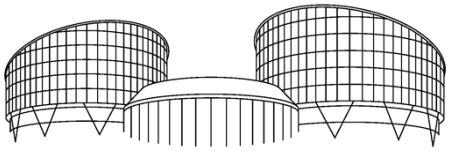

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF MILINOV v. RUSSIA

(Application no. 51165/08)

JUDGMENT

STRASBOURG

24 September 2019

This judgment is final but it may be subject to editorial revision.

In the case of Milinov v. Russia,

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

Paulo Pinto de Albuquerque, *President,*
Helen Keller,
María Elósegui, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 3 September 2019,

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

PROCEDURE

1. The case originated in an application (no. 51165/08) 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, Mr Askerbiy Shabanovich Milinov ("the applicant"), on 13 August 2008.

2. The applicant was represented by Mr V. Gaydash, a lawyer practising in Krasnodar. The Russian Government ("the Government") were represented 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.

3. The applicant alleged, in particular, violations of the right to freedom of expression and the right to liberty.

4. On 22 March 2013 notice of the application was given to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1941. At the material time he lived in Maykop, in the Republic of Adygeya.

A. Events of 26 September 2007

6. On the morning of 26 September 2007 a meeting (*митинг*) was organised in the main square in Maykop to celebrate the 450th anniversary of the peaceful unification of Adygeya with Russia.

7. At 10 a.m. the applicant entered the square holding a placard that read "Why were my magnificent, noble people exterminated and expelled?" (*«За что истребили и выгнали мой прекрасный, благородный народ?»*), to express his disagreement with the official interpretation of historic events (in his view, the unification with Russia had not been voluntary for the people of Adygeya). Almost immediately he was approached by a man in police uniform and a man in plain clothes. The latter introduced himself as an officer of the Federal Security Service ("the FSB") and demanded that the applicant leave the meeting. The applicant asked why such a demand was being made, and the FSB officer pulled the placard out of his hands and grabbed his right hand. In the meantime, the uniformed police officer had forced the applicant's left hand behind his back. The two officers then dragged the applicant to a police minivan parked nearby, where a larger group of police officers stood. The applicant felt pain in his right shoulder and screamed.

8. Once they had got close to the minivan the police officers took note of the details of the applicant's identity document. One of the officers, G., escorted the applicant to his parked car and ordered him to leave.

9. At about 3 p.m. the applicant arrived home and saw G. and another police officer, N., outside his house. G. demanded that the applicant get in the police car in order to go to the police station housing the Department of the Interior of the town of Maykop ("the police station") because the head of the police station wanted to have a "preventive conversation" (*«профилактическая беседа»*) with him. The applicant obeyed, as he feared that otherwise the police officers would use force. On the way to the police station, the police car made a stop at a medical analysis laboratory, where the applicant underwent an alcohol concentration test, which showed that he was not inebriated.

10. At 4 p.m. G. escorted the applicant into the police station, placed him in a room designated as a place where officers could study while they were on duty ("the study room") and told him to wait to be called for an interview with the head of the police station.

11. Having waited for about an hour, the applicant decided to leave the police station. He approached an officer on duty, Sh., and asked him why he was being detained without any record having been made. Sh. made a phone call to his superiors, informed the applicant that he had not received permission to release him, and told him to return to the study room. The applicant could not leave the police station without Sh.'s permission, because the latter had his identity document and the entry was guarded by an armed police officer.

12. After two more hours had passed the applicant again asked Sh. if he could leave. Sh. made another phone call and said that he had not received permission to release the applicant.

13. At some point the applicant's daughter arrived at the police station. She complained verbally that her father was being arbitrarily detained.

14. At 7.40 p.m. Sh. received permission from his superiors to let the applicant go. He returned the applicant's identity document to him and told the armed police officer to allow the applicant and his daughter to pass.

15. Later that day the applicant visited a traumatology centre, where a duty doctor recorded his complaints of pain in the right shoulder. The applicant was diagnosed with a muscle strain in the right shoulder and prescribed treatment.

B. Ensuing events

1. The applicant's complaints to the authorities

16. On 1 October 2007 the applicant asked the Forensic Medical Expert Bureau of the Republic of Adygeya to give a medical expert opinion on the nature of his shoulder injury. An expert report issued on 24 December 2007 confirmed the diagnosis of a muscle strain and noted that it had most probably been caused by "an unusual and abnormal movement of the shoulder blade".

17. The applicant complained to the Maykop investigation department of the prosecutor's office of his ill-treatment by the police and unlawful arrest on 26 September 2007.

18. On 2 November 2007 a senior investigator of the investigation department refused to open a criminal case, having found no prima facie case of ill-treatment. In particular, the investigator noted that the applicant had not been subject to administrative arrest or found guilty of an administrative offence, and had only been taken to the police station because he had scared children with his placard and his appearance.

19. The applicant appealed against the decision of 2 November 2007 to the head of the investigation department, who upheld it on 11 February 2008.

2. Civil proceedings for compensation for non-pecuniary damage

20. The applicant brought civil claims against the Ministry of the Interior of the Republic of Adygeya, the FSB Department of the Republic of Adygeya, and the Ministry of Finance of the Russian Federation, seeking compensation for the non-pecuniary damage caused to him by the actions of the police and FSB officers on 26 September 2007 – the ill-treatment, unlawful detention and interference with his freedom of expression.

21. On 24 January 2008 the Maykop Town Court ("the Town Court") dismissed the claims, having reasoned, in so far as relevant, as follows:

> "... As the court has established, the President's Office and the Committee of Ministers of the Republic of Adygeya scheduled a meeting for 10 a.m. on

26 September 2007 to celebrate the 450th anniversary of the voluntary unification of Adygeya with Russia. ... There was a short delay before the meeting. On 26 September 2007 the claimant arrived at the square early, having brought a placard [which stated] 'Why were my magnificent, noble people exterminated and expelled?' At the same time he chose to stand in a place where there were [children]. [The claimant] had not informed the organisers of the meeting of the above-mentioned action. [His] action did not correspond to the aim of the public event. Given the existing historic traditions and the practice of celebrating holidays and memorial dates, [and taking into account] their important social and political character, the law of the Republic of Adygeya ... set specific holidays and memorial dates in the Adygeya Republic. One of those dates is 21 May, the Day of Remembrance and Sorrow for Victims of the Caucasus War in the 19th century. On 21 May Mr Milinov's actions might have been acceptable.

Moreover, the claimant, dressed in dark clothes, was near small children from performing arts groups; he held the placard protesting against the event which a large group of people – leaders of the Republic of Adygeya and many guests from other regions of the Russian Federation – had gathered together to celebrate. Therefore, the claimant's behaviour could not but attract attention from [representatives] of State agencies entrusted with maintaining public order at the meeting. As Mr Milinov has explained himself, he expected a similar reaction.

Having approached the claimant from behind, police officers addressed him, which provoked an inappropriate reaction on his part. As the claimant explained at the court hearing, he rudely asked the police officers [what they wanted and whether it was the time of Yezhov and Beria again]. The claimant was asked to hand over the placard; he ignored the request and the placard was taken from him by force. The claimant was agitated, and he was surrounded by small children and their parents who, in turn, started expressing their disapproval of his behaviour. The claimant was invited to step aside to give explanations; however, he ignored that request from the police officers.

...

Mr Milinov's actions – including his rude refusal to exit the crowd of children, in response to a request from the police officers – therefore called for lawful and well-founded actions by the police officers ..., in particular: [his] removal from the crowd so that he could be identified and explanations could be sought as regards the slogan on his placard.

...

... the claimant's argument that he was unlawfully detained is unsubstantiated and does not correspond to reality, as [he] absolutely agreed to go to the police station voluntarily. He was not coerced [into doing this] by anyone; the police officers on duty at the police station merely announced to the claimant – who approached [them] on a number of occasions – that the head of the police station had asked him to wait for him. Had he wished to do so, [the claimant] could have left the police station at any time during those three hours and forty minutes mentioned by him, as he ultimately did. He remained in the study room at the police station, and not in a cell for those subject to administrative arrest, and on a number of occasions he freely went out into the police station's courtyard to smoke.

In such circumstances, Mr Milinov's claim for compensation for non-pecuniary damage should be dismissed, in view of its manifestly ill-founded character."

22. On 22 February 2008 the Supreme Court of the Republic of Adygeya ("the Supreme Court") upheld the judgment of 24 January 2008 on appeal, having fully endorsed the Town Court's reasoning. In particular, the Supreme Court supported the Town Court's finding that the police officers had correctly responded to the applicant's "refusal to exit the crowd of children" by removing him from the crowd to check his identity, and that the applicant had failed to provide any evidence in support of his claim that the officers' actions had been unlawful. The Supreme Court also held that the time the applicant had spent at the police station – three and a half hours – did not amount to deprivation of liberty, as the applicant had voluntarily followed the police officers to the station, had remained in the study room and not in a cell, had freely moved around the police station, had left the police station to go into the courtyard to smoke, had used a mobile phone, and had freely left the police station.

II. RELEVANT DOMESTIC LAW AND PRACTICE

23. Article 29 of the Constitution of the Russian Federation guarantees freedom of thought and expression, freedom to receive and impart information, and freedom of the mass media.

24. Section 6(3)(1) and (2) of the Federal Law on Gatherings, Meetings, Demonstrations, Processions and Pickets, no. 54-FZ of 19 June 2004 ("the Public Events Act"), as in force at the material time, provided that participants in a public event should comply with all lawful requirements imposed by: the organiser of the public event and persons authorised by the organiser, a representative of the executive authority of a constituent entity of the Russian Federation or a municipal authority, and police officers. Participants in a public event should also comply with the rules on public order and the regulations governing the public event.

25. Section 18(1) of the Public Events Act states that the organiser of a public event, public officials and third parties have no right to hinder participants in the public event from expressing opinions, provided that such opinions are expressed in a manner compatible with the rules on public order and the regulations governing the public event.

THE LAW

I. *LOCUS STANDI*

26. The Court notes that the applicant died on 1 May 2015 and his widow, Ms Goshnago Aslancheriyevna Milinova, expressed a wish to continue with the application.

27. Having been invited to submit their comments on the matter, the Government informed the Court by letter of 13 May 2019 that they would leave the issue of Ms Milinova's participation in the proceedings before the Court at its discretion.

28. The Court reiterates that where an applicant dies during the examination of a case, his or her heirs may in principle pursue the application on his or her behalf (see *Jėčius v. Lithuania*, no. 34578/97, § 41, ECHR 2000-IX). In a number of cases in which an applicant died in the course of proceedings, the Court has taken into account the statements of the applicant's heirs or close family members expressing a wish to pursue the proceedings before it (see, for instance, *Hanbayat v. Turkey*, no. 18378/02, §§ 20-21, 17 July 2007; *Szerdahelyi v. Hungary*, no. 30385/07, §§ 19-22, 17 January 2012; *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, §§ 97-101, ECHR 2013; and *Nosov and Others v. Russia*, nos. 9117/04 and 10441/04, §§ 28-30, 20 February 2014). In particular, the Court has recognised the right of a deceased applicant's widow to pursue an application concerning the exercise of the right to freedom of expression (see *Dalban v. Romania* [GC], no. 28114/95, § 39, ECHR 1999-VI).

29. In the present case, the applicant's widow submitted documents confirming that she was his widow and heir. In these circumstances, the Court considers that she has a legitimate interest in pursuing the application in place of her late husband.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

30. The applicant complained that he had not been allowed to voice his opinion at the public event of 26 September 2007. He initially invoked Article 11 of the Convention. By virtue of the *jura novit curia* principle, the Court is not bound by the legal grounds adduced by the applicant under the Convention and the Protocols thereto, and has the power to decide on the characterisation to be given in law to the facts of a complaint by examining it under Articles or provisions of the Convention that are different from those relied upon by the applicant (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018). The Court will thus examine the applicant's complaint under Article 10 of the Convention, taking into account, where appropriate, the general principles it has established in the context of Article 11 of the Convention (see, with further references, *Novikova and Others v. Russia*, nos. 25501/07 and 4 others, § 91, 26 April 2016).

31. Article 10 of the Convention, in so far as relevant, 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. ...

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."

A. The parties' submissions

1. The Government

32. The Government made the following submissions to contest the applicant's complaint.

33. The applicant had come to the celebratory meeting holding a placard whose contents had not been in line with the aims of the meeting. He had been wearing dark clothes while standing next to little children who had been performing at the meeting. In the Government's submission, such behaviour "could not but attract the attention of the Maykop police officers charged with ensuring public safety and preventing breaches of administrative law ..."

34. The police officers had invited the applicant to step aside and come away from the celebratory crowd, but he had refused. The officers had then asked him to give them the placard; in response, the applicant had behaved aggressively. The officers had forcibly taken the applicant away from the crowd and invited him to visit the police station for a "preventive conversation". The applicant had gone to the police station voluntarily and had agreed to wait for the arrival of the head of the police station. While at the police station, the applicant had freely moved around inside the building, had used his mobile phone, and could have left whenever he had wanted. Eventually, he had left the building without any hindrance. The Government concluded by stating that the applicant had not been deprived of his liberty.

35. Under the Public Events Act, participants in a public event should comply with all lawful orders given by: the organiser of an event and persons designated by him or her, an agent of the executive body of a constituent entity of the Russian Federation or a municipality, and the police. Participants in public events should also abide by the rules on running a public event and the rules of conduct in society.

36. The applicant's right had been restricted because his actions had not corresponded to "the aim of the public event". The applicant had hindered the right to peaceful assembly of those who had gathered for the celebrations.

37. The police officers had not forbidden the applicant from doing anything, but had merely suppressed his attempts to dampen the celebrations with his loud shouting and inappropriate behaviour. It had been

necessary to remove the applicant from the crowd to identify him and "[clarify] the circumstances related to the contents of his placard".

38. The applicant could have held a solo static demonstration in any other place in Maykop, or in the same place but at another time.

39. The Government concluded by stating that the applicant's complaint was manifestly ill-founded.

2. The applicant

40. The applicant maintained his complaint. In his view, the interruption of his participation in the meeting by State agents had constituted an interference with his freedom of expression that had been neither "lawful" nor "necessary in a democratic society".

41. The applicant submitted that he had attended the meeting on 26 September 2007 to express the alternative point of view regarding the history of Adygeya joining Russia, that is, that the unification had not been voluntary or peaceful for the people of Adygeya, and had in fact been the result of one hundred years of hostilities. The applicant had written a question on the placard, hoping to receive a response from those who had organised the celebratory meeting. He had stood in silence, waiting for a reaction and possibly a chance to speak up.

42. The applicant had gone to the police station upon the police officers' orders, that is, involuntarily. He had chosen not to leave the police station guarded by a person armed with a machine gun without having express permission from the duty officer to do so, to avoid sanctions for disobedience.

43. The applicant's actions had been in full compliance with the requirements of the Public Events Act, section 18(1) of which guaranteed that organisers of a public event should not prevent participants in the event from expressing their opinions by any means not disturbing public order or breaching the rules on holding a public event.

44. The FSB and police officers had prevented the applicant from participating in the meeting and expressing his opinion. The only grounds for doing so had been the fact that he had been wearing dark clothes and that the text on his placard had for some reason disturbed the organisers of the meeting. The State agents had publicly humiliated him, a man of advanced age, and had used force against him, which had caused him physical and psychological suffering.

B. The Court's assessment

1. Admissibility

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

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

2. Merits

46. The Court reiterates at the outset that freedom of expression, as secured in paragraph 1 of Article 10, constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those which offend, shock or disturb; such are the demands of pluralism, tolerance and broadmindedness, without which there is no "democratic society". Moreover, Article 10 of the Convention protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed. As set forth in Article 10, freedom of expression is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly (see, with further references, *Mariya Alekhina and Others v. Russia*, no. 38004/12, §§ 197-98, 17 July 2018).

47. The parties in the present case did not dispute that the actions by State officials leading to the termination of the applicant's expression of his opinion by means of displaying a placard had amounted to an interference with his right guaranteed by Article 10 § 1 of the Convention.

48. The Court reiterates that, in order to be compatible with Article 10 § 2 of the Convention, an interference with the right to freedom of expression must be "prescribed by law", pursue one or more of the legitimate aims listed in the second paragraph of that provision, and be "necessary in a democratic society" (see, among many other authorities, *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, § 121, 17 May 2016).

49. The Court points out that the applicant observed that the interference had had no basis in domestic law, while the Government referred to the provision of the Public Events Act which states that a participant in a public event should comply with all lawful demands of, in particular, the organiser of the event and the police (see paragraph 35 above). Be that as it may, in view of its findings below, the Court considers it unnecessary to decide whether the interference with the applicant's right to freedom of expression was prescribed by law (see *Mătăsaru v. the Republic of Moldova*, nos. 69714/16 and 71685/16, § 32, 15 January 2019). Furthermore, considering the Government's submission that the applicant's actions violated the right to freedom of assembly of participants in the celebratory meeting (see paragraph 36 above), the Court is prepared to accept for the sake of argument that the interference in question pursued the legitimate

aim of protecting the rights of others. It remains to be ascertained whether the interference was "necessary in a democratic society".

50. According to the Court's established case-law, the test of necessity in a democratic society requires the Court to determine whether the interference complained of corresponded to a pressing social need, whether it was proportionate to the legitimate aim pursued, and whether the reasons given by the national authorities to justify it are relevant and sufficient. The margin of appreciation left to the national authorities in assessing whether such a need exists and what measures should be adopted to deal with it is not, however, unlimited, but goes hand in hand with European supervision by the Court, whose task it is to give a final ruling on whether a restriction is reconcilable with freedom of expression as protected by Article 10 of the Convention. As indicated above, when exercising its supervisory function, the Court's task is not to take the place of the national courts, but rather to review, in the light of the case as a whole, whether the decisions they have taken pursuant to their power of appreciation are compatible with the provisions of the Convention relied on (see, with further references, *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 164, 27 June 2017).

51. Turning to the circumstances of the present case, the Court notes that the applicant attended a public event open to all. He expressed his views on the historic events that were the theme of the celebratory meeting, views which contradicted the version endorsed by the meeting's organisers. Seeking to receive a response to the question written on his placard (see paragraph 41 above), the applicant drew the public's attention to the other side of the story of the unification of Russia and Adygeya, thus contributing to a debate on a matter of public interest. The wording on the placard was not offensive or obscene. The applicant's actions were by no means violent or aggressive. State officials (the FSB and police officers) chose to interrupt and put a stop to his actions a few minutes after they had started. In doing so, they grabbed the applicant by the hands. The applicant was allowed to go home in his own car. However, once at home, he was invited to go to the police station in a police car for a "preventive conversation" with the head of the police station. He spent three and a half hours at the police station before being allowed to leave. When the applicant sought compensation for the non-pecuniary damage caused by the State officials' actions, the domestic courts dismissed his claims as unsubstantiated.

52. The Court observes that it is disputed between the parties whether the applicant was deprived of his liberty while at the police station (see paragraphs 34 and 42 above). However, it does not deem it necessary to rule on this matter, as the salient fact in the context of its analysis under Article 10 of the Convention is that the applicant was subject to a measure of police coercion following the expression of his opinion.

53. The Court regards the requirement that the applicant go to the police station for a "preventive conversation" with the head of the police station (see paragraph 9 above) as a direct consequence of his actions. The Government have not provided any explanation as to what the purpose of such a "preventive conversation" would have been, yet the very wording implies that at least one of its objectives would have been to prevent similar actions in the future by persuading the applicant to refrain from repeating his behaviour. In the Court's view, the fact that uniformed police officers invited the applicant to come to the police station for a "preventive conversation" and that the applicant subsequently waited three and a half hours for the head of the police station had a "chilling effect" on the exercise of his freedom of expression, as this was likely to discourage him from expressing opinions on the history of Adygeya in the future (see, *mutatis mutandis*, *Wille v. Liechtenstein* [GC], no. 28396/95, § 50, ECHR 1999-VII, and *Baka v. Hungary* [GC], no. 20261/12, § 173, 23 June 2016).

54. The Court takes note of the argument advanced by the Town Court (see paragraph 21 above) and subsequently repeated by the Government (see paragraph 33 above) justifying the necessity to put a stop to the applicant's actions, namely that the applicant had been wearing dark clothes while standing next to children. In the Court's view, this is neither a "relevant" nor "sufficient" reason for the interference in question. The Government also argued that the applicant's actions had not corresponded to "the aim of the public event" (see paragraph 36 above), implying that only one set of views could be tolerated at the celebratory meeting, which runs contrary to the principles of pluralism, tolerance and broadmindedness, without which there is no "democratic society" (see, among many other authorities, *Bédat v. Switzerland* [GC], no. 56925/08, § 48, 29 March 2016). The Government further claimed that it had been necessary to remove the applicant from the crowd in order to identify him and "[clarify] the circumstances related to the contents of his placard" (see paragraph 37 above), yet they did not advance any reasons to explain why it would be necessary to identify a person who was silently holding a placard with an innocuous question written on it and clarify the meaning of that question. The Government did not allege that the applicant's actions had stirred up or justified violence, hatred or intolerance (see *Perinçek v. Switzerland* [GC], no. 27510/08, § 204, ECHR 2015 (extracts)). The Court therefore cannot discern any "pressing social need" capable of justifying the suppression of the applicant's actions.

55. The Court takes note of the Government's suggestion that the applicant could have chosen another place or time to express himself (see paragraph 38 above). However, the question written on the applicant's placard pertained to the very nature of the celebratory meeting. The Court has already held in the context of Article 11 of the Convention that the

purpose of an assembly is often linked to a certain location and/or time (see *Lashmankin and Others v. Russia*, nos. 57818/09 and 14 others, § 405, 7 February 2017) and that the place chosen for an assembly is important, so that the participants in the assembly may exercise their right to freedom of expression in a satisfactory manner, invite the public to reflect on their ideas and inform the public about issues of importance to society, and openly express their ideas (see *Süleyman Çelebi and Others v. Turkey*, nos. 37273/10 and 17 others, § 109, 24 May 2016). The Court has previously observed on a number of occasions that in the sphere of political debate the guarantees of Articles 10 and 11 of the Convention are often complementary (see, among other authorities, *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 102, 15 November 2018). In its view, this approach is applicable in the context of the present case. The Court thus considers that the time and place that the applicant chose for his actions were of particular importance as regards the delivery of the message that he sought to convey.

56. In view of the above, the Court considers that the Government have not advanced any convincing arguments to demonstrate that there existed a "pressing social need" to put a stop to the applicant's actions and subsequently escort him to the police station and make him wait there for three and a half hours (compare *Novikova and Others*, cited above, § 219). Reiterating that there is little scope under Article 10 § 2 of the Convention for restrictions on political expression or debate on questions of public interest (see *Perinçek*, cited above, § 197; see also *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 88, ECHR 2001-IX), the Court finds that the interference with the applicant's right to freedom of expression was not "necessary in a democratic society".

57. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 10 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

58. The applicant complained that he had been unlawfully deprived of his liberty by the police, in violation of Article 5 of the Convention.

59. Having regard to the above finding relating to Article 10 of the Convention, the Court considers that it is not necessary to examine whether Article 5 of the Convention was applicable in the applicant's case and whether it was violated (see *Novikova and Others*, cited above, § 227).

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

60. Lastly, the applicant complained: under Article 3 of the Convention that the police had used force against him; under Article 6 of the

Convention of the unfairness of the judicial proceedings; and under Article 13 of the Convention of the lack of effective domestic remedies.

61. Having regard to all the material in its possession and in so far as it falls within its competence, the Court finds that there is no 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 being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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

63. The applicant claimed 45 euros (EUR) in respect of pecuniary damage. He did not submit any documents to confirm such expenses.

64. The applicant further claimed EUR 25,000 in respect of non-pecuniary damage.

65. When commenting on the applicant's claims in respect of pecuniary and non-pecuniary damage, the Government observed that the applicant had not provided evidence to substantiate the claim in respect of pecuniary damage, and considered that the amount claimed in respect of non-pecuniary damage was excessive. They suggested that, should the Court find a violation of the Convention in the present case, such a finding would suffice as just satisfaction.

66. By letter of 13 May 2019 (see paragraph 27 above) the Government submitted that "no compensation for pecuniary or non-pecuniary damage [should] be made in favour of Ms Goshnago Milinova" in view of the non-transferrable nature of the rights guaranteed by Articles 5 and 10 of the Convention.

67. The Court notes that the claim in respect of pecuniary damage has not been supported by documentary evidence; it therefore rejects it. At the same time the Court notes that it has already accepted that Ms Milinova could pursue the proceedings before it in the name of her late husband (see paragraphs 28-29 above). In respect of non-pecuniary damage, it considers that the applicant did suffer, and his widow has suffered, such damage and that this cannot be sufficiently redressed by the mere finding that there has been a violation (see *Dalban*, cited above, § 59). Accordingly, the Court finds it appropriate to award EUR 9,750 in respect of non-pecuniary damage

for the violation of Article 10 of the Convention found above. The award should be paid to the applicant's heir, Ms Goshnago Aslancheriyevna Milinova.

B. Costs and expenses

68. The applicant also claimed the following amounts in respect of the costs and expenses incurred before the domestic courts and before the Court: (a) 630 roubles (RUB – approximately EUR 14) in compensation for the fee for his medical examination to record the injuries sustained on 26 September 2007; (b) RUB 100 (approximately EUR 2) in compensation for the court fee in the domestic proceedings; (c) RUB 8,709 (approximately EUR 202) in respect of postal fees related to the Strasbourg proceedings (the applicant enclosed receipts confirming that he had paid RUB 5,147 – approximately EUR 120); (d) RUB 9,000 (approximately EUR 208) in respect of translation fees (the applicant did not enclose relevant invoices); (e) EUR 7,050 in respect of his counsel's fees for the proceedings before the Court, corresponding to 141 hours of work at an hourly rate of EUR 50.

69. The Government observed that the applicant had not submitted evidence to show that he had incurred expenses in the amount of EUR 7,050, the amount claimed as compensation for legal fees.

70. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 850 covering costs under all heads, to be paid into the applicant's representative's bank account.

C. Default interest

71. 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. *Holds* that the applicant's widow and heir has standing to continue the proceedings in the applicant's stead;

2. *Holds* that there is no need to examine the complaint under Article 5 of the Convention;

3. *Declares* the complaint under Article 10 of the Convention admissible and the remainder of the application inadmissible;

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

5. *Holds*

(a) that the respondent State is to pay, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 9,750 (nine thousand seven hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be paid to the applicant's heir, Ms Goshnago Aslancheriyevna Milinova;

(ii) EUR 850 (eight hundred and fifty euros), plus any tax that may be chargeable to the applicant's heir, in respect of costs and expenses, to be paid into the applicant's representative's bank account;

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

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

Done in English, and notified in writing on 24 September 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Paulo Pinto de Albuquerque
President