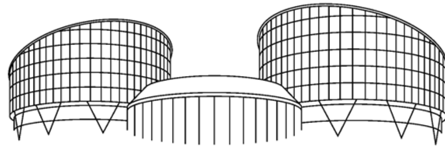

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF TSVETKOVA AND OTHERS v. RUSSIA

(Applications nos. 54381/08 and 5 others – see appended list)

JUDGMENT

STRASBOURG

10 April 2018

FINAL

10/09/2018

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Tsvetkova and Others v. Russia,

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

Helena Jäderblom, *President,*
Branko Lubarda,
Helen Keller,
Dmitry Dedov,
Alena Poláčková,
Georgios A. Serghides,
Jolien Schukking, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 20 March 2018,

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

PROCEDURE

1. The case originated in six applications (nos. 54381/08, 10939/11, 13673/13, 69739/14, 70724/14 and 52440/15) 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 six Russian nationals, whose names and dates of birth are listed below and in the Appendix, on various dates also listed there.

2. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that post, Mr M. Galperin.

3. On 13 September 2016 the complaints under Articles 3, 5, 6 and 13 of the Convention and Article 2 of Protocol No. 7 to the Convention were communicated to the Government and the remainder of the applications was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASES

A. Ms Tsvetkova (application no. 54381/08)

4. This application was lodged on 20 October 2008 by Svetlana Ivanovna Tsvetkova, who was born in 1972 and lives in Irkutsk.

5. At 10 p.m. on 1 January 2008 Officer S. escorted the applicant to the police station, in accordance with Article 27.2 of the Federal Code of

Administrative Offences ("the CAO") (see paragraph 67 below), on suspicion of shoplifting.

6. Officer B. compiled an arrest record under Article 27.3 of the CAO (see paragraph 69 below). The administrative arrest record reads as follows:

> "I, Officer B., ... compiled the present administrative arrest record in respect of: [the applicant's name, date of birth, address] ... who has been escorted to ... on 1 January 2008 at 10 p.m., on account of an administrative offence under Article [blank] of the CAO.
>
> Reasons for the arrest (Article 27.3 of the CAO): [blank] ..."

7. According to the applicant, after she had been taken away by the police, her minor son (who had apparently been with her in the shop) had been left unattended in the cold. The applicant was then subjected to a humiliating body-search procedure and was asked to take off her clothes, remaining in her underwear. She was then kept with drunk people in a small cell with no seats and no toilet.

8. In her application to the Court, the applicant specified that she had been released at 3 a.m. on 2 January 2008. In her observations before the Court, she specified that she had been released "after 4 a.m.". According to the Government, the applicant was released at 0.35 a.m.

9. The applicant was not subsequently prosecuted for an administrative offence or a criminal offence.

10. Considering that the police actions in respect of her and the degrading treatment to which she had been subjected were sufficiently serious so as to amount to a criminal offence, on 27 May 2008 the applicant sought the institution of criminal proceedings against officer S., referring, *inter alia*, to the unlawful deprivation of liberty.

11. On 16 June 2008 an investigator refused to open a criminal case, finding that the officer had not committed any abuse of power, which was a criminal offence punishable under Article 286 of the Criminal Code. The investigator referred to a statement from B. affirming that the applicant had been taken to the police station on suspicion of theft.

12. On 20 June 2008 a superior officer overruled the refusal to open a case. A new refusal was issued on 30 June 2008 by the same investigator. That was also then overruled.

13. A further refusal was issued on 11 December 2008 and the applicant sought a judicial review. On 19 January 2009 the Oktyabrskiy District Court of Irkutsk confirmed the refusal. On 26 February 2009 the Irkutsk Regional Court set aside the judgment, considering that the applicant's allegations concerning the unlawfulness of her arrest had not been examined.

14. The District Court then declined jurisdiction in favour of another court, but that was declared unlawful on appeal.

15. On 8 May 2009 the District Court discontinued the case because on 7 May 2009 the impugned refusal to prosecute had been overruled by a superior officer. However, a new refusal was issued on 12 November 2009 as regards offences under Articles 285, 286 and 293 of the Criminal Code.

This refusal was then upheld by a final judgment of the Regional Court on 9 September 2010.

B. Mr Bgantsev (application no. 10939/11)

16. This application was lodged on 28 January 2011 by Aleksandr Vitalyevich Bgantsev, who was born in 1958 and lives in Volgograd. The applicant was represented before the Court by Ms Y. Lepilina, a lawyer practising in the Volgograd Region.

17. On 30 August 2010 the applicant's superior, Mr I., called the police to report that the applicant had used (unspecified) foul language at his work place. Officer O. ordered the applicant to accompany him to the police station. The applicant refused and said that nothing prevented the officer from compiling an administrative-offence record on the spot. The officer insisted, stating that it would be more convenient for him to do it at the police station. The applicant obeyed and was escorted to the police station at around 1 p.m. (in accordance with Article 27.2 of the CAO). At 3.40 p.m. he was subjected to the arrest procedure (Article 27.3 of the CAO). The arrest record reads as follows:

> "[The applicant] was escorted to the police station at: 3.40 p.m.
>
> On account of: an administrative offence under: Article 20.1 of the CAO
>
> For the purpose(s) of Article 27.3 of the CAO: for taking a decision."

18. Officer O. compiled the administrative-offence record, which reads as follows:

> "[The applicant] used foul language in the presence of Mr I. and continued his unruly behaviour, despite being asked to stop. Thus, [the applicant] committed an offence under Article 20.1 of the CAO.
>
> Witnesses to the offence: Mr K.; Mr M."

19. The applicant spent the night at the police station.

20. On 31 August 2010 the applicant was taken before a justice of the peace, who held a hearing at which he examined the applicant, as well as I., K. and M. On the same day, the justice of the peace convicted the applicant of minor hooliganism (Article 20.1 of the CAO) and sentenced him to five days of detention.

21. The applicant started to serve the sentence on the same day, in the police station. Between 30 August and 4 September 2010 he was locked in cells measuring six square metres and accommodating, on average, four detainees. Each cell was equipped with two benches some 35 cm in width. There was no window and no ventilation system. The other detainees smoked cigarettes, which caused discomfort to the applicant, who was not a smoker. There was no bed or bedding. The applicant was not provided with food or allowed outdoors. Access to a toilet (which was apparently outside the cell) was available every four hours (or sometimes every eight hours).

The applicant submitted written statements from three co-detainees in support of his allegations.

22. The applicant was released at 3.40 p.m. on 4 September 2010.

23. On 4 October 2010 the Krasnoarmeyskiy District Court of Volgograd held an appeal hearing and examined the applicant, I., K., M. and Officer O. The appellate court upheld the judgment of 31 August 2010. On 3 November 2010 the Volgograd Regional Court upheld the judgments following a review.

C. Mr Andreyev (application no. 13673/13)

24. This application was lodged on 1 February 2013 by Pavel Vladimirovich Andreyev, who was born in 1989 and lives in Syktyvkar. The applicant was represented before the Court by Ms I. Buryukova, a lawyer practising in the Moscow Region.

25. On 9 December 2011 the applicant distributed leaflets in various police stations, urging the police not to use force to disperse public gatherings which were to be held on 10 December 2011, after the contested elections to the State Duma earlier that month.

26. At 11 p.m. the traffic police took the applicant to the police station on suspicion of evading military service. At 11.50 p.m. the applicant was charged with an administrative offence under Article 20.25 of the CAO on account of an unpaid fine of 300 roubles (RUB) (equivalent to 7 euros (EUR)) for a traffic offence. The charge concerning evasion of military service was not pursued.

27. The arrest record reads as follows:

> "[The applicant] was escorted to the police station: at 11.30 p.m.
>
> On account of an administrative offence: under Article 20.25 of the CAO.
>
> For the purposes of Article 27.3 of the CAO: for compiling an administrative record."

28. The applicant was not released after the administrative-offence record had been drawn up, but was instead placed in a detention centre at 2 a.m., for reasons which were not specified.

29. At 3 p.m. on 11 December 2011 the applicant was taken before a justice of the peace, who then sentenced him to two days of detention for the offence under Article 20.25 of the CAO. The applicant was then taken back to the detention centre and was released at around 11.30 p.m.

30. The applicant appealed. On 31 January 2012 the Syktyvkar Town Court upheld the conviction.

31. The applicant brought proceedings, under Chapter 25 of the Code of Civil Procedure ("the CCP"), to challenge the deprivation of his liberty from 2 a.m. on 10 December 2011 to 3 p.m. the next day. By a decision of 12 May 2012, the Town Court discontinued the proceedings. On 2 August 2012 the Supreme Court of the Komi Republic upheld the decision. On

4 March 2013 the cassation instance of the same court confirmed it. The courts considered that while neither the CCP nor the CAO set out a separate procedure for challenging the measures of being escorted to the police station or of administrative arrest, arguments concerning those measures could be raised during an examination of the related CAO charges against the applicant, as well as in an appeal against a decision that had been taken on such charges.

32. In separate proceedings, the applicant lodged a claim for compensation, arguing that Article 27.4 required that a record of administrative arrest was to specify reasons for the arrest; the record of his arrest referred to the need to compile the administrative-offence record; such record had been compiled late at night on 9 December 2011; thereby the justification for his arrest had been exhausted and could no longer justify his continued deprivation of liberty on 10 and 11 December 2011. The applicant concluded from the above that the unlawful deprivation of liberty on those dates served as a legal basis for obtaining compensation on account of the non-pecuniary damage suffered.

33. By a judgment of 19 September 2012, the Town Court dismissed the applicant's claim. The court considered that the matters relating to his being taken to the police station and the ensuing administrative arrest had been examined in the CAO case and there were therefore no reasons to award compensation. On 20 December 2012 the Supreme Court of the Komi Republic upheld that judgment. On 27 May 2013 the same court dismissed a cassation appeal lodged by the applicant, stating as follows:

> "... [The applicant] was escorted to the police station for the compiling of a record of administrative offence ... With a view to the correct and expedient examination of the case, he was subjected to the measure of administrative arrest ... The actions of the police officers relating to the escorting and the arrest procedures were assessed by the courts dealing with the administrative charge and were, in substance, declared lawful ... The claimant's argument that the courts in a civil case should assess the lawfulness of the police actions is based on a wrong interpretation of the law ... It is not appropriate to challenge the procedure of administrative arrest within the procedure under Chapter 25 of the Code of Civil Procedure, where there is a decision to engage the liability of a person for an administrative offence ..."

D. Mr Dragomirov (application no. 69739/14)

34. This application was lodged on 5 September 2014 by Aleksey Olegovich Dragomirov, who was born in 1980 and lives in Roslavl in the Smolensk Region, Russia.

35. On various dates between 2001 and 2008, including from 9 to 11 June 2008 (see below), the applicant was kept in a temporary detention centre. According to him, the cells had no toilet; he had had to relieve himself in a bucket; there was no running water available in the cells, and no access to shower facilities.

36. According to a written report by Officer S., at 2.45 p.m. on 9 June 2008 he arrested the applicant for being drunk and looking untidy in a

public place, and took him to the police station where he then remained until he sobered up. It appears, however, that the applicant was actually arrested (apparently, by another officer) and then tested for alcohol intoxication around 6 p.m. and 10.45 p.m. respectively (see paragraph 38 below). On 10 June 2008 before a justice of the peace the applicant admitted that he had consumed vodka with a friend in the morning the day before but denied that he had appeared untidy at 2. 45 p.m. or had been drunk or otherwise behaving in a manner offending public morals or human dignity. On the same day, referring to S.'s report, a medical report (the contents of which are not clear) and an arrest record, the justice of the peace convicted the applicant of an administrative offence under Article 20.21 of the CAO on account of being drunk in a public place at 2.45 p.m. on 9 June 2008 while having an untidy appearance, thus offending human dignity and public morals. The justice of the peace sentenced him to five days of administrative detention.

37. The applicant started to serve his sentence on 10 June 2008.

38. The applicant appealed. On 11 June 2008 the Bolsheukovskiy District Court quashed the conviction and discontinued the case for lack of any evidence to confirm the facts as imputed to the applicant. The appeal court considered that there had been nothing to suggest that the applicant had had an untidy appearance which offended human dignity or public morals; around the same time the applicant had had an appointment at the prosecutor's office and no complaint had been made concerning his appearance or any state of drunkenness. The appeal decision reads as follows:

> "The defendant was convicted of being drunk and looking untidy in a public place at 2.45 p.m. on 9 June 2008 ...
>
> [The applicant] stated that he had consumed vodka with a friend in the morning of 9 June 2008; had then attended a sauna, had put clean clothes, had had lunch and had then gone to attend a meeting in the district prosecutor's office; he had not seen any police officer at 2.45 p.m. ...
>
> Mr Se. stated before the appeal court that he had had a meeting with [the applicant] at 3 p.m. While he could see that [the applicant] had consumed alcohol, he conducted himself, looked and spoke properly ...
>
> Officer S. stated that he had been told on 9 June 2008 of [the applicant] being drunk but he had actually not seen him at 2.45 p.m. and had actually not effected his arrest at that time ...
>
> The file contains a medical report compiled at 10.45 p.m. and the arrest record indicating that the defendant had been arrested at 6.05 p.m.
>
> There is no other evidence in the file. The trial court relied on S.'s report, the medical report and the arrest record. However, it has now been established that the defendant was examined and arrested much later than at 2.45 p.m. on 9 June 2008 ... S.'s presentation of facts is not truthful and contradicts his earlier report. Shortly after that time the defendant was at the district prosecutor's office and testified before an investigator [Se.]. His appearance and conduct did not offend human dignity and public morals ... So it has not been established that the defendant committed any

> offence under Article 20.21 of the CAO ... The proceedings should be discontinued for lack of a *corpus delicti* ...”

39. The applicant was released on 11 June 2008.

40. The applicant brought civil proceedings, seeking compensation in the amount of RUB 100,000 (equivalent to EUR 2,000) in respect of non-pecuniary damage owing to the conditions of his detention and the unlawful penalty of administrative detention. By a judgment of 5 March 2014, the District Court awarded the applicant RUB 5,000 (EUR 100 according to the Bank of Russia rate on the relevant date) on the basis of the fact that the prosecution had been discontinued. On 4 June 2014 the Omsk Regional Court upheld that judgment.

E. Mr Torlopov (application no. 70724/14)

41. This application was lodged on 24 October 2014 by Viktor Grigoryevich Torlopov, who was born in 1963 and lives in Syktyvkar, Komi Republic. The applicant was represented before the Court by Ms I. Buryukova, a lawyer practising in the Moscow Region.

42. Section 8 of the Public Events Act of 2004 banned public gatherings “in the immediate vicinity of court buildings”. Relying on that provision of the Act, in 2011 the Syktyvkar town administration decided to ban the holding of public events within a radius of 150 metres of any court, to be measured from the entrance to each court building in the town.

43. At 9 a.m. on 12 October 2011, as part of a series of solo demonstrations held in late 2011, the applicant placed himself within a fenced-off area around the building housing the prosecutor’s office. He was holding a poster that read “The prosecutor’s office should return Stefanovskaya Square to demonstrators!”.

44. After ten minutes the police ordered the applicant to stop the demonstration because it was being held in the vicinity of the Town Court building. He was handcuffed and, allegedly, physical force was used against him. He was then taken to the police station and subjected to the measure of administrative arrest. The relevant record reads as follows:

> “[The applicant] arrived at the police station at ‘11.25’ in connection with offences under: ‘Article 20.2, Article 19.3 of the CAO’
>
> For (among the grounds listed in Article 27 of the CAO): for compiling a record of administrative offence ...”

45. The applicant was released at 8.30 p.m. He was later admitted to hospital.

46. By a judgment of 6 December 2011, a justice of the peace convicted the applicant under Article 20.2 of the CAO and sentenced him to a fine of RUB 500 (equivalent to EUR 12 at the time). On 14 March 2012 the Syktyvkar Town Court upheld the judgment. However, on 23 August 2013 the Supreme Court of the Komi Republic set aside the above judgments and discontinued the case. The court considered that there had been no evidence

that the place where the applicant had stood was assigned to the territory of the Town Court under the applicable laws and regulations.

47. The applicant brought civil proceedings for compensation on account of the unlawful deprivation of his liberty on 12 October 2011. By a judgment of 12 February 2014, the Town Court dismissed his claim. On 24 April 2014 the Supreme Court of the Komi Republic upheld that judgment. The court observed as follows:

(a) Having regard to Articles 5, 10 and 11 of the Convention and the ruling of the Plenary Supreme Court of Russia dated 27 June 2013 (concerning the application of the Convention by courts of general jurisdiction), the police's action in taking the applicant to the police station had been proportionate and had pursued a legitimate aim; it had been of short duration, and had not involved any recourse to physical force.

(b) The measure of taking the applicant to the police station had been aimed at ensuring prosecution for an administrative offence, including the drawing up of an arrest record.

F. Mr Svetlov (application no. 52440/15)

48. This application was lodged on 30 September 2015 by Kirill Valentinovich Svetlov, who was born in 1990 and lives in Cherepovets in the Vologodsk Region.

49. On 4 September 2015 the applicant's car was stopped by the police. The applicant was accused of an administrative offence under Article 12.7 of the CAO because he had no valid driving licence. The applicant was taken to the police station where he went through the procedure of being placed under administrative arrest. His mobile telephone was seized.

50. According to the applicant, he was not informed of his procedural rights, including the right to remain silent, when he was pulled up by the police, or at the police station.

51. On 6 September 2015 (a Sunday) the applicant was taken before a justice of the peace. At the hearing, the applicant asked for a lawyer. The judge adjourned the hearing for thirty minutes to allow the applicant to contact a lawyer. According to the applicant, during the break in the hearing, a guard took him to a metal cage where defendants were kept; the applicant had no access to a telephone. According to the Government, the applicant was not kept in a metal cage but in a room measuring some twelve square metres.

52. According to the Government, after the adjournment the applicant waived his right to legal assistance and opted to defend himself. The applicant submitted that he had not made any such statement.

53. The justice of the peace convicted the applicant of the offence and sentenced him to five days of administrative detention, to be counted from 4 September 2015. The justice of the peace stated that the applicant's guilt was confirmed by, *inter alia*, the record of administrative offence compiled

by the police as well as by the applicant's guilty plea. The justice of the peace had dismissed as unsubstantiated his argument that as a military officer, he could not be sentenced to administrative detention.

54. The applicant began his sentence the same day.

55. On 8 September 2015 the applicant appealed. In his statement of appeal he mentioned that he had had difficulties with legal assistance since no law firms would be open on a Sunday. He was released on 9 September 2015.

56. On 18 September 2015 the Cherepovets Town Court examined the applicant and upheld the judgment against him. It stated, *inter alia*, that the justice of the peace had not been provided with any proof that the applicant was a military officer. It is unclear whether the applicant adduced the relevant evidence in the appeal proceedings.

57. The applicant also lodged a constitutional complaint. By decision no. 2732-O of 19 November 2015, the Constitutional Court held that the immediate execution of the sentence of administrative detention had not contravened the Constitution (see "Relevant domestic law and practice", paragraph 79 below).

58. On 26 November 2015 the Vologda Regional Court dismissed an application by the applicant for review of the court decisions of 6 and 18 September 2015.

59. On 1 April 2016 the Supreme Court of Russia dismissed a further application for review lodged by the applicant.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Causes of action under Russian law

1. Judicial review under Chapter 25 of the Code of Civil Procedure (CCP)

60. Until 15 September 2015 the procedure for examining complaints about decisions, acts or omissions of State and municipal authorities and officials was governed by Chapter 25 of the CCP and the Judicial Review Act (Law no. 4866-1 of 27 April 1993 on judicial review of decisions and acts violating citizens' rights and freedoms). Chapter 25 of the CCP and the Judicial Review Act both provided that a citizen had a possibility to lodge a complaint before a court about an act or decision by any State or municipal authority or official if he considered that the act or decision had violated his rights and freedoms (Article 254 of the CCP and section 1 of the Judicial Review Act). The complaint might concern any decision, act or omission which had violated the citizen's rights or freedoms, had impeded the exercise of rights or freedoms, or had imposed a duty or liability on him (Article 255 of the CCP and section 2 of the Judicial Review Act). For a more detailed description of the Chapter 25 procedure, see *Roman Zakharov*

v. Russia [GC], no. 47143/06, §§ 92-100, ECHR 2015, and *Lashmankin and Others v. Russia*, nos. 57818/09 and 14 others, §§ 280-85, 7 February 2017.

2. *Tort actions under the Civil Code of the Russian Federation*

61. Damage caused to the person or property of a citizen shall be compensated in full by the tortfeasor. The tortfeasor is not liable for damage if he or she proves that the damage has been caused through no fault of his or her own (Article 1064 §§ 1 and 2 of the Civil Code). State and municipal bodies and officials shall be liable for damage caused to a citizen by their unlawful actions or omissions (Article 1069 of the Civil Code). Irrespective of any fault by State officials, the State or regional treasury is liable for damage sustained by a citizen on account of (i) unlawful criminal conviction or prosecution; (ii) unlawful application of a preventive measure, and (iii) unlawful sentence of administrative detention (Article 1070 § 1 of the Civil Code).

62. A court may impose on the tortfeasor an obligation to compensate non-pecuniary damage (physical or mental suffering). Compensation for non-pecuniary damage is unrelated to any award in respect of pecuniary damage (Articles 151 § 1 and 1099 of the Civil Code). The amount of compensation is determined by reference to the gravity of the tortfeasor's fault and other significant circumstances. The court also takes into account the extent of physical or mental suffering in relation to the victim's individual characteristics (Article 151 § 2 and Article 1101 of the Civil Code). Irrespective of the tortfeasor's fault, non-pecuniary damage shall be compensated for if the damage was caused (i) by a hazardous device; (ii) in the event of unlawful conviction or prosecution or unlawful application of a preventive measure or unlawful sentence of administrative detention, and (iii) through dissemination of information which was damaging to honour, dignity or reputation (Article 1100 of the Civil Code).

B. Police powers

63. Under the old Police Act (Federal Law no. 1036-I of 18 April 1991), applicable until 2011, the police were empowered to carry out an administrative arrest.

64. Under the current Police Act (Federal Law no. 3-FZ of 7 February 2011) the police are empowered to check an individual's identity documents where there are reasons to suspect the person of a criminal offence or if his or her name is on a wanted persons list; where there is a reason for prosecuting him or her for an administrative offence; or where there are other grounds, provided for by federal law, for arresting the person (section 13 of the Act). The police are also empowered to take the person to a police station in order to decide whether he or she should be arrested, if that cannot be done on the spot (section 13(13) of the Act); to apply measures listed in Article 27.1 of the CAO, such as administrative escorting

(*административное доставление*) or administrative arrest (*административное задержание*) (section 13(8) of the Act).

65. It is pertinent to take into account the statutory conditions, aims and grounds for taking a person to a police station (for instance, by way of administrative escorting), as well as the specific circumstances of a given situation when it is applied. Thus such a measure should not be arbitrary and should "take account of the proportionality as regards the scope of limitations on one's rights (for instance, as the case may be, freedom of expression or freedom of assembly) *vis-à-vis* the actual necessity arising from the circumstances as well as the practicability of attaining the aim pursued by the measure" (Ruling no. 8-P of 17 March 2017 by the Russian Constitutional Court in relation to section 13(13) of the Police Act of 2011). After a record of escorting has been compiled and if the grounds for escorting are no longer compelling, the person must be released without delay. Continued retention of the person in that case may become arbitrary, thus violating his or her right to liberty and personal security as protected by Article 22 of the Constitution and Article 5 of the European Convention. Individuals have the right to challenge the measure of escorting applied to them (ibid.).

C. Administrative escorting to a police station and administrative arrest

1. General provisions

66. Article 27.1 of the CAO provides for a number of measures, including administrative escorting (*административное доставление*) of a suspect to a police station and administrative arrest (*административное задержание*). Such measures may be used for the purpose of putting an end to an administrative offence; to establish an offender's identity; to compile an administrative-offence record, where this cannot be done on the spot; to ensure a timely and correct examination of a case; and to enforce a decision taken in a case.

2. Administrative escorting

67. Article 27.2 of the CAO defines the procedure of escorting someone to a police station as being that by which an offender is compelled to follow the competent officer for the purposes of compiling an administrative-offence record when it cannot be done on the spot.

68. The Constitutional Court has held that this measure of compulsion, which amounts to a temporary restriction of a person's freedom of movement, should be applied only when it is necessary and within short time frames (Decision no. 149-O-O of 17 January 2012). Subsequently, the Constitutional Court stated that both administrative escorting and administrative arrest amounted to "restrictions imposed on [a person's] liberty" (see, for instance, Ruling no. 14-P of 23 May 2017).

3. Administrative arrest

69. Pursuant to Article 27.3 of the CAO, in exceptional cases (*в исключительных случаях*) relating to the need (*необходимо для*) for a proper and expedient examination of an administrative case or for securing the execution of any sentence imposed for an administrative offence, the person concerned may be placed under administrative arrest.

70. It is unclear whether, in addition to the specific aims listed in Article 27.3, administrative arrest may be applied in exceptional cases for the aims listed in Article 27.1 (see paragraph 66 above), such as to put an end to an administrative offence, to establish a person's identity or to compile the administrative-offence record if it is not practicable to do so on the spot (see, however, Ruling no. 25-P of 17 November 2016 by the Constitutional Court of Russia). While dealing in that ruling (paragraph 3) with the requirement of an "exceptional case", the Constitutional Court mentioned that this requirement means that administrative arrest may only be applied where it is necessary in view of the specific situation, which objectively indicates that without such a measure it would be impossible (*невозможно*) to establish the person's identity, to clarify the circumstances of the offence or to ensure the expedient and correct examination of the case or to enforce the penalty.

71. The duration of administrative arrest must not exceed three hours. Administrative arrest for a longer period, not exceeding forty-eight hours, is permissible only for persons subject to administrative proceedings concerning an offence punishable by administrative detention or offences involving the unlawful crossing of the Russian border. Under Article 27.5 of the Code, the term of arrest starts to run as soon as the person has been escorted to the police station in accordance with Article 27.2.

72. The arrestee should be informed of his rights and obligations and this notification should be mentioned in the arrest record.

73. The Constitutional Court has ruled that administrative arrest amounts to "deprivation of liberty" as it is understood by the European Court within the meaning of Article 5 § 1 of the European Convention (Ruling no. 9-P of 16 June 2009). Administrative arrest must be effected in compliance with the goals listed in subparagraph (c) of Article 5 § 1, that is it must be effected for the purpose of bringing an individual 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 (Ruling no. 9-P of 16 June 2009). Lawfulness of the arrest requires assessment of the essential features affecting such "lawfulness", which includes assessment of whether the measure was justified (*обоснованной*) in view of the goals pursued and in view of whether it was necessary and reasonable (*разумной*) in the specific circumstances of the situation in which it was applied. Administrative arrest is lawful if it is justified on account of the nature of the offence and is necessary for ensuring execution of the judgment in the

administrative-offence case (Decision no. 1049-O of 2 July 2013 by the Constitutional Court). The assessment of the reasons/grounds listed in the record of administrative arrest (as was relevant, in respect of a claim for compensation relating to such arrest) includes the assessment of whether the arrest was the only possible measure in respect of the defendant (ibid.).

74. In Ruling no. 2 of 10 February 2009 the Plenary Supreme Court of Russia (paragraph 7) stated that the procedure under Chapter 25 of the CCP was not applicable to challenges against actions, omissions or decisions for which the CAO did not provide for a review procedure and which, being intrinsically linked to a given case of administrative-offence charges, were not amenable to a separate review. The above statement was relevant for evidence in cases such as the record of certain measures, for instance a record of administrative escorting or a record of administrative arrest. In such circumstances, arguments relating to the inadmissibility of a piece of evidence or a measure could be presented during examination of the administrative-offence case or on appeal against a decision in such a case. However, where CAO proceedings were discontinued, any actions taken during such proceedings could then be challenged under Chapter 25 of the CCP, if such actions impinged upon the person's rights or freedoms, created obstacles to their being exercised, or unlawfully imposed liability. The same approach was applicable where no CAO proceedings were instituted. This Ruling ceased to be applicable in September 2016.

75. The Constitutional Court held that the special rules contained in Articles 1070 and 1100 of the Civil Code (concerning State liability, without the need to prove a public official's guilt) had to be interpreted as affording individuals a possibility to claim compensation for being placed under administrative arrest in the context of offences punishable by administrative detention or administrative removal (that is where Article 27.5 § 3, allowing the police to hold an arrested person for up to forty-eight hours, was applicable) (Ruling no. 9-P of 16 June 2009). The courts must assess both the formal lawfulness of the measure and the reasons for it, in terms of its fairness and proportionality (Decision no. 149-O-O of 17 January 2012). With regard to the reasons cited in the administrative-arrest record, the courts must ascertain whether arrest was the only acceptable measure in the circumstances (Decision no. 1049-O of 2 July 2013).

D. Presumption of innocence

76. Article 49 of the Russian Constitution provides that anyone who is accused of a criminal offence is presumed innocent until his guilt is proven, pursuant to the procedure prescribed by federal statute, and is established by a final judgment in a criminal case. The accused is not obliged to prove his innocence. Any doubts about the guilt of a person must be interpreted in favour of the accused.

77. Article 1.5 of the CAO provides for the presumption of innocence. The official or the court dealing with the administrative-offence case should establish whether the person concerned is guilty or innocent (Ruling no. 5 of 24 March 2005 by the Plenary Supreme Court of Russia).

E. Sentence of administrative detention

78. Law-enforcement officers should execute a sentence of administrative detention (*административный арест*) immediately after the delivery of the relevant judgment by a court (Article 32.8 of the CAO).

79. By decision no. 2732-O of 19 November 2015, the Constitutional Court held that the immediate execution of a sentence of administrative detention did not contradict any provision of the Constitution, including Articles 15, 17, 22 and 49 (presumption of innocence), for the following reasons:

(i) Penalties provided for by the CAO, except for administrative detention, are executed (if imposed by a court) following the expiry of the time-limit for an appeal, or after an appeal has been examined.

(ii) While being the strictest penalty under the CAO, a sentence of administrative detention is imposed only in “exceptional circumstances” and only for certain listed offences. The execution of such a sentence is accompanied by guarantees of judicial protection: the sentence must be imposed by a court; that court must provide reasons for imposing such a sentence; the sentence must be notified to the defendant without delay; an appeal against the sentence can be submitted to a higher court without delay and must be examined within one day; and the period of administrative detention is counted from the time of administrative arrest.

One judge expressed a separate opinion. He found that the applicable legislation meant that a person who had not yet been found guilty was compelled, in the absence of a final judgment having the quality of *res judicata*, to serve a period of administrative detention. He pointed out that Article 49 of the Constitution provided that everyone should be presumed innocent until his or her guilt had been proven by a final criminal judgment. That principle was applicable to the CAO, in particular having regard to the European Court’s approach in applying the criminal limb of Article 6 of the Convention to the CAO or to similar cases. In this connection he referred to *Mikhaylova v. Russia* (no. 46998/08, 19 November 2015). Noting that the Convention was an integral part of the Russian legal system and had “priority over national statutes when they conflict”, he stressed that Russia’s obligations under Article 6 of the Convention required strict compliance with the presumption of innocence, both in criminal cases and in cases under the CAO. In his view, the safeguards referred to by the majority of the court were not sufficient to ensure respect of the presumption of innocence and appeared to sit ill with the constitutional guarantee of judicial protection of rights and judicial protection against unfair prosecution and punishment.

In fact, although it dealt with less serious cases, the CAO was stricter than the Code of Criminal Procedure, under which a sentence of imprisonment was only executed following an appeal judgment.

F. Compensation in relation to prosecution under the CAO

80. Article 1070 of the Civil Code provides for a possibility to claim compensation on account of unlawful prosecution where it resulted in the imposition of the penalty of administrative detention. Pursuant to Ruling no. 5 of 24 March 2005 by the Plenary Supreme Court of Russia, claims in respect of pecuniary or non-pecuniary damage caused by unlawful prosecution for an administrative offence are examined under the rules of civil procedure (paragraph 27).

81. A claim for compensation failed where the court decision setting aside the conviction did not contain findings relating to the defendant's innocence but was reasoned with reference to the expiry of the prosecution period rather than, for instance, the absence of *corpus delicti* (Appeal decision no. 33-44053/2016 of 10 November 2016 by the Moscow City Court; see also Appeal decision no. 33-273/2015 of 9 February 2015 by the Lipetsk Regional Court). In certain circumstances a claim for compensation may be examined and granted under the general rules of tort liability under Articles 1069 and 1070 of the Civil Code (Cassation review decision no. 77-KG16-2 of 13 September 2016 by the Civil Chamber of the Supreme Court of Russia).

G. Other relevant legislation

82. Section 8 of the Federal Law on Gatherings, Meetings, Demonstrations, Processions and Pickets, no. FZ-54 of 19 June 2004 ("the Public Events Act") prohibited public events in the immediate vicinity of a court. The perimeter of the zones in the immediate vicinity of buildings or other constructions was to be determined by a decision of the regional or municipal executive authorities issued in accordance with the land and urban planning legislation on the basis of the land or urban planning register (section 3). The Constitutional Court of Russia specified that having regard to the wording of the above-mentioned sections, it was appropriate to have regard also to the relevant provisions of the Land Code, in particular, relating to the borders of plots of land (Decision no. 573-O-O of 17 July 2007). The Supreme Court of Russia further confirmed that approach, indicating that when determining areas "in the immediate vicinity" of buildings within the meaning of the Public Events Act, it was incumbent on the regional authorities to take due account of the land actually used (for instance, by a specific court) and the official borders of the relevant plot of land (Decision no. 11-G09-17 of 11 November 2009).

THE LAW

I. JOINDER OF THE APPLICATIONS

83. In accordance with Rule 42 § 1 of the Rules of Court, the Court decides to join the applications, given their factual and legal similarities. It considers that joining these applications will highlight the recurring nature of the intertwined issues arising in the cases at hand and underscore the general nature of the Court's findings as set out below.

II. ALLEGED VIOLATIONS OF ARTICLE 5 § 1 OF THE CONVENTION

84. The applicants complained that they had been unlawfully and arbitrarily subjected to the measures of administrative escorting and administrative arrest.

85. Mr Dragomirov (application no. 69739/14) also complained that, in view of the findings by the appeal court, there had been a separate violation of this Article on account of the sentence that he had served in part.

86. Article 5 § 1 of the Convention reads in the relevant parts as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court; ...
>
> (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; ... "

A. The parties' submissions

1. The Government

87. As regards Ms Tsvetkova, Mr Bgantsev and Mr Svetlov, the Government referred to decision no. 440-O of 4 December 2003 by the Russian Constitutional Court and argued that the applicants should have used the procedure under Chapter 25 of the Code of Civil Procedure (see paragraph 60 above) for challenging the allegedly unlawful actions on the part of the police. The Government also submitted that the applicants "had a right to lodge a separate civil action" under Article 1070 of the Russian Civil Code (see paragraphs 61-62 above). Mr Andreyev and Mr Torlopov had brought the relevant proceedings and had thus exhausted the domestic remedies.

88. The Government also made the following submissions as to the merits of the applicants' complaints:

(a) Ms Tsvetkova had been arrested on suspicion of theft and an administrative offence of being drunk in public places (which was an offence under Article 20.21 of the CAO).

(b) In view of Mr Bgantsev's behaviour, it had not been possible to compile the administrative-offence record on the spot and thus he had been taken to the police station.

(c) Mr Andreyev had been taken to the police station for compiling an administrative-offence record, which had been compiled without delay. It had been lawful to keep him in detention for forty-eight hours.

(d) As regards the administrative escorting/arrest and the penalty of administrative detention in respect of Mr Dragomirov, the Government submitted that he had lost victim status in view of the compensation awarded by the domestic court (see paragraph 40 above).

(e) As established by the domestic courts, Mr Torlopov's rights had not been violated.

2. The applicants

89. Ms Tsvetkova argued that the record of administrative arrest contained no references to the grounds or reasons for her arrest. That information was essential to the lawfulness of her deprivation of liberty, and its omission amounted to a violation of Article 5 § 1 of the Convention.

90. As to Mr Bgantsev, referring to Article 24.1 of the CAO and the Supreme Court's ruling of 24 March 2005, he argued that it was incumbent on the courts in his CAO case to delve into matters relating to the observance of various procedures, including those relating to administrative escorting and administrative arrest. The applicant also relied on the Supreme Court's ruling of 10 February 2009 (see paragraph 74 above). As to the substance of his complaints, the applicant submitted that the only reason and legal ground for his arrest was listed in the record and read "for taking a decision". There had been nothing to prevent the police officer from compiling the administrative-offence record on the spot, as required by Article 27.2 of the CAO.

91. Mr Andreyev submitted that the record of administrative arrest indicated the "compilation of administrative-offence record" as the legal ground for depriving him of his liberty. The administrative-offence record had been compiled by midnight on 9 December 2011. Thus, there had been no lawful grounds or exceptional circumstances for keeping him in detention on 10 December and until 3 or 4 p.m. on 11 December 2011.

92. Mr Torlopov argued that there had been no reasonable grounds for suspicion that he had taken part in a public event in a prohibited area. He further argued that the applicable regulations were unforeseeable in their application and gave room for arbitrary actions on the part of the authorities, such as administrative arrest, as recognised by the domestic court (see paragraph 46 above).

93. Mr Dragomirov made no submissions relating to the alleged unlawfulness of his pre-trial detention, merely stating that the compensation had been derisory.

94. Mr Svetlov argued that shortly after the events in August 2015, Chapter 25 of the CCP had no longer been valid and had been replaced by the new Code of Administrative Procedure. The applicant had chosen to complain about his administrative arrest by way of appeals against his conviction as well as by way of different procedures: by applying to the town and regional prosecutors' offices and lodging "hierarchical appeals" with the police. As to the substance of the issue, the applicant argued that it had not been substantiated that his arrest had been based on reasonable suspicion that he had committed an offence, or that his arrest corresponded to the relevant statutory aims or those arising under Article 5 of the Convention.

B. The Court's assessment

1. Admissibility

(a) Administrative escorting and administrative arrest

(i) Exhaustion of domestic remedies

95. First of all, although the Government have referred to two domestic remedies, they have not specified whether recourse to the procedures under Chapter 25 of the Code of Civil Procedure and Article 1070 of the Civil Code (see paragraphs 60-62 above) was meant to be alternative or, rather, consecutive and cumulative. Secondly, the Government have not specified whether they were referring to the special rules concerning State liability (Article 1070 § 1) or the general rules that normally require proof of an official's civil culpability (Article 1070 § 2 in conjunction with Article 1069). Nor did they specify whether their assertions concerned both administrative arrest and administrative escorting. Decision no. 440-O of 4 December 2003, referred to by the Government, did not concern compensation in relation to administrative escorting or administrative arrest.

96. The Court notes, on the facts of the present case, that at least four procedures might, *prima facie*, be relevant for raising issues relating to administrative escorting or administrative arrest and for seeking redress:

(a) raising the related matters during the trial and/or in the appeal proceedings; and/or

(b) seeking a judicial review under Chapter 25 of the Code of Civil Procedure; and/or

(c) seeking compensation under the special rules of Article 1070 § 1 and Article 1100 of the Civil Code; and/or

(d) seeking the institution of criminal proceedings, for instance, under Articles 127, 286 or 301 of the Criminal Code, and challenging related non-judicial decisions (for instance, a decision not to institute criminal

proceedings after a pre-investigation inquiry) under Article 125 of the Code of Criminal Procedure.

97. As regards Mr Bgantsev, the Court notes that the relevant events occurred in August 2010 and that the present application was lodged in January 2011. It is also noted that the proceedings under the CAO, including recourse to the administrative-arrest procedure, concerned an offence under Article 20.1 of the CAO punishable by administrative detention. It appears that under Russian law the applicability of the special rules of Article 1070 § 1 and Article 1100 of the Civil Code concerning State liability in respect of non-pecuniary damage caused by administrative arrest was connected to the question of whether the person was prosecuted for an offence punishable by administrative detention (see paragraph 75 above). At the same time, it is noted that Mr Bgantsev was convicted of the offence by a final judgment. This fact appeared to be an obstacle to bringing a case seeking compensation for the administrative arrest related to such a conviction (compare the civil courts' findings in paragraphs 31-33 above in respect of Mr Andreyev who had been convicted and paragraphs 38-40 and 46-47 above in respect of Mr Torlopov and Mr Dragomirov, whose prosecution had been discontinued). The Government have not suggested that this approach, as demonstrated by Mr Andreyev's case, was taken as a result of an erroneous interpretation of Russian law. Thus, the respondent Government have not demonstrated that in 2010 Mr Bgantsev had any prospect of success in bringing a civil claim for compensation under Article 1070 § 1 in conjunction with Article 1100 of the Civil Code. The Court has no reason to consider that the general tort remedy under Article 1070 § 2 in conjunction with Article 1069 was available or appropriate in the circumstances of the case (compare *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 113-14 and 229, 10 January 2012). Lastly, as regards the judicial-review challenge under Chapter 25 of the Code of Civil Procedure, it appears established that it was not available where a defendant had been convicted of an administrative offence (see paragraph 74 above). Consequently, the Government have not convincingly demonstrated that Mr Bgantsev could bring such proceedings and has not complied with the exhaustion requirement.

98. As regards the administrative arrest of Mr Svetlov in September 2015, the same doubts persist as to whether a compensation claim has any prospect of success where the person complaining about the use of the administrative-arrest procedure against him was not acquitted or the case against him was not discontinued (see also paragraphs 80-81 regarding the apparent relevance of the specific ground of discontinuation in relation to a claim for compensation on account of wrongful prosecution). Thus, in the present case the Court is not prepared to dismiss the complaint for failure to exhaust domestic remedies. Furthermore, the Court is satisfied that the administrative arrest of the applicant was based on a reasonable suspicion that he had committed a traffic offence. The remaining submissions are not detailed. Accordingly, Mr Svetlov's complaint concerning his

administrative arrest is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

99. As regards Ms Tsvetkova (application no. 54381/08), the Court notes that the relevant events occurred in 2008 and that the application was lodged in 2008, following the use of the criminal-complaint procedure (see paragraphs 10-15 above). It was only in 2009 that the Constitutional Court first confirmed the availability of a compensatory remedy in respect of administrative arrest in cases where the penalty of detention had been incurred (see *Makhmudov v. Russia*, no. 35082/04, §§ 103-05, 26 July 2007, where the Court found a violation of Article 5 § 5 of the Convention). The Government have not suggested that this was a new remedy which the applicant had to use in respect of her application pending before this Court. Nor have they specified that it remained available to the applicant after the 2009 constitutional decision.

100. Lastly, the Government have not stated that the criminal-complaint procedure was manifestly devoid of purpose in the context of the specific issues relating to Article 5 § 1 of the Convention (see *Leonid Petrov v. Russia*, no. 52783/08, §§ 49-50, 11 October 2016; *Aleksandr Sokolov v. Russia*, no. 20364/05, § 66, 4 November 2010; and *Smirnova v. Russia* (dec.), no. 37267/04, 8 July 2014, where a criminal-inquiry procedure was taken into account under Article 35 § 1 of the Convention in respect of complaints relating to Article 5 § 1). For its part, the Court notes that Articles 127 and 301 of the Criminal Code proscribe the unlawful deprivation of liberty and the manifestly unlawful recourse to the arrest procedure or the procedure for remand in custody; Article 286 of the Code proscribes abuse of power by a public official (a statutory provision frequently used, for instance, in relation to complaints arising in the context of use of force by the police, with or without a related issue concerning deprivation of liberty, see *Aleksandr Andreyev v. Russia,* no. 2281/06, §§ 34-45 and 47-51, 23 February 2016). Consequently, in the particular circumstances of the case (see paragraph 10 above), the Court does not find it unreasonable or devoid of any prospect of success that the applicant chose to lodge a criminal complaint (see, in the same vein, *Annenkov and Others v. Russia*, no. 31475/10, § 106, 25 July 2017). Given the sequence of the proceedings ongoing since May 2008 in relation to the arrest in January 2008, the Court has no reason to consider that the applicant should have lodged her complaint with the Court earlier than in October 2008 as she did, for instance, because the remedy she had been using turned out to be ineffective (compare *Raush v. Russia* (dec.), no. 17767/06, § 60, 22 March 2016).

101. In view of the foregoing considerations, the Court finds it unnecessary to determine whether in 2008 Ms Tsvetkova had any prospect of success in bringing proceedings under Chapter 25 of the CCP.

(ii) Six-months rule

102. The Court observes that in view of the short or relatively short durations of the contested periods of deprivation of liberty, it was not practicable for the applicants to institute proceedings by which their escorting and arrests could be reviewed speedily by a court, before they were released or (for some of them) before they started to serve the sentence of administrative detention. Thus, it may be appropriate to take into account, for the purpose of the six-month rule, subsequent proceedings in 2012 and 2014 in which certain applicants sought compensation for allegedly unlawful or unjustified arrest or escorting to the police station. Therefore, even though the deprivations of liberty complained of by Mr Andreyev and Mr Torlopov ended more than six months before the dates on which their applications were lodged, the Court concludes that they have complied with the six-month rule. In particular, Mr Andreyev cannot be reproached for having tried to obtain compensation in respect of his administrative arrest (despite his final conviction for an administrative offence) before bringing a case before the Court. At the time, the availability of that remedy was questionable but not clearly without any prospect of success and the applicant made a reasonable attempt to comply with the exhaustion requirement.

103. The Court notes that the contested period of Mr Dragomirov's administrative arrest ended on 10 June 2008. No matters relating to it were raised in the civil proceedings in 2014. Accordingly, this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

(iii) Conclusion

104. The Court notes that the complaints concerning the administrative escorting and/or administrative arrest of Ms Tsvetkova, Mr Bgantsev, Mr Andreyev and Mr Torlopov are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

(b) Penalty of administrative detention in respect of Mr Dragomirov

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

2. Merits

(a) Administrative escorting and administrative arrest

(i) Were the applicants deprived of their liberty?

106. It has not been contested before the Court that the applicants were "deprived of [their] liberty" within the meaning of Article 5 § 1 of the Convention on the relevant dates. At the same time, the Court is mindful that the Russian Constitutional Court seemed to classify administrative escorting as a restriction on freedom of movement (see paragraph 68 above).

107. In the present case, the taking of the applicants to police stations (whether or not specifically with recourse to the procedure of administrative escorting) and their retention there for some time under the procedure of administrative arrest, taken as a whole, did fall with the scope of Article 5 § 1 of the Convention. The Court considers that the procedure of administrative escorting (including the taking of a person to a police station and his or her presence there) amounted to "deprivation of liberty" (compare *Rozhkov v. Russia (no. 2)*, no. 38898/04, § 79, 31 January 2017, and *Navalnyy and Yashin v. Russia*, no. 76204/11, § 92, 4 December 2014). Nothing suggests that, as a matter of fact and/or given the requirements of Russian law, the applicants could have freely decided not to follow the police officers to the police station or, once there, could have left it at any time without incurring adverse consequences (compare *Creangă v. Romania* [GC], no. 29226/03, §§ 94-98, 23 February 2012; *Khalikova v. Azerbaijan*, no. 42883/11, § 102, 22 October 2015; and *Ursulet v. France* (dec.), no. 56825/13, §§ 35-37, 8 March 2016).

108. The Court considers that throughout the events there was an element of coercion which, notwithstanding the relatively short duration of this procedure in certain cases (for instance, as regards Ms Tsvetkova), was indicative of a deprivation of liberty within the meaning of Article 5 § 1 (see *Shimovolos v. Russia*, no. 30194/09, § 50, 21 June 2011).

(ii) Were any of the sub-paragraphs of Article 5 § 1 of the Convention applicable?

109. The Court must ascertain whether the deprivation of the applicants' liberty complied with the requirements of Article 5 § 1. It reiterates in this connection that the list of exceptions to the right to liberty secured in Article 5 § 1 is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely to ensure that no one is arbitrarily deprived of his liberty (see, among others, *Giulia Manzoni v. Italy*, 1 July 1997, § 25, *Reports of Judgments and Decisions* 1997-IV, and *Shimovolos*, cited above, § 51).

110. The deprivation of the applicants' liberty clearly did not fall under sub-paragraphs (a), (d), (e) or (f) of paragraph 1 of Article 5. Nor was it covered by sub-paragraph (b), since there is no evidence of the applicants'

failure to fulfil any obligation prescribed by law and, even less, their failure to comply with any lawful court order.

111. It remains to be determined whether the deprivation of the applicants' liberty fell within the ambit of sub-paragraph (c) concerning "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".

112. It is significant in this connection that the applicants were all suspected of "having committed an offence". The Court notes that each applicant was suspected of an "offence" punishable under the Code of Administrative Offences. While sub-paragraph (c) of paragraph 1 of Article 5 finds its usual application in relation to criminal proceedings, which are related to "a determination of a criminal charge" within the meaning of Article 6 § 1 of the Convention, the Court has previously examined, with reference to the "criminal" limbs of Article 6 § 1 and Article 5 § 1, complaints relating to administrative-offence proceedings (see, among many others, *Makhmudov*, cited above, §§ 80-86; *Menesheva v. Russia*, no. 59261/00, §§ 94-98, ECHR 2006-III; *Mikhaylova*, cited above, §§ 57-74; and *Karelin v. Russia*, no. 926/08, § 42, 20 September 2016).

113. The Court notes that while under sub-paragraph (c) of Article 5 § 1 a person's detention may be justified "when it is reasonably considered necessary to prevent his committing an offence", that particular ground for detention is not adapted to a policy of general prevention directed against an individual or a category of individuals who present a danger on account of their continuing propensity to crime. It does no more than afford the Contracting States a means of "preventing" a concrete and specific offence (see *Urtāns v. Latvia*, no. 16858/11, § 33, 28 October 2014, with further references).

114. Article 5 § 1 (c) requires that detention to prevent a person from committing an offence is "effected for the purpose of bringing him before the competent legal authority", and under Article 5 § 3 that person is "entitled to trial within a reasonable time". Consequently, the second limb of Article 5 § 1 (c) covers only pre-trial detention which is imposed in connection with "criminal" proceedings in the case of a person who has already carried out punishable preparatory acts to an offence, in order to prevent his committing that offence (see *Blokhin v. Russia* [GC], no. 47152/06, § 119, ECHR 2016).

115. Article 27.1 of the CAO provides for a number of measures, including escorting a suspect to a police station or administrative arrest. These measures may be used for the purpose of putting an end to an administrative offence; to establish an offender's identity; to compile an administrative-offence record, where this cannot be done on the spot; to ensure a timely and correct examination of a case; and to enforce a decision taken in a case. Article 27.2 of the CAO concerns specifically the procedure

of escorting someone to a police station "for the purposes of compiling an administrative-offence record when it cannot be done on the spot". Article 27.3 of the CAO concerns specifically administrative arrest that can be used in "exceptional cases" relating to the need for "a proper and expedient examination of an administrative case" or for securing the execution of the sentence in that case.

116. The Court notes the argument put forward by certain applicants (for instance, Mr Bgantsev) that the above-mentioned statutory framework as such, and as applied to them, allowed deprivation of liberty for mere considerations of convenience to the police, or for pragmatic considerations, namely the expedient processing of administrative-offence cases. The Court has no reason to doubt that the above-mentioned statutory framework *per se* was compatible with the spirit and purpose of Article 5 § 1 (c) of the Convention. Thus the Court does not conclude in the present case that this statutory framework did not fall within the ambit of Article 5 § 1 (c) so as to make it inapplicable to the situations being examined in the present case. The Court will, however, examine such arguments below in considering whether the deprivations of liberty were unlawful, arbitrary or otherwise in breach of Article 5 § 1 (compare *Novikova and Others v. Russia*, nos. 25501/07 and 4 others, § 142, 26 April 2016).

(iii) Were the applicants deprived of their liberty unlawfully, arbitrarily or otherwise in breach of Article 5 § 1 of the Convention?

(α) Ms Tsvetkova

117. The Court observes that the record of administrative arrest in respect of Ms Tsvetkova specifies no grounds or actual reasons for her arrest in relation to any specific administrative offence. The applicant argued that no such grounds or reasons actually obtained in the circumstances of the case. Indeed, it is not clear from the record of administrative arrest, nor was it convincingly established in the course of a pre-investigation criminal inquiry, what administrative offence the applicant was suspected of (petty theft and/or being drunk in a public place or some other offence). It was essential to specify this information, *inter alia*, in view of the domestic requirement that administrative arrest could exceed three hours only in relation to offences punishable by detention (or administrative removal, for foreigners). The available material does not confirm the Government's assertion before the Court that the applicant was released at 0.35 a.m. on 2 January 2008. Neither the record nor the inquiry clearly established the grounds for applying the arrest procedure.

118. There has therefore been a violation of Article 5 § 1 of the Convention on account of the absence of the grounds and reasons for Ms Tsvetkova's arrest.

(β) Mr Andreyev and Mr Bgantsev

119. Mr Andreyev argued that administrative arrest under Article 27.3 of the CAO was lawful only in “exceptional cases”; the record of administrative arrest indicated that the arrest was aimed at facilitating the compiling of the record of administrative offence; such compiling had been completed around midnight on 9 December 2011; thereafter there had been no legal basis for maintaining him in detention until the delivery of the trial judgment at 3.45 p.m. on 11 December 2011, when the penalty of detention had been imposed. The applicant was not released on 9 December 2011 and was remanded in custody to secure his attendance at the hearing before the justice of the peace. The Government argued that the term of the applicant’s detention had remained within the forty-eight-hour time-limit provided for by Article 27.5 § 3 of the CAO.

120. Article 5 § 1 of the Convention requires that for deprivation of liberty to be free from arbitrariness, it does not suffice that this measure is taken and executed in conformity with national law; it must also be necessary in the circumstances (see *Nešťák v. Slovakia*, no. 65559/01, § 74, 27 February 2007). Detention falling within the scope of Article 5 § 1 (c) must embody a proportionality requirement (see *Ladent v. Poland*, no. 11036/03, § 55, 18 March 2008), which implies a reasoned decision balancing relevant arguments for and against release (see *Taran v. Ukraine*, no. 31898/06, § 68, 17 October 2013).

121. As regards the requirements of Russian law, the Russian Constitutional Court specified that administrative arrest could be applied only in an exceptional case, that is, where it was “necessary” in view of the specific situation, which objectively indicates that without such a measure it would be “impossible” to achieve the statutory goals such as to ensure the expedient and correct examination of the case or to enforce the penalty (see paragraph 70 above). However, neither the domestic authorities nor the Government before the Court provided any justification, as required by Article 27.3 § 1 of the Code, namely that it was an “exceptional case” or that it was “necessary for the prompt and proper examination” of the case or for “ensuring enforcement of the penalty imposed in the case”, which, as it happens, concerned a charge relating to a delay in paying a fine of seven euros. Having regard to the interpretation given by the Russian Constitutional Court (see also paragraph 73 above), the above considerations were essential elements pertaining to the legality of the deprivation of liberty (see also *Lashmankin and Others*, cited above, § 490; compare, albeit in different contexts, *Gusinskiy v. Russia*, no. 70276/01, §§ 63-65, ECHR 2004-IV, and *Volchkova and Mironov v. Russia*, nos. 45668/05 and 2292/06, § 106, 28 March 2017).

122. In the absence of any explicit reasons given by the authorities for not releasing Mr Andreyev, the Court considers that his thirty-nine-hour detention was unjustified, arbitrary and disproportionate. In view of the foregoing, the Court finds a breach of Mr Andreyev’s right to liberty on

account of the lack of reasons and legal grounds for remanding him in custody pending and during the hearing of his case by the justice of the peace (see *Frumkin v. Russia*, no. 74568/12, §§ 150-52, ECHR 2016 (extracts); see also *Navalnyy and Yashin*, cited above, § 98).

123. Similarly, while there is no reason to doubt that the arresting officer had a reasonable suspicion that Mr Bgantsev had committed an administrative offence of hooliganism by way of using rude language in public, the Court is not satisfied that it was compliant with Russian law to hold him in detention overnight following the compiling of the administrative-offence record. Nothing suggests that there was a risk of the applicant reoffending, tampering with evidence, influencing witnesses or fleeing justice, which would plead in favour of the continued detention. Even if those considerations could be considered to constitute an "exceptional case" referred to in Article 27.3 § 1 of the CAO as part of the rationale for avoiding excessive and abusive recourse to the administrative-arrest procedure, there is nothing in the file to conclude that such considerations were pondered and justified the applicant's deprivation of liberty.

124. For these reasons, the Court is not satisfied that Mr Andreyev's and Mr Bgantsev's administrative arrests complied with Russian law so as also to be "lawful" within the meaning of Article 5 § 1 (c) of the Convention. It follows that there has been a violation of Article 5 § 1.

(γ) Mr Torlopov

125. As to Mr Torlopov, the Court first notes that he has raised similar arguments, for the first time, in his observations before the Court. Thus, the Court will not examine them but instead will deal with his initial arguments that there had been no reasonable suspicion that he had held a public event in a prohibited area, and that the applicable regulations were unforeseeable in their application and gave room for arbitrary actions on the part of authorities such as administrative arrest (see also paragraph 46 above).

126. It is well established in the Court's case-law on Article 5 § 1 of the Convention that all deprivation of liberty must not only be based on one of the exceptions listed in sub-paragraphs (a) to (f) but must also be "lawful". Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law. This primarily requires any arrest or detention to have a legal basis in domestic law but also relates to the quality of the law, requiring it to be compatible with the rule of law, a concept inherent in all the Articles of the Convention. The "quality of the law" implies that where a national law authorises a deprivation of liberty, it must be sufficiently accessible, precise and foreseeable in its application to avoid all risk of arbitrariness. The standard of "lawfulness" set by the Convention requires that all law be sufficiently precise to allow the person –

if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see, as a recent authority, *Del Río Prada v. Spain* [GC], no. 42750/09, § 125, ECHR 2013). Where deprivation of liberty is concerned, it is essential that the domestic law define clearly the conditions for detention (see *Creangă*, cited above, § 120).

127. The Court also reiterates at this juncture its earlier findings, albeit in the context of Article 11 of the Convention, regarding the ban on public events in the immediate vicinity of court buildings (see *Lashmankin and Others,* cited above, §§ 432-42). The Court considered in that case that the Government had not convincingly shown that the general ban on holding public events at certain locations was proportionate to the legitimate aim of ensuring public safety and preventing disorder. Taking into account the absolute nature of the ban, coupled with the local executive authorities' wide discretion in determining what was considered to be "in the immediate vicinity" of court buildings, the Court concluded that the general ban on holding public events in the vicinity of court buildings was so broadly drawn that it could not be accepted as compatible with Article 11 § 2.

128. Mr Torlopov's complaint is an example of the application of the statutory ban in the context where the applicant was deprived of liberty by way of administrative arrest because he was holding a solo demonstration in front of a prosecutor's office building (with a message addressed to that public authority), which happened to be across the road and at some distance from the Town Court. As clarified by the Constitutional Court in 2007 and the Supreme Court of Russia in 2009, and as confirmed by the reviewing court in the applicant's case, it was particularly pertinent to look at the actual borders of plots of land assigned to and actually used by a specific court (see paragraph 82 above). The local legislation, which was applied to the applicant, dealt with the notion of the "immediate vicinity" distance by way of establishing a "radius" of 150 metres from any court, to be measured from the entrance to each court building in the town. It was acknowledged at domestic level that there had been no evidence that the place where the applicant had stood was assigned to the territory of the Town Court under the applicable laws and regulations.

129. The Court accepts that, apart from geometrical considerations, it might be difficult for a law-enforcement officer to grasp the intricacies of the requirements arising from the federal and local legislation and the applicable jurisprudence of the Constitutional Court, with a view to taking a decision as to the legality of applying the administrative-arrest procedure in the circumstances as they obtained in respect of Mr Torlopov.

130. It is not the Court's task to resolve any conflict between the federal and local legislation. The Court considers, however, that the applicable normative framework, including the federal CAO and the regional and local regulations, was not sufficiently foreseeable and precise in its application to avoid the risk of arbitrariness.

131. For these reasons, the Court is not satisfied that Mr Torlopov's taking to the police station and retention there were "lawful" within the meaning of Article 5 § 1 (c) of the Convention. It follows that there has been a violation of Article 5 § 1.

(iv) Conclusion

132. The Court concludes that there have been violations of Article 5 § 1 of the Convention in respect of Ms Tsvetkova, Mr Bgantsev, Mr Andreyev and Mr Torlopov.

(b) Sentence of administrative detention in respect of Mr Dragomirov

133. As regards the penalty of administrative detention falling to be examined under Article 5 § 1 (a) in respect of Mr Dragomirov, the Court first needs to address the Government's argument concerning the loss of victim status on account of the compensation awarded at national level. The Court observes that the domestic court granted in part his claim for compensation and awarded EUR 100 on account of the penalty of detention and unsatisfactory conditions of detention for two days (see paragraph 40 above). The Court reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim", unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention. Redress so afforded must be appropriate and sufficient, failing which a party can continue to claim to be a victim of the violation (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 181, ECHR 2006-V, and *Cocchiarella v. Italy* [GC], no. 64886/01, § 72, ECHR 2006-V). The Court is not satisfied that this award constituted adequate and sufficient redress in respect of the impugned detention. The award was by no means comparable to what could be awarded under Article 41 of the Convention (see, for the approach, *Scordino (no. 1),* cited above, §§ 181 and 202, and *Rakhimberdiyev v. Russia*, no. 47837/06, § 42, 18 September 2014 in a comparable situation; see also paragraph 203 below). Thus, the applicant was a victim of the alleged violation concerning his administrative detention when he lodged the application before the Court (see, in the same vein, *Novikova and Others*, cited above, §§ 217-18).

134. As to the merits, the Court reiterates that a period of detention will in principle be lawful if it is carried out pursuant to a court order. A subsequent finding that the court erred under domestic law in making the order will not necessarily retrospectively affect the validity of the intervening period of detention. For this reason, the Court has consistently refused to uphold applications from individuals convicted of criminal offences who complain that their convictions or sentences were found by the appellate courts to have been based on errors of fact or law (see *Benham v. the United Kingdom*, 10 June 1996, § 42, *Reports* 1996-III). However, where a person has already spent time in detention on the basis of a decision

that contained a "gross and obvious irregularity", it can likely be concluded that the intervening period of detention was in breach of Article 5 § 1 (see for comparison *Yefimenko v. Russia*, no. 152/04, §§ 89-111, 12 February 2013, with further references; *Malofeyeva v. Russia*, no. 36673/04, §§ 91-95, 30 May 2013; *Kleyn v. Russia*, no. 44925/06, §§ 28-29, 5 January 2016; *Hammerton v. the United Kingdom*, no. 6287/10, §§ 112-17, 17 March 2016; and *Gumeniuc v. the Republic of Moldova*, no. 48829/06, §§ 25-26, 16 May 2017).

135. In the present case the issue arises from the fact that the applicant had already served part of the sentence (which was not yet final) before the appeal court found, in substance, that no offence had been committed. The findings made on appeal disclose a serious defect in the trial judgment, adversely affecting the pertinent period of detention.

136. The Court notes that the trial court heard Mr Dragomirov who denied that he had been drunk and untidy in a public place at 2.45 pm. on 9 June 2008. The trial court convicted the applicant as charged, relying on Officer S.'s report as well as a medical report and an arrest record. However, as confirmed by the appeal court, the officer's report was not truthful and thus could not lay foundation for the conviction. Furthermore, it should have been apparent already at the trial that the remaining written evidence was unrelated to the timing of the imputed offence and thus could not be used for convicting the applicant as charged. As a result, the appeal court could not but acknowledge the absence of any adverse evidence which could have justified the trial judgment declaring the applicant guilty. Consequently, it set aside the trial court's judgment for lack of any evidence that the applicant had committed the offence and discontinued the case for lack of *corpus delicti* (see paragraph 38 above).

137. Having regard to the quashing of the trial judgment by the appeal court and the gravity of the underlying defects identified in relation to the trial proceedings, the Court considers that in the particular circumstances of the case there is sufficient basis to conclude that the applicant's detention "after conviction", which he had already served in part, was not "lawful" within the meaning of Article 5 § 1 (a) of the Convention.

138. There has accordingly been a violation of Article 5 § 1 of the Convention on account of Mr Dragomirov's sentence of administrative detention served from 10 to 11 June 2008.

III. ALLEGED VIOLATION OF ARTICLE 5 § 5 OF THE CONVENTION

139. Three of the applicants (Mr Andreyev, Mr Dragomirov and Mr Torlopov) complained of violations of their right under Article 5 § 5 of the Convention, in relation to their administrative arrests and, in the case of Mr Dragomirov, also as regards the unlawful sentence of administrative detention.

140. Article 5 § 5 reads as follows:

> "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. The parties' submissions

141. Mr Andreyev argued that the civil courts had wrongly dismissed his claim for compensation, holding that his administrative arrest had been lawful. Mr Dragomirov argued that he had merely received some EUR 100 as compensation for the unlawful prosecution, the unsatisfactory conditions of detention and the unlawful deprivation of liberty from 9 to 11 June 2008 (see paragraph 40 above).

142. The Government argued that Mr Dragomirov had lost his victim status under Article 5 of the Convention in view of the compensation awarded by the domestic court (see paragraph 40 above).

B. The Court's assessment

1. Admissibility

143. The Court reiterates that Article 5 § 5 of the Convention is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4. The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the other paragraphs has been established, either by a domestic authority or by the Court. In this connection, the effective enjoyment of the right to compensation guaranteed by Article 5 § 5 must be ensured with a sufficient degree of certainty (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 182, ECHR 2012, with further references).

144. First, as regards Mr Torlopov, his complaint under Article 5 § 5 concerning enforceability of a right to compensation for administrative arrest and escorting is limited to a mere disagreement with the outcome of the compensation case. It was "possible to apply for compensation" and the applicant's claim was examined on the merits. The applicant has not raised any argument which would, for instance, raise concerns relating to the effective enjoyment of the right to compensation guaranteed by Article 5 § 5, or to accessibility or prospects of success in respect of the course of action in the context where a claim for compensation was related to administrative arrest effected in relation to a charge punishable by detention and where the case did not result in a conviction. The mere fact that the applicant's claim was not successful does not confirm that he was not afforded an "enforceable right to compensation". Accordingly, Mr Torlopov's complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

145. Second, the Court observes that it was not established in any domestic proceedings that Mr Dragomirov's administrative escorting and

arrest were in breach of Russian law or otherwise "unlawful" or arbitrary. This Court has not made any finding of a violation either, dismissing the complaint under Article 5 § 1 as belated (see paragraph 103 above). Accordingly, the related complaint under Article 5 § 5 has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

146. As regards Mr Dragomirov's sentence of administrative detention, the Court notes that he brought a claim before the civil courts, which made an award essentially with reference to the conditions of his detention, rather than any matter relating to deprivation of liberty, and merely with reference to the fact that the administrative-offence case had been discontinued. It is questionable whether or not such findings amount to acknowledgement of a violation relating to Article 5 § 1 (a). Be that as it may, this Court has found a violation of this provision in the present case (see paragraph 138 above). As regards the availability of compensation in relation to Mr Dragomirov's sentence of administrative detention, the Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

147. Lastly, as regards Mr Andreyev's complaint, the Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) Compensation in relation to administrative arrest in respect of Mr Andreyev

148. First of all, the Court reiterates that it has found a violation of Article 5 § 1 of the Convention on account of the applicant's administrative arrest.

149. Second, it is noted that in 2009 the Russian Constitutional Court held that it was possible to rely on the special rules of Articles 1070 and 1100 of the Civil Code for claiming compensation on account of unlawful administrative arrest when it was applied in relation to offences punishable by administrative detention (as in Mr Andreyev's case) (see paragraphs 61-62 and 75 above).

150. The available material before the Court does not disclose that the matters relating to the administrative arrest of Mr Andreyev were examined by the courts dealing with the merits of the administrative-offence charge against the applicant. As a matter of law, neither the domestic courts nor the respondent Government before the Court referred to any provision of the CAO allowing or requiring such a substantive assessment of the type of arguments the applicant raised in the domestic proceedings and then before the Court under Article 5 § 1 of the Convention (see paragraphs 32-33 above). Be that as it may, as a matter of fact, nothing in the file discloses

that the courts in the CAO case against the applicant proceeded to a substantive assessment of any factual or legal elements relating to the legality of and, even less, justification for the administrative arrest.

151. However, the civil courts refrained from delving into this matter, underlying the applicant's claim for compensation, precisely for that reason (see paragraph 33 above). Thus, the applicant was refused an opportunity to have his claim for compensation assessed, and this situation adversely affected the enforceability of his right to compensation.

152. The same conclusion obtains if the domestic decisions in the compensation case and the respondent Government's submissions in the present case (as regards exhaustion under Article 5 § 1) were to be understood as excluding under Russian law a possibility to claim compensation in relation to administrative arrest where the related administrative case resulted in a conviction (see also paragraphs 97-98 above).

153. There has accordingly been a violation of Article 5 § 5 of the Convention in respect of Mr Andreyev.

(b) Compensation in relation to the penalty of administrative detention in respect of Mr Dragomirov

154. As regards Mr Dragomirov, the Court observes that the award of EUR 100 made by the civil court was essentially related to the findings that the conditions of his detention had been unsatisfactory. As specified by the appeal court, this award was also related to the "unlawful prosecution in the form of the penalty of administrative detention". The findings of unlawfulness arose from the mere fact that the administrative case against the applicant had been discontinued. It appears that it was not pertinent to delve into the gravity of the shortcomings that had prompted the discontinuation of the case against the applicant and thus might have adversely affected the legality of the sentence of administrative detention he had already served prior to the discontinuation of the case (compare with the Court's approach in paragraphs 134-138 above). Thus, it may be understood that Russian law provides for a possibility to obtain compensation on wider grounds than those arising from the Court's case-law under Article 5 §§ 1 (a) and 5.

155. Having said this, the Court also reiterates that a right to compensation which sets levels of compensation for damage suffered so low as no longer to be "enforceable" would not comply with the requirements of Article 5 § 5 (see *Cumber v. the United Kingdom*, no. 28779/95, Commission decision of 27 November 1996). In *Novoselov v. Russia* ((dec.), no. 66460/01, 16 October 2003) the Court stated that it might be that, by pan-European standards, an award of approximately EUR 120 for ten days of unlawful administrative detention could be low. However, since in domestic terms the said amount equalled a monthly salary of a qualified worker, the Court considered that the award in question could not be said to

be so low as to be negligible, particularly bearing in mind that the wording of Article 5 § 5 did not require compensation to be of a specific amount.

156. In a more recent judgment the Court considered that EUR 63 for three days of unlawful detention was significantly lower than amounts awarded by the Court in similar cases, and found a violation of Article 5 § 5 (see *Ganea v. Moldova*, no. 2474/06, § 30, 17 May 2011).

157. In the present case, the applicant was awarded EUR 100 for unsatisfactory conditions of detention during two days of his detention and also with reference to the fact of the unlawfulness of such deprivation of liberty. The Court reiterates in this connection that, even taking alone the matter of conditions of detention, such an amount is out of proportion to the awards that could be made, in comparable circumstances, in respect of related complaints either within the procedures of a unilateral declaration or friendly settlement, or under Article 41 of the Convention. It is not possible to determine the quantum awarded in relation to the unlawfulness of the deprivation of liberty. The Court does not lose sight of the fact that there may be differences in approach between assessing the loss of victim status under Article 5 § 1 on account of the quantum of compensation awarded at national level, on one hand, and the matter of non-enforceability of a right to compensation in terms of Article 5 § 5, on the other hand. Indeed, the Court has held that the applicant has not lost his victim status under Article 5 § 1 (a) in the present case, that there has been a violation of that provision and that the applicant should be awarded compensation under Article 41 of the Convention in respect of non-pecuniary damage (see paragraph 203 below).

158. As regards Article 5 § 5, the threshold for a violation to have occurred on account of the quantum of a domestic award is a stringent one. In the present case, the Court is not satisfied that the award of EUR 100 was so low as to undermine the right to compensation.

159. There has accordingly been no violation of Article 5 § 5 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF Mr ANDREYEV

160. Mr Andreyev complained that his right of access to a court under Article 6 of the Convention had been violated on account of the Town Court's decision of 12 May 2012, as upheld on 2 August 2012, and that court's judgment of 19 September 2012, as upheld on 20 December 2012. Article 6 § 1 in the relevant part reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

161. The applicant submitted that the civil limb of Article 6 of the Convention was applicable to each set of domestic proceedings (see paragraphs 31-33 above) aimed at declaring his administrative arrest in

breach of domestic law and arbitrary, and at obtaining compensation for non-pecuniary damage sustained as a result of such arrest. The civil courts had wrongly declined jurisdiction by referring to the competence of courts in a CAO case to assess the legality of administrative arrest and related actions on the part of the police. In both sets of proceedings, the civil courts had wrongly reasoned that the courts in the applicant's CAO case had assessed the legality of the arrest, by emphasising that the related court decisions had become final. The CAO contained no provision requiring courts in CAO cases to assess related issues of legality. The courts in the second set of proceedings had omitted to assess the relevant factual and legal elements arising from his claim.

162. The Government made no specific comment on this complaint.

163. In view of the nature and scope of the Court's findings under Article 5 § 5 of the Convention in respect of Mr Andreyev, it is not necessary to make a separate examination of the admissibility and merits of his complaint under Article 6 of the Convention.

V. ALLEGED VIOLATIONS OF ARTICLES 3 AND 13 OF THE CONVENTION IN RESPECT OF Mr BGANTSEV

164. Mr Bgantsev complained about the conditions of his detention from 30 August to 4 September 2010 and that he had no effective remedies in that regard.

165. The Government acknowledged that the circumstances of the case had disclosed violations of Articles 3 and 13 of the Convention.

166. Having taken note of the Government's position and having examined the applicant's submissions and the available material, the Court finds no reason to disagree. There have therefore been violations of these Articles.

VI. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 2 OF PROTOCOL No. 7 TO THE CONVENTION IN RESPECT OF Mr SVETLOV

167. Mr Svetlov complained that he had not been afforded adequate time and facilities for the preparation of his defence, in particular by way of being able to retain counsel for the trial proceedings. He also alleged that the lack of suspensive effect of an appeal against the sentence of administrative detention had violated his right to the presumption of innocence. It had also undermined his right of appeal, because the appeal hearing had taken place only after he had served his sentence in full.

168. Article 6 of the Convention in the relevant parts reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ...

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

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

...

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

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; ...”

169. Article 2 of Protocol No. 7 to the Convention reads as follows:

“1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.”

A. The parties’ submissions

170. The Government argued that there had been no violation of the Convention.

171. The applicant maintained his complaints.

B. The Court’s assessment

1. Admissibility

(a) Article 6 §§ 3 (b) and (c) of the Convention

172. As regards his complaints under Article 6 §§ 3 (b) and (c) of the Convention, the applicant has not complained that he was not afforded free legal assistance (see *Mikhaylova*, cited above, §§ 76-102). Instead, he has argued that on 6 September 2015 he had been de facto placed in such conditions as to be unable to make his own arrangements for his defence at the trial, in particular by retaining a lawyer. The Court observes that the pre-trial and the trial proceedings spanned the period from 4 to 6 September 2015, when the applicant was deprived of his liberty. It is uncontested that his mobile telephone was seized after the arrest. At the same time, there is no allegation that the applicant was not aware or that he was not made aware of his right under Article 27.3 § 3 of the CAO to request that his family or defence counsel be informed of his whereabouts; that he made such request or that any such request was refused. The respondent Government have not contested that the applicant had no access to mobile telephone during the trial and have not specified whether during a short adjournment at the trial, the applicant could have contacted a lawyer of his choice by other means. Thus, it has not been demonstrated that there were

relevant and sufficient grounds for obstructing the defendant's wish as to his choice of legal representation (see *Dvorski v. Croatia* [GC], no. 25703/11, § 82, ECHR 2015). Therefore, it is appropriate to proceed to evaluate the overall fairness of the proceedings (ibid.).

173. There is no evidence that following the short adjournment, the applicant waived the right to legal assistance. Nor is there any evidence that he was kept in a metal cage on 6 September 2015. It is uncontested that the applicant pleaded guilty at the trial. While it is by no means decisive, it is noted that prior to the impugned proceedings the applicant had already been prosecuted for similar offences under the same type of procedure. In this particular context and in the absence of any allegation to the contrary, the Court is prepared to assume that he was aware of the possibility to remain silent and not to incriminate himself. In the context of the present case and the above considerations, this does not necessarily mean that he had "adequate time and facilities" and could properly defend himself, in view of the chosen line of defence. Nevertheless, it is significant that the applicant has not specified, and it does not follow from the available material, what specific elements of his defence were hindered in the circumstances of the case. In particular, there is no indication that he unsuccessfully applied to have witnesses heard or that he could not adduce evidence. It is also noted that he did not choose to retain counsel on appeal and did not lodge any motions or requests before the appeal court. In his statement of appeal he merely mentioned that he had had difficulties with legal assistance since no law firm would be open on a Sunday.

174. The applicant has not specified, and the Court does not discern, that the objective consequence of any conduct that may be attributable to the trial court or public officials in preventing the applicant from exercising his right to legal assistance was such as to undermine the fairness of the proceedings.

175. Overall, the Court concludes that the complaint Article 6 §§ 3 (b) and (c) of the Convention is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

(b) Article 6 § 2 of the Convention and Article 2 of Protocol No. 7 to the Convention

176. As regards the lack of suspensive effect of an appeal against the sentence of administrative detention, the Court observes that this matter was raised by the applicant before the Russian Constitutional Court, which issued a decision in this respect (see paragraph 79 above). However, it does not appear that the applicant relied on the constitutional provision relating to the right of appeal in criminal cases. Be that as it may, it has not been argued that the applicant thus failed to exhaust domestic remedies in respect of his complaint under Article 2 of Protocol No. 7 to the Convention.

177. The Court notes that the complaints under Article 6 § 2 of the Convention and Article 2 of Protocol No. 7 to the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the

Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

178. The Court has to determine whether the lack of suspensive effect of an appeal against a trial judgment imposing the sentence of administrative detention and the examination of such an appeal after this sentence has already been served violated Article 6 § 2 of the Convention or Article 2 of Protocol No. 7 to the Convention.

(a) Article 2 of Protocol No. 7 to the Convention

179. A similar issue arising in the context of Ukrainian legislation was examined by the Court in *Shvydka v. Ukraine* (no. 17888/12, §§ 48-55, 30 October 2014):

> “48. The Court notes that the Contracting States in principle enjoy a wide margin of appreciation in determining how the right secured by Article 2 of Protocol No. 7 to the Convention is to be exercised ...
>
> 49. The Court further observes that this provision mostly regulates institutional matters, such as accessibility of the court of appeal or scope of review in appellate proceedings ... As the Court has observed in its case-law, the review by a higher court of a conviction or sentence may concern both points of fact and points of law or be confined solely to points of law. Furthermore, it is considered acceptable that, in certain countries, a defendant wishing to appeal may sometimes be required to seek permission to do so. However, any restrictions contained in domestic legislation on the right to a review mentioned in that provision must, by analogy with the right of access to a court embodied in Article 6 § 1 of the Convention, pursue a legitimate aim and not infringe the very essence of that right ...
>
> 50. Having regard to the aforementioned analogy, it appears pertinent to reiterate here the Court’s well-established principle on the importance of the right of access to a court, having regard to the prominent place held in a democratic society by the right to a fair trial ... Where the right to a review under Article 2 of Protocol No. 7 exists, it should be effective in the same way.
>
> 51. The Court notes that this provision is aimed at providing a possibility to put right any shortcomings at the trial or sentencing stages of proceedings once these have resulted in a conviction ... Indeed, an issue would arise under the Convention if the appellate jurisdiction is deprived of an effective role in reviewing the trial procedures ...
>
> 52. The Court has held that delays by the national courts in examining appeals against decrees on a special prison regime applicable for a limited period time may raise issues under the Convention, in particular, its Article 13. Thus, in *Messina v. Italy* (no. 2) the Court, while acknowledging that the right to an effective remedy was not infringed merely by a failure to comply with a statutory time-limit, concluded that the systematic failure to comply with the ten-day time-limit imposed on the courts was liable to considerably reduce, and indeed practically nullify, the impact of judicial review of the decrees on a special regime. One of the factors, which drove the Court to that conclusion, was the limited period of validity of each decree imposing the special regime (no. 25498/94, §§ 94-96, ECHR 2000-X; see also *Enea v. Italy* [GC], no. 74912/01, §§ 73 and 74, ECHR 2009). In other words, a judicial review of a

measure, which had by that time expired or almost expired, was considered to serve no longer any purpose.

53. A similar approach should be taken in the circumstances of the present case. The Court notes that the applicant's appeal against the judgment of 30 August 2011, lodged on the same day, did not have a suspensive effect, and the imposed sentence was executed immediately. This was done pursuant to the Code of Administrative Offences providing for the immediate enforcement of a sentence only if it concerned deprivation of liberty (with another unrelated exception – see paragraph 16 above). Had the sanction been different, the first-instance court's decision would have become enforceable only in the absence of an appeal within the legally envisaged time-limits or once upheld by the appellate court. In the present case, however, the appellate review took place after the detention sentence imposed on the applicant by the first-instance court had been served in full. The Court finds it inconceivable how that review would have been able to effectively cure the defects of the lower court's decision at that stage.

54. It does not escape the Court's attention that, had the court of appeal quashed the first-instance decision, it would have been open to the applicant to seek compensation in respect of both pecuniary and non-pecuniary damage on that ground ... However, that retrospective and purely compensatory remedy cannot be regarded as a substitute of the right to a review embedded in Article 2 of Protocol No. 7. To hold otherwise would run contrary to the well-established principle of the Court's case-law that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective ...

55. In the light of the foregoing considerations the Court concludes that there had been a violation of Article 2 of Protocol No. 7 in the present case."

180. It is noted that under Ukrainian law (Article 294 of the Ukrainian Code of Administrative Offences), following receipt of the case file, an appeal court had twenty days to examine an appeal; it also appears that a trial judgment was formally treated as having "entered into force" (see *Shvydka*, cited above, § 16).

181. By comparison with *Shvydka*, it is noteworthy that under Russian law a trial judgment did not "enter into force" immediately. Notably, the Court observes that unlike in *Shvydka*, while it was possible under Russian law to lodge an appeal within ten days of the trial judgment, a first-instance court was formally required to forward the statement of appeal to the appellate court on the day of its receipt; an appeal court was formally required to examine it within one day. It is also noted that under the Russian CAO an appeal court was empowered to review the case in its entirety, and was not confined to examining the scope of the arguments raised in the statement of appeal (Article 30.6 of the CAO).

182. Turning to the facts of the present case, it is noted that on 8 September 2015 the applicant lodged an appeal against the judgment of 6 September 2015. For unspecified reasons the appeal was examined only on 18 September 2015, which was after the applicant's release on 9 September 2015. It is also noted that although the applicant was sentenced to five days' detention on 6 September, he actually served less time, the pre-trial two-day administrative arrest being counted towards the term of the sentence.

183. It is true that the applicant was not barred from exercising his right of appeal against the trial judgment; he did obtain an appeal decision on the substance of the charge against him or on the penalty imposed on him. It is noted in this connection that the applicant did not complain of any procedural restrictions on his access to the appellate court. Nor did he complain that the scope of the review had not been in compliance with Article 2 of Protocol No. 7, or that the review itself had been otherwise flawed.

184. The Court notes that the immediate execution of the penalty of administrative detention was accompanied by time constraints imposed on the courts in relation to appeal proceedings against such penalty. At the same time, the time-limit for lodging an appeal remained the same for all cases, including those resulting in this penalty being imposed and enforced.

185. Having said this, the Court notes that the essential factual elements and legal matters, which were at the heart of the Court's findings in *Shvydka*, apply in the present case. The Court has been given no reason to reach a different conclusion in the present case. Notably, although the CAO required that appeal proceedings be expedited within certain time constraints, the fact remains that in the present case there was a delay and the applicant's appeal was examined after he had served the sentence in full.

186. Article 2 of Protocol No. 7 allows for restrictions on the right of appeal, provided that they pursue a legitimate aim and do not infringe the very essence of that right.

187. The respondent Government have not put forward before the Court any argument relating to the legitimate aim or to whether the "very essence" of the right was adversely affected in the circumstances of the case.

188. For its part, having regard to the relevant constitutional decision, the Court observes that under the Russian CAO, penalties are normally executed following expiry of the time-limit for appeal or after the appeal decision. Despite having the benefit of the decision by the Constitutional Court, this Court is not convinced that any particular feature of the administrative-offence procedure or the consideration of expediency outweighed the disadvantage caused to the defendant *vis-à-vis* his right of appeal by the absence of any alternative to the immediate execution of the penalty of administrative detention. In particular, the Court is not convinced that the requirement to expedite the (appeal) proceedings prevailed in the situation arising in the present case, that is where a penalty of administrative detention was involved. It is also noted that unlike pecuniary penalties, for instance, an unwarranted (unlawful or, *a fortiori*, arbitrary) and already served sentence consisting in a deprivation of liberty could not be undone by the mere fact of an eventual favourable appeal decision.

189. The Court reiterates in this connection that, in reaching its unanimous judgment in *Shvydka*, it mentioned, albeit by way of an additional observation, the availability of a procedure to claim compensation when it happened that a person had served a sentence of detention on the basis of a judgment which was then quashed. It appears

that a similar procedure for compensation was available under Russian law too (see paragraphs 80-81 above). However, this element does not alter the Court's finding under Article 2 of Protocol No. 7 to the Convention.

190. The Court is mindful of certain differences between the relevant provisions under Russian law and Ukrainian law. However, as a matter of fact, the applicant's appeal was not processed expediently but was examined only after he had already served his sentence.

191. There has therefore been a violation of Article 2 of Protocol No. 7 to the Convention.

(b) Article 6 § 2 of the Convention

192. The Court reiterates that the presumption of innocence enshrined in paragraph 2 of Article 6 is one of the elements of a fair criminal trial that is required by Article 6 § 1; as a procedural right, the presumption of innocence serves mainly to guarantee the rights of the defence and at the same time helps to preserve the honour and dignity of the accused (see *Konstas v. Greece*, no. 53466/07, § 32, 24 May 2011). Article 6 § 2 requires, *inter alia*, that the burden of proof is on the prosecution, and any doubt should benefit the accused (see *Barberà, Messegué and Jabardo v. Spain*, 6 December 1988, §§ 67-68 and 77, Series A no. 146). Thus, the presumption of innocence will be infringed where the burden of proof is shifted from the prosecution to the defence (see *John Murray v. the United Kingdom*, 8 February 1996, § 54, *Reports* 1996-I, and *Telfner v. Austria*, no. 33501/96, § 15, 20 March 2001). The Court made the following findings relating to Article 6 § 2, albeit in the context of the alleged violation of the presumption of innocence on account of remarks by a public official (see *Konstas*, cited above, §§ 34-36):

> "34. The Court notes first of all that the offending remarks were made after the applicant had been convicted at first instance and while his appeal was still pending. The question thus arises whether the principle of the presumption of innocence could have been prejudiced at that stage of the proceedings. The Court considers that Article 6 § 2 of the Convention by no means prevented the competent authorities from referring to the applicant's existing conviction when the matter of his guilt had not been finally determined. Clearly, the applicant's conviction at first instance is the objective element at the centre of the appeal proceedings. Furthermore, regard being had to Article 10 of the Convention, Article 6 § 2 can neither prevent the authorities from informing the public about the criminal conviction concerned, nor prevent discussion of the subject by the media or the general public or, as in the present case, in the course of a parliamentary debate (see, *mutatis mutandis*, *Allenet de Ribemont*, cited above, § 38, and *Papon v. France (no. 2)* (dec.), no. 54210/00, ECHR 2001-XII). Nonetheless, such reference should be made with all the discretion and restraint which respect for the presumption of innocence demands (see *Peša v. Croatia*, no. 40523/08, § 139, 8 April 2010).
>
> 35. In addition, the Court reiterates that it has already found that in the preliminary stages of a criminal case statements made by the public authorities should not encourage the public to believe the accused guilty, or prejudge the assessment of the facts by the competent judicial authority (see *Allenet de Ribemont,* cited above, § 41). Furthermore, in other cases where the domestic courts had not determined the

question of guilt by a final judgment, the European Commission on Human Rights has explained that it is the essence of the principle of presumption of innocence that it can only be invalidated by a final conviction in accordance with the law (see *Englert v. Germany*, no. 10282/83, Commission's report of 9 October 1985, Decisions and Reports (DR) 31, p. 11, § 49, and *Nölkenbockhoff v. Germany*, no. 10300/83, Commission's report of 9 October 1985, DR 31, p. 12, § 45).

36. The Court also reiterates that the Convention must be interpreted in such a way as to guarantee rights which are practical and effective as opposed to theoretical and illusory (see, for example, *Artico v. Italy*, 13 May 1980, § 33, Series A no., and *Capeau v. Belgium*, no. 42914/98, § 21, ECHR 2005-I). Accordingly, and in the light of the foregoing, it considers that the presumption of innocence cannot cease to apply in appeal proceedings simply because the accused was convicted at first instance. To conclude otherwise would contradict the role of appeal proceedings, where the appellate court is required to re-examine the earlier decision submitted to it as to the facts and the law. It would mean that the presumption of innocence would not be applicable in proceedings brought in order to obtain a review of the case and have the earlier conviction set aside."

193. The Court reiterates that in so far as the "criminal limb" of Article 6 of the Convention was applicable to cases relating to minor offences (in particular, as in the present case, offences punishable by administrative detention), it was considered that Article 2 of Protocol No. 7 to the Convention required provision of a review procedure (see, for instance, *Gurepka v. Ukraine (no. 2)*, no. 38789/04, §§ 32-34, 8 April 2010).

194. The Court also reiterates its case-law under which the period relating to the application of Article 5 § 1 (c) and § 3 ends when the person concerned is released and/or the charge is determined, even if only by a court of first instance (see, as a recent authority, *Buzadji* [GC], cited above, § 85). It is in relation to this period that the Court stated that continued detention could be justified in a given case only if there were actual indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighed the rule of respect for individual liberty laid down in Article 5 of the Convention; the national judicial authorities must, with respect for the principle of the presumption of innocence, examine all the facts militating for or against the existence of the above-mentioned requirement of public interest or justifying a departure from the rule in Article 5, and must set them out in their decisions on applications for release (ibid., §§ 90-91). It results from the above that once a charge has been determined, "even if only by a court of first instance" and a sentence of detention "imposed", a detained defendant is considered – in terms of Article 5 of the Convention – to be deprived of liberty within the meaning of its paragraph 1(a). It follows from the above that Article 5 of the Convention does not preclude that detention after a trial judgment may be considered as arising from the sentence consisting in a deprivation of liberty.

195. The Court has had occasion to deal with the matter of suspensive effect in the context of complaints under Article 13 of the Convention. In cases raising issues of a risk of torture in the event of a foreigner's removal,

effectiveness also requires that the person concerned should have access to a remedy with automatic suspensive effect. Article 13 of the Convention does not compel Contracting States to set up a second level of appeal in this type of case. It is sufficient that there is at least one domestic remedy which fully satisfies the requirements of this Article, namely that it provides for independent and rigorous scrutiny for a complaint relating to Article 3 of the Convention and has automatic suspensive effect in respect of the impugned measure (see *S.K. v. Russia*, no. 52722/15, § 75, 14 February 2017 with further references). The Court also reiterates its case-law to the effect that "effectiveness" of a domestic remedy in relation to certain substantive rights or freedoms under the Convention may require immediate enforceability of a favourable court decision (see *Lashmankin and Others*, cited above, § 345; see also, *mutatis mutandis*, *Pompey v. France*, no. 37640/11, § 33, 10 October 2013).

196. The Court made the following observation when dealing with the lack of a prosecuting party in cases under the Russian CAO (*Karelin*, cited above):

> "72. The Court further notes that the lack of a prosecuting party had an effect on the operation of the presumption of innocence during the trial and, by implication, on the question of the trial court's impartiality and vice versa. The Court reiterates in this connection that Article 6 § 2 of the Convention safeguards the right to be "presumed innocent until proved guilty according to law". The presumption of innocence will be infringed where, as a matter of fact or on account of the operation of the applicable law (for instance, a legal presumption), the burden of proof is shifted from the prosecution to the defence ...
>
> 73. The available information concerning the content and application of the pertinent provisions of domestic law do not enable the Court to ascertain the manner in which the presumption of innocence and the burden of proof operated in the administrative offence cases examined by the courts of general jurisdiction, including the present case ..."

197. Having regard to the applicable terminology under Article 5 § 1 (a), Article 6 § 1 and Article 7 § 1, the "penalty" consisting in a deprivation of liberty was imposed by a court following the determination of the "charge" against the applicant and "after conviction by a competent court". Reading the above provisions of the Convention together, the Court considers that the presumption of innocence, as protected under the Convention, was, so to say, reversed albeit in a provisional manner. It is noted that this was done on the strength of the adverse evidence and the applicant's own guilty plea. Furthermore, there were no manifest shortcomings, nor, for instance, any "gross and obvious irregularities" (see *Yefimenko*, cited above, §§ 104-11) during the trial proceedings.

198. While admittedly the defendant remained protected under Article 6 § 2 of the Convention, for instance, as regards possible adverse statements in appeal proceedings relating to questions of both fact and law (see *Konstas*, cited above, §§ 34-36) and also as a matter of domestic law (see paragraph 76 above), the mere fact that an appeal against the trial

judgment did not have suspensive effect *vis-à-vis* enforcement of the penalty did not entail a violation of Article 6 § 2 of the Convention.

199. There has therefore been no violation of this Article.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

200. 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

201. The applicants made the following claims in respect of non-pecuniary damage: Ms Tsvetkova – 15,000 euros (EUR); Mr Bgantsev – EUR 35,000; Mr Andreyev – EUR 7,500; Mr Dragomirov – EUR 1,500; Mr Torlopov – EUR 5,000; and Mr Svetlov – EUR 6,000 for Article 2 of Protocol No. 7 to the Convention.

202. The Government made no specific comment.

203. Having regard to the nature and scope of the violation(s) found in respect of each applicant (such as the duration of the relevant periods of deprivation of liberty in administrative-offence proceedings, in relation to a violation of Article 5 § 1 of the Convention), and making its assessment on an equitable basis, the Court awards the following sums in respect of non-pecuniary damage, plus any tax that may be chargeable:

- EUR 3,000 (three thousand euros) to Ms Tsvetkova;
- EUR 3,600 (three thousand six hundred euros) to Mr Bgantsev;
- EUR 1,500 (one thousand five hundred euros) to Mr Dragomirov;
- EUR 3,300 (three thousand three hundred euros) to Mr Andreyev;
- EUR 3,000 (three thousand euros) to Mr Torlopov;
- EUR 1,000 (one thousand euros) to Mr Svetlov.

B. Costs and expenses

204. Three of the applicants also made the following claims for costs and expenses incurred at the domestic level and/or before the Court: Ms Tsvetkova claimed EUR 1,000; Mr Bgantsev EUR 3,407; and Mr Svetlov EUR 150.

205. The Government made no specific comment.

206. 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 have been 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 following sums, plus any tax that may be chargeable to the applicants, covering costs under the relevant head(s): EUR 50 (fifty euros) to Ms Tsvetkova; EUR 3,000 (three thousand euros) to Mr Bgantsev; and EUR 150 (one hundred and fifty euros) to Mr Svetlov.

C. Default interest

207. 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 following complaints admissible:
   - under Articles 3 and 13 of the Convention in respect of Mr Bgantsev's conditions of detention and lack of effective remedies in that respect;
   - under Article 5 § 1 of the Convention concerning administrative escorting and/or arrests in respect of Ms Tsvetkova, Mr Bgantsev, Mr Andreyev and Mr Torlopov;
   - under Article 5 § 1 of the Convention in respect of Mr Dragomirov's penalty of administrative detention;
   - under Article 5 § 5 of the Convention concerning right to compensation by Mr Dragomirov and Mr Andreyev;
   - under Article 6 § 2 of the Convention and Article 2 of Protocol No. 7 to the Convention in respect of Mr Svetlov;

3. *Holds*, unanimously, that it is not necessary to examine the admissibility and merits of Mr Andreyev's complaint about a violation of Article 6 § 1 of the Convention;

4. *Declares*, unanimously, the remainder of the applications inadmissible;

5. *Holds*, unanimously, that there have been violations of Articles 3 and 13 of the Convention on account of Mr Bgantsev's conditions of detention and lack of effective remedies;

6. *Holds*, unanimously, that there have been violations of Article 5 § 1 of the Convention in respect of Ms Tsvetkova, Mr Bgantsev, Mr Andreyev and Mr Torlopov on account of their administrative escorting and arrests;

7. *Holds*, unanimously, that there has been a violation of Article 5 § 1 of the Convention in respect of Mr Dragomirov's penalty of administrative detention;

8. *Holds*, unanimously, that Article 5 § 5 of the Convention has been violated in respect of Mr Andreyev and that there has been no violation of this provision in respect of Mr Dragomirov;

9. *Holds*, unanimously, that there has been no violation of Article 6 § 2 of the Convention in respect of Mr Svetlov;

10. *Holds*, unanimously, that there has been a violation of Article 2 of Protocol No. 7 to the Convention in respect of Mr Svetlov;

11. *Holds*,

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

(i) by four votes to three, in respect of non-pecuniary damage: EUR 3,000 (three thousand euros) to Ms Tsvetkova; EUR 3,600 (three thousand six hundred euros) to Mr Bgantsev; EUR 1,500 (one thousand five hundred euros) to Mr Dragomirov; EUR 3,300 (three thousand three hundred euros) to Mr Andreyev; EUR 3,000 (three thousand euros) to Mr Torlopov; and EUR 1,000 (one thousand euros) to Mr Svetlov;

(ii) unanimously, in respect of costs and expenses: EUR 50 (fifty euros) to Ms Tsvetkova; EUR 3,000 (three thousand euros) to Mr Bgantsev; and EUR 150 (one hundred and fifty euros) to Mr Svetlov;

(b) unanimously, that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

12. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 10 April 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Helena Jäderblom
Registrar	President

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

H.J.
J.S.P.

JOINT PARTLY DISSENTING OPINION OF JUDGES JÄDERBLOM, KELLER AND SERGHIDES

1. We agree with our colleagues on the admissibility issue and all the different violations and non-violations of the Convention rights in this case.

2. However, we did not vote with the majority on point 11 of the operative part (just satisfaction). In our view, the Court made an award for non-pecuniary damage that is too low in comparison with other cases. In *Denisenko v. Russia*, for example, the applicant complained that his detention from 15 to 20 July 2004 was in breach of Article 5 § 1 (c) of the Convention (no. 18322/05, § 9, 14 February 2017). The Government denied the allegation and claimed that the applicant, although arrested at 2 p.m. on 15 July, was released at 9 p.m. that same evening (ibid., § 11). The police failed to draw up a record of the applicant's arrest, without which it was impossible to tell whether or not the applicant had been detained until the time he claimed or released on the day he was arrested. Nevertheless, the Court noted that, although it remained unclear whether the applicant was indeed detained during the days he claimed, he had at the very least, based on the Government's version, been "deprived of his liberty from 2 p.m. until 9 p.m. for seven hours in total" (ibid., § 14). Accordingly, the Court "found a violation of Article 5 § 1 (c) of the Convention and awarded the applicant EUR 7,500 in respect of non-pecuniary damage" (ibid., §§ 16 and 21).

3. In two other cases the Court has awarded EUR 5,000 in respect of non-pecuniary damage to applicants whose arrests were not properly formalised. In both *Rakhimberdiyev v. Russia* (no. 47837/06, 18 September 2014) and *Birulev and Shishkin v. Russia* (nos. 35919/05 and 3346/06, 14 June 2016), the Court's reason for making an award was the lack of a formal record of the arrest. These cases illustrate that, even where the Court has upheld a claim of non-pecuniary damage based on procedural shortcomings of otherwise seemingly lawful arrests, the awards have been larger than in the present case, where the Court has found a substantive violation of Article 5 § 1.

4. In our view, and given the nature and scope of the violation or violations found in respect of each applicant, the Court should have awarded the following sums for non-pecuniary damage, plus any tax that may be chargeable:

– EUR 7,500 (seven thousand five hundred euros) to Ms Tsvekova;

– EUR 7,500 (seven thousand five hundred euros) to Mr Bgantsev;

– EUR 5,000 (five thousand euros) to Mr Torlopov on the basis of *ne ultra petitum*;

– EUR 7,500 (seven thousand five hundred euros) to Mr Andreyev.

We agree with the amounts awarded to Mr Dragomirov and Mr Svetlov.

APPENDIX

Application no.	Lodged on	Applicant Date of birth Place of residence	Represented by
54381/08	20/10/2008	**Svetlana Ivanovna TSVETKOVA** 12/12/1972 Irkutsk	
10939/11	28/01/2011	**Aleksandr Vitalyevich BGANTSEV** 15/03/1958 Volgograd	Yuliya Aleksandrovna LEPILINA
13673/13	01/02/2013	**Pavel Vladimirovich ANDREYEV** 12/03/1989 Syktyvkar	Irina Anatolyevna BIRYUKOVA
69739/14	05/09/2014	**Aleksey Olegovich DRAGOMIROV** 12/03/1980 Roslavl	
70724/14	24/10/2014	**Viktor Grigoryevich TORLOPOV** 13/12/1963 Syktyvkar	Irina Anatolyevna BIRYUKOVA
52440/15	30/09/2015	**Kirill Valentinovich SVETLOV** 21/09/1990 Cherepovets	