The Right to Free Protest versus Governmental Interests: Russian Context.

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ABSTRACT

This thesis focuses on the legislative and human rights protection of the right to freedom of assembly in the Russian Federation. It analyses domestic normative acts and acts of law enforcement and compares them with the principles worked out by the European Court of Human Rights and the relative practice of some other jurisdictions.

The main goal of the research work was to identify the crucial problems in the Russian assembly legislation and to propose possible solutions in what way the Legislator and judges should move in order to establish the free exercising of the right to protest peacefully *de facto*.

Relevance and importance of the present work is vital since there was no examination of modern Russian laws related to the assembly issues and the practice of its enforcement in light of the position of the ECHR before.

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INTRODUCTION

"*What does the legislation about the march say?*
It is necessary to get local authority permission.
If you have received it – go ahead and show off.
But if not – you do not have rights.
Went out without having the right – get a club on the head.
That's it!"

Vladimir Putin
An abstract from the interview to "Kommersant" newspaper.[1]
30.08.2010.

The right to freedom of peaceful assembly is one of the fundamental rights guaranteed by the basic international documents on human rights. Obviously, the right to assemble peacefully, without weapons in order to discuss public interest issues, to express political sentiments, protest - is a necessary condition for the viability of the civil society and should be provided by the state - at least, if it is called democratic. Although in practice the problems of realization of this "right to freedom" are primarily associated with the activities of the State and its organs.

A right to freedom of assembly is always in contradiction with the right of the public to order and tranquility. As András Sajó said, "[a]ssemblies are protected thanks to a number of happy historical accidents."[2] However, sometimes this protection is mostly on paper rather than in life. 'Paper' protection is extremely important, it allows defending the right using different remedies, but when the real protection is available just in the European Court of Human Rights,[3] it seems that those domestic remedies are not so effective. Simultaneously, despite the great importance of the freedom of assembly, it is almost impossible to imagine a totally free protest, without any requirements and restrictions from the side of the State. And that is undoubtedly

[1] *Vladimir Putin*: *Dayu vam chestnoe partiynoye slovo* (Vladimir Putin: I give you my word of honour) <www.kommersant.ru/doc/1495411> accessed 20 September 2011.

[2] András Sajó, *Constitutional Sentiments* (Yale University Press, 2011) P. 246.

[3] Russia's Court of Last Resort 'The Russian people have an extremely effective supreme court. It is entirely independent of the Russian state, its judgments have a significant impact on the legal system, and — above all — the state will (eventually) comply with its judgments. The only problem is that the court is not in Moscow, it's in Strasbourg — it's the European Court of Human Rights'. <http://www.nytimes.com/2011/08/05/opinion/05iht-edriley05.html?_r=1&pagewanted=all%3Fsrc%3Dtp&smid=fb-share> accessed 20 November 2011.

right. Unfortunately, in modern Russia, the balance between people's and State's rights is at stake and the power that the State has weights the scales on its behalf.

During the last 20 years the life has changed sharply, especially in Post-Soviet countries. Russia became a party of several international human rights conventions, took obligations to provide human rights on its territory. However, the number of violations of human rights is still prohibitively high and a violation of freedom of assembly occupies one of the leading positions among all of them.

It is a great misbelief, that Russian people are "patient, with an almost infinite capacity to bear hardship without protest."[4] On the contrary, they try to protect their rights very intensively; however, as it was fairly noticed by Graeme Robertson: "the extent of this protest has been largely neglected by academic writers of contemporary Russia."[5]

Therefore, the aim of this paper is to fill up the gap in the field of protests' researching. By now, there are very few academic works on freedom of assembly in Russia. Among them, it is possible to distinguish those that are mostly concentrated on the pure legislation separated from the real practice[6] or on the social and philosophical aspects of protests.[7] In this research work I combine theory and practice.

First of all, I explore the issue of protests in the Russian Federation from the historical point of view. Then I analyze the RF current legislation and the authoritative position of the Russian Constitutional Court on the problem that constitute the subject matter of the issue of freedom of assembly, namely the confrontation of the *de jure* 'notification procedure and the *de facto* 'authorization order'.

[4] G. B. Robertson, *The politics of protest in hybrid regimes: managing dissent in post-communist Russia* (CUP, 2011) P. 41.

[5] Ibid.

6 For example, Yakovenko M.A. '*Pravo na provedeniye sobraniy, mitingov, demonstratsiy, shestviy I piketirovaniy v sisteme konstitutsionnyh prav i svobod'* (Right to hold assemblies, meetings, demonstrations, marches and picketing in the system of constitutional rights and freedoms). *Konstitutsionnoye i munitsipalnoye pravo* No. 3 (11-16) (2009).

[7] For example, G. B Robertson, *The politics of protest in hybrid regimes: managing dissent in post-communist Russia*.

In order to limit the scope of this work it is important to note that I will not cover the issue of the "Pussy Riot" case, primarily because in my point of view the real problem is not in the violation of the girls'[8] right to freedom of assembly, but in the wrong qualification of the action. Instead of opening the administrative case, it was decided to launch a criminal case against the members of the punk rock band.[9] Even though the issue is of the utmost importance and the right to freedom of expression is closely related to the right to free protest, they are still two separate rights.

The European Court was recently satisfied that the "political performance" occurred in Hungary "was intended to send a message through the media rather than the direct gathering of people"[10] and therefore was not determined as an assembly. I think the Pussy Riot's "punk moleben" should also be classified as an "intensive expression of an idea" rather than an assembly.

Due to the violent that occurred from both sides[11] during the assembly in May 2012, the Public Gathering Law of the Russian Federation was substantially amended. In this paper I examine these novellas in order to evaluate their conformity with the Russian Constitution and ECHR standards.

One may argue that the thesis is over concentrated on the internal affairs without giving a reasonable attention to comparative studies. However, I will provide examples of several jurisdictions included by not limited to ECHR, France, Georgia and the United Kingdom where necessary.

[8] Maria Alyokhina, Nadezhda Tolokonnikova and Yekaterina Samutsevich.

[9] Which is confirmed by the content of the Samutsevich's application to the ECHR. If to believe to her lawyer, a complaint will be based on Articles 3, 6 and 10 of the European Convention. <http://www.interfax-religion.com/?act=news&div=10023> accessed 15 November 2012.

[10] Case of *Tatár and Fáber v. Hungary* (App. Nos. 26005/08 and 26160/08) Judgment of 12 June 2012 para 39.

[11] From protesters and police officers.

I. CONCEPTUAL ISSUES OF THE FREEDOM OF ASSEMBLY

I.A. The General Importance of Freedom of Assembly

"An 'assembly' is an intentional and temporary gathering in a private or public space for a specific purpose. It therefore includes demonstrations, inside meetings, strikes, processions, rallies or even sits-in. ..."

Maina Kiai [12]

For ordinary people, the exercising of the right to free protest is a way to participate in state administration by expressing their opinions, discussing crucial issues of public life. The public event also carries another functional meaning – it helps to work out the ideas and opinions, preliminary draws out a political will and subsequently estimates it.

Freedom of assembly gives people the possibility to express their attitude towards political and social problems, to discuss issues of public interest, to show their support to the policy of the authorities or to protest against it, to make their position available to the public. Public events are basically used by people to protect their rights and freedoms, to require the State to take certain decisions.

Public events can be considered as a part of civil society: mass forms of 'brainstorming' aimed to draw attention to a particular problem within the public sphere of civil society are expressed in the holding of assemblies in different forms.[13]

Historically, freedom of assembly was modified from natural and inalienable freedoms of thought and speech. In turn, other political rights and freedoms, as well as personal, socio-economical and cultural rights are implemented through the right to freedom of manifestations.

[12] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, (A/HRC/20/27, 21 May 2012, para. 24). <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/ A.HRC.20.27_En.pdf.PDF> accessed 15 November 2012.

[13] Russian legislation distinguishes demonstrations, meetings, rallies, marches and pickets.

In order to clarify the concepts that I use in this work, I will give the overview of what will be considered as an 'assembly', what constitutes a 'protest' and why assemblies should or should not be negotiated.

The European Court of Human Rights has recently said that even though there are numerous definitions of "assembly" in national legal systems, they are no more than a starting-point.[14] It further adds that "in qualifying a *gathering of several people* as an assembly, regard must be had to the fact that an assembly constitutes a specific form of *communication of ideas*, where the gathering of an *indeterminate number of persons* with the *identifiable intention* of being *part of the communicative process* can be in itself an *intensive expression of an idea*" [15] (emphasis mine).

The basic definition of the public event envisaged in Article 2 of the Federal Law of the Russian Federation No.54-FZ of 19 June 2004 "On Meetings, Rallies, Demonstrations, Marches and Pickets" (hereinafter – the Assembly law, the Public Gathering law, the Federal law on assemblies, the Federal law No.54-FZ) provides that the public event as an

> "[o]pen, peaceful action accessible to everyone that is implemented as a rally,[16] meeting,[17] demonstration,[18] and march[19] or picketing[20] or by using various combinations of those forms that is undertaken at the initiative of citizens of the Russian Federation, political parties, other public or religious associations. The objective of the public event is to exercise the free expression and shaping of opinions and to put forward demands concerning various issues of political, economic, social and cultural life of the country and also issues of foreign policy."

As it follows from the definition of the public event and its varieties, the "public event" is equally a mass demonstration and an individual picket. Therefore, all types of manifestations are

[14] *Tatár and Fáber v. Hungary* (App nos. 26005/08 and 26160/08) Judgment of 12 June 2012 Para 37.

[15] Ibid. Para 38.

[16] The Federal Law of the Russian Federation No.54-FZ of 19 June 2004 "On Meetings, Rallies, Demonstrations, Marches and Pickets" Art. 2: *Rally* implies the coming together of citizens at a place specially allocated or adjusted for the purpose to collectively discuss some socially important issues.

[17] Ibid. *Meeting* implies mass gathering of citizens at a certain place to publicly express the public opinion regarding currently important problems mostly of a social and political character.

[18] Ibid. *Demonstration* implies an organized public manifestation of public sentiments by a group of citizens carrying, as they go, placards, streamers and other aids of visual campaigning.

[19] Ibid. *March* implies mass passage of citizens along a route specified beforehand with the aim of attracting attention to certain problems.

[20] Ibid. *Picketing* implies a form of public expression of opinions carried out without marching and using sound-amplifying technical devices by stationing one or several citizens carrying placards, streamers and other aids of visual campaigning outside an object being picketed.

protected by the Federal law on assemblies regardless the number of participants and the form of holding.

Undoubtedly, "assembly" by itself stipulates that one person cannot assemble with him/herself. The ECHR requires a '*indeterminate number of persons'* and this approach is not far from the one that is used for purposes of the OSCE/ODIHR Guidelines where 'assembly' is determined as "[t]he intentional and temporary presence of a number of individuals in a public place for a common expressive purpose"[21] that effectively means that there should be at least two persons on the public event. However, the "individual protester exercising his or her right to freedom of expression, where the protester's physical presence is an integral part of that expression" according to the Guidelines "should also be afforded the same protections as those who gather together as part of an assembly."[22]

The position of Russian authorities is not in contravention of the position of the OSCE/ODIHR Panel. In fact, I consider the definition of assembly given in the Russian Assembly law as appropriate to the international standards and not in need of substantive change.

There are very few academic works on the subject of freedom of assembly that access the legal component of the issue. One of the most significant researches in recent times was made by David Mead[23] who rightly noted that the European Convention on Human Rights and Fundamental Freedoms does not contain "a right of peaceful protest."[24] It his book David Mead used it "as shorthand for the amalgam of the right of peaceful assembly under Article 11 and those aspects of freedom of political expression under Article 10 that can truly be said to be forms of protest."[25] The same approach will form the basis of the present paper.

According to Mead, the activity in order to be considered as a 'protest' must be in compliance with four conditions:

[21] Guidelines on Freedom of Peaceful Assembly (2nd edition) (2010) Para 1.2.
[22] Ibid. Para 16.
[23] D. Mead, *The New Law of Peaceful Protest: Rights and Regulation in the Human Rights Act Era* (Hart Publishing, 2010).
[24] Ibid. P.58.
[25] Ibid.

a) be politically participative,

b) be directed towards the body that is capable of making – or preventing - the change,

c) the subject matter has to be of wider concern and

d) it should run alongside and outside formal party structures.[26]

Even though he does not consider this definition "as complete or even workable", I think it stays in line with the purpose of my research work and therefore I will rely on it in case of need.

The practice of states with developed institutes of civil society has worked out a set of methods and means that, on the one hand, ensure the freedom of the assembly as a way to demonstrate the one's will and opinion, and on the other - do not allow the breaking up of the fundamental legal pillars of society, attacks on stable and civilized principles of development of human society that proved their value.

It is worthwhile to say that any right, including the right to freedom of assembly turns into fiction without proper mechanism of the implementation. Interestingly, while organizers reconcile the holding of the public event, they "cooperate with the very symbols of authorities they are often protesting,"[27] therefore sometimes the results of this cooperation might be predefined.

I.B. Interference or not Interference: that is the Question

There is no such thing as a free lunch

A conventional wisdom

David Mead opens a question of "whether or not requiring permission or authorization constitutes an interference." The traditional ECHR's answer is: "No".

[26] D. Mead, *The Right to Peaceful Protest under the European Convention on Human Rights – a Content Study of Strasbourg Case Law*, European Human Rights Law Review (2007) P.349-350.

[27] T. Zick, *Speech Out of Doors: Preserving First Amendment Liberties in Public Spaces* (CUP, 2009) P. 198

In particular, it was proclaimed in the *Rassemblement Jurassien* admissibility decision that subjecting public assemblies to prior authorization "does not normally encroach the essence of the right [under Article 11.1] and accordingly does not as such constitute interference with the exercise of the right."[28]

At the same time the Court has a very disparate case-law. On the one side of the barricade are, for example, *Ziliberberg*[29] with *Berladir*[30] where the ECHR insist on the lawfulness of the authorization/notification requirements because the authorities need 'to ensure the peaceful nature of a meeting' and stand upon the consequences of the failure to comply with them in form of administrative fines. On the other side are *Bukta* with its three-limbed test,[31] *Ataman* when the Court found that "in the absence of violent acts on the part of demonstrators, it is important that the public powers demonstrate certain tolerance of peaceful gatherings…"[32] and *Kuznetsov* where the European Court states that "merely formal breaches of the notification time-limit [were] neither relevant nor a sufficient reason for imposing administrative liability"[33] and others.

The need for authorization is nevertheless distinguished from penalizing someone to obtain one: the latter measure must be proportionate. Subsequently, it prevents the Court from assessing the proportionality of the authorization process.[34] D. Mead suggests to change the main approach and to allow first of all domestic courts to access the proportionality of requiring authorization "rather than possibly rendering the right to peaceful protest illusory or subverted by states imposing permission rules for any type of assembly."[35]

[28] *Rassemblement Jurassien and Unite Jurassienne v. Switzerland* (App no.8191/78) EComHR inadmissibility decision of 10 October 1979, at 119.

[29] *Ziliberberg v. Moldova (*App no. 61821/00) inadmissibility decision of 01 February 2005.

[30] *Berladir v. Russia* (App no.34202/06) Judgment of 10 July 2012.

[31] *Bukta and Others v. Hungary* (App no. 25 691/04) Judgment of 17 July 2007. By the three-limbed test I mean 3 conditions that should be fulfiled in order to have a right to hold spontaneous assemblies that may override the obligation to give prior notification to public assemblies *(paras 35-37)*:

1) There should be *special circumstances* that can justify
2) An *immediate response*
3) To a *political event.*

[32] *Oya Ataman v. Turkey* (App no. 74552/01) Judgment of 05 December 2006 Para 42.

[33] *Sergey Kuznetsov v. Russia* (App no. 10877/04) Judgment of 23 October 2008 Para 43.

[34] D. Mead, *The New Law of Peaceful Protest: Rights and Regulation in the Human Rights Act Era* P.80.

[35] Ibid.

Undoubtedly, the "[s]ystem in which public protest occurs is more or less at the discretion of and in terms largely dictated by public officials."[36] It may be argued that "the emphasis on pre-emptive planning has reduced violence and injury at public events but has imposed order at a substantial cost to public expression and public democracy,"[37] but isn't it a specific 'price'?

Surely enough, democracy is a rather expensive form of government. There is a price to be paid for it by both sides: authorities and people. In relation to human rights, the state is bound by international conventions, national laws and in case of freedom of assembly should provide the safety of the event. Simultaneously, people should obey their national laws and express their will correctly. I can agree with Sydney Tarrow that nowadays, assemblies have become the "major non-electoral expression of civil polities"[38] (emphasis mine).

Protests as a form of demonstration of popular will engendered long before the emerging of elections and especially universal adult suffrage. However, I assume that in the present time there is a hierarchy of different ways of exercising the political will of people, where elections are on the first place and 'street protests' should be treated as an additional influential leverage over the public authorities. There should be a 'social responsibility' for the choice people made during the elections. At the same time, 'minorities' should not be left unattended and deprived of their political rights. However, they should follow the procedure established by the majority.

The fact that this procedure might be draconian does not necessarily mean that it is undemocratic and vice versa. In my opinion, the requirement of prior notification/authorization does not constitute interference by itself. But if compliance with proper rules eventually makes it effectively impossible to exercise the right to assemble peacefully, the established order should be examined by the Court *in concreto*.

The path of development of the right to free protest in the Russian Federation will be analyzed in the next section.

[36] T. Zick, *Speech Out of Doors: Preserving First Amendment Liberties in Public Spaces* P.199.
[37] Ibid.
[38] S.Tarrow, *Power in Movement: Social Movements and Contentious Politics*, (CUP, 1998) P.100.

I.C. Historical Development of the Right to Protest in Russia

"God preserve us from seeing Russian Revolt,
senseless and merciless"

Alexander Pushkin
"The Capitan's Daughter", 1836.

Russia has a long history of protests. Unfortunately, this history is extremely cruel, incredibly bloody and very unsuccessful. Whereas a wave of bourgeois revolutions run through Europe, all attempts to protest in 17th - 19th centuries (Razin's, Pugachev's rebellions, Decembrist uprising) in Russia were ruthlessly stamped out.

Legally speaking, Russian citizens had no rights to organize any public event (especially with political purposes) until 1905, when the 'Bloody Sunday'[39] triggered a substantial growth of strikes and other industrial and public disturbances all over the country which are largely responsible for the Decree 'About the establishment of temporary measures in addition to the valid ordinance 'About Assemblies'[40] and October Manifesto[41] that was issued by Tsar Nicolas II and granted some civil rights to people, including freedom of assembly. Without belittling the Decree's and Manifesto's accomplishments regarding the first historical observance of civil rights, it is important that in practice the possibility to hold a meeting was at the discretion of the Head of local police who had a right to 'forbid assemblies if their purposes pose a threat to public tranquility'. In brief, the freedom of assembly was in fact a 'freedom to gather if the police deigns and not to break up till the police desires so.'[42]

After the victory of February Revolution in 1917 more democratic laws regulating the freedom of assembly were passed. Thus, in the ordinance of the Provisional Government (April

[39] On Sunday. 9 January (1905), a mass peaceful demonstration was gunned by soldiers of Imperial Guard in Saint Petersburg while approaching the Winter Palace from different directions. Demonstrators marched to deliver the petition to the Tsar.

[40] Was issued on 12 October 1905.

[41] *The Manifesto on the Improvement of the State Order*, 17 October 1905.

[42] Lazarevskiy N. *Vremenniye pravila o sobraniyah* (Temporary rules about assemblies) // Pravo. 1905. N 42. Art. 3447 quoted by the Scientific practical commentary to the Federal Law on Assemblies, Meetings, Demonstrations, Processions and Picketing from 19th of June 2004 N 54-FZ edited by Komarova V.V. (2009) (hereinafter - the Scientific practical commentary) P.1.

12, 1918) "About assemblies and associations" a right to organize assemblies was granted to all Russian citizens regardless of where these assemblies go - indoors or outdoors. Concepts of "private" and "public" assemblies, established earlier (in 1906) by the ordinance "About assemblies" were excluded; there was just one restriction that stayed behind - the prohibition of assemblies on the railway tracks. However, assemblies on other communication routes, on streets and squares were allowed because they did not impede free movement.

The October Revolution of 1917 proclaimed the conquest of power by workers and their right to participate in political life. Nevertheless there was no elaborated mechanism of this participation. In a country with a low level of culture, essentially illiterate, rallies, meetings, demonstrations and processions were the only way to express workers' and peasants' interests. They brought some elements of disaster and chaos to life, however the boundlessness of freedom in political warfare is intolerable in any country. A resignation of general democratic principles was proclaimed in the regulation of freedom of assembly. Thus, in the ordinance of Yekaterinburg Provisional Working Committee it was written that '*any counter-revolutionary propaganda directed against the existence of Soviet power should be forbidden'* and that '*all kinds of rallies and meetings, except those which are held by the Soviet or with the permission of the Soviet should be forbidden.* '[43]

The Constitution of the Russian Soviet Federative Socialist Republic (RSFSR) in 1918 found:

> In order to ensure a real freedom of assembly for workers, recognizing the rights of the Soviet Republic citizens to organize meetings, rallies, marches, the RSFSR makes available to workers and the poorest peasantry all suitable premises, complete with furnishing, lighting and heating for holding public gatherings... [44] Being guided by the interests of the working class as a whole, the RSFSR deprives individuals and separate groups of rights, which could be used to prejudice interests of the socialist revolution.[45]

[43] Quoted by the Scientific practical commentary. P.3.

[44] The Constitution of the Russian Soviet Federative Socialist Republic, adopted by the Fifth All-Russian Congress of Soviets (July 10, 1918) Chapter 5 Article 15 (the author's translation).

[45] The Constitution of the Russian Soviet Federative Socialist Republic, adopted by the Fifth All-Russian Congress of Soviets (July 10, 1918), Article 23.

While assuming the wide general freedom of assembly for workers and peasants under the Constitution, an authorization procedure which excluded the possibility to use these rights had been introduced.

I would challenge the opinion that the Constitution of USSR of 1936 prescribed class origins in the regulation of the freedom of assembly 'quite clearly'.[46] Conversely, the Constitution proclaimed the equality of all citizens, eliminating the inequality established by the previous Constitution, thus, it was proclaimed that 'the citizens of the U.S.S.R.' (not only workers and peasants) are guaranteed the freedom of assembly.[47]

The next Soviet Constitution (1977) also included the right to freedom of assembly in the system of rights and freedoms of socialist state of the whole people.[48] However, there was no special-purpose legislation regulating the process of exercising this freedom.

It is widely accepted that the notification procedure is commonly used for holding demonstrations, pickets and other types of assemblies in democratic countries, whereas a permissive procedure of holding public assemblies is attributed to authoritarian regimes given that their authorities have a wide discretion power. In totalitarian countries organized assemblies are not generally permitted by the authorities and sometimes, there is no legislation regulating the exercise of this freedom (it is replaced by security forces instructions that guide to suppress outlawed assemblies and demonstrations).

Therefore, it was impossible to imagine that Russian people would realize their declared right to freedom of assembly during almost the whole 20th century.[49] However, on the 4th of

[46] The scientific practical commentary P.3.

[47] 'In conformity with the interests of the working people, and in order to strengthen the socialist system, **the citizens of the U.S.S.R**. are guaranteed by law: [..] c) freedom of assembly, including the holding of mass meetings; d) freedom of street processions and demonstrations' (Art.125) (official translation).

However, the ensuring of these rights were organized by placing at the disposal of the **working people** and **their organizations** printing presses, stocks of paper, public buildings, the streets, communications facilities and other material requisites.

[48] 'In accordance with the interests of the people and in order to strengthen and develop the socialist system, citizens of the USSR are guaranteed freedom of ... assembly, meetings, street processions and demonstrations' (Art. 50).

February in 1990 more than 300 000 people took to the Moscow streets. It was an incredible amount of protesting people for our country and it was probably the first mass demonstration (legally speaking it was a street procession) after 70 years of Soviet power. It was generally supposed that it is not in our nature to express the protest outdoors.[50] During those days it was possible to hear that the destiny of Russian nation is to suffer – '*to suffer the piercing winter frosts of a vast land, the predations of war and invasion, the shortages, the harshness of their masters. The Russian would suffer patiently, silently*'[51]…until it becomes to be beyond sufferance.[52] In regard to this demonstration there are two main questions: first of all, how it was possible to get permission from the authorities for such a mass event in the center of the capital city and second of all, how it was possible to organize such a mass demonstration with the absence of mobile connection and social networks?

Responding to the second question, it was obviously a 'jungle telegraph' that swept across Moscow. It was not very difficult simply because thousands if not millions of people strung along the idea of removing Article 6 from the Constitution. Article 6 that proclaimed the USSR Communist Party as the 'leading and guiding force of the Soviet society' essentially established a one-party system with which too many people did not agree anymore. And preeminently people who were trying to change the system and who were already very powerful to do it. That is the answer to the first question, in sober fact. Organizers enlisted the support of the authorities, but not of those who were sitting in the offices. It was a time of change, with an unexpected tomorrow, when you could fall asleep in one country and wake up in another, when it was believed that you could change everything, but only then and there. And therefore it was not

[49] Novocherkassk massacre of 1962 is a terrible example of a labor strike that eventually developed into a meeting that was violently dispersed by the army: 26 people were killed, 87 wounded. The whole information about the event was immediately classified.

[50] During the 70-80s 'kitchen conversations' were the most popular and wide-spread way of expression the opinion. Nobody could really think about going out on the street and say something effectively.

[51] R. Boulton, *Will Russians take to the street?* Global News Journal (2009) <http://blogs.reuters.com/global/2009/03/10/will-russians-take-to-the-streets/> accessed 20 March 2012.

[52] The same ideas were in the air during the next 20 years when people were concentrated on their own needs, when there was nothing to eat in 'boisterous nineties', when the crime rate was overshooting, people were thinking that they do need to outlast, to rise from knees and only afterwards they can start to think about changing in the political system. This moment came in 2011 and is continuing in 2012 with varying success.

such a big deal to find a powerful protector who can lobby your (and his) interests on the same 'authority' level.

Three days after the demonstration, on 7th of February, an enlarged plenary meeting of the Central Committee of the Communist Party of the Soviet Union decided to abolish Article 6 and permitted a multiplicity of parties. Never after did the authorities react on 'streets' demands so expeditiously.[53] Being inspired by this event, 22 years later the opposition decided to organize their procession almost by the same route, but this event was not so successful and was accompanied by other pro-governmental assemblies.

The last and current Russian constitution (1993) has changed the relationship between an individual and the State. Human rights and freedoms are proclaimed as being the supreme value of the State, they are recognized and guaranteed in accordance with generally recognized principles and norms of international law and in accordance with the Constitution (Article 17). Probably, for the first time in our history, fundamental rights and freedoms became inalienable and belong to everyone from the moment of birth. And one of the most important provisions related to all human rights has become Article 55 that envisages the way of rights' limitation:

> The rights and freedoms of man and citizen may be limited by the federal law only to such an extent to which it is necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defense of the country and security of the State.[54]

The value of this provision for the freedom of assembly cannot be emphasized too strongly. I will give special consideration to its application in the next chapter.

[53] Anatoly Sobchak, one of the brightest politicians of those times, wrote: "Almost all the speakers of the plenary session reacted negatively to the idea to abolish the Article 6. Moreover, they execrated 'so-called democrats' in the harshest tones, they spoke about the discrediting of the party and socialism and were very determined. And then cast an affirmative vote, also unanimously' A. Sobchak, *Hozhdeniye vo vlast': Rasskaz o rozhdenii parlamenta* (A Walking to the Power: A Story about the Birth of the Parliament) (1991).

[54] The Constitution of the Russian Federation (December 12, 1993) (official translation).

II. RUSSIAN DOMESTIC LEGISLATION

II.A. Federal Legislation

'A Russian man harnesses the horse slowly but drives fast'
Otto von Bismarck[55]

The Constitution of the Russian Federation enshrines freedom of assembly in Article 31: "*Citizens of the Russian Federation shall have the right to gather peacefully, without weapons, and to hold meetings, rallies, demonstrations, marches and pickets*".

Article 31 of the Constitution does not directly point out the possibility of the legislator to bring certain conditions for the realization of the right covered by the Article. The only one condition imposed by the Constitution is expressed in the phrase: "peacefully, without weapon". And that is the most classical argument for some Russian protesters movements, who declare that they are protecting the people's right to free assembly by using Article 31 as a 'shield' for organizing and holding different assemblies that are never concerted with the authorities. In all fairness it has to be added that organizers usually notify the authorities, however, the problem of this notification process will be examined later.

Nevertheless, the lack of reservations in the Constitution concerning the legislator's participation in the adjustment of the procedure for the exercising of the constitutional right undoubtedly does not mean the impossibility of its imposition.

Obviously, for the enforcement of this right it is not enough to be 'pacific' and not to carry weapons. Presumably if the government itself is formed through the law, then the forms of influence on it cannot be out of the legislative regulation that at the same time cannot block this right.

[55] The peculiarity of the Russian legal culture is not the speed of political society flammability but is in unpredictable effects of the following "fast drive." Public protests of the radical nature are considered as a risk factor for the existence of a very thin line that separates the state of social harmony from the social chaos, where the society can be drawn in as quickly as slowly it will subsequently come out.

Adoption of the special law is determined by the necessity to ensure the effective and real enforcement of the right enshrined in the Constitution wherein its implementation will be harmonized with exercising of other rights and discharging of constitutional duties. The restrictive regulation, if it is governed by the aims envisaged in Article 55 is within the realm of possibility in this case.

The appearance of the Federal Law No.54-FZ "On Meetings, Rallies, Demonstrations, Marches and Pickets" (hereinafter – Assembly Law, Federal Law No.54-FZ) opened a new era in legal regulation of assemblies in Russia. At first the whole society and human rights activists in particular greeted this law with fervour, mostly because it officially proclaims the notification regime instead of an authorization one, it seemed that it establishes a rational order of organizing and holding assemblies, however after a couple of years the enthusiasm smoothed down. Activists started to face the abuse of discretion when too formal interpretation of the letter of the law led to a preposterous position of the prevailing authorities. It was not everywhere in the country, but the scattered examples from different regions set activists thinking to appeal to the Constitutional Court.

To begin with, what are the principal provisions of the Assembly law and what practical problems do they cause?

The Federal Law No.54-FZ declares that if the assembly in public is expected to involve more than one participant, its organizers are obliged to notify the executive or local self-government authorities of the upcoming event 10-15 days in advance in writing. A picketing held by a single participant does not require notifying any authorities; however, this seeming freedom often presents certain practical difficulties that will be observed in the next chapter.

Who can be a promoter and a participant? According to the Constitutional regulation, the right to freedom of assembly as being a political right belongs just to Russian citizens. On an international scale, the right to assemble freely is recognized as a human right and neither the Universal Declaration of Human Rights nor the International Covenant on Civil and Political

Rights or the European Convention on Human Rights and Fundamental Freedoms put a 'citizenship' restriction on exercising of this right.

However, further development the Constitutional norm that it got in the Federal law No. 54-FZ shows that the organizer is really required to be a citizen (or a political party, other public and religious association, etc)[56] and a participant of the public event should be a citizen, a member of a political party, member and participant in other public and religious associations, voluntarily participating therein.[57] According to the public association and religious legislation, either a foreign national or a stateless person can be a member of those associations and therefore can exercise his/her right to freedom of assemble.[58] The law is silent on the issue whether a foreign national who is not a member of any public association will be prevented from taking part in a public event, but relying solely on the letter of law, this person can be fined for violating the procedure established for conducting a meeting, rally, demonstration, procession or picket on 500-1000 rubles (approximately, 12-25 Euros).[59]

After notifying the executive authorities, a promoter can start to conduct prior campaigning in support of the goals of the public event.[60] The ways of doing it are prescribed by law, but the list is open, thus it can be done through the mass media, by distributing leaflets, making placards, streamers, slogans and in any other forms not conflicting with the legislation of the Russian Federation, and obviously it may not be conducted in the form of a public event when the

[56] The promoter of the public event may include one or several citizens of the Russian Federation (promoter of demonstrations, marches and picketing - a citizen of the Russian Federation who is no less than 18 years old, of meetings and rallies - 16 years old), political parties, other public and religious associations, regional affiliations and other structural branches of same that have undertaken an obligation associated with the organization and holding the public event (Federal Law No.54-FZ "On Meetings, Rallies, Demonstrations, Marches and Pickets" of June 19, 2004, Article 5 Section1)

[57] Federal Law No.54-FZ "On Meetings, Rallies, Demonstrations, Marches and Pickets" of June 19, 2004, Article 6 Section 1.

[58] Federal Law No. 82-FZ "About public associations" of May 19, 1995 Article 19, Federal Law No. 125-FZ "About Freedom of Conscience and About Religious Associations" Articles 6 and 8.

[59] Code of Administrative Offences of the Russian Federation No. 195-FZ of December 30, 2001, Article 20.2. Section 2.

Legally speaking, in a situation where declared participants are inanimate objects , the authorities cannot accept such a notification as the one that was lodged in the manner prescribed by law (for example, lego people and kinder surprise toys were not allowed to show the protest in Barnaul in February 2012. The scan version of the official letter from Barnaul authorities is available at: <http://sergey-shpp.livejournal.com/570657.html>, the article of "The Guardian" that describes the circumstances of the event is available at: <http://www.guardian.co.uk/world/2012/feb/15/toys-protest-not-citizens-russia> accessed 20 March 2012).

[60] Federal Law No.54-FZ, Article 5 Section 3 Part 2.

procedure for its organization and holding is at variance with the provisions of the Assembly law (Article 10 section 4). From one side this is a logical and liberal position of the State, but from another side some omissions that this Federal law itself has may give rise to new problems, such as, for example, inability to hold a prior campaigning as a bike ride, as it happened in St. Petersburg on March 22, 2012, when a small group of people wanted to inform citizens about the up-coming demonstration by distributing leaflets while riding bicycles with white balloons that had the inscription: 'I was inflated' (figuratively: 'It's a touch/I was faked out') and even before they started riding, they were captured by the police for the violation of the procedure established for conducting an assembly.[61]

One of the most problematic provisions of the Assembly law is envisaged in Section 5 of Article 5:

> The promoter of the public event shall have **no right to hold** it when the notice on holding the public event was not filed **in due time** or **no agreement** was reached with the executive power body of the subject of the Russian Federation or local self-government body as to the alteration at their motivated proposal of the place and/or time of holding the public event.

This provision was a subject of appeal to the Constitutional Court, it is used by the authorities to abuse their discretion power and to prevent the exercising of the right to freedom of assembly on formal grounds, it is used by the police for capturing people for violating the established procedure for arranging or conducting an assembly,[62] sometimes even when they are just leaving their home to come to the event presumably for 'illegal intentions'.[63]

[61] By the Ruling of the Justice of Peace of the Central district of St. Petersburg (Court Circle No. 199) from 25 April 2012 case No. 5-384/12-199 participants were found to be guilty of an administrative offence. However, the Dzerzhinsky District Court of St. Petersburg did not agree with the first-instance court. The judge said that the Code of Administrative Offences of the Russian Federation does not content such a form of punishment as a 'fine' that was imposed on participants: there is only an 'administrative fine', therefore, the first judgment was reversed and the case was closed (The St. Petersburg Dzerzhinsky District Court's Judgment of 27 June 2012, Case No.12-146/2012. The card of the case is available at: <http://dzr.spb.sudrf.ru/modules.php?name=sud_delo&op=cs&CARD_ID=24&CASE_ID=12616529> accessed 15 November 2012, the text of the judgment was kindly furnished by the participant of a bike ride.

[62] Code of Administrative Offences of the Russian Federation No. 195-FZ of December 30, 2001, Article 20.2.

[63] It sometimes happened with Eduard Limonov, the leader of the "Strategy-31" movement.

II.B. Regional Application

The Constitution determines that the jurisdiction of the Russian Federation includes regulation and protection of the rights and freedoms of man and citizen; citizenship in the Russian Federation, regulation and protection of the rights of national minorities (Article 71, Section "c"). The joint jurisdiction of the Russian Federation and the subjects of the Russian Federation includes protection of the rights and freedoms of man and citizen; protection of the rights of national minorities; ensuring the rule of law, law and order, public security, border zone regime (Article 72 Section 1 Part "b").

This principle is intended to create a particular federal standard of human rights and freedoms. However, the accomplishment of common standards of the personal constitutional status is scarcely performed in practice. For Russian citizens, residing in a particular constituent entity of the Federation,[64] rights, freedoms and duties enshrined in their regional legislation are of paramount importance as a consequence of constitutional rules and federal laws in this area.

However, the specification of the legal status is not a free regulation of legal relationships. Unfortunately, the mentioned specification occasionally causes certain restrictions on the content of the constitutional rights and replaces the guaranteed rights with a subjective decision of individual office holders.

Sometimes it can work even worse, when local authorities invent their own legal restraints that are not prescribed by the Federal law and eventually constitute a violation of the right to freedom of assembly. Thus, the Assembly law does not contain any grounds for prohibiting the holding of assembly. Nonetheless in different regional laws probably in an effort to correct a 'legal deficiency' it is possible to find some legally preposterous provisions as "a refusal to

[64] The Russian Federation consists of 83 constitutional entities (subjects). The main types are republics, oblasts (provinces) and krais (territories), they have their own legislative and executive systems; however, regional laws should always be in accordance with the Constitution and federal laws.

accept the notice."[65] In Voronezhskaya oblast, the ground for starting a "reconciliation procedure" for authorities is a desire of organizers to hold a public event on a weekday on the streets where buildings of government agencies and municipalities, educational and health care institutions are located.[66]

The Ombudsman noted in his annual report that "in Samarskaya oblast authorities can permit to hold an assembly or to refuse, in Tyva Republic a promoter asks for a permission to hold an assembly, in Ryazanskaya, Ivanovskaya, Kostromskaya, Tyumenskaya provinces authorities either deliver refusals or a 'positive determination' if the notice is beyond exception."[67]

It should be noted that the Federal Law No 54-FZ does not provide a legal opportunity for local or regional authorities to make a 'refusal' decision; they cannot refuse to register a notice. According to Article 12, they are **obligated** to acknowledge with documents receipt of the notice on holding the public event and to deliver to the promoter of the public event a **well-motivated proposal** to alter the place and/or time of holding the public event **within three days** (and in case of the notice on holding a picket by a group of persons submitted within less than five days prior to the day of its holding - on the day of its receipt). The authorities should also deliver **suggestions** that **the promoter of the public event remedy any discordances**, if any, between the goals, forms and other conditions for holding the public event specified in the notice and the requirements of the Federal law within the same 3 days.

Therefore, the absence of any legal consequences of the non-compliance with the form in the Federal law creates a space for imagination and therefore for abuses of regional legislators. It seems appropriate to detail those consequences in the Assembly law, for instance either to

[65] The Law of Ulyanovskaya oblast of 9 September 2004 No. 057 – ЗО "On the procedure of filing a notice concerning the holding of the public event on the territory of Ulyanovskaya oblast," Article 3.

[66] The Law of Voronezhskaya oblast of 5 April 2011 No. 34-ОЗ «On Introduction of Amendments to the Law of Voronezhskaya oblast "On the procedure of filing a notice concerning the holding of the public event" Section 4 of Article 6.

[67] The Annual Report of the Russian Federation Ombudsman for 2006, <http://www.rg.ru/2007/04/13/upolnomochennyj-doklad-dok.html> accessed 20 March 2012.

prescribe that the promoter should start the process from the very beginning and the time-frames should start over again or to 'freeze' the running of the time period for 2 days (by analogy with the requirement prescribed by Article 5 Section 4) and to give a promoter a chance to hold an assembly on the particular day that he wants.

Interestingly enough in some regions, for example in Permskaya oblast', the law prescribes a requirement to submit the rules of procedure of the event and a schematic plan of the participants' disposition certified by the promoter's signature. While the establishment of these additional requirements on its own terms constitutes a violation of the Assembly law, a representative of the St. Petersburg authorities in a personal interview was claiming that the absence of the official requirement in the Federal law to submit the rules of procedure to the authorities prevents a full execution of his functions. Whereas the Law prescribes an obligation of the promoter to require the participants of the public event to comply with the public law and order and also with the rules of procedure for holding the public event,[68] it does not bind the promoter to show these rules to anybody, particularly to the authorities. And when the authorized representative of the authorities (who is obliged to be on the event according to Article 12 Section 3) asks the promoter whether he has these rules, the promoter usually answers in the affirmative. When the representative asks to show it, the promoter refuses referring to the absence of such an obligation. When the representative asks where the promoter holds the rules, the latter replies: "In the head."[69]

I personally do not see any problem in this requirement. The Assembly law already prescribes the necessity to have it for a promoter and if the authorities have a schedule of the event, it will not impose a heavy burden on the organizer. However, I am against any kind of clashes between the regional and the federal regulation and if the Federal law does not require submitting the rules, the regional law should not require it either.

[68] The Federal Law No.54-FZ, Article 5 Section 4 Part 4.

[69] However, Article 2 (basic definitions) prescribes that rules of procedure for holding the public event implies a **document** containing a timetable (hour-by-hour schedule) of the basic stages of holding the public event specifying persons responsible for implementing each such stage.

One more point that I want to stop on is about the possibility to hold a car run (motor rally) according to Federal and regional law. Before 2010 the Assembly law did not prescribe any conditions of holding a car run, but later on it was amended and now if the public event is held with the use of vehicles for transport (hereinafter – transport), '*the information about the use of transport should be given*' to the authorities.[70] But the specification of the Law does not always help with the exercising of the right. Thus, a year ago, after the amendment came in force, Moscow authorities said that the promoter has not rights to hold a car run 'because the Federal law No. 54-FZ does not prescribe such a form of a public event as a car run.[71] A few months after the incident Moscow authorities amended their own law[72] and now the possibility to hold a car run is envisaged in details. However, it was possible to organize a successful car run in Moscow without any notification. On January 29, 2012 participants of the motor rally "For Fair Elections" closed the main traffic artery of Moscow – the Garden Ring. It is impossible to imagine that Moscow authorities could allow to hold a rally on this road, but although participants did not form a column, they were driving very freely, they did not violate driving regulations and most likely because of the great attention of mass media, the police did not capture anybody for 'violating the procedure established for conducting an assembly.'

In this respect it seems interesting to compare Moscow legislation with a regional act of Primorsky krai,[73] where the percentage of cars per capita is higher than anywhere in the country.

In my opinion, the most controversial provision that can lead to abusive practices by the authorities concerns the direct prohibition of using transport during the public event in case of '*the announcement about the storm signal in accordance with the established procedure (public notice) or about another hazardous natural phenomenon.'*[74] Needless to say that the law does not contain a definition of a 'hazardous natural phenomenon'; this raises the question whether a

[70] The Federal Law No.54-FZ, Article 7 Section 3 Part 3.

[71] An official response of the Moscow Department of Regional Security of March 16, 2011 No.4-19-4819/1.

[72] Moscow law of 4 April 2007 No. 10 «Concerning the ensuring of enforcement of the Russian citizens' right to hold rallies, meetings, demonstrations, marches and picketing in Moscow."

[73] The Law of Primorsky Krai No. 742-KZ of 25 February 2011 "On public events in Primorsky krai."

[74] Ibid, Article 5 Section 4.

summer heat or rain or snow can be qualified as such and what executive or local body is responsible for measuring the level of 'hazard'? Besides that, it is important to know the peculiarities of the region and that 'the announcement about the storm signal' is actually a very common thing, especially during the summer. It can be not necessarily related to a very strong wind or a tropical rain, very often we can see just some surges of the sea and therefore the restriction of the right to hold motor rallies made in such a vague way seems to be redundant. Probably, that was the logic of Moscow authorities when they decided to remove the same provision from their law after the first hearing.

II.C. Constitutional Court Assessment

Returning to the federal regulation, I want to concentrate more on the position of the Constitutional Court[75] that on the one hand does not help to change the situation dramatically, but on the other hand it defined and clarified some provisions of the Assembly law.

The factual background of the case can be briefly stated as follows:

Three applicants, living in different Russian cities, challenged the constitutionality of Article 5 Section 5 together. The norm authorizes local officials to offer a "motivated proposal" to the promoters of public events to change the planned location and (or) time of the meeting. The negotiation procedure is not itself regulated by the Law; the promoter cannot hold an assembly without reaching an 'agreement' with the authorities.

According to applicants, the challenged provision virtually envisages an authorization procedure of holding public events contrary to the Constitution. The reason for the common complaint was the authorities' refusal to agree on the place or time of rallies, processions (including the "March of Dissent") and the pickets in Samara, Nizhny Novgorod and Kirov.

[75] Determination of the Constitutional Court of the Russian Federation on the appeal of Lashmankin Alexander Vladimirovich, Shadrin Denis Petrovich and Shimovolos Sergey Mikhailovich against the violation of their Constitutional rights by the provision of Part 5, Article 5 of the Federal Law on Assemblies, Meetings, Demonstrations, Processions and Picketing, Saint-Petersburg (2 April 2009, No. 484-O-P) (hereinafter – the Determination of the Constitutional Court, the Ruling No. 484-O-P).

The Court did not find a violation of the Constitution and pointed out that the authorities are obliged to bring weighty arguments in favor of the position that the event cannot be held due to the need of the public interest protection. The authorities can offer an alternative place for holding an assembly but only if such a place would allow to achieve the purpose of the assembly. The Constitutional Court stressed the point that while litigating a controversy about the violation of the right to freedom of assembly, the courts must evaluate the authorities' actions in terms of their legality and reasonability in time "prior to the planned event". And this is exactly the position that everybody was waiting for. Even though the Constitutional Court decision cannot replace the law, the Constitutional Court cannot create a new norm, but its position is like a guidance for all other courts. The Court stated that 'freedom of assembly' cases should be considered by courts on the same procedural grounds as 'right to vote' cases, in as short time as possible. But instead of changing the situation for the better, this position was not only neglected by the regular courts, it was also used as a justification for abusing the right.[76]

One Judge (Anatoly Kononov) did not agree with the Court position and in his dissenting opinion he argues that in this case the Constitutional Court took to the woods, that it "avoided its primary responsibility – to protect constitutional rights and freedoms of citizens". The Judge continues that the challenged norm 'provokes widespread and massive violations of freedom of peaceful assembly' referring to media reports, statement of political parties and the Ombudsman report where the latter draws attention to the political nature of an 'agreement procedure'. The judge also notes that the vagueness of 'motivated proposal' and 'agreement' definitions leads to a *'cynical and non-restrictive arbitrariness when the executive power can use the disputed provisions in their own interests'* and '*when affected by a political bias'* is permitted to *'provide*

[76] Thus, in Arkhangelsk, the district court refused to accept a complaint relying just on the position of the Constitutional Court saying that insofar as the applicant lodged a lawsuit after the planned date of assembly, it is impossible to consider the case 'prior to it' as the Constitutional court requires. In fact, the applicant wanted to find a compromise with authorities till the very end, suggesting a variety of places where he could hold an assembly, but the authorities refused to temporize with the applicant, most likely because his assembly was related to homosexual issues. However, fortunately, the higher court did not agree with this argumentation and remanded the case.

certain advantages to some political parties and movements and to prevent the possible actions of their opponents.'[77]

Judge Kononov was troubled by the *"list of possible reasons of public events' prohibition kindly offered by the Constitutional Court*", for example, the need to maintain the smooth functioning of utilities and transport infrastructure, and the maintenance of public order in his opinion is virtually applicable to any mass public event.

Partially accepting the dissenting opinion I want to express my point of view. Instead of being too emotional I will examine the decision in a legal way, whether the Court really could grant an appeal.

Constitutional law experts distinguish two types of free assembly restrictions: categorical and technical.[78] The difference is determined by the elimination criterion. The former can include an expressly particularized list of locations where any public event is prohibited (nearby the judicial authorities, the Presidential residence, military and strategic facilities, etc).[79] This list can be narrowed or expanded; its content may be a subject of the constitutional review from the standpoint of its reasonableness. However from the point of legal certainty and consequent risks of rights' abusing, the greater danger can be found in technical norms (that suggest technical conditions of the right enforcement). Such a norm was the subject of appeal to the Constitutional Court.

Nevertheless, if the disputed provision applies for the purpose of blocking public events (as it is described in an Ombudsman report), this practice is undoubtedly contrary not only to its constitutional, but to its authentic sense as a technical norm that contains a technical and therefore a surmountable ban.

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[77] The dissenting opinion of Judge Kononov.

[78] E. Taribo *Problemy realizatsii konstitutsionnogo prava sobirat'sya mirno i bez oruzhiya (kommentariy k Opredeleniyu KS ot 2 Aprelya 2009 No. 484-0-P* (Problems of exercising the constitutional right to peaceful assembly (A Commentary on the Constitutional Court Determination of 2 April 2009 No. 484-O-P) // Zhurnal Konstitutsionnogo Pravosudiya (2009) N 6.

[79] L.. Nudnenko *Teoreticheskie osnovy prava grazhdan RF na provedeniye sobraniy, mitingov, shestviy i piketirovaniya* (Theoretical Aspects Of The Russian Citizens' Right To Hold Rallies, Meetings, Marches And Picketing) Zhurnal Rossiyskogo Prava (2002) No. 12.

The Constitutional Court made it clear that a public authority may not prohibit the assembly on the basis of this norm. It can offer only an alternative place and (or) time and "such a proposal shall correspond to the normative standards of Law,"[80] specifically: 1) a public event should be free from external pressure, and 2) its purpose is the formation of opinions (and not just their declaration), and 3) an ascertainment of a return experience between the participants and their intended recipients. Place and time changing is acceptable if it does not prevent the achievement of the legitimate aims of the public event. In this regard, the Court's decision includes a crucial reservation – the alternative variant must be of an adequate social and political significance.

This argument is supported by the experts' conclusions called for during the preliminary examination. If a public authority offers a place and time, and the organizer is willing to cooperate, there is no reason for a conflict, "*the harmonization criteria should be: the reasonableness, equality and compromise.*"[81]

While speaking about an 'alternative' variant, the way this provision can be abused by authorities and the critiques that it evokes from the promoters and protesters, I cannot overlook other legal problems that the same provision causes for the authorities' side. Being unprejudiced and not trying to keep a one-sided standpoint and assuming that authorities can also be adequate and approachable, admitting that most of the time they are functioning in accordance with the procedure established by law, I would raise the question about unique intended target objects when the authorities are unable to propose an alternative place. For example, if a group of people decides to hold an assembly with 100 participants in front of the US Embassy and at the same time the road (or a sidewalk) in front of it is being repaired, there is no park/square or another free public space that can contain 100 people and where their safety can be provided by the authorities. What 'alternative' variants can authorities suggest?

Naturally, the example is totally imaginary and usually the way of reconciliation can be

[80] E. Taribo *Problemy realizatsii konstitutsionnogo prava sobirat'sya mirno i bez oruzhiya.*P.25.
[81] The expert opinion of Kabyshev V.T. (achieves of the Constitutional Court), quoted by Taribo E.V.

found, but I just want to show that sometimes the right to freedom of assembly can be restricted by reasons beyond the authorities' control.

In June 2012, after the May 6 action[82] where a number of police officers were injured by protesters, the Assembly law was significantly amended. Parliamentarians increased fines for the violation of assembly rules 150-fold and restricted the order of holding a public event. The main gaps of these amendments will be discussed in the next chapter.

[82] It was the first so-called "March of Millions", timed to coincide to the Presidential inauguration. For the first time since winter 2011-2012, when the mass demonstrations started to take place regularly, the police used violence against demonstrators. For more information see: http://www.hrw.org/news/2012/05/08/russia-investigate-police-use-force-against-peaceful-protesters accessed 15 November 2012.

III.CONTEMPORARY CHALLENGES

III.A. De Jure Notification, De Facto Authorization.

The exercise of the right to freedom of peaceful assembly
should not be subject to prior authorization by the authorities,
but at the most to a prior notification
procedure, which should not be burdensome.
In case an assembly is not allowed or restricted,
a detailed and timely written explanation should be provided,
which can be appealed before an impartial and independent court.[83]

The requirement to stop violations of the right of freedom of assembly has become one of the most 'repeated' issues in the Report of the Working Group on the Universal Periodic Review,[84] that found its expression in the recommendation No. 49: "*Create an environment, inter-alia through a legislative framework, that promotes rather than restricts the right to freedom of assembly and that encourages citizens to express their diverse views (Austria)".* The Russian Federation accepted this recommendation and added that '*there can be no suggestion that the individual's right to freedom of association or opinion is restricted in the Russian Federation'*. It stated that *"[t]he Constitution and other legislation of the Russian Federation already enshrine a wide range of rights relating to the right to freedom of assembly and freedom of opinion*".[85]

International community asks Russia to pay more attention to the violation of freedom of assembly not only by official UPR procedure. In the letter to the Russian Government, Commissioner for Human Rights of the Council of Europe Thomas Hammarberg wrote that Russia should remove all hindrances to freedom of assembly. He reasonably pointed out, that

[83] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, (A/HRC/20/27 21 May 2012) <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf> accessed 20 November 2012.

[84] Report of the Working Group on the Universal Periodic Review: Russian Federation (A/HRC/11/19 5 October 2009) <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/162/59/PDF/G0916259.pdf?OpenElement> accessed 15 November 2011.

[85] Report of the Working Group on the Universal Periodic Review: Russian Federation; Addendum; Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (A/HRC/11/19/Add.1/Rev.1, 5 June 2009) <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/140/54/PDF/G0914054.pdf?OpenElement> accessed 15 November 2011.

"*the federal legislation broadly complies with international standards, foreseeing – as in most other European states – a notification procedure which does not require the organizers of a meeting to seek authorization from the authorities, but rather to inform them about their intention to hold a meeting. However, regulations or decisions promulgated by regional or local authorities have at times delimited this right more narrowly or in a different spirit*"[86].

Things came to such a pitch that the necessity to stop violations of freedom of assembly has become a condition of normal international relations between the Russian Federation and the European Union. While Russian President considers Germany's visa requirements as an obstacle between two countries, Germany's President Christian Wulff said that for the abolishment of the visa regime is needed more convergence when it comes to common values and rule of law. He particularly noted that Russia lacks free press and freedom of assembly.[87]

The protection of freedom of expression, that is guaranteed by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter - the Convention, the European Convention, ECHR), is one of the main aims of providing the freedom of assembly, that is guaranteed by Article 11 of the Convention. Consequently, it's almost impossible to separate the freedom of expression from the freedom of assembly.[88] There are several judgments of the ECHR that condemn Russian authority actions concerning the violation of freedom of assembly.[89] However, each of those cases implies only a personal outcome for a particular plaintiff (in a compensation form), but not for the whole society. And in fact, the problem is usually not in Russian legislation.

As it was mentioned before, the Assembly Law officially establishes the 'notification' procedure if the assembly in public is expected to involve more than one participant. However, Russian NGOs by

[86]The letter of Commissioner for Human rights in the Council of Europe, 21 July 2011 <https://wcd.coe.int/wcd/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1911022&SecMode=1&DocId=1779374&Usage=2> accessed 15 September 2011.

[87] German President Critical of Russian Visa Move <http://pik.tv/en/news/story/23294-german-president-critical-of-russian-visa-move> accessed 15 November 2011.

[88] For instance, *Galstyan v. Armenia*, (App no 26986/03) Judgment of 15 November 2007, §§ 95-96.

[89] *Sergey Kuznetsov v. Russia* (App no. 10877/04) Judgment of 23 October 2008, *Makhmudov v. Russia* (App no. 35082/04) Judgment of 26 July 2007, *Barankevich v. Russia* (App no. 10519/03) Judgment of 26 July 2007, *Alekseyev v.* Russia (App no. 4916/07, 25924/08 and 14599/09) Judgment of 21 October 2010, etc.

'shadow reports' to the Human Rights Council stated that, although only a "notification" to the local authorities is required by law to organize an assembly, in practice, the authorities require an "approval". Moreover, the authorities try to derange peaceful assemblies by various means, including by putting forward unacceptable conditions, terminating assemblies and detaining their participants, by the use of unlawful reasons for forbidding assemblies or punishing the organizers and participants, preventive detention of the participants before assemblies, and fabrication of administrative cases against the organizers and participants.[90]

Anna Udyarova, a lawyer of the Anti-Discriminatory Center "Memorial", distinguishes 3 most often grounds and reasons that the authorities use in order not to come to an agreement with organizers:

- Another event will be hold on *the place that was specified* in the notification (reconditioning works, antiterrorist actions can be subsumed to the same group of "excuses"). Notably, the authorities just mention all these circumstances in their official "response" letters, without any kind of justification or evidences. Disturbances to movement of people and vehicles are almost a universal ground in the context of any big city.

- The impossibility to hold the action in a *declared form*: practically speaking, it is very difficult to come to the agreement on processions, it is a bit easier to agree on meetings and picket is the easiest form in relation to its organization. A. Udyarova notes that in the "Memorial" practice there was a case when the authorities voluntarily changed the form of the assembly: they agreed on picket even though the NGO notified them about the procession.[91]

- The impossibility to provide law and order in the course of the assembly. This "justification" is widely used in relation to LGBT actions. Meanwhile, the public authorities are obliged to ensure the safety of participants; in fact, the refusal on such a ground is a failure to

[90] Summary prepared by the office of the high commissioner for human rights, in accordance with paragraph 15 (c) of the annex to human rights council resolution (5/1 A/HRC/WG.6/4/RUS/3, 1 December 2008) <http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/RU/A_HRC_WG6_4_RUS_3_E.PDF> accessed 15 November 2011.

[91] A. Udyarova, *Freedom of Peaceful Assembly in St. Peterburgh: Theory and Practice of Arbitrary Restrictions* (Svoboda Mirnih Sobraniy v Sankt-Peterburge: Teoriya I Praktika Neobosnovannih Ogranicheniy) <http://adcmemorial.org/www/4809.html> accessed 15 November 2012.

fulfill obligations and actually is an acknowledgement of helplessness in respect of the enforcement of the law and security.[92]

The Venice Commission considers the presumption in favor of a peaceful assembly in conjunction with the principle of respect for the independence of the organizer to choose the place and time of the meeting as incompatible with the authorization procedure of organizing and holding public events.

At the same time, freedom of assembly is a fundamental right that has a relative character, i.e. can be a subject to lawful restrictions. Discretionary powers of the government to regulate and to limit freedom of assembly have to meet the criteria of certainty and have to be directly linked to the achievement of the legitimate aims listed in Article 11 of the ECHR. The imposition of the obligation on the organizer of the public event to negotiate with authorities can be attributed to such restrictions caused by the principle of cooperation with the authorities. However, the nature and the content of these obligations shall comply with the eligibility criteria to limit the right to freedom of assembly.

[92] In February 2012, the member of the Legislative Assembly of St. Petersburg, Vitaly Milonov appealed to the governor to ban an anticlerical meeting. According to media reports, the deputy has expressed fears for the safety of the protesters and asked to annul the already taken decision on the reconciliation of the event and to send the protesters elsewhere – for example, "to bears in the forest" (this example shows, in addition, the real attitude of many regional legislators to the right to freedom of assembly). Available at: <http://www.gazeta.spb.ru/643756-0/> accessed 10 November 2012.

III.B. Deficiencies of the Amended Assembly Law

III.B.1. The Brief Description

While correlating the provisions of the impugned amended Act with the European standards of freedom of peaceful assembly one can detect the following problems and inconsistencies:

1. The **presumption** in favor of peaceful assembly and the principle of respect for the autonomy of the organizer in deciding on the time and place of the public event in conjunction with organizer's **duty** to cooperate with the authorities **suggest** the notification order of the organization of public events. In case of disagreement between the organizer and the authorities concerning the place and time of the event, it is possible to carry out a conciliation procedure in order to develop a coherent and mutually acceptable solution.

However, Part 2.1 of Article 8 of the Assembly Law as reworded by the Federal law No. 65 establishes a rule that holding of public events outside the designated areas is allowed **only after** the reconciliation with the executive authorities of the constitutional entity of the Russian Federation or local authority. In this case, the refusal to reconcile means the prohibition of public events. Respectively Part 7 of Article.20.2 of the Administrative Code as amended by Federal Law No. 65 directly introduces the concept of the *unauthorized* public event. Therefore, in those provisions of the Federal Law № 65 the name of the game is that state authorities can give their consent, authorization, permission to hold a public event, i.e. the permissive order of public events is established.

2. Some provisions of the Federal Law No. 65 do not meet the criteria of the legitimate aim of restriction. This aim is interpreted too broadly and is taken out of publicly relevant goals indicated in Article 11 of the ECHR (in accordance with their interpretation of the ECtHR and the Venice Commission): the interests of national security or public safety, the prevention of

disorder or crime, the protection of health or morals or the protection of the rights and freedoms of others.

The Federal Law No. 65 (Part 2.2 Article 8 of the Federal Law on Assemblies) significantly expands the list of places where holding of public events is **prohibited**: to the areas which are named in the Assembly law were added places that are determined by additional laws of constitutional entities of the Russian Federation. The territory can justify the inclusion of particular places into the list "if the holding of public events in these areas can lead to disruption of the functioning of vital facilities, transport and social infrastructure, communications, to interfere with the flow of pedestrians and (or) vehicles or to clutter the access of citizens to the accommodation or facilities of transport and social infrastructure."

Apparently, these criterions to choose the places where public events may be prohibited, not necessarily associate with those goals that are listed in Article 11 of the ECHR.

At the same time, the discretionary powers of the regional legislator extend to vague limits: holding a public event almost in any place can get banned as causing some sort of inconveniences or disturbances to somebody.

3. Some provisions do not comply with the criterion of legal certainty of the restrictions that might be established. For example, requiring the organizer of the public event to take measures to prevent the excess of the participants of the public event specified in the notification if the excess constitutes a threat to public order, public safety, the safety of this public event, other persons or the possibility of property damage (item 7.1 of Part 4 of Article 5 of the Federal Law on Assembly.

There are at least two questions that should be clarified by the legislator in relation to this statutory innovation. First of all, what is included in the normative content of the organizer's obligation to take measures to avoid the exceeding of the event's participants? Secondly, when the incurrence of liability should follow the non-compliance with this duty?

III.B.2.The Exceeding of the Number of Assemblies' Participants

This obligation arises from a number of other duties of the organizer, established by Part 4 of Article 5 of the Federal Law: to notify the public authority about the event, to ensure compliance with the conditions specified in the notification, to ensure public order and safety of citizens and to ensure compliance with maximum holding capacity of the territory at the place of holding the public event. As well as the other duties of the organizer, the obligation that is under consideration is aimed to provide public order and public safety. At the same time, the normative content of the novel is uncertain in the absence of a reference to the framework of rights and obligations of the organizer fixed by the Assembly Law.

Firstly, it is not clear what specific actions and in what period should the organizer perform in order to accomplish this duty. Secondly, it is not clear how he/she should evaluate the occurrence of threat and its dependence on the excess number of participants. The legal uncertainty of like nature creates a threat of the arbitrary interpretation of the obligation to use efforts to prevent exceeding the number of participants in the public event by the law enforcement official.

Obviously, the content of this duty and the conditions of the incurrence of liability for its failure should be interpreted, on the one hand, in the light of the objectives pursued by its setting: the maintenance of public order and public safety, the ensuring of secure nature of the event, consistent with the rights and interests of its participants as well as people who are not involved in it. On the other hand, the content of this duty should include only those actions of the organizer, which correspond to his/ her status and his/ her capacities to exercise them. In this case, we should talk about a balanced and elaborated estimation of the potential number of participants by the organizer and a consequent communication of the relevant information to the authorized bodies. In addition, the content of this duty may include other measures of informational character that the organizer should undertake: the notification of the audience on the maximum number of participants of the public event, the announcement concerning the

termination of access to the public event. It should be taken into account that the problem of security, taking the necessary measures in this connection, as well as rendering of assistance to the organizer of the event is the responsibility of the relevant authorities and their officials. Shifting all the functions and powers to the organizers would give them public authorities that are too broad and not peculiar to their status.[93]

In paragraph 1 of Part 2 of Article 14 of the Federal Law on Assembly it is stated that the authorized representative of the internal affairs body has the right to call on the organizer to declare the termination of the access of people to a public event and to cease the access of citizens by himself/ herself if the maximum holding capacity of the territory (premises) is exceeded. Therefore, through the interpretation of this legal provision, we can conclude that the only duty of the organizer that the authorities can demand him/her to perform is the obligation to declare of termination of access to a public event. It should be noted that the organizer is not empowered to stop the access in case of a breach of the marginal rate of occupancy of the territory (premises) on his/her own. It is quite natural, taking into consideration that the participants of the public event, who are not the organizers, also exercise their constitutional rights, and only empowered representatives of the authorities can prevent them to do it given that there are certain legal grounds (undoubtedly, the organizer is not among these representatives). Otherwise, the organizer would have committed a gross violation of the norms and principles of the Constitution by his/her actions. Besides, the organizer has neither special training nor the necessary means to end the admission of a public event.

[93] The Venice Commission correctly noted that "[w]hereas the organiser is indeed responsible for exercising due care to prevent disorder, he/she cannot revert to the exercise of police power and cannot be required to do so. Moreover, the citizen's right of peaceful assembly mirrors the state's duty to facilitate and protect such events. This leads to the conclusion that the overall responsibility to ensure public order must lie with the law enforcement bodies, not with the organiser of an assembly. The obligations of organisers should be reduced to the exercise of due care, taking into account the limited powers of the organiser, the more so since the responsibility of the authorities to provide public security, medical aid etc. is already set out in Article 18.3 of the Assembly Law." Opinion on the Federal law No. 54-FZ of 19 June 2004 on Assemblies, Meetings, Demonstrations, Marches and Picketing of the Russian Federation. Adopted by the Venice Commission at its 90th Plenary Session (Venice, 16-17 March 2012), para 41. Available at: <http://www.venice.coe.int/docs/2012/CDL-AD(2012)007-e.pdf> accessed 1 November 2012.

At the same time, the normative content of this duty of the organizer should not include a requirement for accurate determination of people participating in the event and a demand to prevent the excess of the estimated number of participants stated in the notification. It should be borne in mind that the organization of a public event in a public place accessible for visiting assumes the possibility of participation of any person, regardless of any action on the part of the person himself (e.g., notice of participation), and on the part of the organizer. Participation in such kind of events (including adherence to them) - is a matter of personal choice of each person and the imposition of a ban on their visits is an interference in the freedom of assembly. This approach was particularly in the picture in the ECHR case *Christian Democratic People's Party v. Moldova*.[94] Now it can be seen that the content of the obligation "to take the necessary measures to prevent the excess of the *number* of participants of the public event that was indicated in the notification", requires first of all, legislative clarification and should be determined on the ground of a balance between the necessity to ensure, on the one hand, public order and security of citizens and, on the other hand, the impermissibility of a violation of freedom of assembly of other people and with due account for the constitutional status of the organizer of the public event.

The practice of bringing the organizer to responsibility for exceeding the number of participants that comes out of his/her obligations to comply with the norms of the maximum holding capacity of the territory and conditions specified in the notification has been the subject of attention of the Commissioner for Human Rights in the Russian Federation. In his Report[95] he pointed out the uncertainty of the legal regulation of the issue and the discrepancy of this practice to the purpose of any public event - to attract the attention of the citizens.

In light of the increased attention to these questions during the last winter (2011-2012), a large number of assemblies with the excess of the declared number of participants and, therefore,

[94] *Christian Democratic People's Party v. Moldova (*App. No. 28793/02) Judgment of 14 February 2006.

[95] Report of the Commissioner for Human Rights in the Russian Federation for 2010 of 03.03.2011. Available at: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=EXP;n=505012> accessed 28 October 2012.

cases of calling organizers to account,[96] this practice was considered by the Constitutional Court of the Russian Federation. The Court based its position regarding the responsibility of the organizer of the event in case of breach of his/her duties on the general principles of accountability. The Constitutional Court noted that Article 20.2 of the Administrative Code ("*Violation of the established procedure for organizing or conducting a gathering, meeting, demonstration, procession, or picket")* does not itself lists the specific types of conduct (which are specified in the Assembly Law) and does not require any specific offensive consequences of violation of the rules of the event. This framework of the objective side gives a reasonable cause to believe that the organizer should be held liable not for any deviation from the rules of public events, but only for those that pose a real threat of harm to the protected values.

In such a case, the threat has to be considered as a real one if it was actual (not imaginary) and the damage was not caused only by mere accident or due to the timely measures regardless of the will and efforts of the person called to account.[97] In this respect, the excess of the participants *in abstracto* is not enough to hold the organizer responsible if it did not create a real threat to the breach of public order and public safety. In addition, the Constitutional Court of the Russian Federation made a point that there is a need to respect the fault-based individual responsibility principle follows from the provisions of the Constitution and the Administrative Code. Therefore, the question of the organizer's responsibility should be resolved with a glance to his/her fault and a direct cause and effect relationship between his/her actions (or inaction) and the onset of the real threat to the protected values.

A similar approach to the solution of the question of the organizer's responsibility is reflected in the OSCE/ODIHR - Venice Commission Guidelines on Freedom of Peaceful

[96] For example, when the number of participants was exceeded during the rally in support of Vladimir Putin, its organizer was found guilty and Putin promised to refund the fine through his campaign office. (<http://www.vesti.ru/doc.html?id=712706>, <http://www.bloomberg.com/news/2012-02-11/putin-pays-33-fine-after-too-many-people-rally-in-his-support.html> accessed 15 November 2012.

[97] Decision of the Constitutional Court of the Russian Federation No.12-P of 18.05.2012.

Assembly (2010). According to paragraph 5.7, organizers cannot be held liable for failure to perform their responsibilities if they have made reasonable efforts to do so. In particular, the organizer of an assembly should not face prosecution for either underestimating or overestimating the number of expected participants in an assembly if this estimate was made in good faith (paragraph 110).

How does the notification of the public event comport with the reconciliation procedure? Whether the obligatory character of the reconciliation procedure of holding a public event (in cases specified in the Federal law) means the establishment of the permitting procedure of exercising the right to assembly?

There is no definition of the reconciliation procedure in the Assembly law as well as there are no special norms that regulate the order of this reconciliation. The situation is inconsistent with the principle enshrined in Part 3 Article 55 of the Constitution (the imposition of restrictions on the rights and freedoms should be prescribed in the federal law). In the circumstances concerned, the regional legislator is responsible for adjustment of these issues and that creates significant problems in the process of law enforcement. The Federal law states only that during the negotiating process, authorities are obliged to provide an alternative to the previously selected time and location. It further states that the organizer of the event does not have rights to carry out the assembly if the local authority did not come to the agreement upon changes of place and (or) time of the event.

As it was previously said, the Constitutional Court explained that a public authority body cannot prohibit the event, and "may only offer to change a place and (or) a time of the meeting."[98] The offer means the creation of obligation of the organizer to consider it and to decide whether to agree or disagree with the proposal. Thus, it is a beginning of reconciliation. At the same time, Art. 5 of the Federal Law on Assembly establishes the rule that the organizer of the public event shall not be entitled to hold it if “the change of a place and (or) time of the

[98] Determination of the Constitutional Court on 2 April 2009 N 484-O-P.

public event had not been coordinated with the competent authority under its motivated proposal."

In case of disagreement with the proposal of the public authorities and the organization of the event on the place where it was originally planned, the organizer has administrative responsibility for the violation of the established order of organization or holding meetings, rallies, demonstrations, marches and pickets (Article 20.2 of the Administrative Code). Therefore, the holding of the event can be prohibited even if the organizer submitted a notification in due form. This ban is not a blanket one, it is not absolute. It is rather imposed on the realization of the event in concrete terms (time and place) than on the event in any form of holding. But if to bear in mind that in many cases such kind of activities as picketing has a strict peg to a certain place or object, the prohibition becomes absolute, since this public event cannot be held under different conditions. The Assembly Law does not disclose the content of reconciliation procedures in relation to resolving such conflicts.

In some regions of the Russian Federation the reconciliation procedure transforms the notification order into a permissive one. So if the place and (or) the time pointed out in the notification are improper according to the regional or municipal government, this body of power offers a motivated proposal to the organizer to hold an assembly in another place and (or) another time. As it was noted by the Venice Commission, as a result "[t]he organizer is thus often left with the choice of either giving up the public event (which will then be de facto prohibited) or accepting to hold it in a manner which may not correspond to the original intent,"[99] that is not compatible with Article 11 of the European Convention of Human Rights and Fundamental Freedoms: a motivated proposal should not be used as an instrument of interference to freedom of the organizer to choose the place and the manner of the public event.

The Constitutional Court pointed out that during the reconciliation process and while it makes the proposal to modify the terms of the event (time, place), the authority shall take into

[99] Opinion on the Federal law No. 54-FZ of 19 June 2004 on Assemblies, Meetings, Demonstrations, Marches and Picketing of the Russian Federation., para 22.

account the possibility of achieving the aim of the event (free formation and expression, making demands on various aspects of political, economic, social and cultural life of the country and foreign policy), and the new location, and (or) time should correspond to the social and political significance of the event.[100]

III.B.3. Specially Allotted Places

The Federal law No. 65-FZ of 08.06.2012 (that inserts amendments to the Assembly law) introduces a new category of "specially allotted or adapted places for public events", thereby a procedure of notification and reconciliation is not excluded. Moreover, an additional ground for the mandatory reconciliation of the public event floats to the surface.

Pursuant to the new rules, the regional executive bodies are authorized to enumerate specially allotted places "for collective discussion of socially significant issues and for the expression of public sentiments, as well as for the mass presence of citizens for the public expression of opinion on the actual problems mainly of socio-political character."[101]

The special act of the constitutional entity of the Russian Federation determines the order of using, norms of the maximum holding capacity of these places, and the maximum number of people (at least one hundred people) that can participate in certain public events when a notification is not required. Therefore, the simplification of the order of organizing a public event and perhaps the cancellation of the notification procedure should be governed by a regional law. In such a case, the federal legislator did not define the necessary parameters of this regulation at the regional level, thus unreasonably expanded the discretionary powers of constitutional entities of the Russian Federation in this field and did not accomplish its task of regulation of rights and freedoms.

According to the recent amendments to the Assembly law, from the time the executive body designates the specially allotted places, public events should be held in there “as a rule”.

[100] Determination of the Constitutional Court on 2 April 2009 N 484-O-P.
[101] Article 8 part 1 item 1.1.

The term "as a rule" by implication of the subsequent provisions means the following: if the organizer is not satisfied with list of "permitted" places for public events, he/she will not be able to hold an assembly in the place that is not included to the list simply according to the standard notification procedure. If the organizer wants to hold an assembly outside the allotted places, he/she will need to get through the reconciliation procedure with the local or regional executive body. Authorities can refuse to reconcile only in two cases:

1) A notification on holding of a public event was submitted by a person who does not have a right to be the organizer;

2) The place where according to the federal or regional laws the holding of the public event is prohibited is indicated as the venue for a public event in the notification.

At the same time, there is no exhaustive list of "banned" places in the Federal Law, and therefore the additional regulation is left to the constitutional entities. Thus, contrary to Article 55.3 of the Constitution, the imposition of restrictions on the right to freedom of assembly was handed over to regional regulation although it should be a federal one. Concurrently, the Federal law on Assemblies does not establish either guidelines or criterions for the determination of these prohibited places. The Law literally leaves it to the discretion of the regulation of regions of the Russian Federation within the framework of general constitutional principles.

But are there any binding restrictions for regional executive authorities in relation to their powers to define specially allotted places for public events or they may act in their sole discretion?

The federal legislator proclaimed that there are certain conditions that regional authorities should be guided by when they determine these places. Thus "it should be possible to achieve the objectives of public events, there should be a transport accessibility of specially allotted places."[102] Also, organizers and participants should be able to use infrastructure facilities. Their safety should be provided as well as safety of other people. The state should provide the

[102] Federal law №54-FZ, Article 8, Section 1.2.

compliance with sanitary norms and regulations too. In my point of view, although the establishment of these requirements is a necessary step, most of them have a dangerously vague character on the following grounds:

1. Each and every public event has its own unique purposes. It is simply impossible to take them into consideration well in advance;

2. Transport accessibility of specially allotted places is definitely an important requirement. However, the legislator did not specify any criterions of this accessibility. Therefore, there is a threat of too formal approach that the authorities can go by that consequently can lead to the abuse of powers. For example, the existence of the bus stop close to the allotted place where just one vehicle stops once in a couple of hours as a matter of form will meet this requirement. None the less, in point of fact it will make no practical sense to hold an assembly in such a place.

3. It is not clear what kind of infrastructure facilities are in question and how organizers and participants of the public event can use them.

Interestingly enough, the necessity to allot places within the populated locality was not included to the list of requirements to the specially allotted places. Nor the high pass-through capacity of the place or the compelling need to have certain objects of particular historical or political significance in the vicinity (such as monuments, buildings, etc) became a part of it.[103]

The European Court of Human Rights has reiterated on many occasions that where the location of the assembly is crucial to the participants, an order to change it may constitute an interference with their freedom of assembly under Article11of the Convention.[104]

[103] At the same time, the Venice Commission emphasized that "[t]he alteration of the place of the assembly by the authorities means that events cannot be held in places chosen by the organizer within sight and sound of their targeted audiences or at a place with a special meaning for the purpose of the assembly [...] But even assuming that the alternative proposals do comply with this principle, it must be underlined that in principle the organisers should be permitted to choose the venue and the format of the assembly without interference." Opinion on the Federal law No. 54-FZ of 19 June 2004 on Assemblies, Meetings, Demonstrations, Marches and Picketing of the Russian Federation, para 23.

[104] Among many other examples: *The United Macedonian Organisation Ilinden and Ivanov v. Bulgaria*, (App. No. 44079/98, para. 103, Judgment of 20 October 2005

Therefore, summing up what has been said, it can be inferred that the executive bodies of the constitutional entities of the Russian Federation have authority to use their own discretion while allotting special places for assemblies and are guided only by general constitutional principles.

In the meantime, according to the Assembly Law, peaceful public assembly has the following features:

- The openness of the public event;

- The accessibility of the public event for everyone;

- The rights in a wide range of people - as participants in public events and parties, they are not directly involved

- The possibility of free expression and formation of opinions, the possibility to put forward demands on various aspects of political, economic, social and cultural life of the country and foreign policy issues;

- The dissemination of opinions, demands that were laid down during the assembly among the population.

It seems certain that the selection of specially allotted places for public events should not be done by the executive authorities in an arbitrary fashion and it has to comply with the characteristics of a public event described above. The appropriate places should be relevant in order to achieve the goals of the action, to ensure its accessibility to a wide range of people. The importance of the place of public assembly in relation to accomplishing the purposes of the event was also noted by the Constitutional Court of the Russian Federation.[105]

On the other hand, the venues for public events should be selected in such a way as to reduce the risk of situations that can lead to a dispersal of a public event (doing damage to green

[105] The Determination of the Constitutional Court of 02.04.2009 No. 484-O-P.

areas, facilities, buildings, structures, etc.) and to bringing the participants and organizers to responsibility.

It seems reasonable to envisage adequate requirements and restrictions that will regulate the process of selection of special places by executive bodies directly in the Assembly Law. The establishment of this legal regulation would strengthen the guarantees of the right to peaceful assembly. In turn, the arbitrariness in the choice of these places, can lead to a "deportation" of public actions to initially unfit areas.

III.B.4. Single Pickets: Spontaneously Simultaneously.

During the recent winter, an extraordinary attention was invited to mass actions in Russia. The fact that these assemblies took place is remarkable and uncommon by itself, but sole protests were quite popular before, during and even after those winter events. As was mentioned earlier, the individual picket does not require notifying any authorities as lond as the person does not use sound-amplifying facilities. Even though these personal protests are not really dangerous for the people in power, they often face certain obstacles that sometimes are on the edge of fantasy.

For example, on New Year's Eve (29.12.2011) a well-known human rights activist Suren Gazaryan was taken in custody by the police at the time of his sole picket. During the course of this action he handed out rolls of toilet paper with the print “Constitution” on them. The activist was in the costume of Father Frost (Russian alternative to Santa Claus). According to the folk tales, Father Frost has a granddaughter (Snegurochka) who is travelling with him and gives gifts to children. However, during this action, Suren Gazaryan was obviosly alone. Suddenly, a girl in cloths of Snegurochka (who went from a children's matinee) appeared on the other side of the street and both of ‘characters’ were immediately captured.[106]

[106] Krasnodar. Deda Moroza arestovali za razdachu tualetnoy bumagi s nadpis’yu “Konstitutsiya” vo vremya piketa solidarnosti s politzaklyuchennymi [Krasnodar. Father Frost was arrested for distribution of the toilet paper with a print “Constitution” during the picket of solidarity with political prisoners] <http://www.novayagazeta.ru/news/53068.html> accessed 15 November 2012.

This and other cases gave a food for thought to human rights lawyers that started to pay attention to certain loopholes in the Assembly Law that allow authorities to use the act at their own discretion. First of all, it was not clear how to distinguish the aggregate of individual pickets from the assembly with few participants. Legally speaking, the 'aggregate of individual acts' can be regarded as an abuse of the right to protest whereas in such a circumstance a group of people does not notify authorities about their collective action. At the same time, it is the only possible legal way to organize a spontaneous assembly when there are undelayable and urgent reasons (even though, a 'spontaneous' nature of the assembly means the absence of any sort of organization). The Summer Act put some clarity into the legal framework of picketing.

Article 7 of the Federal law on Assemblies was amended by paragraph 1.1. According to this paragraph, "the aggregate of acts of picketing, carried out by the single participant, consolidated by the common design and a joint organization **can** be recognized as a single public event by the court judgment on specific civil, administrative or criminal case" *(emphasis mine)*. The constitutional law department of the Saint-Petersburg State University in their expert opinion concerning the recent amendments to the Assembly Law stated that "[i]f several single pickets combined by the same purpose and organization are held at the same time and use the same or similar graphic materials and participants in such events put forward slogans and demands, united by a single concept, such pickets cannot be considered as single ones, and should be regarded as elements of a single picket that has a wide geographical coverage."[107]

I agree with this opinion inasmuch as that the norm is focused on impeding of the misuse of the right not to inform the public authorities concerning the holding of the public event if it is a single picket. Simultaneously, this rule can lead to the superfluous reaction on spontaneous assemblies.

[107] The Conclusion Concerning the Amendments to the Assembly Law by the Federal law of 08 June 2012 No.65-FZ , kindly furnished by members of the constitutional law department of the Saint-Petersburg State University.

But what does the Strasbourg Court think about minimum number of people? In fact, there is no case in which a solitary protester relied solely on Article 11. David Mead argues that in the various German sit-in cases – such as *CS v. Germany*[108] – "no question was ever raised about these not constituting assemblies but in each case those arrested were not demonstrating by themselves."[109] Roughly speaking, the similar situation was with *Galstyan v. Armenia case*,[110] where the applicant refereed to Article 11. He was arrested for participating in the demonstration and violating public order during it therefore he was not the individual protester in a strict sense.

However, a solitary protest can easily transform to a spontaneous assembly.

The European Court of Human Rights' approach aimed at protecting of public events occurring spontaneously has become a foundation for the position of the OSCE/ODIHR expressed in the Guidelines on Freedom of Peaceful Assembly. According to paragraph 4.3, "[t]he prohibition of a public assembly solely on the basis that is due to take place at the same time and location as another public assembly will likely be a disproportionate response where both can be reasonably accommodated." The possibility to join individual pickets without restrictions should also be regarded as a realization of the right to freedom of assembly and the expression of a healthy democracy.

Furthermore, according to the well-established practice of the ECHR and provisions of the Guidelines, a failure to notify the authorities about the event does not constitute enough grounds for its restriction if it did not result in disturbances of public order or security of citizens.[111] Therefore, if the recognition of the aggregate of sole pickets as a single event relates to the solution of a question concerning the application of liability measures for failure to comply with the order of its organization, it is necessary to take into account not only the presence of a

[108] *CS v. Germany* (App.No. 13858/88) EComHR inadmissibility decision 30 November 1992.

[109] D.Mead, *The New Law of Peaceful Protest: Rights and Regulation in the Human Rights Act Era* P.66.
He further notes that the inadmissibility decision *McBride v. UK* (App.No.27786/95) inadmissibility decision 5 July 2001) is "open to the interpretation that it has widened the reach of Article 11 by eliding the word "assembly" with the word "protest" – such that it is no longer means a coming together of persons."

[110] Galstyan v. Armenia (App.No.26986/03) Judgment of 15 November 2007.

[111] E.g. *Bukta and Others v. Hungary* (App. No. 25 691/04) Judgment of 17 July 2007.

common intent and organization, but also the existence of a real threat that public order and public safety could be violated.

Looking at the whole picture of protesting during the last years, it is possible to draw a conclusion that the Russian government does not want to accept the idea of "unagreed" assemblies in cases where a society immediately reacts to acute political situation (the recent winter example – to violations during the parliamentary elections).

It is fair to say, however, that the Russian Federation is not the only Council of Europe Member state who does not guarantee the right to spontaneous assemblies. Even in France, the assembly held without prior notification is punishable by 6 month of imprisonment or a fine equal to 7500 euros[112] that is in fact less 'humane' punishment that is prescribed by Russian Administrative Code.[113] Anyway, it is better to look up at a more well-advised and democratic example. For instance, the United Kingdom[114] and Hungary have prescribed the possibility of spontaneous assemblies in their normative acts.

[112] Le Code Pénal, Art. 431-9.

[113] The organization or holding the public event without prior notice is subject to administrative fine at a rate from 500 to 750 euros approximately (Art. 20.2 para 2).

[114] Public Order Act 1986 Section 11.

III.C. The Lack of Effective Remedy

III.C.1. The 'January 19' problem.

Since 2005, Russian people have 10 "vacation" days in January (usually 'winter holidays' last from January 1 till January 10).[115] When the Assembly law was enacted, there were no such 'exceptional circumstances' and consequently there were no such periods of time when it is effectively impossible to reconcile the assembly. According to the Assembly Law, the organizer should submit a notification 10-15 days prior to the public event. That means that the authorities have a formal ground to reject a notification if it was submitted too early or too late. Hence, there are certain days that are practically 'withdrawn' from the calendar of assemblies.[116] This gap is annually used by the authorities of St. Petersburg, when they decide to reject the notice of the Anti-discrimination center "Memorial" that wishes to hold the assembly on January 19. This day is of the utmost importance for organizers because it is a day of murder and a memorial day of human rights activists Anastasia Baburova and Stanislav Markelov, therefore holding of the public event on another day would not meet the purpose of the assembly.

This 'case' is very significant due to the fact that first of all, the NGO was not able to receive the court decision before the day of assembly since the trial was scheduled after the declared date of the public event. However, the first-instance court did not find a violation of a constitutional right to freedom of assembly and the court of superior jurisdiction upheld this judgment.

Secondly, the actions of authorities contradict to the practice of the ECHR, particularly, to the case-law against the Russian Federation. Thus, in *Sergey Kuznetsov v. Russia*, the European Court of Human Rights held (in para.43), that "*merely formal breaches of the notification time-limit [were] neither relevant nor a sufficient reason for imposing administrative liability*". In this case, late notification did not prevent the authorities from adequately preparing for the assembly.

[115] Actually there are just 5 "additional" free days, but due to the fact that the Orthodox Christmas is an official day-off and there are usual days-off as well (Saturday, Sunday), finally we have around 10 free day.

[116] Usually around 7, but it depends on the arrangement of days in the calendar of a particular year.

And thirdly, the decision of St. Petersburg authorities contradicts to the practice of Moscow authorities that are bound by the same laws. Nevertheless, the Moscow authorities did not find it crucial that the notification was submitted 8 days in advance conceiving that it was not the organizer's fault and the assembly was held on the declared date.

III.C.2. Possible Solutions

Since the *Alexeyev* judgment[117], nothing has significantly changed in regard to the effective remedy in the Russian Federation. If the reconciliation procedure finishes without success, the organizer has a right to lodge a judicial appeal against unlawful actions and decisions. However, as a rule, it does not lead to the effective protection of the right to assemble peacefully.

Normally, it takes about 2 month (at the very least) to receive the final decision on this issue. Eventually, it makes it impossible to hold the assembly on the initially declared date simply because the notification cannot be submitted earlier than 15 days before the date of the event.

Finally we have a dead end situation: if the organizer wants to appeal against the authorities' decision, most likely he will lose an opportunity to hold the assembly on the desired date. If he does not appeal, he has no right to hold the assembly on the desired place or in a declared time and manner.

At the same time, there is a loophole in Russian legislation that can allow the judge to deliver a final judgment almost immediately. Of course, there should be certain grounds for such an exception however they are rather vague.[118]

[117] *Alekseyev v. Russia* App. No. 4916/07, 25924/08, 14599/09 Judgment of 21 October 2010. The Court noted that the authorities were not obliged by any legally binding time-frame to give their final decisions before the planned date of the march or the picketing. The Court was therefore not persuaded that the judicial remedy available to the applicant in the present case, which was of a *post-hoc* character, could have provided adequate redress in respect of the alleged violations of the Convention (para 99).

[118] "By the plaintiff's request, court may turn the judgment to immediate execution, if the delay in its execution, resulted from special circumstances, may cause a significant loss to the judgment creditor or execution may become impossible. While allowing immediate execution, the court may demand of the plaintiff to secure restitution of property and rights upon reversal of judgment. The issue on the immediate execution of a judgment may be examined simultaneously with the judgment making" (Article 212 of the Civil Procedural Code of the Russian Federation).

To my best knowledge, this possibility was used only once for some time past and the beneficiary party from such acceleration were Moscow authorities (even though formally they were a defendant). It happened after the latest in a series of mass assemblies against the third term of President Putin, and as many other things that had happened the previous year, the group of people accidentally "occupied" the boulevard called Chistiye Prudy[119] in the center of Moscow (therefore, the case will be further named as a *Chistiye Prudy* case). The camp was almost immediately named "OccupyAbay."[120] People were living there day and night, it was not declared as a meeting or any other form of assembly. Camp residents did not shout slogans or anyhow demonstrate the political constituent of the event, therefore the police did not have a right to dissolve them. However, after a week, the camp was dispersed under the court decision. This judgment is particularly attractive because of several reasons.

First of all, the timeline of the case is particularly interesting and quite unusual for the judicial system of the Russian Federation. According to the case card on the web-site of the Moscow *Basmanny* district *court, the application from locals who complained about the 24-hour noise on the boulevard was registered on May 14 at 09.40. At the same day, the Court Chairman rendered an interlocutory judgment* on the preparation of the case for trial *and* scheduled a meeting with the representatives of the parties on the morning. Therefore, defendants (the prefecture of the Central Administrative District of Moscow and the Department of Natural Resources) had just one night to prepare objections and the legal position for the case. However, it did not draw fire from their side - after a morning interview on May 15, the examination of a case on its merits was scheduled on the second half of the day. The parties did not ask to reclaim anything, to refine, no one was in need of time to prepare for the trial. The judgment was delivered in the evening. The text of the decision was given to parties at the same moment and at the same night the police read it out to the camp residents. It is particularly remarkable that the

[119] The literal translation is "Clean Ponds".

[120] As a resemblance to the world-famous protest movement "Occupy Wall Street". Abay Kunanbayev is a 19th century Kazakh poet whose statue is on the boulevard.

camp residents were the only side who argued to the contrary in this someone else's dispute and simultaneously they were the side obliged to fulfill the judgment even though they were not admitted to take part in the trial.

But the critical importance of this judgment is in its immediate nature. The court took into account the requirements of Article 212 of the Russian Civil Procedure Code, considered the "legally significant circumstances of the case and the mode of the infringement of applicants' rights as a consequence of the authorities' failure to suppress the twenty-four-hours mass event" and recognized that the "delay in the enforcement of the judgment may lead to additional serious damage to the rights and freedoms of citizens", therefore "the real implementation of the present judgment after a certain period of time may not be possible" and eventually the court granted a motion concerning the immediate execution of a judgment.[121]

In such a case, I can suggest three possible solutions:

The first one does not suggest any significant changes of law. The main idea is to change the practice of its application: to take into consideration that the delay in the enforcement of the judgment may also lead to the serious damage to the rights and freedoms of protesters and to use the 'loophole' on a more frequent basis. In other words, I suggest to use the 'urgent' scenario as a rule in relation to assembly cases, but not as an exception.

The second solution is to equate the assembly disputes to the election ones in relation to the review duration. Thus, according to the Election Law,[122] if the complaint was received by the court before the voting day (but during the election campaign), the decision should be delivered within five days, but no later than the day preceding the election, and if the complaint was received on the ballot day or the day following the day of voting, the decision should be

[121] The Moscow Basmanny district court's judgment of 15 May 2012. The card of the case is available at: <http://basmanny.msk.sudrf.ru/modules.php?name=bsr&op=show_text&srv_num=1&id=7760002120522112410469100436148> accessed 18 November 2012.

[122] The Federal Law No.67-FZ of 12.06.2002 "On fundamental guarantees of electoral rights and a right to participate in referendum of citizens of the Russian Federation."

delivered immediately.[123] Court decisions are binding for the relevant commissions.[124] If to scrutinize the principle one may distinguish 3 crucial components:

1. Procedural terms are established in a special law that it *lex specialis* in relation to the Civil Procedural Code.

2. The decision should be delivered before the Election Day.

3. The decision is binding for the relevant commissions. That does not mean that it is impossible to take review against the judgment, but the decision should be executed right after its rendering by responsible authorities.

Based on the above, it may be concluded that due to the special character of legal relations arising from the nature of the assembly, there are enough grounds to use the exceptional approach in regard to the judicial protection of the right to free protest. Thus, the special procedural periods should be envisaged in the Assembly law allowing the organizer to get the final judgment before the declared day of the public event.

One of the prime comparative examples might be the Law of Georgia on Assemblage and Manifestations.**[125]** Regardless the fact that a local government body is empowered *not to allow* holding an assemblage,[126] **"**a decision of a local government body on forbidding holding an assemblage or manifestation can be appealed against in a court which shall make a final decision within *two working days*"[127] (emphasis mine).

The third solution suggests to turn upside down the current system. To all intents and purposes, I think that the burden of proof should be shifted to the authorities' side. Practically, it should be as follows.

[123] Article 78 para 4 of the Federal Law No.67-FZ of 12.06.2002.

[124] Ibid. Article 75 para 3.

[125] Even though, Georgia is not the best example of the country where freedom of assembly is highly protected in practical terms, its legislation is rather liberal when it comes to the notification procedure and concurrent conditions of the enjoyment of the right to free protest. For more information see: Bakar Jikia, *Monitoring Freedom of Peaceful Assembly in Georgia. Legislation and Practice*. Tbilisi 2012. Available at: <http://humanrights.ge/admin/editor/uploads/pdf/02%20English_final.pdf> accessed 21 November 2012.

[126] Article 14 para 1 of the Law of Georgia on Assemblage and Manifestations. Available at: <http://legislationline.org/documents/action/ popup/id/15649> accessed 18 November 2012.

[127] Ibid. Article 14 para 2.

If the authority does not want to coordinate an event, it must turn to court and offer particular evidence of the reasonableness of the restrictions (for example, if the roadway maintenance work is really planned for the time of the assembly, authorities should be obliged to show the plan of works that was previously approved or an operating schedule).[128]

Anna Udyarova suggests that in order to minimize their efforts, the authorities would like to refuse to have anything to do with the facilitating of assembly, therefore, the 'coordinating' functions and functions of safety provision should be separated. [129] In her opinion, it will be better if notifications are submitted to the independent body that would render decisions and then send them to executive and law enforcement bodies for execution. I think that this proposal can also become one of the possible solutions of making the procedure more efficient and "rights-oriented". In addition to all solutions I would add that the system should become more transparent. By now, it is impossible to trace how many assemblies were registered by authorities for a certain period of time, where and when the particular assembly will be held or what was the motivation to adjourn the public event. Publication of this information would probably lead to uniformity and consistency of administrative practice and would prevent ill-founded restrictions.

[128] The main practical challenge of realization of the last suggestion is that there is no similar procedure in the civil law of the Russian Federation. Perhaps, the process can be compared solely with the incarceration rules.

[129] A. Udyarova, *Freedom of Peaceful Assembly in St. Peterburgh: Theory and Practice of Arbitrary Restrictions*.

CONCLUSION

"Considering that the place specified in the notice
is closed to the Russian Orthodox Church […]
we suggest you to submit the written blessing
from the Moscow Patriarchate
in order to hold the event"

The Official Response of the
Deputy Prefect of the Central Administrative District of Moscow.[130]

The aim of this work was to fill up the gap in the field of analyzing the right to freedom of assembly in the Russian Federation, to combine the legal theory and the real practice of exercising the right to peaceful protest.

In the course of work I came to the following conclusions:

The analysis of the Constitutional Court's Determination on the appeal of Lashmankin and others led me to the conclusion that legally speaking there is no violation of the right to assemble peacefully in the impugned article (Section 5 of Article 5) of the Assembly law.[131] However the big amount of constitutional entities and sometimes the abuse of discretion powers by regional authorities cause the different practice in law making and law enforcement all around the Russian Federation.

Practically speaking, if the 'bolt' of protesters' desire to hold an assembly on a particular place/ in a certain manner/ on a specified date does not suit the size of the 'washer' of the authorities' frame of mind, the mechanism of the proclaimed notification procedure immediately transforms into an authorization one that results in the endless bureaucratic circle, where in the successful case when the court decision will be in favor of protesters it will nevertheless enter into force after the declared date. Moreover, the executive body will not be bound by the judgment in its further decisions.

[130] From 15 February 2011, No. 180100-38-359/1.

[131] It may also happen that the findings of the Determination in a little while will be declared obsolete in light of the new decision of the Constitutional Court concerning the lawfulness of the amendments to the Assembly law (is expected at the beginning of the 2013 year).

Therefore the present order and safeguards envisaged in the Russian legislation are in need of change. In this paper I suggest three possible solutions how the situation can be changed:

- to use the 'loophole' in law that allows the court to deliver an immediate final judgment.

- to establish a special order by analogy with the elections' one that would allow the organizer to receive the final judgment before the declared date of event.[132]

- to establish the 'court's sanction' order. That means that if the authorities have a reasonable ground to disagree on the time, place or manner of the assembly, it should provide evidence to the court that will assess the lawfulness and proportionality of the possible public act.

The examination of summer amendments resulted in the following observations:

The obligation "to take the necessary measures to prevent the excess of the *number* of participants of the public event that was indicated in the notification", requires first of all, a legislative clarification and should be determined on the ground of a balance between the necessity to ensure, on the one hand, public order and security of citizens and, on the other hand, the impermissibility of a violation of freedom of assembly of other people and with due account for the constitutional status of the organizer of the public event.

The echo of totalitarian regime is still audible in the Russian Federation, however it is not so loud as it is often described by the opponents of the present government. Undoubtedly, there are substantial problems, the legislation is imperfect and the enforcement of law is sometimes terrible, but at the same time the one can see a great step forward made by the people of the country.

People are no more afraid. When I was doing the field work in St. Petersburg, I met with protesters who were in need of legal help before the trial when they could be found guilty on

[132] A similar recommendation was given by the Constitutional Court in its Determination on Assembly law, however, it was not taken into account by regional law enforcement officials.

violation of the order of holding the public event. Lawyers gave them advises how to destroy their cases on the grounds of procedural faults. Undoubtedly, this strategy has a better chance of success than to start insisting on the right to freedom of assembly, but it cannot change the whole situations with illegal detentions. Suddenly, one man asked a question: "Am I understand right? We need to tell to the court not that our detention was illegal, but that it was made with procedural faults? But what about Bukta versus Hungary, what about Kuznetsov and other cases? Isn't the district court bound by the ECHR judgments?" Unfortunately, it isn't. But I truly believe that if the ordinary protester knows the ECHR position, sooner or later judges will not hesitate to use it as a source of inspiration for their decisions.

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