not bestow any freedom of forum for the exercise of that right. In particular, that provision does not require the automatic creation of rights of entry to private property, or even, necessarily, to all publicly owned property, such as, for instance, government offices and ministries (see *Appleby and Others v. the United Kingdom*, no. 44306/98, § 47, ECHR 2003-VI).

79. In the present case the protest action in which the applicant participated took place in the President's Administration building. It is significant that the Administration's mission was to receive citizens and examine their complaints and its premises were therefore open to the public, subject to identity and security checks. The protesters, however, failed to comply with the established admission procedure: they bypassed the identity and security checks, did not register at the reception desk and did not wait in a queue for an available official to receive their petition. Instead, they stormed into the building, pushed one of the guards aside, jumped over furniture and eventually locked themselves in a vacant office. Such behaviour, intensified by the number of protesters, could have frightened the employees and visitors present and disrupted the normal functioning of the President's Administration. In such circumstances the actions of the police in arresting the protesters, including the applicant, and removing them from the President's Administration's premises may be considered as justified by the demands of the protection of public order (see, for similar reasoning, *Steel and Others,* cited above, §§ 103 and 104, and *Lucas,* cited above).

(β) Proportionality

80. It remains to be ascertained whether the length of the applicant's detention pending trial and the penalty imposed on her at the end of it were proportionate to the legitimate aim pursued (see *Steel and Others,* cited above, §§ 105-107).

– Overview of the Court's case law

81. The Court reiterates in this connection that the Contracting States do not enjoy unlimited discretion to take any measure they consider appropriate in the name of the protection of public order. The Court must exercise the utmost caution where the measures taken or sanctions imposed by the national authorities are such as to dissuade the applicants and other persons from imparting information or ideas contesting the established order of things (see *Women On Waves and Others,* cited above, § 43).

82. The Court has had several occasions to assess the proportionality of sanctions imposed for unlawful conduct involving some degree of disturbance of public order. Thus, in the case of *Steel and Others v. the United Kingdom* the Court examined two situations. The first situation concerned a protest against a grouse shoot involving a group of about sixty people attempting to obstruct a hunt. The Court considered that in such circumstances forty-four hours' detention pending trial and sentencing to twenty-eight days' imprisonment was proportionate to the legitimate aim of protecting public order. The second situation concerned a protest against the construction of a motorway. The participants repeatedly broke into a construction site, where they climbed into trees to be felled and onto some of the stationary machinery and placed themselves in front of machinery in order to impede the engineering works. The Court considered that seventeen hours' detention pending trial and sentencing to seven days' imprisonment for such disorderly behaviour was compatible with the requirements of Article 10 (see *Steel and Others,* cited above, §§ 105 – 109).

83. In *Drieman and Others v. Norway* the Court examined the proportionality of the sanction imposed on participants in a direct action against whaling carried out by Greenpeace. The direct action consisted of manoeuvring boats in such a manner as to obstruct whaling by, on each occasion, placing the boat between the hunting vessel and the whale, thereby making it impossible to harpoon the whale. Whereas the Court left open the question as to whether that particular conduct could be covered by the guarantees set out in Articles 10 and 11, it found that by imposing a criminal fine on the participants the national authorities had acted within their margin of appreciation (see *Drieman and Others,* cited above).

84. Further, in the case of *Lucas v. the United Kingdom* the Court found that four hours' detention pending trial and sentencing to a fine for blocking a public road to protest against the retention of a nuclear submarine were proportionate to the legitimate aim of protecting public order in view of the dangers posed by the protesters' conduct in sitting in a public road (see *Lucas,* cited above).

85. Similarly, in the case of *Barraco v. France* the Court held that a suspended sentence of three months' detention for blocking a highway by the participants in a go-slow protest organised by a trade union was proportionate to the legitimate aims pursued. The Court noted that the applicant had not been punished for his participation in the demonstration itself, but rather for particular behaviour in the course of the demonstration, namely the repeated and intentional blocking of a public road, thereby causing more obstruction than would normally arise from the exercise of the right of peaceful assembly (see *Barraco,* cited above, §§ 41-49).

86. The Court also takes note of the case of *Osmani and Others v. the former Yugoslav Republic of Macedonia.* In that case the applicant, the mayor of a town, stated in a speech made during a public assembly his

refusal to remove an Albanian flag, in defiance of a decision of the Constitutional Court. That speech triggered a fight between those citizens who wanted to remove the flag and those who wanted to keep it. After that incident, that applicant organised an armed vigil to protect the Albanian flag. The police later found weapons in the town hall and in the applicant's flat. On the same day as they found the cache of weapons, the police were attacked by a group of about 200 people, who were armed with metal sticks and threw stones, rocks, Molotov cocktails and teargas projectiles at them. The Court found that in the very sensitive interethnic situation of that time the applicant's speeches and actions had encouraged interethnic violence and violence against the police. When assessing the proportionality of the sanction, the Court took into account that, although the applicant had been sentenced to seven years' imprisonment, due to an amnesty he spent only one year and three months in prison. Therefore, even if the original sentence could be considered severe, the term actually spent in prison could not be considered disproportionate, regard being had to the facts of the case (see *Osmani and Others v. the former Yugoslav Republic of Macedonia* (dec.), no. 50841/99, 11 October 2001).

87. An analysis of the Court's case-law cited above reveals that the Contracting States' discretion in punishing illegal conduct intertwined with expression or association, although wide, is not unlimited. It goes hand in hand with European supervision by the Court, whose task is to give a final ruling on whether the penalty was compatible with Article 10 or 11. The Court must examine with particular scrutiny the cases where sanctions imposed by the national authorities for non-violent conduct involve a prison sentence.

88. Another important principle that transpires from the Court's case-law is that participants in a demonstration which results in damage or other disorder but who do not themselves commit any violent or otherwise reprehensible acts cannot be prosecuted solely on the ground of their participation in the demonstration. Thus, in the case of *Ezelin v. France* the applicant was sentenced to a reprimand for participating in a demonstration which resulted in public property being damaged by offensive and insulting graffiti, the perpetrators of which were never identified. When finding a violation of Article 11, the Court held that the freedom to take part in a peaceful assembly was of such importance that a person could not be subjected to a sanction – even one at the lower end of the scale of disciplinary penalties – for participation in a demonstration, so long as that person did not himself commit any reprehensible act on such an occasion (see *Ezelin,* cited above, § 53).

89. That approach was further confirmed in the cases of *Yılmaz and Kılıç v. Turkey* and *Schwabe and M.G. v. Germany*. Thus, in the case of *Yılmaz and Kılıç* the Court found that four years' imprisonment for participating in a demonstration during which slogans calling for violence

had been chanted by the crowd was disproportionate to the legitimate aim of protecting public order and therefore incompatible with Article 10. When assessing the proportionality of the sanction, the Court took into account, among other things, that it had been never established whether the applicants had taken part in chanting the violent slogans (see *Yılmaz and Kılıç v. Turkey*, no. 68514/01, §§ 65-69, 17 July 2008). Finally, the case of *Schwabe and M.G* concerned the applicants' arrest immediately before the commencement of a demonstration against a G8 summit. A similar demonstration the day before had ended with rioting, involving well-organised violent demonstrators who had attacked the police with stones and baseball bats. The Court noted that it had not been shown that the applicants had had violent intentions in seeking to take part in G8-related demonstrations. In such circumstances, their detention for almost six days in order to prevent them from participating in a demonstration that risked becoming violent had failed to strike a fair balance between the aims of securing public safety and the prevention of crime and the applicants' interest in freedom of assembly (see *Schwabe and M.G.,* cited above, §§ 105 and 114-119).

– *Analysis of the present case*

90. Turning now to the present case, the Court notes that the applicant's conviction was at least in part founded on the domestic courts' condemnation of the political message conveyed by the protesters. Indeed, the applicant was accused of "throwing anti-[Putin] leaflets" and "issuing an unlawful ultimatum by calling for the President's resignation" (see paragraph 28 above). At the same time, it is significant that the applicant was not convicted for expression of an opinion alone, but rather for expression mixed with particular conduct.

91. The Court notes that the participants in the protest action came to the President's Administration building to meet officials, hand over a petition criticising the President's policies, distribute leaflets and talk to journalists. They were not armed and did not resort to any violence or force, except for pushing aside the guard who attempted to stop them. The disturbance that followed was not part of their initial plan but a reaction to the guards' attempts to stop them from entering the building. Although that reaction may appear misplaced and exaggerated, it is significant that the protesters did not cause any bodily injuries to the guards, any other employees of the President's Administration or visitors. Indeed, the charges against them did not mention any use or threat of violence against individuals or infliction of any bodily harm to anyone.

92. Further, it is true that the protesters were found guilty of damaging the President's Administration's property. The Court, however, notes that the domestic courts did not establish whether the applicant had personally participated in causing that damage or had committed any other

reprehensible act. It is also significant that before the end of the trial the defendants compensated all the pecuniary damage caused by their protest action.

93. The above circumstances lead the Court to conclude that the present case is different from *Osmani and Others* because the protesters' conduct, although involving a certain degree of disturbance and causing some damage, did not amount to violence. It is therefore closer on the facts to *Steel and Others, Drieman and Others, Lucas* and *Barraco.*

94. The exceptional severity of the sanction, however, distinguishes the present case from the cases of *Steel and Others, Drieman and Others, Lucas* and *Barraco*, where the measures taken against the applicants in comparable circumstances were considered to be justified by the demands of public order. Indeed, in none of those cases was the sentence longer than a few days' imprisonment without remission, except in one case (*Barraco*) where it amounted to a suspended sentence of three months' imprisonment which was not, in the end, served. The Court accordingly considers that the circumstances of the instant case present no justification for being remanded in custody for a year and for the sentence of three years' imprisonment, suspended for three years.

95. The Court therefore concludes that, although a sanction for the applicant's actions might have been warranted by the demands of public order, the lengthy period of detention pending trial and the long suspended prison sentence imposed on her were not proportionate to the legitimate aim pursued. The Court considers that the unusually severe sanction imposed in the present case must have had a chilling effect on the applicant and other persons taking part in protest actions (see, mutatis mutandis, *Cumpănă and Mazăre,* cited above, § 116).

96. In view of the above, and especially bearing in mind the length of the pre-trial detention and the exceptional seriousness of the sanctions involved, the Court finds that the interference in question was not necessary in a democratic society.

97. There has therefore been a violation of Article 10 of the Convention interpreted in the light of Article 11.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

98. Lastly, the Court has examined the other complaints submitted by the applicant, and, having regard to all the material in its possession and in so far as they fall within the Court's competence, it finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

99. Article 41 of the Convention provides:

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

A. Damage

100. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

101. The Government submitted that the claim was excessive. In their opinion, the finding of a violation would constitute sufficient just satisfaction.

102. The Court considers that the applicant has suffered non-pecuniary damage as a result of her detention and criminal sentence which were incompatible with the principles of the Convention. The damage cannot be sufficiently compensated by a finding of a violation alone. Making its assessment on an equitable basis, the Court awards the applicant EUR 12,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

103. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning the excessive length of the applicant's pre-trial detention and the interference with her rights to freedom of expression and freedom of assembly admissible and the remainder of the application inadmissible;

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

3. *Holds* that there has been a violation of Article 10 of the Convention interpreted in the light of Article 11 of the Convention;

4. *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, EUR 12,500 (twelve thousand five hundred euros) plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 15 May 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint separate opinion of Judges Pinto de Albuquerque, Turković and Dedov is annexed to this judgment.

I.B.L.
S.N.

JOINT CONCURRING OPINION OF JUDGES PINTO DE ALBUQUERQUE, TURKOVIĆ AND DEDOV

1. The *Taranenko* case deals with a new aspect of the limits of freedom of expression and expressive conduct in the public arena. It is the first time that the European Court of Human Rights ("the Court") has had to evaluate the exercise of this freedom inside the premises of a public building, which a group of people including the applicant entered without authorisation. Simultaneously, the Court faces the delicate issues of the legality and proportionality of the criminal punishment of the applicant's conduct, amounting to "participation in mass disorder"[1]. We can subscribe to the Chamber's finding of a violation of Article 10 of the European Convention of Human Rights ("the Convention"), but not entirely to its reasons. Our disagreement is based on a different assessment of both the legality and the proportionality of the interference with the applicant's Convention freedoms[2].

The deficient legal framework governing mass disorder or rioting

2. The applicant was found guilty of the criminal offence of "participation in mass disorder", established by Article 212 § 2 of the Russian Criminal Code. This offence refers to the conduct of someone who voluntarily takes part in an organised or non-organised movement of disturbance of social order caused by a mass of citizens, which must be

1. The concept of mass disorder or rioting is used in this opinion in a technical, criminal-law sense, to include various forms of mass social disorder which may be violent or non-violent, armed or non-armed. Mass social disorder may be caused without violence being used. In a violent riot violence may be used against persons or property. A violent riot may be armed, that is, accompanied by the use of arms. But there may also be violent, non-armed riots, where violence is perpetrated by means other than arms, such as physical force. A non-violent riot may be armed if the participants carry arms but do not use them. Mass riots, be they violent or non-violent, are frequently, but not necessarily, accompanied by disobedience or even resistance to public authorities such as the police.

2. The applicant complained also of a violation of Article 11 of the Convention, but the majority preferred to deal with the case under Article 10, "interpreted in the light of Article 11" (see paragraph 97 and point 3 of the operative part). The majority gave no justification for this approach. Since the purpose of the group of about forty intruders was to assemble inside the President's Administration building, ask for a meeting with the President and two other senior politicians, wave placards, distribute leaflets and ultimately lock themselves in an office inside the building, Article 11 rights were clearly at stake. Furthermore, the applicant and the other intruders were punished because of the unauthorised entry and gathering inside a public building, and not because of the content of the political message conveyed. Therefore, the facts should have been addressed primarily under Article 11. In any case, the pre-trial detention and criminal punishment of the demonstrators also raised, in a broad sense, the issue of the infringement of their freedom of expression and expressive conduct.

accompanied by one or more of acts of violence against one or more persons, by a pogrom against an ethnic or religious group[3], by acts of arson[4], by the destruction of movable property (for example, cars) or immovable property, by the use of firearms or explosives or by armed resistance to the authorities. Thus, the offence is not based on a merely potentially dangerous conduct but on the causation of harm as a result of the offender's conduct, directed either at persons or at property. Yet this is not the sole provision applicable to the conduct of causing mass social disorder in the respondent State. There are three provisions which might be applicable to this conduct: Articles 212 and 213 of the Russian Criminal Code and Article 20.1 of the Russian Code of Administrative Offences. The borderline between these provisions is not at all clear. In the case of non-armed mass social disorder, such as in the present case, it is disputed whether Article 212 of the Russian Criminal Code or Article 20.1 of the Russian Code of Administrative Offences applies. In the case of armed mass social disorder, both Articles 212 and 213 of the Russian Criminal Code may be applied. It is interesting to note that the criminal offence of hooliganism (Article 213 of the Criminal Code) involves the same conduct of breach of public order as the criminal offence of mass disorder (Article 212 of the Criminal Code), but is punishable by a lesser penalty. Hence, the rationality of the penal policy choice to create these two autonomous offences is highly questionable. The overlapping of these legal provisions is aggravated by a prosecutorial practice that frequently imputes to "rioters" the offence of "violent overthrow of State power" (Article 278 of the Russian Criminal Code). In fact, the prosecutorial practice of initially charging participants in political demonstrations with the offence of "violent overthrow of State power", for the purpose of justifying their pre-trial detention for long periods of time, and subsequently amending the charges to a lesser charge of participation in mass disorder, is not censured by the domestic courts, which passively accept this prosecutorial practice[5].

3. Moreover, the minimum penalty under Article 212 § 2 of the Russian Criminal Code is excessive. Although the setting of maximum and minimum prison sentences for criminal offences is a domain where member States enjoy a wide margin of appreciation, they are not entirely free when legislating on these issues. Among others, member States must take into consideration the following two principles: first, a very broad penal framework, with a great disparity between the minimum and the maximum

3. Pogrom is a Russian word which originally referred to a violent riot aimed at the massacre or persecution of Jews. It now refers to all forms of collective violence directed at an ethnic or religious group.

4. Arson is a wilful conduct of setting fire to one or more buildings or other property of another person or of burning one's own property for an illegal purpose.

5. *Dolgova v. Russia*, no. 11886/05, § 42, 2 March 2006, and *Lind v. Russia*, no. 25664/05, § 78, 6 December 2007.

prison terms, raises an issue of certainty of the penal law under Article 7 (*nulla poena sine legge certa*), and second, a very long mandatory minimum prison term calls into question the necessity of the State interference. A comparative law review of the penal codes of member States provides a useful logical instrument for the purposes of this necessity test.

4. In the present case, a review of the European penal codes in force at the relevant time shows that a significant number of codes provide for no minimum prison term or for a minimum prison term lower than three years as punishment for the conduct of participation in mass social disorder, even when accompanied by acts of violence towards persons or property. Article 355 of the Andorran Penal Code makes rioting causing danger to persons subject to a penalty of up to two years' imprisonment. Article 274 of the Austrian Penal Code subjects participation in a breach of social order to a penalty of up to two years' imprisonment, and leadership of a riot to a prison term of up to three years. In Belgium, rioting is punished by "police penalties", which may constitute a fine or a prison term of up to seven days (see, for example, Article 70 of the Police Regulations of the city of Brussels). Under Article 239 of the Estonian Penal Code, persons participating in mass disorder who commit desecration, destruction, arson or other similar acts or who disregard a lawful order or offer resistance to a police officer, special constable or any other person combating such activities on a legal basis, or incitement of such person to non-performance of his or her duties, are liable to a pecuniary penalty or up to five years' imprisonment. Article 238 of the same Code punishes the offence of organising or planning disorder involving a large number of persons or incitement to participation in such disorder, if such disorder results in desecration, destruction, arson or other similar acts, with three to eight years' imprisonment. Section 2 of Chapter 17 of the Finnish Penal Code makes non-violent rioting subject to a fine or imprisonment for at most one year, participation in a violent riot to a fine or imprisonment for at most two years and leadership of a violent riot to a fine or imprisonment for at most four years. Section 14 of the Irish Criminal Justice (Public Order) Act 1994 makes the offence of riot punishable by a fine and/or a period of imprisonment of up to ten years, but sets no minimum prison term. Violent disorder, which is covered by Section 15 of the Act, is subject to the same penalty. Article 283 of the Lithuanian Criminal Code punishes participation in non-armed rioting with a prison term of up to five years and armed rioting with a term of up to six years. Section 324 of the Croatian Penal Code makes rioting subject to a fine or a period of imprisonment ranging from three months to three years. The aggravated offence of rioting committed out of hatred, towards large number of persons, with the use of arms, endangering the life or physical integrity of other persons or resulting in extensive material damage, is punishable by imprisonment of between six months and five years. Article 431-3 of the French Criminal Code punishes

participation in a non-armed riot with a fine and one year's imprisonment and participation in an armed riot with a fine and three years' imprisonment. Article 225 of the Georgian Criminal Code punishes the offence of organising or leading mass disorder involving violence, pogrom, arson, the use of arms or explosive devices, or armed resistance against a Government representative, with imprisonment for a term ranging from three to ten years, while mere participation in the riot is punishable by prison sentences ranging from two to eight years. Article 186 of the Dutch Penal Code punishes participation in a riot with a prison term of up to three months or a second-category fine. Article 125 of the German Penal Code punishes rioting with a fine or a prison term of up to three years, and armed rioting with a prison term of six months to ten years. Article 274 of the Liechtenstein Criminal Code punishes participation in a riot accompanied by murder, bodily harm or damage to property with a prison term of up to three years. Article 385 of the Macedonian Penal Code punishes those who participate in a crowd which by means of joint action performs acts of violence against people or damages or destroys property on a large scale, with a fine or with imprisonment for up to three years; if during the action of the crowd a person is killed or sustains serious bodily injury, or large-scale damage is caused, the participants in the crowd are liable, by virtue of their participation, to imprisonment for between three months and five years. The leader of the crowd is punished with a prison term of one to ten years. Article 399 of the Montenegro Criminal Code punishes rioting with a prison term ranging from three months to three years, and when there is bodily harm or serious humiliation of third parties, with a term ranging from six months to five years. Article 136 of the Norwegian Penal Code makes rioting subject to a prison term of up to three years and when there is violence against persons or property, to a prison term ranging from two months to five years. Article 302 of the Portuguese Penal Code punishes participation in a riot with one year's imprisonment or 120 day-fines, and organisation of a riot with three years' imprisonment or 360 day-fines; however, when the riot is armed the upper limit is doubled. The lower limit is one month's imprisonment or ten day-fines. Article 344 of the Serbian Criminal Code punishes rioting with a prison term of three months to three years, and where there is bodily harm or serious damage to the property of third parties, with a prison term ranging from six months to five years. Article 514 of the Spanish Penal Code punishes the leaders of unlawful demonstrations with a prison term of between one and three years and a fine; participants carrying arms or other dangerous implements are liable to a prison term of between one and two years. Section 1 of Chapter 16 of the Swedish Penal Code punishes participation in a non-violent riot with a fine or a prison term of up to two years, and leadership of a riot with up to four years' imprisonment. Section 2 of the same chapter punishes participation in a violent riot with a fine or a prison term of up to four years, and leadership

with a penalty of up to ten years' imprisonment. These provisions do not set a minimum penalty. In some countries such as Hungary the crime of rioting is associated with the immediate aim of impeding the exercise of constitutional authority by means of violence or threats of violence, or of coercing the Parliament, the President of the Republic, the Supreme Court or the Government to take certain measures, but even in this case the crime is punishable with imprisonment of between two and eight years (Article 140 of the Hungarian Criminal Code). Based on this comparative law review, it can be ascertained that a minimum prison term of three years for the criminal offence of participating in mass social disorder, even when accompanied by damage caused to property, is *per se* problematic from the standpoint of the principle of necessity.

5. It is true that Article 64 of the Russian Criminal Code provides for the option of sentencing the defendant to a penalty below the minimum set by the applicable criminal provision. But Article 64 does not establish a clear set of conditions for the application of this concession. Although it refers to a list of "exceptional" circumstances, this list is not exhaustive and judges may refer to other circumstances. The lower courts exercise considerable discretion in the application of this list of circumstances, since the higher courts have failed to date to give any guidelines as to how the said provision should be construed and have thus left the first-instance judges with ample room for a subjective evaluation of the appropriate punishment in each particular case. Scholars and commentators on the Criminal Code do not provide the judges with any additional guidance. This serious defect in the legal framework impacts not only on the conditions for the application of the provision in question but also on the consequences of its application. Judges have the following two options: either to give a sentence below the minimum set out in the relevant article of the Criminal Code, but in any case not below the minimum established by the Code for each type of punishment (for example, in the case of imprisonment the minimum is two months), or to give a less severe punishment (for example, if an offence is punishable by imprisonment only, the judge may decide to apply a fine or correctional labour). Such is the plethora of possible alternatives for sentencing that defendants cannot anticipate the penalty that they might incur. In sum, the lawfulness of the interference with the applicant's freedom of expression and expressive conduct by the domestic prosecutors and courts is called into question by this additional element of uncertainty involving sentencing.

The disproportionate criminal sanctions for rioting

6. The interference with the applicant's freedom of expression and expressive conduct was twofold: first, she was hindered from demonstrating inside the public building, and second, she was arrested by the police, held

in pre-trial detention, convicted of a criminal offence and sentenced to a suspended prison term. In view of the nature of the actions and decisions of the police and the courts, the interference with the applicant's freedom is to be assessed in terms of the negative obligations arising from Article 10 of the Convention, which narrows the breadth of the margin of appreciation of the respondent State.

7. Shouting and chanting political slogans, waving placards with political messages and distributing leaflets with messages of a similar nature are forms of expression and expressive conduct which clearly fall under the protection of Article 10 and which all deserve the exact same degree of protection. In the present case, the content of the message conveyed by the demonstrators and the underlying intention of the demonstration were political. The objectively and subjectively political nature of the expression and expressive conduct further narrows the margin of appreciation of the respondent State. But both expression and expressive conduct may nonetheless lose the protection of the Convention when they give rise to a clear and imminent danger of public disorder, crime or other infringement of the rights of others[6]. Expression in the marketplace of ideas is only possible where no violence is incited, threatened or exerted[7]. Where there is violence, there is no communication.

8. In principle, States have a narrow margin of appreciation with regard to expression in a public space[8]. In *Appleby and Others*, the Court assessed the limits of the applicants' freedom of expression on another person's private property such as a shopping centre[9]. As an *obiter dictum*, the Court added that under the Convention there was no positive obligation to create rights of entry to all publicly owned property, such as government offices and ministries, in order to allow freedom of expression to be asserted, if there were alternative and effective means for those concerned to convey their message. In the case at hand, the administration building served as the executive office of Russia's President, with its various bureaucratic services and branches. One of these branches was the front desk for the reception of members of the public and their applications and complaints. Thus, the building used by the President of the Russian Federation's Administration can be considered as a non-public forum which, by governmental design, is not an appropriate platform for unrestrained communication, assembly and demonstration. Here, the State is granted much greater latitude in regulating freedom of expression and expressive conduct. In addition to applying

---

6. On the clear and imminent danger test see the opinion of Judge Pinto de Albuquerque in *Faber v. Hungary*, no. 40721/08, 24 July 2012.

7. United States Supreme Court, *Brandenburg v. Ohio*, 395 US 444 (1969) and *Samuels v. Mackell*, 401 US 66 (1971).

8. On the public forum doctrine see the opinion of Judge Pinto de Albuquerque in *Mouvement raëlien suisse v. Switzerland* [GC], no. 16354/06, ECHR 2012.

9 *Appleby and Others v. the United Kingdom*, no. 44306/98, §§ 47-49, ECHR 2003-VI.

regulations as to time, place and manner, the State may reserve the forum for its intended purposes, as long as the regulation of expression and expressive conduct is reasonable and not an effort to suppress them merely because public officials oppose the forum user's view. Special restrictions may be imposed with regard to the simultaneous entry and gathering of large crowds inside public buildings during working hours. Even when enjoying authorised entry and gathering inside a public building, the forum users are not supposed to misuse their freedom of expression and expressive conduct by means of acts of violence against persons or property. *A fortiori*, no violence may be used for entering and remaining inside a public building under the guise of a political form of expression or assembly. Violence does not become legitimate simply because it takes place in an assembly, even when it pursues political aims[10].

9. In the case at hand, the nature of the interference and of the expression and expressive conduct point in the direction of a narrow margin of appreciation, but the place where they occurred points in the opposite direction. Assessing the weight of these factors on both sides of the scales, the balance is clearly tipped in favour of the essence of the interference and the expression, to the detriment of the circumstantial element of space. Overall, a narrow margin of appreciation prevails in the particular circumstances of the case.

10. After establishing the admissible criteria for the assessment of the State's interference with the applicant's freedom of expression and expressive conduct, and their relative and overall weight, the Court must assess the reasons given by the national courts for the interference with the applicant's freedom of expression. The domestic courts gave two reasons: first, the demonstrators had committed serious breaches of public safety and order by disregarding established norms of conduct and showing manifest disrespect for society; and second, while performing the above disorderly acts, the defendants had destroyed and damaged property in one of the offices of the reception area of the President's Administration building. These arguments are based on the protection of public order and public property and the prosecution of criminal conduct as legitimate aims for the restriction of the freedom of expression and expressive conduct. And they are well founded. Taking into account the fact that the applicant entered the building with a considerable number of demonstrators involved in the action of the National Bolsheviks Party, and that the group bypassed identity and security checks, pushed aside the guard who had attempted to stop them, did not comply with the guards' lawful demands to leave the premises, took over office no. 14 on the ground floor, damaged the furniture and the walls

10. See German Federal Constitutional Court, *Sitzblockade III* judgment, 10 January 1995, paragraph 50; Venice Commission and OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly, 2008, paragraphs 63 and 86-90; and Principle 6 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information.

of the office, blocked the door with a heavy metal safe and conducted an unauthorised meeting, it was justified to assert not just that there was a clear and imminent danger of commission of criminal acts, but moreover that criminal acts had already been committed by the group of demonstrators which warranted the police action to restore order and bring the demonstrators to justice. In other words, the arrest of the demonstrators by the police and their charging with criminal offences corresponded to a pressing social need and were therefore covered by the second paragraph of Article 10 of the Convention.

11. In view of the serious disorder and considerable damage caused by the demonstrators, the punishment of the described conduct as a criminal offence was not incompatible with the protection of their freedom of expression and *a fortiori* with their freedom of assembly[11]. Nevertheless, the domestic courts' reaction was disproportionate in the circumstances of the case, because they kept the defendant in pre-trial detention for a year in spite of the fact that two months after the demonstrators' arrest the prosecutor had dropped the initial extremely serious charges of attempted violent overthrow of the State and charged the demonstrators with the less serious offence of participation in mass disorder. Admittedly, the domestic courts applied the minimum prison penalty prescribed by law for the crime imputed to the applicant and subsequently suspended this prison sentence, taking into consideration the fact that the defendants had voluntarily compensated the pecuniary damage caused by their actions and that the applicant had "positive character references". But the domestic courts could have gone further. They had three alternatives: maintaining the charges against the applicant and making use of their power to apply a prison sentence below the minimum set out in the relevant provision; applying a different penalty, such as a fine or correctional labour (Article 64 of the Criminal Code); or even using their power to amend the charges during the trial and try the defendant for a lesser offence, provided that her situation was not aggravated as a result and her defence rights were not impaired (Article 252 § 2 of the Code of Criminal Procedure). At the least, the "positive character references" that led the courts to suspend the prison sentence could have prompted them also to apply Article 64 of the Criminal Code. The legitimate pressing social needs pursued by the domestic authorities of restoration of public order and prosecution and punishment of criminal conduct could have been achieved without such heavy-handed interference with the applicant's freedom of expression and expressive conduct.

---

11. Although the prosecutor accused the demonstrators of "pushing back" several guards at the entrance, and several witnesses confirmed this accusation, the domestic courts did not clarify how the demonstrators had behaved towards the guards at the entrance of the administration building or the exact number of guards involved. These elements would have been relevant for the purpose of sentencing.

Conclusion

12. The defendant misused her freedom of expression and expressive conduct when she joined a group of people who forced their way into the President's Administration building in December 2004 and damaged equipment and the building. She was rightly arrested and brought to justice. But the response of the Russian justice system was excessive, in view of her pre-trial detention and her sentencing to a prison term of three years. This excessive response was made possible by the severity and lack of clarity of Russian law on the punishment of participation in mass social disorder and by the wide discretionary powers with regard to the sentencing of defendants to a penalty below the minimum set by the applicable criminal provision. We therefore conclude that there has been a violation of Article 10.