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La CEDU su illegittime limitazioni della libertà di riunione in Russia
(CEDU, sez. III, sent. 21 novembre 2023, ricc. nn. 29356/19 e 31119/19)

La Corte Edu, riunendo due diversi ricorsi, si pronuncia sulle restrizioni imposte dalle autorità russe in ordine alla sede di svolgimento di due eventi pubblici programmati. In particolare, nell'ottobre 2018 era stata impedita l'organizzazione di una piccola protesta contro l'aumento dell'età pensionabile statale, di fronte all'edificio della Duma di Stato (camera bassa del Parlamento russo) nel centro di Mosca, nonché, nel dicembre 2018, un evento in piazza Pushkin nel centro di Mosca per celebrare l'anniversario della prima protesta politica del dopoguerra tenutasi in quella sede nel dicembre 1965, per sollecitare le autorità russe a rispettare i diritti alla libertà di espressione e di riunione. In entrambi i casi erano stati proposti luoghi alternativi per celebrare l'evento.
Per i Giudici di Strasburgo le preoccupazioni per la sicurezza pubblica e la necessità di proteggere i diritti e le libertà degli altri erano motivazioni solo apparenti per tali dinieghi, non sufficienti a superare il vaglio di legalità convenzionale. Ed invero, rappresentando il diritto di riunione pacifica uno dei fondamenti di ogni società democratica, solo convincenti ed impellenti motivi, ben circostanziati, potrebbero giustificare un'ingerenza in tale diritto.
Di qui il riconoscimento dell'avvenuta violazione dell'art.11 Cedu.

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

THIRD SECTION

CASE OF XXXXX AND OTHERS v. RUSSIA

(Applications nos.29356/19 and 31119/19)

JUDGMENT

STRASBOURG

21 November 2023

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 XXXXX and Others v. Russia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:
Pere Pastor Vilanova, *President*,
Yonko Grozev,
Georgios A. Serghides,
Darian Pavli,
Ioannis Ktistakis,
Andreas Zünd,
Oddný Mjöll Arnardóttir, *judges*,
and Milan Blaško, *Section Registrar*,

Having regard to:

the applications (nos.29356/19 and 31119/19) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by seven Russian nationals ("the applicants"), on the various dates indicated in the appendix;

the decision to give notice to the Russian Government ("the Government") of the complaints of violations of Article 11, Article 13 and Article 14 in conjunction with Articles 10 and 11 of the Convention, and to declare inadmissible the remainder of application no. 29356/19;

the parties' observations;

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

Having deliberated in private on 17 October 2023,

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

INTRODUCTION

1. The present case concerns alleged restrictions imposed by the authorities on the exercise of the applicants' freedom of peaceful assembly and the alleged lack of domestic remedies in that regard.

THE FACTS

2. The applicants' names and other relevant details of the applications are set out in the Appendix.

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

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

I. APPLICATION NO. 29356/19

5. On 5 October 2018 the applicant notified the prefect of the Central Administrative District of Moscow of his intention to hold a "picket" (*пикетирование*) from 12 noon to 3 p.m. on 11

October 2018. The event was to take place in front of the State Duma (lower chamber of the Russian Parliament) building in central Moscow, with twenty people expected to attend. The aim of the event was to protest against the increase in the State pension age recently voted by the State Duma.

6. On the same day a deputy prefect of the Central Administrative District of Moscow refused to approve the location chosen by the applicant. She indicated that the venue was unsuitable for public events because it would be impossible to meet safety requirements there. In particular, holding a "picket" might result in "disruption to the functioning of public utilities, transport, social or communications services, obstruction of pedestrian traffic or a breach of the rights and interests of citizens not participating in the notified event". The deputy prefect proposed that the "picket" be held in Moscow's Lermontov Park, some 3 km from the State Duma building.

7. The applicant challenged the above-mentioned decision before the Taganskiy District Court of Moscow. He submitted, in particular, that the aim of the public event was to make the State Duma deputies aware of the inadmissibility of raising the State pension age. It was therefore crucial to hold the event in front of the State Duma building, as the deputies were there daily. Moreover, the pedestrian pavement in front of the building was large enough to allow the "picket" to take place without any pedestrian traffic or access to the State Duma being obstructed.

8. On 10 October 2018 the Taganskiy District Court dismissed the applicant's complaint. It held, in particular, as follows:

> "The court agrees with the justification for [the prefect's] proposal to change the location of the notified public event. It is common knowledge – and does not therefore have to be pointed out ... – that pedestrian and vehicle traffic at the location chosen by the organiser of the public event (Okhotnyy Ryad Street in Moscow) is heavy. The court takes into account that human life and health are fundamental values. The court is therefore convinced that [the prefect's] finding that the location in question is unsuitable for public events is justified, as holding public events there might endanger the safety of their participants as well as people not taking part in them. It therefore meets the requirements of section 8 of the Public Events Act.
>
> The complainant's notification has been examined in accordance with the established procedure. He has been given a decision in writing within the established time-limit indicating the reasons as to why it is impossible to hold public events at the chosen location and time. The complainant has not been deprived of an opportunity to enjoy his constitutional right to hold a public event in accordance with the procedure established by [the Public Events Act] by choosing another location for public events, including the location proposed by [the prefect]. The participants' right to express opinions during public events and voice demands on issues related to political, economic, social or cultural life in the country has not been restricted."

9. The applicant appealed. He submitted, in particular, that the authorities had no legal grounds for refusing to approve the "picket".

10. On 11 October 2018 the Moscow City Court upheld the judgment on appeal. It held, in particular, as follows:

> "The [District] Court found the authorities' decision lawful and well-reasoned ... The [Regional] Court considers that this finding is correct and sufficiently reasoned ...

The [Regional] Court notes that, by a decision of 5 October 2018, the organiser of the public event was informed of the reasons why it was not possible to hold the public event at the chosen location.

A regional public authority has competence under section 12 [of the Public Events Act] to make to the organiser of a public event a well-reasoned proposal to change its location. Moreover, the complainant was not banned from holding a public event because he was offered an alternative location accessible to the public.

The [Regional] Court therefore concludes that the contested decision by the respondent was within its statutory powers, the procedure for adopting it was complied with, there were reasons for adopting the decision, [and] its content meets the applicable statutory requirements."

11. On 25 January 2019 a judge of the Moscow City Court refused to refer a cassation appeal lodged by the applicant with the Presidium of that court for examination. She referred, in particular, to Plenary Supreme Court Ruling no. 28 of 26 June 2018 (hereinafter "the Supreme Court Ruling"; see paragraphs 30-31 below) when endorsing the reasoning of the lower courts.

12. On 17 April 2019 a judge of the Supreme Court of the Russian Federation refused to refer the applicant's cassation appeal for consideration by the Civil Chamber of the Supreme Court. The judge found that no significant violations of substantive or procedural law had influenced the outcome of the proceedings.

II. APPLICATION NO. 31119/19

13. The applicants are human rights activists. On 10 December 2018 they notified the Moscow government of their intention to hold a public gathering from 2 to 5 p.m. on 22 December 2018 in Pushkin Square in central Moscow. About 1,000 people were expected to attend the event. Its aim was to mark the anniversary of the first post-war political protest held there on 5 December 1965 and urge the authorities to respect rights to freedom of expression and assembly. The applicants promised not to disrupt traffic.

14. On 12 December 2018 the Moscow Department of Regional Security informed the applicants that another public event was scheduled to take place in Pushkin Square on the same day. It proposed that the applicants' gathering be held at a special venue for public events in Sokolniki Park.

15. On 13 December 2018 three applicants submitted to the Moscow government a written "proposal for an agreement over the location of the public event". They pointed out the importance of holding the event in Pushkin Square, stemming from the fact that the protest of 5 December 1965 had also been held there. The alternative location proposed by the authorities was incompatible with the event's purposes as it was too far away from the headquarters of the public authorities targeted by its intended message. The applicants requested further information about the event planned in Pushkin Square on 22 December 2018, in particular its time frame and the contact details of its organisers. They also asked that the Moscow government propose a time slot that would not overlap with the other event and assist in negotiations with its organisers. The applicants did not receive a reply to this request.

16. On the same date all applicants also challenged the refusal to approve the public gathering before the Tverskoy District Court of Moscow, on the grounds that it was not sufficiently reasoned. In particular, the Moscow government had not explained why it was not possible to hold the two events simultaneously. Nor had it mentioned at what time the other event was planned and why it would be impossible to hold the applicants' event before or after it. They stressed again that Pushkin Square was the only venue that would allow the event's purposes to be achieved. The applicants also relied on the Supreme Court Ruling. In particular, they referred to its requirements that any interference by a public authority with the right to freedom of public assembly had to be lawful, necessary and proportionate to a legitimate aim and be justified through the submission of evidence of specific facts making it impossible to hold the public event at the chosen location or time.

17. On 20 December 2018 the Tverskoy District Court dismissed the applicants' complaint. Referring to Article 11 of the Convention, the applicable domestic provisions and the Supreme Court Ruling, it held as follows:

> "... regional and local law-enforcement authorities have an obligation to ensure public order and safety during public events. They should take these and other circumstances into account when proposing to change the location of a public event, giving reasons for their decision.
>
> The court has established that the law-enforcement authorities complied with the above statutory requirements ... It is apparent from the case material that the complainants' rights have not been breached ...
>
> The public authority must submit to the court evidence of specific facts making it impossible to hold the public event at the chosen location or time.
>
> The ... Moscow government, when preparing its proposal in reply to the notification of the public event lodged on 11 December 2018, sent a ... [request for information] to the office of the prefect of the Central Administrative District of Moscow.
>
> The [above authority] replied that another event had already been planned to take place in Pushkin Square on [22 December 2018] from 7.30 a.m. to 8 p.m., namely the "Moscow Traditions of New Year Celebrations" ... The holding of that event had been approved on 21 November 2018 ...
>
> The respondent ... therefore complied with its obligation to submit to the court evidence of specific facts making it impossible to hold the public event at the chosen location and/or time. The law does not provide for any obligation to submit such evidence to the organisers of public events.
>
> ... The court has no reason to believe that it will be impossible to achieve the event's purposes if it were to be held at another location.
>
> The [applicants'] arguments about the restriction of their right to freedom of assembly cannot be taken into account as they are based on their erroneous belief that their rights cannot be restricted ...
>
> The law-enforcement authorities complied with the statutory prohibition on putting public order and safety of citizens at risk if holding a public event at the same venue where a popular cultural event has already been approved. They have therefore complied with the requirements of international law.

At the same time, non-compliance by the [applicants] with that statutory prohibition could amount to an abuse of that right, which falls outside of the scope of judicial protection."

18. On the same date three applicants appealed, extensively relying on the Court's findings in the case of *Lashmankin and Others v. Russia* (nos. 57818/09 and 14 others, 7 February 2017). They reiterated the arguments they had made before the first-instance court.

19. On 21 December 2018 the Moscow City Court upheld the District Court's judgment. It endorsed the court's reasoning, referring to the Supreme Court Ruling. The relevant parts of the appeal judgment read as follows:

"The appellants' arguments that the law-enforcement authorities had not considered the possibility of holding two events simultaneously do not warrant the quashing of [the District Court's] judgment because they contradict ... the circumstances of the case.

It is apparent from the case file that before sending a reply to the event organisers, the respondent had received information from the office of the prefect of the Central Administrative District of Moscow, the Moscow Department of Cultural Heritage and the Moscow Department of Commerce.

According to attachment no. 5, the celebrations in Pushkin Square will occupy 3,000 sq. m, making it impossible to hold [the applicants'] public event.

[The appellate court] concludes that the contested decision was within the statutory powers of the respondent, the procedure for its adoption was respected, there were reasons for adopting that decision, [and] its content meets the applicable statutory requirements."

20. On 25 December 2018 the other three applicants lodged an appeal against the Tverskoy District Court's judgment. On 6 June 2019 the Moscow City Court dismissed their appeal. The parties did not provide a copy of that judgment.

21. The applicants lodged two separate cassation appeals. On 18 June and 29 August 2019 respectively a judge of the Moscow City Court refused to refer them to the Presidium of that court for examination. The parties did not provide a copy of those decisions.

22. On 15 August and 24 September 2019 respectively the applicants lodged cassation appeals with the Presidium of the Supreme Court. They reiterated their previous arguments, stressing that the domestic courts had failed to apply Article 11 of the Convention interpreted in the light of the Court's case-law.

23. On 17 September and 22 November 2019 a judge of the Supreme Court of the Russian Federation refused to refer the applicants' cassation appeal for consideration by the Civil Chamber of the Supreme Court. She found no significant violations of substantive or procedural law which had influenced the outcome of the proceedings in the applicants' case.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. Relevant legislation

24. The Code of Administrative Procedure (Law no. 21-FZ of 8 March 2015, hereafter "the Code") entered into force on 15 September 2015. It replaced Chapter 25 of the Code of Civil Procedure governing the procedure for examining complaints about decisions, acts or omissions of State and municipal authorities and officials, and the Judicial Review Act (Law no. 4966-1 of 27 April 1993 on judicial review of decisions and acts violating citizens' rights and freedoms).

25. The Code provides that a complaint against the authorities' decisions concerning the change of location or time of a public event must be lodged with a court within ten days of the date on which the complainant learnt of the breach of his rights (Article 219 § 4). Such complaints must be examined by courts within ten days. If the complaint is lodged before the planned date of the public event, it must be examined at the latest on the eve of that date (Article 226 § 4). A reasoned judicial decision must be prepared as soon as possible on the same day and immediately served on the complainant (Article 227 §§ 4 and 6). The judicial decision is subject to immediate enforcement (Article 227 § 8).

26. If an appeal has been lodged against the first-instance decision before the planned date of the public event, it must be examined at the latest on the eve of that date (Article 305 § 3).

27. When examining the case, the court must review the lawfulness of the contested decision (Article 226 § 8). The court must examine, in particular, whether the State or municipal authority had competence to make the contested decision, whether the procedure prescribed by law for its adoption was respected, whether the contested decision was taken on the grounds prescribed by law, and whether the contents of the contested decision met the requirements of law (Article 226 § 9). The burden of proof as to the lawfulness of the contested decision lies with the authority concerned. The complainant however has to prove that his rights and freedoms have been breached by the contested decision and that he has complied with the time-limit for lodging the complaint (Article 226 § 11).

28. The court allows the complaint if it has been established that the contested decision is unlawful and breaches the complainant's rights or freedoms. In that case it requires the authority to remedy the breach of the citizen's rights or to stop hindering such rights (Article 227 § 2). When necessary, the court determines specific steps to be taken to remedy the violation and sets out the time-limit (Article 227 § 3).

29. After unsuccessful recourse to the appeal court, the complainant can lodge a cassation appeal within six months from the delivery of the appeal decision (Article 318 §§ 1 and 2). At the time such a cassation appeal should have been lodged with the presidium of the regional supreme court (Article 319 § 2.1 as revised by Law no. 103-FZ of 5 April 2016) and subsequently to the Civil Chamber of the Supreme Court (Article 319 § 2.3 as in force at the time).

B. Plenary Supreme Court Ruling no. 28 of 26 June 2018

30. On 26 June 2018 the Plenary of the Supreme Court of the Russian Federation adopted Ruling no. 28 "On certain questions arising during judicial examination of administrative cases and cases on administrative offences related to the application of the legislation on public events". With a view to ensuring consistency in judicial practice, the Supreme Court provided the judiciary with guidelines on the application of, *inter alia*, the Public Events Act when examining administrative complaints.

31. The Supreme Court Ruling is summarised in *Kablis v. Russia* (nos. 48310/16 and 59663/17, §§ 29-33, 30 April 2019). The parts directly relevant to the present case read as follows:

"29. Plenary Supreme Court Ruling no. 28 of 26 June 2018 deals with the application of legislation governing public events during judicial examination of administrative complaints ... It provides that a refusal to approve a public event, its location or time or the manner in which it is to be conducted may be challenged before a court either by the event organiser or by a person appointed by the organiser to fulfil certain organisational tasks (point 2). When examining such administrative complaints, the courts have to examine whether the interference by a public authority with the right to freedom of public assembly was lawful, necessary and proportionate to a legitimate aim. The courts must examine all the grounds advanced by the public authority and all the evidence submitted by it and assess whether the reasons for the interference were relevant and sufficient (point 9). ...

30. Ruling no. 28 also provides that the courts must take into account that a proposal to change the location or time of a public event or the manner in which it is to be conducted must not be arbitrary or unreasoned. They must mention specific facts showing that public interest considerations make it manifestly impossible to hold the public event at the chosen location or time. Such public interests may include: normal functioning of essential public utilities, social and transport infrastructure and communications (such as emergency maintenance work on engineering and technical networks); maintenance of public order and safety of citizens (both those participating in the public event and passers-by, including on account of a risk of building collapse or an expected number of participants in excess of the maximum capacity of the location); disruption of pedestrians or traffic or of citizens' access to residential premises or to social or transport facilities); and other similar considerations. At the same time, inconvenience caused to citizens by a public event or an assumption by the authorities that there might be a risk of such inconvenience may not in themselves be considered valid reasons for changing the location or time of a public event. For example, a necessity to temporarily divert pedestrians or traffic may not be considered a valid reason for changing the location or time of a public event, provided that it is possible to ensure that the traffic and the conduct of everyone involved in the event will comply with the established rules and will not lead to traffic accidents. On the other hand, disruption of pedestrians or traffic or a risk of disruption of essential public utility services may be considered valid reasons for proposing to change the location or time of a public event, provided that holding the public event will breach traffic or public transport safety requirements or limit citizens' access to residential premises or public facilities, irrespective of measures taken by the public authority to ensure compliance with such requirements. The public authority must therefore submit to the court evidence of specific facts making it impossible to hold the public event at the chosen location or time. The courts may not take into account any circumstances which were not mentioned in the proposal to change the location or time of the public event (point 12).

31. Ruling no. 28 further provides that the courts should take into account that the public authority must suggest a specific alternative location and time for the public event compatible with its purposes and its social and political significance. If approval was denied because it was prohibited to hold public events at the chosen location, the public authority may suggest

an alternative location for that event. The organiser must reply in writing, stating whether he or she accepts the proposed alternative location and/or time, no later than three days before the planned date of the event. The organiser may also propose another location or time for approval. However, if the organiser wants to change the date of the event, he must submit a new notification (point 13)."

C. Domestic practice on the application of Plenary Supreme Court Ruling no. 28 of 26 June 2018

32. The Government submitted seventeen judgments delivered by the domestic courts between July 2018 and November 2019, with references to the Supreme Court Ruling, and sometimes Article 11 of the Convention and the Court's relevant case-law. In most cases, first-instance courts found local authorities' refusals to approve public events unjustified due to insufficient evidence regarding the unsuitability of the selected location or timing, or the inability to hold two events simultaneously for security reasons. Courts also deemed any refusal unjustified where the authorities failed to propose an alternative location or time for the public event, or where such suggestions did not align with the organisers' intended message of the event.

33. In cases where the authorities' refusals to approve the location and time of the public event were found to be lawful and well-reasoned, first-instance courts scrutinized the reasons behind these decisions. Examples included the assessment of potential participant numbers, making it impossible to host two events concurrently at one place, or consideration of construction works planned at the chosen location and time of the event.

34. In some instances, appellate courts overturned lower courts' decisions, finding that local authorities' refusals to approve public events were not well-reasoned because they lacked reference to specific facts or evidence. Similarly, the Supreme Court ruled in several cases that such refusals were unlawful or ill-founded, overturning lower courts' decisions and either ordering re-examination of the case or issuing a new decision.

II. RELEVANT INTERNATIONAL MATERIAL

A. Council of Europe materials

1. *The European Commission for Democracy through Law (the Venice Commission)*

35. The document entitled "The Compilation of Venice Commission Opinions Concerning Freedom of Assembly", issued by the Venice Commission on 1 July 2014 (CDL-PI(2014)0003), reads insofar as relevant as follows:

"... 4.2. Restrictions on Place, Time and Manner of holding Assemblies

Location is one of the key aspects of freedom of assembly. The privilege of the organiser to decide which location fits best for the purpose of the assembly is part of the very essence of freedom of assembly. Assemblies in public spaces should not have to give way to more routine uses of the space, as it has long been recognised that use of public space for an assembly is just as much a legitimate use as any other. Moreover, the purpose of an assembly is often closely

linked to a certain location and freedom of assembly includes the right of the assembly to take place within 'sight and sound' of its target object ...

Proper restrictions on the use of public places are based on whether the assembly will actually interfere with or disrupt the designated use of a location. ... The mere possibility of an assembly causing inconvenience does not provide a justification for prohibiting it ...

... the Venice Commission stresses that it is the privilege of the organiser to decide which location fits best, as in order to have a meaningful impact, demonstrations often need to be conducted in certain specific areas in order to attract attention ('Apellwirkung', as it is called in German). Respect for the autonomy of the organizer in deciding on the place of the event should be the norm. The State has a duty to facilitate and protect peaceful assembly ...

5.3 Regulatory authority and decision-making

... It is recommended in addition that a co-operative process between the organizer and the authority be established in order to give the organizer the possibility to improve the framework of the assembly ... It is necessary that the decision-making and review process is fair and transparent ... The organizer of an assembly should not be compelled or coerced either to accept whatever alternative(s) the authorities propose or to negotiate with the authorities about key aspects, particularly the time or place, of a planned assembly. To require otherwise would undermine the very essence of the right to freedom of peaceful assembly ...

2. The Committee of Ministers

36. The implementation of the judgment in *Lashmankin and Others* ("the *Lashmankin* group") with seventy-two other repetitive cases fell under the enhanced supervision procedure of the Committee of Ministers of the Council of Europe ("the Committee of Ministers").

37. At its 1377bis (Human Rights) meeting from 1 to 3 September 2020, the Committee of Ministers examined the status of execution in the *Lashmankin* group and adopted decision CM/Del/Dec(2020)1377bis/H46-33. The Committee of Ministers noted that "although certain positive steps were taken, these were insufficient to attest to tangible progress". At the same time, the deputies welcomed the ruling by the Supreme Court of 2018 which provided important clarifications in respect of the relevant practice, and noted the positive examples provided by the authorities in their action plan (twenty judicial decisions delivered by courts of all levels between July 2018 and February 2020 in various Russian regions).

38. The Committee of Ministers next examined the *Lashmankin* group at its 1406th (Human Rights) meeting from 7 to 9 June 2021 and adopted decision CM/Del/Dec(2021)1406/H46-29. The deputies, among other things, welcomed the Supreme Court's ruling of 2018 and other domestic measures. According to the Russian authorities' action plan, in 2020 the first-instance courts found the authorities' refusals to approve the location, time or manner of conducting public events unlawful in 312 cases out of 815 similar challenges. Nonetheless, the deputies recalled the necessity of further changes to the Public Events Act with a view to introducing proper notification rules narrowing down the local authorities' discretion in authorising public events and obliging the authorities to assess thoroughly the proportionality of their decisions. The deputies exhorted the authorities to complete this work without further delay.

39. In its most recent decision, adopted during the 1459th (Human Rights) meeting on 9 March 2023, the Committee of Ministers emphasised that the Russian Federation, despite having ceased to be a member of the Council of Europe as of 16 March 2022, was still obliged to implement the judgments of the Court. The Committee of Ministers also urged the authorities to improve the notification rules on public events and to limit the discretion of local authorities in authorising public events (CM/Del/Dec(2023)1459/H46-21).

B. United Nations documents

40. In his Report of 21 May 2012 (A/HRC/20/27) the Special Rapporteur on the right to freedom of peaceful assembly and freedom of association of 21 May 2012 stressed that States have a negative obligation not to unduly interfere with the right to peaceful assembly (§ 39 of the Report). Any restrictions imposed on that right must be necessary and proportionate to the aim pursued. In addition, assemblies must be facilitated within "sight and sound" of their object and target audience, and "organisers of peaceful assemblies should not be coerced to follow the authorities' suggestions if these would undermine the essence of their right to freedom of peaceful assembly". In that regard the Special Rapporteur warned against the practice whereby authorities allow a demonstration to take place, but only in the outskirts of the city or in a specific square, where its impact will be muted (§ 40 of the Report).

C. Other international documents

41. Joint Guidelines on freedom of peaceful assembly (CDL-AD(2019)017, third edition) issued by the Office for Democratic Institutions and Human Rights (ODIHR) of the Organisation for Security and Co-operation in Europe (OSCE) and the European Commission for Democracy through Law (the Venice Commission) of the Council of Europe read as follows:

> **"Restrictions on an Assembly**
>
> 28. **Limited grounds for restriction**. Any restrictions imposed on assemblies must have a formal basis in law and be based on one or more of the legitimate grounds prescribed by relevant international and regional human rights instruments: national security, public safety, public order, the protection of public health or morals, and the protection of the rights and freedoms of others. These grounds should not be supplemented by additional grounds in domestic legislation and should be narrowly interpreted by the authorities.
>
> 29. **Necessity and proportionality**. Any restrictions on the right to freedom of peaceful assembly, whether set out in law or applied in practice, must be both necessary in a democratic society to achieve a legitimate aim, and proportionate to such aim. The least intrusive means of achieving a legitimate aim should always be given preference. The principle of proportionality requires, for example, that authorities do not routinely impose restrictions which would fundamentally alter the character of an event, such as relocating assemblies to less central areas of a city. Banning or prohibiting an assembly should always be a measure of last resort and should only be considered when a less restrictive response would not achieve the [aim].
>
> 30. **Illegitimacy of content-based restrictions**. Any restrictions on assemblies should not be based on the content of the message(s) that they seek to communicate within the limits set by

Article 10 § 2 ECHR. Restrictions must not be justified simply on the basis of the authorities' own disagreement with the merits of a particular protest – and so both criticism of government policies or ideas contesting the established order by non-violent means are deserving of protection. ...

The location of assemblies

61. **Freedom to choose the location or route of an assembly**. People also have the right in principle to choose the location or route of an assembly in publicly accessible places. The location or route may include, but need not be limited to, public parks, squares, streets, roads, avenues, sidewalks, pavement, footpaths, and open areas near public buildings and facilities. ...

62. **Assemblies as a legitimate use of public space**. Given the importance of freedom of assembly in a democratic society, assemblies should be regarded as an equally legitimate use of public space as other, more routine uses of such space, such as commercial activity or pedestrian and vehicular traffic. In this context, both the European Court of Human Rights and the Inter-American Commission on Human Rights' Special Rapporteur for Freedom of Expression have stressed the need to facilitate, rather than hinder, assemblies in the public space. ...

Core State Obligations

78. **Facilitation of simultaneous assemblies**. Where prior notification is submitted for two or more assemblies at the same place and time, simultaneous events should be facilitated where possible. If this is not practical (for example, due to lack of space), the organisers should be encouraged to explore alternative options that might yield a mutually satisfactory resolution. Where such a resolution cannot be found, the authorities should still seek to accommodate the different assemblies – ensuring, insofar as possible, that any alternative locations remain within sight and sound of the target audiences. Attempts by assembly organisers to 'block-book' particular locations, especially for significant dates or anniversaries, may constitute an abuse of rights since they aim to exclude other assemblies from using that location at that time. As such, a 'first come, first served' rule must not be implemented in a way that enables some assembly organisers to 'block-book' particular locations. Simply prohibiting an assembly in the same place and at the same time as an already notified or planned public assembly in cases where both can reasonably be accommodated is likely to amount to a disproportionate and possibly discriminatory response. ...

82. **Duty to facilitate assemblies at the organiser's preferred location and within 'sight and sound' of the intended audience**. Assemblies should be able to effectively communicate their message and must therefore be facilitated within 'sight and sound' of their target audience unless compelling reasons (that conform with the permissible justifications for imposing limitations under Article 21 ICCPR or Article 11(2) ECHR) necessitate a change of venue. In those cases, alternative sites should be provided that are as close as possible to the initially proposed site. ...

Notification procedures

124. **Voluntary participation of organizers in pre-event planning with relevant authorities**. Dialogue and other forms of co-operation between organizers of an assembly and the relevant state authorities may be useful to ensure the smooth conduct of the assembly. At the same time, involvement in prior negotiations on the part of the organizers should be entirely voluntary, and an unwillingness or refusal to engage in dialogue with the authorities should not have negative repercussions for the organizers or their assembly in relation either to the processing of the notification or the performance of the State's positive obligations to facilitate and protect a peaceful assembly.

Legal remedies

125. **Right to an effective remedy**. Those seeking to exercise the right to freedom of peaceful assembly should have recourse to a prompt and effective remedy against decisions disproportionately, arbitrarily or illegally restricting or prohibiting assemblies. Where assemblies are prevented or unreasonably restricted due to potentially unlawful inaction or negligence of the administrative authorities, the organizers or representatives of the assembly should be able to initiate direct legal action in courts or tribunals. The relevant court decisions should be issued prior to the planned events. The right to a remedy includes being able to access independent and impartial administrative and judicial appeals mechanisms. The availability of effective administrative review can reduce the burden on courts and help build a more constructive relationship between the authorities, the organizers, and the public in general. In both administrative and court proceedings, the burden of proof should be on the relevant state authority to prove that the restrictions imposed are justified. Courts or tribunals should have the authority to review all circumstances of the case, and to annul or, where applicable, correct any error or omission made at the administrative or first instance review stage. ...

Restrictions Imposed Prior To or During an Assembly

131. Restrictions should be necessary and proportionate to achieving a legitimate aim. Restrictions to the right to freedom of peaceful assembly, whether set out in law or applied in practice, must be both necessary to achieve a legitimate aim, and proportionate to such aim. Necessity denotes a 'pressing social need' for the restriction in question; this means that a restriction must be considered imperative, rather than merely 'reasonable' or 'expedient'. The means used should be proportional to the aim pursued, which also means that where a wide range of interventions may be suitable, preference should always be given to the least restrictive or invasive means. The relevant state authorities should review and debate a range of restrictions, rather than viewing the choice as simply between non-intervention or prohibition. The reasons provided by the authorities for any restriction(s) should be relevant and sufficient, convincing and compelling, and based on a comprehensive assessment of the relevant facts. Moreover, the interference should go no further than is justified by a legitimate aim. The principle of proportionality requires that there be an objective and detailed evaluation of the circumstances affecting the holding of an assembly. Thus, the State must demonstrate that any restrictions promote a substantial interest that would not be achieved, or would be achieved less effectively, without the restriction. The principle of proportionality also requires that

authorities should generally not impose restrictions which would fundamentally alter the character of an event (such as relocating assemblies to less central areas of a city). ...

Categories of Restrictions

145. **Time, Place and Manner restrictions**. The types of restriction imposed on an assembly should in principle relate only to its 'time, place, and manner', not to the message that is being communicated... Unlike with content-based restrictions, where States hardly have a margin of appreciation, they enjoy a certain discretion in relation to time, place and manner restrictions. For instance, they may proportionally regulate, restrict or prohibit occupation of the essential public space, such as main roads or entries to essential facilities, while offering suitable alternative, when possible. ...

147. **Restrictions on 'place'**. At the core of the right to freedom of assembly is the ability of the assembly participants to choose the place where they can best communicate their message to their desired audience. It would be disproportionate if authorities categorically excluded places suitable and open to the public as sites for peaceful assemblies. The use of such suitable sites must always be assessed in the light of the circumstances of each case. The fact that a message could also be expressed in another place, is by itself insufficient reason to require an assembly to be held elsewhere, even if that location is within sight and sound of the target audience... If, however, having regard to all relevant factors of a specific case, the authorities reasonably conclude that it is necessary to change the place of an assembly, a suitable alternative place should be made available. Any alternative location must be such that the message which the assembly seeks to convey may still be effectively communicated to those at whom it is directed – in other words, the assembly should still take place within 'sight and sound' of the target audience (see also paragraph 61 above ...). Other means of conveying expression, such as the placement of video screens near the target audience of the assembly, are not adequate substitutes for the physical presence of assembly participants within sight and sound of the intended audience. ...

Duty to establish effective channels of communication

169. **Dialogue and mediation procedures**. The designated public authorities and law enforcement officials should make every effort to reach a mutual agreement with the organizers of an assembly on the time, place, and manner of the event."

THE LAW

I. JOINDER OF THE APPLICATIONS

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

II. JURISDICTION

43. The Court observes that the facts giving rise to the alleged violations of the Convention occurred prior to 16 September 2022, the date on which the Russian Federation ceased to be a party to the Convention. The Court therefore decides that it has jurisdiction to examine the

present applications (see *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, §§ 68-73, 17 January 2023).

III. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

44. The applicants complained about the restrictions imposed by the authorities on the locations of their public events. They relied on Articles 10 and 11 of the Convention. The Court will examine the complaint under Article 11, interpreted where appropriate in the light of Article 10 (see *Lashmankin and Others*, cited above, §§ 363-65). Article 11 reads as follows:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

A. Submissions by the parties

1. *The Government*

45. The Government submitted that application no. 31119/19 had been lodged on 25 May 2019, before some of the applicants had exhausted domestic remedies, and that it should therefore be declared inadmissible. They argued that the applicants had had effective domestic remedies at their disposal in respect of the alleged restrictions on their right to freedom of assembly. In accordance with the Code of Administrative Procedure and the Supreme Court Ruling, the scope of domestic judicial review of the authorities' proposals to change the location of public events had expanded. In support of their position, the Government submitted examples of domestic judicial practice (see paragraphs 32-33 above), that applied the criteria developed in the Court's case-law, including "necessity in a democratic society" and "proportionality".

46. The Government further argued that the interference with the applicants' rights had been lawful, had pursued the aims of ensuring public safety and protecting the rights and freedoms of others, and had been necessary in a democratic society. They considered that the reasons advanced by the public authorities to justify the impossibility of holding the public events at the intended locations had been valid, as had been confirmed by the domestic courts. The applicants could freely exercise their right to freedom of assembly by choosing different locations for their public events, including those suggested by the authorities. The latter were situated in the city centre and would have allowed the events' purposes to be achieved.

2. *The applicants*

47. The applicants in application no. 31119/19 submitted that they had lodged their complaints with the Court within six months of receiving the Moscow government's refusal to approve their

public event. Moreover, they had exhausted all available domestic remedies, including cassation appeals to the Supreme Court, although they considered them to have been ineffective. All applicants argued that the domestic courts had not examined the refusals of local authorities to approve the locations of their public events in the light of the "necessity in a democratic society" and "proportionality" requirements. Moreover, the examples of domestic judicial practice provided by the Government did not demonstrate the application of these criteria either. The applicants commented on these judicial decisions, arguing that the scope of review was still limited to examining the lawfulness of the proposals to change the location, time or manner of conducting a public event. They also pointed out that the Supreme Court's decisions mentioned in paragraph 34 above, albeit favourable to the organisers of public events, had been delivered more than a year after the planned dates of these events.

48. The applicants further reiterated their arguments raised before the domestic courts (see paragraphs 7 and 16 above). They insisted that it had been essential to hold their public events at the chosen locations because of the events' intended messages. The locations proposed by the authorities would not have allowed the purpose of the respective events to be achieved. The applicants therefore considered that the interference with their right to peaceful assembly had been arbitrary because of the wide discretion afforded to public authorities in deciding whether to accept the organisers' proposed time and place for an assembly.

B. The Court's assessment

1. Admissibility

49. Before considering the merits of the present case, the Court must first determine whether the applicants in application no. 31119/19 complied with the rule of exhaustion of domestic remedies, as required under Article 35 § 1 of the Convention.

(a) General principles

50. The Court reiterates that the purpose of Article 35 § 1 is to afford the Contracting States the opportunity of preventing or putting right – usually through the courts – the violations alleged against them before those allegations are submitted to the Court (see *Fressoz and Roire v. France* [GC], no. 29183/95, § 37, ECHR 1999-I). Consequently, States are dispensed from answering before an international body for their acts before they have had the opportunity to put matters right through their own legal system (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 70, 25 March 2014).

51. The obligation to exhaust domestic remedies requires an applicant to make normal use of remedies which are accessible, capable of providing redress in respect of their complaints and which offer reasonable prospects of success (see *Abramyan and Others v. Russia* (dec.), nos. 38951/13 and 59611/13, § 74, 12 May 2015). It is incumbent on the Government to illustrate the practical effectiveness of the remedy with examples from the case-law of the domestic courts (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 219, ECHR 2012, and *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 110, 10 January 2012). Yet a single judicial decision is not sufficient to show the existence of settled national case-law that would prove the effectiveness of the

remedy (see, *mutatis mutandis*, *Sürmeli v. Germany* [GC], no. 75529/01, § 113, ECHR 2006-VII, and *Horvat v. Croatia*, no. 51585/99, § 44, ECHR 2001-VIII).

(b) Application to the present case

52. The Court observes that the Code of Administrative Procedure provides for judicial review of complaints about authorities' refusals to approve the location, time or manner of conducting public events (for a summary of the domestic provisions, see §§ 24-29 above). In *Kablis* (cited above, §§ 68-70), the Court noted, in particular, in respect of the scope of judicial review:

> "70. The Court takes note of the Supreme Court's Ruling of 26 June 2018, instructing the domestic courts that when examining under the CAP complaints against the authorities' decisions concerning changes to a public event's purposes, location, type or the manner in which it was to be conducted, they had to assess whether the interference by a public authority with the right to freedom of public assembly had been lawful, necessary and proportionate to a legitimate aim, and in particular whether the reasons for the interference advanced by the public authority had been relevant and sufficient... The Court welcomes these instructions, but notes that they were issued after the events at issue in the present cases. It will have to wait for an opportunity to examine the practice of the Russian courts after that Ruling to assess how these instructions are be applied in practice."

53. The examples of domestic case-law submitted by the Government in the present case, in application of the Supreme Court Ruling, demonstrate that national courts had examined the reasons advanced by local authorities when proposing changes to the location and timing of public events, and required these reasons to be supported by evidence (see paragraphs 32-33 above). The courts stressed the need to refer to specific facts demonstrating the impossibility of holding a public event at the chosen location and time, and to propose alternatives to the organisers, in line with the standards established by the Court under Article 11 (see *Lashmankin and Others*, cited above, § 405). The Court also notes the acknowledgment by the Committee of Ministers of that practice (see paragraphs 36-38 above), despite certain recurring concerns about the legal framework. The Court is satisfied that the practical application of the existing legal framework was capable of enabling the organiser of a public event to challenge the justification and proportionality of interference with the right to freedom of assembly. Given the examples of judicial practice applying the Supreme Court Ruling, the Court considers that after its adoption the judicial review of complaints of alleged restrictions on freedom of assembly was a remedy which organisers of public events must have normally exhausted in order to comply with Article 35 § 1 of the Convention (see, by contrast, *Nepomnyashchiy and Others v. Russia*, nos. 39954/09 and 3465/17, §§ 78-79, 30 May 2023, where the Government failed to submit any examples of judicial practice applying a particular ruling of the Constitutional Court, and the Court retained doubts about the effectiveness of the applicable legislation in practice).

54. The Court observes that the applicants lodged judicial review complaints about the authorities' refusal to approve the locations of their public event. The first-instance courts examined their complaints before the planned dates of the events and dismissed them (see paragraph 17 above). The applicants also lodged an appeal against the unfavourable judgment with the Moscow

City Court and further pursued cassation appeal proceedings (see paragraphs 18 and 20 above, and *Chigirinova v. Russia* (dec.), no. 28448/16, §§ 28-30, 12 December 2016). The fact that some of the appeals were pending at the time of lodging of applications does not affect this conclusion, since although the assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with the Court, the last stage of a particular remedy can also be reached after the application has been lodged but before its admissibility has been determined (see *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, §§ 193-94, 22 December 2020, with further references). This is all the more so when the Court is required to assess compliance with the exhaustion requirement in respect of introduction of a new remedy (see, for a relevant recent summary, *Beshiri v. Albania* (dec.), no. 29026/06, § 177, 17 March 2020).

55. Thus, the Court is satisfied that the applicants in application no. 31119/19 fulfilled the exhaustion requirement by resorting to judicial review of the alleged restriction on their freedom of assembly. Accordingly, it dismisses the preliminary objection raised by the Government regarding the non-exhaustion of domestic remedies in respect of this complaint. The Court further notes that the complaint under Article 11 of the Convention is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

2. Merits

(a) General principles

56. The Court refers to the principles established in its case-law regarding the right to freedom of assembly (see *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, §§ 142-48, ECHR 2015, with further references). That right includes the right to choose the time, place and modalities of the assembly, within the limits established in paragraph 2 of Article 11 (see *Sáska v. Hungary*, no. 58050/08, § 21, 27 November 2012). The Court stressed in that regard that the organisers' autonomy in determining the assembly's location, time and manner of conduct are important aspects of freedom of assembly. Thus, the purpose of an assembly is often linked to a certain location and/or time, to allow it to take place within sight and sound of its target object and at a time when the message may have the strongest impact (see *Lashmankin and Others*, cited above, § 405, with further references). Accordingly, in cases where the time and place of the assembly are crucial to the participants, an order to change the time or the place may constitute an interference with their freedom of assembly (ibid.).

57. That said, the Court acknowledged that it was not well-suited to challenge the decisions of national authorities' concerning the suitability of a specific location for a public assembly, due to the complexity of assessing local factors like size, security, and traffic density (see *Berladir and Others v. Russia*, no. 34202/06, § 59, 10 July 2012, and *Lashmankin and Others*, cited above, § 417). States are allowed a wider margin of appreciation when it comes to such matters, but their discretion is not unlimited and remains subject to the Court's supervision to ensure that any restrictions on freedom of assembly are compatible with Article 10 or 11. The Court emphasized that, when states are afforded a wide margin of appreciation, the procedural safeguards for

individuals become especially important. In particular, the Court must examine in such cases whether the decision-making process that led to measures of interference was fair and such as to afford due respect to the interests safeguarded to the individual by the Convention (see *Lashmankin and Others*, cited above, § 418, with further references).

58. Furthermore, while the Court does not expect the national authorities to meet all the demands of the demonstrators regarding a particular venue for an assembly, it stresses that any "place" restrictions should not represent a hidden obstacle to the exercise of the right to freedom of assembly (see, *mutatis mutandis*, *Süleyman Çelebi and Others v. Turkey*, nos. 37273/10 and 17 others, § 109, 24 May 2016, and *Oya Ataman v. Turkey*, no. 74552/01, § 38, ECHR 2006-XIV).

(b) Application of the above principles to the present case

59. The Court notes that the applicants intended to hold public events at specific locations and considered the alternative sites proposed by the authorities as being ill-suited to the purposes of the events. It is undisputed by the parties that the authorities' refusals to approve the locations for the public events in question amounted to an interference with the applicants' right to freedom of assembly. Such an interference will constitute a breach of Article 11 unless it was "prescribed by law", pursued one or more legitimate aims under paragraph 2, and was "necessary in a democratic society" to achieve those aims.

60. With regard to the lawfulness of the interference, the Court has previously asserted that domestic law granted an excessively broad discretion to the executive authorities in proposing a change of location for public events, these powers often being used in an arbitrary and discriminatory way (see *Lashmankin and Others*, cited above, §§ 416-30 and 477). While the Supreme Court Ruling provided welcome clarifications for the judiciary (see paragraph 52 above), further measures will be necessary to address the general issues identified earlier (see *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 186, 15 November 2018; see also the most recent decision of the Committee of Ministers cited in paragraph 39 above). However, given that a more conspicuous problem arises with respect to the necessity of the interference, the Court will not limit its examination under Article 11 of the Convention in the present case to the lawfulness of the interference only (see, for a similar approach, *Kakabadze and Others v. Georgia*, no. 1484/07, § 86, 2 October 2012).

61. The Court is prepared to accept the Government's argument that the interference in question pursued the legitimate aims of ensuring public safety and protecting the rights and freedoms of others (see paragraph 46 above), even if in Mr Pleshkov's case the concerns related to public safety were rather vague (see paragraph 6 above). What remains to be examined is whether the refusals to approve the applicants' chosen locations for their public events were necessary in a democratic society. The Court reiterates in that regard that the right of peaceful assembly is one of the foundations of any democratic society, and only convincing and compelling reasons can justify an interference with that right (see *Djavit An v. Turkey*, no. 20652/92, § 56, ECHR 2003-III, and *Sergey Kuznetsov v. Russia*, no. 10877/04, § 39, 23 October 2008).

(i) Mr Pleshkov, application no. 29356/19

62. In Mr Pleshkov's case, the reason for the deputy prefect's refusal to approve the location of the "picket" against pension reform was the prospect of disruption to the life of the community or a breach of the rights and interests of those not participating in the event (see paragraph 6 above). The refusal, however, contained no specific explanation as to why the deputy prefect had formed such a belief, for instance, a reference to heavy pedestrian or vehicle traffic, an assessment of the size of the pedestrian pavement in front of the State Duma building against its capacity to accommodate twenty participants, or specific security concerns.

63. In reviewing the deputy prefect's decision, the domestic courts had to balance the rights of the event organiser, including his autonomy in choosing its location, against the public interest considerations put forward by the authorities. In the domestic court decision dealing with the case, the basis for upholding the deputy prefect's refusal related exclusively to traffic issues (see paragraph 8 above). The Court reiterates that any demonstration in a public place may cause a certain level of disruption to ordinary life, including traffic disruption (see *Kudrevičius and Others*, cited above, § 155). While it is not the Court's task to determine whether or not there was a risk of disruption as alleged by the authorities in the present case, it cannot overlook that the domestic courts failed to assess specific facts that allegedly made it impossible to hold the "picket" of twenty participants at the chosen location, as required by the Supreme Court Ruling (see paragraph 31 above). Moreover, the deputy prefect's categorical exclusion of such a high-profile location as being unsuitable for public events for safety reasons (see paragraph 6 above) imposed a substantial burden of justification on the national authorities, including the domestic courts (see, *mutatis mutandis*, *Lashmankin and Others*, cited above, § 434, and point 147 of the Joint Guidelines on freedom of peaceful assembly, issued by the OSCE and the Venice Commission, cited in paragraph 41 above). There is no indication in the domestic courts' decisions that the security concerns clearly outweighed the adverse impact of such an exclusion on the event organiser's interests.

64. Furthermore, it was incumbent on the domestic courts to assess whether the alternative location offered to Mr Pleshkov, Lermontov Park, was well suited for his "picket" to have a meaningful impact, in line with point 31 of the Supreme Court Ruling (see paragraph 31 above). In order to respect the organiser's autonomy, the authorities should make good-faith efforts to ensure that any alternative location allows the assembly to still take place within 'sight and sound' of the target audience (see, in the same vein, points 29, 78, 82 and 147 of the Joint Guidelines on freedom of peaceful assembly, issued by the OSCE and the Venice Commission, cited in paragraph 41 above, and point 4.2 of the Compilation of Venice Commission Opinions Concerning Freedom of Assembly of 1 July 2014, cited in paragraph 35 above; as well as § 40 of the Report of the UN Special Rapporteur on the right to freedom of peaceful assembly and freedom of association of 21 May 2012, cited in paragraph 40 above). It was important for the "picket" planned by Mr Pleshkov to have been conducted in close proximity to the State Duma building, as it is one of the highest representative bodies of the respondent State whose national pension policy the protesters aimed to criticise. However, the domestic courts paid little attention to the importance of the event's intended location, instead broadly stating that "[the applicant] was offered an alternative location accessible to the public" (see paragraph 10 above).

Furthermore, they failed to examine whether holding the "picket" in Lermontov Park would have fundamentally altered the character of the protest due to its distance from the target audience.

65. In view of the above-mentioned shortcomings, the domestic courts cannot be said to have applied standards which were in conformity with the principles embodied in Article 11 of the Convention (see paragraphs 56-58 above) and to have struck a fair balance between the competing interests.

(ii) Ms Astrakhantseva and others, application no. 31119/19

66. For Ms Astrakhantseva and her companions, the planned location of the public gathering had special significance as they wanted to commemorate the anniversary of a historical event, namely the first post-war political protest held in Pushkin Square on 5 December 1965. They also wanted to urge nearby authorities to respect freedom of expression and assembly (see paragraph 15 above). The Moscow government reasoned their rejection of the request by reference to New Year celebrations already planned in Pushkin Square, without providing any details such as the expected number of participants or the type of arrangements, such as installations, which could have reduced the available space. The domestic courts upheld the Moscow government's decision by referring to specific facts "making it impossible to hold the public event at the chosen location or time", as required by the Supreme Court in its Ruling (see paragraph 31 above). These facts included elements such as the name, date and time of another event scheduled at Pushkin Square, along with its coverage area. Based on these considerations, the courts concluded that holding two events simultaneously would have posed risks to public order and the safety of citizens (see paragraphs 17 and 19 above).

67. The Court reiterates that since overcrowding during a public event is fraught with danger, it is not uncommon for State authorities in various countries to impose restrictions on the location, date, time, form or manner of conduct of a planned public gathering (see *Primov and Others v. Russia*, no. 17391/06, § 130, 12 June 2014). This consideration holds particular relevance for simultaneous assemblies occurring at the same place and time. However, it should not serve as a justification for a blanket prohibition on hosting more than one assembly at the same place and time, provided they remain peaceful and do not pose direct threats of violence or serious danger to public safety (compare with points 29 and 78 of the Joint Guidelines on freedom of peaceful assembly, issued by the OSCE and the Venice Commission, cited in paragraph 41 above). The Court notes that in the present case the domestic courts agreed with the Moscow government's assessment about the risks to public order and safety, but did so without providing an estimated attendance figure for the New Year celebrations, merely mentioning it as a popular cultural event, or the overall capacity of the venue. Even if a large number of participants in the celebrations was expected, it was incumbent upon the authorities to at least consider a solution that would have allowed both events to proceed peacefully, for example offering the applicants a non-peak hour for their gathering. It is noteworthy that the applicants indeed requested an alternative time slot that would not overlap with the concurrent event (see paragraph 15 above). However, the authorities adopted a formalistic attitude and made no genuine efforts to explore in a timely manner potential solutions for accommodating the applicants' gathering (see, for comparable recommendations, points 124 and 169 of the Joint

Guidelines on freedom of peaceful assembly, issued by the OSCE and the Venice Commission, cited in paragraph 41 above).

68. The Court further finds that when it is not feasible to facilitate two simultaneous events at the same place and time, the authorities should make an effort to propose a suitable alternative location bearing in mind the target audience of the message. Here, the applicants sought to commemorate the anniversary of a protest held in Pushkin Square. The significance of their event was thus closely tied to the chosen venue, as emphasized by them before the domestic courts (see paragraph 16 above). The applicants' message also targeted the authorities located near Pushkin Square. While the Court's role is not to substitute its own view for that of the domestic courts, it is not convinced that Sokolniki Park, situated eight kilometres away from Pushkin Square, was a suitable location for effectively conveying the message of the applicants' gathering. Not only it was a less frequented place, but it was also located far away from the seats of the authorities targeted by the event's intended message (see, for similar approach, point 78 of the Joint Guidelines on freedom of peaceful assembly, issued by the OSCE and the Venice Commission, cited in paragraph 41 above).

69. The Court therefore considers that the authorities, including the domestic courts, failed to propose acceptable alternative arrangements to the applicants, such as a non-peak hour time slot or an alternative venue suitable for conveying the message (see, *mutatis mutandis*, *Primov and Others*, cited above, § 131). They have thus failed to provide "relevant and sufficient reasons" to justify the restrictions imposed on the applicants in exercising their right to freedom of assembly. In such circumstances, these restrictions cannot be said to have been necessary in a democratic society.

(iii) Conclusion

70. In view of the foregoing, the Court concludes that there has been a violation of Article 11 of the Convention in respect of each applicant in applications nos. 29356/19 and 31119/19.

IV. REMAINING COMPLAINTS

71. The applicants also complained under Article 13 that they had had no effective domestic remedy for their complaints of restrictions on the right to freedom of assembly. The applicant in application no. 29356/19 further complained under Article 14 of the Convention taken in conjunction with Articles 10 and 11 that he had been discriminated against on the grounds of his political opinion.

72. Having regard to its findings under Article 11, the Court decides to dispense with the examination of the complaints under Article 13 and Article 14 in conjunction with Articles 10 and 11 (see *Moscow Branch of the Salvation Army v. Russia*, no. 72881/01, § 100, ECHR 2006-XI).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. 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

74. The applicant in application no. 29356/19 claimed 300,000 euros (EUR) in respect of non-pecuniary damage for each violation of his rights under Articles 10, 11 and 14 of the Convention. The applicants in application no. 31119/19 claimed EUR 20,000 each in respect of non-pecuniary damage. They did not make any claims in respect of pecuniary damages.

75. The Government considered the applicants' claims excessive and unreasonable.

76. The Court observes that it has found a violation of Article 11 of the Convention in respect of all applicants on account of the restrictions imposed on them in exercising their right to freedom of assembly. It considers that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage the applicants may have suffered (see *United Civil Aviation Trade Union and Csorba v. Hungary*, no. 27585/13, § 35, 22 May 2018, and the cases cited therein; see also, *mutatis mutandis*, *Alekseyev and Others v. Russia*, nos. 14988/09 and 50 others, § 29, 27 November 2018).

B. Costs and expenses

77. The applicant in application no. 29356/19 claimed 6,841 Russian roubles (RUB – approximately EUR 99) in respect of postal expenses. He submitted copies of numerous postal receipts, but did not specify whether these expenses related to the proceedings before the Court in the present case or all of his applications. The applicant further claimed RUB 9,000 (approximately EUR 131) for court fees in respect of twelve applications lodged with the Court.

78. The applicants in application no. 31119/19 claimed EUR 24,900 for the legal services of their representative in the domestic courts and in the proceedings before the Court. They asked the amount to be paid directly into their representative's bank account.

79. The Government considered that no compensation should be awarded to the applicant in application no. 29356/19. They further submitted that the amount claimed by the applicants in application no. 31119/19 was excessive. Moreover, that amount was due to be paid to the representative upon examination of the case by the Court; the applicants could not therefore be said to have actually incurred these expenses.

80. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant in application no. 29356/19 EUR 50, plus any tax that may be chargeable, in respect of costs and expenses. Furthermore, it awards the applicants in application no. 31119/19 EUR 3,000 jointly, plus any tax that may be chargeable, for legal services, to be paid into the bank account of their representative, Mr Zboroshenko.

FOR THESE REASONS, THE COURT

1. *Decides*, unanimously, to join the applications;
2. *Holds*, unanimously, that it has jurisdiction to deal with the applicants' complaints, as they relate to facts that took place before 16 September 2022;
3. *Dismisses*, unanimously, the Government's preliminary objection of non-exhaustion of domestic remedies in respect of application no. 31119/19 and *declares* the complaints under Article 11 admissible;
4. *Holds*, unanimously, that there has been a violation of Article 11 of the Convention in respect of all applicants;
5. *Holds*, unanimously, that there is no need to examine the remaining complaints under Articles 13 and 14 of the Convention;
6. *Holds*, by six votes to one, that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants;
7. *Holds*, unanimously,

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts in respect of costs and expenses, plus any tax that may be chargeable to the applicants, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 50 (fifty euros) to Mr Pleshkov in application no. 29356/19;

(ii) EUR 3,000 (three thousand euros) to the applicants in application no. 31119/19, jointly, to be paid into the bank account of their representative, Mr Zboroshenko;

(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;

8. *Dismisses*, by six votes to one, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 21 November 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško	Pere Pastor Vilanova
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Serghides is annexed to this judgment.

P.P.V.
M.B.

PARTLY DISSENTING OPINION OF JUDGE SERGHIDES

1. The present case concerns the alleged restrictions imposed by the domestic authorities on the location of public events held by the applicants and, consequently, on the exercise of their right to freedom of peaceful assembly under Article 11 of the Convention. It also concerns the alleged lack of any relevant domestic remedies.

2. I voted in favour of points 1-5 and 7 of the operative provisions of the judgment, but against points 6 and 8.

3. Regrettably, though the Government did not submit that the applicants should not be afforded any sum in respect of non-pecuniary damage, and only considered that their claims were excessive and unreasonable (see paragraph 75 of the judgment), the Court nevertheless made no monetary award under this head.

4. My disagreement lies with the Court's decision in paragraph 76 of the judgment and with point 6 of its operative provisions, namely, "that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants".

5. I do not wish to give a fully-fledged opinion, but rather to express briefly my disagreement since, already in a number of separate opinions, I have more fully explained what I consider to be the logical fallacy contained in the ritual formula used in point 6 of the operative provisions to avoid affording victims of a Convention violation any monetary award in respect of non-pecuniary damage (see, *inter alia*, paragraphs 22-38 of my partly concurring, partly dissenting opinion in *Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20, 26 September 2023, and the joint partly dissenting opinion I authored with Judge Felici in *Grzęda v. Poland* [GC], no. 43572/18, 15 March 2022).

6. Based on the provisions of Article 41 of the Convention and the facts of the case, and with a view to affording the applicants practical and effective protection of the right that has been infringed, I would have awarded them monetary compensation in respect of non-pecuniary damage, the amount of which – being, as I am, in the minority – it is not necessary to determine.

APPENDIX

Omissis