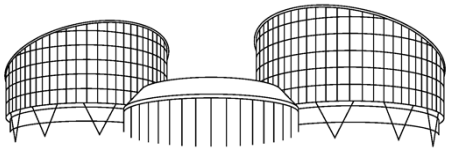

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF OLGA KUDRINA v. RUSSIA

(Application no. 34313/06)

JUDGMENT

Art 6 § 1 (criminal) and Art 6 § 3 (d) • Fair hearing • Refusal to summon to trial witnesses requested by defence, despite the relevance of their testimony, undermined overall fairness of the proceedings
Art 10 • Freedom of expression • Sentence imposed on the applicant exceptionally severe and disproportionate to legitimate aim of protecting public order • Interference not necessary in a democratic society

STRASBOURG

6 April 2021

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

In the case of Olga Kudrina v. Russia,

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

Paul Lemmens, *President,*
Georgios A. Serghides,
Dmitry Dedov,
Georges Ravarani,
Darian Pavli,
Anja Seibert-Fohr,
Peeter Roosma, *judges,*
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 34313/06) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Ms Olga Aleksandrovna Kudrina ("the applicant"), on 25 July 2006;

the decision to give notice to the Russian Government ("the Government") of the complaints concerning inability to examine witnesses on the applicant's behalf and interference with the applicant's right to freedom of expression;

the parties' observations;

Having deliberated in private on 16 March 2021,

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

INTRODUCTION

1. The main issues in the present case are whether the domestic courts' refusal to summon witnesses on the applicant's behalf breached her rights under Article 6 §§ 1 and 3 (d) of the Convention and whether the applicant's prosecution and conviction resulting from her participation in an anti-government protest action breached her rights under Article 10 of the Convention.

THE FACTS

2. The applicant was born in 1985 and lived in Moscow before her conviction. She was represented by Mr D.V. Agranovskiy, a lawyer practising in Moscow.

3. The Government were represented initially by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

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

I. EVENTS IN ISSUE

A. Protest at the Ministry of Health and Social Development

5. On 2 August 2004 a group of about thirty members of the National Bolshevik Party ("the NBP") gathered in front of the Ministry of Health and Social Development ("the Ministry") to protest against the introduction of a law transforming social benefits in kind (including free use of public transport, significant discounts on residential utilities, free local telephone service, free medication, free annual treatment at sanatoriums and health resorts, free prosthetic devices and wheelchairs for people with disabilities, guaranteed employment for people with disabilities, and a variety of other services) received by pensioners, war veterans, people with disabilities, victims of Soviet-era political repression, survivors of the Second World War siege of Leningrad, and Chernobyl clean-up workers (approximately 27 percent of the population) into monetary compensation ranging from 300 to 1,550 Russian roubles (RUB) a month (approximately 8 to 45 euros (EUR) at the 2004 exchange rate). The draft law had been prepared by the Ministry and was at that time being debated in the Russian Parliament.

6. The NBP members were dressed in emergency-services uniforms. They pushed the security guard out of their way and forced entry into the building of the Ministry, ran up to the second and third floors and occupied four offices, telling the employees who were working in them to leave because "emergency services training exercises" were taking place. They then nailed the doors shut from the inside using nail guns and blocked them with office furniture. They subsequently waved NBP flags out of the office windows, threw out leaflets and chanted slogans calling for the resignation of the Minister for Health at that time. They also set off firecrackers and threw a portrait of the President of Russia out of the window. The intruders stayed in the office for about an hour until the police broke through the doors and arrested them.

7. The applicant denied having taken part in that protest.

8. On 20 December 2004 the Tverskoy District Court ("the District Court") found seven participants in the protest (B., G., G.-M., K., Kl., T. and Ye.) guilty of a gross breach of public order committed by an organised group and involving the use of weapons, and intentional destruction and degradation of others' property in public places, offences under Article 213 § 2 and Article 167 § 2 of the Criminal Code respectively. Each of them was sentenced to five years' imprisonment. On 29 March 2005 the Moscow City Court upheld the conviction on appeal by the defendants. It did, however, commute the sentences of four of them to three years' imprisonment and the sentences of the three others to two years and six months' imprisonment.

B. Protest at the Rossiya Hotel in Moscow

9. On 4 May 2005 the applicant and L. climbed out of the window of their room at the Rossiya Hotel using rock-climbing equipment and hung an 11-metre poster saying "Go away Putin" on the outside wall of the hotel. They then started to wave around signal flares and throw leaflets, which contained the following demands:

> "1. To dissolve the State Duma and to organise free elections with the participation of all political forces without exception;
>
> 2. To investigate impartially the resonant crimes and tragic events of recent years: fraudulent electoral practices, assaults on and murders of the activists of opposition parties, explosions in housing blocks in Moscow and Volgodonsk and attempted explosions in Ryazan, the Nord-Ost and Beslan tragedies, repeated kidnappings in Ingushetia and ill-treatment of citizens in Bashkiria;
>
> 3. To free political prisoners and to declare a wide-ranging amnesty for all prisoners;
>
> 4. To abolish the detrimental Law no. 122 transforming social benefits in kind into monetary compensation;
>
> 5. To stop political censorship of television."

10. About forty minutes later, the police arrested the applicant and L., who offered no resistance.

II. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

11. On 18 May 2005 the applicant and L. were charged with a gross breach of public order committed by an organised group and involving the use of weapons, and with intentional destruction and degradation of others' property in public places, offences under Article 213 § 2 and Article 167 § 2 of the Criminal Code respectively, in connection with their protest at the Rossiya Hotel.

12. On 31 May 2005 the applicant was charged with the same offences in connection with the protest at the Ministry on 2 August 2004.

13. On an unspecified date the case was submitted for trial before the District Court.

14. The court read out the pre-trial statements of a security guard and V., another employee at the Ministry. According to the security guard's statement, he had been frightened when the protesters entered the building because he had thought that an armed siege of the building was taking place. V. described the protest and stated that he had demanded that the protesters leave the building. Six Ministry employees and police officers who had arrived at the scene were also questioned during the trial and described the protest and the participants' arrest. Two employees testified that the protesters had not been aggressive and that they had not been frightened by them or felt any danger. One employee reported having been frightened by

the sounds of shooting. Neither the employees nor police officers reported having been injured or having seen the applicant among the protesters at the Ministry. The representative of the Ministry stated that the damage caused to the Ministry's property had been compensated in full by the participants in the protest.

15. A pre-trial statement by G.-M., one of the participants in the protest at the Ministry, was read out at the prosecutor's request. G.-M. had stated in it that he had participated in the protest at the Ministry with the applicant. However, when questioned at the trial, G.-M. retracted his pre-trial statement, claiming that it had been made under duress from the officer of the Federal Security Service (FSB). He stated that the applicant had not taken part in the protest and that his pre-trial statement had been falsified and he had been forced to sign it.

16. The trial court also examined a police report dated 2 August 2004, according to which the applicant had been arrested on that day in connection with her participation in a protest at the Ministry. The police officer who was called to the Ministry testified that he had seen young women among the protesters at the Ministry and that all the protesters had been taken to the police station. According to his pre-trial statement read out at the hearing, the identities of the protesters had been established on the basis of their passports. The District Court also included, *inter alia*, the material of the administrative case against the applicant in connection with the protest action of 2 August 2004 and a copy of its judgment of 20 December 2004 as evidence in the applicant's case (see paragraph 8 above).

17. The applicant's lawyer requested the District Court to exclude G.-M.'s pre-trial statement as inadmissible evidence. He also submitted that somebody else had used the applicant's passport on 2 August 2004. The District Court found his arguments unsubstantiated and did not take them into consideration.

18. At the hearing of 14 April 2006, the applicant's lawyer submitted a written request to the District Court that stated as follows:

> "... Request to summon and examine witnesses
>
> In the bill of indictment the prosecution identified, as witnesses for the prosecution, the following persons who were eyewitnesses to the events in question: G., ... K., ... B., ... Ye., ... T., ... and Kl. [all convicted on 20 December 2004 – see paragraph 8 above].
>
> The prosecution decided not to summon these witnesses.
>
> Article 6 § 3 (d) of the European Convention provides that everyone charged with a criminal offence has a right to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.
>
> Considering that all of the above persons were eyewitnesses to and participants of the events [under consideration], I request the court ... to secure the attendance and examination of G., K., B., Ye., T. and Kl. in court.

14 April 2006 [lawyer's signature]"

19. The trial transcript of 14 April 2006 stated as follows in respect of the lawyer's request:

"...

Prosecutor D.: I ask [the court] to refuse this request. If the defence considers it necessary to examine these witnesses, it should secure their attendance of its own motion. It is up to the prosecution what evidence to present.

Prosecutor Dr.: I would like to point out that the prosecution did not refuse to examine these witnesses but considered that sufficient evidence had already been presented to the court.

The District Court ruled: the request is refused. Evidence is to be presented by the parties, it is not for the prosecution to secure the attendance of these witnesses. Moreover, the court cannot refuse a request to examine a witness who attends the hearing at the parties' initiative.

..."

20. The relevant part of the trial transcript of 3 May 2006 stated as follows:

"... witnesses T., Kl., K., B., ... Ye. did not appear (for reasons unknown to the court).

The presiding judge enquired whether the participants of the hearing had any requests. No requests were submitted ..."

21. The District Court read out the pre-trial statements of three employees of the Rossiya Hotel. Two of them stated that they had seen the protesters from below and been afraid that they might fall and endanger others. The head of the hotel's fire-safety department was questioned in court. He reported that he had been alarmed by the use of signal flares by the protesters and testified that he had consulted with the rescue services about which lift to use. Four other employees of the Rossiya Hotel were also questioned and described the events of 4 May 2005. None of them reported having been injured. One of them stated that the damage to the hotel's property had been compensated in full by the defendants.

22. On 10 May 2006 the District Court found the applicant and L. guilty of a gross breach of public order committed by an organised group and involving the use of weapons, and intentional destruction and degradation of others' property in public places. It found it established on the basis of G.-M.'s statements at the pre-trial stage that the applicant had participated in the protest action at the Ministry. The District Court held that G.-M.'s statements had been given and recorded in accordance with the procedure prescribed by law and were therefore admissible in evidence. It further held as follows, in so far as relevant:

"... [The defendants] made a poster with a slogan offending the Head of State ...

[Having climbed out of the hotel room window using rock-climbing equipment, the defendants] threw leaflets containing anti-government slogans on [the persons below and] shouted out anti-government slogans. Intentionally breaching the applicable fire-safety regulations, [the defendants] lit red signal flares in close proximity to flammable objects, such as their poster and the curtains and soft furnishings in the hotel room. Subsequently, they started waving the signal flares, which had flames of 35-40 cm in length, from side to side, thus endangering hotel guests who were staying on the 11th and 10th floors.

... The defendants' guilt in committing the offence of disorderly acts has been proved during the trial. [They] ... seriously breached public order and significantly harmed the public interest by destabilising for an extended period of time the day-to-day work of the Ministry of Health and Social Development of the Russian Federation and of the Rossiya Hotel. They showed a manifest lack of respect for society and State authority by chanting anti-government slogans, forcing employees of the Ministry out of their offices and by hanging a poster with a slogan offensive to the Head of State on the wall of the Rossiya Hotel. They used nail guns in locked offices in disregard of the possibility that other persons might perceive this as a danger to their physical safety, brandished nail guns, threw firecrackers out of the windows and waved signal flares near flammable objects ... causing a risk of physical harm to the persons and cars in the street.

The defendants committed criminal acts as an organised criminal group which was highly structured, consisting of members and supporters of an unofficial National Bolshevik movement, who gathered together to commit these crimes having armed themselves with nail guns ... [and having] planned to a high degree and coordinated their actions.

The court finds it established that the defendants' actions caused significant damage. They destabilised for an extended period of time the normal work of [the Ministry], as well as the normal functioning of the Rossiya Hotel on the eve of the celebration of the sixtieth anniversary of the victory in the Great Patriotic War of 1941 to 1945.

[L.'s] argument that the furniture in the Rossiya Hotel's room was damaged by the police ... is unconvincing and has not been objectively substantiated.

The defence's argument that the defendants did not use any weapons is unconvincing. It has been established that in order to commit the criminal offences, the defendants used nail guns, firecrackers and signal flares ... Objects used to damage property or to make signals may be characterised as weapons."

23. The District Court found that there were mitigating circumstances in that the applicant and L. had positive references, were first-time offenders and that they had compensated the hotel in full for the damage. The court sentenced the applicant to three years and six months' imprisonment.

24. The applicant did not attend the hearing at which the conviction and sentence were pronounced, having fled the country to Ukraine, where she requested political asylum.

25. Counsel for the applicant appealed to the Moscow City Court against the conviction. He submitted, in particular, that the applicant's participation in the protest at the Ministry had not been proved. None of the witnesses questioned at the trial had testified to having seen her at the Ministry. G.-M. had retracted his pre-trial statements and stated that the applicant had not

participated in the protest action. In such circumstances it had been important to question the other eyewitnesses to the protest (B., G., K., Kl., T. and Ye.). The defence's request to have those witnesses questioned had, however, been rejected.

26. Counsel further complained that the applicant had been convicted for taking part in a peaceful protest against the abolition of social benefits in Russia. She had not shown a lack of respect for society. Nor had she used or threatened violence. The nail guns, firecrackers and signal flares could not be regarded as weapons, as they had been used to nail the doors shut and to attract the attention of the public rather than to injure or threaten people. The Ministry's property had been damaged by the police, not the applicant. In any event, the damage had not been significant. Finally, counsel complained about the severity of the penalty.

27. On 19 June 2006 the Moscow City Court upheld the conviction on appeal, finding that it had been lawful, well-reasoned and justified. In particular, it held that the evidence against the applicant had been duly examined and accepted by the District Court, that it had found no serious procedural breaches that would have justified vacating the conviction, and that there had been no grounds for mitigating the applicant's sentence.

28. In January 2008 the applicant was granted refugee status in Ukraine.

RELEVANT LEGAL FRAMEWORK

29. Article 213 of the Criminal Code of the Russian Federation, as in force at the material time, provided as follows:

> "1. Hooliganism, that is, a gross breach of public order manifested in clear contempt of society and committed with the use of weapons or articles used as weapons ...
>
> 2. The same offence committed by a group of persons by previous agreement, or by an organised group, or in connection with resistance to a representative of authority or to any other person who fulfils the duty of protecting public order or suppressing a breach of public order shall be punishable by deprivation of liberty for a term of up to seven years."

30. Article 167 as in force at the material time provided as follows:

> "1. Deliberate destruction of property or infliction of damage on property if these actions caused significant damage ...
>
> 2. The same acts committed in the course of breaching public order, by way of arson, explosion or in any other dangerous manner ... shall be punishable by compulsory labour for a term of up to five years or by deprivation of liberty for the same term."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (d) OF THE CONVENTION

31. The applicant complained that the District Court had refused to summon witnesses who could have testified that she had not taken part in the protest on 2 August 2004 at the Ministry of Health and Social Development. She relied on Article 6 §§ 1 and 3 (d) of the Convention, which reads as follows:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
>
> ..."

A. Admissibility

32. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The applicant's submissions

33. The applicant insisted that she had not taken part in the protest of 2 August 2004. She submitted that B., G., K., Kl., T. and Ye. could have confirmed that she had not been at the protest. She further submitted that she had not been able to secure the attendance of those witnesses because they had already been convicted of participating in the protest of 2 August 2004 and had been imprisoned pursuant to the court's judgment. Therefore, the defence, unlike the District Court, did not have any enforcement powers to secure the attendance of the witnesses and the District Court had not granted the applicant's request to summon them. In

respect of G.-M.'s testimony, the applicant submitted that he had retracted his pre-trial statement as having been given under duress and that he had testified in court that the applicant had in fact not participated in the protest on 2 August 2004. Lastly, the applicant submitted that other witnesses who had been examined by the District Court had also testified that they had not seen her in the Ministry building on 2 August 2004.

2. The Government's submissions

34. The Government submitted that the applicant did not have an absolute right to summon witnesses and that it was usually for the national courts to decide whether it was necessary or advisable to call a witness. They further submitted that on 14 April 2006 the District Court had refused the applicant's request to summon B., G., K., Kl., T. and Ye. The District Court had explained that the prosecutor had initially identified those witnesses as persons whose attendance was required, but had then not insisted on their attending, having determined that sufficient evidence had already been presented to the court. The ruling of the District Court had been well reasoned; the applicant had had the right to request the attendance of the witnesses again; however, she had not done so. According to the Government, the applicant's participation in the protest on 2 August 2004 had been confirmed by the statements of witnesses given during the pre-trial investigation and in court. Furthermore, the police record of the applicant's arrest on 2 August 2004, her own statements made during the administrative proceedings concerning the protest, and G.-M.'s pre-trial statements confirmed that the applicant had taken part in the protest at the Ministry on 2 August 2004. Lastly, the Government submitted that the proceedings in the applicant's case had been adversarial and had complied with the requirement of equality of arms, since the District Court had duly examined all the requests made by the parties and issued rulings on each of them.

3. The Court's assessment

(a) General principles

35. The Court notes from the material in the case file that B., G., K., Kl., T. and Ye. were first identified as witnesses by the prosecution in the appendix to the bill of indictment submitted to the District Court. However, the prosecutor decided not to summon those witnesses and the applicant, who wished to have them summoned, was unable to rely on their testimony in order to support her claim that she had not been present at the protest on 2 August 2004 (see paragraphs 18-19 above). Therefore, B., G., K., Kl., T. and Ye. are to be regarded as "witnesses on behalf" of the applicant within the meaning of Article 6 § 3 (d) of the Convention.

36. The Court reiterates that under Article 6 of the Convention, the admissibility of evidence is primarily a matter for regulation by national law

and the Court's task is not to give a ruling as to whether statements of witnesses were properly admitted as evidence, but rather to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair. Article 6 § 3 (d) of the Convention does not require the attendance and examination of every witness on the accused's behalf; the essential aim of that provision, as indicated by the words "under the same conditions" is to ensure a full "equality of arms" in the matter (see *Murtazaliyeva v. Russia* [GC], no. 36658/05, § 139, 18 December 2018, with further references).

37. The relevant general principles concerning the examination of defence witnesses have been summarised and clarified recently by the Court in its judgment in *Murtazaliyeva* (cited above). In particular, when examining a complaint that the refusal to summon a witness for the defence irreversibly undermined the fairness of the proceedings against an applicant, the Court has to establish

(i) whether the request to examine a witness was sufficiently reasoned and relevant to the subject matter of the accusation;

(ii) whether the domestic courts considered the relevance of that testimony and provided sufficient reasons for their decision not to examine a witness at trial; and

(iii) whether the domestic courts' decision not to examine a witness undermined the overall fairness of the proceedings (ibid., §§ 139-59).

(b) Application of these principles to the present case

(i) Whether the request to examine witnesses was sufficiently reasoned and relevant to the subject matter of the accusation

38. As the transcript of the trial indicates, the applicant's lawyer requested the District Court to summon B., G., K., Kl., T. and Ye. because they were eyewitnesses to the protest action on 2 August 2004 at the Ministry. Relying on Article 6 §§ 1 and 3 (d) of the Convention, he stated that everyone had the right to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against him (see paragraphs 18-19 above). The Court notes that in her request to summon witnesses the applicant did not state, either directly or indirectly, how, in her opinion, the testimony of those six witnesses would have been relevant to the examination of the case and how it could have influenced the outcome of the proceedings against her. For example, she did not specify that they could have testified that she had not taken part in the protest action on 2 August 2004, thereby rebutting the testimony of prosecution witnesses in that respect. Nor did she state that she could have been acquitted in relation to the protest on the basis of their testimony or that their testimony could have strengthened her defence (see *Murtazaliyeva*, cited above, § 160) or that she did not have the power, unlike the domestic court, to secure the

attendance of witnesses who had already been convicted and imprisoned. Furthermore, the content of the applicant's statement of appeal was similar to her request to the District Court and did not contain any specific reasons as to why the attendance and examination of those witnesses had been necessary in her case.

39. Notwithstanding the above, the Court considers that the relevance of the testimony of the six witnesses was apparent in the applicant's case, despite the scant reasoning given by the defence (see *Murtazaliyeva*, cited above, § 161). In particular, the six witnesses in question directly took part in the protest action in relation to which the applicant was criminally charged, and in which she consistently denied having participated. G.-M., who also participated in the same protest action, retracted his pre-trial statement and testified at trial that he had not seen the applicant on 2 August 2004 during the protest action. He testified that he had signed his pre-trial statement under duress and that it had been falsified. None of the other witnesses who were examined in court testified that the applicant had taken part in the protest action. On the other hand, as the Government pointed out, the District Court also relied on the record of the applicant's arrest on 2 August 2004 and self-incriminating statements she had allegedly made during the administrative proceedings concerning the protest (see paragraph 34 above), which, in the Government's opinion, proved her participation in the protest action. Therefore, in the Court's opinion, given the contradictory accounts and despite the applicant's insufficiently reasoned request, it must have become apparent to the District Court that clarification as to whether or not she had participated in the protest action was required by at least some of the participants in the events of 2 August 2004 at the Ministry, that their attendance and examination were necessary in those circumstances, and that their testimony would have been relevant for the subject matter of the accusation.

(ii) Whether the domestic courts considered the relevance of that testimony and provided sufficient reasons for their decision not to examine witnesses at trial

40. The Court observes from the transcript of the trial that when the District Court refused the applicant's request to summon the witnesses, it limited its reasoning to describing the position of the prosecutor on the matter and held that "the court cannot refuse a request to examine a witness who attends the hearing at the parties' initiative". The District Court did not reflect in substance on the relevance of the testimony of eyewitnesses whose attendance had been requested by the defence in the applicant's case. Furthermore, the District Court that examined the applicant's case was the same court that on 20 December 2004 had convicted and sentenced those six persons to terms of imprisonment. The details of that case could not have been unknown to the District Court since it relied on its own judgment

of 20 December 2004 in the proceedings against the applicant and admitted it in evidence (see paragraph 16 above). Therefore, the District Court must have been aware that the applicant could not secure, through her own efforts, the attendance of witnesses who were in prison at the time. However, the District Court did not elaborate on this matter further and did not advance any other reasons for having refused to summon B., G., K., Kl., T. and Ye.

(iii) Whether the domestic courts' decision not to examine witnesses undermined the overall fairness of the proceedings

41. The Court observes that the applicant's conviction in relation to her alleged participation in the protest action on 2 August 2004 was largely based on the record of her arrest on 2 August 2004 and G.-M.'s pre-trial testimony, which, however, he had retracted at trial, testifying that the applicant had in fact not participated in the protest action and that he had signed his statement under duress. The applicant refused to testify, and the applicant's lawyer consistently stated that she had not taken part in the protest action on 2 August 2004; no other witness testified to having seen her on that day. Her lawyer also claimed that her passport had been used on 2 August 2004 by somebody else. At the same time, the domestic court also relied on the statements that the applicant made during the administrative proceedings as proof of her alleged participation in the protest action of 2 August 2004 (see paragraph 34 above). In these circumstances, it appears that additional and relevant testimony of all or at least some of the six eye witnesses could have shed light on the events of 2 August 2004 and clarified the issue of her alleged participation in the protest action on that day. Having regard to these considerations, the Court concludes that the domestic courts' decision not to examine B., G., K., Kl., T. and Ye. at trial undermined the overall fairness of the proceedings against the applicant and that there has been a violation of the applicant's rights under Article 6 §§ 1 and 3 (d) of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

42. The applicant complained that her conviction and the sentence imposed on her in the criminal proceedings had violated her right to freedom of expression under Article 10 of the Convention, which reads as follows:

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

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

43. The Court notes that in respect of her conviction for participating in the two protest actions, the applicant complained under Article 10 alone. Notice of her complaint was given to the Government by the Court under Articles 10 and 11. The Court, being the master of characterisation to be given in law to the facts of the case, considers that the applicant's complaint is to be examined under Article 10 of the Convention only.

A. Admissibility

44. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

45. The applicant maintained that she had not taken part in the protest action on 2 August 2004 at the Ministry of Health and that her participation in the protest action on 4 May 2005 at the Rossiya Hotel had been peaceful and that she had wished to express her opinion and criticise the policies of the Government. The applicant also submitted that the punishment imposed on her had been highly disproportionate to the seriousness of her actions and had pursued the aim of restricting her freedom of expression and association.

46. The Government submitted that the protests in which the applicant had taken part had not been "peaceful" within the meaning of Articles 10 and 11. In particular, the Government stated that the applicant had violently and unlawfully trespassed into a government building, breached public order, endangered the well-being of other persons, and damaged and destroyed State and hotel property. Instead of expressing her opinions in one of the ways permitted by Russian law – such as at a public gathering, meeting, demonstration, march or picket – she had acted in a manner constituting a criminal offence. The prosecution of the applicant for that criminal offence had not therefore interfered with her freedom of expression and assembly. The applicant had not been prosecuted for her political opinions or demands. She had been prosecuted for participating in mass disorder involving the destruction of State property. Her criminal

prosecution and conviction had been prescribed by the domestic law and had pursued the legitimate aims of protecting public order, resuming the normal functioning of the Ministry and punishing those responsible. The sanction imposed on her had been proportionate to the aims pursued.

2. The Court's assessment

(a) The establishment of the facts

47. In the present case, the finding of a violation under Article 6 by the Court (see paragraph 41 above) has put into doubt the findings by the domestic courts in respect of the applicant's presence at the protest action at the Ministry of Health. In addition, there are no references in the domestic judgments to any assessment of the applicant's individual actions and her concrete role in the collective protest action, in particular regarding her involvement in the protest of 2 August 2004 at the Ministry of Health. In these circumstances, the Court will focus its examination on the applicant's prosecution in connection with her participation in the protest action at the Rossiya hotel.

(b) General principles

48. The relevant general principles concerning the application of Article 10 in the context of protest actions have been summarised by the Court in *Fáber v. Hungary*, no. 40721/08, §§ 32-3, 24 July 2012.

(c) Existence of interference

49. On 4 May 2005 the applicant and L. hung a poster on the exterior wall of the Rossiya Hotel calling for President Putin to resign. They also threw political leaflets out of the window onto people and journalists who had gathered below. She was arrested after conveying her political message to the general public and later convicted. The Court therefore considers that her arrest in connection with the protest action on 4 May 2005 and her criminal conviction in respect of that incident constituted interference with her right to freedom of expression.

(d) Justification for the interference

50. It is not contested that the interference was "prescribed by law", in particular by Article 213 § 2 and Article 167 of the Criminal Code.

51. Furthermore, the arrest of the applicant initially pursued the legitimate aim, for the purposes of Article 10 § 2, of preventing disorder and protecting the rights of others. In particular, the Court reiterates that notwithstanding the acknowledged importance of freedom of expression, Article 10 does not bestow any freedom of forum for the exercise of that right. In particular, that provision does not require the automatic creation of

rights of entry to private property or even, necessarily, to all publicly owned property, such as, for instance, government offices and ministries (see *Taranenko v. Russia*, no. 19554/05, § 78, 15 May 2014). Therefore, as the everyday activities of the Rossiya Hotel were disrupted as a result of the protest, the police were justified in interfering with the expression of political opinions by the applicant with a view to restoring and protecting public order.

52. The dispute in the present case, however, relates to whether the criminal prosecution and conviction of the applicant were "necessary in a democratic society", that is, whether the interference complained of corresponded to a "pressing social need", whether the reasons adduced by the national authorities to justify the interference were "relevant and sufficient", and whether the measure taken was "proportionate to the legitimate aims pursued".

53. The applicant was convicted of a gross breach of public order owing to her conduct, which was considered criminal under the applicable legal provisions. The Court notes that similarly to the considerations of the domestic court in the case of *Taranenko* (cited above, § 90), the applicant's conviction in the present case was also at least in part founded on the domestic court's condemnation of the political message conveyed by the applicant on 4 May 2005 ("made a poster with a slogan offending the Head of State", "threw [out of the windows] leaflets containing anti-government slogans", "shouting out anti-government slogans"). It appears that this assessment of the domestic court did not serve any purpose other than to criticise and to dissuade similar protest actions and assemblies, including informal groups of people. At the same time the Court notes that the District Court condemned the methods employed by them as being proscribed by the law (throwing firecrackers onto the street, attaching rock-climbing equipment in the hotel room in order to climb out of the 11th-floor room onto the exterior wall of the building, waving signal flares from side to side near flammable objects, and damaging the property of others). Seen from this angle, the prosecution and conviction of the applicant were justified by the need to attribute responsibility for committing such acts and to deter similar crime, without regard to the context in which they had been committed. Therefore, the Court accepts that the applicant's conviction was based on relevant and sufficient reasons.

54. That being so, the Court nevertheless considers that the sentence of three years and six months' imprisonment imposed on the applicant appears to be exceptionally severe and disproportionate to the aim of the punishment of such criminal conduct. In particular, the Court notes that the applicant's conduct, although involving a certain degree of disturbance and causing some damage to property, did not amount to violence or incite it; and no persons were injured during the protest in which the applicant was implicated (see, for similar reasoning, *Taranenko*, cited above, § 93; *Gül*

and Others v. Turkey, no. 4870/02, § 42, 8 June 2010; and contrast *Osmani and Others v. the former Yugoslav Republic of Macedonia* (dec.), no. 50841/99, ECHR 2001-X, where the police were attacked by a group of about 200 people, who were armed with metal sticks and threw stones, rocks, Molotov cocktails and teargas projectiles at them). Furthermore, the sanction imposed on the applicant appears to be exceptionally severe in light of the Court's case-law on the matter (see *Taranenko*, cited above, §§ 81-9, where the Court gave an overview of sanctions imposed by the domestic authorities in different countries for similar offences and found that those sanctions included: criminal fines, seven and twenty-eight days' imprisonment and a suspended sentence of three-months' detention). Finally, the Court considers that the rather severe sanction imposed in the present case without a doubt aimed to discourage others from participating in political debate and must have had a chilling effect on the applicant and other persons taking part in protest actions (see *Taranenko*, cited above, § 95).

55. The foregoing considerations are sufficient to enable the Court to conclude that the sentence imposed on the applicant was disproportionate to the legitimate aim of protecting public order and that the interference in question was not necessary in a democratic society.

56. There has accordingly been a violation of Article 10 of the Convention.

III. OTHER ALLEGED VIOLATION OF THE CONVENTION

57. Finally, the applicant complained under Article 6 § 1 of the Convention that the examination of her case by the District Court had not been impartial. The Court has examined the complaint submitted by the applicant and, having regard to all the material in its possession and in so far as it falls within the its competence, finds that it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. Article 41 of the Convention provides:

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

A. Damage

59. The applicant claimed 500,000 euros (EUR) in respect of non-pecuniary damage.

60. The Government submitted that the amount claimed by the applicant was excessive and that, in any case, no award should be made under this head since no violation of her rights had taken place.

61. The Court considers that an award of just satisfaction in the present case must be based on the fact that the applicant was convicted of participation in a protest action in violation of Articles 6 and 10 of the Convention. She undeniably sustained non-pecuniary damage as a result of the violation of her rights. However, the sum claimed by the applicant appears to be excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 9,800 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

62. The Court notes that the applicant did not submit a claim in respect of costs and expenses. It therefore makes no award under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning the refusal to summon witnesses on the applicant's behalf and the criminal conviction for participation in the protest action admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention;

3. *Holds* that there has been a violation of Article 10 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 9,800 (nine thousand eight hundred euros), plus any tax that may be chargeable, in respect

of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

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

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 April 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško	Paul Lemmens
Registrar	President