



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

THIRD SECTION

**CASE OF RAZVOZZHAYEV v. RUSSIA AND UKRAINE AND
UDALTSOV v. RUSSIA**

(Applications nos. 75734/12 and 2 others - see appended list)

JUDGMENT

Art 1 • Jurisdiction of States

Arts 3 and 5 § 1 • Positive obligations • Respondent States' failure to investigate allegations of cross-border abduction and ill-treatment involving State agents

Art 6 § 1 (criminal) • Fair hearing • Co-defendant admitted as witness against the accused after conviction in disjoined plea-bargaining procedure without prior adversarial scrutiny • Art 6 § 3 (b) • Adequate facilities • Unnecessary confinement of accused in glass cabin at court hearings over a number of months • Applicant's ineffective participation in his trial due to excessively intensive court hearing schedule coupled with lengthy prison transfers

Art 8 • Family life • Detainee not allowed to visit ill mother or to attend her funeral later • Detainee's transfer to a remote prison

Art 11 • Freedom of peaceful assembly • Conviction for organising "mass disorder" on account of clashes during demonstration, without sufficient scrutiny of event organiser's own acts and intentions

Art 1 P1 • Control of the use of property • Unlawful continued application of attachment order in respect of applicant's assets after the end of criminal proceedings

STRASBOURG

19 November 2019

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

In the case of Razvozzhayev v. Russia and Ukraine and Udaltsov v. Russia,

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

Paul Lemmens, *President*,
Georgios A. Serghides,
Ganna Yudkivska,
Paulo Pinto de Albuquerque,
Helen Keller,
Dmitry Dedov,
Alena Poláčková, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 8 October 2019,

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

PROCEDURE

1. The case originated in one application against the Russian Federation and Ukraine (no. 75734/12) and two applications against the Russian Federation (nos. 2695/15 and 55325/15) lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Russian nationals, Mr Leonid Razvozzhayev (“the first applicant”) and Mr Sergey Udaltsov (“the second applicant”; collectively “the applicants”), on 28 November 2012, 13 January 2015 and 10 September 2015 respectively.

2. The applicants were represented by Mr D.V. Agranovskiy, a lawyer practising in Elektrostal. The second applicant was also represented by Ms V. Volkova, a lawyer practising in Elektrostal. The Russian Government were represented initially by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin. The Ukrainian Government were represented by their then Acting Agent, Ms O. Davydchuk.

3. The first applicant alleged, in particular, that Russia and Ukraine had failed to carry out an effective investigation into his allegations of unlawful deprivation of liberty and inhuman and degrading treatment. In respect of Russia the applicants complained that insufficient reasons had been given for both applicants’ pre-trial detention, that they had not had a fair hearing in their criminal case, that there had been a breach of their right to freedom of assembly, that there had been a breach of the first applicant’s right to family life and that the attachment of the second applicant’s property had been unlawful.

4. Between 7 July 2014 and 27 April 2016 the Russian and Ukrainian Governments were given notice of the applications, which were granted priority under Rule 41 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1973 and 1977 respectively and live in Moscow.

6. The first applicant is a political activist. At the time of events he worked as an assistant to a State Duma Deputy. The second applicant is a political activist and a member of an opposition movement, “Levy Front”. In 2012 he organised a political rally held on 6 May 2012 at Bolotnaya Square in Moscow, following which both applicants were convicted of conspiracy to organise mass disorder and were sentenced to four and a half years’ imprisonment.

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

A. Dispersal of a public event at Bolotnaya Square on 6 May 2012

8. The background facts relating to the planning, conduct and dispersal of the assembly at Bolotnaya Square are set out in the judgment in the case of *Frumkin v. Russia* (no. 74568/12, §§ 7-65, 5 January 2016). The parties’ submissions on the circumstances directly relevant to the present case are set out below.

9. On 23 April 2012 five individuals (Mr I. Bakirov, Mr S. Davidis, Ms Y. Lukyanova, Ms N. Mityushkina and the second applicant) submitted notice of a public demonstration to the mayor of Moscow. The aim of the demonstration was “to protest against abuses and falsifications in the course of the elections to the State Duma and of the President of the Russian Federation, and to demand fair elections and respect for human rights, the rule of law and the international obligations of the Russian Federation”.

10. On 3 May 2012 the Moscow Department of Regional Security approved the route from Kaluzhskaya Square, down Bolshaya Yakimanka Street and Bolshaya Polyanka Street, followed by a meeting at Bolotnaya Square, noting that the organisers had provided a detailed plan of the proposed events. The march was to begin at 4 p.m., and the meeting had to finish by 7.30 p.m. The number of participants was indicated as 5,000.

11. On 4 May 2012 the First Deputy Head of the Moscow Department of Regional Security held a working meeting with the organisers of the

demonstration at Bolotnaya Square, at which they discussed the security issues. The organisers and the authorities agreed that the assembly layout and the security arrangements would be identical to the previous public event organised by the same group of opposition activists on 4 February 2012. On that occasion, the venue of the meeting had included the park at Bolotnaya Square and the Bolotnaya embankment.

12. On 5 May 2012 the Moscow Department of Regional Security asked the Moscow city prosecutor's office to issue a warning to the organisers against exceeding the notified number of participants and against erecting tents at the meeting venue, an intention that had allegedly been indicated by the demonstration organisers who had attended the working meeting. The Moscow Department of Regional Security also referred to information found on the Internet indicating that the demonstrators would go to Manezhnaya Square after the meeting. On the same day the Tsentralnyy District Prosecutor's Office issued a warning to two of the organisers, Mr Davidis and the second applicant, against exceeding the notified number of participants and against erecting camping tents at the meeting venue, an intention allegedly expressed by the organisers at the working meeting.

13. On the same day the Moscow Department of the Interior published on its website the official information about the forthcoming demonstration on 6 May 2012, including a map. The map indicated the route of the march, the traffic restrictions and an access plan to Bolotnaya Square; it delineated the area allotted to the meeting, which included the park at Bolotnaya Square. Access to the meeting was marked through the park.

14. On the same day the Police Chief of the Moscow Department of the Interior adopted a plan for safeguarding public order in Moscow on 6 May 2012 (the "security plan"). In view of the forthcoming authorised demonstration at Bolotnaya Square and anticipated attempts by other opposition groups to hold unauthorised public gatherings, it provided for security measures in Moscow city centre and set up operational headquarters to implement them. The police units assigned to police the march and the meeting included 2,400 riot police officers, of whom 1,158 were on duty at Bolotnaya Square. They were instructed, in particular, to search the demonstrators to prevent them from taking tents to the site of the meeting and to obstruct access to Bolshoy Kamenyy bridge, diverting the marchers to Bolotnaya embankment, the place of the meeting. The adjacent park at Bolotnaya Square had to be cordoned off.

15. At about 1.30 p.m. on 6 May 2012 the organisers were allowed access to the meeting venue to set up their stage and sound equipment. The police searched the vehicles delivering the equipment and seized three tents found amid the gear. They arrested several people for bringing the tents.

16. At the beginning of the march, Police Colonel A. Makhonin met the organisers at Kaluzhskaya Square to clarify any outstanding organisational matters and to have them sign the undertaking to ensure public order during

the demonstration. He specifically asked the second applicant to ensure that no tents were placed on Bolotnaya Square and that the participants complied with the limits on the place and time allocated for the assembly. The organisers gave their assurances on those issues and signed the undertaking.

17. The march began at 4.30 p.m. at Kaluzhskaya Square. It went down Yakimanka Street peacefully and without disruption. The turnout exceeded expectations, but there is no consensus as to the exact numbers. The official estimate was that there were 8,000 participants, whereas the organisers considered that there were about 25,000. The media reported different numbers, some significantly exceeding the above estimates.

18. At about 5 p.m. the march approached Bolotnaya Square. The leaders found that the layout of the meeting and the placement of the police cordon did not correspond to what they had anticipated. Unlike on 4 February 2012, the park at Bolotnaya Square was excluded from the meeting venue, which was limited to Bolotnaya embankment.

19. Faced with the police cordon and unable to access the park, the leaders of the march – the second applicant, Mr A. Navalnyy, Mr B. Nemtsov and Mr I. Yashin – stopped and demanded that the police open access to the park. According to the protesters, they were taken aback by the alteration of the expected layout and were unwilling to turn towards Bolotnaya embankment; they therefore demanded that the police officers at the cordon move the cordon back to allow sufficient space for the protesters to pass and to assemble for the meeting. According to the official version, the protesters were not interested in proceeding to the meeting venue; they stopped because they had either intended to break the cordon in order to proceed towards Bolshoy Kamennyy bridge and then to the Kremlin, or to stir up the crowd to incite disorder. After about fifteen minutes of attempting to engage with the cordon officers, who did not enter into any discussion and with no senior officer delegated to negotiate, at 5.16 p.m. the four leaders announced that they were going on a “sit-down strike” and sat on the ground. The people behind them stopped, although some people continued to go past them towards the stage. The leaders of the sit-in called on other demonstrators to follow their example and sit down, but only a few of their entourage did so (between approximately twenty and fifty people in total).

20. Between 5.20 p.m. and 5.45 p.m. two State Duma deputies, Mr G. Gudkov and Mr D. Gudkov, contacted unidentified senior police officers to negotiate the enlargement of the restricted area by moving the police cordon behind the park along the lines expected by the organisers. At the same time Mr V. Lukin, the Ombudsman of the Russian Federation, at the request of Police Colonel Biryukov, attempted to convince the leaders of the sit-in to resume the procession and to head towards the meeting venue at Bolotnaya embankment, where the stage had been set up. During that time no senior police officers or municipal officials came to the site of the

sit-down protest, and there was no direct communication between the authorities and the leaders of the sit-in.

21. At 5.40 p.m. one of the meeting participants announced from the stage that the leaders were calling on the demonstrators to support their protest. Some people waiting in front of the stage headed back to Malyy Kamennyy bridge, either to support the sit-down protest or to leave the meeting. The area in front of the stage almost emptied.

22. At 5.43 p.m. the media reported that the second applicant had demanded that the protesters be given airtime on Russia's main television channels, that the presidential inauguration of Mr Putin be cancelled and that new elections be called.

23. At 5.50 p.m. the crowd around the sit-down protest built up, which caused some congestion, and the leaders abandoned the protest and headed towards the stage, followed by the crowd.

24. At 5.55 p.m. the media reported that the police authorities were regarding the strike as incitement of mass disorder and were considering prosecuting those responsible for it.

25. At the same time a commotion arose near the police cordon at the place vacated by the sit-down protest, and the police cordon was broken in several places. A crowd of about 100 people spilled over to the empty space beyond the cordon. Within seconds the police restored the cordon, which was reinforced by an additional riot police force. Those who found themselves outside the cordon wandered around, uncertain what to do next. Several people were apprehended, others were pushed back inside the cordon, and some continued to loiter outside or walked towards the park. The police cordon began to push the crowd into the restricted area and advanced by several metres, pressing it inwards.

26. At 6 p.m. Police Colonel Makhonin told Ms Mityushkina to make an announcement from the stage that the meeting was closed. She did so, but apparently her message was not heard by most of the demonstrators or the media reporters broadcasting from the spot. The live television footage provided by the parties contained no mention of her announcement.

27. At the same time a Molotov cocktail was launched from the crowd at the corner of Malyy Kamennyy bridge over the restored police cordon. It landed outside the cordon and the trousers of a passer-by caught fire. The fire was promptly extinguished by the police.

28. At 6.15 p.m. at the same corner of Malyy Kamennyy bridge the riot police began breaking into the demonstration to split the crowd. Running in tight formations, they pushed the crowd apart, arrested some people, confronted others and formed new cordons to isolate sections of the crowd. Some protesters held up metal barriers and aligned them so as to resist the police, threw various objects at the police, shouted and chanted "Shame!" and other slogans, and whenever the police apprehended anyone from

among the protesters they attempted to pull them back. The police applied combat techniques and used truncheons.

29. At 6.20 p.m. the second applicant climbed onto the stage at the opposite end of the square to address the meeting. At that time many people were assembled in front of the stage, but, as it turned out, the sound equipment had been disconnected. The second applicant took a loudspeaker and shouted:

“Dear friends! Unfortunately we have no proper sound, but we will carry on our action, we are not going away because our comrades have been arrested, because tomorrow is the coronation of an illegitimate president. We shall begin an indefinite protest action. You agree? We shall not leave until our comrades are released, until the inauguration is cancelled and until we are given airtime on the central television channels. You agree? We are power here! Dear friends, [if] we came out in December [2011] and in March [2012], it was not to put up with the stolen elections, ... it was not to see the chief crook and thief on the throne. Today we have no choice – stay here or give the country to crooks and thieves for another six years. I consider that we shall not leave today. We shall not leave!”

30. At this point, at 6.21 p.m., several police officers arrested the second applicant and took him away. Mr Navalnyy and Mr Nemtsov were also arrested as they were attempting to address people from the stage.

31. Meanwhile, at the Malyy Kamenny bridge the police continued dividing the crowd and began pushing some sections away from the venue. Through the loudspeakers they requested the participants to leave for the metro station. The dispersal continued for at least another hour until the venue was fully cleared of all protesters.

B. Investigation of the “mass disorder” case

32. On 6 May 2012 the first deputy head of the Moscow Department of Regional Security drew up a report summarising the security measures taken on that day in Moscow and stating that 656 protesters had been detained. The report stated that it was the second applicant, among others, who had provoked the stand-off and the breaking of the police cordon and that he had called on the demonstrators to stay at the meeting venue to take part in an indefinite protest action.

33. On the same day the Investigation Committee of the Russian Federation opened a criminal investigation into the alleged mass disorder and violent acts against the police (offences under Article 212 § 2 and Article 318 § 1 of the Criminal Code).

34. On 28 May 2012 an investigation was also launched into the criminal offence of organising mass disorder (offences under Article 212 § 1 of the Criminal Code). The two criminal cases were joined on the same day.

35. On 5 October 2012 the NTV television channel showed a film, *Anatomy of Protest, Part Two*, which featured the applicants and their

fellow activist Mr L., discussing with Mr T. the plans for opposition events and financing options involving sponsorship by Mr T.

C. The second applicant's house arrest during the investigation

36. On 10 October 2012 the Investigation Committee of the Russian Federation questioned the second applicant on the basis of the allegations made in the film *Anatomy of Protest, Part Two*.

37. On 16 October 2012 the Investigation Committee opened a criminal investigation into suspected conspiracy to organise mass disorder in various Russian regions by the applicants and other persons (Article 30 § 1 and Article 212 § 1 of the Criminal Code). The applicants, Mr L. and some other unidentified individuals were suspected of having conspired to organise acts of mass disorder, and in particular of having planned riots in Moscow, Kaliningrad, Vladivostok and other regions of Russia, as well as in penal institutions, and of having planned other actions such as blocking railway lines and counteracting the police responsible for securing public order. It was indicated that the riots in question had been planned for autumn 2012. The applicants and their accomplices had allegedly discussed ways of raising funds for these offences, in particular from abroad, and had allegedly planned to recruit activists from across the country to be trained in special training camps.

38. On the following day, charges were brought against the second applicant. As a preventive measure, he gave an undertaking not to leave Moscow without the investigator's or the court's permission, and to display proper behaviour. On the same day the first applicant was put on a "wanted" list on the grounds that he was absent from his home address.

39. On 23 October 2012 the investigator issued a statement that on that day he could not contact the second applicant at his home address or by telephone to summon him to receive the indictment on 26 October 2012.

40. On 26 October 2012 the second applicant attended the investigator's office and received the indictment. He was given the status of an accused in the criminal case instituted on 28 May 2012.

41. On 6 December 2012 the justice of the peace of the Basmannyy District Court of Moscow convicted the second applicant of an administrative offence for having organised and participated in an unauthorised public event on 27 October 2012, under Article 20.2 of the Code of Administrative Offences. It was established, in particular, that some fifty people had held a series of stationary demonstrations to protest against crackdowns, followed by a march which, according to the judgment, had caused a certain amount of disruption to traffic.

42. On 1 January 2013 the Investigation Committee joined the second applicant's criminal case file to the criminal case opened on 28 May 2012.

43. On 9 February 2013 the Basmannyy District Court of Moscow examined a request by the investigator to place the second applicant under house arrest pending the completion of the criminal investigation. The request referred to the applicant's regular absence from his place of residence, allegedly because he was travelling to other regions and abroad; his possession of a travel passport; the fact that his wife and children were temporarily living in Ukraine; his extensive contacts in Russia and abroad; the investigator's difficulties in contacting the applicant to ensure his attendance at the investigator's office; and his conviction for the administrative offence of having taken part in an unauthorised stationary demonstration on 27 October 2012, his subsequent participation in an opposition rally on 15 December 2012 and the alleged attempt to burn some symbolic merchandise during a public event on 13 January 2013 while calling for protest actions. The applicant contested that he had breached the undertaking and stated that the circumstances existing at the time of choosing the original preventive measure had not changed. He claimed that he had not left Moscow while the preventive measure was in place; that he had attended the investigator's office in due time; that he had requested the investigator's permission to travel to Ukraine but his request had been refused; that his travel passport had not been seized by the investigator; and that his undertaking did not prevent him from participating in public events. He denied having breached the procedure for holding public events, contended that his administrative conviction as a result of the demonstration on 27 October 2012 had been unlawful and pointed out that the allegations of breaches on two other occasions were unsubstantiated. Moreover, he alleged that his undertaking did not contain a prohibition on the commission of administrative offences in the relevant period and had no connection with the pending proceedings.

44. On the same day the court granted the investigator's request and ordered the second applicant's house arrest for two months. It considered it established that the second applicant had demonstrated that he posed risks of absconding, continuing criminal activity, interfering with witnesses and other participants in the criminal proceedings, destroying evidence and otherwise obstructing the course of justice. It referred to the gravity of the charges, the administrative offences committed by the applicant, his criminal record, his lengthy absence from his registered address and the investigator's difficulties in contacting him, and concluded that he had breached the undertaking. It imposed a number of conditions on the applicant for the period of his house arrest, in particular:

“- [a prohibition] on leaving the [home address] without authorisation by the investigating authority ...;

- on communicating with anyone, except for immediate family, as defined by law, legal counsel representing him in the criminal case and [investigating officials];
- on receiving or sending any postal or telegraphic correspondence;

- on using any means of communication or the Internet telecommunications network.”

45. On 6 March 2013 the Moscow City Court upheld the order for the second applicant’s house arrest.

46. On an unspecified date an attachment order was imposed on a car owned by the second applicant and his wife, and the sum of 142,000 Russian roubles (RUB). According to the second applicant, these assets were attached as exhibits (material evidence).

47. On 1 April 2013 the Basmannyy District Court extended the second applicant’s house arrest by four months, until 6 August 2013, with reference to the same grounds as those given in the original order. That decision was upheld by the Moscow City Court on 29 April 2013.

48. On 25 April 2013 the Moscow City Court examined a case against Mr L. in accelerated proceedings on the basis that he had previously entered into a plea-bargaining agreement. It convicted him of organising mass disorder and imposed a suspended prison sentence of two and a half years.

49. On 19 June 2013 charges were brought against the second applicant.

50. On 1 August 2013 the Basmannyy District Court extended the second applicant’s house arrest by two months, until 6 October 2013, with reference to the same grounds as those given in the original order. It dismissed a request by the second applicant for bail and refused to allow him to leave his place of residence for walks, exercise or medical appointments, on the grounds that granting leave fell within the discretion of the investigating authority. That decision was upheld by the Moscow City Court on 26 August 2013.

51. On an unspecified date the investigator decided to bar the first applicant’s legal counsel, Mr F., from participating in the proceedings because he was to be examined as a witness. Subsequently the court disallowed Mr F.’s participation as a witness in the case (see paragraph 130 below).

52. On 2 October 2013 the Basmannyy District Court extended the second applicant’s house arrest by four months, until 6 February 2014, with reference to the same grounds as given in the original order. It dismissed a request by the second applicant for bail. That decision was upheld by the Moscow City Court on 6 November 2013.

D. The first applicant’s alleged abduction and pre-trial detention

1. Events in Kyiv

53. On 14 October 2012 the first applicant left Moscow. On 16 October 2012 he entered Ukraine and arrived in Kyiv.

54. On 19 October 2012 at about 10 a.m. the first applicant arrived at the Kyiv office of HIAS, the partner organisation of the United Nations High

Commissioner for Refugees (UNHCR), to apply for asylum. He filled in the application forms and left the HIAS office to go for lunch while his belongings remained at the office. According to the applicant, he was abducted outside the office by unidentified persons, who forced him into a minibus and drove him to Russia. Mr S., an HIAS officer who had received the first applicant, described in a written statement what he had perceived as the applicant's abduction. He stated, in particular, that he had heard cries for help, looked out of the window and saw two men pulling another man towards a black minibus; despite his resistance they had forced him into the minibus and driven away fast. The HIAS officers had tried phoning the first applicant but he had not responded and his telephone had then been deactivated.

55. At about 4 p.m. Ms B., a UNHCR officer working at the HIAS office who had received the first applicant on that day, informed the Solomenskiy Department of the Interior in Kyiv about his suspected abduction and requested that it be investigated in criminal proceedings.

56. At about 9 p.m. on the same day the first applicant left Ukraine and crossed the Russian border by car. The first applicant's passport was stamped by the Ukrainian border control but not by the Russian authorities.

57. According to the first applicant's detailed account, he was blindfolded, handcuffed, tied up with adhesive tape and driven for about four hours to an unknown location, where he was handed over to another group of unidentified people; the latter drove him for another four to five hours to an unknown location, possibly in the Bryansk Region of Russia, where he was kept for about twenty hours in a cellar. According to the first applicant's account, the unidentified people wearing masks handcuffed him and threatened to give him an injection to make him talk if he did not confess voluntarily. The version suggested by the first applicant did not satisfy them and they forced him to make a statement that he and other persons had been plotting political unrest and violence, and he ultimately wrote the confession as he was told to do.

2. The first applicant's detention and his requests to investigate the abduction

58. On 21 October 2012 the Investigation Committee of the Russian Federation questioned the first applicant as a suspect and produced a written statement in which he confessed to having committed preparatory steps for organising acts of mass disorder. According to the first applicant, his abductors took him to the premises of the Investigation Committee of the Russian Federation. According to the Government, the first applicant went to the Chief Investigation Directorate of the Investigation Committee to surrender and confess and was then questioned as a suspect, in the presence of a lawyer.

59. On the same day the Basmannyy District Court of Moscow examined the request to detain the first applicant pending the criminal investigation and granted it. It noted that the first applicant had been arrested earlier the same day and that he had been questioned as a suspect in a criminal case in the presence of his defence counsel, although the applicant pointed out that he had been deprived of his liberty since 19 October 2012.

60. The first applicant was represented in those proceedings by a court-appointed lawyer because, according to him, he was not given access to legal counsel of his choosing. He requested the court not to detain him pending trial and to choose a different preventive measure. He contended that he had not absconded from the investigation, and that he had a fixed place of residence and his family in Moscow. He contested the charges and denied having conducted any criminal activity. The court ordered the first applicant's pre-trial detention until 16 December 2012. It found that there had been sufficient reasons to believe that the first applicant was likely to abscond and to obstruct the course of justice by destroying evidence and influencing witnesses. In so deciding, the court took into account his strong connections with NGOs and human rights organisations in Russia and abroad, his connections within the State authorities in Russia, and the fact that he had been regularly travelling abroad, had a travel passport, had no fixed place of work, and had not been living at his registered address in Irkutsk. The court also considered that the first applicant was likely to continue his criminal activity because he had been intercepted at the stage of preparing the crime. It took into account the police reports stating that the applicant had been hiding from the investigation and had been placed on the "wanted" list.

61. According to the Russian Government, while in detention the first applicant was examined on 21, 22 and 25 October by a doctor, who did not note any injuries.

62. On 23 October 2012 the first applicant's counsel sent a complaint to the Prosecutor General of Ukraine, requesting an investigation into the first applicant's abduction in Kyiv and his allegations of torture. He also enquired whether the first applicant's removal from Ukraine had been agreed upon by the Ukrainian authorities.

63. On 24 October 2012 five members of a public commission for the monitoring of detention facilities visited the detention facility to meet the first applicant and to inspect the conditions of his detention. The commission's report stated that the management of the detention facility had hindered their access to the first applicant for several hours but had eventually let them meet him. The first applicant had given them a detailed account of his abduction, torture and the ensuing proceedings; he had also complained of his difficulties in contacting his lawyer in order to file

complaints. The commission noted the first applicant's exhausted and subdued state and his fear of torture and prison violence.

64. On 29 October 2012 the office of the Prosecutor General of Ukraine informed the first applicant's counsel, in reply to an enquiry from him, that the Ukrainian authorities had received no extradition request from a foreign State concerning the first applicant.

65. On 1 November 2012 the investigating authorities reviewed another, unrelated criminal case against the first applicant. In that case, dating back to 1997, an investigation into a robbery by an unidentified perpetrator had been suspended in 1998 and terminated in 2008 as time-barred and the file had been destroyed in June 2012. The investigating authorities decided that the case had been closed wrongfully and resumed its investigation.

66. On 7 November 2012 the Moscow City Court upheld the first applicant's detention order of 21 October 2012.

67. On an unidentified date the first applicant filed a complaint with the Investigation Committee of Russia concerning his abduction, forceful removal from Ukraine and torture. On 8 November 2012 he submitted additional documents, including statements from the HIAS officers in Kyiv, which he requested to have included in the file. On 12 November 2012 this request was refused; the witness statements were rejected on the grounds that the copies of the statements had been addressed to the Ukrainian authorities and their content could not be verified by the Russian authorities.

68. On 21 November 2012 the Investigation Committee refused to open a criminal investigation following the first applicant's complaint of abduction, forceful removal and torture. It considered the first applicant's allegations unsubstantiated and stated that he had left Kyiv voluntarily, by taxi, and returned to Moscow; he had then come to the Investigation Committee on 21 October 2012 to file his confession to criminal offences, which he had done voluntarily, out of patriotic sentiment. The first applicant challenged this refusal before the Basmannyy District Court of Moscow, which dismissed his complaint on 1 April 2013. The appellate court upheld the refusal on 20 May 2013.

69. On the same date, 21 November 2012, the first applicant was charged as a suspect in the 1997 robbery case that had been reopened on 1 November 2012.

70. On 22 November 2012 the Solomenskiy District Prosecutor's Office of Kyiv registered the first applicant's complaint of abduction and referred it for further investigation.

71. On 28 November 2012 the Investigation Committee decided to join the 1997 robbery case to the first applicant's case concerning mass disorder.

72. On 3 December 2012 the first applicant was charged with unlawful crossing of the Russian-Ukrainian border.

73. On 4 December 2012 the limitation period in the first applicant's robbery case expired.

74. On 7 December 2012 the Solomenskiy District Prosecutor's Office of Kyiv refused to open a criminal investigation into the first applicant's abduction on the basis that there was no case to answer. According to the Ukrainian Government, despite the prompt reaction of the authorities to the report of the first applicant's alleged abduction, no proof of his abduction had been found. The investigating authority had inspected the place of the alleged abduction immediately after the report, and had questioned Ms B., who had submitted the report, Mr S., who had witnessed someone being pushed into a black van, and their colleague Ms R., who had not seen or heard anything noteworthy and had only learned about the incident from Mr R.; it had also questioned residents of the neighbourhood, who had said that they had not seen anyone being pushed into a car; the investigating authority had also made enquiries with the Ministry of the Interior in Kyiv, the Security Service of Ukraine and the State Border Guard Service to establish the first applicant's whereabouts. The State Border Guard Service had reported that the applicant had crossed the border on the same day in a normal way, his passage had been recorded in the official database, he had presented his passport and he had not made any complaints of abduction to the border guards. The investigating authority had also made an enquiry with Interpol and learned that on 21 October 2012 the first applicant had been detained in Moscow. As to the alleged absence of a border-crossing record at the Russian checkpoint, the Ukrainian authorities were not able to comment as this related to matters that would have taken place in Russian territory and under the authority of the Russian Federation. In conclusion, they considered that this complaint was in any event manifestly ill-founded. That decision was confirmed on 26 February 2013 by the same body.

75. On 12 December 2012 the Basmannyy District Court examined the request to extend the term of the first applicant's detention. The request indicated, in particular, that the extension was necessary to investigate the robbery case, for which the first applicant would have to be transferred to Irkutsk. The applicant objected and requested the court to select another preventive measure, having offered a personal guarantee from a State Duma deputy, bail or house arrest. The court extended the first applicant's detention until 1 April 2013, referring to the "mass disorder" case and citing essentially the same reasons for the extension as those given in the initial order.

76. On 18 December 2012 the first applicant was transferred to Irkutsk on the grounds that he had to be questioned as a suspect in a 1997 criminal case. The first applicant had previously been informed that the limitation period in that case had expired. The transfer to Irkutsk included a twenty-two-day stopover in a detention facility in Chelyabinsk. On 9 January 2013 he arrived in Irkutsk, where he was detained until 12 March 2013. During this time he was questioned on criminal charges and was

allegedly intimidated and ill-treated by his cellmates and pressured into signing self-incriminating statements.

77. In the meantime, on 21 December 2012 the Moscow City Court upheld the extension order of 12 December 2012 in respect of the first applicant.

78. On 10 January 2013 the Investigation Committee rejected the first applicant's allegations that his transfer to the Irkutsk Region had been unlawful and that he had been subjected to ill-treatment.

79. On 17 January 2013 the first applicant was charged with bringing false accusations, a criminal offence under Article 306 of the Criminal Code, apparently in relation to the complaints he had filed against the investigators. The charge was updated on 21 March 2013.

80. On 21 January 2013 the charges against the first applicant in the robbery case were dropped on account of the expiry of the limitation period.

81. On 29 March 2013 the Basmannyy District Court of Moscow granted a further extension of the term of the first applicant's detention, until 6 August 2013. The decision referred to the conspiracy to organise mass disorder and the organisation of mass disorder during the demonstration on Bolotnaya Square on 6 May 2012 as two separate sets of charges, and to a further offence of unlawful crossing of the Russian-Ukrainian border. The court found the first applicant's continued detention necessary in view of the risk of his absconding, continuing criminal activity and obstructing the instigation by other means; these risks were inferred from the gravity of the charges and the information that the first applicant had previously tried to flee. It rejected the alternative preventive measures proposed by the first applicant, in particular bail and the personal guarantees from the State Duma deputy.

82. On 5 April 2013 the Solomenskiy District Court of Kyiv refused to examine the first applicant's complaint against the decision not to investigate his abduction in criminal proceedings on the grounds that the lawyer who had submitted it lacked authority. That decision was upheld on appeal on 22 April 2013. It appears that in 2014 another lawyer attempted to challenge the same decision before the prosecuting authority but not before a court. According to the Ukrainian Government, she requested the investigative measures which had in fact already been completed at the preliminary inquiry and had served as a basis for the decision of 7 December 2012.

83. On 10 April 2013 the investigator refused a request by the first applicant for a full medical assessment of his health.

84. On 24 April 2013 the Moscow City Court upheld the extension order of 29 March 2013 in respect of the first applicant.

85. On 30 July 2013 the investigator refused the first applicant's request for release on health grounds.

86. On 2 August 2013 the Basmannyy District Court of Moscow granted a further extension of the term of the first applicant's detention, until 6 October 2013, essentially on the same grounds as before.

87. On 4 September 2013 the Moscow City Court upheld the extension order of 2 August 2013 in respect of the first applicant.

88. On an unidentified date the first applicant was given access to the criminal case file for the first time. The charges included an attempt to organise acts of mass disorder (Article 212 § 1 of the Criminal Code) and unlawful crossing of the State border (Article 322 § 1 of the Criminal Code).

89. On 30 September 2013 the Basmannyy District Court of Moscow granted a further extension of the term of the first applicant's detention, until 21 October 2013, having rejected his request to replace the detention with house arrest at his wife's address, or bail. The reasons for the continued detention were the risk of fleeing, influencing witnesses, destroying evidence, continuing criminal activity and obstructing the criminal proceedings by other means. The court considered that these risks were still present because of the gravity of the charges, and because the first applicant did not have employment or a permanent income, was not resident at his registered address and had previously been charged with other criminal offences.

90. On 7 October 2013 the Moscow City Court granted a further extension of the term of the first applicant's detention, until 6 February 2014. It stated that the extension was necessary for giving the first applicant access to the voluminous case file, and because the risks indicated earlier were still present. It rejected his request to replace his detention with house arrest or personal guarantees from a State Duma deputy, on the grounds that the first applicant did not live at his registered address in Irkutsk and was not registered at his *de facto* address in Moscow.

91. On 30 October 2013 the Moscow City Court upheld the extension order of 30 September 2013, and on 7 November 2013 it upheld the extension order of 7 October 2013.

92. On 15 November 2013 the case file was taken away from the first applicant and was remitted to the Moscow City Court for judicial examination.

93. On 20 December 2013 the Moscow City Court scheduled the preliminary hearing for 26 December 2013.

94. On 26 December 2013 the Moscow City Court remitted the case to the Prosecutor General with an indication of the case-processing flaws to be rectified. The order for the first applicant's pre-trial detention was maintained.

95. On 16 January 2014 the case was remitted to the Moscow City Court and the preliminary hearing resumed.

96. On 4 February 2014 the Moscow City Court examined the request for a further extension of the term of the first applicant's detention. The first applicant reiterated the request for an alternative preventive measure, including a fresh personal guarantee from a State Duma deputy, and referred to family and health grounds among the reasons for his request for release. The court rejected the first applicant's requests, reiterated the reasons relied on in the previous detention orders and extended the term of the first applicant's detention until 10 June 2014.

97. On 6 February 2014 the Moscow City Court concluded the preliminary hearing and scheduled the main hearing for 18 February 2014.

98. On 28 February 2014 the same court upheld the extension order of 4 February 2014 in respect of the first applicant.

99. On 3 March 2014 the first applicant filed an application for release and an alternative preventive measure pending trial. He complained in particular of inhuman and degrading conditions of detention, of the deterioration of his health and of his resulting incapacity to effectively defend himself at the hearings. On 4 March 2014 the Moscow City Court rejected his application. It found, in particular, that the first applicant did not have any illness that was incompatible with pre-trial detention. As regards the schedule of the hearings, it established that the first applicant arrived at the detention facility between 8.40 p.m. and 10.15 p.m. on the days of the court hearings and that his transfer to and from the courthouse had complied with the regulations, and noted that he had not previously complained to the courts about the conditions of his detention and transfers. It found that the hearings had been scheduled with due regard for the requirement to conduct criminal proceedings within a reasonable time and without excessive intensity.

100. On 7 May 2014 the Solomenskiy District Prosecutor's Office wrote, in reply to repeated enquiries from the first applicant, that there were no grounds to revise the decision of 7 December 2012 dispensing with a criminal investigation into his alleged abduction.

101. On 6 June 2014 the first applicant's detention was extended by the trial court until 10 September 2014 for the same reasons as cited on 4 February 2014; that decision was upheld on 15 July 2014.

3. Medical assistance provided to the first applicant

102. On 21 October 2012, upon arrival at the detention facility, the first applicant underwent a medical examination. The record noted a number of chronic conditions and injuries dating back to 1991 and 2005, and stated that he had blood pressure of 140/100. On the following day he was examined again because he complained of back pain; his blood pressure was 120/70 and his condition was assessed as satisfactory. The medical file submitted by the Government contains records of a further eleven visits and prescriptions between October and December 2012, and one visit to a

dentist; on two of these occasions the applicant had hypertension, and once the blood pressure was noted as 120/80.

103. On 12 January 2013, upon his transfer to the detention facility in Irkutsk, the first applicant was placed in a prison hospital. The first medical examination found a haematoma on his right shoulder; blood pressure of 130/80 was noted, but the overall conclusion was that he was in good health. On 14 January 2013 he was seen by a doctor because of back and buttock pain; blood pressure of 140/80 was noted. On the following day he was seen by a neurologist, who diagnosed him with lumbago and prescribed treatment; blood pressure of 140/80 was noted. In the next three days he had seven more medical consultations, including with a GP, a neurologist, a psychiatrist and a surgeon, and a visit to a nurse. Blood pressure of 140/90 was noted once in this period. On 22 January 2013 he had a scan of the abdomen; his blood pressure on that day was recorded as 130/80. On 18 February 2013 he was discharged from hospital.

104. In the course of 2013 the first applicant had at least sixteen medical consultations, an X-ray, two electrocardiograms and a blood test; treatment was prescribed for a bronchial infection, back pain and hypertension; the records of his blood pressure, which was measured in addition to the consultations, varied between 120/80 and 140/90.

105. For 2014 the first applicant's medical record contains notes on at least three consultations, two blood tests and an electrocardiogram.

106. On 1 October 2014 he had a heart seizure and was transferred to the SIZO-1 prison hospital ("Matrosskaya Tishina"), where he was treated until 14 November 2014. During that period, on 12 November 2014, the first applicant underwent coronary angiography. He was discharged with a diagnosis of third-degree hypertension and was ordered to limit his physical effort.

107. Throughout his detention the first applicant received medication prescribed at the prison hospitals and provided, at his request, by his family. On a number of occasions he was visited by members of the public commission for the monitoring of detention facilities, who noted, on unidentified dates in August and September 2014, his request to monitor his blood pressure and his complaints about the excessively intensive court hearing schedule.

108. The first applicant raised the state of his health in his requests for release from detention, but the domestic courts found that there was no evidence that the applicant's health was in such a state that it was incompatible with further detention.

E. The applicants' trial and subsequent developments

109. On 4 December 2013 the Prosecutor General's Office issued an indictment against the applicants, which was referred to the Moscow City

Court for trial. On 20 December 2013 the court listed the trial for 26 December 2013 (see paragraph 93 above). On the latter date the court returned the case to the prosecutor's office for rectification of a number of procedural flaws (see paragraph 94).

110. On 16 January 2014 the case was again submitted to the Moscow City Court (see paragraph 95). According to the applicants, the resubmitted case file did not contain the list of defence witnesses that had previously been annexed to it.

111. On 4 February 2014 the Moscow City Court extended the second applicant's house arrest until 10 June 2014, with reference to the same grounds as set out in the original order, which in its view remained pertinent. It dismissed a request by the applicant for release on bail and refused to relax the restrictions imposed in connection with his house arrest. It found that despite the completion of the investigation the risk of the second applicant's absconding or otherwise obstructing the course of justice could not be ruled out (see paragraph 96 above).

112. On 6 February 2014 the Moscow City Court listed the trial for 18 February 2014 (see paragraph 97). From that date and until 24 July 2014 the trial took place in hearing room no. 635 at the Moscow City Court. The hearings were held on four days each week and (including time spent escorting the first applicant to the courthouse) lasted for over eight hours every day. The applicant requested a less intensive hearing schedule, but the court refused to amend it. That decision was upheld by the Moscow City Court on 28 February 2014.

113. On 18 February 2014 the first applicant complained of lack of sleep caused by the excessively frequent court hearings and the lengthy transfer from the detention facility to the court and back. His complaints were dismissed.

114. During the trial the applicants asked to be able to call and examine a number of defence witnesses, but the request in respect of five of them was refused on the grounds that those people had previously participated in the same proceedings, although the applicants disputed this. The applicants' request to be permitted to examine ten defendants in related criminal cases, including the first "Bolotnaya" case, was dismissed on the grounds that they were interested parties.

115. On 21 February 2014, in parallel criminal proceedings, the Zamoskvoretskiy District Court of Moscow ruled against eight persons who had taken part in clashes with the police during the public assembly of 6 May 2012 (the first "Bolotnaya" case). It found them guilty of participation in mass disorder and of committing violent acts against police officers. They received prison sentences of between two and a half and four years; one person had his sentence suspended. Three of their co-defendants had previously been pardoned under the Amnesty Act and one had had his case disjoined from the main proceedings.

116. On 26 February 2014, during the hearing, the first applicant complained of lack of sleep caused by the excessively frequent court hearings and the lengthy transfer from the detention facility to the court and back. His complaints were dismissed.

117. During the hearings on 3, 4 and 5 March 2014 the first applicant complained of lack of sleep caused by the excessively frequent court hearings and the lengthy transfer from the detention facility to the court and back. His complaints were dismissed with reference to information from the detention facility that the first applicant had been arriving at the facility no later than 10.15 p.m.

118. On 12 and 13 March 2014, in the applicant's criminal case, the Moscow City Court examined Mr L. as a witness.

119. During the hearing of 12 March 2014 the first applicant complained of lack of sleep caused by the excessively frequent court hearings and the lengthy transfer from the detention facility to the court and back. His complaints were dismissed for lack of medical evidence of harm to his health.

120. On 18 March 2014 the Moscow City Court examined police officer A.M. as a witness. When cross-examined by the applicants' counsel, he refused – on the grounds of confidentiality – to answer a number of questions. The court did not assess the grounds of confidentiality, but warned the applicant's counsel not to ask questions that might raise such issues.

121. On 20 March 2014 the first applicant asked for the hearing to be adjourned because he had slept for only three hours, having not been brought to his cell until 3 a.m. after the previous day's hearing. It was noted that the first applicant had been transferred to another detention facility, and the hearing was adjourned.

122. On 25 March 2014 the first applicant complained of lack of sleep caused by the excessively frequent court hearings and the lengthy transfer from the detention facility to the court and back. The court requested the detention facility to provide information on the first applicant's collection and drop-off times.

123. On 1 April 2014 the second applicant was transferred to the courthouse despite having presented a sick-leave certificate, which the court dismissed as fabricated. The court called a medical assistant, who authorised the second applicant's participation in the proceedings. When he objected, the court expelled him from the proceedings for ten days and continued the proceedings in his absence.

124. On 8 April 2014 the witness M., an NTV television journalist, testified that the video and audio recordings used in the film *Anatomy of Protest, Part Two* had been given to him outside his house by an unknown person.

125. On 10 April 2014 the first applicant complained of lack of sleep caused by the excessively frequent court hearings and the lengthy transfer from the detention facility to the court and back. His complaints were dismissed as unfounded.

126. On 17 April 2014 the Moscow City Court examined the film *Anatomy of Protest, Part Two* as evidence.

127. On 13 May 2014 the court examined the video and audio recordings received by the witness M. from the unidentified individual. The second applicant's objections to the admissibility of that material were dismissed.

128. On 20 May 2014, at the hearing, the first applicant complained of lack of sleep because he had not been taken to his cell until midnight after the previous day's hearing. His complaints were noted.

129. On the same day the court examined State Duma Deputy Mr Ponomarev as a witness. He testified, in particular, that the first applicant had worked as his assistant and that on 6 May 2012 he had been acting on his instructions; he specified that the second applicant could not have given orders to the first applicant. Mr Ponomarev also stated that he was the person who had suggested during the sit-in that the applicants push the police cordon back to the agreed limits of the meeting venue, and that he had told the first applicant to find strong men for that purpose.

130. Later on the same day the court began to examine Mr F., the first applicant's former legal counsel, but decided that his testimony and earlier statements were inadmissible because of his previous involvement in the case as counsel.

131. On 6 June 2014 the Moscow City Court extended the second applicant's house arrest until 10 September 2014, essentially reiterating its earlier extension order. On 15 July 2014 the same court dismissed an appeal by the second applicant and upheld that decision.

132. On 18 June 2014 the presiding judge, Z., was appointed to the Supreme Court as a judge of the Military Section with effect from 6 August 2014. He continued to examine the applicants' case.

133. On 20 June 2014 the Moscow City Court, acting as an appellate court in the parallel criminal proceedings, upheld the judgment of 21 February 2014 in the first "Bolotnaya" case, having slightly reduced the prison sentences of two of the defendants.

134. On 20 June 2014 the first applicant complained of lack of concentration because of the lack of sleep caused by his late drop-off at the detention facility after the previous day's hearing. His complaint was noted.

135. On 30 June 2014 the Moscow City Court dismissed a request by the second applicant to be allowed to call and examine the victims in his case as witnesses.

136. On 9 July 2014 the court scheduled the delivery of the judgment for 24 July 2014, and withdrew to deliberate in private.

137. On 24 July 2014 the Moscow City Court found the applicants guilty of organising mass disorder on 6 May 2012. The judgment read as follows, in so far as relevant:

“The witness Mr Deynichenko testified that on 4 May 2012 he had taken part in a working meeting at the Moscow Department of Regional Security... as a follow-up to the meeting a draft security plan was prepared, and all necessary agreements were reached with the organisers concerning the order of the march and meeting, the movement of the column, the stage set-up, access to the meeting venue, barriers and the exit from the stage; the [organisers] had agreed on that. The question of using the park at Bolotnaya Square was not raised because the declared number of participants was 5,000, whereas over 20,000 people could be accommodated in the open area of the square and the embankment, and [the organisers] had known that in advance. It had been discussed with them how the cordon would be placed from Malyy Kamennyy bridge to the park at Bolotnaya Square, so the organisers knew about the cordon in advance. The placement of the cordon was indicated in the [security plan]. This document was for internal use and access to it was only given to the police; the location of the forces could be changed in an emergency by the operational headquarters. The organisers did not insist on an on-the-spot visit; such visits are held at the initiative of the organisers, which had not been requested because they had known the route ... and the meeting venue ... [The witness Mr Deynichenko] had known that at the beginning of the march the event organisers, including Mr Udaltsov, had discussed between them that they were not going to turn towards the meeting venue but would stop and try to break the cordon to proceed to Bolshoy Kamennyy bridge.

...

The witness N. Sharapov testified that Mr Udaltsov had known the route of the march and had not raised a question about opening up the park at Bolotnaya Square. Moreover, the park was a nature reserve with narrow lanes ... the park had been opened up previously [for a public event], as an exception, on only one occasion, on 4 February 2012, but then it was winter, it was snowing and the declared number of participants had significantly exceeded 5,000. No such exception was made for 6 May 2012.

... according to the statement of the Moscow City Security Department, ... the meeting venue at Bolotnaya embankment could accommodate 26,660 people ...

The fact that no map of the assembly route or the placement of the police had been produced at the working meeting of 4 May 2012, that these questions had not been expressly discussed, ... that the event organisers present at the working meeting had not been shown any maps, was confirmed by them.

... the court concludes that no official map had been adopted with the organisers and, in the court’s opinion, [the published map] had been based on Mr Udaltsov’s own interview with journalists ...

Therefore the map presented by the defence has no official character, its provenance is unknown and therefore unreliable and it does not reflect the true route of the demonstration and the placement of the police forces.

... the witness Mr Makhonin ... testified that on 5 May 2012 he received the [security plan] ... Before the start of the march he personally met the event organisers Ms Mityushkina, Mr Udaltsov [and] Mr Davidis and in the presence of the press and with the use of video recordings explained to them the order of the meeting and the

march, warned against a breach of public order during the conduct of the event; and stressed the need to inform him personally about any possible provocations by calling the telephone number known to the organisers. He asked Mr Udaltsov about the intention to proceed towards the Kremlin and to cause mass disorder because the police had received information about it from undercover sources; Mr Udaltsov had assured him that there would be no breaches of order at the event and that they had no intention to move towards the Kremlin ... He (Mr Makhonin) arrived at Bolotnaya Square after the mass disorder had already begun ... After the mass disorder began he tried calling Mr Udaltsov on the phone but there was no reply. Mr Udaltsov did not call him ... Other event organisers had not asked him to move the cordon. Given the circumstances, Ms Mityushkina, at his request, announced the end of the meeting, and the police opened additional exits for those willing to leave. In addition to that, the police repeated through a loudspeaker the announcement about the end of the meeting ...

... the witness Mr Zdorenko ... testified that ... following information received [from undercover sources] about the possible setting up of a camp site, at about 9 p.m. on 5 May 2012 he had arrived at Bolotnaya Square and organised a search of the area including the park. The park was cordoned off and guarded ... if necessary, by a decision of the operational headquarters, the venue allocated for the meeting could be significantly extended at the expense of the park [at Bolotnaya Square]. However, there was no need for that given that there were no more than 2,500-3,000 persons on Bolotnaya Square ... [others being stopped at] Malyy Kamennyy bridge.

...

The witness A. Zharkov testified that ... while the stage was being set up he had seen an unknown man smuggling four camping tents in rubbish bins.

...

The witness M. Volondina testified that ... before the beginning of the march, police information had come through from undercover sources that the event organisers intended to encircle the Kremlin holding hands to prevent the inauguration of the Russian President.

The witness M. Zubarev testified that ... he had been [officially] filming ... while Police Officer Makhonin ... explained the order ... and warned the organisers ... and asked Mr Udaltsov to inform him of any possible provocations. Mr Udaltsov stated that they would act lawfully and that he had requested the police to stop any unwanted persons from joining the public event ...

The witness Y. Vanyukhin testified that on 6 May 2012 ... at about 6 p.m. Mr Udaltsov, while on the way to the stage, told people around him that they were going to set up a campsite ...

... the witness Ms Mirza testified that ... Police Officer Biryukov had asked her and [the Ombudsman] to come to Malyy Kamennyy bridge where some of the protesters, including Mr Nemtsov and Mr Udaltsov, had not turned right towards the stage but had gone straight to the cordon, where they had begun a sit-in protest on the pretext that access to the park at Bolotnaya Square had been closed and cordoned off ... While [the Ombudsman] was talking to those sitting on the ground they remained silent and did not reply but would not stand up.

The witness Mr Babushkin testified that ... after the first confrontations between the protesters and the police had begun, the latter announced through a loudspeaker that the meeting was cancelled and invited the citizens to leave.

The witness Mr Ponomarev testified that ... the police cordon had been placed differently from [the cordon placed for] a similar march on 4 February 2012 ... he proposed to Mr Udaltsov that the cordon be pushed back so that the police would go back a few steps and widen access to Bolotnaya Square, and the latter replied that he would figure it out when they reached the cordon ... he knew that Mr G. Gudkov was negotiating with the police about moving the cordon, which had now been reinforced by the riot police.

... the witnesses Mr Yashin and Mr Nemtsov testified that ... during the steering committee meeting the question of setting up tents during the public event had not been discussed ... while [Mr G. Gudkov] and [Mr D. Gudkov] were negotiating with the police ... the crowd built up [and] suddenly the police began moving forward, the protesters resisted and the cordon broke ...

The witness Mr G. Gudkov [deputy of the State Duma] testified that ... at the request of the organisers, who had told him that they would not go anywhere and would remain sitting until the police moved the cordon back and opened up access to the park at Bolotnaya Square, he had taken part in the negotiations with the police on that matter. He had reached an agreement with the officers of the Moscow Department of the Interior that the cordon would be moved back, but the organisers who had filed the notice [of the event] should have signed the necessary documents. However, those who had called for a sit-in, including Mr Udaltsov, refused [to stand up] to go to the offices of the Moscow Department of the Interior to sign the necessary documents, although he (Mr Gudkov) had proposed several times that they should do so ...

... the witness Mr D. Gudkov [deputy of the State Duma] testified that ... together with Mr G. Gudkov he had conducted negotiations with the police ... an agreement had been reached that the cordon at the Malyy Kamennyy bridge would be moved back and the access to the park would be opened up, but at that point some young men in hoodies among the protesters began first to push the citizens onto the cordon provoking the [same] response; after that the cordon was broken, the [police] began the arrests and mass disorder ensued.

...

... the court [rejects] the testimonies to the effect that it was the police who had begun moving towards the protesters who were peacefully sitting on the ground and thus provoked the breaking of the cordon ... [and finds] that it was the protesters, and not the police ... who began pushing against the cordon, causing the crowd to panic, which eventually led to the breaking of the cordon and the ensuing mass disorder.

...

The court takes into account the testimony of Mr Davidis that ... at about 6 p.m. Ms Mityushkina, who was responsible for the stage, informed him about the demand from the police that she announce, as an event organiser, that it was terminated. He passed this information on to Mr Udaltsov by phone, [and he] replied that they were standing up and heading towards the stage ... he knew that on 6 May 2012 [some] citizens had brought several tents to Bolotnaya Square, but Mr Udaltsov had not informed him about the need to put up tents during the public event.

...

The court takes into account the testimony of Mr Bakirov ..., one of the [formal] event organisers ..., that nobody had informed him about the need to put up tents during the public event.

...

[The court examined] the video recording ... of the conversation between Mr Makhonin and Mr Udaltsov during which the latter assured Mr Makhonin that they would conduct the event in accordance with the authorisation, he would not call on people to stay in Bolotnaya Square and if problems occurred he would maintain contact with the police.

...

... [the court examined another video recording] in which Mr Makhonin and Mr Udaltsov discussed the arrangements. Mr Makhonin showed Mr Udaltsov where the metal detectors would be placed; after that they agreed to meet at 3 p.m. ... and exchanged telephone numbers ...

...

According to [expert witnesses Ms N. and Ms M.], the borders of Bolotnaya Square in Moscow are delimited by Vodootvodnyy channel, Serafimovicha Street, Sofiyskaya embankment and Faleyevskiy passage, and the [park] forms a part of Bolotnaya Square. During public events at Bolotnaya Square the park is always cordoned off and is not used for the passage of citizens.

These testimonies are fully corroborated by the reply of the Head of the Yakimanka District Municipality of Moscow of 27 July 2012 and the map indicating the borders of Bolotnaya Square.

...

[The court finds] that the place of the sit-in ... was outside the venue approved by the Moscow authorities for the public event ...

...

The organisation of mass disorder may take the form of incitement and controlling the crowd's actions, directing it to act in breach of the law, or putting forward various demands to the authorities' representatives. This activity may take different forms, in particular the planning and preparation of such actions, the selection of groups of people to provoke and fuel mass disorder, incitement to commit it, by filing petitions and creating slogans, announcing calls and appeals capable of electrifying the crowd and causing it to feel appalled, influencing people's attitudes by disseminating leaflets, using the mass media, meetings and various forms of agitation, in developing a plan of crowd activity taking into account people's moods and accumulated grievances, or guiding the crowd directly to commit mass disorder.

... this offence is considered accomplished as soon as at least one of the actions enumerated under Article 212 § 1 of the Criminal Code has been carried out ...

... the criminal offence of organisation of mass disorder is considered accomplished when organisational activity has been carried out and does not depend on the occurrence or non-occurrence of harmful consequences.

...

There are no grounds to consider the closure of access to the park at Bolotnaya Square and the placement of a guiding police cordon at the foot of Malyy Kamennyy bridge to be a provocation ... since it was only intended to indicate the direction and it did not obstruct access to the meeting venue at Bolotnaya Square.

... the reinforcement of the cordon ... was necessary in the circumstances ... to prevent it from breaking ... but the police [cordon] did not advance towards the protesters.

It is therefore fully proven that the mass disorder organised by Mr Udaltsov [and others] ... led to the destabilisation of public order and peace in a public place during the conduct of a public event, put a large number of people in danger, including those who had come to fulfil their constitutional right to congregate in peaceful marches and meetings, and led to considerable psychological tension in the vicinity of Bolotnaya Square in Moscow, accompanied by violence against the police ... and the destruction of property ...”

138. The Moscow City Court found both applicants guilty of organising mass disorder (Article 212 § 1 of the Criminal Code) and preparing the organisation of mass disorder (Article 30 § 1 in conjunction with Article 212 § 1 of the Criminal Code). The first applicant was also found guilty of unlawful border crossing. Both applicants were sentenced to an aggregate of four and a half years of imprisonment, which comprised a term of four years and four months’ imprisonment under Article 212 § 1 and a concurrent four-year prison term under Article 30 § 1 in conjunction with Article 212 § 1. The judgment maintained the attachment order in respect of the car and the sum of money owned by the second applicant and his wife (see paragraph 46 above) until the resolution of any civil lawsuits against the second applicant in respect of damage caused by the criminal offence. It accepted one private company, one municipal entity and the Ministry of the Interior as civil parties that had sustained damage, but stated that the amount of damages had to be established in separate civil proceedings. The judgment did not specify on what grounds the assets had been seized in the first place, nor did it refer to the legal provision under which the continued attachment was being ordered.

139. On 18 August 2014 the Zamoskvoretskiy District Court of Moscow examined the second “Bolotnaya” case, which was similar to the first one, and found four persons guilty of participating in mass disorder and of committing violent acts against police officers during the demonstration on 6 May 2012. Prison sentences of between two and a half and three and a half years were imposed; one of them was suspended. This judgment was upheld by the Moscow City Court on 27 November 2014.

140. During the appeal hearing the first applicant requested the court to change his preventive measure to allow him to visit his seriously ill mother, who lived in Moscow, but the court refused this request.

141. On 11 September 2014 the Deputy Prosecutor General of Ukraine quashed the decision of 7 December 2012 to terminate the criminal investigation into the first applicant’s alleged abduction (see paragraph 74 above). According to the Ukrainian Government, after the investigation was reopened the witnesses Mr S. and Mr R. were questioned again and their new statements were different from their original ones. Mr S. stated that the man he had seen being pushed into the vehicle on 19 October 2012 was the first applicant; Ms R. said that she had seen the black van leaving the car park in front of the HIAS office at the relevant time.

142. On 18 March 2015 the Supreme Court of the Russian Federation upheld the judgment of 24 July 2014, except for the first applicant's conviction for unlawful border crossing, which was struck out as time-barred.

143. The judgment upheld the attachment of the second applicant's assets. It stated that contrary to the second applicant's and his wife's allegations, civil claims had been filed in the criminal proceedings and therefore it had been reasonable to postpone the decision on the attached assets. At the time of submission of the parties' observations in the present case the attachment order was still in force. The applicant submitted that the car had not been returned. The parties did not provide any information to the Court about any past or outstanding lawsuits for the purpose of which the assets had been attached.

144. On 8 April 2015 the first applicant's mother died. On 10 April 2015, following a request by the first applicant's counsel, the Ombudsperson of the Russian Federation sent a cable to the Federal Prison Service asking it to grant the first applicant leave to attend the funeral on 11 April 2015. No leave was granted.

145. On 22 May 2015 the first applicant was transferred to a correctional colony in the Irkutsk Region to serve his sentence, but shortly thereafter he was transferred to another correctional colony in the Krasnoyarsk Region.

146. On 22 June 2015 the first applicant applied to the Constitutional Court of the Russian Federation with a constitutional complaint. He challenged the provisions of the Code of Criminal Procedure which had allowed accelerated proceedings following Mr L.'s plea bargain, alleging that those proceedings had led to a violation of the rights of the defendant's co-accused who had been tried separately, contrary to the constitutional guarantees of a fair hearing.

147. On 16 July 2015 the Constitutional Court dismissed the first applicant's constitutional complaint.

148. On 25 January 2016 the Supreme Court of the Russian Federation refused to re-examine the applicants' case in supervisory review proceedings.

II. RELEVANT LEGAL FRAMEWORK

149. The Criminal Code of the Russian Federation provides as follows:

Article 30. Preparation of a crime and attempted crime

"1. Preparation of a crime entails the finding, making or adjusting by a person of the means or instruments of a crime, seeking accomplices to a crime, conspiring to commit a crime, or otherwise intentionally creating the conditions for committing a crime, where the crime was not completed owing to circumstances beyond the person's control.

2. Criminal liability shall be incurred only for the preparation of serious and especially serious crimes.

3. An attempt to commit a crime entails the deliberate actions (or inaction) of a person directly aimed at committing a crime, where the crime was not completed owing to circumstances beyond the person's control."

Article 212. Mass disorder

"1. The organisation of mass disorder accompanied by violence, riots, arson, destruction of property, use of firearms, explosives and explosive devices, as well by armed resistance to a public official, shall be punishable by four to ten years' deprivation of liberty.

2. Participation in mass disorder as provided for by paragraph 1 of this Article shall be punishable by three to eight years' deprivation of liberty.

3. The instigation of mass disorder provided for by paragraph 1 of this Article, or the instigation of participation in it, or the instigation of violence against citizens, shall be punishable by restriction of liberty for up to two years, or community work for up to two years, or deprivation of liberty for the same term."

Article 318. Use of violence against a public official

"1. The use of violence not endangering life or health, or the threat to use such violence, against a public official or his relatives in connection with the performance of his or her duties shall be punishable by a fine of up to 200,000 Russian roubles or the equivalent of the convicted person's wages for 18 months, or community work for up to five years, or up to five years' deprivation of liberty ..."

150. The Code of Criminal Procedure provided, at the material time, as follows:

Article 90: Prejudice

"Circumstances established in a judgment which has acquired legal force, given by a court in criminal proceedings, or in civil, commercial-court or administrative proceedings, shall be accepted by a court, prosecutor, investigator or inquirer without additional verification. However, such a judgment or decision cannot predetermine the guilt of persons who have not previously participated in the criminal case."

Article 154: Disjoining a criminal case

"...

5. Material in a criminal case divided into separate proceedings shall be admitted as evidence in the given criminal case ..."

Article 240: Direct and oral hearing

"1. In judicial proceedings all evidence in a criminal case shall be subject to direct scrutiny, except as provided for in Section X of the present Code [plea bargaining and accelerated proceedings]. The court shall hear the testimony of the defendant, victim, witnesses and experts, and shall examine the evidence and read out transcripts and other documents; it shall also carry out other judicial methods of examining evidence.

2. Reading out statements given during the preliminary investigation shall only be possible in the cases specified in Articles 276 and 281 of the present Code.

3. The court judgment may be based solely on evidence examined in a court hearing.”

Article 276: Reading out the defendant’s statement

“1. The defendant’s statement given in the course of the preliminary investigation ... may be read out on the application of the parties in the following cases:

(i) where there are significant contradictions between the evidence the defendant gave in the course of the preliminary investigation and in court ...”

Article 281: Reading out the victim’s or witness’s statement

“ ...

A court may, on an application by the parties, decide to read out the evidence of the victim or a witness given earlier in the course of the preliminary investigation or in court where there are significant contradictions between the evidence previously given and the evidence given in court.

...”

151. On 29 June 2015 Article 90 of the Code of Criminal Procedure was amended to read as follows:

“Circumstances established in a judgment which has acquired legal force given by a court in criminal proceedings, except for a judgment given in accordance with Articles 226.9 [accelerated proceedings], 316 [court hearing in accelerated proceedings] or 317.7 [plea bargaining] of this Code, or in civil, commercial-court or administrative proceedings, shall be accepted by a court, prosecutor, investigator or inquirer without additional verification. However, such a judgment or decision cannot predetermine the guilt of persons who have not previously participated in the criminal case.”

152. The relevant provisions of the Code on the Execution of Sentences are summarised in *Polyakova and Others v. Russia* (nos. 35090/09 and 3 others, §§ 45-52, 7 March 2017).

153. The relevant domestic law concerning the attachment of assets in criminal proceedings is summarised in *Bokova v. Russia* (no. 27879/13, §§ 26-32, 16 April 2019).

THE LAW

I. JOINDER OF THE APPLICATIONS

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

II. ALLEGED VIOLATION BY RUSSIA AND UKRAINE OF ARTICLES 3 AND 5 OF THE CONVENTION ON ACCOUNT OF THE FIRST APPLICANT'S ALLEGED ABDUCTION AND ILL-TREATMENT

155. The first applicant complained that he had been abducted in Kyiv on 19 October 2012 by unidentified individuals and subsequently ill-treated by the same individuals, who had tortured him to extract a confession to the offence of conspiracy to organise mass riots in Russia. According to the first applicant, the unidentified perpetrators might have been Russian State agents acting with the tacit agreement of the Ukrainian authorities. He alleged that following his abduction he had been deprived of his liberty until 21 October 2012, when the unidentified men had taken him to the premises of the Investigation Committee. He also complained that neither the Russian nor the Ukrainian authorities had conducted an effective investigation into the alleged abduction and ill-treatment. He alleged a violation of Articles 3 and 5 of the Convention, which read as follows:

Article 3 (prohibition of torture)

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Article 5 (right to liberty and security)

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

A. Admissibility

1. *Compatibility ratione loci*

156. Having regard to the fact that the first applicant’s alleged abduction took place in Ukraine and involved his cross-border transfer to Russia, the Court considers it appropriate to examine of its own motion the compatibility *ratione loci* of the complaint directed against Russia and Ukraine with the provisions of the Convention.

157. The Court’s case-law concerning the question of jurisdiction of member States in a cross-border or trans-jurisdictional context was set out in *Güzelyurtlu and Others v. Cyprus and Turkey* ([GC] no. 36925/07, §§ 178-90, 29 January 2019). The principles formulated in relation to Article 2 in that case, which are also applicable to the complaints lodged in the present case under Articles 3 and 5, are the following:

“178. ‘Jurisdiction’ under Article 1 is a threshold criterion. ... As the Court has emphasised, from the standpoint of public international law, the jurisdictional competence of a State is primarily territorial ...

...

181. To date, there have been very few cases in which the Court has had to examine complaints under the procedural limb of Article 2 where the death occurred under a different jurisdiction from that of the State in respect of which the procedural obligation is said to arise.

...

188. In the light of the above-mentioned case-law it appears that if the investigative or judicial authorities of a Contracting State institute their own criminal investigation or proceedings concerning a death which has occurred outside the jurisdiction of that State, by virtue of their domestic law ..., the institution of that investigation or those proceedings is sufficient to establish a jurisdictional link for the purposes of Article 1 between that State and the victim’s relatives who later bring proceedings before the Court ...

...

190. Where no investigation or proceedings have been instituted in a Contracting State, according to its domestic law, in respect of a death which has occurred outside its jurisdiction, the Court will have to determine whether a jurisdictional link can, in

any event, be established for the procedural obligation imposed by Article 2 to come into effect in respect of that State. Although the procedural obligation under Article 2 will in principle only be triggered for the Contracting State under whose jurisdiction the deceased was to be found at the time of death, ‘special features’ in a given case will justify departure from this approach, according to the principles developed in *Rantsev*, §§ 243-44. However, the Court does not consider that it has to define *in abstracto* which ‘special features’ trigger the existence of a jurisdictional link in relation to the procedural obligation to investigate under Article 2, since these features will necessarily depend on the particular circumstances of each case and may vary considerably from one case to the other.”

158. Furthermore, a State may also be held accountable for violations of the Convention rights and freedoms of persons who are in the territory of another State but who are found to be under the former State’s authority and control through its agents operating – whether lawfully or unlawfully – in the latter State. This principle has been applied where an individual is taken into the custody of State agents abroad (see *Öcalan v. Turkey* [GC], no. 46221/99, § 91, ECHR 2005-IV; *Issa and Others v. Turkey*, no. 31821/96, § 71, 16 November 2004; and, *mutatis mutandis*, *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 136, ECHR 2011 with further references).

159. The Court observes that the first applicant’s allegations concern events that occurred in Ukraine and Russia. According to the applicant, his apprehension in Kyiv by unidentified individuals, and his ill-treatment, which consisted of his transportation in a vehicle, tied up and blindfolded, to the Russian border, fell within Ukraine’s jurisdiction. As regards Russia, the first applicant alleged that it had been responsible for the acts of the unidentified perpetrators of the abduction because he believed that they were Russian State agents carrying out official duties. Moreover, his continued deprivation of liberty after crossing the Russian border and his alleged ill-treatment leading to his writing a statement confessing to having organised acts of mass disorder had taken place in the territory of the Russian Federation. Finally, he contended that both member States had failed to investigate his abduction and ill-treatment.

160. Adhering to the principle that the jurisdictional competence of a State is primarily territorial, the Court finds that the first applicant’s complaints directed against the two member States are compatible *ratione loci* with the provisions of the Convention as regards the events which occurred on their respective territories. Ukraine had territorial jurisdiction over the first applicant at the time of his alleged abduction and ill-treatment on the way to the Russian border. Accordingly, if the first applicant made an arguable claim that he had been deprived of his liberty and ill-treated within their territory, the Ukrainian authorities had a duty to investigate that claim. By application of the same principle, Russia had territorial jurisdiction from the moment of the first applicant’s entry into

Russia, and an ensuing obligation to investigate his allegations of his deprivation of liberty and ill-treatment in Russian territory.

161. Moreover, in so far as the first applicant alleged that the unidentified perpetrators might have been Russian State agents, the jurisdictional link with Russia is established on the basis of Russia's authority and control allegedly exercised through its agents operating abroad (see the cases cited in paragraph 158 above). These allegations must be examined from the standpoint of the substantive guarantees of Articles 3 and 5, as well as in terms of the procedural requirement to investigate the possible involvement of State agents in the impugned conduct.

162. In conclusion, the Court has competence *ratione loci* to examine the first applicant's complaint against Russia and Ukraine.

2. Non-exhaustion of domestic remedies

163. In their original set of observations filed in October 2014 the Ukrainian Government alleged that the first applicant had failed to exhaust domestic remedies in respect of the alleged absence of an effective investigation in Ukraine because his challenge to the prosecutor's decision of 7 December 2012 terminating criminal proceedings before a competent court had been lodged by an unauthorised legal representative. However, in February 2015 the Government submitted a fresh set of observations and stated that the decision of 7 December 2012 had been quashed by the Deputy Prosecutor General of Ukraine and that the criminal investigation into the first applicant's alleged abduction was pending (see paragraph 141 above).

164. After the reopening of the criminal investigation the Ukrainian Government did not maintain their original objection as to the non-exhaustion of domestic remedies. The Court is therefore not required to examine it. It further notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, and that this part of the application is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The first applicant

165. The first applicant maintained that on 19 October 2012 he had been abducted by unknown individuals acting on behalf of the Russian security forces, and that he had been transferred illegally across the Ukrainian-Russian border and taken to the Investigation Committee of the Russian Federation in Moscow. He contested the allegation that he could

have left Kyiv for Moscow of his own will and pointed out that his “disappearance” had occurred during an interval in the consultation with the HIAS; he had left some of his personal belongings at the NGO’s office and some in a locker at the Kyiv railway station. Those belongings had been handed in to the police and had then been given to the applicant’s counsel. He alleged that his abductors had deviated from the shortest route to Moscow by at least 330 km, according to the Ukrainian border-control stamp in his passport; at the same time, there was no stamp by the Russian border control in his passport. The first applicant also pointed out that at the time of his entry into Russia he had been on the “wanted” list and would have been detained if he had tried to enter in a regular way. He contended that neither the Ukrainian nor the Russian authorities had properly investigated his abduction despite the ample evidence, including witness statements. Moreover, the Ukrainian authorities had acknowledged that the investigation had been deficient when in 2014 they had quashed the decision of 7 December 2012 and ordered its resumption. As regards the Russian authorities, they had dismissed his complaint without further investigation; the inquiry on the basis of which the institution of criminal proceedings had been refused had been conducted by the Investigation Committee, the same authority against which the complaint had been directed.

(b) The Ukrainian Government

166. The Ukrainian Government originally contended that the first applicant’s allegations of abduction had been adequately investigated and that the decision of 7 December 2012 terminating the criminal proceedings had been reasoned and well-founded. After the reopening of the investigation (see paragraph 163 above) they stated that they could not comment on its effectiveness while it was ongoing; they mentioned that there had been fresh witness statements. The Ukrainian Government provided no further information on the progress of the domestic proceedings and did not update their submissions as regards the merits of this complaint.

167. In reply to the first applicant’s allegations of the Ukrainian authorities’ involvement in his transfer to Russia, the Ukrainian Government stated that he had not been extradited. Moreover, the Russian authorities had not made an extradition request, which would otherwise have been addressed to the Prosecutor General’s Office of Ukraine, nor had they reported him as a wanted person. They also stated that he had not had the status of an asylum seeker at the time of his alleged abduction and crossing of the Russian border; he had only been preparing an application for asylum.

(c) The Russian Government

168. The Russian Government contested the first applicant's allegations of abduction and ill-treatment. They alleged that he had left Ukraine without any involvement on the part of the Russian authorities and had returned to Russia voluntarily to surrender and confess. They stated that the first applicant had been examined by a medical doctor in the first few days of his detention (see paragraph 61 above), and the medical record did not corroborate his allegations of ill-treatment. Those allegations had been dismissed by the inquiry as unsubstantiated. The decision of 21 November 2012 refusing to institute criminal proceedings had been upheld by competent courts (see paragraph 68 above). They also stated that they had no competence to examine witnesses from Ukraine.

2. The Court's assessment**(a) General principles**

169. According to the Court's case-law, the responsibility of a State is engaged under Articles 3 and 5 of the Convention, in particular if, being aware of irregular detention, even by private persons, the authorities acquiesced or failed to put an end to it (see *Riera Blume and Others v. Spain*, no. 37680/97, §§ 29-35, ECHR 1999-VII; *Medova v. Russia*, no. 25385/04, §§ 123-25, 15 January 2009; *Rantsev v. Cyprus and Russia*, no. 25965/04, §§ 319-21, ECHR 2010 (extracts); *Lopatin and Medvedskiy v. Ukraine*, nos. 2278/03 and 6222/03, § 85, 20 May 2010; and *Koval and Others v. Ukraine*, no. 22429/05, §§ 54 and 73, 15 November 2012).

170. Where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3, that provision requires by implication that there should be an effective official investigation (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII, and *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, §§ 315-25, ECHR 2014 (extracts)). Moreover, this positive obligation cannot be considered in principle to be limited solely to cases of ill-treatment by State agents (see *M.C. v. Bulgaria*, no. 39272/98, § 151, ECHR 2003-XII).

171. Even though the scope of the State's positive obligations might differ between cases where treatment contrary to Article 3 has been inflicted through the involvement of State agents and cases where violence is inflicted by private individuals (see *Beganović v. Croatia*, no. 46423/06, § 69, 25 June 2009), the requirements as to an official investigation are similar. For the investigation to be regarded as "effective", it should in principle be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible. This is not an obligation of result, but one of means. The authorities must have taken the

reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard, and a requirement of promptness and reasonable expedition is implicit in this context (see, among many authorities, *Mikheyev v. Russia*, no. 77617/01, §§ 107 et seq., 26 January 2006, and *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, §§ 183-85, ECHR 2012).

172. In cases under Articles 2 and 3 of the Convention where the effectiveness of the official investigation has been at issue, the Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time (see *Labita v. Italy* [GC], no. 26772/95, §§ 133 et seq., ECHR 2000-IV). Consideration has been given to the opening of investigations, delays in taking statements (see *Timurtaş v. Turkey*, no. 23531/94, § 89, ECHR 2000-VI, and *Tekin v. Turkey*, 9 June 1998, § 67, *Reports* 1998-IV) and the length of time taken for the initial investigation (see *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001).

173. In cases of alleged abduction associated with ill-treatment the Court has considered that the nature and the scope of the State's procedural obligation to investigate the alleged abduction was the same with respect to both Articles 3 and 5 of the Convention (see *El-Masri*, cited above, § 242, and, *mutatis mutandis*, *Medova*, cited above, § 123).

(b) Application of these principles to the present case

174. The Court notes that the first applicant's allegations of abduction and ill-treatment concern both the negative and positive obligations of Russia and Ukraine under Articles 3 and 5 of the Convention. As regards the negative obligations, in so far as the first applicant may be understood as having alleged the involvement of the Russian authorities in his abduction and the cooperation or knowing acquiescence of the Ukrainian authorities, there is no evidence that the abductors acted on behalf of the Russian authorities, or that the Ukrainian authorities actively or passively participated in the abduction. The Court therefore sees no grounds to find either respondent State in breach of the substantive guarantees of these provisions.

175. On the other hand, the Court considers that the applicant had an arguable claim of abduction and ill-treatment, which he put forward before the authorities of both States. It notes that the essential facts underlying the first applicant's complaint of abduction were not contested by either of the respondent Governments. All parties agreed that on 19 October 2012 in the morning the first applicant was in Kyiv and that at about 9 p.m. on the same day he crossed the Ukrainian-Russian border by car. It was also confirmed by the Ukrainian Government, and not contested by the Russian

Government, that he had visited the HIAS office that morning and had then left for lunch, but had not returned to the office.

176. The Ukrainian authorities acknowledged, moreover, that at about 4 p.m. on the same day the HIAS legal officer had reported the first applicant's suspected abduction to the Kyiv police and requested that it be investigated in criminal proceedings. Given that, according to the eyewitnesses, the first applicant was wrestled into a vehicle, this complaint suggested not only that he had been unlawfully deprived of his liberty but that there had been a risk of his ill-treatment by the perpetrators. From the moment they received this report, the Ukrainian authorities' obligation to investigate the incident was engaged under both Articles 3 and 5 of the Convention.

177. In fact, the Ukrainian authorities did not dispute that they had been under an obligation to conduct an effective investigation in this case. However, they initially refused to open a criminal investigation after a superficial inquiry which ended with a decision of 7 December 2012 to dispense with criminal proceedings. The Ukrainian authorities have implicitly acknowledged that that inquiry did not constitute an effective investigation. In December 2014 they undertook to carry one out (see paragraph 163 above). However, in the absence of any report on the part of the respondent Government on the progress of those proceedings the Court cannot but conclude that the Ukrainian authorities have not complied with this obligation to date.

178. As regards the Russian authorities with which the first applicant lodged complaints shortly after his arrest in Moscow, the Russian Government stated that his allegations were unsubstantiated because the first applicant had not sustained any injuries which he could demonstrate as evidence. However, the Court does not consider the absence of injuries to be sufficient to dismiss a complaint of this kind. By presenting witness statements from the HIAS staff the applicant made a *prima facie* case of abduction, possibly associated with inhuman or degrading treatment during his transfer to Russia, which placed the Russian authorities under an obligation to investigate it. If they could not take any practical steps towards an inquiry for lack of territorial jurisdiction, it was their obligation to seek the assistance of the Ukrainian authorities (see *Güzelyurtlu and Others*, cited above, §§ 232-33), but this has not been done. In any event, the order for the first applicant's abduction was allegedly given in Russia, and it was incumbent on the Russian authorities to verify these allegations. Moreover, the first applicant's deprivation of liberty and ill-treatment had allegedly continued in Russian territory. The Court therefore cannot accept that the Russian authorities could not have taken any action within their competence.

179. The Court concludes that the authorities of neither of the respondent States have taken the necessary steps to verify the first

applicant's plausible allegations of abduction and ill-treatment by unidentified individuals.

180. There has been a violation of the procedural guarantees of Articles 3 and 5 of the Convention by Ukraine in that it failed to carry out an effective investigation into the first applicant's allegations of unlawful deprivation of liberty and inhuman and degrading treatment in Ukrainian territory.

181. There has been a violation of the procedural guarantees of Articles 3 and 5 of the Convention by Russia in that it failed to carry out an effective investigation into the first applicant's allegations that he had been unlawfully abducted and ill-treated by Russian State agents acting in Ukraine, and into his allegations of unlawful deprivation of liberty and inhuman and degrading treatment in Russian territory.

III. ALLEGED VIOLATION BY RUSSIA OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE LACK OF MEDICAL ASSISTANCE PROVIDED TO THE FIRST APPLICANT AND THE INTENSIVE SCHEDULE OF THE COURT HEARINGS

182. The first applicant alleged that he had not received adequate medical assistance during his lengthy pre-trial detention and that the excessively intensive schedule of the court hearings had led to the deterioration of his health, in violation of Article 3 of the Convention.

1. The parties' submissions

(a) The Russian Government

183. The Government contested the first applicant's allegation of poor medical care and disputed that this had caused an aggravation of his illness. They pointed out that he had not provided any medical report or expert statement indicating that the deterioration of his health, if there had been any, could have been linked to the conditions of his detention or inadequate medical assistance. The applicant had been given the necessary medical treatment and had been transferred to the prison hospital when needed, in particular between 24 January and 19 February 2013 and between 1 and 14 October 2014. The Government relied on the medical certificate issued on 12 October 2014 before the first applicant's discharge from the prison hospital stating that he was in good health, and pointed out that all medical examinations had found him fit to stand trial, to remain in pre-trial detention and to serve his prison sentence. As regards the intensity of the court hearing schedule, it had remained reasonable, taking account of the need to secure the applicant's right to trial within a reasonable time. The Government submitted a schedule according to which the hearings had

taken place four days a week, usually beginning at about 11 a.m. and finishing at about 5 p.m.

(b) The first applicant

184. The first applicant submitted that his health had deteriorated significantly during his detention and that for the first two years of his detention he had not received any treatment. He alleged that he had not begun receiving medical assistance until 1 October 2014, when he had had a heart seizure, after which he had been transferred to the SIZO-1 prison hospital (“Matrosskaya Tishina”), where he had been treated until 14 November 2014. The applicant alleged that he had been transferred back to the detention facility despite still being seriously ill and having difficulty walking. He had made multiple requests to the trial court to reduce the intensity of the hearing schedule and to change his preventive measure to house arrest to allow him to recover from illness, stress and fatigue. The applicant relied on the results of the coronary angiography conducted on 12 November 2014, and asserted that his diagnosis of hypertension had worsened because of his lengthy detention in conditions amounting to ill-treatment and the exhausting criminal proceedings.

185. The first applicant did not contest the Government’s submissions about the number of court hearings per week and their duration. However, he pointed out that his transfer arrangements between the detention facilities and the courthouse had been such that he had had to wake up at 6 a.m. and return to his detention cell at about midnight. He had thus spent many hours per day in the transfer van and had not had sufficient sleep on the days of the hearing.

2. The Court’s assessment

186. The Court notes that, according to the medical report of 12 November 2014, in the course of that year the first applicant’s blood pressure had occasionally risen to 170/100, but that at the time of his discharge from hospital it was 120/70. While the applicant argued that the updated diagnosis of third-degree hypertension proved that the conditions of his detention and the lack of medical care had caused damage to his health, the Court considers this insufficient to find a breach of Article 3 of the Convention. The medical files submitted by the Government (see paragraphs 102-106 above) show that he was regularly seen by various medical specialists and was receiving treatment for his various health disorders. He was twice placed in the prison hospital, in particular after a heart seizure, and coronary angiography was performed in order to diagnose his condition. The first applicant has not given any examples of refusal or failure to provide him with medical assistance in relation to a specific need. It follows that the Russian authorities have complied with their positive obligations to provide the applicant with appropriate medical assistance.

187. Likewise, there is nothing in the case file to corroborate the first applicant's claim of poor detention conditions or to link them to the state of his health.

188. As regards the intensity of the court hearing schedule, the Court notes that it has previously considered lack of sleep caused by the frequency and length of prison transfers to be a compounding factor for treatment to attain, overall, the minimum level of severity required to characterise it as degrading within the meaning of Article 3 of the Convention (see *Yaroslav Belousov v. Russia*, nos. 2653/13 and 60980/14, § 110, 4 October 2016). The Court observes that, according to both parties, the hearings were conducted four days a week, from about 11 a.m. to about 5 p.m. However, this did not include the time the first applicant spent during the transfer between the detention facility and the court. During the trial he regularly complained about his early departures from the detention facility – as early as 6 a.m. – and late arrivals after the hearings, typically after 11 p.m., but sometimes after midnight, and asked the court to reduce the frequency of the hearings, to transfer him to another detention facility or to apply a non-custodial preventive measure. The Government did not comment on the applicant's submissions about his early pick-up and late drop-off times. It appears from the detention facility's report that the drop-off time was 10.15 p.m., which means that the first applicant had seven hours and forty-five minutes before the pick-up for the next day's hearing. The Court considers that the time of rest thus afforded to the first applicant was far from adequate (see also paragraphs 254-255 below). However, in the present case the information available about the intensity of the hearing schedule does not, by itself or in combination with other elements known about the conditions of the first applicant's detention and the medical care provided to him, allow the Court to conclude that it attained the threshold of severity required to characterise it as degrading treatment within the meaning of Article 3 of the Convention.

189. It follows that the first applicant's complaint of a violation of Article 3 of the Convention on account of the poor level of medical assistance provided to him, the intensity of the court hearing schedule and the conditions at the courthouse is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. ALLEGED VIOLATION BY RUSSIA OF ARTICLE 5 OF THE CONVENTION ON ACCOUNT OF THE FIRST APPLICANT'S DETENTION

190. The first applicant complained under Article 5 § 1 of the Convention that his loss of liberty in the period between 19 and 21 October 2012, or the ten days of his pre-trial detention in 1997, had not been taken into account for the calculation of his term of pre-trial detention. He alleged

that, moreover, his pre-trial detention had not been based on a “reasonable suspicion” that he had committed a criminal offence. He also complained that his pre-trial detention had not been justified by “relevant and sufficient reasons”, as required by Article 5 § 3 of the Convention.

A. Admissibility

191. As regards the period between 19 and 21 October 2012, the Court has found that it has no evidence that the first applicant’s abductors acted on behalf of State authorities (see paragraph 174 above). Consequently, it cannot accept the allegation that the three-day period when he was deprived of his liberty by unidentified individuals formed part of his pre-trial detention. Likewise, it cannot accept the allegation that the ten days of his pre-trial detention in 1997 were relevant for the term of his detention ordered in 2012 because the detention orders in the latter case were based on a reference to charges of mass disorder; the reference to the 1997 case in the investigator’s request is of no consequence for the assessment of this question.

192. It follows that the first applicant’s complaint of a violation of Article 5 § 1 of the Convention on account of the incorrect calculation of the term of his pre-trial detention is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

193. As regards the subsequent period, the Court notes that the Basmannyy District Court of Moscow ordered the first applicant’s detention, which was extended on several occasions by the same court and, after the case had been submitted for trial, by the Moscow City Court. The domestic courts acted within their powers in making those decisions and there is nothing to suggest that they were invalid or unlawful under domestic law. Accordingly, the first applicant’s detention was imposed and extended in accordance with a procedure prescribed by law.

194. As regards the allegation that the first applicant’s detention was not based on a reasonable suspicion that he had committed criminal offences, his complaint under Article 5 § 1 of the Convention is linked to his complaint under Article 5 § 3 of the Convention that the authorities had failed to adduce relevant and sufficient reasons justifying the extensions of his detention pending criminal proceedings. According to the Court’s case-law under the latter provision, the persistence of a reasonable suspicion is a condition *sine qua non* for the validity of continued detention (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 87, ECHR 2016 (extracts)). In addition to the persistence of reasonable suspicion, a pre-trial detention must also be justified on relevant and sufficient grounds, already at the time of the first decision ordering detention on remand (*ibid.*, § 102). Having regard to the nature of the applicant’s allegations, the Court deems it more appropriate to deal with the issues raised by the complaint under

Article 5 § 3 of the Convention (see *Khodorkovskiy v. Russia*, no. 5829/04, § 165, 31 May 2011; *Taranenko v. Russia*, no. 19554/05, § 46, 15 May 2014; and *Kovyazin and Others v. Russia*, nos. 13008/13, 60882/12 and 53390/13, § 71, 17 September 2015).

195. As regards the first applicant's complaint of a violation of Article 5 § 3 of the Convention, the Court finds that it is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that this part of the application is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

196. The applicant complained that his detention had been extended using formulaic reasons without an assessment of the changing circumstances and without giving thorough consideration to alternative preventive measures.

197. The Russian Government submitted that the first applicant's detention had been duly ordered and extended by the competent courts in reasoned and well-founded decisions which had thoroughly examined all the relevant circumstances and the evolving situation. The length of his detention, just over one year and nine months, had not exceeded a reasonable time. The Government restated the reasons given by the domestic courts in those decisions and argued that there had been no violation of Article 5 §§ 1 and 3 of the Convention.

2. The Court's assessment

198. The period of detention to be taken into consideration in this case started on 21 October 2012, the date of the first applicant's arrest, and ended on 24 July 2014, the date of his conviction by the first-instance court. Accordingly, the period to be taken into consideration was one year, nine months and three days. Having regard to this considerable length of detention in the light of the presumption in favour of release, the Court finds that the Russian authorities were required to put forward very weighty reasons for keeping the applicant in detention for such an extended period of time.

199. The initial detention order stated that the first applicant was likely to abscond and to obstruct the course of justice by destroying evidence and influencing witnesses because of his strong connections in Russia and abroad, his regular trips abroad, his possession of a travel passport, his lack of permanent employment, and the fact that he had not been living at his registered address in Irkutsk. The court also considered that the first applicant was likely to continue his criminal activity because he had been

intercepted at the stage of preparing the crime. It took into account the police reports stating that the applicant had previously fled and had been placed on the “wanted” list. In the extension orders the courts continued to rely on the information that he had previously tried to flee, that he did not have employment or a permanent income, and that he did not live at his registered address in Irkutsk. In some extension orders they relied also on the gravity of the charges and his previous prosecution for other criminal offences. The extensions ordered after the end of the investigation also indicated that the extension was necessary to allow the first applicant access to the criminal case file. Replying to the first applicant’s request to replace his detention with house arrest at his wife’s address in Moscow, the courts noted that he was not registered at that address.

200. In the present case, the Court is prepared to accept that the nature and the gravity of the offences imputed to the first applicant, that is, the preparation of mass disorder, could have played a role in the choice of preventive measure at the initial stage of the investigation. However, it reiterates that, although the seriousness of the charges and the severity of the sentence faced are relevant in the assessment of the risk of an accused person’s absconding, reoffending or obstructing the course of justice, they cannot alone serve to justify long periods of detention (see *Ilijkov v. Bulgaria*, no. 33977/96, §§ 80 and 81, 26 July 2001, and *Artemov v. Russia*, no. 14945/03, § 77, 3 April 2014).

201. It observes that throughout the whole period of the first applicant’s detention the domestic courts accepted that there was a risk of him absconding because of police information about his previous attempt to flee the investigation, as well as his absence from his registered address and his lack of employment. The references to his frequent travels, his possession of a travel passport and his connections in Russia and abroad did not feature in the later detention orders. The Court will therefore examine whether the three above-mentioned factors remained relevant and sufficient in the later stages of the criminal proceedings.

202. It notes that the courts attached weight to the police reports on the first applicant’s attempt to flee and his placement on the “wanted” list in October 2012. However, according to the official version, it was the first applicant who presented himself on 21 October 2012 to surrender and confess. Moreover, at the time of his journey to Ukraine in October 2012 he did not have the status of a suspect in a criminal case and was not subject to any preventive measure; his absence from his registered address at the time when the authorities decided to bring charges was not in breach of any rule or undertaking. It appears that the courts did not perform a thorough assessment of the information provided by the police and did not question their contradictory allegations as regards the first applicant’s previous attempts to flee. As to the applicant’s lack of fixed employment and the fact that he was not registered at his *de facto* address in Moscow, the Court

considers that the domestic courts did not provide a satisfactory explanation as to why these circumstances constituted an obstacle to applying other preventive measures, in particular house arrest.

203. Likewise, the courts' reasoning did not contain sufficient details to enable the Court to uphold their finding that in the later stages of the investigation and during the trial the applicant still posed risks of reoffending, tampering with evidence and influencing witnesses. Accordingly, the Court has no grounds for accepting that these risks could not have been effectively dealt with by other preventive measures.

204. The Court further notes that on 7 October 2013 the domestic court granted an extension of the first applicant's pre-trial detention, in particular to allow him and his counsel sufficient time for access to the investigation file. It is not clear, however, why the applicant had to remain in detention for that purpose. Certainly, if released, he could have accessed the file under the same arrangements as persons to whom pre-trial detention had never been applied. Moreover, the Court has previously found that the provisions of Russian law concerning the extension of detention pending the study of the case file by a defendant were not foreseeable in their application, in violation of Article 5 § 1 of the Convention (see *Tsarenko v. Russia*, no. 5235/09, §§ 59-63, 3 March 2011, and *Pyatkov v. Russia*, no. 61767/08, §§ 86-91, 13 November 2012).

205. Having regard to the material in its possession, the Court considers that by failing to address the specific facts or to consider alternative preventive measures, the authorities extended the first applicant's detention on grounds which, although "relevant" for the initial period, cannot be regarded as "sufficient" to justify remanding him in custody for a period of over one year and nine months.

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

V. ALLEGED VIOLATION BY RUSSIA OF ARTICLE 5 OF THE CONVENTION ON ACCOUNT OF THE SECOND APPLICANT'S HOUSE ARREST

207. The second applicant complained under Article 5 §§ 1 and 3 of the Convention that his house arrest pending trial had been unlawful and excessively lengthy.

A. Admissibility

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

B. Merits*1. The parties' submissions*

209. The second applicant contested the Government's allegation that he had breached his undertaking and had thus inflicted a further restriction of liberty on himself. He submitted, in particular, that on the date when the authorities had allegedly been unable to reach him at his home address he had actually been present at the investigator's office and had received the indictment. In the applicant's submission, his placement under house arrest had been ordered after Mr Razvozzhayev's refusal to give incriminating evidence and had pursued the aim of putting pressure on both co-accused.

210. The Russian Government contended that the second applicant's house arrest had complied with Article 5 of the Convention. They pointed out that the second applicant's initial preventive measure – an undertaking not to leave Moscow and to display proper behaviour, imposed on 17 October 2012 – had been replaced by house arrest after the applicant had breached that undertaking. In particular, he had repeatedly travelled to other regions and abroad and had often been absent from his address and unreachable by telephone. Moreover, he had been charged with and convicted of an administrative offence for having taken part in an unauthorised stationary demonstration on 27 October 2012; then, on 15 December 2012 he had been arrested at an opposition rally; and on 13 January 2013 he had attempted to set some merchandise on fire during a public event while calling for protest actions. Therefore, the court had considered it necessary to apply a stricter preventive measure and had placed the applicant under house arrest. Bail, as an alternative measure, had been duly rejected. In the Government's submission, such a measure could not have prevented the applicant from committing new offences.

211. As regards the second applicant's allegations that he could not receive adequate medical assistance while under house arrest, they pointed out that Article 107 of the Code of Criminal Procedure had required him to receive the investigator's permission to leave the designated premises. Accordingly, he could have obtained such permission for his medical visits, and indeed he had successfully done so on three occasions. Moreover, he had called an ambulance to his place of residence at least once and thus had received the requisite medical care.

2. The Court's assessment

212. The relevant general principles applicable in this case have been summarised by the Court in *Buzadji v. the Republic of Moldova* ([GC], see above, §§ 86-91). In particular, house arrest is considered, in view of its degree and intensity, to amount to deprivation of liberty within the meaning of Article 5 of the Convention. The Court has held that this type of

deprivation of liberty requires relevant and sufficient reasons, just as with pre-trial detention. It has specified that the notions of “degree” and “intensity” in its case-law, as criteria for the applicability of Article 5, refer only to the degree of restrictions on liberty of movement, not to differences in comfort or in the internal regime in different places of detention. Thus, the Court would apply the same criteria for deprivation of liberty, irrespective of the place where the applicant was detained (*ibid.*, §§ 104 and 113-14).

213. Having regard to the circumstances of the second applicant’s house arrest as described in paragraph 44 above, the Court considers that subjecting him to this measure between 9 February 2013 and 24 July 2014, that is, for over one year and five months, constituted deprivation of liberty within the meaning of Article 5 of the Convention.

214. The Court observes that the second applicant’s detention under house arrest was justified by his failure to comply with the previous preventive measure, namely the undertaking not to leave Moscow and to behave properly, in particular with reference to his participation in public events, seeing that, on at least one occasion, he had been given an administrative sanction for a breach of the procedure for holding public events. Although the second applicant considered the latter sanction unlawful and irrelevant for the preventive measure in question, the Court notes that the criminal charges in the present case related to disorder during a public event; the reference to the applicant’s conduct at assemblies during the period when he was subjected to the undertaking was thus pertinent for the assessment of the risk of his reoffending. Therefore, at least one of the grounds relied on by the authorities could be said to have genuinely conformed to the purpose of the restrictions permitted by Article 5 § 1 (c), and it does not appear there was any element of bad faith or deception on the part of the authorities (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 69, ECHR 2008, and the cases cited therein). There was thus no violation of Article 5 § 1 in this respect. Whether there were grounds which were “relevant” and “sufficient” to justify the house arrest is a question to be examined under Article 5 § 3 of the Convention (see *Buzadji*, cited above, § 61).

215. As noted above, the second applicant’s house arrest was justified by his failure to comply with the previous preventive measure, namely the undertaking to remain in Moscow and to display proper behaviour. Although the risks of his influencing witnesses, continuing criminal activity, destroying evidence and obstructing the course of the criminal proceedings were also listed among the grounds, the court did not indicate any specific facts showing the emergence of those risks. The gravity of the charges, the second applicant’s possession of a travel passport, his wife’s and children’s temporary residence in Ukraine and his connections were referred to in a general manner, and these circumstances had already existed at the time

when the original preventive measure of an undertaking rather than detention was ordered. Therefore, they could not be considered relevant for replacing it with another preventive measure.

216. Accordingly the Court will assess whether the breach of the undertaking alone could have justified the second applicant's house arrest.

217. In finding the second applicant in breach of the undertaking the domestic court first noted his frequent absences from his home address and his trips to other regions and abroad, and concluded that there was a risk of his absconding. This finding was based solely on one report stating that a police officer had been unable to reach the applicant in order to summon him to receive the indictment on 26 October 2012. However, it appears from the parties' submissions that on that date the second applicant attended the indictment procedure in person. Accordingly, even if on one occasion three days previously the applicant had not answered a telephone call, this was of no consequence to the course of the investigation. Moreover, there is nothing in the case file to corroborate the allegation that the difficulty in contacting the second applicant was a recurring problem or that the applicant had travelled beyond Moscow's city limits in breach of the undertaking. Accordingly, the risk of his absconding was not sufficiently demonstrated in the judicial decision imposing house arrest.

218. Secondly, in relation to the alleged breach of the undertaking to display proper behaviour, the court relied on information about the second applicant's participation in at least three opposition rallies, one of which resulted in an administrative conviction for holding a public event not compliant with the procedure established by law; on that basis it established the existence of a risk of his reoffending. As found above, the second applicant's participation in and conduct at public events could legitimately be taken into account, in view of the nature of the accusations in the criminal case (see paragraph 214 above). Despite the applicant's disagreement with the administrative conviction, the court deciding on the preventive measure was not required to reassess the administrative charges determined by another competent court. For the purpose of his initial two-month detention, the reference to a final judgment could be regarded as "relevant" and "sufficient". However, the five subsequent decisions ultimately extending his house arrest to a period of over seventeen months reiterated the reasons given in the original order without a fresh assessment of their continued relevance and sufficiency. In particular, it remained unexplained why the court's original assessment that the risk of reoffending could be suitably curbed by a two-month period of detention had to be reviewed. The extensions did not mention any circumstances arising during the first two months of the house arrest indicating the applicant's intention to reoffend or any external reasons pointing to the persistence of this particular risk. Moreover, the courts systematically rejected the applicant's

offer of bail without stating reasons beyond a formulaic indication that this would not suffice as a preventive measure.

219. It follows that the authorities failed to convincingly demonstrate the persistence of the risks of the second applicant's absconding and reoffending such as to justify the extensions of his detention for a period of over seventeen months.

220. The Court finds that there has been no violation of Article 5 § 1 of the Convention, and a violation of Article 5 § 3 of the Convention.

VI. ALLEGED VIOLATION BY RUSSIA OF ARTICLE 6 OF THE CONVENTION

221. The applicants complained under Article 6 § 1 of the Convention that they had been convicted by a tribunal that was not independent and impartial and was not "established by law" in view of the fact that during the trial the presiding judge had been appointed to another judicial post at the Supreme Court but had continued to hear their case. They further complained under Article 6 § 1 of the Convention that the criminal proceedings against them had fallen short of the guarantees of a fair hearing, in particular the principles of adversarial proceedings and equality of arms and the way the court had admitted the evidence. They alleged that their conviction had been based on unreliable evidence, in particular the film *Anatomy of Protest, Part Two*, and the confession by the first applicant which he had allegedly given under duress and had later withdrawn. They also complained about the trial of their co-defendant L. in separate accelerated proceedings which had involved plea bargaining and about the subsequent use of evidence given by L. as a witness in the criminal proceedings against them.

222. Under Article 6 §§ 1 and 3 (d) of the Convention, the applicants complained of a violation of the right to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them. They referred in particular to the court's refusal to call and examine some of the victims and the defendants in related criminal cases, as well as to examine certain witnesses on the grounds of their prior involvement in the proceedings. Furthermore, the second applicant complained that he had not been allowed to put certain questions to the police officers who had been examined as witnesses, in particular A.M.

223. The first applicant also alleged that he had been unable to participate effectively in the court hearing because of his confinement in a glass cabin and his exhaustion and lack of sleep caused by the excessively intensive schedule and lengthy prison transfers. He relied on Article 6 §§ 1 and 3 (b) of the Convention.

224. The second applicant also alleged a violation of Article 6 § 3 (b) of the Convention, citing the period in April 2014 when he had been prevented

from taking part in the court proceedings and his lack of access to the transcripts of the proceedings during the trial at first instance.

225. Article 6 of the Convention, in so far as relevant, reads as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...

3. Everyone charged with a criminal offence has the following minimum rights ...

(b) to have adequate time and facilities for the preparation of his defence; ...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him ...”

A. Admissibility

226. As regards the appointment of the trial judge to another office before the end of their trial, the Government confirmed that on 18 June 2014 Judge Z., who had presided over the applicants’ case, had been appointed as a Supreme Court judge (Military Section) with effect from 6 August 2014. They considered that, as a matter of principle, his appointment had not undermined the lawfulness, independence or impartiality of the tribunal conducting the applicants’ trial. On the contrary, it had ensured the right of the accused to have the case heard by the same judicial composition throughout the trial. Moreover, the judgment in the applicants’ case had been rendered before the new appointment became effective.

227. The applicants alleged that the appointment of Judge Z. to another office before the end of their trial had breached their rights in two ways. First, account should have been taken of the role of the Supreme Court as a superior court in relation to the Moscow City Court; for a month, the judge in question had simultaneously held the positions of judge of the first-instance court and of the appellate court. Secondly, the judge’s appointment had resulted in a strict deadline for completing the trial at first instance and giving judgment, and that could have motivated the judge to reject the applicants’ requests to examine witnesses in order to be able to finish the case before taking up his new office. The applicants specified that they had not challenged the judge because of the numerous warnings given to the lawyers throughout the hearing when they had made procedural applications such as requests to examine certain witnesses. The judge had considered some of these applications an abuse of process and potentially punishable, and this had discouraged the defence counsel from raising important procedural points, including the judge’s lack of independence and impartiality.

228. The Court reiterates that, in principle, it is competent to examine whether the domestic legal provisions on the establishment and competence of judicial organs have been complied with. However, having regard to the

general principle that it is primarily for the national courts themselves to interpret the provisions of domestic law, the Court finds that it may not question their interpretation unless it is arbitrary or manifestly unreasonable (see *Molla Sali v. Greece* [GC], no. 20452/14, § 149, 19 December 2018). In the present case, the Court has no grounds for finding that the appointment of Judge Z. to a superior court precluded him from continuing to hear the case under examination before the new appointment had taken effect. It will therefore examine whether that appointment compromised the independence and impartiality of the trial court in the applicants' case.

229. Regarding being had to the criteria for the assessment of a tribunal's independence (see *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 221, 14 April 2015), the Court does not consider that the independence of the tribunal was at issue. In so far as the applicants argued that Z. might subsequently be involved in the case at the appeal stage, the Court notes that he was appointed to the Military Section of the Supreme Court, whereas the applicants' case would be heard by the Criminal Section. Moreover, even if he could hypothetically have been appointed to deal with the applicants' case and had not withdrawn, it would have been open to the applicants to challenge him at that stage.

230. As regards the allegation that Judge Z.'s appointment had set time-limits on the applicants' trial and made him rush the hearings, it falls to be examined under the subjective test (see *Kyprianou v. Cyprus* [GC], no. 73797/01, § 118, ECHR 2005-XIII). The Court has consistently held that the personal impartiality of a judge must be presumed until there is proof to the contrary (*ibid.*, § 119; see also *Hauschildt v. Denmark*, 24 May 1989, § 47, Series A no. 154). The Court observes that the decision on Z.'s appointment was taken on 18 June 2014, four months after the beginning of the trial and about one month before its end, including two final weeks when the court was deliberating in private, preparing the text of the judgment. The material in the case file contains no indication that Judge Z.'s appointment affected his conduct, in particular his approach to dealing with witnesses and evidence in the proceedings. Moreover, the applicants did not make an objection on this ground at the relevant time and did not refer to any specific occurrence in their points of appeal. Accordingly, this complaint is not corroborated by evidence required to rebut the presumption of impartiality.

231. Finally, the Court takes cognisance of the second applicant's complaint that during the trial he had no access to the transcripts of the proceedings, despite requests made by him and his lawyer, and of his complaint about his removal from the trial for four days as a penalty for contempt of court. Having regard to all the material in its possession, the Court finds that these allegations do not disclose any appearance of a violation of the guarantees of a fair trial, within the meaning of Article 6 §§ 1 and 3 of the Convention.

232. It follows that the above complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

233. On the other hand, the Court notes that the remaining complaints under Article 6 are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

234. The applicants maintained that the conviction of L. in a disjoined set of abridged criminal proceedings had rendered their subsequent trial unfair because the facts established in those proceedings had, by law, become prejudicial for the purposes of the related proceedings. This had given the prosecution an advantage over the defence which had in no way been compensated for. Also, they alleged that plea bargaining had incited L. to maintain the same testimony in the subsequent proceedings irrespective of the truth. The applicants also complained that the court had taken into account L.'s statements made during the investigation, although they were substantially different from the testimony he had given at the applicants' trial.

235. The applicants maintained that the refusal to examine four witnesses on the grounds that they had previously been present in the courtroom had been unfounded. They alleged that there had only been an official record of those witnesses being present in the court building, while no record of the attendees in the courtroom had been kept. Moreover, no verification of the possible past attendance of the hearing by the prosecution witnesses had been carried out; this requirement had thus been applied selectively to the defence witnesses only. The applicants contested the bailiffs' report on the subject as incorrect, and the reliance on social media by one of the witnesses in question as irrelevant. The first applicant also maintained his complaint about the court's refusal to call and examine his former legal counsel as a witness. He pointed out that F. had been forced to step down as his lawyer after he had been questioned as a witness during the investigation.

236. Concerning the second applicant's removal from the hearing on 1 April 2014, he contested the Government's allegation that his medical certificate had been invalid and submitted that its authenticity had been confirmed at the hearing on that day, with a relevant record made in the court's minutes. He also contested the Government's assertion that his participation in that hearing had been duly authorised by a medical doctor

and argued that the ambulance doctor who had examined him had refused to issue such an authorisation; the authorisation had been given by the court's medical staff, who had not examined him but had authorised his presence on the presiding judge's orders. He alleged that on that day he had had gastric pain impeding his participation in the proceedings and he had requested the court to adjourn the hearing. The court had rejected the request although there had been no urgent steps to be taken on that day. When he reiterated the request, the judge had issued a warning to him and to his defence lawyer. The second applicant, still in pain, had repeated in emotional terms that it was inhuman and degrading treatment to force him to participate in the trial in that condition, and he had been removed from the courtroom as a penalty for contempt of court. He had returned to the trial only on 7 April 2014, having missed the cross-examination of eleven witnesses and four victims, and the examination of some written evidence.

237. As regards the first applicant's confinement in a glass cabin during the court hearings, he maintained, in particular, that this installation had impeded his participation in the proceedings and his communication with his legal counsel.

238. The applicants' submissions concerning the excessive intensity of the court hearing schedule are the same as those summarised in paragraphs 184-85 above.

(b) The Russian Government

239. The Government contested the applicants' allegations. They maintained that the use of the accelerated procedure and plea bargaining in the disjoined proceedings against L. had had no adverse effect on the fairness of the criminal proceedings against the applicants. They referred to Article 90 of the Code of Criminal Procedure, which provided that a judgment could not predetermine the guilt of anyone who had not participated in the criminal case under consideration. In any event, Article 90 had been amended on 29 June 2015 to introduce an exception to the rule that the circumstances established in an earlier judgment were to be accepted by a court without additional verification: this rule no longer applied to findings made in accelerated proceedings. The Government also contended that the judgment against L. had not identified the applicants by their names or initials, referring to them in general terms. L. had been cross-examined at the applicants' trial and his testimony had been admitted in evidence, without conferring *res judicata* on the statements made by him in his own case. The Government pointed out that the first applicant had unsuccessfully challenged the relevant provisions of the Code before the Constitutional Court.

240. In relation to the complaint about the refusal to call and examine witnesses requested by the applicants, the Government submitted that the four witnesses in question (Mr A.K., Ms P.B., Ms E.V. and Ms E.T.) had

attended the public hearings in the applicants' case prior to the request to call them as witnesses. The judge had therefore decided to reject the applicants' request, considering that the court had heard the submissions of other participants in the trial. The Government also argued that these witnesses had not been "key" ones in the present case; otherwise the applicants would have requested their examination at an earlier stage in the proceedings. As for the first applicant's complaint about the court's refusal to call and examine his former legal counsel F. as a witness, the Government submitted that F. had been given the status of witness in the criminal proceedings which had subsequently been joined with the proceedings in which he had acted as the first applicant's defence counsel. Therefore, he had been unable to continue as defence counsel in the joined case. At the same time, in the same proceedings he had been prevented from testifying about circumstances which were covered by the client-lawyer privilege. The Government therefore alleged that F. had had to be replaced to secure the first applicant's procedural rights as a defendant.

241. Concerning the second applicant's absence on some days of the trial, they submitted that on 26 March 2014 the court had adjourned the proceedings until 1 April 2014 on the basis of a medical certificate submitted by the applicant and made an enquiry to the medical clinic where the certificate had been issued. The clinic had replied on 1 April 2014 that no medical leave had been given to the second applicant. On the same day the court had ordered the applicant to attend the hearing and he had been brought to the court; his ability to stand trial had been assessed by a doctor called to the courtroom, and the second applicant had stated that he did not require medical assistance. The court had therefore resumed the hearing with the applicant present. However, the applicant had been removed from the courtroom for three days (1-3 April 2014) as a penalty for contempt of court following his loud remarks denigrating the trial court. On the three days of the trial when the second applicant had been absent, he had been represented by his lawyers. Therefore, there had been no violation of Article 6 on this account.

242. As regards the first applicant's confinement in a glass cabin during the court hearings, the Government submitted that this arrangement had not obstructed the defendant's participation in the proceedings; the cabin had been equipped with a microphone to enable him to address the court, and there had been slots through which he could talk to his lawyer. The lawyer had sat near the cabin. The Government contended that the first applicant's frequent consultations with his lawyer and his active participation in the proceedings showed that there had been no impediments to the exercise of his procedural rights.

243. The Government's submissions concerning the allegedly excessive intensity of the court hearing schedule are summarised in paragraph 183 above.

2. *The Court's assessment*

(a) **Disjoined criminal proceedings against L. and his conviction based on plea bargaining**

244. The Court observes that the criminal proceedings initially conducted against three co-defendants, namely both applicants and L., were divided into two separate criminal cases, one of which – against L. – resulted in the latter's conviction in accelerated proceedings based on plea bargaining. Subsequently, L. testified at the applicants' trial as a witness, which the applicants considered to have undermined the overall fairness of the hearing in their criminal case. The Court has previously examined complaints about the absence of safeguards associated with similar procedures and summarised the relevant principles applicable to the establishment of facts and the use of co-defendants' statements as witness testimony in disjoined sets of proceedings (see *Navalnyy and Ofitserov v. Russia*, nos. 46632/13 and 28671/14, §§ 96-101 and 105-05, 23 February 2016), holding as follows:

“99. The Court accepts that in complex criminal proceedings involving several persons who cannot be tried together, references by the trial court to the participation of third parties, who may later be tried separately, may be indispensable for the assessment of the guilt of those on trial. Criminal courts are obliged to establish the facts of the case relevant for the assessment of the legal responsibility of the accused as accurately and precisely as possible, and they cannot present established facts as mere allegations or suspicions. This also applies to facts related to the involvement of third parties, though if such facts have to be introduced, the court should avoid giving more information than necessary for the assessment of the legal responsibility of those accused in the trial before it. Even if the law expressly states that no inferences about the guilt of a person can be drawn from criminal proceedings in which he or she has not participated, judicial decisions must be worded so as to avoid any potential pre-judgment about the third party's guilt in order not to jeopardise the fair examination of the charges in the separate proceedings (see *Karaman*, cited above, §§ 64-65).

...

104. The Court has previously highlighted the first and most obvious guarantee to be secured when co-accused are tried in separate sets of proceedings, notably the courts' obligation to refrain from any statements that may have a prejudicial effect on the pending proceedings, even if they are not binding (see *Karaman*, cited above, §§ 42-43 and 64-56) ...

105. The second requirement for the conduct of concurrent proceedings is that the quality of *res judicata* would not be attached to facts admitted in a case to which the individuals were not party. The state of the evidence admitted in one case must remain purely relative and its effect strictly limited to that particular set of proceedings. ...”

245. The Court observes that, contrary to the above requirements, in the present case the decision to disjoin the case against L. did not involve an assessment of the countervailing interests or consultation of the applicants with a view to giving them an opportunity to object to the cases being

separated. It finds that L.'s conviction following the use of plea bargaining and accelerated proceedings compromised his credibility as a witness in the applicants' case because he was compelled to maintain the statements he had made in order to negotiate the reduction of his sentence while not being bound by the witness oath.

246. Moreover, it must be noted that Article 90 of the Code of Criminal Procedure, as worded at the material time, expressly conferred *res judicata* on judgments even if issued in accelerated proceedings. The Court recalls its previous finding that even if the courts were obliged to base their assessment exclusively on the material and testimony presented at the hearing, this provision required the court to remain concordant with the previous judgment (see *Navalnyy and Ofitserov*, cited above, § 236) which holds true in this case. The Court considers that both L. and the domestic courts had an obvious incentive to remain concordant with the findings made in the accelerated proceedings even though those findings had not been scrutinised in an adversarial manner.

247. The Court concludes that there has been a violation of Article 6 § 1 of the Convention in respect of both applicants.

(b) The first applicant's confinement in a glass cabin in the courtroom

248. The first applicant complained about his confinement in a glass cabin in hearing room no. 635 at the Moscow City Court. This particular courtroom arrangement has already been examined by the Court from the standpoint of Articles 3 and 6 of the Convention (see *Yaroslav Belousov*, cited above, §§ 127 and 148-53 respectively). It found that although the conditions in hearing room no. 635 of Moscow City Court did not attain the minimum level of severity to constitute a violation of Article 3 of the Convention, they amounted to a disproportionate restriction of the defendants' rights to participate effectively in the proceedings and to receive practical and effective legal assistance. In particular, the defendants were separated from the rest of the hearing room by glass, a physical barrier which to some extent reduced their direct involvement in the hearing and made it impossible for them to have confidential exchanges with legal counsel. However, the trial court did not seem to recognise the impact of these courtroom arrangements on their defence rights, and did not take any measures to compensate for these limitations.

249. In the present case, as in *Yaroslav Belousov* (cited above), the use of this security installation was not warranted by any specific security risks or courtroom order issues but was applied to the first applicant automatically because he was in pre-trial detention, and without any compensatory measures. Such circumstances prevailed for over five months during the trial at first instance, and inevitably had an adverse effect on the fairness of the proceedings as a whole.

250. It follows that during the trial at first instance, the first applicant's rights to participate effectively in the proceedings and to receive practical and effective legal assistance were restricted, and such restrictions were neither necessary nor proportionate. There has therefore been a violation of Article 6 § 1 of the Convention, taken in conjunction with Article 6 § 3 (b) and (c).

(c) Allegedly excessive intensity of the court hearing schedule as regards the first applicant

251. The first applicant alleged that the court hearings had been scheduled too frequently and had left him insufficient time to rest, which had led to his exhaustion and reduced the effectiveness of his participation in the proceedings.

252. The Court reiterates that the States' duty under Article 6 § 3 (b) to ensure the accused's right to mount a defence in criminal proceedings includes an obligation to organise the proceedings in such a way as not to prejudice the accused's power to concentrate and apply mental dexterity in defending his position (see *Makhfi v. France*, no. 59335/00, §§ 40-41, 19 October 2004). Where the defendants are detained, the conditions of their detention, transport, catering and other similar arrangements are relevant factors to consider in this respect (see, for example, *Barberà, Messegue and Jabardo v. Spain*, 6 December 1988, §§ 70 and 89, Series A no. 146; *Mayzit v. Russia*, no. 63378/00, § 81, 20 January 2005; and *Moiseyev v. Russia*, no. 62936/00, §§ 221-22, 9 October 2008).

253. The Court observes that in the domestic proceedings the trial court dismissed the first applicant's complaints, referring to the information from the detention facility to the effect that the first applicant had been dropped off at 10.15 p.m. at the latest, and noted the lack of medical evidence of any deterioration in the first applicant's health. Only on one occasion, on 20 March 2014, had the court adjourned the hearing on the basis that the first applicant needed rest after having been transferred to another detention facility. However, the first applicant's subsequent complaints of lack of concentration because of exhaustion and sleep deprivation were dismissed as unfounded.

254. In the present case, although the Court has concluded that the intensity of the court hearing schedule did not reach a sufficient level of severity to qualify as inhuman or degrading treatment within the meaning of Article 3 (see paragraph 188 above), it considers that this affected the first applicant's ability to participate effectively in the proceedings and to instruct his lawyers. It observes that the first applicant and his lawyers made numerous detailed and specific complaints alleging that he could not concentrate on the hearing because of exhaustion and sleep deprivation. The courts, however, considered that the schedule was reasonable on the basis of the time the applicant spent in court. They did not take into consideration

the time the first applicant spent being transferred, although they accepted the report from the detention facility indicating the drop-off time as 10.15 p.m., implying that this left him seven hours and forty-five minutes before the pick-up for the next day's hearing. Moreover, lengthy transfers in poor conditions to and from courts appear to have been common in Moscow at the material time (see *Yaroslav Belousov*, cited above, §§ 103-11). The cumulative effect of exhaustion caused by lengthy prison transfers leaving less than eight hours of rest, repeated for four days a week over a period of more than four months, must have seriously undermined the first applicant's ability to follow the proceedings, make submissions, take notes and instruct his lawyers. While the Court accepts the domestic court's reasons for expediting the proceedings, it considers that in this case insufficient consideration was given to the first applicant's requests for a less intensive hearing schedule.

255. The Court therefore holds that the first applicant was not afforded adequate facilities for the preparation of his defence, which undermined the requirements of a fair trial and equality of arms, in violation of Article 6 §§ 1 and 3 (b).

(d) Conclusions on Article 6

256. The Court finds that there has been a violation of Article 6 § 1 of the Convention on account of L.'s admission as a witness in the applicants' criminal case after his conviction in separate accelerated proceedings based on plea bargaining.

257. In respect of the first applicant, there has also been a violation of Article 6 §§ 1 and 3 (b) on account of the excessively intensive hearing schedule and the lengthy prison transfers, and of Article 6 §§ 1 and 3 (b) and (c) of the Convention on account of his confinement in the glass cabin in the courtroom.

258. In view of these findings, the Court does not consider it necessary to address the remainder of the applicants' complaints under Article 6 §§ 1 and 3 of the Convention.

VII. ALLEGED VIOLATION BY RUSSIA OF ARTICLE 8 OF THE CONVENTION AS REGARDS THE FIRST APPLICANT

259. The first applicant complained that while in detention he had not been granted short-term leave to visit his dying mother or, subsequently, to attend her funeral. He also complained that he had been sent to serve his prison term in very remote correctional facilities, which had hindered contact with his family and social ties. These complaints fall to be examined under Article 8 of the Convention, which reads as follows:

Article 8 (right to respect for private and family life)

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, 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. Admissibility

260. The Government submitted that the first applicant had not challenged his transfer to the correctional facility in the Krasnoyarsk Region before the domestic courts. A similar objection as to the non-exhaustion of domestic remedies has recently been examined and dismissed on the basis that the applicant did not have at his disposal an effective domestic remedy for his grievances under Article 8 (see *Voynov v. Russia* no. 39747/10, § 47, 3 July 2018). The Court does not find any grounds to depart from this finding. Accordingly, it dismisses the Government’s objection as to the non-exhaustion of domestic remedies in respect of this complaint.

261. The Court notes that the complaints under Article 8 are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that they are not inadmissible on any other grounds. This part of the application must therefore be declared admissible.

B. Merits

1. The parties’ submissions

(a) The first applicant

262. The first applicant contested the Government’s allegation that it had been impossible to arrange for him to attend his mother’s funeral and pointed out that he had been detained in Moscow, the same city where the funeral had taken place.

263. As regards his transfer to the correctional colony in the Krasnoyarsk Region, he considered it unlawful under domestic law and in breach of Article 8 of the Convention. He specified that a journey from Moscow to the place of his detention involved a flight of about five hours, and that the trip was expensive. He had therefore not received regular visits from his friends, family or supporters.

(b) The Russian Government

264. As regards the first applicant’s inability to visit his dying mother and/or attend her funeral, the Government submitted that his attendance of

the funeral had been impracticable because of the very short notice. They specified that the Ombudsperson's cable concerning his mother's death on 8 April 2015 had been received by the Federal Prison Service on 10 April 2015, and this had not allowed the service to arrange for his timely transfer to the funeral venue on the following day. They added that the applicant had not personally submitted a request to attend the funeral. They did not comment on the alleged refusal to grant the first applicant leave to visit his mother before her death.

265. As regards the first applicant's transfer to the detention facility in the Krasnoyarsk Region, the Government alleged that it had been lawful and compatible with his right to family life. They pointed out that he had been visited by his family members in that facility and he had sent letters to his wife regularly. They noted that Article 73 § 2 of the Code on the Execution of Sentences provided for an exception to the general rule on distribution of prisoners in cases where it was impossible to allocate a prisoner to a detention facility located in the "home" region, which was the reason he had not been transferred to the Irkutsk Region.

2. *The Court's assessment*

(a) **Leave to visit his ill mother and to attend her funeral**

266. The Court observes that the Government did not contest that the first applicant while in detention had not been granted short-term leave to visit his dying mother or, subsequently, to attend her funeral. They did not maintain that he was not eligible for such leave. They referred to the excessively short notice for the funeral attendance and the fact that it was the Ombudsperson, not the applicant himself, who had made the request for attendance. They did not put forward any justification for not granting his earlier request to see his mother during her serious illness.

267. The Court reiterates that it is an essential part of a prisoner's right to respect for family life that the prison authorities assist him or her in maintaining contact with his or her close family (see *Messina v. Italy* (no. 2), no. 25498/94, § 61, ECHR 2000-X; *Kurkowski v. Poland*, no. 36228/06, § 95, 9 April 2013; and *Vintman v. Ukraine*, no. 28403/05, § 78, 23 October 2014). It further reiterates that the refusal of leave to attend a relative's funeral constitutes an interference with the right to respect for family life (see *Schemkamper v. France*, no. 75833/01, § 31, 18 October 2005; *Lind v. Russia*, no. 25664/05, § 92, 6 December 2007; and *Feldman v. Ukraine* (no. 2), no. 42921/09, § 32, 12 January 2012). Whereas Article 8 does not guarantee an unconditional right to leave to attend a relative's funeral, and even though a detainee by the very nature of his situation may be subjected to various limitations of his rights and freedoms, every such limitation must be nevertheless justifiable as being "necessary in a democratic society" (see *Lind*, § 94, and *Feldman*, § 34, both cited above).

The authorities can refuse an individual the right to attend the funeral of his parents only if there are compelling reasons for such refusal and if no alternative solution can be found (see *Płoski v. Poland*, no. 26761/95, § 37, 12 November 2002, and *Guimon v. France*, no. 48798/14, §§ 44-51, 11 April 2019).

268. In the instant case the Russian authorities did not give any consideration to the first applicant's requests referring to his mother's serious illness and, after she died, they considered that they did not have sufficient time to make the necessary arrangements for him to attend the funeral. The latter refusal was not based on the assessment of his individual situation, in particular the fact that he had not been given an opportunity to see his mother before her death. The time constraints complicating the planning of the funeral attendance was not a sufficient reason for refusing it. It is typical for funerals to be fixed at very short notice and they are generally regarded as a matter of urgency. In this case, it would have been physically possible for the first applicant to arrive at the funeral, which was held on the following day in the same city. The fact that the request came from the Ombudsperson rather than from the applicant should not have mattered because it was clear from her letter that the request had been initiated by the applicant's counsel (see paragraph 144 above). In the Court's view, the decision to refuse the first applicant leave was taken in a manner incompatible with the State's duty to carry out an individualised evaluation of his particular situation and to demonstrate that the restriction of his right to attend a relative's funeral was "necessary in a democratic society".

269. There has therefore been a violation of Article 8 of the Convention on account of the refusal of leave to the first applicant to visit his seriously ill mother and subsequently to attend her funeral.

(b) Remote location of the correctional facility

270. As indicated above (see paragraph 267 above), it is an essential part of a prisoner's right to respect for family life that the authorities enable him or her, or if need be assist him or her, to maintain contact with his or her close family, and that, on the issue of family visits, Article 8 of the Convention requires States to take into account the interests of the prisoner and his or her relatives and family members. Placing a convicted prisoner in a particular penal facility may raise an issue under Article 8 of the Convention if its effects on his or her private and family life go beyond the "normal" hardships and restrictions inherent in the very concept of imprisonment, in particular in view of the geographical situation of remote penal facilities and the realities of the transport system (see, with further references, *Polyakova and Others*, cited above, § 81).

271. The Court has already analysed the Russian domestic legal system in the context of the geographical distribution of prisoners (*ibid.*, §§ 90-115)

and concluded that the system did not afford adequate legal protection against possible abuses, and that Article 73 §§ 2 and 4 and Article 81 of the Code on the Execution of Sentences did not satisfy the “quality of law” requirement (*ibid.*, §§ 117-18).

272. There is nothing in the Government’s submissions regarding the present case to convince the Court to depart from the above findings. The Court thus concludes that the interference with the first applicant’s right to respect for his family life in the present case was not “in accordance with the law” within the meaning of Article 8 § 2 of the Convention.

273. Therefore, there has been a violation of Article 8 of the Convention on account of the first applicant’s transfer to the correctional colony in the Krasnoyarsk Region.

VIII. ALLEGED VIOLATION BY RUSSIA OF ARTICLES 10 AND 11 OF THE CONVENTION

274. The applicants complained of a violation of their right to freedom of expression and the right to freedom of peaceful assembly. They alleged that they had been held liable for the disorder at the site of the assembly at Bolotnaya Square, although in their view it was attributable to the authorities, and that their conviction for organising mass disorder had been unlawful, arbitrary and disproportionate. Both applicants relied on Article 11 of the Convention, and the first applicant also relied on Article 10 of the Convention. These Articles read as follows:

Article 10 (freedom of expression)

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

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

Article 11 (freedom of assembly and association)

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

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the

protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

A. The parties’ submissions

275. The Russian Government submitted that both applicants had repeatedly organised acts of mass disorder to bring about political unrest, including at the public event on 6 May 2012. They asserted that on the latter occasion the applicants had conspired with other individuals to break through the police cordon, to take the demonstrators outside the allocated area, to use violence against the police, to set up camping tents at the venue of the demonstration and to hold a sit-in protest there. They alleged that in the present case there had been no interference with the applicants’ rights under Articles 10 and 11 because the applicants had not intended to exercise the right to peaceful assembly but rather to commit a criminal offence. In any event, both provisions allowed for restrictions on those rights in the interests of national security or public safety, or for the prevention of disorder or crime.

276. The applicants contested the Government’s allegation that they had caused, or had intended to cause mass disorder on 6 May 2012. They maintained that the stand-off between the protesters and the police had been a result of the excessive crowd control measures, and that when it had occurred, the second applicant had attempted to negotiate with the authorities, through the intermediary of two State Duma deputies and the Ombudsman of the Russian Federation. According to the applicants, moving the police cordon, as the protesters had requested, would have resolved the conflict. They further alleged that their criminal conviction had not pursued a legitimate aim and had been intended as a public reprisal against the opposition leaders with a view to discouraging all political activists from expressing their views and taking part in public assemblies.

B. The Court’s assessment

1. Scope of the applicants’ complaints

277. The Court observes that unlike the previously examined cases brought by activists convicted of participating in mass disorder at Bolotnaya Square, the applicants in the present case were convicted of organising the same acts of mass disorder. The charges against them were based, on the one hand, on the surveillance material obtained undercover and the film *Anatomy of Protest, Part Two*, and on the other hand, on L.’s witness statements indicating that the applicants had carried out preparatory activities aimed at causing a series of unspecified acts of mass disorder. The

applicants were also accused of having been responsible for the specific occurrence of acts of mass disorder during the rally at Bolotnaya Square on 6 May 2012. In their complaints before the Court both applicants focused on the second point, contesting their responsibility for the disorder at Bolotnaya Square.

278. In so far as the applicants relied on Article 10 in relation to the events at Bolotnaya Square, their allegations concern only the matters directly relating to the conduct of the assembly, without distinguishing any form of expression exercised independently from the freedom of assembly. Accordingly, in the circumstances of the case, Article 10 of the Convention is to be regarded as a *lex generalis* in relation to Article 11 of the Convention, which is the *lex specialis* (see *Ezelin v. France*, 26 April 1991, § 35, Series A no. 202; *Akarsubaşı and Alçiçek v. Turkey*, no. 19620/12, §§ 31-33, 23 January 2018; and *Öğrü v. Turkey*, no. 19631/12, § 13, 17 October 2017). As such, the applicants' complaints should be examined under Article 11 of the Convention. On the other hand, notwithstanding its autonomous role and particular sphere of application, Article 11 of the Convention must, in the present case, also be considered in the light of Article 10 of the Convention. The protection of personal opinions, secured by Article 10 of the Convention, is one of the objectives of freedom of peaceful assembly as enshrined in Article 11 of the Convention (see *Ezelin*, cited above, § 37).

2. Establishment of the facts

279. The Court first observes that in the domestic proceedings and before the Court the applicants argued that there had been no mass disorder at Bolotnaya Square on 6 May 2012. They claimed that the authorities' last-minute change of the meeting layout had caused the stand-off between the protesters and the police and some isolated clashes, but not riots. The Court has previously examined the events at issue in relation to complaints about disruptive security measures implemented at the site of the meeting at Bolotnaya Square (see *Frumkin v. Russia*, no. 74568/12, §§ 7-41 and 102-30, 5 January 2016, and *Yaroslav Belousov*, cited above, §§ 169-71). It found, in particular, that the sit-in had begun because of the unexpected change of the venue layout, of which the police had not informed the organisers. It also found that the authorities had made an insufficient effort to communicate with the assembly organisers to resolve the tension caused by the confusion about the venue layout, and that breaking through the police cordon was not confirmed to have been the organisers' desired outcome (see *Frumkin*, cited above, §§ 113-16 and 128).

280. The parties' pleadings in the present case and the material submitted by them do not contain any information capable of altering the Court's above findings. It will therefore take those findings into account in the present case.

281. The Court also observes, turning to the specific facts of this case, that the judgment of 24 July 2014 referred to surveillance material obtained undercover, in particular audio recordings of conversations, the content of which was partly contested by the applicants. The same judgment also relied on the content of the film *Anatomy of Protest, Part Two*, which was based on footage of which the provenance and reliability were contested by the applicants during the trial. In the proceedings before the Court the parties did not make detailed submissions as regards these pieces of evidence. Noting that the domestic courts examined them in adversarial proceedings in which the applicants were able to scrutinise and challenge the impugned evidence, the Court is not required to substitute its own assessment of the content and the probative value of these recordings for that of the domestic courts, or to call into question the facts established on the basis of them (see, *inter alia*, *Klaas v. Germany*, 22 September 1993, § 29, Series A no. 269, and *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 169, ECHR 2015). The Court will therefore base its assessment on the version of events set out in the domestic judgments.

3. Admissibility

282. The Court reiterates that Article 11 of the Convention only protects the right to “peaceful assembly”, a notion which does not cover a demonstration where the organisers and participants have violent intentions (see *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 77, ECHR 2001-IX). The guarantees of Article 11 of the Convention therefore apply to all gatherings except those where the organisers and participants have such intentions, incite violence or otherwise reject the foundations of a democratic society (see *Sergey Kuznetsov v. Russia*, no. 10877/04, § 45, 23 October 2008; *Alekseyev v. Russia*, nos. 4916/07, 25924/08 and 14599/09, § 80, 21 October 2010; *Fáber v. Hungary*, no. 40721/08, § 37, 24 July 2012; *Gün and Others v. Turkey*, no. 8029/07, § 49, 18 June 2013; *Taranenko*, cited above, § 66; *Kudrevičius and Others*, cited above, § 92; and *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 98, 15 November 2018). It is therefore necessary to determine whether the facts of the present case fall within the ambit of Article 11 of the Convention.

283. The Court has examined a number of cases where it found that the assembly at Bolotnaya Square fell within the scope of Article 11 of the Convention and accepted that the applicants in those cases enjoyed the protection of this provision in so far as they were not among those responsible for the initial acts of aggression contributing to the deterioration of the assembly’s peaceful character (see, among other authorities, *Yaroslav Belousov*, cited above, § 172; *Stepan Zimin v. Russia*, nos. 63686/13 and 60894/14, § 72, 30 January 2018; and *Lutskevich v. Russia*, nos. 6312/13 and 60902/14, § 94, 15 May 2018). However, it accepted that there might

have been a number of individuals in the crowd who had contributed to the onset of clashes between the protesters and the police and whose situation could have been contrasted with that of the applicants in the aforementioned cases (see *Barabanov*, cited above, § 72).

(a) The first applicant

284. In the present case, the first applicant was found guilty of leading a number of individuals to break through the police cordon, and the witnesses confirmed that he had had that intention. Given that the breaking of the cordon led to the escalation of violence at a crucial moment and triggered the onset of clashes, the Court considers that the first applicant's deliberate acts contributing to its occurrence fall outside the notion of "peaceful assembly" protected by Article 11. It therefore dismisses the first applicant's complaint as incompatible *ratione materiae* with the provisions of the Convention.

(b) The second applicant

285. In relation to the second applicant, on the other hand, the Court considers that the acts imputed to him – that is, taking part in the sit-in and encouraging others to join it, and his calls to the protesters to begin an "indefinite protest action" on the site of the cancelled meeting and to set up an illegal campsite there – did not demonstrate any violent intentions on his part. No witnesses at the trial stated that he had taken part in any violent acts or encouraged them; on the contrary, he insisted on a "strictly peaceful" form of conduct. It is noteworthy that the first applicant was not acting on the second applicant's instructions when deciding to break through the police cordon (see witness testimony by State Duma Deputy Ilya Ponomarev, paragraph 129 above). Therefore, Article 11 is applicable to the second applicant's complaint.

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

4. Merits

287. The Court has found that Article 11 of the Convention is applicable to the second applicant's complaint about his prosecution and criminal conviction for organising mass disorder during the assembly at Bolotnaya Square (see paragraph 285 above). Accordingly, these measures constituted an interference with the exercise of the freedom of assembly (see *Yaroslav Belousov*, cited above, § 172). The Court will therefore examine whether the interference was "prescribed by law", pursued a legitimate aim and was

“necessary in a democratic society”, as required by Article 11 § 2 of the Convention.

288. As to whether the second applicant’s criminal conviction was lawful, the Court takes cognisance of his argument that the clashes which took place at Bolotnaya Square on 6 May 2012 could not have been characterised as “mass disorder” within the meaning of Article 212 of the Criminal Code. As in previous cases, the Court considers that the applicability of this provision was not entirely inconceivable and that it has no grounds to disagree with the domestic courts’ assessment of the situation made within the margin of their judicial discretion (*ibid.*, §§ 173-75). It therefore finds that the second applicant’s criminal conviction was “prescribed by law”. The Court also accepts that it pursued the legitimate aims of preventing disorder and crime and protecting the rights and freedoms of others, as argued by the Government.

289. Turning to the question whether the second applicant’s criminal conviction was “necessary in a democratic society”, the Court notes that he was sentenced to four years and four months’ imprisonment for organising mass disorder at Bolotnaya Square, and that this sentence was served concurrently with the four-year prison term imposed on him in the same proceedings for having conspired to organise multiple acts of mass disorder.

290. As regards the events at Bolotnaya Square, his conviction was based on the finding that being one of the event organisers, he was responsible for the stand-off between the protesters and the police and that, moreover, the stand-off had been part of the plan to take the protest outside the allocated perimeter and to set up a long-term protest campsite in the park.

291. As stated in paragraph 279 above, the Court, having observed the parties’ submissions in the present case, maintains its conclusion that the tensions at Bolotnaya Square arose because of the authorities’ unannounced change of the venue layout in order to prevent illegal campsites from being set up in the park at Bolotnaya Square (see *Frumkin*, cited above, § 106). It also considers it sufficiently established that the tension escalated into clashes because of the law-enforcement officials’ failure to communicate with the assembly organisers to resolve the dispute about the placement of the police cordon (*ibid.*, §§ 112-15 and 126). However, the judgment in respect of the second applicant attributed responsibility for the violence to the protesters, and to him personally as one of the organisers, without assessing to what extent the authorities had contributed to the deterioration of the assembly’s peaceful character.

292. Furthermore, the Court finds that the second applicant’s conduct and his statements to the public remained peaceful at all stages. He demanded airtime on Russia’s main television channels, called for the presidential inauguration of Mr Putin to be cancelled and for new elections to be held and called on the assembly participants to stay at the meeting

venue for an indefinite protest action. He may also have encouraged the setting-up of campsites supposedly inspired by the “Occupy” movement. These calls, in particular for overstaying the allocated time-slot of the assembly and for setting up a campsite, were clearly illegal as they would have been in breach of the established rules on holding a public assembly.

293. However, none of the second applicant’s statements incited recourse to physical force or actions of a destructive nature. On the contrary, he repeatedly called on the participants to remain calm and peaceful. The fact that certain protesters may have committed violent acts does not affect the assessment of the second applicant’s conduct in the absence of evidence that they had been incited by him. The mere fact that the second applicant was one of the event organisers is not sufficient to hold him responsible for the conduct of the attendees (see *Mesut Yıldız and Others v. Turkey*, no. 8157/10, § 34, 18 July 2017).

294. Neither could the second applicant’s violent intentions be inferred from the circumstances underlying the related set of charges examined in the same set of proceedings, namely preparation of the organisation of acts of mass disorder (other than the one at Bolotnaya Square). In particular, no such intentions were apparent from the fundraising activities which he carried out before and after 6 May 2012 in order to finance opposition rallies, training sessions for activists and media campaigns. The recordings of negotiations examined at the trial and referred to in the judgment contained no reference to armed or other forceful methods of exerting political pressure on the authorities. In particular, the proposal to block railway lines made in the conversations recorded undercover and relied on by the domestic judgment was attributed to the first applicant, and in any event the extent of violence involved in that proposal was not assessed. The domestic judgments thus left open the question whether the “political instability” allegedly promoted by the second applicant carried an element of violence in the sense of riots or mass disorder, as opposed to advocating political change by peaceful means. The domestic courts therefore omitted a crucial element of the balancing exercise which is required by the proportionality principle when imposing sanctions for unlawful conduct at assemblies (see *Kudrevičius and Others*, cited above, §§ 142-44, and *Gülcü v. Turkey*, no. 17526/10, §§ 110-17, 19 January 2016).

295. The Court reiterates that the nature and severity of the penalties imposed are factors to be taken into account when assessing the proportionality of an interference in relation to the aim pursued (see *Kudrevičius and Others*, cited above, § 146). Where the sanctions imposed on demonstrators are criminal in nature, they require particular justification (see *Rai and Evans v. the United Kingdom* (dec.), nos. 26258/07 and 26255/07, 17 November 2009). A peaceful demonstration should not, in principle, be rendered subject to the threat of a criminal sanction, and notably to deprivation of liberty (see *Akgöl and Göl v. Turkey*,

nos. 28495/06 and 28516/06, § 43, 17 May 2011, and *Gün and Others*, cited above, § 83). Thus, the Court must examine with particular scrutiny cases where sanctions imposed by the national authorities for non-violent conduct involve a prison sentence (see *Taranenko*, cited above, § 87).

296. In the present case, the second applicant's criminal conviction was not based on an assessment of the nature of his conduct, that is, whether his acts and intentions were violent or peaceful. In omitting to justify the criminal sanction by a specific reference to the violent nature of his conduct, the national authorities failed to apply standards which were in conformity with the principles embodied in Article 11 and thus to demonstrate that his criminal conviction for having organised mass disorder at Bolotnaya Square met a "pressing social need" (see *Kudrevičius and Others*, cited above, § 143).

297. It must be stressed, moreover, that the second applicant's criminal conviction, and especially the severity of his sentence, would inevitably have had the effect of discouraging him and other opposition supporters, as well as the public at large, from attending demonstrations and, more generally, from participating in open political debate. The chilling effect of this sanction was further amplified by the fact that it targeted a well-known public figure, and by the large-scale proceedings in this case, which attracted widespread media coverage.

298. The Court concludes that in view of the severity of the sanction imposed on the second applicant and the failure to assess the extent to which the authorities had contributed to the deterioration of the assembly's peaceful character (see paragraph 291 above), his criminal conviction was a measure disproportionate to the legitimate aims of preventing disorder and crime and protecting the rights and freedoms of others. It was therefore not necessary in a democratic society.

299. There has accordingly been a violation of Article 11 of the Convention as regards the second applicant.

IX. ALLEGED VIOLATION BY RUSSIA OF ARTICLE 18 OF THE CONVENTION

300. The second applicant complained under Article 18 of the Convention that his arrest at the meeting venue, his house arrest and his ensuing prosecution had amounted to reprisals for his having expressed views critical of the authorities and had been aimed at curtailing his political activity and at discouraging others from taking part in public assemblies organised by the opposition. This complaint falls to be examined in conjunction with Articles 10 and 11 of the Convention. Article 18 of the Convention reads as follows:

Article 18 (limitation on use of restrictions on rights)

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

301. The Government contested that argument. They alleged that the second applicant had been lawfully convicted of serious criminal offences and had failed to discharge the burden of proof in showing that his prosecution and conviction had pursued a hidden agenda.

302. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

303. It has already found that the second applicant’s criminal conviction was not necessary in a democratic society and that it had the effect of preventing or discouraging him and others from participating in protest rallies and engaging actively in opposition politics (see paragraphs 297-298 above).

304. The Court reiterates that the mere fact that a restriction of a Convention right or freedom does not meet all the requirements of the clause that permits it does not necessarily raise an issue under Article 18. Separate examination of a complaint under that Article is only warranted if the claim that a restriction has been applied for a purpose not prescribed by the Convention appears to be a fundamental aspect of the case (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 291, 28 November 2017, and *Navalnyy v. Russia* [GC], cited above, §§ 154 et seq., 15 November 2018).

305. In the present case, the parties’ submissions under this Article were essentially the same as their arguments as regards the alleged interference with the right to freedom of expression and the right to freedom of assembly. Accordingly, the Court has no grounds to conclude that the complaint under Article 18 represents a fundamental aspect of the case.

306. Having regard to the foregoing, the Court considers that the complaint under Article 18 in conjunction with Articles 10 and 11 of the Convention raises no separate issue and it is not necessary to examine whether, in this case, there has been a violation of that provision.

**X. ALLEGED VIOLATION BY RUSSIA OF ARTICLE 1 OF
PROTOCOL No. 1 TO THE CONVENTION AS REGARDS THE
SECOND APPLICANT**

307. The second applicant alleged a violation of Article 1 of Protocol No. 1 to the Convention, referring to the attachment order imposed on his assets in the criminal proceedings – in particular, the car and the sum of RUB 142,000 which he co-owned with his wife – which had remained in force after the end of the criminal proceedings. Article 1 of Protocol No. 1 to the Convention reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

308. The Russian Government alleged that this complaint was manifestly ill-founded because there had been no information that the second applicant had brought a civil claim to have the attachment order lifted. They referred to the judgment in the case of *Polonskiy v. Russia* (no. 30033/05, 19 March 2009), where the complaint had been declared inadmissible because the applicant had not complained about the relevant act of impounding his car.

309. The second applicant maintained his complaint, pointing out that the attachment order was still in force. He also stated that the car had been used by his wife and had no connection with the offence of which he had been convicted.

A. Admissibility

310. The Court notes the Government’s allegation that the second applicant failed to demonstrate that he had instituted civil proceedings for the lifting of the attachment order in respect of the funds and the car. However, they did not claim that the lack of recourse to such proceedings had constituted non-exhaustion of domestic remedies. In any event, they did not indicate under what provision he should have brought the civil action they referred to. Contrary to the case of *Polonskiy* (cited above, § 178), the applicant in the present case did not complain about the initial attachment order but about its extension by means of the judgment, that is, after the end of the criminal proceedings. Moreover, the Government did not maintain that the civil court could have lifted the attachment order made in the criminal proceedings, in particular given that the applicant was the defendant and not a third party in those criminal proceedings (see, *mutatis mutandis*, *Bokova*, cited above, § 57). The Court notes that this complaint was included in the points of appeal examined and dismissed on 18 March 2015 by the Supreme Court, which held that the continued attachment was lawful. It appears from the parties’ submissions that the assets in question have been neither confiscated nor released to date, and that they remain under the same attachment order.

311. The Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes

that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

312. It is not in dispute between the parties that the second applicant was the lawful owner of the seized funds and the car, or that they constituted his and his wife's "possessions" for the purposes of Article 1 of Protocol No. 1. The trial court's decision to attach these assets pending a possible civil action for damages therefore constituted an interference with his right to the peaceful enjoyment of his possessions.

313. The attachment order in respect of the second applicant's assets was a measure amounting to control of the use of property (see, with further references, *International Bank for Commerce and Development AD and Others v. Bulgaria*, no. 7031/05, § 123, 2 June 2016). According to the applicant, the continued application of this measure after the end of the criminal proceedings was unlawful.

314. The Court observes that the judgment of 24 July 2014 by which the second applicant was convicted of having organised mass disorder did not contain a decision to confiscate or to release assets seized in the course of the criminal proceedings. Instead, it extended the validity of the attachment order on the basis that his offence gave rise to a civil claim for damages. It identified one private company, one municipal entity and the Ministry of the Interior as eligible civil parties. However, neither the domestic court nor the Government indicated the legal provision governing the continued attachment order after the end of the criminal proceedings. Moreover, the parties have not informed the Court of any civil proceedings against the second applicant for the purpose of which the assets remained under attachment. Finally, the Government did not specify what legal steps the applicant could take to recover his possessions as a person convicted in the criminal proceedings in question (see paragraph 310 above).

315. The Court concludes that the attachment of the second applicant's assets ordered in the judgment of 24 July 2014 was not based on clear and foreseeable legal provisions. It was therefore unlawful.

316. Accordingly, the Court considers that in the present case there has been a violation of Article 1 of Protocol No. 1 to the Convention as regards the second applicant.

XI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION BY RUSSIA

317. The second applicant complained under Article 3 of the Convention that his health had deteriorated because of the lack of medical assistance during his house arrest and the excessive frequency and intensity of the

court hearings. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. This part of the application must therefore be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

XII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

318. Article 41 of the Convention provides:

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

A. Damage

319. In application no. 75734/12 the first applicant claimed 1,000,000 euros (EUR) from Russia and EUR 500,000 from Ukraine in respect of non-pecuniary damage. In his application no. 55325/15, against Russia, he claimed EUR 2,000,000 in respect of non-pecuniary damage.

320. The second applicant claimed EUR 1,000,000 in respect of non-pecuniary damage.

321. In relation to application no. 75734/12, the Russian Government contested the first applicant's claim as excessive and in any event unwarranted because they considered that there had been no violation of the Convention in his case. The Ukrainian Government also considered the first applicant's claim against Ukraine excessive. They stated that there was no causal link between the alleged violations of the Convention and the claims in respect of non-pecuniary damage.

322. In relation to applications nos. 55325/15 and 2695/15 the Russian Government made identical observations as regards both applicants' claims in respect of non-pecuniary damage. They submitted that if the Court were to find a violation of Article 6 the Convention in the present case, this finding would constitute in itself sufficient just satisfaction. They stated that in any event, a violation of Article 6 of the Convention, if the Court were to make such a finding, would constitute grounds for reopening the criminal proceedings against the applicants, in accordance with Article 413 of the Code of Criminal Procedure. They pointed out that the applicants, if acquitted, would be entitled to compensation and would be able to present their claims to the domestic courts at that stage.

323. The Court has found violations of Articles 3, 5, 6 and 8 of the Convention as regards the first applicant and violations of Articles 5, 6 and 11 of the Convention and Article 1 of Protocol No. 1 to the Convention as

regards the second applicant. It considers that, in the circumstances, the applicants' suffering and frustration as a result of the violations of Articles 3, 5 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention cannot be compensated for by the mere finding of a violation. Making its assessment on an equitable basis, it awards the following amounts in respect of non-pecuniary damage:

- EUR 11,000 to the first applicant, payable by Russia;
- EUR 4,000 to the first applicant, payable by Ukraine; and
- EUR 9,000 to the second applicant, payable by Russia.

324. Furthermore, the Court refers to its settled case-law to the effect that when an applicant has suffered an infringement of his rights as guaranteed by Article 6 of the Convention, he should, as far as possible, be put in the position in which he would have been had the requirements of that provision not been disregarded, and that the most appropriate form of redress would, in principle, be the reopening of the proceedings, if requested (see, *mutatis mutandis*, *Öcalan*, cited above, § 210 *in fine*, and *Popov v. Russia*, no. 26853/04, § 264, 13 July 2006). This applies to both applicants in the present case. It also considers that this avenue is also capable of leading to a redress to the second applicant for the violation of Article 11 of the Convention. The Court notes, in this connection, that Article 413 of the Code of Criminal Procedure provides a basis for the reopening of the proceedings if the Court finds a violation of the Convention.

325. In view of the above, the Court takes into account the Government's statement concerning the prospect of reopening the applicants' criminal case.

B. Costs and expenses

326. The applicants did not make any claims under this head. Accordingly, no award is called for.

C. Default interest

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

FOR THESE REASONS, THE COURT,

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

2. *Declares*, unanimously, the first applicant's complaints concerning his abduction and the failure by Russia and Ukraine to carry out an effective investigation into his allegations of unlawful deprivation of liberty and inhuman and degrading treatment admissible;
3. *Declares*, unanimously, the first applicant's complaints concerning the alleged violation by Russia of Article 5 § 3, Article 6 § 1 as regards the lack of a fair hearing, Article 6 § 3 (b), (c) and (d) and Article 8 of the Convention admissible;
4. *Declares*, by a majority the first applicant's complaint under Article 3 on account of the excessively intensive hearing schedule and the lengthy prison transfers and his complaint under Article 11 inadmissible;
5. *Declares*, unanimously, the second applicant's complaints concerning the alleged violation by Russia of Article 5 §§ 1 and 3, Article 6 § 1 as regards the lack of a fair hearing, Articles 11 and 18 of the Convention and Article 1 of Protocol No. 1 to the Convention admissible;
6. *Declares*, unanimously, the remainder of the applications inadmissible;
7. *Holds*, unanimously, that there has been a violation of Articles 3 and 5 of the Convention, by Russia and Ukraine, on account of the failure to carry out an effective investigation into the first applicant's allegations of unlawful deprivation of liberty and inhuman and degrading treatment;
8. *Holds*, unanimously, that there has been no violation by Russia of Article 5 § 1 of the Convention as regards the second applicant;
9. *Holds*, unanimously, that there has been a violation by Russia of Article 5 § 3 of the Convention as regards both applicants;
10. *Holds*, unanimously, that there has been a violation by Russia of Article 6 § 1 of the Convention as regards both applicants on account of L.'s appearance as a witness in the applicants' criminal case after his conviction in separate accelerated proceedings based on plea bargaining;
11. *Holds*, unanimously, that there has been a violation by Russia of Article 6 §§ 1 and 3 (b) of the Convention as regards the first applicant on account of the excessively intensive hearing schedule and the lengthy prison transfers, and of Article 6 §§ 1 and 3 (b) and (c) of the Convention on account of his confinement in a glass cabin in the courtroom;

12. *Holds*, unanimously, that there is no need to examine the remaining complaints under Article 6 of the Convention;
13. *Holds*, unanimously, that there has been a violation by Russia of Article 8 of the Convention as regards the first applicant on account of the refusal of leave from detention and on account of his transfer to a remote correctional facility;
14. *Holds*, unanimously, that there has been a violation by Russia of Article 11 of the Convention as regards the second applicant;
15. *Holds*, unanimously, that no separate issue arises concerning Article 18 of the Convention taken in conjunction with Articles 10 and 11 of the Convention as regards the second applicant;
16. *Holds*, unanimously, that there has been a violation by Russia of Article 1 of Protocol No. 1 to the Convention as regards the second applicant;
17. *Holds*, unanimously,
 - (a) that the respondent States are 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 in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) the Russian Government are to pay the first applicant EUR 11,000 (eleven thousand euros), plus any tax that may be chargeable to the applicant on this amount;
 - (ii) the Ukrainian Government are to pay the first applicant EUR 4,000 (four thousand euros), plus any tax that may be chargeable to the applicant on this amount;
 - (iii) the Russian Government are to pay the second applicant EUR 9,000 (nine thousand euros), plus any tax that may be chargeable to the applicant on this amount;
 - (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;
18. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 19 November 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Paul Lemmens
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinions of Judges Lemmens, Yudkivska, Pinto de Albuquerque and Keller are annexed to this judgment.

P.L.
J.S.P.

JOINT CONCURRING OPINION OF JUDGES LEMMENS, YUDKIVSKA AND PINTO DE ALBUQUERQUE

Introduction

1. One of the main complaints in the present case concerns the allegation that Mr Razvozzhayev (the first applicant) was abducted in Ukraine by Russian State agents and brought back to Russia, with the cooperation of the Ukrainian authorities.

We voted with the majority for finding a violation of Articles 3 and 5 of the Convention, by Russia and Ukraine, on account of the failure to carry out an effective investigation into Mr Razvozzhayev's allegations of unlawful deprivation of liberty and inhuman and degrading treatment (see operative point 7).

However, we believe that there is sufficient evidence in the file to allow us to go further and to conclude that, besides this procedural violation, there has also been a substantive violation of Articles 3 and 5 by both respondent States. We thus respectfully disagree with the majority's statement in paragraph 174 of the judgment.

The facts of the case regarding the first applicant's abduction

2. The facts of the case are striking.

Mr Razvozzhayev left Moscow for Ukraine on 14 October 2012 (see paragraph 53 of the judgment), two days after Mr Udaltsov (the second applicant) had been questioned about their common plan to organise mass opposition events, following allegations made in the documentary *Anatomy of Protest, Part Two* (see paragraph 36 of the judgment). On 16 October 2012 Mr Razvozzhayev arrived in Kyiv, and on 19 October 2012 he visited the Kyiv office of HIAS (the Hebrew Immigrant Aid Society), an organisation that assists refugees in applying for asylum in Ukraine and elsewhere. He filled in registration forms and then left the office for lunch, while his belongings remained in the office (see paragraph 54 of the judgment). These facts were confirmed by witnesses, and, as rightly noted by the majority, they are not contested by the respondent Governments (see paragraph 175 of the judgment).

What happened next is disputed between the parties. According to Mr Razvozzhayev, he was abducted in a van by members of the Russian special services, driven to Russia, held in detention, ill-treated and forced to sign a confession (see paragraph 57 of the judgment). The only thing the Ukrainian Government tell us about the incident is that the authorities were informed at 4.08 p.m. by a UNHCR officer working at HIAS about the applicant's abduction (see paragraph 55 of the judgment) and that the

applicant crossed the Ukrainian-Russian border on the same day at 8.56 p.m. (see paragraph 56 of the judgment). The Russian Government state that the applicant was placed on the list of wanted persons on 17 October 2012, that he left Ukraine on 19 October 2012, and that on 21 October 2012 he showed up at the premises of the Investigation Committee in Moscow where he filed a written confession (see paragraph 58 of the judgment). Basically, both respondent Governments argue that nothing improper happened, or that they do not know what happened

Assessment of the evidence

3. It is true that there is no direct evidence of involvement of the Ukrainian or Russian authorities.

However, the Court is free in its evaluation of all evidence. Proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see, among many other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25, and *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 151, ECHR 2012).

Moreover, Convention proceedings do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation). In certain circumstances, where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see, among other authorities, *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 179, ECHR 2007-IV).

4. In the present case, Mr Razvozzhayev gave a specific and coherent account of the events, from his alleged abduction in Kyiv to his arrival in the Moscow offices of the Investigation Committee (see paragraph 165 of the judgment).

Furthermore, we find it utterly improbable that Mr Razvozzhayev, being on the wanted list in Russia, and after fleeing Russia and preparing to apply for asylum, would voluntarily return to Moscow to turn himself in to the Investigation Committee. The only reasonable explanation, also taking into account the witness statement by a HIAS officer (see paragraph 54 of the judgment), is that the applicant was indeed abducted in Kyiv and then brought to Moscow. Since there were two days between the abduction in Kyiv and the drop-off in Moscow, the applicant must also be considered to have been detained during that period. Finally, having regard to the confession made to the Investigation Committee, which is totally inexplicable in the circumstances, we consider that the applicant's account of ill-treatment during his detention is a credible one.

Russia's responsibility in respect of the first applicant's abduction

5. The question remains: by whom was Mr Razvozzhayev abducted, detained and ill-treated?

We do not think that Mr Razvozzhayev was abducted by his friends or other friendly persons. He must have been abducted by people who had an interest in him, and more specifically an interest in him as a participant in the earlier demonstrations and as someone suspected of planning further events. Since he was dropped off at the Investigation Committee, there is in our opinion a strong presumption that he was abducted by Russian State agents.

This presumption is reinforced by the fact that Mr Razvozzhayev, although on Russia's wanted list, was able to return to Russia without being stopped at the Russian border.

The presumption shifts the burden of proof to the Russian Government. However, they have failed to provide a plausible explanation for the above-mentioned events. Although the Russian authorities had the opportunity to investigate the events, they refused to open an investigation. The explanation given at the time for this refusal was that the applicant had left Kyiv voluntarily, had returned to Moscow by taxi, and had then come to the Investigation Committee to confess "out of patriotic sentiment" (see paragraph 68 of the judgment). This is in our opinion wholly unbelievable.

For the above reasons we cannot but conclude that Russia's responsibility was engaged in the abduction of the applicant and the subsequent events.

Ukraine's responsibility in respect of the first applicant's abduction

6. And what about Ukraine?

We note that the events in question took place prior to the conflict between Ukraine and Russia.

We further note that the Ukrainian authorities were informed by a witness at 4.08 p.m. about Mr Razvozzhayev's abduction. According to the official information provided by the Ukrainian Government, Mr Razvozzhayev crossed the Ukrainian-Russian border at 8.56 p.m., that is, almost five hours later. There was ample time for the Ukrainian authorities, who must have known about the applicant's reputation in Russia, to put their border guard services on alert. But instead of paying any attention to the applicant when he arrived at the border, allegedly through the Hoptivka checkpoint, a border guard simply put a stamp in his passport and recorded his passage in the official database. We have serious doubts that unidentified kidnappers could have transferred Mr Razvozzhayev from Ukraine to Russia against his will without anything suspicious being

observed by the Ukrainian border guards (see, for a comparable situation, *Iskandarov v. Russia*, no. 17185/05, § 113, 23 September 2010).

The above course of events, assuming that it happened in the way described, gives rise to a *prima facie* case that the Ukrainian authorities were involved in the applicant's transfer to Russia (compare *Iskandarov*, cited above, § 114).

Here too, the presumption shifts the burden of proof to the respondent Government. But like the Russian Government, the Ukrainian Government have failed to provide a plausible explanation for the above-mentioned events. They merely explained that the applicant could cross the border freely since there had been no official request from the Russian authorities to arrest and extradite him (see paragraph 167 of the judgment). No explanation was offered for the lack of any reaction from the border guards notwithstanding the fact that the authorities in Kyiv had received notice of the applicant's kidnapping five hours earlier.

For the above reasons we cannot but conclude that Ukraine's responsibility too was engaged in the abduction of the applicant and the subsequent events.

Conclusion

7. To sum up, we consider that the majority failed to draw all the appropriate conclusions from the facts of the case. We are of the opinion that both Russia and Ukraine were responsible for a substantive violation of Mr Razvozzhayev's rights under Articles 3 and 5.

JOINT PARTLY CONCURRING AND PARTLY
DISSENTING OPINION OF JUDGES LEMMENS,
YUDKIVSKA AND KELLER

8. We voted with our colleagues for finding a violation by Russia of Article 11 of the Convention as regards Mr Udaltsov (the second applicant) (see operative point 14).

We have nothing to add regarding the relevant part of the judgment.

9. With respect to Mr Razvozzhayev (the first applicant), the majority hold that his complaint, although very similar, is incompatible *ratione materiae* with the provisions of the Convention (see paragraph 284 of the judgment) and thus inadmissible (see operative point 4).

We respectfully disagree.

10. The majority consider that Mr Razvozzhayev deliberately led a number of individuals to break through the police cordon, thus creating an escalation of violence and triggering the onset of clashes. They hold that his acts fall outside the notion of “peaceful assembly” within the meaning of Article 11 (see paragraph 284 of the judgment).

The facts seem not so clear to us.

11. The applicant argued that the clashes with the police had occurred owing to the accumulation of a large number of people as well as to the unexpected change in the manner of deployment of the police squads involved. According to the applicant, the passage to the meeting area, Bolotnaya Square, was deliberately narrowed by policemen, riot police and internal troops and officers in full gear. The access to that area was obviously too small for the great number of protesters. Negotiations with the authorities to open up the passage failed. The applicant conceded that several clashes had arisen between the protesters and law-enforcement officers, but said that they had been spontaneous and had occurred because of bunching caused by the police cordon actions, panic among the protesters and the impossibility for them to leave the place.

As is stated in paragraph 279 of the judgment, the Court has already examined the events of 6 May 2012 at Bolotnaya Square. With respect to the breaking of the police cordon, it noted that “a commotion arose near the police cordon at the place vacated by the sit-down protest, and the police cordon was broken in several places. A crowd of around a hundred people spilled over to the empty space beyond the cordon. Within seconds the police restored the cordon” (see *Frumkin v. Russia*, no. 74568/12, § 35, 5 January 2016; to similar effect, see also *Yaroslav Belousov v. Russia*, nos. 2653/13 and 60980/14, § 22, 4 October 2016). This description, which largely corresponds to the one given by Mr Razvozzhayev, makes plausible the idea that people close to the cordon found themselves “forced” to break through it because of congestion in the area caused by the growing number of protesters approaching the square.

12. We acknowledge that the Court has already stated that there might have been a number of individuals in the crowd who contributed to the onset of clashes between the protesters and the police (see *Yaroslav Belousov*, cited above, § 179; *Barabanov v. Russia*, nos. 4966/13 and 5550/15, § 74, 30 January 2018; *Polikhovich v. Russia*, nos. 62630/13 and 5562/15, § 77, 30 January 2018; and *Stepan Zimin v. Russia*, nos. 63686/13 and 60894/14, § 77, 30 January 2018; see also paragraph 283 of the judgment).

However, the mere fact that someone “contributed to the onset of clashes” does not necessarily exclude that that person acted in a peaceful way. The context is important.

13. The majority refer to the fact that during the trial against the applicants a witness stated that Mr Razvozzhayev had had the intention to break through the police cordon (see paragraph 284 of the judgment). That witness was Mr Ponomarev, a State Duma Deputy for whom Mr Razvozzhayev worked as an assistant. He stated “that he was the person who had suggested during the sit-in that the applicants push the police cordon back to the agreed limits of the meeting venue, and that he had told the first applicant to find strong men for that purpose” (see paragraph 129 of the judgment).

We do not think that this statement provides a firm basis for holding that Mr Razvozzhayev’s conduct was not “peaceful”. First of all, Mr Ponomarev spoke of pushing the police cordon back, not of breaking through the cordon. Moreover, it is not clear why Mr Ponomarev instructed his assistant to find strong men to push the police cordon back. It could have been because of the congestion that was becoming more and more severe and the corresponding need to open up the passage to the meeting area. In any event, Mr Ponomarev’s statement can hardly be understood as an argument in support of the view that Mr Razvozzhayev deliberately broke through the cordon in order to start a conflict with the law-enforcement officers.

14. In short, we are not convinced that Mr Razvozzhayev displayed conduct that placed his acts outside the scope of protection of Article 11.

At the very least, this is in our opinion a matter to be examined under the merits of the complaint. It is for that reason that we voted against declaring his complaint inadmissible.

**PARTLY DISSENTING OPINION
OF JUDGE PINTO DE ALBUQUERQUE**

In addition to my concurring opinion with Judge Yudkivska and Judge Lemmens, I dissent with regard to the finding that the first applicant's complaint of a violation of Article 3 of the Convention on account of the intensity of the court hearing schedule is manifestly ill-founded. To my mind, the very early pick-up and late drop-off times, which left the first applicant with less than eight hours per day to have some rest and recuperate, attained the threshold of severity required to characterise them as degrading treatment within the meaning of Article 3 of the Convention. It is telling to me that the Government did not even comment on the applicant's submissions on this point (see paragraph 188 of the judgment), thereby implicitly accepting that Article 3 had indeed been infringed in this regard. Hence, I do not understand why the majority downplayed this degrading conduct by merely considering it under Article 6 and not under Article 3. The majority's legal reasoning on this point is quite contradictory: on the one hand, they admit that the "cumulative effect of exhaustion caused by lengthy prison transfers leaving less than eight hours of rest, repeated for four days a week over a period of more than four months, must have seriously undermined the first applicant's ability to follow the proceedings, make submissions, take notes and instruct his lawyers" (see paragraph 254 of the judgment), but on the other hand they do not acknowledge that this same seriously damaging conduct had the effect of degrading the applicant to the level of a mere object in the hands of the authorities. In my view, the extremely tiring early pick-up and late drop-off times, the excessively intensive hearing schedule and the lengthy prison transfers were the source not only of the breach of the right to a fair procedure under Article 6 acknowledged by the majority (see paragraph 255 of the judgment), but also of a violation of the prohibition of degrading treatment under Article 3, which the majority failed to recognise.

CONCURRING OPINION OF JUDGE KELLER

1. I agree with the Court that Mr Udaltsov's complaint under Article 18 of the Convention should not be examined. However, it seems right for me to explain the reasoning by which I arrived at this conclusion as I have disagreed with the Court on this issue in previous cases (see, for example, my partly dissenting opinion in *Kasparov v. Russia*, no. 53659/07, 11 October 2016, and my joint partly dissenting opinion with Judges Nicolaou and Dedov in *Navalnyy and Ofitserov v. Russia*, nos. 46632/13 and 28671/14, 23 February 2016).

2. In the present case, I consider that Mr Udaltsov has failed to substantiate his claim under Article 18. The essence of an Article 18 complaint is that a Convention right was restricted chiefly for a purpose *not* prescribed by the Convention (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 305, 28 November 2017). In the single paragraph of his observations addressing Article 18, Mr Udaltsov submitted that his criminal prosecution might have a chilling effect on him and others who publicly criticised the Government. However, he did not argue that his prosecution had been undertaken for a purpose such as a "hidden agenda" to silence him (contrast *Ilgar Mammadov v. Azerbaijan*, no. 15172/13, §§ 133-44, 22 May 2014). Because of Mr Udaltsov's omission in this regard, the Court could only consider the purposes for the prosecution asserted by the Government: the prevention of disorder and crime and the protection of the rights and freedoms of others. These are legitimate aims, as reflected in paragraph 288 of the Court's judgment.

3. The Court would accept the predominance of an ulterior purpose such as the silencing of criticism, which is alien to the ideals and values of a democratic society governed by the rule of law (see *Merabishvili*, cited above, § 307). However, since Mr Udaltsov has failed to assert an ulterior purpose, it is unnecessary to consider Article 18. My conviction in this regard is strengthened even more by the fact that the second applicant did not submit that the "hidden agenda" of the authorities was a fundamental aspect of this case (contrast *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 156, 15 November 2018). As the Court notes at paragraph 305 of its judgment, his argument as to Article 18 was essentially the same as that made with respect to Articles 10 and 11 of the Convention. It should be noted that Mr Udaltsov is in a rather unfortunate situation. He made his submission in 2016, before the judgments in *Merabishvili* (28 November 2017) and *Navalnyy* (15 November 2018) were handed down (see *Navalnyy*, cited above, § 165, and *Merabishvili*, cited above, §§ 309-17). At the time when he made his observations, the criteria for a *prima facie* claim might thus not have been so clear in the Court's case-law. Nevertheless, after *Merabishvili* and in the absence of a claim that this aspect of the case is fundamental, there is nothing to induce the Court to deviate in this case

from its settled practice, which is not to engage with questions that it has already examined under other provisions of the Convention (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

4. Moreover, Mr Udaltsov should have offered some evidence to make out a *prima facie* case. The Court has made it clear that applicants may rely on inferences and “unrebutted presumptions of facts” and that it will be more easily persuaded if the alleged purpose is particularly reprehensible or the Convention right at stake is especially significant (see *Merabishvili*, cited above, § 314).

5. Mr Udaltsov’s position as a political activist and a member of the opposition to the government does not by itself warrant an examination under Article 18 (*ibid.*, § 323). Regrettably, he invoked Article 18 without properly substantiating his claim. I therefore agree with the Court that it is unnecessary to examine this aspect of his complaint.

APPENDIX

List of applications

1. 75734/12 Razvozzhayev v. Russia and Ukraine
2. 2695/15 Udaltsov v. Russia
3. 55325/15 Razvozzhayev v. Russia