



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

### THIRD SECTION

#### **CASE OF NEMYTOV AND OTHERS v. RUSSIA**

*(Applications nos. 1257/21 and 2 others – see appended list)*

#### JUDGMENT

Art 10 • Freedom of expression • Art 11 • Freedom of peaceful assembly • Applicants arrested, prosecuted and sanctioned with detention or a fine in administrative-offence proceedings for participating in public events or solo demonstrations in breach of regional Covid-19 pandemic related blanket bans and/or restrictions in 2020 and 2021 • Interferences imposed in context of pressing social need of protecting individual and public health • Absence of relevant and sufficient reasons • Failure to carry out proportionality assessment • Sanctions capable of a “chilling effect” • Wide margin of appreciation overstepped • Interferences not “necessary in a democratic society”

Art 10 • Freedom of expression • First applicant’s administrative conviction in relation to staging a solo demonstration for failing to comply with rules of conduct during a state of high alert • First applicant exempted from paying imposed fine on account of having served part of his detention • Interference proportionate to the aim pursued • Wide margin of appreciation not overstepped

Art 10 • Freedom of expression • Art 11 • Freedom of peaceful assembly • First applicant’s administrative conviction for participating in unauthorised solo demonstrations staged by way of rotation and for staging a solo demonstration in the Red Square of Moscow in breach of the general ban on holding public events there • Respective sanctions of detention and a fine capable of a “chilling effect” • Failure to carry out proportionality assessment • Interferences not “necessary in a democratic society”

Art 5 § 1 • Unlawful deprivation of liberty

Art 6 § 1 (criminal) • Impartial tribunal • Absence of prosecuting party in administrative-offence proceedings

Art 2 P7 • Review of conviction • Lack of suspensive effect of an appeal against administrative detention

Prepared by the Registry. Does not bind the Court.

STRASBOURG

27 May 2025

**FINAL**

**27/08/2025**

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



**In the case of Nemytov and Others v. Russia,**

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

Ioannis Ktistakis, *President*,

Peeter Roosma,

Darian Pavli,

Oddný Mjöll Arnardóttir,

Diana Kovatcheva,

Úna Ní Raifeartaigh,

Mateja Đurović, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the applications (nos. 1257/21, 3244/21 and 46231/21) 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 three Russian nationals (“the applicants”), on the various dates indicated in the appended table;

the decision to give notice to the Russian Government (“the Government”) of the complaints under Articles 5, 6, 10, 11 and 14 of the Convention in conjunction with Article 8, as well as under Article 2 of Protocol No. 7 to the Convention, and to declare the remainder of applications nos. 1257/21 and 3244/21 inadmissible;

the observations submitted by the respondent Government in applications nos. 1257/21 and 3244/21, and the observations in reply submitted by the applicants;

the comments submitted by Human Rights Centre Memorial and OVD-Info, which were granted leave to intervene by the President of the Section;

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

Having deliberated in private on 6 May 2025,

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

## INTRODUCTION

1. The applications mainly concern the applicants’ complaints under Articles 10 and 11 of the Convention that disproportionate measures were taken against them in connection with (i) their participation in various public events in breach of COVID-19-related restrictions in 2020 and early 2021, and (ii) the first applicant’s participation in a series of solo demonstrations staged by several participants in turn.

## THE FACTS

2. The applicants' names, years of birth and representatives' names are set out in the appended table.

3. The Government were represented by Mr M. Vinogradov, Representative of the Russian Federation to the European Court of Human Rights.

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

### I. THE APPLICANTS' PROSECUTION IN CONNECTION WITH BREACHES OF COVID-19-RELATED RESTRICTIONS

#### A. Background information

5. The global context pertaining to the spread of coronavirus (COVID-19) and the response to it in 2020 is summarised in *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC] (no. 21881/20, §§ 11-18 and 64-74, 27 November 2023). On 11 March 2020 the World Health Organisation (WHO) declared the COVID-19 outbreak a global pandemic.

6. On 31 January 2020 COVID-19 was detected for the first time on Russian territory. From early March 2020 the number of confirmed infections began to rise, prompting the authorities, particularly those in the constituent entities of the Russian Federation, to introduce various measures to contain the spread of the virus across Russian regions (for the applicable legal provisions, see paragraphs 48-54 below).

7. By Decree no. 12-UM of 5 March 2020 the mayor of Moscow introduced a "state of high alert" (*режим повышенной готовности*) in response to the spread of COVID-19 and introduced various restrictions (see paragraph 56 below). The decree, as further amended and in force by the time of the first and second applicants' static demonstrations held in late May 2020, prohibited, among other things, "sports, entertainment, public and other mass events" in Moscow (for a summary of Decree no. 12-UM as in force at the relevant time, see paragraphs 57 and 59 below).

8. By Decree no. 121 of 13 March 2020, "On measures to combat the spread of the novel coronavirus (COVID-19) in St Petersburg", the St Petersburg City Administration declared a "state of high alert" and introduced various restrictions in the city, including a ban on public events (see paragraph 62 below).

9. From early June 2020 several restrictions were gradually eased in Moscow (see paragraph 60 below) and, as of late May, in St Petersburg (see paragraph 63 below).

10. On 5 May 2023 the WHO lifted the alert classifying COVID-19 as a public health emergency of international concern.

11. It appears that the ban on public events remained in effect in Moscow until at least summer 2023. In St Petersburg, the ban on public events, amended in April 2022 to allow the regional consumer protection authority (*Роспотребнадзор* – “Rospotrebnadzor”) to make exceptions, was extended until the end of 2025.

**B. Static solo demonstration of 26 May 2020 (Mr Nemytov, application no. 1257/21)**

*1. Available statistics on the health situation in Moscow in May 2020*

12. According to publicly available official statistics, by 29 April 2020 the number of recorded cases of infection in Moscow had exceeded 50,000, and the number of deaths from COVID-19 reached 500. By 25 May 2020 the number of registered deaths from COVID-19 had exceeded 2,000. Moscow was the epicentre of the COVID-19 outbreak in Russia at that time, accounting for the vast majority of confirmed cases in the country.

*2. The first applicant’s solo demonstration and ensuing proceedings*

13. On 26 May 2020 Mr Nemytov (the first applicant) staged a static solo demonstration, holding a placard reading “Free [V.]” near the Moscow Department of the Interior, to protest against the criminal prosecution of Mr V., an administrator of the popular Telegram channel “Police Ombudsman”, which had exposed police brutality.

14. The first applicant was immediately arrested by the police, escorted to a police station and detained for eighteen hours as an administrative suspect. On the same date police officers drew up an administrative-offence record under Article 20.2 § 8 of the Code of Administrative Offences (“the CAO”), for a repeated breach of the rules for holding public events. The record stated that the applicant had participated in a solo public event for which no approval from the authorities was needed, and at a place where such events were not prohibited. However, he had held it in breach of the requirements of Decree no. 12-UM (as in force at the material time), which had introduced “self-isolation” in Moscow and a ban on any public events between 5 March and 31 May 2020. By his actions, the first applicant had also breached one of the orders (*предписания*) of 29 March 2020 issued by the regional office of Rospotrebnadzor (see paragraph 58 below).

15. On 27 May 2020 the Tverskoy District Court of Moscow convicted the first applicant as charged and sentenced him to fifteen days’ administrative detention. The court referred to the escort and administrative-arrest records, the administrative-offence record, the arresting officers’ reports, photographic evidence, a letter from the local authorities clarifying that no notification had been submitted in relation to a public event planned for 26 May 2020, and an administrative-offence record relating to

the first applicant's previous conviction under Article 20.2 § 5 of the CAO for breaching the rules for holding public events. The court found that the first applicant had taken part in a solo public event in disregard of the requirements of Decree no. 12-UM introducing a "state of high alert" in Moscow, and that he had also breached Order no. 1П of 29 March 2020 issued by the regional office of Rospotrebnadzor (see paragraph 58 below).

16. In an appeal against his conviction, the first applicant argued, in particular, that Article 20.2 of the CAO was a blanket provision and referred to the procedure for holding public events set out in the Public Events Act (Federal Law no. 54-FZ of 19 June 2004 – "the PEA"). However, charges had been brought against him for allegedly breaching different provisions, namely Decree no. 12-UM and Order no. 1П of 29 March 2020, which prohibited public events in the city, including solo demonstrations. A state of high alert was not among the circumstances allowing Moscow's executive authorities to change the rules for holding public events within the meaning of section 1 of the PEA (see paragraph 46 below). Order no. 1П had not been published and, in any event, constituted health regulations. Liability for a breach of such regulations was governed by a different provision, namely Article 6.3 of the CAO (see paragraph 77 below). Referring to clarifications issued by the Supreme Court of Russia on 21 April 2020 (see paragraph 81 below), he argued that a violation of the ban on public events introduced by Article 2 of Decree no. 12-UM should be examined under Article 20.6.1 of the CAO (see paragraph 78 below) as a breach of the rules of conduct during a state of high alert, admitting that his actions could arguably fall under that provision or Article 3.18.1 § 2 of the Moscow Code of Administrative Offences (see paragraph 79 below). Lastly, he argued that his arrest and detention had been excessive and unjustified, as no real damage had been caused by his actions.

17. On 29 May 2020 the Moscow City Court reclassified the charges against the first applicant and convicted him of an offence under Article 20.6.1 § 1 of the CAO (failure to comply with rules of conduct during a state of high alert). The court found the evidence collected in the case admissible and endorsed the lower court's finding that he had held a public event in the form of a static solo demonstration with a thematic placard. Referring to provisions of domestic law concerning the declaration of a state of high alert, namely Federal Law no. 52-FZ of 30 March 1999 ("the Sanitary Welfare Act"), Federal Law no. 68-FZ of 21 December 1994 ("the Emergency Protection Act") and Government Decree no. 417 of 2 April 2020 (see paragraphs 48-54 below), the appellate court reiterated that Decree no. 12-UM, issued by the mayor of Moscow in line with those provisions, had introduced a ban on public events until 31 May 2020, which applied to "pickets" (one of the forms of public events under section 2(1) of the PEA). Accordingly, and in line with the relevant clarifications by the Supreme Court of Russia (see paragraph 81 below), the court found that the first applicant's

solo demonstration had amounted to a failure to comply with rules of conduct during a state of high alert within the meaning of Article 20.6.1 of the CAO (see paragraph 78 below). Having regard to his previous administrative conviction, the appellate court sentenced the first applicant to an administrative fine of 20,000 Russian roubles (RUB – approximately 256 euros (EUR) at the relevant time), but he was exempted from paying it on account of having already served part of his administrative detention. He was released the same day.

**C. Static solo demonstration of 26 May 2020 (Mr Azar, application no. 3244/21)**

18. On 26 May 2020 Mr Azar (the second applicant), a journalist with *Novaya Gazeta* and an elected member of the Khamovniki district council of Moscow, posted a message on his social media that he was going to stage a solo demonstration in support of Mr V. and the first applicant following the latter's arrest earlier that day (see paragraphs 13 et seq. above). He stressed in his message that no assembly could be held because of the COVID-19 outbreak but stated that he considered a solo demonstration to be safer than going shopping, using the Moscow Metro or going to a public services centre. He added that if his colleagues wished to join him, they should respect social distancing and maintain at least 2 metres of distance in a "picket line" (a queue for staging solo demonstrations in turn).

19. On the same day he staged his demonstration, holding placards reading "Free V." and "Free Nemytov". A photograph admitted to the administrative-offence case file shows him standing alone in front of the entrance to the headquarters of the Moscow Department of the Interior. Five minutes later he was arrested, escorted to a police station and detained until 8.20 p.m. that evening for the "drawing up [of] administrative material".

20. According to the administrative-offence record drawn up in respect of him under the CAO, the second applicant took part in a public event in the form of a solo demonstration (for which no approval of the authorities was needed and at a place where such events were not prohibited), in breach of the ban on holding public events under Decree no. 12- UM.

21. Based on photographic evidence and the arresting officers' reports stating that the second applicant had held a solo demonstration, on 28 May 2020 the Tverskoy District Court of Moscow upheld the administrative-offence record. Referring to Presidential Decree no. 316 of 11 May 2020, which granted regional authorities the discretion to extend restrictive measures in response to the spread of COVID-19 based on the epidemiological situation in a given region (see paragraph 55 below), and the ban on public events in Moscow between 5 March and 31 May 2020, introduced by Decree no. 12-UM, the court found that the second applicant had held a "picket" in breach of that ban. Referring to the second applicant's

previous conviction for breaching the rules for holding public events, the court held that his actions constituted an offence under Article 20.2 § 8 of the CAO (repeated breach of the rules for holding public events) and sentenced him to fifteen days' administrative detention.

22. In an appeal against his conviction, the second applicant argued, like the first applicant (see paragraph 16 above), that Article 20.2 of the CAO was a blanket provision and referred to the procedure for holding public events set out in the PEA, and that a state of high alert was not among the circumstances allowing the Moscow executive authorities to change the rules for holding public events. In the absence of a federal law restricting solo demonstrations, Decree no. 12-UM could not be relied upon, as it did not set out rules for holding public events. Referring to clarifications issued by the Supreme Court of Russia on 21 April 2020 (see paragraph 81 below), he admitted that his actions could arguably fall under that provision or under Article 3.18.1 § 2 of the Moscow Code of Administrative Offences (see paragraph 79 below). He further argued that administrative detention should not have been applied to him, as he had to take care of his minor daughter, that his arrest and detention on 26 May 2020 had been unjustified and excessive and that his solo demonstration had not caused any adverse consequences.

23. On 5 June 2020 the Moscow City Court examined the second applicant's appeal. The court heard B., Head of the Directorate for Public Order in Moscow, who testified that on 26 May 2020 he had seen five to ten people standing near the second applicant with similar banners and waiting their turn to stage similar demonstrations. He stated that they had subsequently taken the second applicant's place to stage their static demonstrations. Referring to the second applicant's Facebook post, B.'s statement to the court and photographs of two other participants showing them "in the immediate vicinity" of the second applicant (not submitted to the Court), the appellate court concluded that the second applicant had taken part in a group event – that is, several "pickets" clearly having the same aim and organisation – which had not been notified to the authorities, in breach of the PEA. The court held that this constituted an offence punishable under Article 20.2 § 5 of the CAO (breach of the rules for holding public events). It considered that the arresting officers' reports assessing the second applicant's actions as a "solo demonstration" did not contradict B.'s statements, as the officers had left immediately after the arrest. The court further reiterated that a ban on public events in Moscow, introduced by Decree no. 12-UM, had been in force at the material time. It assessed the second applicant's arrest and escorting to the police station as lawful, as he had taken part in a public event in a public area, meaning it had been "objectively impossible" for the police to have drawn up an administrative-offence record on the spot. The appellate court upheld the second applicant's conviction under

Article 20.2 § 8 of the CAO and reduced his sentence to ten days' administrative detention.

24. The second applicant applied for a review of his conviction. On 10 August 2020 the Second Cassation Court of Moscow upheld it on review.

#### **D. Assembly of 31 January 2021 (Ms Burma, application no. 46231/11)**

##### *1. Background information*

25. As it appears from publicly available sources, the first COVID-19 case was registered in St Petersburg in early March 2020. From 2020 to 2021 the city remained one of the most affected places in Russia. Having started with a strict lockdown between March and May 2020 (see paragraph 62 below), the authorities then eased and tightened various measures to contain the spread of infection during that period (see paragraph 63 below). In particular, in late autumn 2020 St Petersburg saw a significant rise in daily infections, leading to the tightening of several restrictions between 1 November 2020 and 16 January 2021. In January 2021 the city continued to see a significant increase in COVID-19 cases, with authorities registering about 3,000 new infections per day that month. With seventy and sixty-nine COVID-19 deaths registered on 27 and 28 January 2021 respectively, the city had one of the highest rates of registered COVID-19-related deaths in Russian regions at the time. In the last week of January, the city's Interdepartmental Coordination Council for Combating COVID-19 reported a steady downward trend in the spread of infection, which was also reflected in a decrease in the number of patients admitted to hospital with COVID-19. By 30 January 2021 the authorities had eased some of the restrictions (see paragraph 64 below) but reiterated their call for caution and adherence to public health measures.

26. On 31 January 2021 several thousand people took part in unauthorised protests at various locations in St Petersburg to support the opposition leader, Mr Alexey Navalnyy, who had been arrested and detained upon returning to Russia from Germany on 17 January 2021, where he had undergone medical treatment after an attempted poisoning. Several roads in the centre of St Petersburg were blocked by the police and hundreds of participants were arrested.

##### *2. The third applicant's arrest and prosecution*

27. According to the domestic findings and the third applicant's additional statement of appeal (see paragraph 36 below), at about 4 p.m. on 31 January 2021 Ms Burma (the third applicant) took part in a gathering of about one hundred people on Zagorodnyy Avenue in the centre of St Petersburg, near the Zvenigorodskaya metro station, held in support of A. Navalnyy.

28. In her application form and some of her submissions at domestic level, the third applicant stated that at 5 p.m. that day she had been walking home along Zagorodnyy Avenue “using means of health protection”, that is, wearing a surgical mask. Since the entrance to the Zvenigorodskaya metro station had been blocked, she had asked some police officers how to bypass the cordon. The police had immediately arrested her without explanation and placed her in a police van with a number of other people.

29. At 6.30 p.m. that evening she was transferred to a police station (as confirmed by an escort record). According to the arrest record, she remained in detention until 4.30 p.m. the following day, to ensure the correct and timely processing of her case.

30. At 9.30 p.m. on 31 January 2021 the police officers drew up an administrative-offence record under Article 20.2.2 § 1 of the CAO, for participation in a mass simultaneous gathering of citizens in public places not constituting a public event and held in breach of health regulations (see paragraph 76 below). According to the record, the third applicant participated in a gathering “not constituting a public event” of about one hundred citizens. The participants failed to maintain a distance of at least 1 metre, in breach of orders issued by the Chief Medical Officer of Russia, which had introduced social distancing requirements of 1 metre and between 1.5 and 2 metres respectively (Orders nos. 9 and 15 of 30 March and 22 May 2020, see paragraphs 65 and 66 below).

31. The applicant provided a handwritten “explanation”, in which she agreed with the content of the administrative-offence record. In her additional explanations attached to the record, she stated that she had been walking along Zagorodnyy Avenue and had asked a police officer for directions, as the street had been cordoned off. After walking a few more metres she had been arrested by some police officers who had neither introduced themselves nor explained the reason for the arrest.

32. At 4.30 p.m. on 1 February 2021 the Nevskiy District Court of St Petersburg convicted the third applicant as charged and sentenced her to ten days’ administrative detention, specifying that it was to be calculated from 6.30 p.m. on 31 January 2021. Her conviction was based on the administrative-offence record, the arresting officer’s report and documents provided by two other police officers, that is, two identical pre-printed forms containing formulaic references to the same provisions of domestic law as the administrative-offence record, on which only each officer’s details and the third applicant’s name had been handwritten. None of the officers were heard by the court. The District Court also referred to video footage of the gathering, without describing its content in the judgment or specifying whether the third applicant had been filmed. The court considered that her explanations (see paragraph 31 above) and court testimony to the effect that she had not taken part in the public event contradicted the above-mentioned evidence.

33. Referring to sections 10(2), 29(3) and 50(2) of the Sanitary Welfare Act (see paragraphs 48-50 below), the District Court noted that, under Government Decree no. 715 of 1 December 2004, COVID-19 was classified as a disease “representing a danger to others”. The court further noted that, in response to the “complex epidemiological situation” caused by the spread of COVID-19, State authorities had implemented measures to contain the epidemic. In particular, Order no. 9 of 30 March 2020 of the Chief Medical Officer of Russia had introduced a 1-metre social distancing requirement (paragraph 6.2, see paragraph 65 below). Under paragraph 4.4 of Order no. 15 of 22 May 2020, establishing health and epidemiological regulations (no. СП 3/1.3597/20) for preventing the spread of COVID-19 (see paragraph 66 below) and introducing measures aimed at “breaking” the infection transmission mechanism, individuals were required to follow personal hygiene rules (handwashing, using antiseptics and wearing medical masks and gloves) and maintain social distancing of 1.5 to 2 metres. The court established that no fewer than 100 people had participated in an “action” (*акция*) in support of A. Navalnyy, which had not been a public event; that they had failed to keep 1 metre from each other; and that the third applicant had been a voluntary participant. Referring to the Constitutional Court’s decision no. 1721-O of 24 October 2013 (see paragraph 80 below) and without giving further details, the court concluded that the third applicant’s participation in the gathering of about one hundred citizens in a public area (*в общественном месте*), in breach of the above-cited parts of the orders issued by the Chief Medical Officer of Russia on 30 March and 22 May 2020, constituted a breach of Article 20.2.2 § 1 of the CAO. Lastly, when deciding on the applicable sanction, the court referred to the nature of the offence, the third applicant’s conduct (no details were given on either point) and her failure to “realise” the unlawfulness of her actions and their consequences. It also referred to the need to prevent future administrative offences by her and others.

34. The third applicant started serving her sentence of administrative detention immediately.

35. On 7 February 2021 she lodged a brief appeal against her conviction, challenging it as unlawful and ill-founded, without providing further details, on the grounds that she had not taken part in the gathering but had merely been passing by.

36. On 16 March 2021 the third applicant lodged a more detailed appeal, arguing that there was insufficient evidence that she had breached the social distancing requirement. She also argued that she had been using “means of health protection” to prevent the spread of COVID-19. She stressed that the first-instance court had failed to apply domestic law correctly and explain why the event had not constituted a “meeting” within the meaning of the PEA. It had further failed to specify any action by her that had caused obstructions to pedestrians or a breach of health regulations. Lastly, she argued that the

court should not have found her liable for breaching the measures specified in the regulations for preventing the spread of COVID-19 (Order no. 15 of 22 May 2020 of the Chief Medical Officer of Russia, see paragraph 66 below), as, under those regulations, the local Rospotrebnadzor – not individuals – was responsible for their implementation. The third applicant further submitted, relying on Article 11 of the Convention and Article 31 of the Constitution, that she had participated in a peaceful rally and that the authorities had failed to demonstrate that she had infringed the rights of others, disrupted traffic or disturbed public order. The absolute ban on public events in St Petersburg, introduced under the pretext of preventing the spread of COVID-19, was in itself a disproportionate measure. It pursued the aim of punishing people, including the applicant, for their political views. The authorities had applied it selectively. Indeed, at the time of the events, shopping malls, theatres, restaurants and sports facilities had been open in Russia, particularly in St Petersburg, and various “non-political” mass events had been held. A street protest had been no more dangerous in terms of the potential spread of COVID-19 than various indoor events. On the contrary, the escorting of dozens of arrested rally participants to police stations in overcrowded police vans, in violation of basic social distancing and public health requirements, had posed a more serious risk of spreading the infection. In the third applicant’s view, her arrest and detention had been unnecessary and disproportionate, having a chilling effect on her and other protestors. Lastly, the sanction of administrative detention – intended to be exceptional by nature – had been disproportionately applied to her, despite her peaceful conduct and the absence of any evidence that her actions had caused harm.

37. On 16 March 2021 the St Petersburg City Court upheld the third applicant’s conviction on appeal, citing the same provisions as the lower court (see paragraph 32 above) and reiterating that the Sanitary Welfare Act aimed to ensure the health and epidemiological welfare of citizens. Under section 10 of that Act, citizens were required to comply with health legislation and orders from the responsible authorities. The court upheld the lower court’s conclusion that there was sufficient evidence of the third applicant having committed the offence and deemed her arrest and detention lawful and well-founded. It noted that she had been arrested on the street, making it impossible for the police to have drawn up an administrative-offence record on the spot. The court further rejected her arguments based on Article 11 of the Convention, stating that the exercise of the rights guaranteed by Articles 10 and 11 could be restricted under Article 10 § 2 and Article 11 § 2 respectively. The “ban on assemblies” and “health and epidemiological requirements [imposed] on the population” had been enacted in connection with the state of high alert in St Petersburg. The state of high alert, in turn, had been introduced to prevent the spread of COVID-19, to protect people’s lives and health. In the court’s view, this provided a “sufficient basis for the restriction of the right to freedom of expression”. Lastly, the appellate court

upheld the sanction imposed on the third applicant, concluding that there were no grounds to consider the offence insignificant or to exempt her from serving her sentence on that basis.

## II. OTHER EVENTS IN CASE OF MR NEMYTOV

### A. Series of solo demonstrations staged on a rotation basis

38. On 5 June 2020 the first applicant Mr Nemytov and about ten other people took turns staging solo demonstrations in front of the Department of the Interior building at 38 Petrovka Street in Moscow, protesting against the second applicant's arrest and administrative prosecution (see paragraphs 19 et seq. above). The first applicant, who started demonstrating at 5.05 p.m., was arrested twelve minutes later and escorted to a police station so that "administrative material" could be drawn up. He remained at the police station until his release at 8.58 p.m. that evening.

39. An administrative-offence record was drawn up on 22 July 2020, referring to Article 20.2 § 8 of the CAO. According to the record, the first applicant took part in a mass public event between 5 p.m. and 9 p.m. on 5 June 2020, with no fewer than ten other participants. Calls to participate in the event were posted on Twitter (the record cited a specific post) and could have been seen by an unlimited number of people. The participants with placards "replaced each other" near the entrance to the building, taking turns at intervals of five to twenty minutes. The record further cited the ban on public events introduced in Moscow in response to the spread of COVID-19 (see paragraph 59 below), noted that the authorities had not been notified of the event and concluded that participation in it had been unlawful.

40. On 2 October 2020 the Tverskoy District Court of Moscow considered that the first applicant had taken part in a group event in the form of a "picket", which had required prior notification to the authorities. This requirement had not been met, in breach of section 8 of the PEA. The court found it "sufficiently evident" that the participants' actions had had the same aims and organisation, with the use of recognisable campaign materials, such as placards and banners, which some participants had exchanged with one another. Furthermore, the participants had made collective demands and appeals. The court also determined that staging the solo demonstrations had been a "means of concealing the collective nature" of the public event and that the participants, including the first applicant, had failed to discontinue their unlawful actions despite police warnings. The court accordingly convicted the first applicant of repeatedly breaching the rules for holding public events (Article 20.2 § 8 the CAO) and sentenced him to an administrative fine of RUB 150,000.

41. In an appeal, the first applicant argued, in particular, that his conviction had no legal basis, as he had staged a static solo demonstration

that had not required notification. Referring to video footage of his demonstration and arrest, he argued that no one else had been picketing at the same time as him, and that no one with “campaign materials” had been nearby. He had only talked to a journalist, to whom he had explained the purpose of his demonstration. The police had not given any orders that he could have disobeyed, and the authorities had failed to display the requisite degree of tolerance towards the demonstration.

42. On 18 January 2021 the Moscow City Court upheld the first applicant’s conviction, endorsing and reiterating the lower court’s reasoning.

43. On 10 March 2021 the first applicant paid the fine.

### **B. Solo demonstration of 25 June 2020 and subsequent proceedings**

44. On 25 June 2020 the first applicant staged a solo demonstration in Red Square in Moscow against amendments to the Constitution. His demonstration was discontinued by the police and he was escorted to a police station, where he was detained overnight. The next day the Tverskoy District Court of Moscow found him guilty of holding a public event in a prohibited manner, namely in the vicinity of the residence of the President of Russia. He was convicted of repeatedly breaching the rules for holding public events (Article 20.2 § 8 of the CAO) and sentenced to twenty days’ administrative detention. On 30 June 2020 the Moscow City Court upheld his conviction.

## RELEVANT LEGAL FRAMEWORK AND PRACTICE

### I. RELEVANT DOMESTIC MATERIAL

#### **A. Legal provisions and practice on public events and sanitary emergency**

##### *1. General legal framework on public events*

45. For a summary of the provisions of domestic law establishing the procedure for holding public events, including static solo demonstrations (solo “pickets”), see *Novikova and Others v. Russia* (nos. 25501/07 and 4 others, §§ 49-59, 26 April 2016). For legal definitions of the various types of public events contained in section 2 of the Public Events Act (Federal Law no. 54-FZ of 19 June 2004 – “the PEA”), see *Dianova and Others v. Russia* (nos. 21286/15 and 4 others, § 33, 10 September 2024).

46. Under section 1(1) of the PEA, legislation on assemblies, meetings, demonstrations, marches and pickets is based on the provisions of the Constitution, universally recognised principles and standards of international law and international treaties to which the Russian Federation is a party. It includes the PEA itself and other legislative acts of the Russian Federation related to ensuring the right to hold public events. In cases provided for by

the PEA, regulatory legal acts (*нормативные правовые акты*) concerning the conditions for holding assemblies, meetings, demonstrations, marches and pickets are issued by the President of Russia and the government. They are adopted and issued by the State authorities of the constituent entities of the Russian Federation.

47. Under section 8(1) of the PEA, a public event may be held in any suitable location, provided that it does not create a risk of building collapse or any other danger to participants' safety. Access to certain locations may be banned or restricted in circumstances specified by federal law.

## 2. *Legal provisions cited by the parties*

### (a) **Sanitary Welfare Act**

48. Federal Law no. 52-FZ of 20 March 1999 on the Sanitary and Epidemiological Welfare of the Population ("the Sanitary Welfare Act") provides that citizens must abide by health legislation, as well as decrees and orders of the federal health and epidemiological supervision authorities. They cannot take actions in violation of other citizens' rights to health protection and a favourable living environment (section 10). It is within the competence of the constituent entities of the Russian Federation to introduce and discontinue lockdown restrictions based on proposals and instructions of chief medical officers and their deputies (section 6).

49. Under section 29(1), measures to prevent the occurrence and spread of infectious diseases must be implemented promptly and comprehensively. These measures include, among other things, the protection of public health, the introduction of restrictive measures (quarantine) and measures concerning patients suffering from infectious diseases. Under section 29(3), health protection and anti-epidemic (preventive) measures are mandatory for citizens, individual entrepreneurs and legal entities "in accordance with their activities", as well as in cases provided for in section 50(2) of the Law.

50. Under section 50(2), which deals with the rights of officials conducting health and epidemiological supervision on behalf of the State, when violations of health legislation are detected or when there is a threat of the occurrence and spread of infectious diseases, such officials may issue orders to citizens and legal entities. These orders are mandatory.

### (b) **Emergency Protection Act**

51. Under Federal Law no. 68-FZ of 21 December 1994 on the Protection of the Population and Territories from Natural and Man-Made Emergencies ("the Emergency Protection Act"), citizens must abide by laws and other regulatory legal acts of the Russian Federation and its constituent entities in the field of emergency protection, and comply with the established rules of conduct when a state of high alert or emergency is introduced (section 19). The competent authorities function in a "state of high alert" in the event of a

threat of an emergency (section 4.1(6)(b)). At regional level, the highest-ranking executive of the constituent entity is responsible for emergency response efforts (section 4.1(8) and (10)).

52. Pursuant to Federal Law no. 98-FZ, as of 1 April 2020 Law no. 68-FZ was amended. The concept of an emergency was expanded to include cases of disease outbreaks that pose a danger to others (section 1(1)). Under section 10(a.2), binding rules of conduct applicable during a state of high alert are established by the government. Under section 11(1)(m) and (y), authorities of the constituent entities of the Russian Federation could decide whether arising emergencies are classified as regional or intermunicipal and introduce a state of high alert or emergency for the relevant governing bodies and forces of the unified State system for the prevention and elimination of emergencies. They could establish mandatory rules of conduct for citizens and organisations during a state of high alert or emergency, which could not contradict those established by the government (section 11(1.1)).

**(c) Presidential Decree no. 239 of 2 April 2020**

53. Pursuant to Article 2(b) of Presidential Decree no. 239 of 2 April 2020, “On measures to ensure the sanitary and epidemiological welfare of the population on the territory of the Russian Federation in connection with the spread of the novel coronavirus”, the higher officials (heads of the higher executive bodies of State power) of the constituent entities of the Russian Federation were tasked with developing and implementing a set of restrictive and other measures, based on the health and epidemiological situation and specific characteristics of the spread of coronavirus in a given constituent entity. These measures included establishing a special procedure for the movement of people and vehicles within the relevant territory.

**(d) Government Decree no. 417 of 2 April 2020**

54. By Decree no. 417 of 2 April 2020, “On approval of the mandatory rules of conduct for citizens and organisations when introducing a state of high alert or an emergency situation”, the government established rules of conduct to be followed during a state of high alert. Citizens are required to comply with the government’s decisions, maintain public order and abide by the relevant laws of the Russian Federation. They may not take actions posing a threat to the safety, life, health and “sanitary and epidemiological welfare” of themselves or others (Articles 1, 3 and 4).

**(e) Presidential Decree no. 316 of 11 May 2020**

55. By Decree no. 316 of 11 May 2020, “On the procedure for extending the measures to ensure the sanitary and epidemiological welfare of the population in the constituent entities of the Russian Federation in connection with the spread of COVID-19”, the President of Russia ordered the authorities

of the constituent entities to identify territories where “restrictive measures” could be extended, based on the health and epidemiological situation in a given constituent entity.

**(f) State of high alert in Moscow**

56. By Decree no. 12-UM of 5 March 2020 the mayor of Moscow introduced a “state of high alert” in response to the spread of COVID-19. On 10 March 2020 the decree was amended to include a ban on “sports, entertainment, public and other mass events” with more than 5,000 participants.

57. A further amendment on 16 March 2020 prohibited “sports, entertainment, public and other mass events” in Moscow until 31 May 2020.

58. On 29 March 2020, by Order no. 1П, signed by the chief medical officer of Moscow, the regional office of Rospotrebnadzor instructed the authorities to introduce measures in response to the spread of COVID-19, including, in particular, a stay-home order requiring citizens not to leave their places of residence or stay (*жительства (пробывания)*) except in exceptional cases.

59. Further amendments were made to Decree no. 12-UM on 31 March 2020 to introduce a lockdown through self-isolation and social distancing measures, effective until further notice. Under Article 9.3, citizens could not leave their places of residence or stay, except to: (i) seek emergency medical assistance and other urgent cases involving a direct threat to their life or health; (ii) travel to work if the relevant professional activities had not been restricted as a result of the lockdown measures; (iii) travel to the nearest places to purchase goods and services (to the extent that the sale of such goods and the provision of services had not been restricted by the decree); (iv) dispose of rubbish; or (v) walk pets within 100 metres of their place of stay or residence. As of 11 April 2020 individuals were required to obtain electronic passes to use public transport for the above purposes, but that measure was subsequently discontinued in early June 2020.

60. By Decree no. 68-UM, which was issued on 8 June 2020 and amended several times, the mayor of Moscow discontinued several lockdown restrictions introduced in connection with the state of high alert as of 9 June 2020. In particular, the ban on leaving places of residence was lifted, consumer services resumed and some sports events were authorised. In July 2020 certain bans on mass events were lifted, including access to indoor entertainment, cultural and leisure activities, with a limited number of participants. On 3 September 2020 congress and exhibition activities resumed at full capacity. The ban on public events (Article 2 of Decree no. 12-UM, as amended on 8 June 2020 and on subsequent dates) remained in force.

61. It appears that the ban was in force until at least 2023.

**(g) State of high alert in St Petersburg**

62. By Decree no. 121 of 13 March 2020 the St Petersburg City Administration (*Правительство Санкт-Петербурга*) introduced a state of high alert (Article 1) in response to the spread of COVID-19. The decree, which was amended several times, set out measures to contain the spread of infection. Among other restrictions, the “holding of sports, cultural, entertainment, public and other mass events” in St Petersburg was prohibited until 30 April 2020 (Article 2, as amended by Article 1.1 of Decree no. 127 of 18 March 2020). Schools, kindergartens and other educational institutions switched to remote learning (see, in particular, Article 2.1.1, as amended by Decrees nos. 156 and 182 of 24 March and 3 April 2020). Cinemas, museums, theatres, archives, libraries, shows, and sports and leisure sites were temporarily closed to the public. Shops, larger stores, restaurants and cafes were also closed, operating only in takeaway mode. As of 30 March 2020 self-isolation was introduced for residents of St Petersburg over 65 years old, effective until 14 April 2020, and recommended for other people until 5 April 2020. Individuals could only leave their homes in cases of extreme necessity, such as to receive emergency medical care, travel to work, purchase food or medicines, dispose of rubbish or walk pets within 100 metres of their home. Citizens were banned from visiting parks, city squares, sports facilities and children’s playgrounds. Those measures were subsequently extended.

63. As of May 2020 several restrictions were gradually eased. For instance, as of 12 May 2020 several companies and organisations (including construction and industrial enterprises) resumed work, conditional on notifying the authorities and adhering to safety measures, including maintaining 1.5 metres of social distancing and requiring employees to wear masks and gloves in the workplace, except when working in separate offices. In June 2020 the mandatory self-isolation measures were gradually lifted. As of 15 June 2020 organisations providing household services, hairdressers, libraries and other facilities reopened, provided that public health measures were respected. As of the end of that month, people could access city parks and squares again. In August 2020 indoor dining in restaurants and cafes resumed. Open-air amusement parks also reopened, and the ban on sports, cultural and entertainment events on the streets was lifted, provided that “personal respiratory protection” and social distancing measures of at least 1.5 metres were applied. In September 2020 theatres, cinemas and fitness centres reopened, with the mandatory application of health protocols. Schools and kindergartens resumed normal operations, applying the relevant health protocols.

64. In response the relevant health data and the progression of the pandemic, the authorities adjusted the measures on several occasions, including by temporarily reintroducing previously lifted requirements or

tightening existing ones. The following restrictions were in force at the time of the events in the third applicant’s case (31 January 2021):

(i) “Public events and their attendance by citizens” were “banned (temporarily suspended)” (Article 2.1.3 of Decree no. 121, as amended by Article 1.2 of Decree no. 32 of 29 January 2021<sup>1</sup>);

(ii) Under Article 1.14 of Decree no. 32 (introducing Article 2-50 to Decree no. 121), the following activities were “banned (temporarily suspended)” until 15 May 2021:

“[the] holding [and attendance by citizens of]: sports, physical culture, cultural, entertainment, congress and exhibition, ceremonial, leisure and other events with more than 50 participants [*численностью более 50 человек*] in buildings, structures, facilities (and premises therein), as well as outdoors[,] except for [:] sports and physical culture events approved by [*«по согласованию с»*] the Committee for Physical Culture and Sports; entertainment events approved by the [city] Committee for Culture; and other events approved by the [city] Committee for Industrial Policy, Innovations and Trade.

The maximum permissible number of visitors for the relevant event is determined by the [above-mentioned committees] in accordance with the [relevant] procedures, based on the structural and other features of the venue, the availability of necessary equipment and sufficient ... means to ensure the fulfilment of the requirements [of the decree] and the safety of the event.”

Those responsible for holding events had to ensure compliance with the stipulated requirements and conditions. If a breach of those or other restrictions was revealed, an event could only be approved after the violation had been rectified;

(iii) Article 1.8 of Decree no. 32 (introducing Article 2-5.27 to Decree no. 121) set out rules for accessing indoor and outdoor “sports and physical culture events”. Such access was conditional on adherence to the relevant health and epidemiological regulations and instructions, strict observance of social distancing of 1.5 metres and the wearing of masks and gloves. The relevant facilities could be filled to 50% of their capacity but could not accommodate more than 15,000 spectators;

(iv) As of 23 January 2021 organisations providing additional education were allowed to operate (Article 1 of Decree no. 23 of 22 January 2021). Restaurants and cafes, excluding food courts, were allowed to operate, including, as of 30 January 2021, during nighttime hours (Articles 1.5 and 1.11 of Decree no. 32). As of 30 January 2021 theatres and concert halls were permitted to receive audiences, with the allowed capacity increased to 50% [from 25%] (Article 1.7 of Decree no. 32). Zoos and oceanariums reopened, conditional on the observance of safety requirements (including, for oceanariums, a requirement of 10 sq.m per person). Citizens over 65 and other vulnerable persons were recommended to self-isolate. It was mandatory to wear masks in public areas and on public transport.

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<sup>1</sup> In force as of 30 January 2021.

**(h) Orders by the Chief Medical Officer of Russia**

65. On 30 March 2020 the Chief Medical Officer of Russia issued Order no. 9, introducing additional measures to prevent the spread of COVID-19. Under paragraph 6.2, as in force in January 2021, citizens were required to maintain a social distance of at least 1 metre.

66. By Order no. 15 of 22 May 2020, the same authority established health and epidemiological regulations (no. CII 3/1.3597/20) for preventing the spread of COVID-19. Under paragraph 4.4, as in force in January 2021, citizens were required to maintain a social distance of 1.5 to 2 metres.

*3. Relevant domestic practice*

**(a) The Constitutional Court**

67. Between late 2020 and 2022 the Constitutional Court examined several complaints regarding the constitutional validity of regional regulations enacted in various constituent entities of the Russian Federation in response to the spread of COVID-19, particularly those imposing bans on public events. The court's key findings, in so far as relevant, can be summarised as follows.

*(i) Decision no. 49-P of 25 December 2020*

68. A district court requested the Constitutional Court to rule on the constitutionality of a provision of Decree no. 105 of 12 March 2020 of the Moscow Regional Administration, "On the introduction of a state of high alert in the Moscow Region", introducing, among other measures, limitations on freedom of movement. Under the provision in question, people could not leave their place of residence other than to seek emergency assistance, travel to work if the relevant activities had not been suspended, buy goods of first necessity and so on.

69. By decision no. 49-II of 25 December 2020 the Constitutional Court reiterated that human life and health were supreme values and that State authorities had a fundamental constitutional duty to protect them. Russia had assumed responsibility for ensuring the health and epidemiological safety of the population, including through the adoption and implementation of laws aimed at preventing and eliminating risks to life and health arising from epidemic diseases. The global community, and Russia in particular, had had to face new challenges arising from the spread of COVID-19, which had been declared a pandemic by the WHO. Referring to the WHO's Interim Guidance of 19 March 2020 (see paragraph 84 below), the court noted that public health measures to reduce human-to-human transmission could involve restriction of movement. Isolation and self-isolation measures, known as "lockdowns", were not unique to the Russian Federation. By April 2020 such measures had been applied in various forms in more than ninety countries worldwide.

70. The Constitutional Court noted, in so far as relevant, that the pandemic had progressed unevenly in different regions of the Russian Federation. The authorities of the constituent entities could more efficiently determine adequate means to solve the tasks assigned to them, considering the specifics, without disproportionately restricting citizens' rights. It had been objectively necessary to introduce the contested provision in Moscow Region to promptly respond to the extraordinary threat of the spread of COVID-19. The measure did not constitute an absolute prohibition, as it allowed the movement of citizens under certain circumstances. Furthermore, it was temporary, and its introduction had been confirmed by federal legislation in a timely manner. The court concluded that the provision in question was therefore not incompatible with the Constitution.

*(ii) Decision no. 1680-O of 20 July 2021*

71. Mr K., whose notification of a rally of about 250 participants on 7 November 2020 in Kotlas was refused (a decision upheld by the courts), contested the constitutional validity of a decree issued by the regional governor of Arkhangelsk Region, in so far as it prohibited public events during the state of high alert introduced in the region in response to the COVID-19 pandemic. The Constitutional Court found no grounds to accept Mr K.'s complaint, reaffirming that protecting life and health was a fundamental State duty. The Sanitary Welfare Act (see paragraphs 48-50 above), and Regional Law no. 85-5-OZ on Arkhangelsk Region, which defined the scope of competence of the relevant authorities, empowered the regional authorities to declare, *inter alia*, a state of high alert in the region. In March 2020 the governor of Arkhangelsk Region had issued a decree introducing a state of high alert, and in early April 2020 had amended it to ban, among other things, public and other mass events to prevent the spread of COVID-19. The disputed provision was based on federal laws amended in April 2020, which had expanded the powers of regional authorities to implement emergency measures. The Constitutional Court reiterated that any restriction of rights for the protection of constitutional values should be proportionate, based on federal law and respect a fair balance between public and private interests. The same applied to subordinate regulatory acts issued, including in extraordinary situations, in the execution of the Constitution and federal laws. At the time of the planned rally (November 2020), Arkhangelsk Region had had a high (the fifth highest in Russia) COVID-19 infection rate, and the city of Kotlas had experienced a significant and sharp increase in infections. The Constitutional Court deemed the ban on mass events exceptional in nature, objectively necessary and proportionate to the aim of protecting public health.

*(iii) Decision no. 1769-O/2022 of 21 July 2022*

72. By decision no. 1769-O/2022 the Constitutional Court rejected a complaint by Ms B., who had contested the constitutional validity of Article 20.6.1 § 1 of the CAO (see paragraph 78 below) and Article 2 of Decree no. 12-UM issued by the mayor of Moscow (see paragraph 57 above). Ms B. had been found liable under the said provision of the CAO for staging a solo demonstration in Moscow on 18 June 2020. The lower courts had found that she had acted in breach of the Sanitary Welfare Act, the mandatory rules of conduct during a state of high alert (approved by Government Decree no. 417 of 2 April 2020, see paragraph 54 above) and Decree no. 12-UM. The Constitutional Court emphasised that its earlier findings (see paragraphs 70 and 71 above) remained valid and that the conclusions formulated therein fully applied to Article 2 of Decree no. 12-UM. Like any other type of public events, solo demonstrations had the potential to attract the attention of other individuals. People could gather at the location of the picket, which objectively posed a risk of spreading COVID-19. The rule absolving solo demonstrators from the requirement to lodge a prior notification – based “on the presumption of a minimal risk created by solo picketing for public safety and citizens’ rights” – was not “designed for an extraordinary situation such as the spread of COVID-19”. Citizens still could use other forms of expressing their opinions and communicating them to others and the public authorities. The court concluded that the ban on mass events in Moscow, including solo pickets, was objectively necessary to respond to the threat of COVID-19 spreading in a specific area, exceptional in nature and served the constitutional aims of protecting citizens’ lives and health. Lastly, in June 2020, when Ms B. had staged her solo demonstration, the epidemiological situation in Moscow “could not be assessed as favourable”. The contested ban, as well as the administrative liability imposed for its violation, was not inconsistent with the principle of proportionality.

### **B. Solo demonstrations staged by way of rotation**

73. Under section 7(1) of the PEA, no notification is required for a solo demonstration, unless the participant intends to use a quickly (de)assembled object. Section 7(1.1) empowers the courts to declare that several solo demonstrations, taken together, constitute a single public event if they have the same goal and organisation. On 30 December 2020 section 7(1.1) of the PEA was amended to specify that “in particular, pickets staged in turn” could be declared a single group event.

74. The Plenary Supreme Court, in Ruling no. 28 of 26 June 2018, clarified that several solo demonstrations could be considered a single group event if they were shown, to a “sufficiently evident degree”, to have the same aims and organisation, to be “geographically gravitating to each other” and to be held simultaneously, while their participants used similar or

associatively recognisable visual materials and made collective demands. The following elements could indicate this: a single organiser; a single act of informing prospective participants; and common production and distribution of campaign materials. A court should exclude the possibility of random coincidence of actions and should not qualify a solo demonstration as requiring notification where normal interest is shown on the part of persons attracted by the demonstration. Based on the presumption of innocence, it was incumbent on the authorities to prove that holding of solo demonstrations by several persons had been initially planned and united by a single concept and joint organisation, and therefore had constituted a form of a public event requiring notification (paragraph 31 of the ruling).

### **C. Liability for violating the rules for holding public events and health regulations (provisions and practice cited by the domestic courts)**

#### *1. Relevant provisions of the CAO*

75. Article 20.2 § 8 of the CAO (introduced by Federal Law no. 258-FZ of 21 April 2014, as applicable at the time of the events in applications nos. 1257/21 and 3244/21) provided that a repeated breach of the rules for holding public events was punishable by an administrative fine of RUB 150,000 to 300,000, forty to 200 hours' compulsory community service or up to thirty days' administrative detention.

76. Under Article 20.2.2 § 1 (as in force at the time of the events in the third applicant's case), the organisation of, or participation in, a mass simultaneous gathering (*массовое одновременное пребывание*) and/or movement of citizens in public places not constituting a public event was punishable if it violated public order or health protection standards and regulations, or caused a disruption to essential infrastructure (such as life support or communication systems), damage to green spaces, obstruction of pedestrian or vehicle movement or restricted access to residential premises, transport hubs or social infrastructure. The penalty could include a fine of RUB 10,000 to 20,000, up to 100 hours' compulsory community service or up to fifteen days' administrative detention.

77. Article 6.3 sets out sanctions (ranging from a warning to a fine of up to RUB 500) for breaches of current health regulations and hygiene standards, or failure to implement hygiene and anti-epidemic measures (Article 6.3 § 1). The same acts or inaction committed during a state of emergency (*чрезвычайная ситуация*) or when there is a threat of the spread of a dangerous disease, or during the implementation of restrictive measures (quarantine) in the relevant territory, are punishable by a fine of RUB 15,000 to RUB 40,000 (Article 6.3 § 2). Higher fines apply if the same acts result in death or health damage (Article 6.3 § 3).

78. Under Article 20.6.1 § 1 (as in force at the time of the events in the first and second applicants' cases), failure by a citizen to comply with rules

of conduct during a state of high alert (except in cases provided for by Article 6.3 § 2 of the CAO dealing with breaches of health regulations) was punishable by a warning or a fine ranging from RUB 1,000 to 30,000.

#### 2. *Moscow Code of Administrative Offences*

79. Under Article 3.18.1 § 2 of the Moscow Code of Administrative Offences, as in force in late May 2020, failure to comply with legal acts concerning the state of high alert in Moscow, including the self-isolation requirement, was punishable by an administrative fine of RUB 4,000, provided that such actions did not constitute a criminal offence or trigger administrative liability under the CAO.

#### 3. *Constitutional Court's decision no. 1721-O of 24 October 2013*

80. By decision no. 1721-O of 24 October 2013 the Constitutional Court clarified that Article 20.2.2 § 1 of the CAO (see paragraph 76 above) applied specifically to certain types of mass events. Such events had to have a “predetermined” aim, with participants having the same goal, and citizens had to be free to participate in them. However, such events did not constitute “public events” within the meaning of section 2(1) to (6) of the PEA (see paragraph 45 above). Liability was conditional upon the occurrence of the negative consequences specified in the provision.

#### 4. *Clarifications by the Supreme Court of Russia*

81. The Presidium of the Supreme Court issued clarifications on 21 April 2020, concerning the application of legislation and measures to counteract the spread of COVID-19. It stated that acts consisting of a breach of rules of conduct during a state of high alert (Government Decree no. 417 of 2 April 2020, see paragraph 54 above) and similar regional rules were to be examined under Article 20.6.1 § 1 of the CAO (see paragraph 78 above).

## II. RELEVANT INTERNATIONAL MATERIAL

82. For a summary of the relevant international and comparative-law material on COVID-19-related restrictions in the early stages of the pandemic, see *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC] (no. 21881/20, §§ 64-74, 27 November 2023).

83. Joint Guidelines on freedom of peaceful assembly (CDL-AD(2019)017, 3rd edition), issued by the Office for Democratic Institutions and Human Rights (ODIHR) of the Organisation for Security and Co-operation in Europe (OSCE) and the European Commission for Democracy through Law (Venice Commission) of the Council of Europe, are cited in *Pleshkov and Others v. Russia* (nos. 29356/19 and 31119/19, § 41, 21 November 2023).

84. The WHO’s Interim Guidance of 19 March 2020, entitled “Considerations for quarantine of individuals in the context of containment for coronavirus disease (COVID-19)”, stated that public health measures to prevent the introduction of the disease into new areas or to reduce human-to-human transmission in areas where the virus that caused COVID-19 was already circulating, could include quarantine, which involved the restriction of movement, or separation from the rest of the population, of healthy persons who might have been exposed to the virus, with the objective of monitoring their symptoms and ensuring early detection of cases.

85. The United Nations Special Rapporteur’s statement on the rights to freedom of peaceful assembly and association (cited by some of the applicants) stated that States’ responses to the COVID-19 threat should not halt freedoms of assembly and association, and that while restrictions based on public health concerns were justified, it was imperative the crisis not be used as a pretext to suppress rights in general or the rights to freedom of peaceful assembly and association in particular.<sup>2</sup>

## THE LAW

### I. PRELIMINARY ISSUES

#### A. Joinder of the applications

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

#### B. Jurisdiction

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

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<sup>2</sup>“States responses to Covid 19 threat should not halt freedoms of assembly and association”, Geneva, April 14,2020. “States responses to Covid 19 threat should not halt freedoms of assembly and association” – UN expert on the rights to freedoms of peaceful assembly and of association, Mr. Clément Voule | OHCHR.

### **C. Consequences of the Government's failure to participate in the proceedings**

88. The Government, by failing to submit written comments in the third applicant's case, manifested an intention to abstain from participating in its examination. However, the cessation of a Contracting Party's membership in the Council of Europe does not release it from its duty to cooperate with the Convention bodies. Consequently, the Government's failure to engage in the proceedings cannot constitute an obstacle to the examination of this case (Rule 44C of the Rules of Court; see also *Georgia v. Russia* (II) (just satisfaction) [GC], no. 38263/08, §§ 25-27, 28 April 2023; and *Svetova and Others v. Russia*, no. 54714/17, §§ 29-31, 24 January 2023).

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

89. The applicants complained that their arrests, detention and prosecution in administrative-offence proceedings had been in breach of Article 10 (the second applicant), Article 11 (the third applicant) and both provisions (the first applicant). The relevant provisions of the Convention 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. ...

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 ... public safety, for the prevention of disorder or crime, for the protection of health or morals, ...”

### **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. ...”

### **A. Applicable provisions of the Convention**

90. 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, is one of the objectives of freedom

of peaceful assembly enshrined in Article 11 (see, among other authorities, *Taranenko v. Russia*, no. 19554/05, § 68, 15 May 2014). Whether a particular complaint falls to be examined under Article 10 or 11, or both, depends on the particular circumstances of the case and the gist of the applicant's grievances (see *Women On Waves and Others v. Portugal*, no. 31276/05, § 28, 3 February 2009). Being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018), the Court finds it appropriate to examine the applicants' complaints as follows.

*1. Solo demonstrations staged by the first applicant on 26 May and 25 June 2020*

91. It is undisputed that the first applicant staged these demonstrations alone. The Court will examine these complaints under Article 10 of the Convention, taking into account, where appropriate, the general principles it has established in the context of Article 11 (see *Novikova and Others v. Russia*, nos. 25501/07 and 4 others, § 91, 26 April 2016).

*2. Remaining events*

92. On 5 June 2020 the first applicant and some ten other protestors took part in a series of solo demonstrations in support of the second applicant (see paragraph 38 above). The protestors took turns to stage their demonstrations for a few minutes, before being replaced by another participant in a "picket line", who would, in turn, stage a similar demonstration. The second applicant argued that he had staged a solo demonstration on 26 May 2020 (see paragraph 18 above). Nonetheless, the appellate court had found, as in the first applicant's case, that he had taken part in a series of "pickets" with a common subject matter. The Court sees no reason to dispute this factual finding. It further notes that in a social media post made prior to the event, the second applicant had invited others to join him, with a request to maintain social distancing at the "picket line".

93. To avert the risk of a restrictive interpretation, the Court has refrained from formulating the notion of an assembly, which it regards as an autonomous concept, or exhaustively listing the criteria which would define it (see *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 98, 15 November 2018, and *Dianova and Others v. Russia*, nos. 21286/15 and 4 others, § 63, 10 September 2024). In the first and second applicants' cases, although they did not consider the series of solo demonstrations held on a "rotation" basis to be a group public event subject to notification under the applicable national law (see paragraphs 73-74 above; see also, *mutatis mutandis*, *Obote v. Russia*, no. 58954/09, § 35, 19 November 2019), the Court would accept that the appearance of a group of protestors waiting for their turn to stage their solo demonstrations concerning the same matter could

reasonably be perceived as an assembly (see, *mutatis mutandis*, *Kasparov and Others v. Russia* (no. 2), no. 51988/07, § 29, 13 December 2016). Whilst it is not bound by the legal classification under Russian law of the applicants' actions as participation in a group public event, the Court finds that their intentions and actual conduct in these cases were covered by the notion of "peaceful assembly" contained in Article 11 of the Convention (see *Navalnyy*, § 111; *Dianova*, § 63 ; and *Obote*, § 35, all cited above).

94. Lastly, as regards the third applicant's case, while the details of the interference will be addressed more fully in paragraph 106 below, the Court notes that she was arrested, detained and prosecuted in administrative-offence proceedings for participating in a gathering of about one hundred people in support of A. Navalnyy (see paragraph 37 above). In these circumstances, the Court considers that Article 11 takes precedence as the *lex specialis* for assemblies (see, among other authorities, *Sergey Kuznetsov v. Russia*, no. 10877/04, § 23, 23 October 2008). Notwithstanding its autonomous role and particular sphere of application, Article 11 must also be considered in the light of Article 10, where the aim of the exercise of freedom of assembly is the expression of personal opinions, as well as the need to secure a forum for public debate and the open expression of protest (see *Navalnyy*, cited above, § 102).

## **B. Admissibility**

95. The Government argued that the first and second applicants had failed to exhaust the available domestic remedies, that is, to challenge their convictions by way of the "review procedure" provided for in Articles 30.12-30.14 of the CAO.

96. The first and second applicants argued that the above-mentioned procedure did not constitute an effective remedy.

97. Given that recourse to the review procedure under Article 30.12 of the CAO was not subject to any time-limit at the relevant time, the Court does not consider that it was a remedy to be exhausted (see *Elvira Dmitriyeva v. Russia*, nos. 60921/17 and 7202/18, § 42, 30 April 2019) and accordingly dismisses the Government's non-exhaustion objection.

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

## C. Merits

### 1. *The applicants' prosecution on account of breaches of COVID-19-related restrictions*

#### (a) **The parties' submissions**

##### (i) *The applicants*

99. All three applicants complained, in respect of each of the impugned episodes, that the interference with their rights had not pursued any legitimate aim and had been disproportionate and unnecessary in a democratic society. They referred to the peaceful and non-disruptive nature of their actions and the lack of any damage caused by them. The first and second applicants submitted that the domestic courts had failed to specify any threat to the public posed by their demonstrations. Instead, they had merely referred to the relevant laws and regulations. The Russian authorities had used the COVID-19 pandemic as a pretext to introduce a total ban on any type of public event. The ban had not only been general and absolute in nature but also unlimited in time. The right to freedom of assembly could only be restricted during the application of “restrictive measures” (quarantines) or during a declared “emergency” or “state of emergency” – legal regimes which had not been declared in Russia. Furthermore, the ban on public events introduced in Moscow pursuant to Decree no. 12-UM had concerned “sports, public and other mass events”, and thus could not be extended to solo demonstrations. Therefore, the domestic provisions cited by the authorities had been unforeseeable in their application. Russia had not made use of Article 15 of the Convention. Moreover, the authorities' position had been inconsistent, given that, during the same period, a “mass event” in the form of a constitutional referendum had taken place in Russia (between 25 June and 1 July 2020). The first and second applicants further argued that they had staged their open-air demonstrations while respecting social distancing requirements. Lastly, referring to the findings of the Constitutional Courts of Germany and Austria, the *Conseil d'État* of France and courts of Spain and the Czech Republic, they pointed out that various domestic judicial bodies across Europe, when ruling on similar matters, had taken the position that political rallies should, in principle, be allowed (they referred to that position as the “fundamental permissibility of political rallies”).

100. The third applicant maintained that the authorities had arbitrarily dispersed a peaceful assembly under the pretext of fighting COVID-19, even though, at the time of the events, cafes, restaurants, shopping centres and leisure centres had been open in St Petersburg, and several mass cultural and sports events had been held indoors. She further argued that by escorting people in overcrowded vans to police stations, in turn full of arrested people, the authorities had breached distancing requirements.

*(ii) The Government*

101. With regard to the first and second applicants' cases, the Government submitted that from the beginning of 2020 the epidemiological situation in Russia, and notably in Moscow, had rapidly deteriorated due to the spread of COVID-19. They pointed out, referring to section 8(1) of the PEA (see paragraph 47 above), that a public event could not be held at a location where there was a risk to the safety of participants, and that the conditions for the prohibitions or restrictions could be set out in federal laws. The Sanitary Welfare Act and the Emergency Protection Act (see paragraphs 48-52 above) set out procedures for introducing restrictions to prevent "the negative development of an [epidemiological] situation". In line with these laws, as well as the recommendations of the Chief Medical Officer of Russia, the constituent entities of the Russian Federation could introduce restrictions on holding public events based on threats to the safety of participants. Such restrictions had been enacted in Moscow by Decree no. 12-UM during the state of high alert in response to the "unsatisfactory epidemiological situation" in the city. The ban on public events had been introduced in the public interest to "stabilise" infection rates and protect citizens' lives and health. The public events held by the applicants had not only breached the PEA but had also put the life and health of others at risk. They had been prosecuted in administrative-offence proceedings for violating the relevant laws, as well as for their disregard of the sanitary protection measures.

**(b) Submissions by the third-party interveners (Human Rights Centre "Memorial" and OVD-Info) and the Government's comments in reply**

102. In their submissions to the Court in December 2021, the third-party interveners submitted that the literal interpretation of the ban on public events introduced during the COVID-19 pandemic did not "definitively" extend to solo demonstrations. The interpretation of the ban by various domestic authorities had not been fully consistent. Although the courts' practice to apply the ban in Moscow had eventually tended to be uniform, disagreements on the interpretation had emerged. In the third-party interveners' view, it did not appear from Decree no. 12-UM that the ban applied to events which were "public" but not "mass", such as solo demonstrations. They provided a detailed timeline of the introduction and gradual lifting of the COVID-19-related restrictions in Moscow from March to September 2020, and pointed out that even though most of the restrictions in respect of other types of mass events (such as sports and leisure events) had been lifted in Moscow by September 2020, the ban on public events had never been eased or amended and remained in force. The courts in Moscow, in the vast majority of judgments concerning the matter, had found that the ban applied to all public events including solo demonstrations. In some judgments, the courts had found that a ban on "mass events" applied to solo demonstrations, and in one case, a case against a solo demonstrator had been dismissed as it had not

been shown that the event was “mass” or that the demonstrator had attempted to attract the attention of citizens “who could have been endangered in connection with a state of high alert”. The interveners further submitted that similarly worded bans had been introduced in other regions of Russia. Providing an overview of the texts and judicial interpretation in various regions, they submitted that those bans contained some variations in their wording, and that their judicial interpretation had been indicative of a lack of clarity and predictability.

103. The Government, in response to the third-party interveners’ submissions, submitted that the applicants’ solo demonstrations had constituted public events in terms of the PEA, and that the ban introduced by Decree no. 12-UM had applied to them. It was widespread practice to organise mass public events under the guise of “solo demonstrations”. Such events attracted observers, supporters and representatives of the media. The ban had been justified by the need to respect social distancing and other epidemiological requirements. Its breach had led to a violation of the rules of conduct adopted to prevent the spread of COVID-19.

**(c) The Court’s assessment**

104. All three applicants were arrested and prosecuted in administrative-offence proceedings following the discontinuation of the relevant public events, for breaching regional bans on public events and/or restrictions introduced in two different regions of Russia in response to the spread of the COVID-19 pandemic.

*(i) Existence of an interference*

105. It is not in dispute between the parties in the first and second applicants’ cases, and the Court accepts, that the discontinuation of their protests and their arrests, detention and prosecution in administrative proceedings amounted to an interference with their right to freedom of expression (for the first applicant) and freedom of assembly (for the second applicant).

106. As regards the third applicant, the Court notes that, according to her application form and some of her submissions at domestic level, she did not take part in the unauthorised event in question and was merely passing by. However, she was convicted for participating in it and brought a complaint under Article 11 of the Convention. At the same time, both at domestic level and before the Court she presented an alternative argument, essentially challenging the compliance of her prosecution with Article 11. Moreover, in her additional statement of appeal, she stated that she had actually taken part in the event (see paragraph 36 above; see also, *mutatis mutandis*, *Chernega and Others v. Ukraine*, no. 74768/10, §§ 224 and 227-28, 18 June 2019, and *Kilin v. Russia*, no. 10271/12, § 56, 11 May 2021; and compare *Kasparov and*

*Others v. Russia*, no. 21613/07, § 72, 3 October 2013). The Court has previously found an interference with the right to peaceful assembly in cases where applicants denied taking part in a rally but were nonetheless sanctioned for their alleged participation (see, for example, *Zülküf Murat Kahraman v. Turkey*, no. 65808/10, § 45, 16 July 2019; see also, *mutatis mutandis*, *Kilin*, cited above, §§ 55-58, and *Stojanović v. Croatia*, no. 23160/09, §§ 39 and 56, 19 September 2013). The Court finds no reason to depart from that approach in the present case. It considers that the third applicant’s conviction must be regarded as constituting an interference with the exercise of her right to freedom of assembly.

107. Such interference will infringe the Convention unless it is shown that it was “prescribed by law”, pursued one or more of the legitimate aims set out in Article 10 § 2 or Article 11 § 2, and was “necessary in a democratic society” to achieve those aims.

(ii) *Whether the interference was lawful*

108. General principles as regards lawfulness are summarised in *Navalnyy* (cited above, §§ 114-15, with further references).

109. As regards the first and second applicants, the Court notes that they were convicted under Article 20.2 § 8 and Article 20.6.1 § 1 of the CAO for breaching the ban on public events introduced by Decree no. 12-UM. The Court notes their argument that the ban lacked foreseeability in its application to solo demonstrations (see paragraph 99 above). At the same time, the first applicant stated in his statement of appeal that the ban applied to solo demonstrations (see paragraph 16 above). Be that as it may, the Court does not consider it necessary to delve into the issue of foreseeability given, in particular, the applicants’ failure to raise that matter on appeal. Having regard to the domestic courts’ conclusions as to the applicability of the ban on public events to solo demonstrations, as well as the 2022 Constitutional Court’s position corroborating that assessment (see paragraph 72 above), and noting, furthermore, the Constitutional Court’s findings (summarised in paragraphs 70-72 above) about the sufficiency of the legal basis for the impugned restrictions, the Court is prepared to accept that the interference in the first and second applicants’ cases was lawful.

110. As regards the third applicant, the authorities convicted her under Article 20.2.2 § 1 of the CAO (see paragraph 76 above) and the appellate court also referred to the “ban on assemblies” and “health and epidemiological requirements [imposed] on the population” introduced in St Petersburg pursuant to Decree no. 121 of 13 March 2020 (see paragraph 37 above). It is noticeable that the appellate court addressed that restriction, along with social distancing measures, even though Article 20.2.2 § 1 of the CAO – the basis for the applicant’s conviction – concerned a “mass simultaneous gathering or movement of people” in public places not constituting a “public event” within the meaning of section 2(1) to (6) of the

PEA (see also the Constitutional Court’s position summarised in paragraph 80 above). In the absence of any elaborate response to the third applicant’s argument in that regard (see paragraphs 36 and 37 above), the Court finds no explanation in the domestic decisions why the gathering – or, as the authorities described it, an “action” – of no fewer than 100 people in support of the opposition leader (see paragraph 37 above), did not constitute a “public event” within the meaning of the above-mentioned provision of the PEA (see, for the Court’s findings regarding the broad discretion granted to the authorities in deciding what constitutes a public event, albeit in a different context, *Navalnyy*, § 135, and *Dianova and Others*, §§ 66 and 80-81, both cited above). However, in the absence of any observations by the Government on this point, the Court will not dwell on the foreseeability requirement and will proceed on the assumption that the interference was lawful in the third applicant’s case.

*(iii) Whether the interference pursued a legitimate aim*

111. As regards the first and second applicants, the Court notes that while the domestic authorities did fail to specify in the domestic documents any “key interest of society” or to articulate the relevant legitimate aim for the interference (as rightly pointed out by the applicants), the police and the domestic courts nonetheless relied on several provisions of domestic law establishing the framework for the authorities’ response to threats to the safety, life, health and “sanitary welfare” of the population, including through the introduction of a state of high alert and regulations in response to the spread of COVID-19 in Moscow (see also, in so far as relevant, the findings of the Constitutional Court, albeit post-dating the events in the present cases, paragraphs 69-72 above). In the third applicant’s case, the domestic courts expressly referred to the complex epidemiological situation in St Petersburg in the context of the spread of COVID-19, referring to the need to protect people’s lives and health (see paragraphs 32 and 37 above).

112. The Court has already noted that the COVID-19 pandemic threatened to have very serious consequences not just for health but also for society, the economy, the functioning of State institutions and the organisation of life in general. It could therefore be regarded as an exceptional and unforeseeable situation. When examining various restrictions put in place to contain the pandemic, the Court has found that they were introduced in view of significant health considerations concerning not only the applicants but society at large (see, in so far as relevant, *Terheş v. Romania* (dec.), no. 49933/20, 13 April 2021; *Pasquinelli and Others v. San Marino*, no. 24622/22, § 94, 29 August 2024; and *Central Unitaria de Traballadores/as v. Spain*, no. 49363/20, §§ 74 and 83, 17 October 2024). Bearing that in mind, the Court will assume that, in each of the three cases at hand, the interference pursued two aims within the meaning of both

Article 10 § 2 and Article 11 § 2 of the Convention, namely the protection of health and the protection of the rights and freedoms of others.

(iv) *Whether the interference was necessary in a democratic society*

(α) General principles and margin of appreciation in the present cases

113. The general principles concerning the necessity of an interference with freedom of assembly have been summarised in the case of *Kudrevičius and Others v. Lithuania* ([GC], no. 37553/05, §§ 142-60, ECHR 2015), and with freedom of expression in the context of solo demonstrations in *Novikova and Others* (cited above, §§ 149-52).

114. The Court has previously held that healthcare policy matters come within the margin of appreciation of the national authorities, who are best placed to assess priorities, the use of resources and social needs. It has already had occasion to state that the margin of appreciation afforded to the Contracting States in the field of healthcare must be a wide one (see *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, § 160, and *Vavříčka and Others v. the Czech Republic* [GC], nos. 47621/13 and 5 others, § 274, 8 April 2021). Equally, the respondent State's margin of appreciation will usually be wide if it is required to strike a balance between competing private and public interests or Convention rights (see, for example, *Evans v. the United Kingdom* [GC], no. 6339/05, § 77, ECHR 2007-I, with further references).

115. The Court further reiterates that the Contracting States must be allowed a wider margin of appreciation in relation to restrictions on the location, time or manner of conduct of an assembly when they are not based on the content thereof. That margin of appreciation, although wide, is not unlimited and goes hand in hand with European supervision by the Court, whose task is to give a final ruling on whether the imposed restrictions were compatible with Article 11 of the Convention (see *Lashmankin and Others v. Russia*, nos. 57818/09 and 14 others, § 417, 7 February 2017; *Navalnyy*, cited above § 136; and *Pleshkov and Others v. Russia*, nos. 29356/19 and 31119/19, § 57, 21 November 2023).

116. As regards the existence of a consensus within the Contracting States, the Court has recently observed, in the context of the early stages of the pandemic, that there was common ground among the member States of the Council of Europe regarding the need to take urgent measures to protect public health. At the same time, however, there was no European consensus concerning the form those measures should take (see *Central Unitaria de Traballadores/as*, § 79, and, for comparative material, *Communauté genevoise d'action syndicale (CGAS)*, §§ 71-74, both cited above).

117. In *Central Unitaria de Traballadores/as* (cited above, § 81), which concerned a non-content-based prohibition of a demonstration at a specific location and time during the early stages of the COVID-19 pandemic in

Spain, the Court accepted that the margin of appreciation reserved to the authorities was a wide one. It sees no reason to reach a different conclusion in the three applicants' cases. The Court cannot, however, exclude the possibility that this margin may become narrower with the passage of time.

118. Where a wide margin of appreciation is afforded to the national authorities, the procedural safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation. In particular, the Court must examine whether the decision-making process leading to measures of interference was fair and such as to afford due respect to the interests safeguarded to the individual by the Convention (see *Lashmankin and Others*, cited above, § 418).

(β) Events in Moscow on 26 May 2020

119. The first and second applicants were prosecuted for breaching a regional blanket ban on public events (contrast *Central Unitaria de Trballadores/as*, cited above, § 65, where freedom of assembly was not suspended at the time). The ban was introduced in Moscow in mid-March 2020 and remained in force in the city along with several other lockdown restrictions in late May 2020, when the applicants staged their demonstrations (see paragraphs 56-61 above). As established by the domestic courts in both cases, that breach constituted a violation of the mandatory rules introduced during the state of high alert, declared in the capital as of 5 March 2020.

120. It is not the Court's task to review the relevant domestic law in the abstract, but to determine whether the manner in which it actually affected the applicants infringed their rights under Articles 10 and 11 of the Convention. However, when examining the issues raised in the cases before it, more specifically the measures taken against the applicants in connection with their peaceful protests, the Court must not lose sight of the general context, that is to say, in the first and second applicants' cases, the above-mentioned regional ban on public events and the relevant justifications (see, in so far as relevant, *Humpert and Others v. Germany* [GC], nos. 59433/18 and 3 others, § 120, 14 December 2023, with further references).

121. It has been the Court's settled approach that a State can, consistently with the Convention, adopt general measures that apply to pre-defined situations regardless of the individual facts of each case, even if this might result in individual hard cases (see *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 106, ECHR 2013 (extracts)). As a matter of principle, the more convincing the justifications for the general measure are, the less importance the Court will attach to its impact in the particular case (*ibid.*, § 109).

122. As regards the justification for the ban on public events in the first and second applicants' cases, the Court notes the Constitutional Court's

consistent findings that the ban emerged in response to an unprecedented challenge constituted by the pandemic and served the constitutional aims of protecting citizens' lives and health (see paragraphs 71-72 above). That position is consonant with the Court's case-law to the effect that the Contracting States are under a positive obligation, by virtue of the relevant provisions of the Convention, notably Articles 2 and 8, to take appropriate measures to protect the life and health of those within their jurisdiction (see *Vavříčka and Others*, cited above, § 282, with further references).

123. In the first and second applicants' cases, the events unfolded on 26 May 2020 – that is, in the exceptional context of the early stages of the COVID-19 pandemic, when strict lockdown measures were put in place in several regions of Russia, including the capital. The Court is therefore prepared to accept, in principle, that the ban was introduced in Moscow in the context of a pressing social need to protect individual and public health at the early stages of the pandemic (see *Central Unitaria de Trabajadores/as*, cited above §§ 83-84).

124. Nonetheless, the Court notes, first, that the impugned measure consisted of a total ban on any type of public events in Moscow including solo demonstrations, as illustrated by the first applicant's case (see the domestic courts' findings and the Constitutional Court's position in paragraph 72 above). A blanket ban on a given behaviour is a radical measure that requires a strong justification and particularly strict scrutiny by the courts authorised to weigh up the relevant interests at stake (see, for example, *Lacatus v. Switzerland*, no. 14065/15, § 101, 19 January 2021, with further references). The ban in question had been in force for more than two months by the time of the events. The Government did not dispute that it had subsequently remained in force until at least late 2021, when the parties exchanged their observations, and it appears that it continued to be effective even later (see paragraph 61 above).

125. Against this background, and reiterating that the application of the general measure to the facts of the case remains illustrative of its impact in practice and is thus material to its proportionality (see *Animal Defenders International*, cited above, § 108, and *M.C. v. the United Kingdom*, no. 51220/13, § 52, 30 March 2021), the Court will now turn to the specific circumstances of the first and second applicants' cases.

126. It is undisputed that public events were banned in Moscow on 26 May 2020 (the date of the first and second applicants' demonstrations). The participation in them was not among the exceptions to the strict self-isolation rules that were in force. In the light of the considerations related to health protection, including the need to minimise transmission of the virus, the Court is prepared to accept that the applicant's conduct could justify some form of intervention by the authorities. It reiterates, however, its earlier findings, reached in the context of the absence of prior authorisation, that the ensuing "unlawfulness" of the action does not give to the authorities carte

blanche; they are still restricted by the proportionality requirement of Article 11 (see *Kudrevičius and Others*, cited above, § 151). The Court considers that this general approach remains valid in the context of a public health emergency.

– *The second applicant*

127. As regards the second applicant, the Court sees no reason to disagree with the appellate court’s findings that his protest was, in fact, part of a series of solo demonstrations staged by “five to ten people” taking turns, and could therefore be regarded as a small group event (see paragraph 23 above). The appellate court also established that two other participants had, at some point, been “in the immediate vicinity” of the second applicant. In these circumstances, the authorities chose to immediately arrest the second applicant and escort him to the police station. Apart from a mere reference to the “objective impossibility” of drawing up an administrative-offence record on the spot, no reasons were advanced, either at domestic level or in the Government’s observations, to justify the necessity of the arrest. The Court fails to see how, instead of drawing up such record, the arrest of a person who had peacefully stood for five minutes with a placard in front of an administrative building, followed by his escorting to a police station and three hours’ detention, could have served the aims of protecting health and the rights of others.

128. The Court further notes that, despite the importance of the examination carried out by the domestic courts, their assessment of the case was confined to (a) the automatic application of the ban, and (b) imposing a sanction on the second applicant for violating it – in this case, ten days’ administrative detention. Although classified as administrative under domestic law, the sanction was “criminal” within the autonomous meaning of Article 6 § 1, thereby attracting the application of this provision under its “criminal” head (see *Navalnyy*, cited above, § 145). The Court must examine with particular scrutiny cases where sanctions imposed by the national authorities for non-violent conduct are criminal in nature and involve a prison sentence (*ibid.*, and *Kudrevičius and Others*, cited above, § 146). The sanction was explained, at least in part, by reference to the second applicant’s earlier conviction in administrative-offence proceedings (see paragraph 21 above). However, he was sanctioned for an undeniably peaceful demonstration, which had lasted only a few minutes and had been held in the presence of police officers and, admittedly, up to ten other participants. In particular, the courts did not take into account the purpose of the demonstration, which concerned a matter of public interest in reaction to recent events, and did not address the circumstances of the second applicant’s demonstration in detail (contrast, in so far as relevant, *Central Unitaria de Traballadores/as*, cited above, §§ 94-95, where the domestic courts conducted a detailed and swift assessment of the relevant elements and a

thorough balancing of the conflicting rights). As argued by the second applicant at domestic level and before the Court, it had never been established that his conduct at the protest had posed any specific threat to others' health. The authorities failed to explain why it was impossible for them, for instance, to show more tolerance or chose a more reasonable sanction (see, *mutatis mutandis*, *Novikova and Others*, § 175, and *Lashmankin and Others*, § 462, both cited above).

129. Accordingly, the Court finds that, despite the key importance of the procedural safeguards (see paragraph 118 above), the courts failed to provide any meaningful explanation for the severity of the sanction. Taking into account the circumstances of the case, the Court does not consider that the grounds cited in domestic judgments were sufficient, without further elaboration, to render a sanction of ten days' administrative detention proportionate to the legitimate aim pursued (see, *mutatis mutandis*, *Chkhartishvili v. Georgia*, no. 31349/20, § 60, 11 May 2023). Moreover, the chilling effect of the sanction in the second applicant's case was further amplified by the fact that it targeted a well-known journalist, and his arrest and detention attracted certain media coverage (see, *mutatis mutandis*, *Razvozhayev v. Russia and Ukraine and Udaltsov v. Russia*, nos. 75734/12 and 2 others, §§ 296-97, 19 November 2019).

130. In sum, the Court finds that, in implementing the ban on public events in the manner analysed above, the domestic authorities overstepped the wide margin of appreciation afforded to them. The interference in the second applicant's case was not proportionate to the legitimate aims pursued and was therefore not necessary in a democratic society. There has accordingly been a violation of Article 11 read in the light of Article 10 in respect of the second applicant.

– *The first applicant*

131. The Court considers that the above considerations apply equally to the first applicant, who staged a solo demonstration and was arrested, escorted to a police station and detained in the context of the administrative-offence proceedings. It will need to examine the proportionality of the interference in view of all the circumstances of the case.

132. As in the second applicant's case, the first-instance court convicted the first applicant under Article 20.2 § 8 of the CAO for repeatedly breaching the rules for holding public events and sentenced him to administrative detention (see paragraph 15 above).

133. However, unlike in the second applicant's case, the appellate court had regard to the clarifications by the Supreme Court of Russia (see paragraph 81 above) and reclassified the offence as falling under Article 20.6.1 § 1 of the CAO, a provision tailored to deal with failures to comply with rules of conduct during a state of high alert and setting the range of sanctions between a warning and a fine (see paragraphs 17 and 78 above).

The appellate court accepted the first applicant's own argument that his acts could fall under that provision (see paragraph 16 above), sentenced him to a fine of approximately EUR 256 and released from custody.

134. By the time of his release, the first applicant had already spent three days in detention – undoubtedly a long period in such a case. Regrettably, this did not receive any detailed proportionality assessment by the appellate court. However, that court exempted him from paying the fine, precisely on account of his having already served part of his detention. Having regard to the wide margin of appreciation afforded to the domestic authorities in this case and the Court's subsidiary role, the interference in the first applicant's case cannot be deemed disproportionate to the aim pursued.

135. There has accordingly been no violation of Article 10 in respect of the first applicant.

(γ) Events in St Petersburg in January 2021

136. The facts of the third applicant's case, typical for a large group of cases against Russia lodged in 2021-2022, bear similarities to the first and second applicants' cases but also differ in certain aspects.

137. In contrast to the first and second applicants' cases, which concerned small public events, the third applicant was found to have participated in a "mass simultaneous gathering" of no fewer than one hundred people (see paragraphs 33 and 37 above). Since overcrowding at a public event is fraught with danger, it is not uncommon for State authorities in various countries to impose restrictions on the location, date, time, form or manner of a planned public gathering (see, in so far as relevant, *Pleshkov and Others*, cited above, § 67). The Court accepts that this consideration is particularly relevant to assemblies held during the COVID-19 pandemic in the context of health protection.

138. The Court further notes that, unlike in the first and second applicants' cases, the domestic authorities addressed two distinct legal issues in the third applicant's case. First and foremost, she was convicted of breaching public health requirements during a gathering "not constituting a public event". Nonetheless, the appellate court referred to the ban on public assemblies in St Petersburg and the "health and epidemiological requirements" which constituted a "sufficient basis for the restriction" of the third applicant's rights (see paragraph 37 above). The Court's task is therefore to assess the necessity of the interference on those two grounds, having regard to the reasoning provided in the domestic judicial decisions (see *Communauté genevoise d'action syndicale (CGAS)*, cited above, § 161). In conducting its assessment, the Court will bear in mind the following considerations.

139. The events in the third applicant's case unfolded in St Petersburg and in early 2021, during the "second wave" of the pandemic. The Court recently noted in *Pasquinelli and Others* (cited above, § 99) that the virus had still been actively circulating in 2021 and 2022. It found, albeit in a specific

vaccination-related context, that the maintenance of protective measures for the entire population continued to pursue a pressing social need before May 2023, when the WHO lifted the alert classifying COVID-19 as a public health emergency of international concern. In the present case, the Court notes that the health situation in St Petersburg clearly remained difficult at the time of the events. Moreover, the city was among the areas most severely affected by the second wave of the pandemic (see paragraph 25 above). The Court is prepared to accept that the maintaining of COVID-19-related restrictions in St Petersburg, as cited by the domestic courts and in force on 31 January 2021, generally pursued a pressing social need to protect individual and public health.

140. However, the Court cannot disregard the context in which the restrictions were applied in the third applicant's case. As she argued in her appeal, and as shown by the regulations in force in St Petersburg at the material time, a strict lockdown was no longer in force (see paragraph 63 above, and contrast the first and second applicants' cases). Several COVID-19-related restrictions had been altered or eased. The public transport system was operating, and educational activities had restarted. The Court further puts special emphasis on the following factors, set out in Decree no. 121, as amended by Decree no. 32 of 29 January 2021 and in force as of 30 January 2021, the date of the events in the third applicant's case. Firstly, restaurants were allowed to operate, and theatres and concert halls were permitted to receive audiences, with the allowed capacity increased to 50%. Secondly, as regards indoors and outdoors sports, cultural, entertainment and other events, only those involving more than fifty participants appear to have remained suspended. Lastly, the regulations indicate that, in some cases, sports events could be authorised to accommodate up to 15,000 spectators (see paragraphs 63-64 above).

141. Bearing in mind the above, the Court will now examine the proportionality of the two grounds cited by the domestic appellate court to justify the interference.

– *Ban on public events*

142. Firstly, the Court notes that, in contrast to *Central Unitaria de Trballadores/as* (cited above, §§ 38, 43 and 65), the impugned ban in St Petersburg amounted to a *de facto* suspension of the right to assembly at the time of the events, with no provision made for exceptions in the light of factors such as, for instance, strict compliance with public health and/or social distancing measures, restricting the number of participants or distinguishing between events held indoors and outdoors (see paragraph 64 (i) above). Secondly, the total ban had remained in force for about ten months by the time of the events in the third applicant's case – that is, for a particularly long period of time. It appears that it was not modified or eased after its introduction in March 2020. That stood in contrast to other

COVID-19-related restrictions introduced in St Petersburg, which had evolved considerably since the beginning of the pandemic, and which the authorities sought to adjust in a timely manner (see paragraphs 25 and 63-64 above). In the absence of any further justifications, or a response from the domestic court to that argument raised by the third applicant, the Court finds no sufficient justification in the case material for such a divergent approach to activities comparable in terms of public health risks.

143. The Court stresses at this juncture that the right to freedom of assembly is one of the foundations of a democratic society (see *Kudrevičius and Others*, cited above, § 142). The political life of a country is not suspended during a pandemic. In the present case, the participants in the open-air gathering of 31 January 2021 expressed their protest against a contemporary event of undeniable public importance: the arrest of the opposition leader and his ongoing detention and prosecution. The Court fails to see how a ban on any and all types of public events – that is, on the exercise of a fundamental Convention right to assembly, notably in response to a recent political development – could remain justified, while leisure and recreation activities were possible at the very same stage of the pandemic, albeit with certain restrictions. It can only conclude that the measure was not a “nuanced one which [sought] to cater for concerns by distinguishing between relevant different categories on appropriate grounds and whose impact [might] lessen with time” (see, *mutatis mutandis*, *M.C. v. the United Kingdom*, cited above, § 52). The Court’s concerns are further exacerbated by the lack of any information on the exacting parliamentary and judicial review of the blanket restriction of the fundamental rights at stake.

144. Additionally, the Court observes that the ban on public events apparently remained in force until at least 16 September 2022, the date on which the Russian Federation ceased to be a party to the Convention (see paragraph 11 above).

145. In sum, it cannot share the appellate court’s succinct conclusion that the state of high alert constituted a sufficient basis for restricting the right to assembly.

– *COVID-19-related restrictions*

146. In so far as the third applicant was prosecuted for breaching the public health requirements introduced by the Chief Medical Officer of Russia (see paragraphs 65 and 66 above), the Court has found above that the introduction of social distancing itself responded to a “pressing social need” in the context of the evolving pandemic. However, it fails to discern any such need for her arrest, escorting to a police station in a crowded van and detention pending trial in connection with the alleged breach of social distancing rules.

147. Given the peculiar context of the pandemic, the Court will dispense with determining the issue of whether the authorities were expected to display

the same “degree of tolerance” towards a peaceful unauthorised event conducted in breach of social distancing requirements, in so far as the dispersal of the assembly was concerned. Be that as it may, the Court notes the following factors that raise doubts as to the authorities’ allegation that considerations related to health protection were the key reason for the dispersal of the gathering and the arrest of its participants (see, *mutatis mutandis*, *Makhmudov v. Russia*, no. 35082/04, § 71, 26 July 2007) or, as the third applicant suggested, of people who had happened to pass nearby. According to the third applicant’s non-disputed submissions, not only was she immediately arrested, but also, for no less than one hour and thirty minutes, she was transferred to a police station in a van together with other protestors. The police station, where she was then detained for no less than twenty-two hours, was also overcrowded, with no social distancing or other health measures having been applied to the arrested individuals. The conditions thus described clearly sat ill with the aims of “protection of health” and “the protection of the rights and freedoms of others” in the pandemic context, from the standpoint of reducing contacts, transmission of the virus or otherwise. The authorities failed to explain why it was impossible for them to impose a reasonable fine on the spot or later (see, *mutatis mutandis*, *Novikova and Others*, § 175, 26 April 2016, and *Lashmankin and Others*, § 462, both cited above). Therefore, the third applicant’s arrest and detention fell short of being proportionate to the legitimate aims pursued.

148. Furthermore, the Court is not satisfied that the domestic courts conducted a meaningful balancing exercise between the requirements of the purposes listed in Article 11 § 2 of on the one hand, and those of the free expression of opinions by persons assembled on the streets or in other public places, on the other, as required by the Court’s case-law (see *Kudrevičius and Others*, cited above, § 144). First, the courts classified the assembly as “not constituting a public event”, which, in the absence of any reasoning, raises doubts as to whether the domestic decisions were based on an acceptable assessment of the facts. As a result, the domestic courts failed to consider the gathering as entitled to the full protection granted by Article 11. Secondly, and most importantly, in response to the third applicant’s clear and pertinent arguments concerning the nature and scope of the restrictions on protest activity and the application of those restrictions against peaceful protestors in a period when normal life in the city had been gradually resuming (see paragraph 36 above), the domestic court confined itself to a succinct observation that there existed a “sufficient basis” for the restrictions (see paragraph 37 above, and contrast *Central Unitaria de Traballadores/as*, cited above, §§ 19-22, 25-31 and 93-94, in which the domestic courts responded to the key arguments in detail). Thirdly, the “negative consequences” of the third applicant’s conduct were never specified, even though their occurrence was crucial for establishing liability under Article 20.2.2 of the CAO (see the Constitutional Court’s findings in paragraph 80 above), and even though her

failure to “realise [such] consequences” justified, in the courts’ view, her detention (see paragraph 33 above). In sum, the reasons advanced by the courts, admittedly relevant as regards the importance of the application of the social distancing requirement, were clearly insufficient to justify the interference with the third applicant’s rights protected by Article 11 of the Convention.

149. Lastly, the third applicant was sanctioned with ten days’ administrative detention. The Court is not satisfied that a mere reference to her “personality” and failure to “realise” the consequences of her actions was sufficient, without further elaboration, to render the sanction proportionate (see *Kudrevičius and Others*, cited above, § 146, with further references). In the light of the above, the Court finds that the sanction of ten days’ administrative detention was disproportionate to the legitimate aim admittedly pursued by the authorities. It could only have the effect of discouraging supporters of the opposition and the general public from attending demonstrations and, more generally, from participating in open political debate.

– *Conclusion in respect of the third applicant*

150. The Court concludes that by arresting the third applicant, transferring her to the police station, detaining her and sanctioning her with a lengthy period of administrative detention for breaching health regulations, at a time when several COVID-19-related restrictions (other than those applicable to the right to assembly) had already been eased in her region, the national authorities overstepped the wide margin of appreciation afforded to them. The means employed to achieve the legitimate aims pursued were disproportionate and, accordingly, the interference was not necessary in a democratic society.

151. There has accordingly been a violation of Article 11 of the Convention in respect of the third applicant.

2. *The first applicant’s participation in solo demonstrations on 5 June 2020*

(a) **The parties’ submissions**

(i) *The first applicant*

152. The first applicant submitted that the interference had been unlawful. The domestic law in force at the time of the events (June 2020) had not made it possible to distinguish between a “solo demonstration” and series of solo demonstrations staged by several participants in turn. Solo pickets had not required notification and could be held anywhere and at any time, except in cases of a direct ban under domestic law. In any event, the interference had been disproportionate and therefore unnecessary.

*(ii) The Government*

153. The Government argued that the PEA set out procedures aimed at ensuring the peaceful and safe conduct of public events, protecting the rights of non-participants and avoiding potential breaches of public order. Referring to the administrative case material in respect of the first applicant, they submitted that the participants' actions had amounted to a single public event in the form of picketing, which had not been notified to the city authorities. It was sufficiently evident that the participants' actions had pursued a common aim, had had single organisation, the protestors had put forward similar demands and used "associatively recognisable" or identical placards. They had attracted the attention of the mass media, bloggers and citizens. Accordingly, there had been well-founded grounds for the prosecution for failing to notify the competent authority of the public event, and the sanction imposed on the first applicant had been fair.

**(b) The Court's assessment**

154. The domestic courts found that on 5 June 2020 the first applicant and some ten other protestors had taken part in a series of solo demonstrations in support of the second applicant (see paragraph 38 above). Having determined that the interference should be examined under Article 11 (see paragraph 93 above), the Court finds that the dispersal of the event and the applicant's arrest, detention and prosecution constituted an interference with his right to assembly.

155. The events unfolded in June 2020, when various restrictions introduced in response to the spread of COVID-19 were in force in Moscow. However, the domestic courts did not refer to the COVID-19-related restrictions, either explicitly or in substance. While the administrative-offence record of 22 July 2020 mentioned the COVID-19-related ban on public events (see paragraph 39 above), the domestic courts examined the first applicant's acts solely from the standpoint of failure to comply with the notification requirement (see paragraphs 40 and 42 above). Bearing in mind its subsidiary role, the Court will not speculate on any potential impact of the pandemic-related restrictions on the events of 5 June 2020 but will examine the reasons underlying the interference as stated in the domestic judicial decisions.

156. The Court further notes, based on the first applicant's submissions, that the event on 5 June 2020 was planned as a series of static solo demonstrations because that was the only form of public event not subject to the requirement of prior notification to the competent authority (see *Novikova and Others*, cited above, §§ 154-55). The first applicant insisted that the *post facto* reclassification of such solo demonstrations as a group public event requiring prior notification had been unforeseeable at the time of the events. The Court considers that it does not need to delve into the "quality of law"

requirement or reach a firm conclusion as to whether any legitimate aim was pursued in this case, as the interference was, in any event, not “necessary” in a democratic society, as follows.

157. The Court has frequently found a violation of Article 11 of the Convention in cases where participants in a public gathering were arrested and convicted of administrative offences for the sole reason that the State authorities perceived their public gatherings to be unauthorised (see, among many other authorities, *Navalnyy*, §§ 144-46; *Lashmankin and Others*, §§ 461-63, and the cases cited therein; and *Novikova and Others*, §§ 175 and 179-212, all cited above). In so far as the domestic courts chose to consider the case a “standard” breach of the notification requirement, the Court has not found any fact or argument capable of persuading it to reach a different conclusion. The series of solo demonstrations in question was held in response to an event of public importance, that is, the prosecution of the second applicant, a renowned journalist and Moscow municipal deputy. There is nothing in the case material to suggest that the first applicant or any other participant in the small event engaged in violent behaviour, showed violent intentions or disobeyed police orders, or that the “picket line” caused any disruption to ordinary life. The domestic courts made no attempt to verify the extent of the risks posed by the protestors (including, as highlighted above, from the standpoint of any COVID-19 related risks or otherwise), nor did they make sufficient efforts to balance the first applicant’s legitimate interests against any potential damage his conduct could have caused to other public or private interests. Lastly, he was sentenced to a significant fine of approximately EUR 1,730 (see paragraph 40 above), conducive to creating a “chilling effect” on legitimate exercise of the right to protest (see *Novikova and Others*, cited above, §§ 210-12, and *Ecodefence and Others v. Russia*, nos. 9988/13 and 60 others, §§ 181-82, 14 June 2022). Therefore, the authorities failed to show the requisite degree of tolerance in the present case, as well as to adduce relevant and sufficient reasons to justify the interference with the right to freedom of assembly. The interference was therefore not “necessary in a democratic society”.

158. There has accordingly been a violation of Article 11 of the Convention in respect of the first applicant.

### *3. The first applicant’s solo demonstration in Red Square*

159. The applicant argued that the general ban on holding public events in Red Square of Moscow adjacent to the Moscow Kremlin, the official residence of the President of Russia, was unjustified and excessive, as well as unforeseeable in its application insofar as the exact perimeter of the prohibited area was not clearly defined by law; and that the authorities had failed to cite any legitimate aim for the unjustified interference in response to his peaceful protest.

160. The Government argued that the interference was justified as the applicant had breached the ban on public events in the area clearly defined in the domestic law.

161. The relevant legal provisions have been summarised in *Lashmankin and Others* (cited above, §§ 223-25). Even assuming that the interference was lawful and could be regarded as pursuing the aims of ensuring public safety and preventing disorder (see *Lashmankin and Others*, cited above, § 435), the Court finds that the interference in the present case was not necessary in the democratic society, for the following reasons. No explanation was advanced by the Government as to why a general and categorical ban on any events to be held in Red Square, a symbolic venue close to one of the centres of State power and otherwise open to the public, was necessary to address any security risks, as opposed to a case-by-case examination of such risks (see *Lashmankin and Others*, cited above, §§ 431-42, and *Kablis v. Russia*, nos. 48310/16 and 59663/17, §§ 53-59, 30 April 2019).

162. Furthermore, the Court notes that the applicant was arrested, detained overnight and sanctioned to twenty days' administrative detention on the basis of a sole reference to the above ban (see paragraph 44 above). The only relevant consideration was the need to punish unlawful conduct (see *Glukhin v. Russia*, no. 11519/20, § 56, 4 July 2023; and, *mutatis mutandis*, *Ibragimova v. Russia*, no. 68537/13, § 37, 30 August 2022, and *Novikova and Others*, cited above, § 199). The applicant was not found to have committed any reprehensible act, nor was it claimed that his actions had presented any specific security risks. In these circumstances, the sanction in the form of lengthy deprivation of liberty, imposed in connection with a short and peaceful solo demonstration – even if justified in part by the reference to his previous similar convictions – was clearly disproportionate and capable of having a chilling effect on the exercise of freedom of expression (see *Glukhin*, § 56, *Novikova and Others*, § 209, and, *mutatis mutandis*, *Lashmankin and Others*, § 462, all cited above).

163. There has accordingly been a violation of Article 10 of the Convention interpreted in the light of Article 11 of the Convention.

### III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

#### A. Other complaints under the Court's well-established case-law

164. The applicants further complained, under Article 5 § 1 of the Convention, about their administrative arrest and detention. They also complained, under Article 6 § 1 (in its criminal limb), of breaches of fair trial guarantees owing to the absence of the prosecuting party in the administrative-offence proceedings. Lastly, they complained, under Article 2 of Protocol No. 7 to the Convention, about the lack of suspensive effect of an appeal against the administrative detention imposed on them.

165. These complaints, which fall under the Court's well-established case-law, are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor are they inadmissible on any other grounds. Accordingly, they must be declared admissible.

166. Having examined the material before it, the Court concludes these complaints also disclose violations of Articles 5 § 1 in relation to the second and third applicants' cases and the events of 26 May and 5 June 2020 in the first applicant's case, and of Article 2 of Protocol No. 7 in relation to the second and third applicants' cases and the events of 26 May and 25 June 2020 in the first applicant's case. These conclusions are made in the light of the Court's findings in *Butkevich v. Russia* (no. 5865/07, §§ 63-65, 13 February 2018), *Tsvetkova and Others v. Russia* (nos. 54381/08 and 5 others, §§ 115-31, 10 April 2018) and *Korneyeva v. Russia* (no. 72051/17, §§ 34-36, 8 October 2019) as to various aspects of unlawful deprivation of liberty of organisers or participants in public assemblies, as well as *Martynyuk v. Russia* (no. 13764/15, §§ 38-42, 8 October 2019) relating to the lack of suspensive effect of an appeal against administrative detention. They also disclose violations of Article 6 § 1 of the Convention in all three cases, in the light of the Court's findings in *Karelin v. Russia* (no. 926/08, §§ 58-85, 20 September 2016) concerning the absence of a prosecuting party in the proceedings under the CAO.

### **B. Remaining complaints**

167. Lastly, the first and third applicants complained, under Article 6 § 3 (d) of the Convention, that they had been unable to cross-examine in court the police officers whose written statements had formed the basis of their convictions. The second applicant further complained, under Article 14 in conjunction with Article 8, that he had suffered discrimination in the exercise of his rights under the Convention on the basis of sex, in so far as under Article 3.9 § 2 of the CAO, administrative arrest could not be imposed on women with children under the age of fourteen but could be imposed on men with children under the same age. Having regard to its findings above, the Court considers that there is no need to give a separate ruling on the admissibility and merits of the remaining complaints under the above-mentioned provisions (see, *mutatis mutandis*, *Centre for Legal Resources on behalf of Valentin Câmpeanu*, cited above, § 156).

## **IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION**

168. 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. Article 41 of the Convention**

### *1. Damage*

169. All three applicants submitted that they had suffered non-pecuniary damage and left the determination of the amount of the award in respect of non-pecuniary damage to the Court’s discretion. The first applicant further claimed EUR 1,730 in respect of pecuniary damage, which represented the amount of the fine he had had to pay (see paragraph 40 above), and submitted proof of payment of that fine.

170. The Government did not comment.

171. The Court awards each applicant EUR 9,700 in respect of non-pecuniary damage, plus any tax that may be chargeable. The Court further awards the first applicant EUR 1,730 in respect of pecuniary damage, plus any tax that may be chargeable.

### *2. Costs and expenses*

172. The applicants did not make claims in respect of costs and expenses. Accordingly, there is no call for the Court to make an award under that head.

## **B. Article 46 of the Convention**

173. Lastly, in view of the respondent Government’s persistent refusal to pay just satisfaction to the successful applicants, the third applicant (application no. 46231/21) invited the Court to indicate, under Article 46 of the Convention, that the Committee of Ministers should establish an effective “alternative mechanism” to ensure the payment of the awards.

174. The Court reiterates that cessation of a Contracting Party’s membership of the Council of Europe does not release it from its duty to cooperate with the Convention bodies. The Committee of Ministers continues to supervise the execution of the Court’s judgments against the Russian Federation and the Russian Federation is required, pursuant to Article 46 § 1 of the Convention, to implement them, despite the cessation of its membership of the Council of Europe (see *Andrey Rylkov Foundation and Others v. Russia*, nos. 37949/18 and 83 others, § 120, 18 June 2024, and *Kobaliya and Others v. Russia*, nos. 39446/16 and 106 others, § 124, 22 October 2024).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Holds* that the Government's failure to participate in the proceedings presents no obstacles for the examination of the third applicant's application and that it has jurisdiction to deal with all applicants' complaints;
3. *Declares* the complaints under Articles 5 § 1, 6 § 1, 10 and 11 of the Convention and Article 2 of Protocol No. 7 to the Convention admissible;
4. *Holds* that there has been no violation of Article 10 of the Convention in respect of the first applicant in relation to the solo demonstration on 26 May 2020;
5. *Holds* that there has been a violation of Article 10 of the Convention in respect of the first applicant in relation to the solo demonstration on 25 June 2020;
6. *Holds* that there has been a violation of Article 11 of the Convention in respect of the first applicant in relation to his participation in the solo demonstrations on 5 June 2020;
7. *Holds* that there has been a violation of Article 11 of the Convention in respect of the second and third applicants;
8. *Holds* that there has been a violation of Articles 5 § 1 and 6 § 1 of the Convention and Article 2 of Protocol No. 7 to the Convention in respect of all three applicants;
9. *Holds* that there is no need to examine the admissibility and merits of the complaints under Article 6 § 3 (d) of the Convention in the first and third applicants' cases and under Article 14 taken in conjunction with Article 8 of the Convention in the second applicant's case;
10. *Holds*
  - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

- (i) EUR 1,730 (one thousand seven hundred and thirty euros), plus any tax that may be chargeable, to the first applicant in respect of pecuniary damage;
- (ii) EUR 9,700 (nine thousand seven hundred euros), plus any tax that may be chargeable, to each of the three applicants in respect of non-pecuniary damage;
- (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.

Done in English, and notified in writing on 27 May 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova  
Deputy Registrar

Ioannis Ktistakis  
President

NEMYTOV AND OTHERS v. RUSSIA JUDGMENT

APPENDIX

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Nationality Place of residence at the time of the events	Represented by
1.	1257/21	Nemytov v. Russia	29/11/2020	<b>Viktor Aleksandrovich NEMYTOV</b> 1982 Russian Moscow	Mansur Idrisovich GILMANOV
2.	3244/21	Azar v. Russia	02/12/2020	<b>Ilya Vilyamovich AZAR</b> 1984 Russian Moscow	Leonid Alekseyevich SOLOVYEV
3.	46231/21	Burma v. Russia	01/09/2021	<b>Yelizaveta Aleksandrovna BURMA</b> 1998 St Petersburg	Aleksandr Dmitriyevich PEREDRUK