

IN THE NAME OF THE RUSSIAN FEDERATION
The Constitutional Court of the Russian Federation

Judgment

of 10 February 2017 No. 2-II/2017

in the case concerning the review of constitutionality of the provisions of Article 212¹ of the Criminal Code of the Russian Federation in connection with the complaint of I.I.Dadin

The Constitutional Court of the Russian Federation composed of the President V.D. Zorkin, Judges K.V. Aranovsky, N.S. Bondar, G.A. Gadzhiev, Yu.M. Danilov, L.M. Zharkova, S.M. Kazantsev, S.D. Knyazev, A.N. Kokotov, L.O. Krasavchikova, S.P. Mavrin, N.V.Melnikov, Yu.D. Rudkin, O.S. Khokhryakova, V.G. Yaroslavtsev,

with the participation of representatives of I.I.Dadin, lawyers S.A.Golubok, Ye.L.Kostromina and A.Ye. Liptser, Plenipotentiary Representative of the State Duma to the Constitutional Court of the Russian Federation T.V.Kasayeva, Plenipotentiary Representative of the Council of Federation to the Constitutional Court of the Russian Federation A.A.Klishas, Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation M.V.Krotov,

guided by Article 125 (Section 4) of the Constitution of the Russian Federation, Item 3 of Section 1, Sections 3 and 4 of Article 3, Section 1 of Article 21, Articles 36, 74, 86, 96, 97 and 99 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”,

in an open session considered the case concerning the review of constitutionality of the provisions of Article 212¹ of the Criminal Code of the Russian Federation.

The reason for the consideration of the case was the complaint of I.I.Dadin. The ground for the consideration of the case was the discovered uncertainty in the

question of whether the legislative provisions contested by the petitioner are in conformity with the Constitution of the Russian Federation.

Having heard the report of Judge-Rapporteur S.D.Knyazev, statements of the representatives of parties, interventions by those invited to hearing Plenipotentiary Representative of the Government of the Russian Federation to the Constitutional Court of the Russian Federation M.Yu.Barshevsky, as well as representatives: M.A.Melnikova from the Ministry of Justice of the Russian Federation, G.V.Maryan from the Ministry of Internal Affairs of the Russian Federation, T.A.Vasilyeva from the Prosecutor General of the Russian Federation, I.N.Solovyev from the Commissioner for Human Rights in the Russian Federation, having examined submitted documents and other materials, the Constitutional Court of the Russian Federation

e s t a b l i s h e d:

1. In accordance with Article 212¹ of the Criminal Code of the Russian Federation, breach of the established order of the organization or holding of an assembly, meeting, demonstration, procession or picketing, if this action has been committed repeatedly, is punished by a penalty in the amount of 600,000 to 1,000,000 roubles or in the amount of a convicted person's salary or other income for the period of two to four years, or mandatory labour for the term of up to 480 hours, or correctional labour for the term of one totwo years, or compulsory labour for the term of five years, or deprivation of liberty for the same term. At this, the breach of the established order of organization or holding of an assembly, meeting, demonstration, procession or picketing is recognized, in accordance with the footnote to this Article, as committed repeatedly, if breach of the established order of organization or holding of an assembly, meeting, demonstration, procession or picketing, if this person was earlier made administratively answerable for the commission of administrative offences envisaged by Article 20.2 of the Administrative Offences Code of the Russian Federation more than twice during 180 days.

1.1. By resolutions of the Tverskoy District Court of the City of Moscow of 4, 23 and 26 September 2014 I.I.Dadin for the commission of administrative offences – participation in public events, which were held on the Manezhnaya square without preliminary notification of bodies of executive power of the City of Moscow – picketings (23 August and 13 September 2014) and a meeting (6 August 2014), under Section 5 of Article 20.2 of the Administrative Offences Code of the Russian Federation was subjected to administrative punishment in the form of administrative penalties of 10,000, 15,000 and 10,000 roubles respectively. By the decisions of the Moscow City Court of 16 March 2015 resolutions of court of the first instance of 4 and 23 September 2014 were left unchanged, and complaints against these resolutions, lodged in I.I.Dadin's interests, were left without satisfaction. The resolution of 26 September 2014 was not appealed and entered into legal force on 7 October 2014.

On 5 December 2014 I.I.Dadin once again participated in a public event, not coordinated with bodies of executive authority of the City of Moscow, in the form of a procession, whose participants, having unfurled a banner of three to one and a half meters, cut off road traffic and walked with burning torches on the Myasnitskaya street roadway from No. 24 to No. 20, after which staff-members of bodies of internal affairs drew up a record in respect of the petitioner on the administrative offence envisaged by Section 6¹ of Article 20.2 of the Administrative Offences Code of the Russian Federation. The Basmanny District Court of the City of Moscow, proceeding from the fact that I.I.Dadin had more than twice been made administratively answerable for the commission of administrative offences envisaged by Article 20.2 of the Administrative Offences Code of the Russian Federation, appraised his actions as falling under the signs of a crime envisaged by Article 212¹ of the Criminal Code of the Russian Federation and by the resolution of 30 January 2015 discontinued the proceedings on administrative offence envisaged by Section 6¹ of Article 20.2 of the Administrative Offences Code of the Russian Federation in respect of him and referred the case to a body of preliminary investigation. On 29 April 2015 senior

investigator of the Investigatory Committee of the Russian Federation instituted a criminal case No. 385577 in respect of I.I.Dadin in connection with the presence of signs of the crime envisaged by Article 212¹ of the Criminal Code of the Russian Federation in his action – participation on 5 December 2014 in the procession on Myasnitskaya street.

On 15 January 2015 I.I.Dadin once again participated in a public event in the form of a meeting held on the Manezhnaya square without preliminary coordination with bodies of executive power of the City of Moscow, which served as a ground for drawing up a record on administrative offence in his respect and passing a resolution of 16 January 2015 by the Tverskoy District Court of the City of Moscow (left unchanged by the decision of the Moscow City Court of 12 March 2015), by which he was recognized as guilty of the commission of the administrative offence envisaged by Section 5 of Article 20.2 of the Administrative Offences Code of the Russian Federation with prescription of an administrative punishment in the form of a penalty in the amount of 20,000 roubles. In addition, a criminal case No. 385554 was instituted in respect of I.I.Dadin on the fact of his participation in the non-coordinated meeting of 15 January 2015 on the signs of the crime envisaged by Article 212¹ of the Criminal Code of the Russian Federation. Making such a decision, deputy head of the territorial body of the Investigatory Committee of the Russian Federation was guided by the fact that during 180 days prior to this date (on 6 August and 13 September 2014) I.I.Dadin was already made administratively answerable for the commission of administrative offences envisaged by Article 20.2 of the Administrative Offences Code of the Russian Federation (resolution of 27 January 2015).

Later criminal cases instituted against I.I.Dadin (No. 385554 and No. 385577) were merged in one proceedings and he was charged with two episodes of the action envisaged by Article 212¹ of the Criminal Code of the Russian Federation (of 5 December 2014 and 15 January 2015). However, taking into consideration that for participation in the non-coordinated meeting on 15 January 2015 I.I.Dadin had been subjected to administrative punishment, criminal persecution in his

respect was partly discontinued in connection with absence of the *corpus delicti* in his actions, which took place on 15 January 2015 (investigator's resolution of 24 June 2015).

By the sentence of the Basmanny District Court of the City of Moscow of 7 December 2015 I.I.Dadin was recognized as guilty of repeated breach of the established order of holding of an assembly, meeting, demonstration, procession and picketing, i.e. of the commission of the crime envisaged by Article 212¹ of the Criminal Code of the Russian Federation, punished by three years of deprivation of liberty to be served in a general regime correctional colony. By the appellate resolution of the Moscow City Court of 31 March 2016 the sentence was partly altered in connection with exclusion of the reference of I.I.Dadin's conviction of the breach of the order of holding of an assembly and demonstration; punishment prescribed by court of the first instance was reduced to two years six months of deprivation of liberty to be served in a general regime correctional colony; the rest of the sentence was left unchanged. By the resolution of a judge of the Supreme Court of the Russian Federation of 19 December 2016 reconsideration of the said sentence of the Basmanny District Court of the City of Moscow and appellate resolution of the Moscow City Court was refused.

1.2. As follows from Articles 74, 96 and 97 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", the Constitutional Court of the Russian Federation, reviewing on a citizen's complaint constitutionality of legislative provisions applied in the petitioner's case, whose consideration has been completed in court, and affecting constitutional rights and freedoms to the violation of which he refers, passes a judgment only on the subject-matter indicated in the complaint and solely with regard to the part of an act which is called in question, assessing both the literal meaning of legislative provisions under consideration and the meaning attributed to them by an official and other interpretation or the prevailing law-applying practices, as well as proceeding from their place in the system of legal norms; at this the Constitutional Court of the Russian Federation is not bound by grounds and arguments stated in the complaint.

I.I.Dadin perceives violation of his rights, guaranteed by Articles 1 (Section 1), 15 (Section 4), 17 (Section 1), 18, 19 (Section 1), 29 (Sections 1 and 3), 31, 48, 49 (Section 1), 50 (Sections 1 and 2) and 55 (Section 3) of the Constitution of the Russian Federation, by Article 212¹ of the Criminal Code of the Russian Federation so far as its provisions:

contemplate making a person criminally answerable for breach of the established order of organization or holding of peaceful public events on the ground of the repeated character of such breaches alone;

admit the possibility to prescribe to a person a punishment in the form of deprivation of liberty for actions, which have not entailed causing harm to human health or property and created no threat to security of the population and the environment, and do not establish differentiated approach to the prescription of criminal punishment according to the degree of public danger of the action and adverse consequences of its commission;

allow to use as a proof in a criminal case in respect of a person made criminally answerable materials of cases on administrative offences, received without participation of a defence attorney;

admit institution of a criminal case for repeated breaches of the order of organization or holding of public events by a person prior to entering into legal force of all judicial acts passed in respect of this person, by which he was recognized as guilty of the commission of administrative offences envisaged by Article 20.2 of the Administrative Offences Code of the Russian Federation.

Accordingly, Article 212¹ of the Criminal Code of the Russian Federation is the subject-matter of consideration by the Constitutional Court of the Russian Federation in the present case insofar as its provisions in the system of the effective legal regulation serve as a ground for the resolution of the question of whether in an action there are signs of criminally unlawful breach of the established order of organization or holding of an assembly, meeting, demonstration, procession or picketing and of application of a criminal punishment in the form of deprivation of liberty to the person who committed it.

2. The Constitution of the Russian Federation guarantees citizens of the Russian Federation the right to assemble peacefully, without weapons, hold rallies, meetings and demonstrations, processions and picketing (Article 31).

Turning to the question of constitutional content of this right, being one of the basic and inalienable elements of the legal status of person in the Russian Federation as a democratic law-governed State, within the basis of the constitutional system of which ideological and political diversity and the multi-party system are recognized and which is obliged to secure the protection, including judicial, of human and civil rights and freedoms (Article 1, Section 1; Article 2; Article 13, Sections 1 and 3; Article 18; Article 45, Section 1; Article 46, Sections 1 and 2; Article 64 of the Constitution of the Russian Federation), the Constitutional Court of the Russian Federation in its decisions (Judgments of 18 May 2012 No. 12-II, of 14 February 2013 No. 4-II, of 13 May 2014 No. 14-II and others) formulated the following legal positions:

in the interconnection with other rights and freedoms enumerated in the Constitution of the Russian Federation, first of all in its Articles 29, 30, 32 and 33, this right ensures for citizens a real possibility by means of holding of public events (assemblies, meetings, demonstrations, processions and picketing) to exert influence on the organization and exercise of public authority and thereby make for maintenance of peaceful dialogue between civil society and the State, which does not exclude protest character of such public events, which may express itself in criticism both of individual actions and decisions of bodies of State power and bodies of local self-government and their policy as a whole. Accordingly, it is intended that the reaction of public authority to organization and holding of assemblies, meetings, demonstrations, processions and picketing must be neutral and in any event – irrespective of political views of their organizers and participants – aimed at providing conditions (both on the level of the legislative regulation and in law-applying activity) for lawful realization by citizens and their associations of the right to freedom of peaceful assembly, including by way of working out clear-cut rules of their organization and holding, not exceeding the

limits of admissible restrictions of the rights and freedoms of citizens in a democratic law-governed State;

proceeding from the aim to secure civil peace and accord and stability of the democratic basis of sovereign statehood of Russia, proclaimed in the Preamble of the Constitution of the Russian Federation, and considering that by virtue of their nature public events (assemblies, meetings, demonstrations, processions and picketing) can affect the rights and lawful interests of a broad circle of persons – both participants of public events and persons not directly participating in them, – State protection is guaranteed only to the right to hold peaceful public events which, nevertheless, may be restricted by federal law in accordance with the criteria predetermined by the requirements of Articles 17 (Section 3), 19 (Sections 1 and 2) and 55 (Section 3) of the Constitution of the Russian Federation, on the basis of the principle of legal equality and the principle of proportionality following from it, i.e. to the extent necessary for the protection of the basis of the constitutional order, morality, health, rights and lawful interests of other persons, for ensuring the defence of the country and the security of the State;

such an approach conforms to the universally recognized principles and norms of international law, including those fixed in the Universal Declaration of Human Rights, according to Item 1 of Article 20 of which everyone has the right to freedom of peaceful assembly, and in the International Covenant on Civil and Political Rights, Article 21 of which, recognizing the right to peaceful assemblies, admits introduction of well-founded restrictions of this right, imposed in conformity with the law and necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others, and in the Convention for the Protection of Human Rights and Fundamental Freedoms, particularly specifying in Article 11 that exercise of the right to freedom of peaceful assembly is subject to no restrictions other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or

public safety, for the prevention of disorder or crime, for the protection of health or morals or the protection of the rights and freedoms of others.

The European Court of Human Rights in its practice of application of Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms is consistently guided by the idea that in a democratic society the freedom of assembly is a fundamental right and in addition to the freedom of thought, conscience and religion constitutes the basis of such society not subject to restrictive interpretation (judgments of 25 May 1993 in the case of *Kokkinakis v. Greece*, of 20 February 2003 in the case of *Djavit An v. Turkey*, of 23 October 2008 in the case of *Sergey Kuznetsov v. Russia*, of 5 March 2000 in the case of *Barraco v. France* and others); it concerns both closed and public assemblies, as well as assemblies in a certain place and public processions and may be carried out by their individual participants and organizers as well as by other persons having found themselves in the place of their holding (judgments of 31 March 2005 in the case of *Adaly v. Turkey*, of 15 November 2007 in the case of *Galstyan v. Armenia* and others); the State, in its turn, must refrain from application of arbitrary measures able to violate the right to peaceful public actions and does not possess full freedom of action even in the event of breach of the established rules of holding of assemblies, meetings, demonstrations, processions and picketing (judgments of 26 July 2007 in the case of *Barankevich v. Russia*, of 12 June 2014 in the case of *Primov and others v. Russia* and others); rules regulating the order of public assemblies, including the requirement of preliminary notification, have substantial significance for quiet holding of public events, allowing the authorities to minimize hindrances to road traffic and undertake other measures of security, but their execution may not be an end in itself and must not create hidden obstacles for the realization of the freedom of peaceful assembly protected by the Convention (decision of 17 November 2009 in the case of *Rai and Evans v. the United Kingdom*, judgment of 3 October 2013 in the case of *Kasparov and others v. Russia* and others); public authorities must manifest certain tolerance with regard to peaceful assemblies even when they can cause some infringement on

everyday life, including hindrances to traffic, otherwise the freedom of assembly would be deprived of its content (judgments of 17 May 2011 in the case of *Acgöl and Göl v. Turkey*, of 10 July 2012 in the case of *Berladir and others v. Russia* and others); any measures hindering the freedom of assembly and freedom of expression, except for cases of instigation to violence or violation of democratic principles, render bad service to democracy and even threaten it (judgments of 24 July 2012 in the case of *Faber v. Hungary*, of 15 May 2014 in the case of *Taranenko v. Russia* and others).

Interference of public authorities in the freedom of peaceful assembly, if it is not provided for by law, does not pursue one or several lawful ends enumerated in Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms and is not necessary in a democratic society for achievement of one of these ends, is regarded by the European Court of Human Rights as a breach of this Article (judgment of 14 February 2006 in the case of *Christian Democratic People's Party v. Moldova*, of 27 January 2009 in the case of *Samüt Karabulut v. Turkey* and others); real respect for the freedom of assembly cannot be reduced to the obligation of a State not to interfere in its realization, it must be supplemented with positive obligation to ensure effective realization of this right in order to guarantee normal holding of any public event of a political, cultural and other character, which acquires particular significance for persons holding unpopular opinions or belonging to minorities (judgments of 2 July 2002 in the case of *Wilson and the National Union of Journalists and others v. the United Kingdom*, of 20 October 2005 in the case of *Political Party "Ouranio Toxo" and others v. Greece* and of 21 October 2010 in the case of *Alexeev v. Russia* and others); weighty reasons are necessary for restrictions of political statements or statements on other important issues of public life, in whose absence such restrictions may tell negatively on the general respect for freedom of self-expression (judgments of 12 July 2001 in the case of *Feldek v. Slovakia*, of 14 December 2006 in the case of *Karman v. Russia* and others).

Legislative, administrative, organizational and other efforts, undertaken by bodies of State and municipal authority with the object of a proper ensuring of the freedom of public assemblies, whose main destination is to create conditions for lawful exercise of respective civil initiatives, must not lead to excessive control over the activity of organizers and participants of public events, attended by unfounded restrictions of free holding of assemblies, meetings and demonstrations, processions and picketing. At the same time, in cases when organizers or participants of a public event behave destructively, in particular, obviously intend to commit or, what is more, do commit any actions threatening public order or public security, the State – in discharge of its constitutional duty to protect human and civil rights and freedoms and taking into consideration the nature of the right guaranteed by Article 31 of the Constitution of the Russian Federation, contemplating exceptionally peaceful way of expressing their views and informing respective addressees of them by citizens – must use all lawful means for non-admission and interruption of manifests, not answering the substance of the right to peaceful assemblies.

Thus, the right of citizens of the Russian Federation to assemble peacefully, without weapons, to hold assemblies, meetings and demonstrations, processions and picketing, guaranteed by the Constitution of the Russian Federation and the said international-law acts being by virtue of its Article 15 (Section 4) an integral part of the legal system of Russia, is not absolute and may be restricted by a federal law with the aim to protect constitutionally significant values with obligatory observance of the principles of necessity, proportionality and commensurateness, so that restrictions introduced by it do not encroach upon the very essence of this constitutional right and do not hinder open and free expression of their views, opinions and demands by citizens by way of organization and holding of peaceful public actions. Accordingly, such federal law must ensure the possibility of full-value realization of the right to freedom of peaceful assembly and simultaneously – observance of appropriate public order and security without detriment to health and morals of citizens on the basis of balance of interests of organizers and participants

of public events, on the one hand, and third persons – on the other, proceeding from the need of State protection of the rights and freedoms of all persons (both participating and not participating in a public event), including by way of introduction of adequate measures of prevention and averting of breaches of public order and security, rights and freedoms of citizens, as well as establishment of effective public-law liability for actions, breaching them or creating threat of their breach.

3. Setting the order of realization of the right to freedom of assemblies, meetings and demonstrations, processions and picketing by citizens and their associations, the federal legislator, as it follows from Articles 6 (Section 2), 15 (Section 2), 17 (Section 3), 31, 55 (Section 3) 71 (Items “c” and “n”) and 76 (Section 1) of the Constitution of the Russian Federation in their interconnection, is entitled to establish measures of criminal coercion for breaches of the rules of organization and holding of public events, observing in doing so general principles of legal liability, which have universal significance and in essence belong to the fundamentals of constitutional order.

Within the meaning of legal positions formulated earlier by the Constitutional Court of the Russian Federation (judgments of 15 July 1999 No. 11-II, of 19 March 2003 No. 3-II, of 13 July 2010 No. 15-II, of 17 January 2013 No. 1-II, of 29 November 2016 No. 26-II and others), in normative regulation of grounds, conditions and terms of calling to legal account it must be borne in mind that:

legal liability may only come for actions, which are recognized as offences by a law effective by the moment of their commission; use of different kinds of legal liability must accord with constitutional principles of a democratic law-governed State, including the requirement of fairness, in its interrelations with natural and legal persons as subjects of liability; the presence of guilt, either proven or presumed but refutable, as an element of the subjective side of an offence’s composition is the generally recognized principle of calling to account in all branches of law, and any exception from it must be expressed directly and unequivocally, i.e. be provided for directly in the law;

fixing and altering compositions of offences and measures of liability for their commission, the federal legislator is bound by the criteria of necessity, proportionality and commensurateness of the restriction of rights and freedoms to constitutionally significant goals, following from Article 55 (Section 3) of the Constitution of the Russian Federation, as well as is obliged to observe the equality of all before the law, guaranteed by Article 19 (Section 1) of the Constitution of the Russian Federation and meaning that any offence and sanctions for it must be precisely defined in the law, so that everyone can, proceeding directly from the text of a respective norm, and if need be with the help of judicial interpretation, foresee legal sequels of his actions (inaction);

constitutional requirements of fairness and humanism predetermine the need to differentiate legal liability depending on substantial circumstances affecting the choice of one or another measure of State coercion; therefore, envisaging a specific kind of legal liability for persons having committed offences, the federal legislator must correlate it with the character of the offence, danger to values protected by law, personality and the degree of guilt of the offender, thereby guaranteeing adequacy of the engendered consequences to the damage caused as a result of the offence, admitting no excessive State coercion and ensuring the balance of a citizen called to account and the public interest to protect persons, society and the State against unlawful attacks;

kinds of legal liability and punishments accompanying them must have reasonable containing potential, sufficient for the observance of respective bans (restrictions); otherwise their application will not answer the destination of State coercion, which within the meaning of Articles 1 (Section 1), 2, 17 (Section 3), 18 and 55 (Section 3) of the Constitution of the Russian Federation consists mainly in the preventive use of legal means inherent in it for the protection of human and civil rights and freedoms, other constitutionally recognized values of the civil society and law-governed State;

in cases when measures of public law liability cease to conform to social reality, leading to impairment of the protection of constitutionally significant

values or, on the contrary, to the excessive use of State coercion, the federal legislator may ensure their bringing into line with new social reality, observing constitutional principles of equality, justice and humanism.

In the field of the criminal-law regulation, by virtue of Article 54 (Section 2) of the Constitution of the Russian Federation, based on the principle of *nullum crimen, nulla poena sine lege*, the requirement of certainty of legal norms acquires particular significance, since, as the Constitutional Court of the Russian Federation has repeatedly pointed out, criminal legislation is by its nature an extreme (exceptional) means of the State's reaction to the facts of unlawful behavior with the aim to guard public relations, if it cannot be appropriately secured by norms of other branches of law; accordingly, criminal liability may only be regarded as lawfully established on condition that it is proportionate to the character and degree of public danger of the criminalized unlawful action, and signs of its composition, whose presence in this action as the ground for criminal liability allows to delimitate it from other unlawful, let alone lawful, actions, are precisely and unequivocally defined in the criminal law, non-contradictorily fitting in well into the general system of legal regulation (judgments of 27 May 2008 No. 8-II, of 13 July 2010 No. 15-II, of 17 June 2014 No. 18-II, of 16 July 2015 No. 22-II and others).

When establishing criminal-law sanctions, the federal legislator cannot ignore the provision of Article 50 (Section 1) of the Constitution of the Russian Federation, which in accordance with the universally recognized principle of *non bis in idem* prohibits anyone's conviction for one and the same crime twice, which fully accords with the International Covenant on Civil and Political Rights, excluding second trial or punishment of a person for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country (Item 7 of Article 14), and the Convention for the Protection of Human Rights and Fundamental Freedoms, guaranteeing that no one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally

acquitted or convicted in accordance with the law and penal procedure of that State (Item 1 of Article 4 of Protocol No. 7).

As the Constitutional Court of the Russian Federation has pointed out, the principle of *non bis in idem* in its constitutional-law interpretation, taking account of basic provisions of the Criminal Code of the Russian Federation, in particular contained in its Articles 3, 5, 6, 8 and 14, means that the criminal law must exclude the possibility of a repeated conviction and punishment of a person for one and the same crime, qualification of one and the same criminal event under several articles of the criminal law, if norms contained in them correlate as the general and the special or as the whole and the part, as well as double accounting of one and the same circumstance (criminal record, recidivism) simultaneously in qualifying the action and in determining the kind and measure of liability (Judgment of 19 March 2003 No. 3-II); repeated calling of a person to one and the same kind of account for one and the same action – contrary to the principle of *non bis in idem* – would lead to liability without offence, which is inadmissible in a law-governed State (Judgment of 21 March 2013 No. 6-II).

Thus, criminal liability for breach of the order of organization or holding of assemblies, meetings, demonstrations, processions and picketing may be recognized as meeting the requirements of the Constitution of the Russian Federation provided it is necessary for the protection of human and civil rights and freedoms, other constitutionally recognized values and is adequate to public danger of the criminalized unlawful action, whose signs are clearly and precisely defined by the criminal law, which excludes repeated making a person criminally answerable and conviction for one and the same crime.

4. In accordance with Article 212¹ of the Criminal Code of the Russian Federation, breach by a person of the established order of organization or holding of an assembly, meeting, demonstration, procession or picketing is the ground for criminal liability, if such action has been committed by a person having earlier been made administratively answerable for administrative offences envisaged by Article 20.2 “Breach of the Established Order of Organization or Holding of an

Assembly, Meeting, Demonstration, Procession or Picketing” of the Administrative Offences Code of the Russian Federation, more than twice during 180 days.

It follows from this criminal prohibition that breach of the order of organization or holding of public events, established by the Federal Law of 19 June 2004 No. 54-ΦЗ “On Assemblies, Meetings, Demonstrations, Processions and Picketings”, which, as a general rule, entails administrative liability, is only subject to qualification as crime in cases when respective breach has been committed by a person having been exposed to administrative-tortious persecution more than twice (i.e. no less than three times) during 180 days.

The possibility of this dualistic approach to the employment of administrative and criminal liability for fight against some or other offences is determined by the assumption that, being varieties of legal liability for the commission of publicly dangerous actions, they have similar tasks, are based on similar principles, pursue common object – the protection of human and civil rights and freedoms, securing legality and legal order and, in essence, in many respects complement each other. This explains the presence of adjacent compositions of administrative offences and crimes in the legal regulation, which – taking into account the possibility of alteration of the degree of public danger of some actions – does not exclude legislative correction of their unlawfulness, contemplating the admissibility of transformation of compositions of individual administrative offences into *corpora delicti* and *vice versa* (Judgment of the Constitutional Court of the Russian Federation of 14 July 2015 No. 20-Π).

The European Court of Human Rights also proceeds from the relativity and certain conventionality of delimitation of administrative offences and crimes. In its opinion, the whole number of compositions of administrative offences by their nature and the degree of gravity (repressiveness) of punishment have criminal-law character; if the national legislation does not ascribe respective action to criminally-unlawful, guarantees of the protection of a person against criminal persecution, contained in Article 6 of the Convention for the Protection of Human

Rights and Fundamental Freedoms, may not be the object of free discretion in calling to administrative account; liability for any action, if it has punitive and containing effect inherent in criminal punishments, falls under the signs of criminal persecution (judgments of 10 February 2009 in the case of *Sergey Zolotukhin v. Russia*, of 31 July 2014 in the case of *Nemtsov v. Russia*, of 19 November 2015 in the case of *Mikhailova v. Russia* and others).

4.1. In appraising criminalization of the breach of the established order of organization or holding of an assembly, meeting, demonstration, procession or picketing, if it has been committed by a person repeatedly, which took place as a result of adoption of the Federal Law of 21 July 2014 No. 258-ФЗ “On Making Amendments to Individual Legislative Acts of the Russian Federation with Regard to Improvement of the Legislation on Public Events”, it is important to bear in mind that in the legal system of Russia crime, unlike other offences, must be of a criminal public danger, in the absence of which even an action formally falling under signs of a criminally punishable may not be regarded as such (Section 2 of Article 14 of the Criminal Code of the Russian Federation).

As a consequence, the federal legislator, determining what actions, dangerous for person, society and the State are recognized as crimes (Section 2 of Article 2 of the Criminal Code of the Russian Federation), must avoid excessive use of the criminal-law repression, remembering that only circumstances together objectively confirming criminal degree of public danger of unlawful actions, including the scale of their prevalence and the dynamics of growth, the significance of values protected by law which they infringe upon, substance of the damage caused by them, as well as impossibility to overcome them by other legal means may serve as a ground for their criminal character (Judgment of the Constitutional Court of the Russian Federation of 27 June 2005 No. 7-II).

Criminalization of some or other offences, indissolubly connected with the construction of a *corpus delicti*, whose constructive elements are the object, objective side, subject and subjective side, contemplates no obligatory presence of signs of criminal public danger in each of them; such signs may reflect not all, but

only individual elements of the *corpus delicti*. In particular, public danger of an action can be determined by the cumulative effect of an unlawful infringement upon the protected public relations (object of a crime), time, place, method of its commission and its sequels, including their scale (objective side of a crime), the form of guilt, motives and aims of unlawful actions, inaction (subjective side of a crime).

Bearing this in mind, the federal legislator is entitled to resort to the institute of criminal liability in the interests of the proper protection of constitutionally significant values (Article 55, Section 3, of the Constitution of the Russian Federation) also in cases when an unlawful action is committed by a person having already been subjected to administrative persecution and punishment for analogous actions, i.e. having special administrative record, using for it the so called *corpora delicti* with administrative prejudice.

4.2. Repeated (multiple) commission by a person of uniform administrative offences objectively testifies to insufficiency of the existing administrative-law means for effective counteraction against such actions, which together with other factors may be regarded as a constitutionally significant reason to criminalize respective actions (inaction), which, remaining administrative offences in their normative basis, approximate to criminally punishable actions in character and degree of public danger and under certain conditions are able to cause serious harm to public relations guarded by the criminal law.

This conclusion correlates with a number of articles of the Criminal Code of the Russian Federation, which although at present avoids to widely use *corpora delicti* with administrative prejudice, but does not refuse to construct them in some cases of the repeated (multiple) commission of offences, representing the most harmful administrative unlawful infringements upon public relations guarded by law (Article 116¹ “Beating by a person subjected to administrative punishment”, Article 158¹ “Petty theft committed by a person subjected to administrative punishment”, Article 215¹ “Illegal penetration into guarded object” and others). These provisions of the criminal law, notwithstanding that in themselves they do

not predetermine constitutional substantiation of making respective offences, committed by a person having earlier been made administratively answerable for analogous actions, crimes, nevertheless allow to arrive at a conclusion that in establishing criminal liability for a repeated (multiple) breach of some or other bans one cannot but take into account the nature of such offences, excluding ascription of unlawful but not really dangerous actions to crimes (*malum prohibitum*).

Accordingly, introduction of criminal liability for multiple breach of the established order of organization or holding of an assembly, meeting, demonstration, procession or picketing, if it is equivalent to the character and the degree of public danger of an action falling under it, does not entail excessive criminal coercion and does not lead to deviation from principles of equality, proportionality and justice, and therefore, from the constitutional point of view, cannot be regarded as going beyond the bounds of discretionary powers of the federal legislator.

As to the correlation of the disposition of Article 212¹ of the Criminal Code of the Russian Federation with the principle of *non bis in idem* (Article 50, Section 1, of the Constitution of the Russian Federation), the *corpus delicti* envisaged by it (as well as other *corpora delicti*, whose subject can only be a natural person having earlier been subjected to administrative punishment for the analogous unlawful action) contemplates no – contrary to the assertion of the petitioner in the present case – possibility of criminal liability for those breaches of the established order of organization or holding of a public event, for which this person has already been subjected to administrative punishment. The ground for making criminally answerable in these cases is only a breach of the established order of organization or holding of a public event, committed by a person having earlier been made administratively answerable under Article 20.2 of the Administrative Offences Code of the Russian Federation more than twice during 180 days, within the bounds of a term during which this person is regarded as subjected to administrative punishment for the said administrative offences (Judgment of the

Constitutional Court of the Russian Federation of 29 June 2012 No. 16-II), and only on condition that for the action this person is being charged with he was not subjected to administrative punishment for an administrative offence envisaged by this Article.

Thus, criminalization of the multiple breach of the established order of organization or holding of a public event is not attended by the possibility to make a person who committed it criminally answerable for an administrative offence, for which this person has already earlier been subjected to administrative punishment, so far as Article 212¹ of the Criminal Code of the Russian Federation envisages liability for an unlawful action, which did not serve as a ground for administrative liability of the person who committed it.

5. Within the literal meaning of the provisions of Article 212¹ of the Criminal Code of the Russian Federation, multiple breach of the established order of organization or holding of an assembly, meeting, demonstration, procession or picketing forms a *corpus delicti* irrespective of what kind of breach out of those envisaged by Article 20.2 of the Administrative Offences Code of the Russian Federation has been committed by a person, earlier made administratively answerable under the same Article more than twice during 180 days.

In the disposition of Article 20.2 of the Administrative Offences Code of the Russian Federation there are eight compositions of administrative offences, which have a common object of infringement (the established order of organization or holding of a public event), but substantially differ in the subjective side and subject of unlawful actions – from the organization or holding of a public event without submission in an established order of a notification on its holding (Section 2) to the organization or holding of a non-sanctioned public event near the territory of a nuclear installation, source of radiation or post of storage of nuclear materials and radioactive substances or active participation in such a public event, if this has complicated the fulfilment of their official duties by employees of the said installation, source or post or created threat to security of the population and environment (Section 7), which is reflected in the envisaged administrative

punishments, the minimum of which is administrative penalty in the amount of 10,000 to 15,000 roubles (Sections 1 and 5), and the maximum – administrative arrest for the term of up to 30 days and nights (Section 8).

Differentiation of administrative liability for the commission of administrative offences envisaged in Sections 1-8 of Article 20.2 of the Administrative Offences Code of the Russian Federation is predetermined, as the Constitutional Court of the Russian Federation pointed out in the Judgment of 14 February 2013 No. 4-П, by the essence of various breaches of the order of organization or holding of public events. If compositions of administrative offences envisaged by Sections 1, 2 and 5 of Article 20.2 of the Administrative Offences Code of the Russian Federation are not linked with causing or a real threat of causing harm to citizens' health, property of natural and legal persons, other values guarded by law, actions, liability for which is envisaged by its Sections 3, 4, 6, 6¹ and 7, belong to more serious administrative offences and by the degree of their public danger gravitate towards criminally punishable actions (any breach envisaged by Sections 1-6¹ of this Article according to its Section 8 may be regarded as a repeated breach of the order of organization or holding of a public event).

The possibility of causing or a real threat of causing harm to constitutionally guarded values as a result of breach of the established order of organization or holding of a public event conditions the admissibility of the legislative search for stricter measure of State coercion, proportionate to the relevant socio-political reality, whose absence can noticeably complicate the appropriate legal guarding of human and civil rights and freedoms and effective prevention of the most aggressive actions, infringing upon public order and public security; achievement of respective purposes can be secured not only by aggravation of administrative liability (increase of amounts of administrative penalties, terms of mandatory labour and administrative arrest), but also by criminalization of individual unlawful infringements upon the established order of organization or holding of a public event, committed by persons, the application of measures of administrative liability

under Article 20.2 of the Administrative Offences Code of the Russian Federation to whom turned to be insufficient for effective preventive effect and keeping them back from multiple breach of this order.

And if breach of the established order of organization or holding of a public event by a person having earlier been made administratively answerable for administrative offences envisaged by Article 20.2 of the Administrative Offences Code of the Russian Federation no less than three times during 180 days was formal and entailed no coming or a threat of coming of the said negative circumstances, such breach may not be regarded as representing criminal public danger and therefore criminal liability for it, motivated only by multiple character of its commission, goes beyond the constitutionally admissible criminal-law restriction of human and civil rights and freedoms.

The European Court of Human Rights holds similar opinion with regard to criminal persecution of persons breaching rules of holding of public events, assuming that unlawful situation, for instance, holding of a demonstration without preliminary coordination, does not necessarily justify punitive measures used by the authorities for the participation in a public event; peaceful demonstration must in principle not fall under the threat of criminal sanction; criminal conviction for the participation in a public event not connected with acts of violence is impossible without the assessment of its proportionality by domestic courts; measures applied to the participants of peaceful public actions on the basis of their formal unlawfulness must not pursue the object of averting wide public from visiting assemblies and demonstrations and thereby from an open political discussion (judgments of 20 March 2012 in the case of *Pekaslan and others v. Turkey*, of 14 October 2014 in the case of *Yilmaz Yildiz and others v. Turkey*, of 15 October 2015 in the case of *Kudrėvičius and others v. Lithuania*, of 13 December 2016 in the case of *Kasparov and others v. Russia (No. 2)* and others).

Therefore, breach of the established order of organization or holding of an assembly, meeting, demonstration, procession or picketing by a person having earlier been made administratively answerable for the commission of

administrative offences envisaged by Article 20.2 of the Administrative Offences Code of the Russian Federation no less than three times during 180 days is not in itself a sufficient ground for calling to criminal account, which may come only when it entailed causing harm to citizens' health, property of natural or legal persons, environment, public order, public security, other constitutionally guarded values or contained a real threat of causing it. Other would mean the possibility to apply criminal liability for actions (inaction), not representing public danger requiring their criminalization, and therefore would contradict Articles 17 (Sections 1 and 3), 19 (Sections 1 and 2), 31 and 55 (Section 3) of the Constitution of the Russian Federation.

5.1. Multiple character of the breach of the established order of organization or holding of an assembly, meeting, demonstration, procession or picketing becomes criminally unlawful, as it is directly fixed in Article 212¹ of the Criminal Code of the Russian Federation, only in the event when a person during 180 days preceding the breach, in connection with which the question arises of making him criminally answerable under this Article, was already more than twice made administratively answerable for the commission of administrative offences envisaged by Article 20.2 of the Administrative Offences Code of the Russian Federation.

It follows from this that the legislative construction of the *corpus delicti*, laid down in the basis of criminalization of the multiple breach of the established order of organization or holding of a public event differs from the majority of other *corpora delicti* with administrative prejudice (Articles 116¹, 151¹, 157, 158¹, 215⁴ and 264¹ of the Criminal Code of the Russian Federation), because it ties criminal-law sequels of a respective unlawful action not with its commission by a person subjected to administrative punishment for analogous offence, but with previous making such person administratively answerable. As a result, law-applying bodies, including courts, leaning on a formal dogmatic approach to the understanding of the normative content of the provisions of Article 212¹ of the Criminal Code of the Russian Federation without taking into account their place in the system of the

effective legal regulation can assume that for the qualification of an unlawful action under this Article administrative record for earlier committed administrative offences envisaged by Article 20.2 of the Administrative Offences Code of the Russian Federation is not at all required, and it is enough to establish the very facts of his making administratively answerable under this Article more than twice, confirmed by respective judicial acts even if not having entered into legal force (materials of the criminal case of I.I.Dadin show that all judicial instances involved stuck to exactly this interpretation of Article 212¹ of the Criminal Code of the Russian Federation).

Meanwhile, any making criminally accountable, within the meaning of Article 54 (Section 2) of the Constitution of the Russian Federation and the provisions of Section 2 of Article 2, Article 8 and Section 1 of Article 14 of the Criminal Code of the Russian Federation rendering it concrete, unconditionally contemplates that only an action dangerous for person, society and the State and containing all signs of a *corpus delicti* envisaged by the criminal law, which must be inherent in it by the moment of commission, may be its ground. With regard to the *corpus delicti* fixed in Article 212¹ of the Criminal Code of the Russian Federation, which has as one of its imperative signs multiple character of the breach of the established order of organization or holding of a public event, this means that making criminally answerable for this crime is only possible in the event if by the moment of its commission the accused has earlier been no less than three times during 180 days subjected to administrative punishment for administrative offences envisaged by Article 20.2 of the Administrative Offences Code of the Russian Federation under court acts having entered into legal force.

5.2. According to Article 49 (Section 1) of the Constitution of the Russian Federation, any person accused of the commission of a crime is considered innocent until his (her) guilt is proven in accordance with the procedure stipulated by federal law and is confirmed by a court sentence which has entered into legal force. Although literally the this constitutional rule is addressed to persons accused of the commission of a crime, its regulative meaning goes beyond the bounds of

criminal persecution as such, and therefore must be borne in mind in application of State coercion of punitive (penalty) character in the field of public liability – both criminal and administrative (judgments of the Constitutional Court of the Russian Federation of 7 June 2000 No. 10-II, of 27 April 2001 No. 7-II, of 17 July 2002 No. 13-II; rulings of 19 November 2015 No. 2732-O, of 24 November 2016 No. 2524-O and others).

Proceeding from this, Article 1.5 of the Administrative Offences Code of the Russian Federation, fixing the presumption of innocence as a general principle of the administrative-tortious legislation, directly points out that a person is only administratively liable for those administrative offences, in respect of which his guilt has been established (Section 1); a person, in whose respect the proceedings on a case of administrative offence is being conducted is considered innocent until his guilt is proven in accordance with the procedure stipulated by law and confirmed by a resolution of a judge, a body, an official having considered the case, which has entered into legal force (Section 2).

Accordingly, breaches of the established order of organization or holding of an assembly, meeting, demonstration, procession or picketing, preceding making criminally answerable under Article 212¹ of the Criminal Code of the Russian Federation, may only be taken into account in criminal proceedings in the events when they are confirmed by judicial acts on making respective person administratively answerable for their commission, which have entered into legal force. And the qualification of a multiple breach of the established order of organization or holding of a public event as a crime, based on judicial acts on making this person administratively answerable for administrative offences envisaged by Article 20.2 of the Administrative Offences Code of the Russian Federation, which by the moment of the commission of the offence, for which he may be made criminally answerable under Article 212¹ of the Criminal Code of the Russian Federation, have not entered into legal force and had no qualities of *res judicata*, conflicts with the constitutional ban on criminal persecution for actions

(inaction), not falling by the moment of their commission under signs of a crime, and does not accord with the presumption of innocence.

Besides, it follows from the interconnected provisions of Article 20.2 of the Administrative Offences Code of the Russian Federation and Article 212¹ of the Criminal Code of the Russian Federation – in the context of the constitutional-law appraisal of admissible parameters of the prejudicial significance of administrative liability – that breach of the established order of organization or holding of a public event can be ordinary, repeated or multiple; a repeated breach contemplates stricter administrative liability and a multiple breach entails criminal liability. The logic of such legislative regulation, proceeding from the purposes of the creation of a mechanism of effective public law guarding of the established order of organization or holding of an assembly, meeting, demonstration, procession or picketing, consists in gradual aggravation of liability for the repeated (administrative liability) and multiple (criminal liability) breaches of the established order of organization or holding of a public event, which has been bidden by the lawful care about appropriate observance of constitutional criteria of the necessity, commensurateness (proportionality) and fairness of restrictions of human and civil rights and freedoms.

According to the Administrative Offences Code of the Russian Federation, the commission of a uniform administrative offence is recognized as repeated, if it was committed during the period when a person was regarded as subjected to administrative punishment under Article 4.6 of this Code for the commission of a uniform administrative offence (Item 2 of Section 1 of Article 4.3); a person, to whom administrative punishment for the commission of an administrative offence has been prescribed, is regarded as subjected to this punishment as from the day of entering into legal force of the resolution on the prescription of administrative punishment until the expiry of one year from the day of termination of execution of this resolution (Article 4.6).

Commission by a person subjected to administrative punishment, i.e. being under administrative punishment, of a uniform or, what is more, analogous offence

testifies that measures of administrative coercion applied to him have had no due preventive effect, and therefore ascription of the repeated (multiple) character of administrative offences to circumstances aggravating administrative liability for their commission, to signs of qualified compositions of administrative offences, and if need be – to grounds for criminalization of respective actions seems to be reasonably expedient. But if a new administrative offence is being committed by a person having earlier been made administratively answerable for an analogous administrative offence but not subjected to administrative punishment by a judicial act on the case of administrative offence in legal force, attribution to this fact of an administrative or criminal-law significance entailing increase of the public-law liability would not conform to constitutional principles of the proportionate, commensurate and fair use of measures of State coercion.

Thus, the provisions of Article 212¹ of the Criminal Code of the Russian Federation – within its constitutional-law meaning in the system of the effective legal regulation – exclude the possibility to make criminally accountable for multiple breach of the established order of organization or holding of an assembly, meeting, demonstration, procession or picketing a person, in whose respect by the moment of the commission of the action he is being charged with there were no judicial acts in legal force about making him administratively answerable for administrative offences envisaged by Article 20.2 of the Administrative Offences Code of the Russian Federation no less than three times during 180 days. Other would mean not only denial of the normative unity of legislative provisions under consideration with other provisions of the administrative-tortious and criminal legislation, but also ignoring of constitutionally significant criteria of lawfulness of the use of means of criminal coercion following from Articles 19 (Sections 1 and 2), 31, 49 (Section 1), 54 (Section 2) and 55 (Section 3) of the Constitution of the Russian Federation.

5.3. In accordance with the Criminal Code of the Russian Federation, criminality of an action, as well as its punishability and other criminal-law consequences are determined only by this Code (Section 1 of Article 3); the ground

for criminal liability is the commission of an action, containing all signs of a *corpus delicti* envisaged by this Code (Article 8); a person is only criminally liable for those publicly dangerous actions (inaction) and their publicly dangerous sequels, in respect of which his guilt has been established; objective imputation, i.e. criminal liability for a guiltless causing of harm, is not admitted (Article 5); an action committed by negligence alone is only recognized as crime in the event when this is specially envisaged by a respective article of the Particular Part of this Code (Section 2 of Article 24); a crime is recognized as committed intentionally, if it has been committed with a specific or general intent (Article 25).

Article 212¹ of the Criminal Code of the Russian Federation, both in its disposition and a footnote to it, contains no indication at the commission of the crime envisaged by it by negligence, therefore, this crime, unlike administrative offences envisaged by Article 20.2 of the Administrative Offences Code of the Russian Federation, can be committed with the intentional form of guilt; if in the course of investigation and court examination of a specific criminal case it is established that respective action has been committed by a person by negligence, liability for it under Article 212¹ of the Criminal Code of the Russian Federation must not come, which does not exclude the possibility to make this person administratively answerable for the administrative offence (including the repeated one) envisaged by Article 20.2 of the Administrative Offences Code of the Russian Federation.

5.4. According to Article 90 of the Criminal Procedure Code of the Russian Federation, circumstances established by a sentence having entered into legal force, except for a sentence passed by court in accordance with Articles 226⁹, 316 or 317⁷ of this Code, or by other court decision in legal force, taken within the framework of the civil, arbitration or administrative judicial proceedings, shall be recognized by court, prosecutor, investigator, inquirer without additional examination; at this such sentence or decision may not predetermine the guilt of persons having not earlier participated in the criminal case under consideration.

Revealing the constitutional-law meaning of Article 90 of the Criminal Procedure Code of the Russian Federation as applied to prejudicial significance of decisions passed in civil judicial proceedings, the Constitutional Court of the Russian Federation in the Judgment of 21 December 2011 No. 30-II arrived at a conclusion that bounds of operation of the prejudicial character of a court decision are objectively determined by the assumption that facts established by court within the framework of the subject-matter of consideration in a case in their legal essence can have other significance as an element of the matter of proof in another case, so far as matters of proof in different kinds of judicial proceedings do not coincide, and courts in their examination are limited by their competence within the framework of a specific kind of judicial proceedings; proceeding from this, court decisions, passed in civil cases and having entered into legal force may not be perceived as predetermining court conclusions in carrying out criminal judicial proceedings as to whether an action contains signs of a crime, as well as about guilt of the person being made criminally answerable, which must lean on the entire body of evidence in a criminal case.

This legal position, based on Article 118 (Section 2) of the Constitution of the Russian Federation and taking into account that each kind of judicial proceedings has its own, not coinciding with other, tasks and is carried out in the procedures inherent only in it with participation of respective parties, may be extended to prejudicial significance of court decisions, passed in the proceedings in cases on administrative offences as well. Proceeding from this, in applying Article 212¹ of the Criminal Code of the Russian Federation the prejudicial character of judicial acts on making administratively answerable for the commission of administrative offences envisaged by Article 20.2 of the Administrative Offences Code of the Russian Federation cannot be irrefutable, which contemplates the need of court's verification of all circumstances of the commission of a criminally punishable action as proved within the framework of criminal judicial proceedings on the basis of principles of controversy and equality of parties (Article 123, Section 3, of the Constitution of the Russian Federation).

As the Constitutional Court of the Russian Federation noted earlier, the right of everyone charged with a criminal offence to court protection, within the meaning of Article 46 (Sections 1 and 2) of the Constitution of the Russian Federation and Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, is not only the right to public hearing of his case by an independent and impartial court within a reasonable time, but also the possibility to receive real judicial protection against an unfounded making criminally accountable, which must be secured by the State; only if these conditions are fulfilled can the criminal judicial proceeding correspond to its destination (Article 6 of the Criminal Procedure Code of the Russian Federation) and not impair or restrict guarantees of a full-value realization of the right to court protection (judgments of 27 May 2008 No. 8-II, of 16 June 2009 No. 9-II, of 8 June 2015 No. 14-II and others). Accordingly, the defence, including with the help of a lawyer (Article 48, Section 2, of the Constitution of the Russian Federation), is entitled to bring forward any objections as to the proved character of the accusation of a person made criminally answerable of the criminally punishable action he is charged with, including those concerning administrative offences committed by this person, and the obligation to disprove these objections is placed on the prosecution.

By virtue of this, securing constitutionally significant interests of the protection of a person against unlawful and unfounded accusation and conviction for the crime envisaged by Article 212¹ of the Criminal Code of the Russian Federation contemplates that actual circumstances, established by judicial acts in cases on administrative offences having entered into legal force, in themselves do not predetermine court's conclusions about the guilt of a person, in whose respect they have been passed, of the commission of the crime envisaged by this Article, which is to be established by court in the procedures envisaged by the criminal procedure law on the basis of the entire body of evidence, including those not examined in the consideration of cases on administrative offences committed by this person. Otherwise, the application of Article 212¹ of the Criminal Code of the

Russian Federation would be inevitably connected with the risk of deviation from the principles of independent, self-sufficient and fair administration of justice, whose main destination is to secure human and civil rights and freedoms that follow from Articles 10, 18, 19 (Section 1), 46 (Section 1), 120 (Section 1) and 123 (Section 3) of the Constitution of the Russian Federation.

5.5. Federal legislator, providing for criminal liability for multiple breach of the established order of organization or holding of a public assembly, meeting, demonstration, procession or picketing and being bound by the tasks of the criminal legislation, for the fulfilment of which the Criminal Code of the Russian Federation determines actions recognized as crimes and establishes kinds of punishments for their commission (Section 2 of Article 2), is obliged to observe constitutional principles of the necessity, proportionality, commensurateness, fairness and legal security both in criminalization of one or another action and its penalization.

The Constitutional Court of the Russian Federation has repeatedly emphasized that punishments set for breaches of the criminal law must be predetermined by constitutional fundamentals of a democratic law-governed State, including State protection of human and civil rights and freedoms, observance of constitutional guarantees of personal rights, fairness and equality, prohibition of arbitrariness on the part of bodies of State power and officials realizing criminal-law norms, including judges; resolution of the question of the amount of sanctions for crimes envisaged by the Criminal Code of the Russian Federation is the prerogative of the federal legislator, who, when choosing some or other punishments, must be guided by constitutional requirements of necessity and proportionality, obliging him to differentiate them depending on the gravity of the action, amount and character of the damage caused, the degree of guilt of the offender and other substantial factors influencing the individualization of criminal coercion; application of identical measures of criminal liability for crimes, differing by the degree of public danger, without due account of circumstances characterizing the accused person and having objective and reasonable

substantiation, contradicts the constitutional prohibition of discrimination and ideas of justice and humanism expressed in the Constitution of the Russian Federation (judgments of 15 July 1999 No. 11-П, of 27 May 2008 No. 8-П, of 13 July 2010 No. 15-П, of 11 December 2014 No. 32-П and others).

Sanction of Article 212¹ of the Criminal Code of the Russian Federation envisages for multiple breach of the established order of organization or holding of a public event punishments in the form of a penalty, mandatory labour, correctional labour, compulsory labour and deprivation of liberty. Their application may not be carried out in separation from the rules fixed in the General Part of this Code, by virtue of which punishment of a person found guilty of the commission of a crime must be fair and be prescribed within the bounds of the respective sanction; stricter kind of punishment from the number of those envisaged for the committed crime shall only be prescribed if less strict kind of punishment will not be able to secure achievement of purposes of the punishment; in prescribing punishment, character and the degree of public danger of the crime, as well as the personality of the accused, including circumstances mitigating or aggravating the punishment, shall be taken into account, as well as the influence of the prescribed punishment on the correction of the convicted person and living conditions of his family; in the presence of exceptional circumstances linked with objects and motives of the crime, the role of the guilty person, his behavior during or after the commission of the crime, and other circumstances, substantially abating the degree of public danger of the crime, as well as in the event of active help of a participant of a group crime in the disclosure of this crime the prescribed punishment can be lower than the lowest bound of the sanction for this crime or court can prescribe milder kind of punishment than is envisaged by the sanction for this crime (Section 1 of Article 6, Sections 1 and 3 of Article 60 and Section 1 of Article 64).

The enumerated provisions of the criminal law are aimed at ensuring individualization of the criminal liability and exclude arbitrary court discretion in choosing the kind and rate of the punishment, which does not allow to regard inclusion of deprivation of liberty in the sanction of Article 212¹ of the Criminal

Code of the Russian Federation as contemplating its compulsory application to all persons having committed respective crime and not conforming to the requirements of differentiation of criminal liability.

At the same time, regarding deprivation of liberty as a sanction for multiple breach of the established order of organization or holding of a public event, one must bear in mind Article 15 of this Code, according to which, depending on the character and degree of public danger, actions envisaged by it are subdivided into crimes of small gravity, crimes of medium gravity, grave crimes and particularly grave crimes (Section 1); at this as crimes of small gravity are recognized intentional or negligent actions, for the commission of which punishment envisaged by this Code does not exceed three years of deprivation of liberty (Section 2), as crimes of medium gravity – intentional actions, for the commission of which maximum punishment does not exceed five years of deprivation of liberty, and negligent actions, for the commission of which maximum punishment exceeds three years of deprivation of liberty (Section 3), grave crimes – intentional actions, for the commission of which maximum punishment does not exceed 10 years of deprivation of liberty (Section 4), particularly grave crimes – intentional actions, for the commission of which this Code envisages punishment in the form of deprivation of liberty for the term of more than 10 years or stricter punishment (Section 5).

Ascription of the crime envisaged by Article 212¹ of the Criminal Code of the Russian Federation to crimes of medium gravity equates it by the character and degree of public danger, in particular, with such crimes envisaged by this Code as murder of a new-born child by his mother (Article 106), driving to suicide (Article 110), use of violence to a representative of the authorities (Section 1 of Article 318), arbitrariness committed with the use of violence or threat of its use (Section 2 of Article 330), whereas for other crimes with administrative prejudice there is either no punishment in the form of deprivation of liberty at all (Articles 116¹ and 151¹) or it does not exceed one year (Articles 157, 158¹ and 314¹), two years (Article 264¹) or four years (Article 215⁴), and only the crime envisaged by Article

284¹ of this Code may be punished by deprivation of liberty for the term of two to six years.

As a result, within the meaning of the legal position formulated by the Constitutional Court of the Russian Federation in the Judgment of 19 April 2016 No. 12-Π, punishment prescribed to a person having committed the crime envisaged by Article 212¹ of the Criminal Code of the Russian Federation for the first time – with account taken of Sections 1 and 3 of Article 60 of this Code – must not necessarily be linked to deprivation of liberty; court is entitled to resort to it, when it arrives at a substantiated conclusion that the reform of the offender is impossible without his isolation from society.

Deciding on criminal punishment of a person having committed the crime envisaged by Article 212¹ of the Criminal Code of the Russian Federation, courts must base their decision exclusively on the appraisal of public danger and unlawfulness of the action, which may not be put in dependence on this person's attitude – negative (critical) or positive (approving) to the decisions adopted by bodies of public authority and policy conducted by them, so far as the Constitution of the Russian Federation, its Articles 1 (Section 1), 13 (Sections 1-3), 15 (Section 2) and 19 (Sections 1 and 2), as the Constitutional Court of the Russian Federation pointed out in the Judgment of 8 April 2014 No. 10-Π, obliges equally all citizens, whatever their political and ideological convictions, to observe the established order of organization or holding of an assembly, meeting, demonstration, procession or picketing.

The choice of the kind of criminal punishment and determination of its amount in respect of a specific person having committed the crime envisaged by Article 212¹ of the Criminal Code of the Russian Federation must be conditioned by real degree of public danger of the action committed by him, which does not imply application of deprivation of liberty in cases when the breach of the established order of organization or holding of a public event was not linked with its loss of peaceful character, not falling under signs of a crime envisaged by Article 212 (“Mass Rioting”) of the Criminal Code of the Russian Federation or

with causing or a real threat of causing substantial harm to citizens' health, property of natural or legal persons, environment, public order, public security or other constitutionally guarded values.

Other would mean the non-observance of the requirements of necessity, proportionality and fairness, following from Articles 19 (Sections 1 and 2) and 55 (Section 3) of the Constitution of the Russian Federation and brought forward to restrictions of human and civil rights and freedoms and addressed, according to its Article 18, not only to the federal legislator, but also to all law-appliers, including courts.

Proceeding from the expounded above and guided by Articles 6, 71, 72, 74, 75, 78, 79. 87 and 100 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", the Constitutional Court of the Russian Federation

h o l d s:

1. To recognize Article 212¹ of the Criminal Code of the Russian Federation as not contradicting the Constitution of the Russian Federation, so far as within its constitutional-law meaning in the system of the effective legal regulation its provisions:

allow to subject to criminal persecution for breach of the established order of organization or holding of an assembly, meeting, demonstration, procession or picketing a person earlier made administratively answerable for administrative offences envisaged by Article 20.2 of the Administrative Offences Code of the Russian Federation no less than three times during 180 days, if this person within the bounds of the term during which he is regarded as subjected to administrative punishment for the said administrative offences again breached the established order of organization or holding of an assembly, meeting, demonstration, procession or picketing;

contemplate that making a person criminally answerable for the crime envisaged by this Article is only possible if breach by him of the established order

of organization or holding of an assembly, meeting, demonstration, procession or picketing entailed causing or a real threat of causing citizens' health, property of natural or legal persons, environment, public order, public security or other constitutionally guarded values;

exclude the possibility to make criminally answerable for breach of the established order of organization or holding of an assembly, meeting, demonstration, procession or picketing a person, in whose respect by the moment of the commission of an action he is charged with judicial acts in legal force on making him administratively answerable for administrative offences envisaged by Article 20.2 of the Administrative Offences Code of the Russian Federation no less than three times during 180 days were absent;

admit making a person criminally answerable for breach of the established order of organization or holding of an assembly, meeting, demonstration, procession or picketing under this Article only if an action committed by him was intentional;

mean that actual circumstances established by judicial acts on cases on administrative offences having entered into legal force in themselves do not predetermine court's conclusions about guilt of the person, in whose respect they have been passed, of the commission of the crime envisaged by this Article, which must be established in the procedure envisaged by the criminal procedure law on the basis of the entire aggregate of proof, including those not examined in the consideration of cases on administrative offences committed by this person;

imply the possibility of the prescription to the person of punishment in the form of deprivation of liberty on condition that breach by him of the established order of organization or holding of an assembly, meeting, demonstration, procession or picketing entailed loss of peaceful character by a public event (if respective breach does not fall under signs of the crime envisaged by Article 212 "Mass Rioting" of the Criminal Code of the Russian Federation) or causing or a real threat of causing substantial harm to citizens' health, property of natural or legal persons, environment, public order, public security or other constitutionally

guarded values, whereas without the prescription of this kind of punishment it is impossible to achieve purposes of criminal liability for the crime envisaged by this Article.

2. The constitutional-law meaning of the provisions of Article 212¹ of the Criminal Code of the Russian Federation, revealed in this Judgment, is binding for all representative, executive and judicial bodies of State power, bodies of local self-government, enterprises, agencies, organizations, officials, citizens and their associations.

3. The federal legislator is entitled, proceeding from the requirements of the Constitution of the Russian Federation and with regard to legal positions of the Constitutional Court of the Russian Federation expressed in the present Judgment, to make amendments to Article 212¹ of the Criminal Code of the Russian Federation, aimed at elaboration of normative grounds of making criminally answerable for the crime envisaged by this Article and measures of punishment for its commission.

4. Judicial acts passed in respect of Dadin Ildar Ildusovitch and based on the interpretation of the provisions of Article 212¹ of the Criminal Code of the Russian Federation, diverging from their constitutional-law meaning revealed in the Present Judgment, are subject to reconsideration provided there are no other obstacles to it.

5. The present Judgment shall be final and shall not be subject to any appeal, it shall come into force immediately upon pronouncement, shall be directly applicable and shall not require confirmation by other authorities and officials.

6. The present Judgment is subject to immediate publication in Rossiyskaya Gazeta, the Collection of Laws of the Russian Federation and on the official Internet-portal of legal information (www.pravo.gov.ru). The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

The Constitutional Court
of the Russian Federation

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