**УПОЛНОМОЧЕННЫЙ РОССИЙСКОЙ ФЕДЕРАЦИИ
ПРИ ЕВРОПЕЙСКОМ СУДЕ ПО ПРАВАМ ЧЕЛОВЕКА –
ЗАМЕСТИТЕЛЬ МИНИСТРА ЮСТИЦИИ РОССИЙСКОЙ ФЕДЕРАЦИИ**

**Representative
of the Russian Federation at
the European Court of Human Rights
– deputy Minister of Justice
of the Russian Federation**

**Représentant
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«2» September 2019 г.

№ 10-2488-19

Mr J.S. PHILLIPS
Third Section Registrar

European Court
of Human Rights

Application no. 29442/18
Tiunov v. Russia

Dear Sir,

Please find attached the copy of the English translation of the observations of the Government of the Russian Federation.

Yours faithfully,

The Head of the Office of the Representative of the Russian Federation at the European Court of Human Rights – deputy Minister of Justice of the Russian Federation

Andrey Fedorov

Application no. 29442/18

TO THE EUROPEAN COURT OF HUMAN RIGHTS

TIUNOV

v.

RUSSIA

OBSERVATIONS OF THE GOVERNMENT OF THE RUSSIAN FEDERATION ON THE ADMISSIBILITY AND MERITS OF THE APPLICATION

Moscow

26 July 2019

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I. Introduction

On 7 February 2019 the European Court of Human Rights informed the Government of the Russian Federation of application no. 29442/18 *Tiunov v. Russia* lodged with the European Court under Article 34 of the European Convention for the Protection of Human Rights and Fundamental Freedoms by a citizen of the Russian Federation Sergey Yuryevich Tiunov.

Pursuant to Rule 54 § 2 (b) of its Rules, the Court invited the Government of the Russian Federation to submit observations and answer the following questions:

1. Having regard to section 8 of ruling no. 4-P of 14 February 2013 by the Russian Constitutional Court concerning the sentence of community work for offences under Article 20.2 of the CAO, was there a violation of Article 7 of the Convention (see also section 38 of ruling no. 28 of 26 June 2018 by the Plenary Supreme Court of Russia)? Was it established that the applicant's conduct had entailed damage to property or health or "other similar consequences"? By implication, was there also a violation of Article 7 of the Convention on account of the penalty of detention imposed in connection with the applicant's refusal to do community work?

2. Taking note of the sentence of community work and the penalty of detention imposed in connection with the applicant's refusal to do community work, was there a violation of Article 4 § 2 of the Convention:

(a) because of the sentence of community work prescribed, under Russian law, specifically for offences relating to one's exercise of freedoms of expression and peaceful assembly, especially (as in the present case) in the context of violations of the PEA not entailing any damage to one's property or health? Did this sentence fall within the scope of situations listed in Article 4 § 3 (a)-(d) of the Convention (compare with *Stummer v. Austria* [GC], no. 37452/02, §§ 117-20, ECHR 2011; see also Article 2 § 2 (c) of the International Labour Organisation Convention no. 29 of 1930, and Article 1 of the ILO Convention no. 105 of 1957)? In particular, did this sentence amount to work or service which forms part of "normal" "civic" obligations?

(b) Was the sentence of community work imposed in breach of any substantive or procedural requirement of Russian law and, if so, did any such illegality entail a violation of Article 4 of the Convention?

3. Has the applicant exhausted domestic remedies as to Article 5 § 1 of the Convention and his escorting to the police station and his administrative arrest from 10 to 11 April 2018? In particular, was the trial/appeal court competent to deal with the substance of the issue relating, at least in substance, to Article 5 § 1 of the Convention and to afford adequate redress? Was the applicant required to bring a separate case under Chapter 22 of the Code of Administrative Procedure? Was this course of action available after his final conviction of the offence that was not punishable by administrative detention? Was there a violation of Article 5 § 1 of the Convention on account of the applicant's escorting to the police station and his administrative arrest from 10 to 11 April 2018?

4.1. In so far as the notification procedure is concerned, was there a violation of Article 11 of the Convention? In particular:

(i) While opposing V.V. Barmin's public event as planned, was the competent authority required, in compliance with Russian law as interpreted by the Constitutional Court, to make an alternative proposal with a specific alternative venue or timing of the event (compare with sections 1, 9 of Resolution no. 4-P of 14 February 2013 On the Case of the Verification of Constitutionality of the Federal Law *On Amendments to the Code of Administrative Offences of the Russian Federation* and the Federal Law *On Assemblies, Meetings, Demonstrations, Marches and Picketing* in Relation to the Request of the Group of Deputies of the State Duma and the Complaint of Citizen E.V. Savenko and sections 12 and 13 of ruling no. 28 of 26 June 2018 by the Plenary Supreme Court On Certain Issues Arising before Courts when Considering Administrative Cases and Cases on Administrative Offences related to the Application of Legislation on Public Events)? If yes, was any such proposal put forward, in a timely manner, in the present case? Was the public event "deemed approved" in the absence of any such specific proposal (see section 2.2 of ruling no. 4-P of 14 February 2013 by the Constitutional Court)?

(ii) Was it foreseeable that under Russian law actions relating to holding the event as initially planned or to participating in it entailed administrative liability and was deemed an administrative offence, irrespective of the lack of a proposal from executive authorities on alternative venue or timing of the event?

(iii) Was the "interference" "necessary in a democratic society" not to allow the protest rally because another public event was planned for the same venue at the same time? Did the domestic authorities assess the relevant factual elements, for instance, a risk of clashes (for example, in view of the declared topics of the events, their types or target groups) and the size of the venue and its amenities (compare with section 12 of ruling no. 28 of 26 June 2018 by the Plenary Supreme Court)?

4.2. Were there violations of Articles 10 and 11 of the Convention on account of the prosecution against the applicant under Articles 20.2 and 20.25 of the CAO? In particular:

(i) Was the "interference" (in particular, as regards the sentence of community work: see section 8 of ruling no. 4-P of 14 February 2013 by the Russian Constitutional Court concerning the sentence of community work for offences under Article 20.2 of the CAO) "prescribed by law"?

(ii) Was the "interference" "necessary in a democratic society" (compare with sections 1 and 38 of ruling no. 28 of 26 June 2018 by the Plenary Supreme Court)?

5. Noting that the official who had compiled the offence record under Article 20.2 of the CAO was present at the trial hearing and that a similar official (a bailiff) was present at the appeal hearing in the case under Article 20.25 of the CAO whereas the courts used the offence record as a piece of evidence proving the defendant's guilt, was there a violation of the requirement of objective impartiality under Article 6 § 1 of the Convention in those cases on account of the lack of a prosecuting party under the CAO (compare with *Karelin v. Russia*, no. 926/08, 20 September 2016)?

II. Facts

1. On 2 October 2017 V.V. Barmin notified the Ministry of Public Safety of the Sverdlovsk Region of a public event in the form of a picket scheduled for 7 October 2017 from 4.00 p.m. to 7.00 p.m. at Labour square in Yekaterinburg by a group of persons in support of A.A. Navalniy.

2. The Ministry of Public Safety of the Sverdlovsk Region ("the Ministry") by its letter of 4 October 2017 refused V.V. Barmin to hold the above picket due to the fact that at the specified time and venue another public event "In support of the inhabitants of Catalonia - for the territorial division of the sovereign state of Spain, on a national basis" had already been authorised. At the same time, the Ministry proposed another venue for the public event announced by V.V. Barmin.

3. On 7 October 2017 S.Yu. Tiunov participated in a public event in the form of a picket that was not authorised by the Ministry of Public Safety of the Sverdlovsk Region, held at: Labour sq., Yekaterinburg.

4. On the same day, inspector of the Division for Execution of Administrative Law at Police Station no. 5 of the Department of the Ministry of Internal Affairs of Russia for the city of Yekaterinburg, K.A. Yushkov, had drawn an administrative offence report regarding S.Yu. Tiunov, on an offence stipulated by Article 20.2 § 5 (violation by a participant in a public event of the established procedure for holding an assembly, meeting, demonstration, march or picket) of the Code of Administrative Offences of the Russian Federation ("the CAO RF").

5. In order to draw up the administrative offence report S.Yu. Tiunov was taken by a police official to a service vehicle located directly at the place of identification of the administrative offence, where the police took from the applicant a poster that was demonstrated during the public event.

6. By his judgment of 18 October 2017 the judge of the Leninskiy District Court of Yekaterinburg found S.Yu. Tiunov guilty of committing the administrative offence provided for by Article 20.2 § 5 of the CAO RF and sentenced him to an administrative punishment in the form of 30 hours of compulsory works.

7. By its decision of 6 December 2017 the Sverdlovsk Regional Court upheld the judgment of the first-instance court and dismissed the applicant's appeal complaint.

8. By the judgment of 8 February 2018 the deputy Chairman of the Sverdlovsk Regional Court upheld the above court decisions and dismissed cassation appeal of S.Yu. Tiunov.

9. On 22 December 2017, a bailiff-executor of the Leninskiy District Department of Yekaterinburg instituted against S.Yu. Tiunov enforcement proceedings no. 70626/17/66004-IP on the grounds of the judgment of the Leninskiy District court of Yekaterinburg of 18 October 2017.

10. By the order of the bailiff-executor of 23 January 2018 the obligation to proceed to serving the administrative punishment in the form of compulsory work in LLC "UZHKH" of the Leninskiy district no later than 29 January 2018 was imposed on S.Yu. Tiunov.

11. However, on 23 January and 28 February 2018, the applicant issued a written refusal to execute the administrative punishment imposed by the court.

12. In view of the foregoing, by his judgment of 10 April 2018 the Justice of the Peace of Court Circuit no. 3 of the Ordzhonikidzevskiy Judicial District of Yekaterinburg of the Sverdlovsk Region found S.Yu. Tiunov guilty of committing the administrative offence under Article 20.25 § 4 of the CAO RF and sentenced him to an administrative punishment in the form of administrative detention for 3 days.

13. By his judgment of 18 April 2018 the judge of the Ordzhonikidzevskiy District Court of Yekaterinburg upheld the aforementioned judgment and dismissed the applicant's appeal.

14. On 13 April 2018 the applicant served the administrative punishment in the form of administrative detention.

III. Law

Arguments on inadmissibility of S.Yu. Tiunov's application due to his failure to exhaust effective domestic remedies

15. According to Article 35 § 1 of the Convention, the Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognized rules of international law.

16. Pursuant to Article 218 § 1, Article 360 of the Code of Administrative Procedure of the Russian Federation ("the CAP RF") and Article 121 § 1 of Federal Law no. 229-FZ of 2 October 2007 *On Enforcement Proceedings* ("Law *On Enforcement Proceedings*") the decisions, actions (omission) of bailiffs-executors and other officials of the Federal bailiff service of the Russian Federation may be challenged in court both by the parties to the enforcement proceedings (recoverer and debtor), and by other persons who believe that their rights and legitimate interests are violated, hindrance is created to the implementation of their rights and legitimate interests, or any duty has been unlawfully imposed on them.

17. When considering an application to challenge the decisions, actions (omission) of the bailiff-executor, the court is entitled in the same proceedings to decide on the issue of suspension of the enforcement proceedings in whole or in part at the request of the recoverer, debtor or bailiff-executor (Article 39 § 2 (4) of the Law *On Enforcement Proceedings*).

18. It follows from the case-file that S.Yu. Tiunov did not apply to the courts of the Sverdlovsk Region with application on challenging the actions (omission) of bailiffs-executors in relation to the execution of the judgment of the Leninskiy District Court of Yekaterinburg of 18 October 2017.

19. Article 189 § 1 of the CAP RF stipulates that the court, which examined the administrative case, according to applications of the persons, involved in the case, bailiff-executor or proceeding from the property status of the parties or other circumstances, is entitled to postpone or extend the execution of the court's decision, change the way and procedure of its execution.

20. However, S.Yu. Tiunov also did not use the possibility, stipulated by the Russian legislature, to postpone the enforcement of the judgment of the Leninskiy District Court of Yekaterinburg of 18 October 2017.

21. Thus, the applicant, before applying to the court of international jurisdiction with a complaint on violation of Articles 4, 5, 6, 7, 10, and 11 of the Convention, should have applied to a domestic court with a complaint on the actions (omission) of the bailiff-executor and with an application to postpone the execution of the court decision that the applicant considered unlawful.

22. Furthermore, it should be noted that S.Yu. Tiunov did not lodge with the courts of the Sverdlovsk Region the claims on illegal detention and/or claims to award him compensation for pecuniary damage caused by illegal detention and other actions of police officers.

23. The applicant also did not lodge an appeal against the final judicial acts in the case of the administrative offence stipulated by Article 20.2 § 5 of the CAO RF, to the Supreme Court of the Russian Federation. Regarding the case of the administrative offence stipulated by Article 20.25 § 4 of the above Code, S.Yu. Tiunov did not appeal against the final judicial acts either to the Sverdlovsk Regional Court or to the Supreme Court of the Russian Federation.

24. He challenged the judgment on the imposition of sentence in the form of administrative detention to the Ordzhonikidzevskiy District Court of Yekaterinburg, which on 18 April 2018 upheld the above decision.

25. Therefore, the applicant failed to exhaust all domestic effective remedies prior to lodging the application with the international court. In this relation the Government of the Russian Federation declare that the application *Tiunov v. Russia* is inadmissible under Article 35 § 1 of the Convention.

Bringing S.Yu. Tiunov to administrative liability, his administrative sentencing and detention of the applicant for denial to compulsory work was in accordance with Article 7 of the Convention

26. Considering the particular circumstances of such kind of cases as the case *Tiunov v. Russia*, the Court takes into account the following elements: the alleged victim of a violation of the right under Article 7 of the Convention

should be found guilty in committing a crime provided for by the legislation in force at the time of its commission; he/she should be sentenced in accordance with the law. Furthermore, the Court also points out that the law establishing the *corpus delicti* and the punishment for the commission of crime should be accessible to a wide circle of people, and the accused or convicted person should have foreseen liability for the acts committed by him.

27. Article 7 of the Convention requires the existence of a legal basis in order to impose a sentence or penalty. The Court must therefore verify that at the time when an accused person performed the act which led to his being prosecuted and convicted there was in force a legal provision which made that act punishable, and that the punishment imposed did not exceed the limits fixed by that provision.[1]

28. Given the subsidiary nature of the Convention system, it is not the Court's function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention.[2] Even though the Court is not called upon to rule on the legal classification of the offence or the applicant's individual criminal responsibility, that being primarily a matter for assessment by the domestic courts,[3] Article 7 § 1 of the Convention requires the Court to examine whether there was a contemporaneous legal basis for the applicant's conviction and, in particular, it must satisfy itself that the result reached by the relevant domestic courts was compatible with Article 7 of the Convention.

29. The principle of legality requires the offences and corresponding penalties to be clearly defined by law. The concept of "law" within the meaning of Article 7 of the Convention, as in other Convention articles, comprises qualitative requirements, in particular those of accessibility and foreseeability. These qualitative requirements must be satisfied as regards both the definition of an offence and the penalty the offence in question carries or its scope, with respect to the foreseeability of the applicable sentencing standards which

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[1] *Coëme and Others v. Belgium*, judgment of 22 June 2000, nos. 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96, § 145.

[2] *Streletz, Kessler and Krenz v. Germany*, nos. 34044/96, 35532/97 and 44801/98, judgment of 22 March 2001, § 49.

[3] *Rohlena v. the Czech Republic*, no. 59552/08, § 51, judgment of 27 January 2015.

depend solely on the choice of the court by the prosecutor rather than on criteria established by law.

30. Federal Law no. 65-FZ of 8 June 2012 introduced § 5 into Article 20.2 of the CAO RF which in its current version stipulates administrative liability in the form of an administrative fine in the amount of RUR 10,000 to 20,000 or compulsory works for a period of up to 40 hours for violation by a participant in a public event of the established procedure for holding an assembly, meeting, demonstration, march or picket, except for cases provided for in § 6 of this Article.

31. By the judgment of 18 October 2017 the judge of the Leninskiy District Court of Yekaterinburg found S.Yu. Tiunov guilty of committing the administrative offence provided for by Article 20.2 § 5 of the CAO RF and sentenced him to the administrative punishment in the form of 30 hours of compulsory works.

32. In the above judgment the judge established that S.Yu. Tiunov on 7 October 2017, at about 4.00 p.m., being near the monument to the founders of the city at: 34, Lenin st., Yekaterinburg, in violation of the requirements of Article 6 of Federal Law no. 54-FZ of 15 June 2004 *On Assemblies, Meetings, Demonstrations, Marches and Picketing* ("Federal Law no. 54-FZ") participated in a public event, the conduct of which was not authorised by the Ministry of Public Safety of the Sverdlovsk Region.

33. In accordance with § 38 of the Resolution of the Plenum of the Supreme Court of the Russian Federation no. 28 of 26 June 2018, when resolving the issue about imposing an administrative penalty of a specific type and size to a person guilty of violating the legislation of the Russian Federation on public events, it must be borne in mind that such a penalty should meet the requirements of proportionality, fairness and commensurability, individualization of administrative liability, and also meet the goals of preventing the commission of new offences both by the offender and other persons.

34. When imposing a punishment in the form of compulsory work, the judge of the Leninskiy District Court of Yekaterinburg took into account the intentional nature of the administrative offence, the identity of the guilty person,

his property and marital status, as well as circumstances mitigating administrative liability, i.e. the commission of the offence for the first time. The punishment was imposed on the applicant within the sanction of the article, it meets the requirements of the law and is fair.

35. When challenging the decision of the judge in higher courts S.Yu Tiunov did not argue about the unfairness of the administrative punishment imposed due to its severity.

36. According to Article 20.25 § 4 of the CAO RF evasion from serving compulsory works shall entail the imposition of an administrative fine in the amount of RUR 150 000 to 300 000 or administrative detention for up to 15 days.

37. Pursuant to Article 32.13 § 12 of the CAO RF, evasion of a person who has been assigned an administrative punishment in the form of compulsory works from serving this type of punishment means a repeated refusal to perform works, and (or) repeated non-attendance of such a person to compulsory work without a valid reason, and (or) repeated violation of labour discipline, confirmed by documents of the organization where the person sentenced to the administrative punishment in the form of compulsory work shall serve the compulsory works.

38. As follows from the case-file, on 23 January 2018, S.Yu. Tiunov appeared in the Leninskiy district division of bailiffs of Yekaterinburg of the Department of the Federal Bailiff Service of Russia for the Sverdlovsk Region, where he was acquainted with the materials of the enforcement proceedings; he was served the decision to institute enforcement proceedings, decision on sending the person who was sentenced to administrative punishment in the form of compulsory works to the place of serving the sentence of 23 January 2018, leaflet of 23 January 2018, as well as a time sheet.

39. The applicant was also warned that in case of evasion from serving the compulsory works, an administrative offence report would be drawn up against him under Article 20.25 § 4 of the CAO RF.

40. According to the time sheet, certificate of LLC "UZHKH" of the Leninskiy district of 8 February 2018, S.Yu. Tiunov did not appear in the organization for serving the sentence in the form of compulsory works for the

execution of the decision to institute enforcement proceedings of 22 December 2017.

41. The applicant submitted no evidence of valid reason for non-attendance to serve the sentence in the form of compulsory works for a period of 30 hours.

42. S.Yu. Tiunov gave an explanation where he specified that he refused to execute the judicial act. On 9 February 2018 and on 28 February 2019 the decisions on sending the person who was sentenced to administrative punishment in the form of compulsory works to the place of serving the sentence were sent to the applicant repeatedly. However, the applicant refused to comply with the requirements of the enforcement document.

43. On 9 April 2018 a telephone message was sent to S.Yu. Tiunov about the appearance to the bailiff-executor to draw up an administrative offence report.

44. On 10 April 2018 the applicant appeared to the bailiff-executor, in the presence of whom an administrative offence report was drawn up on the offence under Article 20.25 § 4 of the CAO RF. S.Yu. Tiunov was requested to proceed to a service car and together with the bailiff-executor, the bailiff ensuring the established order in court to arrive in the Ordzhonikidzevskiy District Court of Yekaterinburg in order to consider the administrative offence report. The applicant proceeded voluntarily into the service car, physical force and special means were not used against him, administrative detention was not carried out.

45. At the same time, the Government of the Russian Federation note that detention for refusing to perform compulsory work also was not used against the applicant.

46. Pursuant to Article 29.6 § 4 of the CAO RF, the case was examined by the justice of the peace on the day the administrative offence report and other materials of the case were received and the applicant was brought to court.

47. By the judgment of 10 April 2018 the Justice of the Peace of the Court Circuit no. 3 of the Ordzhonikidzevskiy District Court of Yekaterinburg found S.Yu. Tiunov guilty of an administrative offence stipulated by Article 20.25 § 4 of the CAO RF and sentenced him to 3 days' detention as an administrative punishment. On the same day, shortly after the adoption of this judicial act S.Yu. Tiunov was taken to the place of serving the sentence.

48. Therefore, S.Yu. Tiunov was brought by the court to administrative liability for acts that, according to the domestic law in force at the time of their commission, were administrative offences and were clearly defined in the CAO RF.

49. Moreover, the Government of the Russian Federation draw the attention of the European Court to the fact that the applicant had the opportunity to choose other methods of expressing his disagreement with the punishment imposed on him in the form of compulsory works. Thus, S.Yu. Tiunov could lodge a claim with a court to postpone the execution of the judgment of the Leninskiy District Court of Yekaterinburg of 18 October 2017, to challenge the decisions of the bailiff-executor and/or a complaint on the illegal actions of the bailiff-executor on the execution of this judicial act. S.Yu. Tiunov also is entitled to challenge the disputed court decision to the Supreme Court of the Russian Federation.

50. However, the applicant voluntarily decided not to execute the punishment imposed on him by the final court decision, which, under Russian law, entails the imposition of additional administrative sanctions.

51. As it was noted by the judge of the Ordzhonikidzevskiy District Court of Yekaterinburg in the decision of 18 April 2018, disagreement of S.Yu. Tiunov with an assessment of the circumstances established by the courts when bringing the applicant to administrative liability under Article 20.2 § 5 of the CAO RF, is not a legal basis for non-enforcement by the bailiff service of the final court judgment, as well as the basis for quashing the judgment on bringing the applicant to administrative liability under Article 20.25 § 4 of the CAO RF.

52. Furthermore, after serving the imposed sentence in the form of administrative detention, S.Yu. Tiunov keeps evading from the execution of the judgment in the case of administrative offence of 18 October 2017. The applicant was repeatedly sent (most recently - on 21 June 2019) the requirements to appear to the bailiff-executor and to execute the enforcement document.

53. Consequently, the applicant's right guaranteed by Article 7 of the Convention, in relation to his bringing to administrative responsibility, imposition of punishment in the form of compulsory works, and sentencing him

to administrative detention for failure to execute the first punishment, was not violated in the present case.

On the absence of violation of Article 4 of the Convention in S.Yu. Tiunov's case

54. Article 4 § 2 of the Convention provides that no one shall be involved in forced or compulsory labour.

55. In interpreting the concepts under Article 4 of the Convention, the European Court relies on international instruments such as the Slavery Convention of 1926, the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, ILO Convention no. 29 (Forced Labour Convention)[4], Council of Europe Convention on Action against Trafficking in Human Beings and the Protocol to Prevent, Supress and Punish Trafficking in Persons, Especially Women and Children supplementing the 2000 United Nations Convention against Transnational Organized Crime.[5]

56. In order to clarify the concept of "labour" within the meaning of Article 4 § 2 of the Convention, the Court has underlined that not all work exacted from an individual under threat of a "penalty" is necessarily "forced or compulsory labour" prohibited by this provision. Factors that must be taken into account include the type and amount of work of work involved. These factors help to distinguish between "forced labour" and a helping hand which can reasonably be expected of other family members or people sharing accommodation.

57. By Article 4 § 1 of Federal Law no. 65-FZ of 8 June 2012 chapter 3 of the CAO RF was supplemented by Article 3.13, according to which compulsory works as a form of administrative punishment imposed by a judge consist in the performance by a private individual who has committed an administrative offence, of socially useful works, free of charge, during free time from the main work, service or study (§ 1), which are set for the period of 20 to 200 hours and shall be served no more than 4 hours a day (§ 2), do not apply to pregnant women, women with children under the age of three, disabled people of groups

[4] *Van der Mussele v. Belgium*, no. 8918/80, judgment of 23 November 1982, § 32.
[5] *Rantsev v. Cyprus and Russia*, no. 25965/04, judgment of 7 January 2010, § 282.

I and II, members of armed forces, citizens called up for military training, as well as to the officers of the internal affairs authorities, authorities and institutions of the penal execution system, the state fire service, authorities controlling the turnover of narcotic drugs and psychotropic substances and customs authorities having special ranks (§ 3). By Article 1 (7) to (9) of the specified Federal Law, compulsory works were included as a sanction for the commission of administrative offences stipulated by Articles 20.2, 20.2.2 and 20.18 of the CAO RF.

58. In its ruling no. 4-P of 14 February 2013, the Constitutional Court of the Russian Federation pointed out that the practice of legislative regulation of legal liability for administrative offences prevailing after the adoption of the CAO RF demonstrates that the list of types of administrative penalties enshrined in Article 3.2 thereof is not considered as exhaustive and may be supplemented and specified by the federal legislator having wide discretion in establishing measures to respond to administrative offences, conductive to the most effective achievement of the goals of administrative liability at one or another specific historical stage of the State development. In this regard, the extension by Federal Law no. 65-FZ of 8 June 2012 of the list of types of administrative penalties by the inclusion of compulsory works cannot be regarded by itself as not consistent with the Constitution of the Russian Federation.

59. At the same time, enshrining the types of administrative penalties and establishing the rules for their imposition and execution, the federal legislator is obliged to take into account that in the Russian Federation the rights and freedoms of man and citizen are recognized and guaranteed in accordance with generally recognized principles and norms of international law and in accordance with the Constitution of the Russian Federation, and not to allow the enactment of laws that abrogate or derogate the rights and freedoms of man and citizen (Article 17 § 1, Article 55 § 2 of the Constitution of the Russian Federation).

60. Proceeding from this and by virtue of the constitutional recognition of freedom of labour, the application of administrative punishment in the form of compulsory works, alleging the involvement of persons serving such punishment to free socially useful work, is impossible without observing

Article 37 § 1 of the Constitution of the Russian Federation, pursuant to which each person has the right to freely dispose of his abilities for labour and to choose a type of activity and occupation.

61. The presence in the Constitution of the Russian Federation of a direct prohibition of forcible labour (Article 37 § 2) and the absence of an indication of the prohibition of compulsory labour is not due to any significant differences between them, but, on the contrary, should be regarded as a recognition that compulsory labour is nothing more than an analogue of forcible labour. The provisions of the International Covenant on Civil and Political Rights (Article 8 § 3) and of the Convention for the Protection of Human Rights and Fundamental Freedoms (Article 4 § 2), pursuant to which no one should be involved in forcible or compulsory labour, corresponding to the above constitutional requirements, do not distinguish between forcible and compulsory labour.

62. Furthermore, Article 4 § 3 of the Convention indicates that for the purposes of this article, the term "forcible or compulsory labour" does not include:

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;

(b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

(c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

(d) any work or service that is part of usual civic duties.

63. This paragraph is not intended to "limit" the exercise of the right guaranteed by § 2, but to "delimit" the very content of that right, for it forms a whole with § 2 and indicates that the term "forced or compulsory labour" is not to include.

64. Within the meaning of Article 4 § 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms in conjunction with its Article 5, any work required to be done by a person in the ordinary course of lawful arrest,

detention or conditionally released from such detention, should not be regarded as a derogation from the prohibition of forcible or compulsory labour.

65. Since this exception is not directly related to the use of coercion only regarding the persons suspected or accused in committing a crime, its significance is not limited to the scope of criminal prosecution, that is also confirmed by the position of the European Court of Human Rights, which, having examined in the case of *Stummer v. Austria*[6] definitions of forcible (compulsory) labour contained in documents of the International Labour Organization, as a starting point for the interpretation of Article 4 of the Convention, came to the conclusion that it should not lose sight of the special features of the Convention, that is a living tool that should be interpreted "in the light of the concepts that currently prevail in democratic states."

66. The Constitutional Court of the Russian Federation in its ruling no. 4-P of 14 February 2013 specified that exactly in this context it is necessary to assess the attribution of certain works assigned as punishment for the commission of an unlawful act to the scope of forcible (compulsory) labour, which, as follows from Article 2 § 2 (c) ILO Convention no. 29 of 1930 on forcible labour, does not include any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations.

67. General Review (Report) adopted by the International Labour Organization in 2007, concerning ILO Convention no. 29 of 1930 on forced labour and ILO Convention no. 105 of 1957 on the abolition of forced labour, also proceeds from the fact that an exception to the general prohibition established by Article 4 § 2 of the Convention on the Protection of Human Rights and Fundamental Freedoms may take the form of compulsory labour in prison or of labour required as a result of the imposition of other types of punishment, such as conviction for public work; public works are not covered by the conventional prohibition of forced labour if they meet the genuine requirements, namely, they are the measure of punishment imposed solely by

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[6] *Stummer v. Austria*, no. 37452/02, judgment of 7 July 2011.

the court, and performed for the state or its structures - administrations, regions, public services, institutions, etc.

68. The introduction of compulsory works as a form of administrative punishment, imposed solely by court of law (Article 3.13 § 1 of the CAO RF) and consisting in the performance by a person sentenced to this type of administrative penalty of free socially useful works in places determined by local self-government authorities on agreement with the territorial divisions of the relevant federal executive bodies (Article 32.13 § 2 of the CAO RF), ensures - on the basis of a balance between private and public principles - such a state response to the commission of administrative offences, which, on the one hand, is not related to the invasion into property rights of citizens and does not entail (unlike administrative detention) the deprivation of liberty of the offender, and on the other - it does not contradict the goals of administrative liability and is not an unacceptable way of coercion to labour, further used only for socially useful purposes under the control of state bodies.

69. In the case of *Stummer v. Austria*[7] the Court noted that the applicant was obliged to work in accordance with Article 44 (1) of the Law of Austria *On the Execution of Sentences*. Refusal to perform the work entrusted to him constitutes a crime under Article 107 of this law, for the commission of which, in accordance with Article 109, a punishment in the form of a reprimand or solitary confinement shall be assigned.

70. According to Russian legislature, evading the administrative punishment in the form of compulsory works, which may be expressed in repeated refusal to perform works, non-attendance to compulsory work without a valid excuse, violation of labour discipline (Article 32.13 § 12 of the CAO RF) constitutes an independent type of administrative offence and shall entail the imposition of an administrative fine in the amount of RUR 150 000 to 300 000 or administrative detention for up to 15 days (Article 20.25 § 4 of the CAO RF).

71. In the view of the Constitutional Court of the Russian Federation, this amount of sanction for evading from serving compulsory works, introduced by Federal Law no. 65-FZ of 8 June 2012, in itself, does not confirm the transformation of the very nature of administrative liability which leads to its

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[7] *Stummer v. Austria*, cited above.

matching to criminal liability, especially since the use of administrative detention for evading compulsory works is consistent with the position of the International Labour Organization, considering public works "first of all and primarily as an alternative to imprisonment."[8]

72. Meanwhile, compulsory works as a form of administrative punishment and compulsory works assigned in accordance with the Criminal Code of the Russian Federation ("the CC RF") for committing crimes, cannot be recognized as identical punishments: compulsory works served in accordance with the CAO RF are shorter than the corresponding criminal penalty which is assigned for a period of 60 to 480 hours (Article 49 § 2 of the CC RF), and their assignment, despite the fact that it is imposed under a court decision, does not entail a criminal conviction, which, as a specific criminal legal status, is associated with much greater (as compared to administrative liability) limitations of rights and freedoms, not only by the duration, but also by the nature of the negative consequences.

73. Thus, the establishment by Federal Law no. 65-FZ of 8 June 2012 of compulsory works as a form of administrative punishment, not related to the limitation of property rights of a person sentenced to this administrative punishment and not involving the deprivation of his freedom – given that they are subject to application only if the person was found guilty in committing an administrative offence in due process, - does not contradict the Constitution of the Russian Federation.

74. Thus, the administrative punishment in the form of compulsory works imposed on S.Yu. Tiunov, as well as the sanction in the form of administrative detention in relation to the applicant's refusal to execute the punishment, complies with the provisions of Article 4 § 2 of the Convention.

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[8] paragraph 124 of the General Review of the International Labour Organization.

On inadmissibility of the applicant's application under Article 5 of the Convention due to non-exhaustion of effective domestic remedies

75. As regards the alleged violation of S.Yu. Tiunov's right to liberty and security of person in connection to his administrative escorting and arrest, the Government of the Russian Federation first of all would like to note that the applicant's application in this part shall be subject to dismissal under Article 35 §§ 1 and 4 of the Convention in connection to the applicant's failure to exhaust effective remedies.

76. Thus, domestic courts delivered in relation to S.Yu. Tiunov the judgment of the Leninskiy District Court of Yekaterinburg of 18 October 2017 in the case on administrative offence stipulated by Article 20.2 § 5 of the CAO RF, and the decision of the Justice of the Peace of Court Circuit no. 3 of the Ordzhonikidzevskiy District of Yekaterinburg of the Sverdlovsk Region of 10 April 2018, by which S.Yu. Tiunov was found guilty of an administrative offence under Article 20.25 § 4 of the CAO RF. The above judicial acts were upheld by the courts of higher instances.

77. However, neither in the course of the first-instance court hearing, nor in his appeal complaints against these decisions S.Yu. Tiunov claimed to recognize the measures applied to him to ensure the proceedings in the administrative case as unlawful.

78. Furthermore, S.Yu. Tiunov did not lodge with the courts complaints on illegal detention and/or claims to award him compensation for non-pecuniary damage caused by illegal detention and other actions of police officers.

79. Therefore, the applicant did not use all remedies available to him at the domestic level for the restoration of his violated rights.

80. In any case, taking into account the circumstances of the present case, the Government of the Russian Federation suppose that there was no violation of the applicant's right guaranteed by Article 5 § 1 of the Convention in this case.

81. Everyone's right to liberty and security of person is enshrined in Article 5 of the Convention which, in particular, provides that the lawful arrest or detention of a person shall be effected for the purpose of bringing him before

the competent legal authority on reasonable suspicion of having committed an offence or when there are sufficient reasons to believe that it is necessary to prevent his committing an offence or fleeing after having done so (Article 5 § 1 (c)).

82. In compliance with the European Court's case-law any deprivation of liberty notwithstanding its form, which is not always adequate to the classic imprisonment, should be compatible not only with principal procedural rules of the national legislation but also with the requirements of Article 5 of the Convention which exhaustingly defines the circumstances under which a person may be deprived of liberty on legal grounds (see *Quinn v. France*[9]; *K.-F. v. Germany*[10]; *Kurt v. Turkey*[11]).

83. Article 22 of the Constitution of the Russian Federation, which corresponds to the Convention provisions, also provides for the right of everyone to liberty and security of person (part 1); arrest, commitment and detention are allowed only under a court decision; a person may not be detained for more than 48 hours before a court decision (part 2).

84. Article 55 § 3 of the Constitution of the Russian Federation provides that the rights and freedoms of a man and a citizen may be limited by federal law only to the extent necessary for the protection of the basis of the constitutional order, morality, health, rights and lawful interests of other persons, national defence and state security.

85. Elaborating the provisions of Article 22 of the Constitution of the Russian Federation taken in conjunction with Article 55 § 3 of the Constitution of the Russian Federation with regard to administrative responsibility, the CAO RF provides that, in order to prevent an administrative offence, to establish the identity of the offender, to compile an administrative offence report when it cannot be done on the spot, to ensure timely and proper consideration of the administrative case and execution of the decision taken in an administrative case, an authorized person may, within his/her powers, apply the means of ensuring administrative offence proceedings stipulated by the CAO RF. The CAO RF stipulates the following means of ensuring administrative offence

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[9] *Quinn v. France*, no. 18580/91, judgment of 22 March 1995.
[10] *K.-F. v. Germany*, no. 25629/94, judgment of 27 November 1997.
[11] *Kurt v. Turkey*, no. 24276/94, judgment of 25 May 1998.

proceedings relating to a temporary forcible restriction of liberty: escorting, administrative arrest and conveying (Article 27.1).

86. By way of development of the said provisions, the Constitutional Court of the Russian Federation in its Resolution no. 9-P of 16 June 2009 pointed out that the right to liberty and personal security, which is one of the fundamental rights of a person, is inalienable, guaranteed to every person from such person's birth, and may be subject to limitations determined with due regard of the general principles and constitutional criteria of necessity, reasonableness and proportionality, aimed at preventing this right from losing its essence.

87. As noted in Ruling of the Constitutional Court of the Russian Federation no. 1428-O of 7 July 2016, legislative, organisational and other measures taken by state authorities in order to properly ensure the right to freedom of peaceful assembly should not lead to excessive state control over the activities of the organisers and participants of public events, associated with unreasonable restrictions on freedom of gatherings, meetings, demonstrations, marches and picketing.

88. However, taking into account the nature of the right, guaranteed by Article 31 of the Constitution of the Russian Federation, implying exclusively peaceful way of expression of opinions by citizens and bringing thereof to the notice of the appropriate recipients, in cases when the organisers and participants of public events behave destructively, in particular, if they clearly intend to commit or, moreover, do commit any actions that threaten public order and (or) social security, the state, pursuant to its constitutional obligation to protect the rights and freedoms of human and citizen, should use all legal means to prevent and suppress the expressions that do not meet the right to peaceful assembly (para. 4 of § 2 of the Ruling).

89. The Constitutional Court of the Russian Federation noted in its Resolution of 16 June 2009 no. 9-P that administrative arrest and escorting of a person charged with an administrative offence in fact constituted the deprivation, though short-term, of liberty, and therefore, these measures ensuring administrative proceedings shall comply with the criteria under Article 22 and Article 55 § 3 of the Constitution of the Russian Federation,

taken in conjunction with Article 5 § 1 (c) of the Convention, and they shall be predetermined by the nature of an offence and the aims of their application.

90. On 7 October 2017, a group of citizens, including the applicant, took part in a picket which was not authorised by the executive authorities of the Sverdlovsk Region, at Labour square in Yekaterinburg, thus having breached the requirements of Federal Law no. 54-FZ of 19 June 2004 *On Assemblies, Meetings, Demonstrations, Marches and Picketing*.

91. As the Court reiterated in its judgments, the subjection of public events to an authorisation or notification procedure is to allow the authorities to take reasonable and appropriate measures in order to guarantee the smooth conduct of any gathering, meeting or other event (see *Sergey Kuznetsov v. Russia*[12] and *Rai and Evans v. the United Kingdom*[13]).

92. The same conclusion was made in the decision in the case of *Ziliberberg v. Moldova*[14], according to which "Member States have the right to require authorization, and therefore they must be entitled to impose sanctions on demonstration participants for not complying with this requirement."

93. For the purpose of performing the obligations imposed on police, on the basis of Article 13 § 1 (1), (7), (8) and (13) of Federal Law no. 3-FZ of 7 February 2011 *On Police*, police officers are entitled to order the persons and public officials to terminate their unlawful behaviour, order the groups of citizens staying in public places for the reasons other than participating in lawful public and mass events to leave the venue.

94. In the present case, the participants in the public event, including S.Yu. Tiunov, had ignored these requirements of the police, in relation with that S.Yu. Tiunov was escorted by police officers to the service (staff) bus located at the venue of the unauthorised public event in order to draw up an administrative offence report.

95. Based on the record on escorting 6604 no. 0103224 of 7 October 2017 within the period from 4.10 p.m. to 4.11 p.m. S.Yu. Tiunov was escorted to the bus in order to draw up an administrative offence report. Within one hour the

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[12] *Sergey Kuznetsov v. Russia*, no. 10877/04, judgment of 23 October 2008, § 42.

[13] *Rai and Evans v. the United Kingdom*, nos. 26258/07 and 26255/07, decision of 17 November 2009.

[14] *Ziliberberg v. Moldova*, no. 61821/00, decision of 4 May 2004.

administrative offence report on the offence stipulated by Article 20.2 § 5 of the CAO RF concerning S.Yu. Tiunov was drawn up, after that he was released.

96. According to the information contained in the subsection "escorted persons" of the support service for the duty units of the Unified Information and Analytical Support System for the Ministry of Internal Affairs of Russia, S.Yu. Tiunov was not escorted to the duty units of the police stations of the Ministry of Internal Affairs of Russia for the city of Yekaterinburg.

97. The measure of ensuring the proceedings in the case on administrative offence in the form of administrative detention was not applied to S.Yu. Tiunov.

98. In view of the foregoing, the Government of the Russian Federation draw the European Court's attention to the inaccuracy of the statement of facts of this case in § 4 of the decision on the inadmissibility of part of the application of S.Yu. Tiunov of 15 January 2019.

99. In such circumstances, police officers' actions complied not only with the laws of the Russian Federation, but also with section A §§ 5 and 12 of the Declaration on the Police (adopted on 8 May 1979 in Strasbourg), according to which a police officer must oppose violations of the law; in performing his duties, a police officer shall use all necessary determination to achieve an aim which is legally required or allowed.

100. In this connection, the interference of police officers with the applicant's right to freedom of assembly and personal security was caused by the fact that he had violated the law of the Russian Federation governing the procedure for participation in a public event, as well as by the duty of police officers to protect person, society, and state from illegal infringement and to prevent and suppress administrative offences.

101. The actions of the police officers, who carried out the measures for drawing up administrative offence report and other procedural actions in respect of the applicant, were not challenged in due course, nor were they found unlawful by any court.

102. The lawfulness of the actions of the police officers is confirmed by the final judgment of the Leninskiy District Court of Yekaterinburg of 18 October 2017, by which S.Yu. Tiunov was found guilty of committing an

administrative offence stipulated by Article 20.2 § 5 of the CAO RF and was sentenced to 30 hours of compulsory works.

103. The higher courts upheld by their decisions the above judgment of the first-instance court against S.Yu. Tiunov and dismissed the applicant's appeals.

104. Thus, bringing S.Yu. Tiunov to administrative liability stipulated by Article 20.2 § 5 of the CAO RF pursued a legitimate aim, since his actions did not comply with the limitations provided for by Federal Law no. 54-FZ, encroached on public order and public safety.

105. Contrary to the applicant's arguments specified in his application to the European Court, the measure to ensure the proceedings in the administrative case under Article 20.25 § 4 of the CAO RF in the form of escorting and administrative detention was not applied to S.Yu. Tiunov, since on 10 April 2018 he on his own arrived at the Leninskiy District Department of the bailiff-executors service of the city of Yekaterinburg.

106. At the same time, the Government of the Russian Federation note that the term of serving the sentence in the form of administrative detention imposed on S.Yu. Tiunov ran from the moment the applicant was actually brought to court - 1.30 p.m. on 10 April 2018.

107. S.Yu. Tiunov was taken to the Special Detention Centre for Keeping Persons Sentenced to Administrative Detention of the Department of the Ministry of Internal Affairs of Russia for the city of Yekaterinburg ("the Special Detention Centre") for serving the sentence in the form of administrative detention for a period of 3 days on 10 April 2018 at 8.20 p.m.

108. According to the daily time sheet for administratively detained persons, subjected to the administrative detention and kept in the Special Detention Centre, approved on 28 October 2014 by Interim Head of the Department of the Ministry of Internal Affairs of Russia for the city of Yekaterinburg, Colonel of Police D.V. Gnatyuk, dinner is served from 6.00 p.m. to 7.00 p.m., breakfast - from 10.00 a.m. to 11.00 a.m. Thus, at the time S.Yu. Tiunov was taken to the Special Detention Centre the applicant was not entitled to meals.

109. Pursuant to para. 45 of the Internal Rules at the administrative detention facilities, approved by order of the Ministry of Internal Affairs of Russia no. 83

of 10 February 2014, persons sentenced to administrative detention contained in the cells of the Special Detention Centre are provided with a tank of drinking water the quality of which satisfies the sanitary epidemiological requirements. All cells of the Special Detention Centre are equipped with drinking water tanks that are daily filled with boiled water.

110. S.Yu. Tiunov did not lodge complaints on unavailability of drinking water during his detention in the Special Detention Centre. Actions of officials of the Department of the Ministry of Internal Affairs of Russia for the city of Yekaterinburg were not challenged by S.Yu. Tiunov.

111. The applicant's arguments about violations of the conditions of detention in the Special Detention Centre of the Department of the Ministry of Internal Affairs of Russia for the city of Yekaterinburg were not confirmed, the actions of officials of the Department of the Ministry of Internal Affairs of Russia for the city of Yekaterinburg contained no violations of the national law and the provisions of the Convention.

112. In view of the foregoing, the Government of the Russian Federation suggest that S.Yu. Tiunov's right to freedom and personal security on account of his bringing to administrative liability and imposition on him of the punishment in the form of administrative detention was not violated in the present case.

On the absence of violation of S.Yu. Tiunov's rights to freedom of expression and freedom of assembly in connection with bringing him to the administrative liability for participating in an unauthorised public event

113. Pursuant to Article 31 of the Constitution of the Russian Federation, citizens of the Russian Federation have the right to assemble peacefully, without weapons, hold assemblies, meetings and demonstrations, marches and pickets.

114. Meanwhile, this right may be limited by federal law with the purpose of protection of the foundations of the constitutional system, morality, health, rights and legitimate interests of other persons, ensuring the defence of the country and the security of the state on the basis of the principles of legal equality and commensurability (proportionality) of permissible limitations of

this right (Article 17 § 3, Article 19 §§ 1 and 2, Article 45 § 1, Article 55 § 3 of the Constitution of the Russian Federation).

115. According to the Ruling of the Constitutional Court of the Russian Federation no. 24-P of 18 June 2019, this right may nevertheless be limited by federal law, but only in accordance with the criteria arising from principles of inadmissibility of abuse of human and civil rights and freedoms, legal equality, reasonableness (necessity) and commensurability (proportionality), enshrined in Articles 17 (§ 3), 19 (§§ 1 and 2) and 55 (§ 3) of the Constitution of the Russian Federation. Whereby, the limitations imposed by the federal legislator on freedom of peaceful assembly in any case should not encroach on the very essence of this constitutional right and impede the open and free expression by citizens of their views, opinions and requests through the organization and conduct of peaceful public actions.

116. This approach is consistent with generally accepted principles and norms of the international law enshrined in the Universal Declaration of Human Rights (Article 20 § 1), International Covenant on Civil and Political Rights (Article 21) and Convention for the Protection of Human Rights and Fundamental Freedoms (Article 11), defining, in particular, the right to freedom of peaceful assembly as not subject to any restrictions other than such as are prescribed by law and are necessary in a democratic society in the interests of national security and public safety, for the prevention of disorder and crime, for the protection of health and morals, or for the protection of the rights and freedoms of others.

117. The procedure for the organising and holding of peaceful public events is regulated by Federal Law no. 54-FZ, which ensures the exercise of this right and, at the same time, the due respect for public order and safety without prejudice to health and morals of the citizens on the basis of the balance of interests of the organisers and participants of public events, on the one hand, and third parties, on the other hand, based on the need to ensure the state protection of rights and freedoms of all citizens (both participating and not participating in a public event), including through the introduction of appropriate measures to avoid and prevent violations of public order and safety,

civil rights and freedoms, as well as the establishment of public and legal responsibility for the actions which lead to or create the risk of such violations.

118. Article 7 of Federal Law no. 54-FZ stipulates the notification procedure for holding public events providing for the necessity to get the place and time of holding thereof approved by the executive authority of the constituent entity of the Russian Federation, or a local authority, for the sake of public order and national safety.

119. The need for such approval is primarily attributable to ensuring uninterrupted functioning of vital facilities of the communal or transport infrastructure, as well as the need to maintain public order and ensure the safety of citizens (both participants in a public event and persons who may be in the venue at a time specified for this) or other similar reasons.

120. Pursuant to Article 16 § 3 of Federal Law no. 54-FZ, a ground for terminating a public event is the failure of its organizer to fulfil the duty stipulated by Article 5 § 4 (1) of this Federal Law to submit to an executive body of a constituent entity of the Russian Federation or local self-government body notification of a public event, according to the procedure established by Article 7 of this Federal Law.

121. In the case of *Berladir and Others v. Russia*[15], the Court noted that the Russian notification-and-endorsement procedure is just one example among others of the variety of systems existing in Europe, and it is not the Court's task to standardise them.

122. In the Court's view, the notification (and even authorization) procedure for organizing public event does not, as such, infringe the essence of the right to freedom of assembly and does not run counter to Article 11 of the Convention; it serves not only the aim of reconciling, on the one hand, the right to assembly and, on the other hand, the right to freedom of movement and lawful interests of others, but also the prevention of disorder or crime, and it enables the authorities to take reasonable and appropriate measures to guarantee the smooth conduct of any gathering, meeting or other event of political, cultural or other

[15] *Berladir and Others v. Russia*, no. 34202/06, judgment of 10 July 2012, § 54.

nature (see *Éva Molnár v. Hungary*[16]; *Rassemblement Jurassien Unite v. Switzerland*[17]; *Plattform "Arzte fur das Leben" v. Austria*[18]).

123. Prior notification serves not only the aim of reconciling the right to assembly with the rights and lawful interests of others, but also the prevention of disorders or crimes. In order to balance these conflicting interests, the institution of preliminary administrative procedures is common practice in Member States when public events are to be organized *(Eva Molnar v. Hungary*[19]*).*

124. Since States have the right to require authorisation, they must be able to apply sanctions to those who participate in demonstrations that do not comply with the requirements. The impossibility to impose such sanctions would render illusory the power of the State to require authorization (see *Ziliberberg v. Moldova* (dec.), no. 61821/00, 4 May 2004, as to the admissibility).

125. At the same time, in cases when the concerned parties had sufficient time to apply for the authorization of an event by the authorities, however they either did not attempt to obtain authorization or held an event despite the prohibition, the Court found that the dispersal of such an event and imposition of sanctions provided for by the law on its participants were justified and necessary in a democratic society (see *Eva Molnar v. Hungary*[20]*; Rai and Evans v. the United Kingdom*[21]*).*

126. During a public event, the participants shall comply with all lawful orders of an organiser of the public event, persons authorised by an organiser, authorised representative of the executive authority of the constituent entity of the Russian Federation, or the local self-government body, as well as internal affairs bodies; maintain public order and rules for holding a public event (Article 6 § 3 of Federal Law no. 54-FZ).

127. In accordance with para. 21 of Resolution of the Plenum of the Supreme Court of the Russian Federation no. 28 of 26 June 2018 *On Certain Issues*

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[16] *Eva Molnar v. Hungary,* no. 10346/05, 7 October 2008, § 37.
[17] *Rassemblement Jurassien Unite v. Switzerland,* no. 8191/78, decision of the European Commission of Human Rights of 10 October 1979.
[18] *Plattform "Ärzte für das Leben" v. Austria*, no. 10126/82, 21 June 1988, §§ 32, 34.
[19] *Eva Molnar v. Hungary*, no. 10346/05, judgment of 7 October 2008, § 37.
[20] *Eva Molnar v. Hungary,* no. 10346/05, judgment of 7 October 2008, § 45.
[21] *Rai and Evans v. the United Kingdom*, nos. 26258/07 and 26255/07, decision of 17 November 2009.

Arising before Courts when Considering Administrative Cases and Cases on Administrative Offences related to the Application of Legislation on Public Events, violations of the legislation of the Russian Federation on public events entail liability prescribed by law, including administrative liability imposed in accordance with the norms of the CAO RF.

128. A public event participant shall be brought to administrative liability for the offence under Article 20.2 § 5 of the CAO RF when he or she breached the procedure for holding an assembly, meeting, demonstration, march or picket.

129. The Government of the Russian Federation note that the picket in Yekaterinburg on 7 October 2017 was held in violation of the requirements of Federal Law no. 54-FZ, as its time and venue had not been authorised by local self-government bodies or the executive authorities of the constituent entity of the Russian Federation.

130. On 2 October 2017 the Ministry of Public Safety of the Sverdlovsk Region received a notification from V.V. Barmin about holding a public event on 7 October 2017 from 4.00 p.m. to 7.00 p.m. in the form of a picket at the address: Labour sq., Yekaterinburg, in support of A.A. Navalniy, with the stated number of participants - 30 persons.

131. In response to the notification received from V.V. Barmin, the Ministry, guided by Article 12 § 1 (2) of Federal Law no. 54-FZ, proposed to change the venue of the announced public event due to the impossibility of its holding in the declared venue.

132. Sending of the proposal by the Ministry was due to the holding in the venue specified by V.V. Barmin in the notification of another public event, the notification of which was sent to the Ministry by its organizer - K.S. Streletsky on 29 September 2017, that is, prior to the notification of V.V. Barmin.

133. Since there was no grounds impeding holding the public event by K.S. Streletsky, the Ministry approved holding the picket to K.S. Streletsky in order to assist the organizer of a public event in holding this public event in accordance with the requirements of Federal Law no. 54-FZ.

134. Proceeding from the fact that the topic of the public event announced by K.S. Streletsky differed from that announced by V.V. Barmin, in view of the

principle of lawful holding of public events, prescribed by Article 3 of Federal Law no. 54-FZ, in order to prevent the risk of violations of other persons' rights during public events, which could not be done if two public events with completely different purposes of statements were held simultaneously, the Ministry of Public Safety of the Sverdlovsk Region proposed to V.V. Barmin to change the venue of the picket and to hold it in Oborony Square, Yekaterinburg (next to the monument to Uralian that Forged Victory).

135. The venue proposed to V.V. Barmin for the public event is located in the centre of Yekaterinburg, it can be easily accessed by various public transport, it is located in vicinity of different bus stop shelters; the traffic flow of the venue proposed was fully compliant with the one required for the public event and with the purposes of that public event, and did not restrict the freedom of expression of the picket participants.

136. According to the legal stance expressed in the ruling of the Constitutional Court of the Russian Federation no. 4-P of 14 February 2013, the exercise of the right to hold a public event depends not only upon observation by public authorities and local authorities of the provisions of law regulating the holding of mass events, but to the equal extent upon the initiative of the public event organizer himself, with the aim of achieving the possible compromise based upon maintaining the balance of interests of all parties concerned.

137. In accordance with Article 5 § 4 (2) of Federal Law no. 54-FZ V.V. Barmin in response to the proposal to change the venue of the public event should have notified the Ministry of the acceptance (rejection) of the proposal no later than three days before holding the public event. However, V.V. Barmin did not send a response to this proposal to the Ministry, did not make further attempts to agree on the venue and time of the public event, which indicates the organizer's passive position in resolving the issue of the venue and (or) time of the public event.

138. Therefore, the Ministry when sending the proposal to change the venue of the public event acted in strict accordance with the requirements of Federal Law no. 54-FZ and duly fulfilled the obligations stipulated in Article 12 of this Law.

139. It should be noted that the proposal to change the venue of the public event sent by the Ministry is not as such a refusal to authorise the public event,

which by virtue of Article 12 § 3 of Federal Law no. 54-FZ is allowed only in cases where the notification of its holding was sent by a person who, in accordance with this federal law, is not entitled to be the organizer of a public event, or when in the notification as the venue of the public event, the place indicated where, in accordance with this federal law or the law of a constituent entity of the Russian Federation, holding public events is prohibited, but constitutes the duty of the executive authority of the constituent entity of the Russian Federation stipulated in Article 12 §§ 1 (2) and 2 of Federal Law no. 54-FZ and involves further interaction of the organizer of the public event with the public authority in order to determine the venue, time, form and other conditions for holding the public event. However, V.V. Barmin ignored such interaction.

140. Pursuant to Article 5 § 5 of Federal Law no. 54-FZ, a public event organiser has no right to hold a public event if the notification of its holding was submitted outside the statutory time limit or if the change of the venue and (or) time of the event was not authorised by the executive authority of a constituent entity of the Russian Federation following its reasoned proposal.

141. Consequently, the lack of response of V.V. Barmin to the proposal sent by the Ministry of Public Safety of the Sverdlovsk Region was an obstacle to the implementation of the announced public event.

142. Despite the proposal of the Ministry to change the venue of the public event and the lack of response to this proposal from V.V. Barmin, on 7 October 2017 he together with other participants in the amount of 300 persons went to Labour sq. and started an unauthorized public event.

143. At the same time, in the venue of the unauthorized public event, a public event authorised by the Ministry was held in the form of a picket, organized by K.S. Streletsky.

144. Before the start of the unauthorised picket the authorized employees of the Ministry ordered the organizer of the public event, V.V. Barmin, to terminate the public event with a time limit for fulfilling the order in accordance with Articles 16 and 17 of Federal Law no. 54-FZ.

145. Due to the fact that the organizer of the unauthorised picket did not comply with the requirements of the Ministry employees, continuing its holding

and creating an obstacle to the holding of the authorised public event, employees of the Ministry requested the participants of this public event to terminate the unauthorized public event with the establishment of additional time. The participants of the unauthorised picket also did not comply with the requirements of the Ministry employees about its termination and continued to actively participate in it.

146. Due to the failure by the organizer and participants of the picket to comply with the requirements of the Ministry employees to terminate the unauthorized public event, police officers took measures to stop illegal actions demanding the participants of the unauthorized public event to leave the place of committing the administrative offence.

147. S.Yu. Tiunov was among the participants of the unauthorized public event held with violation of the statutory procedure for organizing and holding a public event.

148. The applicant, being a participant of the unauthorized public event, was aware of the unlawfulness of his actions, as he had been repeatedly warned by the Ministry employees and the police officers about the termination of participation in the unauthorised public event. Participation of S.Yu. Tiunov in the unauthorized public event was expressed in his presence at the venue of the unauthorized public event, despite the warnings from the Ministry employees and the police officers, and the use of visual aids in the form of posters and in shouting slogans.

149. Thus, S.Yu. Tiunov, having violated the procedure for holding a public event established by law, committed an administrative offence stipulated in Article 20.2 § 5 of the CAO RF. The guilt of the applicant in the commission of the specified offence was established by the final decision of the Leninskiy District Court of Yekaterinburg of 18 October 2017.

150. Meanwhile, as found by the Leninskiy District Court of Yekaterinburg, the organizer of the picket V.V. Barmin was properly and in due time, in advance, notified by the Ministry of Public Safety of the Sverdlovsk Region that the disputed public event was not authorised in the manner prescribed by law.

151. Therefore, the applicant was held administratively liable for failure to comply with statutory procedure for holding a public event (whereas this procedure was subject to mandatory compliance in order to ensure the peaceful and safe nature of holding events) as, together with other people, he had taken part in a public event unauthorised by the Ministry of Public Safety of the Sverdlovsk Region.

152. The arguments raised by the applicant in his application to the European Court regarding his prosecution for the legitimate expression of his opinion are based on his disagreement with the assessment of the evidence examined by the judges and are aimed at their re-assessment. Meanwhile, the assessment of evidence provided in a particular case is within the competence of the judge considering the case. There are no grounds to believe that the domestic courts acted in an arbitrary or unreasonable way in assessing evidence, establishing facts or interpreting domestic law.

153. In view of the foregoing, the Government of the Russian Federation suggest that there was no violation of the applicant's rights guaranteed by Articles 10 and 11 of the Convention.

On the absence of violation of S.Yu. Tiunov's rights, provided for by Article 6 § 1 of the Convention, in the present case

154. The applicant's argument on an unfair trial in the administrative offence case against him because of the fact that the prosecutor did not participate in the trials when he was held administratively liable for the administrative offences, and therefore the court accomplished the prosecution function, is inconsistent.

155. Compliance with the adversarial principle in administrative offence proceedings is a fundamental guarantee of the right to defence. This principle is expressed in the fact that the parties and other stakeholders actively collect and present evidence in the case to a court, and the court in such case does not perform the functions of the parties. It is the adversarial form of proceedings that makes it possible to distinguish between the court's function to settle a case and the parties' functions to prove relevant circumstances, as well as ensures their activity in proving the circumstances, essential for making the lawful

decision, and serves as a form of guarantee of the right to defence for the person subject to administrative prosecution, by providing them with a set of legal powers to substantiate their position.

156. It should be noted that the current legislation on administrative offences contains mechanisms ensuring impartial examination of administrative cases.

157. The legal position of the Constitutional Court of the Russian Federation on the issue at stake is expressed by following arguments:

- when examining an administrative case, a judge shall take procedural actions related to examination of evidence submitted (in particular, a judge shall hear participants of the proceedings – Article 29.7 § 2) and shall thereby exercise the function of justice, but not the one of prosecution; the mere absence of an official who has drawn up the administrative offence report among participants of the proceedings in the case on administrative offence (Chapter 25) shall not mean imposing prosecuting function on the court: procedural actions aimed at collecting evidence shall be taken by officials (Articles 26.3, 26.5, 26.9, Chapter 27 of the CAO RF, etc.); evidence collected and submitted by such persons, along with the evidence submitted by participants of the proceedings entitled to do so, shall serve as grounds for the establishment of all the circumstances relevant to the proper resolution of the case by the court examining it (Articles 26.1 and 26.2 of the CAO RF) (rulings no. 1312-O of 24 June 2014, no. 2157-O of 25 September 2014, etc.);
- the judge who examines an appeal against a judgment in an administrative case in administrative proceedings shall be entitled not only to examine evidence submitted, but also to take the procedural actions aimed at verification of their admissibility, relevance and reliability; these actions shall be fully consistent with the constitutional adversarial principle of administrative proceedings (rulings no. 1086-O-O of 6 July 2010, no. 884-O of 29 May 2012);
- the provision of Article 26.9 of the CAO RF is aimed at the comprehensive, complete, objective and timely establishment of circumstances of each case; this provision provides an official in charge of the proceedings in any administrative offence with the right to entrust the execution of certain actions to an official of the respective territorial body; this regulation operates in conjunction and systemic unity with other provisions of this Code, determining the procedure for

carrying out adversarial proceedings in the administrative offences, and providing for, among all, necessary procedural actions when the case is examined by the judge (Chapter 29 of the CAO RF); therefore, the court order to the judge at the place of committing an administrative offence to interrogate, as witnesses, the officials who have drawn up records and other documents submitted as evidence, as well as the attesting witnesses who were present when the above documentation was drawn up, in order to verify the information contained in the documents, does not represent searching and collecting new evidence and cannot confirm the performance of improper function of prosecution by the judge examining the case; however the challenged provision does not impede the judge, who executes the court order, to inform the person who has committed an administrative offence and his/her lawyer, in order to ensure the adversarial proceedings in accordance with the rules of Articles 25.1, 25.5 and Chapter 29 of the CAO RF, of the place and time of execution of the court order, and does not exclude, when expressing the respective will, their participation when taking necessary procedural actions (rulings no. 1817-O of 18 September 2014 and no. 763-O of 23 April 2015).

158. The provisions of the CAO RF provide for the possibility to develop the above legal position of the Constitutional Court of the Russian Federation.

159. For instance, a judge holding a person administratively liable is bound not only by the tasks of administrative proceedings (Article 24.1 of the CAO RF), but also by the principles of the legislation on administrative offences. In particular, the judge shall take into account the principle of the presumption of innocence by virtue of which unresolvable doubts in respect of the guilt of a person held administratively liable shall be interpreted in favour of such person (Article 1.5 § 4 of the CAO RF). Following this principle suggests the impossibility of the judge to collect evidence on his or her own initiative, i.e. to obtain other evidence, except for those submitted by the individual against whom the proceedings in the administrative offence case are carried out (Article 25.1 § 1 of the CAO RF), by the victim (Article 25.2 § 2 of the CAO RF), by the defence counsel and by the representative (Article 25.5 § 5 of the CAO RF), by the legal representatives (Articles 25.3 and 25.4 of the CAO RF)

or by the prosecutor (Article 25.11 § 1 (2) of the CAO RF), i.e. by the duly authorized persons participating in the proceedings in administrative offences.

160. Pursuant to Article 29.1 § 3 of the CAO RF, while preparing the administrative offence case for examination, the judge shall establish whether an administrative offence record and other reports provided for in this Code were drawn up correctly, as well as whether other materials of the case were prepared properly. If the administrative offence record and other materials were drawn up (executed) by unauthorized persons, the record was incorrectly drawn up, and other case files were improperly prepared, as well as in case of incomplete submission of materials, which cannot be supplemented during examination of the case, the judge shall return the administrative offence record and other materials of the case to the body, the official who (that) drew up such record. These persons shall make amendments and additions to the case file and then return it to the judge (Articles 28.8 § 3 and 29.4 § 1 (4) of the CAO RF). These legal provisions are aimed at excluding the possibility to perform of improper function by the court through preliminary taking of actions eliminating occurrence of the situation in which the judge, acting for the purposes of comprehensive and complete resolving of the case, would be forced to independently remove doubts in respect of the guilt of the person held administratively responsible.

161. Consequently, the broad powers of a judge, which are conditioned by the inherent features of the current model of administrative offence proceedings, are aimed at the need to provide a judge with adequate opportunities for the full exercise of the function of justice entrusted to him/her.

162. Furthermore, the fulfilment of tasks of the prosecuting side in administrative offence proceedings in light of the nature of administratively-punishable acts and the simplicity of *corpus delicti* of most administrative offences does not imply an urgent need for mandatory participation in the oral hearing of a representative of the prosecuting side. The presence (absence) of the prosecuting side as a party to the proceedings cannot be regarded as narrowing (expansion) of court's powers. However, any option of judicial procedure chosen by the legislator corresponding to the basic principles of legal proceedings in any event implies the court being provided with such legal

possibilities that would allow it to fully exercise the functions assigned to it. Therefore, the performance, on the initiative of a judge in a procedure that does not provide for the obligatory participation of the prosecution, of actions that are not typical for the traditional judicial model but are aimed at the implementation of generally recognised judicial powers, cannot cast doubt on the impartiality of justice.

163. In view of the above, the Constitutional Court of the Russian Federation has reiterated that a judge is not only entitled to examine reports and other documents submitted as evidence but also, in order to verify the information contained in them, to summon to a court hearing persons who may know the necessary circumstances, which cannot be regarded as the exercise by a court of an improper function and is consistent with the constitutional principle of adversarial administrative proceedings (Rulings no. 1086-O-O of 6 July 2010, no. 884-O of 29 May 2012, no. 1817-O of 18 September 2014, etc.).

164. Article 25.11 § 2 of the CAO RF provides that a prosecutor shall be informed of the place and date of the hearing of an administrative case related to the offence committed by a minor, and of an administrative offence case instituted by a prosecutor.

165. The applicant's case on administrative offence envisaged by Article 20.2 § 5 of the CAO RF does not fall within the above categories of cases, and its consideration in the absence of the prosecutor does not, therefore, constitute a violation of the procedural requirements of the CAO RF, including that of the principles of equality of arms and adversarial proceedings.

166. Within the meaning of the CAO RF, the prosecutor shall be entitled, but not obliged, to take part in the examination of an administrative offence case, and his failure to appear, even in those categories of cases which are indicated in Article 25.11 § 2 of the CAO RF, does not impede their examination on the merits. At that, the law does not impose upon the prosecutor or other officials the function of support of the prosecution during examination of administrative offence cases, including those cases for which the administrative punishment is similar to criminal punishment in terms of its gravity and consequences.

167. However, such legal regulation does not evidence that the court has been entrusted with an improper function - prosecution.

168. In addition, according to the procedures for judicial examination of cases on administrative offences, these are the officials of the administrative authorities in charge of investigating such cases and applying, where necessary, coercive measures to the persons subject to the proceedings on administrative offences, who collect incriminating evidence and materials and submit it to the court.

169. Meanwhile, the physical absence of the participant, supporting the prosecution in court, does not deprive the proceedings of its adversarial nature, does not exclude the court's impartiality and objectivity in the consideration of cases, as the burden of maintaining such charges in court in such case lies on the official who has collected the evidence and brought the charges at the pre-trial stages.

170. As follows from the case file against the applicant, the court did not assume the function of maintaining the charges, remained impartial towards all the participants in the proceedings, performed its function of resolving the case based on the evidence submitted by the prosecution and the defence.

171. The produced evidence was assessed by the court at its own discretion, based on the full, comprehensive and objective examination of the totality of facts in accordance with Article 26.11 of the CAO RF. The findings on which the decisions and judgments in the case are based are properly reasoned.

172. The Government of the Russian Federation suppose that the above findings are consistent with the Court's case-law (see *Weh and Weh v. Austria*[22], *Blum v. Austria*[23], *Thorgeir Thorgeirson v. Iceland*[24], *Agnes Mort v. the United Kingdom*[25]).

173. Regarding participation in the case on bringing S.Yu. Tiunov to administrative liability under Article 20.2 § 5 of the CAO RF of the person who drew up the administrative offence report, as well as the presence of a bailiff at the hearing of the court of appeal when considering the case on the administrative offence under Article 20.25 of the CAO RF in respect of the applicant, the Government of the Russian Federation note the following.

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[22] *Weh and Weh v. Austria* (dec.), no. 38544/97, decision of 4 July 2002.
[23] *Blum v. Austria*, judgment of 22 February 1996, 1996-11, p. 359
[24] *Thorgeir Thorgeirson v. Iceland*, no. 13778/88, judgment of 25 July 1992, Series A no. 239.
[25] *Agnes Mort v. the United Kingdom* (dec.), no. 44564/98, decision of 6 September 2001.

174. The Code of Administrative Offences of the Russian Federation does not exclude, if necessary to clarify the issues arisen, the possibility to call to a court session to consider the case the official who drew up the administrative offence report.

175. At the court hearing in the case of the applicant, explanations of the official who drew up the administrative offence report were obtained, written evidence and video from the place of commission the offence were examined.

176. When considering this case in the courts of first and second instances, the administrative offence report was assessed as one of the evidence confirming, in conjunction with other evidence collected in the case, the guilt of S.Yu. Tiunov in participating in the unauthorised public event. The courts of both instances on their own initiative did not call for evidence, all the additional evidence presented was examined at the motion of the defence. During consideration of the case, the factual circumstances of the offence were not challenged by S.Yu. Tiunov, the arguments of the defence were consigned to disagreeing with the qualification of the public event as unauthorised.

177. The official who drew up the administrative offence report participated in consideration of the case on the administrative offence stipulated in Article 20.2 § 5 of the CAO RF. Thus, the applicant was not deprived of the opportunity to hear the explanations of the official and ask him questions.

178. The official who drew up the administrative offence report on the administrative offence stipulated by Article 20.2 § 5 of the above Code did not participate in consideration of the case on the administrative offence stipulated by Article 20.25 § 4 of the CAO RF.

179. Meanwhile, S.Yu. Tiunov did not file a motion to keep a record of the court session, in accordance with the provisions of the Code of Administrative Offences of the Russian Federation taking such record is not obligatory when considering the case by a judge.

180. When considering the appeal against the judgment on the imposition of administrative penalty the judge of the Regional Court upon a motion of S.Yu. Tiunov examined the written evidence attached to the case. Furthermore, at the hearing the official of the Ministry of Public Safety of the Sverdlovsk

Region, who was directly present at the venue of the unauthorised public event, was questioned as a witness, and S.Yu. Tiunov asked him questions.

181. Consequently, the applicant had the opportunity to hear the statements of the prosecution, as well as to represent his interests in the national courts, in particular to submit additional evidence. The absence of the prosecution and the presence of the person who drew up the administrative offence report at the hearing in the applicant's case did not violate the principle of impartiality and independence of the court. Thus, S.Yu. Tiunov's right to a fair trial guaranteed by Article 6 § 1 of the Convention was not violated in the present case.

IV. Conclusion

In view of the foregoing, the Government of the Russian Federation

SUBMIT:

that application of S.Yu. Tiunov on the alleged violation of his rights guaranteed by Articles 4, 5, 6 § 1, 7, 10 and 11 of the Convention is inadmissible within the meaning of Article 35 § 1, in view of non-exhaustion of effective domestic remedies before applying to the international court;

that application of S.Yu. Tiunov on the alleged violation of his rights guaranteed by Articles 4, 5, 6 § 1, 7, 10 and 11 of the Convention is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

ASK:

to declare the application of S.Yu. Tiunov on the alleged violation of his rights guaranteed by Articles 4, 5, 6 § 1, 7, 10 and 11 of the Convention inadmissible in view of non-exhaustion of effective domestic remedies before applying to the international court;

to dismiss the application of S.Yu. Tiunov on the alleged violation of his rights guaranteed by Articles 4, 5, 6 § 1, 7, 10 and 11 of the Convention in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

Attachment: on pages

Representative of the Russian Federation at the European Court of Human Rights - deputy Minister of Justice of the Russian Federation M.L. Galperin