



# **Freedom of Assembly in Russia: Legal Controversies and Limitations**

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## **Abstract**

This thesis is primarily focused on highlighting defects, existing in the current legislation of the Russian Federation on the freedom of assembly, and examining them through the prism of practice of the European Court of Human Rights and standards on the freedom of assembly, established by the Organization for Security and Cooperation in Europe.

The aim of this research is to determine contradictions between the national legislation and supranational legal instruments, and to contribute to further improvement and promotion of the freedom of assembly in the Russian Federation.

The novelty of this research paper is determined by the use of a comparative approach directed primarily at ascertainment of the crucial problems in Russian assembly legislation through a profound analysis of a wide spectrum of Federal and Regional Laws, decisions of the Constitutional Court of the Russian Federation, Acts of Regional Governments, etc.

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## **Introduction**

The right to freedom of assembly is one of the vital political values in every democratic society. The State is not only obliged to refrain from interference in the enjoyment of this freedom, but also provide substantive guaranties and effective legal framework with the view of securing and promoting the freedom of assembly on the national level. The freedom of peaceful assembly in Russia is now facing formidable challenges: on the one hand it is being limited increasingly, on the other political eventuality demands a new approach towards political rights. As the tension grows, the laws regulating public events prove themselves ineffective and therefore are in need of a holistic revision.

The purpose of the present thesis is to analyze the most controversial provisions of Russian legislation on the freedom of assembly and compare them to standards, established by the European Court of Human Rights and the Guidelines on the freedom of assembly, adopted by the Organization for Security and Cooperation in Europe<sup>1</sup>. The primary focus of this paper will be in identification of the existing contradictions and finding suitable solutions, which would significantly improve the situation with the freedom of assembly in Russia.

The present thesis consists of three chapters. The first chapter makes a general overview of restrictions to the freedom of assembly, existing in the assembly legislation, and analyze them on the basis of opinions, issued by the European Commission for Democracy through Law. The second chapter concentrates primarily on the prior authorization procedure, discussing factors which determine the form of the procedure and its legal consequences. The third chapter focuses

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<sup>1</sup> OSCE/ODHR – Venice Commission Guidelines on Freedom of Peaceful Assembly, as revised in 2010, available from: <http://www.osce.org/baku/105947?download=true>

on the problem of prohibition of spontaneous and simultaneous assemblies in the Russian Federation, examining the legitimacy of restrictions and exemptions, consolidated in the Assembly Law.

## Chapter 1

### Controversy of Russian Assembly Law

*Without general elections, without unrestricted freedom of press and assembly, without a free struggle of opinion, life dies out in every public institution, becomes a mere semblance of life, in which only the bureaucracy remains as the active element. Public life gradually falls asleep, a few dozen party leaders of inexhaustible energy and boundless experience direct and rule.... Such conditions must inevitably cause a brutalization of public life: attempted assassinations, shootings of hostages, etc.*

*Rosa Luxemburg<sup>2</sup>*

The freedom of assembly is one of the fundamental human rights widely recognized and valued in every democratic society. On international level this freedom is secured by Art. 20 (1) of the Universal Declaration of Human Rights, Art. 21 of the International Covenant on Civil and Political Rights, Art. 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms. These legal acts establish a minimum standard of protection to the freedom of assembly. Therefore, the main objective of the State in this respect is not only to comply with these standards, but also to provide effective legal framework in order to facilitate and promote the right to freedom

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<sup>2</sup> Rosa Luxemburg, *Prison notes, 1918. The Russian Revolution*, ch. 6 (1922, trans. 1961)

of assembly within its borders.

As it was rightly stated by A. Stremukhov, fundamental human rights and freedoms acquire a special status with their embodiment in the Constitution of every democratic society.<sup>3</sup> According to Art. 15 (4) of the Constitution of the Russian Federation “the universally-recognized norms of international law and international treaties and agreements of the Russian Federation” constitute an integral part of its legal system. As a Party to ICCPR and ECHR, Russia undertook certain commitments to preserve and promote freedom of assembly within its territory. The Constitution provides for a special protection to the freedom of assembly. According to Art. 31 the “citizens of the Russian Federation shall have the right to assemble peacefully, without weapons, hold rallies, meetings and demonstrations, marches and pickets.”<sup>4</sup> Nevertheless, the freedom of assembly is not absolute, even though it is secured by the Act, “having a supreme juridical force.”<sup>5</sup> For example, the freedom of assembly may be limited during the state of emergency.<sup>6</sup> Art. 55 (3) of the Constitution permits restrictions justified by protection of the constitutional foundations, health, morals, rights and interests of others, as well as defense and security of the State. These limitations are subject to determination by the *lex specialis*, namely by the Federal Law No.54-FZ "On Meetings, Rallies, Demonstrations, Marches and Pickets" as of June 19, 2004<sup>7</sup> (hereinafter referred to as the “Assembly Law”).

As it was fairly noticed by A. Blankenagel, success of the freedom of assembly is particularly

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<sup>3</sup> A. Stremukhov, *O sootnoshenii kategorij ponuyatijnogo ryada “prav cheloveka” (On comparison of categories of definitions of “human rights”)*, Zhurnal Rossijskogo prava No11 (2010), at p.67

<sup>4</sup> Art. 31 of the Constitution of the Russian Federation as of December 12, 1993, Rossijskaya Gazeta, published on December 25, 1993, available from: <http://www.constitution.ru/en/10003000-01.htm>

<sup>5</sup> Ibid., Art. 15(1)

<sup>6</sup> Ibid., Art. 56

<sup>7</sup> Federal Law of the Russian Federation No.54-FZ "On Meetings, Rallies, Demonstrations, Marches and Pickets" as of June 19, 2004, Rossijskaya gazeta No 3508, published on June 23, 2004

determined by the degree of allowed assemblies, their peaceful nature and existence of a critical component.<sup>8</sup> The question of conformity of Russian Assembly Law with national and international standards has been subject to a profound scrutiny of the European Commission for Democracy through Law (hereinafter referred to as “the Venice Commission”). The opinion of the Venice Commission<sup>9</sup>, issued on March 20, 2012 (hereinafter referred to as the “Opinion of the Venice Commission on the Assembly Law”) provided substantial criticism on existing defects of the assembly legislation and at the same time introduced solutions, aimed at improving the overall situation with the freedom of assembly in the country. The Commission thoroughly analyzed provisions of the Assembly Law and came to the conclusion that public events in the Russian Federation are subject to multiple restrictions having an adverse effect on the freedom of assembly in general. As a starting point of the analysis, the Commission drew attention to a notification procedure, which was considered as prior authorization due to the absolute nature of requirements of the Law providing for no permissible derogations in favor of holding peaceful assemblies. And no wonder, since the evident dissymmetry of obligations, imposed on the organizer of a public event and at the same time excessively broad discretionary powers of public authorities, taken in conjunction, amount to a disproportionate responsibility of the former and the freedom of action of the latter.

The overall restrictive approach towards peaceful assemblies may be viewed as a result of blanket prohibitions, lack of precision and deficiency of the legislation on the freedom of

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<sup>8</sup> A. Blankenagel, I. Levin, *Ostatki svobodi sobranij pered Konstituzionnim Sudom Rossii (Remains of the freedom of assembly before the Constitutional Court of Russia)*, Sravnitelnoe Konstituzionnoe obozrenie No 5(96) 2013, at p. 110 (translation of the author)

<sup>9</sup> 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), CDL-AD(2012)007, No 659/2011, available from: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)007-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)007-e)

assembly. Due to blanket prohibitions, a peaceful assembly cannot exist in a form, which is not explicitly provided for by the Law. The Assembly Law establishes an exhaustive list of permissible public events, considering “gathering, meeting, demonstration, procession, picket or [any other public event] comprised of any combination of this forms”<sup>10</sup> as legitimate forms of an assembly, and prohibiting therefore spontaneous assemblies *in toto*. At the same time not only the form of a public event matters, but also its time and/or place. As regards the time, Art. 9 of the Assembly Law explicitly forbids any public event from taking place between 10 p.m. and 7 a.m., providing for no exceptions to assemblies, which “[last] more than a single day.”<sup>11</sup> Restrictions to the right to choose the place of the assembly freely and without undue interference constitute a complicated confluence of norms, which explicitly prohibit certain venues from being used for the purposes of holding public events,<sup>12</sup> presuppose interference of the public authorities in order to prevent any threat to public safety<sup>13</sup> and empower regional authorities to prohibit a peaceful assembly due to excess of the holding capacity of the venue.<sup>14</sup> As regards the problem of imprecision, it is closely tied to deficiency of the legislation on the freedom of assembly, since both of these issues amount to accretion of discretionary powers of public authorities. Enjoying wide margin of appreciation on the issue, public authorities tend to decide on public events differently, on a case by case basis, which particularly excludes any unified approach on the non-discriminatory basis.

As for the judicial review, the Venice Commission concluded, that it is far from being effective. The organizer of the public event faces the following judicial challenges: lengthy process of appeal and impossibility to rebut a decision, delivered by the public authority within its

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<sup>10</sup> Art. 2.1 of the Assembly Law (translated by the author)

<sup>11</sup> Opinion of the Venice Commission on the Assembly Law, para 35

<sup>12</sup> Art. 8.2 of the Assembly Law

<sup>13</sup> *Ibid.*, Art. 8.1

<sup>14</sup> *Ibid.*, Art. 8.1.1

discretionary powers. In conformity with Art. 257(1) of the “Civil Procedural Code of the Russian Federation”<sup>15</sup> the time limit for the examination of the application is equal to 10 days, when the application is lodged with the District Court as a court of first instance.<sup>16</sup> In case, when the application is lodged with the Supreme Court of the Russian Federation,<sup>17</sup> it is examined within 2 months. Bearing in mind, that the notification of the public authority must be performed between 10 and 15 days prior to such public event, it may become problematic to overrule the decision of the public authority and manage to hold an assembly at the time, originally envisaged. However, even if the Court manages to review the application before the originally contemplated date of the assembly, indicated in the notification, the decision eventually would be in favor of the public authority since the restrictions are imposed in conformity with *lex specialis* and most likely within discretionary powers of such authorities, therefore outweighing the right to freedom of assembly guaranteed by Russian Constitution.

However, the opinion of the Venice Commission, made in March 2012 was relevant for quite a short period of time. Events of May 6, 2012 amounted to unprecedentedly violent dissolution of a peaceful assembly on the Bolotnaya Square in Moscow and subsequent mass imprisonment of its participants. These events entailed a vast revision and adoption of new provisions to the Assembly Law and the Code of Administrative Offences of the Russian Federation<sup>18</sup> through the Federal Law No 65-FZ “On Amending the Code of Administrative Offences of the Russian

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<sup>15</sup> Civil Procedural Code of the Russian Federation No138-FZ as of November 14, 2002, Rossijskaya gazeta No 220, published on November 20, 2002

<sup>16</sup> Ibid., Art. 24

<sup>17</sup> Ibid., Art. 27 of the Civil Procedural Code

<sup>18</sup> Code of Administrative Offences of the Russian Federation No. 195-FZ as of December 30, 2001, Rossijskaja Gazeta No 256, published on December 31, 2001

Federation and Federal Law “On Meetings, Rallies, Demonstrations, Marches and Pickets”<sup>19</sup> (hereinafter referred to as the “Amending Law”). By means of establishment of new amendments, the freedom of assembly became bound by excessive constraints, which resulted in dramatic aggravation of political tension in the country.

Firstly, the requirements concerning the organizer of a public event were subject to considerable addenda, namely Art. 5.2.1.1 of the Assembly law explicitly prohibited a certain category of citizens from standing as an organizer in case of having an outstanding or pending charge for the criminal offence against the constitutional order of the State or in case of a charge for an administrative offence, which was inflicted at least twice.<sup>20</sup> It is important to note, that this explicit prohibition primarily contradicts both the Constitution of the Russian Federation which guarantees that “no one may be convicted twice for one and the same crime”<sup>21</sup>, and similar provision contained in Art. 14(7) of the ICCPR, as the prohibition on becoming an organizer of an assembly amounts to a double punishment.

Secondly, a series of new obligations were imposed on the organizer of the public event. Art. 5.4 of the Assembly law was supplemented by an obligation of the organizer to demand observance of public order from the participants of the public event,<sup>22</sup> take measures on prevention of excess of the number of assembly participants indicated in the notice on holding assembly,<sup>23</sup> as well as demand from assembly participants not to cover their faces.<sup>24</sup> Non-compliance with the

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<sup>19</sup> Federal Law No 65-FZ “On Amending the Code of Administrative Offences of the Russian Federation and Federal Law “On Meetings, Rallies, Demonstrations, Marches and Pickets” as of June 8, 2012, Rossijskaja Gazeta No 131, published on June 9, 2012

<sup>20</sup> Implemented by the Amending Law

<sup>21</sup> Art. 50(1) of the Constitution of the Russian Federation

<sup>22</sup> Art. 5.4.4 of the Assembly Law

<sup>23</sup> Ibid., Art. 5.4.7.1

<sup>24</sup> Ibid., Art. 5.4.11

obligations, imposed on the organizer, entail two legal consequences. The first one refers to the punishment of the organizer of the public event. In accordance with a legal novelty, introduced by the Amending Law, the organizer is exposed to civil liability for any damage, incurred by the participants of the assembly.<sup>25</sup> The second consequence directly affects the right of a peaceful assembly to proceed without interference. The Amending Law introduced a new ground for discontinuation of the public event, in particular in case of non-compliance with obligations, imposed on the organizer of a public event.<sup>26</sup>

Thirdly, as a result of amending the Assembly Law, campaigning for public events may only take place after the agreement is reached between the organizer of an assembly and the public authority.<sup>27</sup> By this amendment the previous version of the Law, a more permissive stipulation, allowing public campaigning to be carried out on the basis of a simple notification on holding assembly, was abolished. The consequence of this amendment is that public campaigning became dependent of the final decision of the authority and subject to considerable delay as a result of it.

The restrictions, extended by the Amending Law attracted the attention of the Venice Commission for the second time.<sup>28</sup> In the opinion of the Commission the prohibition on standing as an organizer of the public event of certain categories of citizens amounted to a disproportionate restriction since the amendments did not provide for a differentiation of gravity of such offences. With regard to a new range of obligations, imposed on the organizer of the public event, the

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<sup>25</sup> Art 2.1 (g) of the Amending Law

<sup>26</sup> Art. 16.3 of the Assembly Law

<sup>27</sup> *Ibid.*, Art. 10.1

<sup>28</sup> Opinion on Federal Law No. 65-FZ as of 8 June 2012 of the Russian Federation Amending Federal Law No. 54-FZ of 19 June 2004 "On assemblies, meetings, demonstrations, marches and picketing and The Code of Administrative Offences", adopted by the Venice Commission at its 94th Plenary Session (Venice, 8-9 March 2013)

Commission reiterated its previous opinion on the Assembly Law,<sup>29</sup> holding that the primary responsibility of the State is in facilitating public order and public safety. For these reasons, the Assembly Law may not hold the organizer accountable for excess of the holding capacity of the assembly venue.<sup>30</sup> The organizer cannot be liable for non-compliance with an obligation to “[exercise] due care to prevent disorder”<sup>31</sup> as it constitutes a disproportionate requirement since the organizer of the public event is not authorized to make use of police power. Furthermore, the Venice Commission established a standard, according to which the organizer of a public event should be held responsible only in case of intentional indication of false information on the number of participants of the public event or when he or she precluded the public authorities from “[keeping] the number of participants within the holding capacity”<sup>32</sup> of the venue. As concerns the restraints to public campaigning, the Venice Commission unequivocally expressed its position, emphasizing that new amendments did not draw a line between information about the public event and its promotion.<sup>33</sup> This lack of specification as a result lead to excessive restrictions to the rights of the organizer of a public event as it “[limits] the capacity of the organizers to advertise assemblies” and “cause a chilling effect.”<sup>34</sup>

Therefore, the overall situation with the freedom of assembly in Russia is far from being favorable. As a result of amendments, which were introduced in 2012 by the State Duma and subsequently affirmed by the Federation Council in full, the freedom of assembly lost its original

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<sup>29</sup> Opinion of the Venice Commission on the Assembly Law, para 41

<sup>30</sup> Opinion of the Venice Commission on the Amending Law, para 24

<sup>31</sup> *Ibid.*, para 26

<sup>32</sup> *Ibid.*, para 24

<sup>33</sup> *Ibid.*, para 35

<sup>34</sup> *Ibid.*

spirit as a result of disproportionate prohibitions and excessive obligations, imposed on organizers of public events, and unwarrantedly wide discretionary powers of public authorities on the matter. The procedure of prior authorization, mentioned in this chapter, is a central issue to this research as it may be fairly be regarded as a determining factor in formation of the right to freedom of assembly in the Russian Federation.

## **Chapter 2**

### **Prior authorization procedure and its legal consequences**

This Chapter is aimed at analyzing the procedure of prior authorization of public events, comparing its essential elements to the standards, established by the European Court of Human Rights in its respective practice, the OSCE Guidelines on the freedom of assembly, etc. The sections of this chapter will analyze to which extent these essential elements may be subject to reconciliation and how far the authorities may go in protecting “public order [and] the security of citizens.”<sup>35</sup> The first section will primarily discuss the factors, which determine the procedure as a prior authorization. The second section will consider legal grounds for the alteration of date and place of the assembly as a form of a prior authorization, analyzing them in details. The third section will examine the issue of alteration of the form of a peaceful assembly by the example of transformation of the moving event into static.

#### ***2.1 Prior authorization procedure***

OSCE Guidelines consolidated governing principles, which are of a certain practical importance. Such principles as “presumption in favor of holding assemblies, the state’s duty to protect peaceful assembly, and proportionality”<sup>36</sup> form a basis for the freedom of assembly in every democratic society. Presumption in favor of holding assemblies refers to an absolute priority of an assembly and requires the State to refrain from “arbitrary interference”<sup>37</sup> in the legitimate exercise of this freedom. In contrast, the duty to protect the freedom of peaceful assembly induces the State to develop not only the legal framework in order to protect public order and public safety,

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<sup>35</sup> *Barankevich v. Russia*, Application no. 10519/03, Eur. Ct. H.R. Judgement of 26 July 2007, para 28.

<sup>36</sup> OSCE Guidelines (vol. 2) para. 29

<sup>37</sup> *Barankevich*, para 27

but also provide safeguards from any abuse which might be inflicted by the empowered authorities. Proportionality is a measure, which can be viewed as an evaluative category delimiting ambit of permissible restrictions to the freedom of peaceful assembly, inflicted by relevant law and discretion of the State's agents regarding the process of application of such law.

Art. 7 of the Assembly Law prescribes the procedure of notification as a form of obtaining consent of the public officials. The procedure obliges the organizer of the peaceful assembly to act in compliance with the time frame for the notice submission, which may take place “not earlier than 15 and no later than 10 days prior to the day of the public event”<sup>38</sup> and ensure the conformability of its form to the requirements of the law. The latter conditionality refers to the observance of due content of notice, namely by providing information on the essence of the public event.<sup>39</sup> Therefore, on the basis of Art. 7 of the Assembly Law we may conclude, that the procedure of notification is quite common and neutral. Hence, since it does not contain in itself any other explicit restriction or additional requirement on holding a public event, the notification procedure could have been regarded as having a form of a “notice of intent and not the request of permission.”<sup>40</sup> However, in practice this dispositive norm is eclipsed by other restrictive provisions of the Assembly Law which substantively limit the freedom of peaceful assembly, transforming the notification procedure into a prior authorization.

The procedure of prior authorization in the Russian Federation is resting on three legitimate whales. The first whale exists in the form of blanket prohibitions, i.e. norms, which have an absolute character, providing for no alternative solution and therefore which could not satisfy

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<sup>38</sup> Art. 7.1 of the Assembly Law

<sup>39</sup> Ibid., Art. 7.3. The notice must provide information on the aim of the public event, its form, date and place, approximate number of the participants, methods of the public safety maintenance, information on the organizer of the public event, his authorized representative, etc.(translation of the author)

<sup>40</sup> Opinion of the Venice Commission on the Assembly Law, para 10

requirements of the presumption in favor of holding assemblies. The second has a form of imprecise and vague legal formulas. The third whale refers to the problem of deficiency existing in Russian legal system, i.e. legal gaps, which allow public authorities to decide on authorization of public events at their own discretion. These three whales taken in conjunction, amount to the institution of the prior authorization procedure with respect to public events in the Russian Federation.

Firstly, as regards blanket prohibitions, they can be divided into three categories depending on their rationale: a defect of the organizer, non-compliance with the rule of law and a defect of the place of the assembly. Art. 12.3 of the Assembly Law provides for a blanket prohibition on holding a peaceful assembly, if the notification is filed by a person, which is not allowed to be an organizer of the public event as a result of legal incapacity, imprisonment or due to existence of an outstanding or pending charge for the criminal or administrative offence committed at least twice.<sup>41</sup> This provision explicitly empowers public authorities to reject such notification and prohibit a public assembly. Additionally, as regards the defect of the place of the assembly, Art. 12.3 prohibits a peaceful assembly, if the public event is intended to take place at the venue, where assemblies are explicitly prohibited. Another blanket prohibition refers to the non-compliance with the rule of law. Art. 5.5 of the Assembly Law establishes, in particular, a ground for prohibition of the public event, when the written notice is submitted by the organizer in undue time, i.e. outside the time-limit established by Art. 7.1 of the Assembly Law, or when the organizer and the public authority failed to reach an agreement on the date and place of the potential assembly, introduced in the “well-reasoned proposal.”<sup>42</sup>

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<sup>41</sup> Art. 5.2 of the Assembly Law

<sup>42</sup> *Ibid.*, Art. 12.3

Secondly, as regards the problem of deficiency of law, a “well-reasoned proposal” is a central issue to the regime of the prior authorization of public events. A proposal to amend the format of the event is considered well-reasoned when initial place of the peaceful assembly, indicated in the notice, endangers the safety of its participants. Even though the concept of a “well-reasoned proposal” is of a particular significance since it directly affects the destiny of a public event, the Assembly Law does not provide any qualitative standard, which would narrow the scope of the discretion enjoyed by public authorities in this question. Even though Art. 8 of the Assembly Law gives a more or less precise list of places in which holding an assembly is not allowed, at the same time it contains vague and overbroad norms, which empower public authorities to change the venue of the assembly, justifying it on the basis of existence of “a threat to security of the participants of a particular public event.”<sup>43</sup> As a result of this imprecise formulation, undesirable assemblies can *de facto* be prohibited since a proposal of the public authority on altering the date and/or place of the assembly, issued within its discretionary powers, may contradict initial aims of the assembly, originally envisaged by the organizer of a public event. In this respect the Venice Commission concluded, that the process of reconciliation with the public authorities appears to be one-sided, as the decision of the authority to alter the format of the event in every respect outweighs the will of the organizer and the originally envisaged manner of the assembly,<sup>44</sup> encroaching the very essence of the freedom of peaceful assembly.

Thirdly, as for the imprecision of legal norms regulating the freedom of assembly in Russia, it is closely tied to the problem of deficiency of law since both of these phenomena result in accretion of discretionary powers of public authorities. As a rule, imprecise norms have an adverse

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<sup>43</sup> Ibid., Art. 8.1

<sup>44</sup> Opinion of the Venice Commission on the Assembly Law, para 21

effect on the freedom of assembly as they contain no specification as to the criteria, which would bind public authorities in their execution of office. For these reasons the European Court of Human rights has elucidated, that “a law which confers a discretion must indicate the scope of that discretion.”<sup>45</sup> This view was supported by the conclusion of the Venice Commission, which reiterated that due to existence of imprecise norms, public authorities are empowered “to alter the format originally envisaged by the organizer for aims which go far beyond the legitimate aims required by the ECHR.”<sup>46</sup>

Therefore, as the Assembly Law does not permit the organizer to hold an event when there is no agreement achieved, the notification procedure turns into a request for permission in disguise. This approach of Russian public authorities is contrary to the conditions on freedom of peaceful assembly, enshrined in the OSCE Guidelines, which emphasize that the notification procedure must take a form of “a notice of intent” and should not be obstructed by bureaucratic requirements.<sup>47</sup> Otherwise, prior authorization procedure would amount either to changing the nature of the assembly, for example, due to the alteration of its date and place, or to prohibition of spontaneous assemblies *in toto*.

## ***2.2. Alteration of the date and place of the assembly***

Alteration of the date and place of the assembly as result of a prior authorization requirement is not in itself incompatible with the standards of Art. 11 of the ECHR. In fact, such alteration may

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<sup>45</sup> *Silver and Others v. United Kingdom*, Applications nos. 5947/72, 6205/73, 7052/75, 7061/75, 7107/75, 7113/75 and 7136/75, Eur. Ct. H.R. Judgment of 25 March 1983, para 88

<sup>46</sup> Opinion of the Venice Commission on the Assembly Law, para 21

<sup>47</sup> OSCE Guidelines (vol. 2), Section A, Guiding principles, para. 2.2, at p. 15

take place, if it is justified by the “reasons of public order and national security”,<sup>48</sup> which presupposes wide discretionary powers of the State in altering the format of a peaceful assembly. However, the margin of appreciation of the State in this question is not absolute. Any restrictions, imposed on the freedom of peaceful assembly are subject to thorough examination by the European Court of Human Rights, and must satisfy its respective standards.

As it was stated above, the Assembly Law provides for alteration of the public event due to various reasons, which form a basis for the “well-reasoned proposal” issued by executive authorities. Public authorities are required to propose an alternative place of assembly in cases, when the place, indicated in the notice, is explicitly prohibited by the Law,<sup>49</sup> when a peaceful assembly may result in a collapse of a building or pose any other threat to its participants,<sup>50</sup> or when the number of potential participants exceeds the holding capacity of the venue.<sup>51</sup>

The Venice Commission made an emphasis on the existence of an additional ground for amending the venue of the event, indicated in the Assembly Law, claiming that under Art. 12.1.3 of the Assembly Law “discordances, if any, between the goals, forms and other conditions for holding the public event specified in the notice and the requirements of [the] law”<sup>52</sup> can be a legitimate ground for proposing amendments. However, this statement can be argued since the conclusion of the Venice Commission is based on a false construction of the legal norm of the

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<sup>48</sup> *Nurettin Aldemir and Others v. Turkey*, Application nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02, Eur. Ct. H.R. Judgment of 02 June 2008, para 42; *Éva Molnar v. Hungary*, Application no. 10346/05, Eur. Ct. H.R. Judgment of 07 January 2009, para 35

<sup>49</sup> Art. 8.2. of the Assembly Law. The exhaustive list of forbidden places includes: territories adjacent to the dangerous industrial units, which require maintenance of special safety measures; railways, high-tension transmission lines; territories adjacent to the residence of the President of the Russian Federation, buildings occupied by the courts, penitentiary institutions (either territories adjacent to them or buildings occupied by such institutions); frontier zone

<sup>50</sup> *Ibid.*, Art. 8.1

<sup>51</sup> *Ibid.*, Art. 12.1.4

<sup>52</sup> Opinion of the Venice Commission on the Assembly Law, para 13 (translation of the Venice Commission on the Assembly Law)

Assembly Law. Strictly speaking, Art. 12.1.3 regulates the procedure of appointment of the public representative in order to render assistance to the organizer of the event. The citation, provided in the opinion of the Venice Commission, in fact, belongs to Art. 12.1.2 of the Assembly Law. It is worth emphasizing, that the interpretation made by the Commission appears misleading. The provision in question provides for the obligation of the public authority to make a proposal to the organizer of the event to eliminate any contradictions, existing “between the goals, forms and other conditions” for holding a public event and the provisions of the Law.

As we can see, the provision of Art. 12.1.2 of the Assembly Law has nothing to do with alteration of the time and/or place of the assembly. Rather the mere existence of contradictions between the essence of the assembly and the rule of law, brings about the obligation of public authorities to warn the organizer on existing discordances, stating that the assembly is not in line with the current legislation, but giving the organizer of the event an opportunity to eliminate all existing contradictions. Thus, obligation to eliminate contradictions does not automatically empower authorities to alter the format of a public event. As being of a less gravity, a failure to comply with legal standards of the Assembly Law, fairly faces less tension from the authorities and therefore all existing contradictions can be unilaterally eliminated by the organizer of the event himself, if he or she so chooses.

Returning back to the legitimate grounds for amending the date and place of the assembly, it is worth discussing them and analyzing through the prism of requirements, established primarily by the case-law of the European Court of Human Rights and OSCE Guidelines on Freedom of Peaceful Assembly. As it was stated by the European Court of Human Rights, the first and foremost requirement concerning limitations on the freedom of assembly is that such limitations

must rely on “convincing and compelling reasons”<sup>53</sup>, which may be justified under the concept of “a democratic society”<sup>54</sup>. Interference performed by the State must be in conformity with the standards of reasonableness, carefulness and good faith.<sup>55</sup>

Firstly, as regards the absolute ban on holding an assembly in place, explicitly prohibited, Art. 8.2 of the Assembly Law establishes an exhaustive list of such places. Exclusion of certain premises may be justified due to the potential threat they are likely to pose, as for example, dangerous industrial units, railways and high-tension transmission lines. However, as for the territories adjacent to the residence of the President of the Russian Federation, buildings occupied by the Courts and penitentiary institutions<sup>56</sup>, the Law does not provide for specific exceptions. As posing no danger, these venues must be subject to less strict regulation, which would allow smaller assemblies to be held on their premises. Such absolute prohibition to hold assemblies on the premises of administrative buildings may be considered as disproportionate since the legislator failed to strike a balance between protected interest in smooth operation of administrative organs and the freedom of assembly. The criterion of necessity presupposes the high degree of public demand, which would outweigh the freedom of peaceful assembly in case of an imminent threat to public order and public safety. In case, when such threat does not exist, prohibition in question may not be considered as necessary.<sup>57</sup> Hence, as it was emphasized by the Venice Commission, “the term “territories directly adjacent” is overly broad and calls for narrow interpretation.”<sup>58</sup>

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<sup>53</sup> *Barankevich*, para 25

<sup>54</sup> *Barankevich*, para 24

<sup>55</sup> *Barankevich*, para 26

<sup>56</sup> Art. 8.2.3 of the Assembly Law

<sup>57</sup> M. Yakovenko, *Konstituzionnoe pravo grazhdan Rossijskoj Federazii na provedenie sobranij, mitingov, demonstrazij, shestvij i piketirovanij v kontekste praktiki Evropejskogo Suda po pravam cheloveka (Constitutional right of the citizens of the Russian Federation to hold assemblies, meetings, demonstrations, processions and pickets in the context of practice of the European Court of Human Rights)*, *Mestnoe pravo*, No.3 (2012), at p. 42

<sup>58</sup> Opinion of the Venice Commission on the Assembly Law, para 34

Therefore, in order to comply with principles of necessity and proportionality, the legislator has to specify certain exceptions and not merely prohibit peaceful assemblies of all kinds and size, intended to be held on the premises of administrative buildings.

Secondly, as regards the question of holding capacity of the venue, a public authority may propose an alternative venue for an assembly, if the indicated approximate number of participants exceeds the limit of holding capacity of the intended place.<sup>59</sup> The Assembly Law explicitly refers this question to the competence of the Federal Units. For example, according to the enactment of the Government of Moscow, norms of the holding capacity are established individually for each public event and as of the date of such event.<sup>60</sup> As it is evident from the formulation, the normatives may vary. In practice, public authorities selectively apply normatives of holding capacity in order to restrict the freedom of assembly. For example, in May 2005 administration of the central district of Saint-Petersburg prohibited a picket against the Chechen War on the basis of excess of a holding capacity of the venue. The administration indicated in the proposal on alteration of the place of the assembly that the venue was capable of accommodating 15 people, however several days later the same venue was found suitable for another assembly with 100 participants.<sup>61</sup>

Thirdly, in conformity with Art. 8.1 of the Assembly Law, a public event may take place in any venue, suitable for such event. This legal norm has two exception: threat of a building collapse and “any other threat to participants [of the assembly]”. Indeed, the first exception can justify the

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<sup>59</sup> Art. 12.1.4 of the Assembly Law

<sup>60</sup> Art. 4 of the Decree of the Government of Moscow No 757-PP “On measures of realization of the Law of the city of Moscow as of April 4, 2007 No 10 “On providing conditions for the realization of the right of the citizens of the Russian Federation on holding assemblies, meetings, demonstrations, processions and pickets”” as of August 28, 2007

<sup>61</sup> E. Zusman, U. Dzhibladze, *Svoboda sobranij v Rossii: zakonodatelstvo i pravoprimeritel'naya praktika (Freedom of assembly in Russia: legislation and law enforcement practice)*, at p. 5, available from: <http://www.hrights.ru/text/b23/Chapter3%201.htm>

prohibition of an assembly, however “any other threat to participants” presupposes wide interpretation and as a result, wide discretion of public authorities. The European Court of Human Rights made a clarification on this matter, indicating, that the law must be sufficiently precise in determining the scope of discretion conferred on public authorities and the manner in which this discretion is exercised.<sup>62</sup>

What is important to mention is that the approach towards the imprecision of legal grounds for proposing alternatives to the originally envisaged date and place of the assembly, applied by the Constitutional Court of the Russian Federation in its respective decision<sup>63</sup> diverges dramatically from the one established by the European Court of Human Rights (above). The Constitutional Court did not consider the grounds as overbroad, instead it provided doubtful tautological argumentation, stating that “legal prescription of the exhaustive list of such reasons [for alteration] would unreasonably restrict the discretion of the public authorities in realization of their constitutional obligations.”<sup>64</sup> Moreover, the question whether the “proposals made by the public authorities on amending the place and (or) date of holding the public events”<sup>65</sup> were legitimate and sufficient for the protection of the constitutional values, and whether they did not constitute impermissible impediments for the aims of peaceful assemblies, were considered as being outside the competence of the Court. The approach of the Constitutional Court of the Russian Federation towards the same issue did not change with the passage of time. In the decision No.705-O-O as of June 1, 2010,<sup>66</sup> the Court emphasized, that the public authority is not empowered to

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<sup>62</sup> *Gillan and Quinton v. the United Kingdom*, Application no. 4158/05, Eur. Ct. H.R. Judgment of 12 January 2010, para. 77

<sup>63</sup> Judgment of the Constitutional Court of the Russian Federation N 484-O-P as of 2 April 2009, available from: <http://www.echr.ru/documents/doc/1691869/1691869-001.htm>

<sup>64</sup> *Ibid.*, para 2.1 (translated by the author)

<sup>65</sup> *Ibid.*, para 3 (translated by the author)

<sup>66</sup> Judgment of the Constitutional Court of the Russian Federation No 705-O-0 as of June 1, 2010

prohibit a public event *it toto*, it may only propose an alteration to the date and/or place of the assembly on the basis of a “well-motivated proposal”, which must comply with the concept of necessity to preserve normal functioning of the city infrastructure, protect public order and public safety. According to the Court, a “well-motivated proposal” as presupposed by its constitutional meaning, must be based on sound justifications such as protection of public order and safety. However, the scope of sound justifications, the Constitutional Court of the Russian Federation preferred not to clarify. Hence, the problem of excessive discretion of public authorities on approving or rejecting public events, remained unresolved.

Therefore, limitations imposed on the time and place of the event may be regarded as permissible when they serve a legitimate purpose, for example when there is an imminent threat, that the assembly would result in damage, inflicted either to the property of an individual or to his or her health<sup>67</sup>. According to the OSCE Guidelines such restrictions must reach a threshold in order to be justified.<sup>68</sup> However, the Assembly Law does not provide for such threshold. At the same time the European Court of Human Rights makes a clarification on this subject, stating that “there must be a verifiable impact...on the lives of others requiring that objectively necessary...steps be taken.”<sup>69</sup> In order to reach such threshold, “it is not enough that restrictions are merely expedient, convenient or desirable.”<sup>70</sup>

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<sup>67</sup> OSCE Guidelines (vol. 2), para 99

<sup>68</sup> *Ibid.*, para 80

<sup>69</sup> *Chassagnou v. France*, Application nos. 25088/94, 28331/95 and 28443/95, Eur. Ct. H.R. Judgment of 29 April 1999, para 113

<sup>70</sup> *Ibid.*

### ***2.3. Alteration of the form: transformation of the moving event into static***

Transformation of the moving event into static is a logical continuation of the authorization procedure. Since alteration of the format of an assembly falls within the discretionary powers of public authorities, it may not only result in the change of time and place of the assembly, but also in the alteration of the form of an assembly, changing it beyond recognition.

As it was stated by the European Court of Human Rights, the “freedom of assembly covers both private meetings and meetings in public thoroughfares as well as static meetings and public processions”<sup>71</sup> At the same time, the Opinion of the Venice Commission reiterates, that the autonomy of the organizer of the public event must be respected and preserved<sup>72</sup>. As a rule, it is for the organizer himself to make a primary decision on the format of the assembly without unreasonable and/or discriminatory interference of the public authorities<sup>73</sup>. This right is generally seen as an element of the principle of autonomy of the organizer<sup>74</sup> and is deemed to constitute its integral part.

According to Art. 2.5 of the Assembly Law procession is a legitimate type of an assembly, which refers to an organized passage performed by the citizens according to an itinerary, approved by the public authorities in advance. The nature of procession implies that it takes a form of a moving event, being an essential and inalienable feature of this form of a public event. Therefore, any alteration as to the form of a procession would inevitably deprive it from its primordial meaning.

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<sup>71</sup> *Kuznetsov v. Russia*, Application no. 10877/04, Eur.Ct. H.R. Judgment of 23 January 2009, para 35; *Barankevich*, para 25

<sup>72</sup> Opinion of the Venice Commission on the Assembly Law, para. 23

<sup>73</sup> *Ibid.*, para 25

<sup>74</sup> Opinion of the Venice Commission on the Amending Law, para 40

What is important to mention is that the Assembly Law does not provide for any particular safeguards on holding moving events. Therefore, since there is no specific regulation, it is in the discretion of public authorities to alter the format of the moving event, in fact, allowing them to go as far as transforming the moving peaceful assembly into a static.

As it was noted by the Venice Commission, Russian public authorities tend to resort to their discretionary powers and transform moving events into static, justifying such transformation on the basis of considerations of the free flow of traffic.<sup>75</sup> Such practice of the Russian authorities is contrary to Art. 11 of the ECHR as it goes beyond its legitimate aims. The European Court of Human Rights in its recent decision on case of *Kudrevičius and Others v. Lithuania*<sup>76</sup> held, that limitations on the freedom of assembly may be justified on the grounds of “maintaining the orderly circulation of traffic”<sup>77</sup> and prevention of disorder. At the same time neither a mere disruption of traffic may entail banning or dispersing of a peaceful assembly, nor any other inconvenience may justify its prohibition<sup>78</sup>. At the same time the OSCE Guidelines establish a principle of “equal right to use” public places.<sup>79</sup> As a general rule, assemblies must have an equal weight comparing to the ordinary purposes for which such public places are intended. And therefore, the State has to strike a balance between the protection of the right to peaceful procession and circulation of the traffic, showing a particular degree of tolerance with respect to the freedom of assembly, if it is exercised in the peaceful manner.<sup>80</sup>

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<sup>75</sup> Opinion of the Venice Commission on the Assembly Law, para 25

<sup>76</sup> *Kudrevičius and Others v. Lithuania*, Application no. 37553/05, Eur. Ct. H.R. Judgment of 26 November 2013

<sup>77</sup> *Ibid.*, para 80

<sup>78</sup> *Berladir and Others v. Russia*, Application no.34202/06, Eur. Ct. H.R. Judgment of 19 November 2012, para 38

<sup>79</sup> OSCE Guidelines (vol. 2), para 19

<sup>80</sup> *Kudrevičius*, para 82

What is important to highlight, is that existence of “the element of violence”<sup>81</sup> is regarded by the European Court of Human Rights as the point of no return, i.e. when the procession unequivocally loses its peaceful nature. The mere existence of violence during the public event may outweigh the right to hold a procession and justify an interference of public authorities in enjoyment of this right. With this regard the interference to the freedom of assembly may be justified, when the assembly has no longer peaceful character. However, it must be noted, that this conclusion of the Court refers to already authorized assemblies, whereas ensuring normal circulation of traffic is used by public authorities in Russia as a ground for changing the format of the moving assembly prior to the date of the event, indicated by the organizer in the notification.

Therefore, as it was stated in the present chapter the procedure of prior authorization is a central issue, which determines the overall situation with the freedom of assembly in the Russian Federation. Alteration of the date and/or place of an assembly, as well as to its format is a logical continuation of a prior authorization procedure. When the powers of public authorities are not limited by the rule of law, such alterations may go as far as restricting the very essence of the right to freedom of assembly, which is incompatible with Art. 11 of the Convention.

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<sup>81</sup> Ibid.

### **Chapter 3**

## **Spontaneous and simultaneous assemblies: prohibition *de jure* and *de facto***

This chapter will examine the scope of restrictions, imposed on spontaneous and simultaneous assemblies in the Russian Federation. It is worth mentioning, that prohibition *de jure* refers to spontaneous assemblies as they are unequivocally exempted from the regulation and therefore protection of the Assembly Law. As regards simultaneous assemblies, they are not explicitly prohibited by the Assembly Law. However, since public authorities have wide discretionary powers in allowing one of the simultaneous assemblies and at the same time refusing the other, it may be concluded, that simultaneous assemblies are prohibited *de facto*. The following sections will analyze to which extent and on which grounds spontaneous and simultaneous assemblies may be prohibited.

### ***3.1 Prohibition on spontaneous assemblies***

The freedom of spontaneous assemblies in the Russian Federation is a non-existent phenomenon since the Assembly Law explicitly exempts this form of a peaceful gathering from its regulation, therefore prohibiting it. Prohibition on spontaneous assemblies is resting on two main factors. The first one refers to a prohibition to hold an assembly as a result of non-compliance with the time frame for the notice submission. The second factor is determined by an excessively narrow list of lawful public events, provided for in the Assembly Law.

Firstly, with regard to the problematic of the time frame, in conformity with Art. 7.1 of the Assembly Law the notification on holding a public event is to be submitted by its organizer “not

earlier than 15 and no later than 10 days prior to the day of the public event.”<sup>82</sup> Furthermore, Art. 5.5 of the Assembly Law explicitly prohibits the organizer of the public event from holding it, if the notice was lodged in defiance of the prescribed time frame. As a consequence, these imperative norms constitute an impediment to the freedom of spontaneous assemblies in Russia, making them *de jure* prohibited as the Assembly Law does not provide for a shorter notice and at the same time explicitly outlaws holding of an unauthorized event.

Relying on the standard, established by the European Court of Human Rights, spontaneous assemblies enjoy the same degree of legal protection, ensured by Article 11 of the ECHR, as any other type of peaceful assembly. Moreover, with regard to spontaneous assemblies the European Court of Human Rights emphasized, that absence of the prior notice in case, when an assembly takes place as an “immediate response”<sup>83</sup> to a certain political event and when there is no illegitimate conduct on behalf of its participants, cannot justify the dissolution or prohibition of the assembly. For example, in Germany, despite the general rule of notification in 48 hours prior to the date of the assembly, as was emphasized by the Constitutional Court<sup>84</sup>, the absence of such notification in case of a spontaneous assembly cannot justify its prohibition.<sup>85</sup> Therefore, an absolute, non-derogable prohibition of spontaneous assemblies *per se* constitutes a “disproportionate restriction on the freedom of assembly”<sup>86</sup> and cannot be considered as necessary in a democratic society.<sup>87</sup>

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<sup>82</sup> Art. 7.1 of the Assembly Law

<sup>83</sup> *Bukta and Others v. Hungary*, Application no. 25691/04, Eur. Ct. H.R. Judgment of 17 July 2007, para. 36

<sup>84</sup> BVerfGE 69, 315/350 f.; BVerfGE 85, 69/74 f

<sup>85</sup> A. Blankeagel, I. Levin, *Svoboda sobranij i mitingov v Rossijskoj Federazii- sdelano v SSSR?: “Luchshe mi ne mozhem” ili “Po-drugomu ne hotim”?* (*Freedom of assemblies and meetings in the Russian Federation- made in the USSR?: “Cannot do it better” or “Do not want otherwise”?*), *Sravnitelnoe Konstituzionnoe Obozrenie*, 2013 No 2(93), at p.57

<sup>86</sup> *Berladir*, para 43

<sup>87</sup> *Bukta*, para 38

Secondly, as regards the prohibition to hold peaceful assemblies in forms, which are not explicitly provided for by the current legislation, the Assembly Law acknowledges the following permissible forms of public events as “gathering, meeting, demonstration, procession, picket or an event, comprised of any combination of these forms.”<sup>88</sup> Since the Law provides for the exhaustive list of legitimate public events, any other event, even of a peaceful nature, which falls outside the list, amounts to violation of the Assembly Law. Therefore, spontaneous assembly as such, is not recognized as a form of a peaceful assembly, and as a result, it cannot be held on the territory of the Russian Federation. Such blanket exclusion of non-stipulated forms of peaceful assemblies from the regulation of the Assembly Law is not in compliance with the standards, established in the OSCE Guidelines, by which the State has a duty to provide “for an inclusive and expansive interpretation”<sup>89</sup> of possible forms of assemblies with a view to preserve diversity of potential assemblies so that no excessive burden would prevent such assemblies from taking place.

As a result, spontaneous assemblies in the Russian Federation are equated with unauthorized assemblies. With this regard the Code of Administrative Offences of the Russian Federation acquired a new sanction, having an effect on spontaneous assemblies.<sup>90</sup> The administrative sanction was aimed at preventing organization of “mass simultaneous [gatherings] and (or) [movements] of citizens in public places,”<sup>91</sup> i.e. public events which do not constitute an assembly in the meaning of Art. 2.1. of the Assembly Law or which cannot be authorized in conformity with the Assembly Law. At the same time this sanction penalizes public incitement to take part in such gatherings, as well as participation in them, if such actions resulted in “disturbance of public order

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<sup>88</sup> Art. 2.1 of the Assembly Law

<sup>89</sup> OSCE/ODHR – Venice Commission Guidelines on Freedom of Peaceful Assembly, as adopted 2007, para. 16, available from: <http://www.osce.org/odihr/24523?download=true>

<sup>90</sup> As amended by the Amending Law

<sup>90</sup> Novelty introduced by the Amending Law

<sup>91</sup> Art. 20.2.2(1) of the Code of Administrative Offences (translated by the author)

or sanitary norms and regulations, disruption of functioning and integrity of the life support systems or systems of communication or infliction of harm to the green plantations or disrupt pedestrian or vehicle traffic or access of the citizens to the residential units or transport or social infrastructure.”<sup>92</sup> This complicated legal norm provides for the following: a public event not considered for the purposes of Art. 2.1 of the Assembly Law as a legitimate or an authorized event, is a prohibited simultaneous public gathering, organization of which, as well as incitement and participation in which, is punished in accordance with the Code of Administrative Offences. The target group of this regulation is comprised of *de facto* organizers of public gatherings, persons, inciting to participate in such gatherings and their participants. With respect to the latter group the OSCE Guidelines unequivocally expressed its attitude towards the punishment of participants of an unauthorized event. In particular, administrative or criminal legislation, sanctioning for participation in an outlaw public event must primarily be based on the principle of legality and should provide for a “reasonable excuse”, which would exempt a participant of an illegitimate public gathering from certain type of liability in case, when such participant “had no prior knowledge that the assembly was unlawful.”<sup>93</sup> At the same time, a participant of a non-peaceful assembly, who did not take part in violent actions, “cannot be prosecuted solely on the ground of participation in a non-peaceful gathering.”<sup>94</sup>

What should be noted, is that prohibited behavior does not only amount to the dissolution of a spontaneous assembly. Administrative punishment may be imposed in the form of a fine ranging from 10’000 to 20’000 RUB (app. from 245 to 489 EUR) or compulsory works for the duration of up to 50 hours for the citizens of the Russian Federation. For public officials the fine ranges from

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<sup>92</sup> Ibid. Art. 20.2.2(1), (translated by the author)

<sup>93</sup> OSCE Guidelines (vol.1), para 88

<sup>94</sup> Ibid., para 89

50'000 to 100'000 RUB (app. from 1'222 to 2'445 EUR), for legal persons from 200'000 to 300'000 RUB (app. from 4'890 to 7'335 EUR).<sup>95</sup> Since the first part of the sanction refers particularly to the citizens of the Russian Federation, therefore neither non-citizens, nor apatrides can be held liable for the breach of this provision. Such inequality before the administrative sanction can be explained easily by the fact that non-citizens are in no political interest of the State as they generally have no claims with respect to the freedom of assembly and therefore do not participate in controversial political events to the same extent as the citizens do. Therefore, it may be concluded, that the main intention of the sanctions in question is to punish politically active citizens for their politically opposing views.

As having effect on spontaneous assemblies, the prohibition on holding assemblies, notification on which cannot be submitted within the time limit, must be regarded as vague and overbroad since it gives wide discretionary powers to the public authorities in using police force against participants of an outlaw public event. Administrative sanctions, adopted as an authoritarian response to peaceful assemblies, which run counter to the official policy of the Government, entailed an un contemplated legal effect, as will be illustrated further. The State, acting through its agents, namely, the police forces, is now obliged to go as far as dissolving any gathering, even harmless, such as for example, flash mobs,<sup>96</sup> automobile protest actions,<sup>97</sup> fests, conferences, concerts and other innocent “simultaneous gatherings” which are becoming increasingly popular in Russia.<sup>98</sup> With respect to this issue, the Venice Commission received an

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<sup>95</sup> Exchange rate valid for June 9, 2012 (the date of entry into force of the legal norm); 1 EUR = 40,90 RUB

<sup>96</sup> *Politsia Sankt-Peterburga zapretila snezhki (Police of Saint-Petersburg prohibited snow-balls)*, Agency of Civil Journalism “Ridus”, available from: <http://www.ridus.ru/news/61713/>

<sup>97</sup> *“Sinee vederko”- akcia protiv migalok (“Blue bucket”-action against blinkenlights)*, “Snob” Journal, available from: <http://www.snob.ru/fp/entry/17031>

<sup>98</sup> *Belij krug somknulsya (White circle interlocked)*, Publishing agency “Interfax”, available from: <http://www.interfax.ru/russia/232743>

explanation from Russian authorities, explaining that, since such public gatherings are of little “political, economic, social and cultural”<sup>99</sup> importance, an administrative sanction for such gatherings must be considered as a lawful measure. The opinion of the Venice Commission on the substance of this communique is quite precise. The Commission concluded that the sanction of Art. 20.2.2 of the Code of Administrative Offences constitutes “a disproportionate interference with the right to freedom of assembly”<sup>100</sup> since the essence of this freedom implies the obligation of the State to secure diverse forms of assemblies regardless of their subject-matter.

According to the conclusion of the Institute of Legislation and Comparative Law on the freedom of assembly in Russia,<sup>101</sup> imperative regulation of the time frame for the notice submission serves a legitimate aim in ensuring and preserving a peaceful nature of the event, i.e. ensuring public safety before and during the event, preventing disorderly conduct and breach of public order. However, this claim can be argued from the position of respective practice of the European Court of Human Rights. As it was stated by the Court, it is an obligation of the State to provide effective measures in order to protect public order and public safety.<sup>102</sup> Therefore, such protection should be ensured by the public authorities not through the prohibition of the event itself, but through the application of adequate security measures, allowing any assembly to take place without undue interference and in conformity with the presumption in favor of holding assemblies.

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<sup>99</sup> Opinion of the Venice Commission on the Amending Law, para 56

<sup>100</sup> *Ibid.*, para 57

<sup>101</sup> Opinion of the Venice Commission on the Assembly Law, para 36

<sup>102</sup> *Barankevich*, para 32

### 3.2. *Simultaneous assemblies and counter-demonstrations*

The European Court of Human Rights placed a special emphasis on the necessity to preserve and promote “pluralism, tolerance and broadmindedness”<sup>103</sup> in every democratic society. With regard to the freedom of simultaneous assemblies, it must be highlighted, that simultaneity is synonymous to plurality.

According to the standard, established in the OSCE Guidelines, several assemblies in comparable circumstances must “not face differential levels of restriction.”<sup>104</sup> The authorities are to provide equal access to public infrastructure designated for such assemblies, when both assemblies may “be reasonably accommodated.”<sup>105</sup> As a matter of fact, simultaneous assemblies and counter demonstrations are generally regarded by the Russian public authorities as posing threat to public order and public safety.<sup>106</sup> They are not explicitly prohibited by the Law, rather it is in discretionary powers of the authorities either to approve or alter one of the simultaneous assemblies as the case may be. Generally, one of the assemblies is authorized as it is, whereas the other is altered on the basis of a “well-reasoned proposal”. OSCE Guidelines make a definite clarification on the issue of authorization of simultaneous assemblies. Such assemblies, if they are peaceful in nature, must “be facilitated as best possible.”<sup>107</sup>

However, at the same time the State is not wholly to be deprived of its discretionary powers. In fact, it may freely dispose of them in order to provide for rules “[determining], which assembly should be facilitated in the notified location”<sup>108</sup>, for example, on the basis of a ballot or due to

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<sup>103</sup> *Barankevich*, para 30

<sup>104</sup> OSCE Guidelines (vol. 2), para 4.3, at p. 18

<sup>105</sup> *Ibid.*

<sup>106</sup> Opinion of the Venice Commission on the Assembly Law, para 38

<sup>107</sup> OSCE Guidelines (vol.1), para 102

<sup>108</sup> *Ibid.*

existence of a priority rule, i.e. a rule of preferential occupation of public space by an assembly, notice on which was submitted first. It must be noted, that such rule should be applied on the basis of principle of non-discrimination and should serve a purpose of accommodating both assemblies in the best possible way, which means that the organizer of the second assembly should be offered an alternative with regard to the time and/or place of the public event.

Simultaneous assemblies are generally subject to considerable restraints as a result of differential treatment of organizers of public events. This differentiation is partly caused by excessively precise provisions of the Assembly Law defining the organizer of the public event. Namely, Art. 5.1 of the Assembly Law contains an exhaustive list of persons, which can stand as organizers. It is particularly stated, that a citizen (or several citizens) of the Russian Federation, political parties, religious and other public organizations, their regional branches or any other subdivisions, are entitled to become organizers. As may be seen from Art. 5.1 of the Assembly Law, the public authorities of the Federation, Federal Units and municipal authorities are exempted from the direct legal effect of the Assembly Law. Therefore, the rule “not earlier than 15 and no later than 10 days prior to the day of the public event”<sup>109</sup> does not apply to them. At the same time, provisions contained in other legal acts (so-called “blanket norms”)<sup>110</sup> explicitly vest public authorities with a right to stand as an organizer of an assembly.<sup>111</sup> Such blanket norms, which are for example, contained in the Federal Law No 131-FZ “On General Principles of Organization of the Local Government in the Russian Federation” empower municipal authorities to organize

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<sup>109</sup> Art. 7.1 of the Assembly Law

<sup>110</sup> M. Zhiltsov,, *Problems of formulation of reference and blanket norms in labour law*, Rossijskij Juridicheskij Zhurnal, September 2012 (86) at p.170

<sup>111</sup> Art. 16(19) of the Federal Law No 131-FZ “On General Principles of Organization of the Local Government in the Russian Federation” as of October 6, 2003.

official athletic and sports events in urban districts<sup>112</sup>. This provision explicitly permits municipal authorities to stand as organizers of public events, without being bound by the provisions of the Assembly law. In practice this means that public authority appears in two forms- as a State agent, empowered to authorize an assembly, and as an organizer of a public event. Such coincidence of functions with one governmental body poses a threat to the freedom of assembly in general, and to simultaneous assemblies in particular since the public authority may have an undue interest in altering the format of an ordinary assembly (i.e. its time and/or place) by proposing another public event, predominantly cultural<sup>113</sup> or sports,<sup>114</sup> and as a result, authorizing it. Alteration of an undesirable assembly is likely to take place, when its format substantively diverges from the official political course of the Government. Generally, in case, when such divergence exists, two assemblies are not likely to be held at the same time, which signifies, that freedom of simultaneous assemblies in the Russian Federation is far from being secured.

As regards simultaneous opposition assemblies, also known as counter-demonstrations,<sup>115</sup> the OSCE Guidelines determine this form of a public event as a special form of simultaneous gathering.<sup>116</sup> At the same time in order to be effective, the message of such gathering must be communicated at the same time and in the same place as the original assembly.<sup>117</sup> In contemporary Russian eventuality counter-demonstrations are considered as posing danger to public order and public safety. As simultaneous assemblies, they are generally not allowed by the public authorities

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<sup>112</sup> Ibid., Art. 2(1)

<sup>113</sup> Opinion of the Venice Commission on the Assembly Law, para 40

<sup>114</sup> Art. 16(19) of the Federal Law No 131-FZ

<sup>115</sup> *Öllinger v. Austria*, Application no. 76900/01, Eur. Ct. H.R. Judgment of 29 August 2006, para 37

<sup>116</sup> OSCE Guidelines (vol. 2), para 4.4

<sup>117</sup> T. Hramova, *Pravo na kontrdemonstrazii: ugroza ili indikator urovnya demokratii? (Right of counter-demonstrations: a threat or a detector of the democracy level?)*, *Konstituzionoe I municipalnoe pravo*, (7) 2012, at p.10

to be held at the same time and/or place, as an assembly, which was authorized first.<sup>118</sup>As it was stated by the European Court of Human Rights, the State enjoys a wide discretion in the choice of appropriate measures to prevent any disturbances to public order and safety.<sup>119</sup> However, at the same time an assembly cannot be prohibited due to existence of a potential risk. The banning or dispersing of the event having the form of a counter-demonstration, must be applied as the measure of last resort,<sup>120</sup> which requires a certain degree of justification. Namely, such measure may be justified in cases, when there is an imminent threat of disorder, physical violence, human rights violations, etc. At the same time, the State has to aim at striking a balance, which would “[ensure] the fair and proper treatment of minorities and [avoid] any abuse of a dominant position.”<sup>121</sup> Therefore, it is a duty of the State “to remain neutral and impartial”<sup>122</sup> in order to reconcile conflicting interests of various groups, which are seeking to be heard by means of a peaceful assembly.

The European Court of Human Rights in its respective opinion in the Öllinger v. Austria case, with a view to delimiting verges to the freedom of holding counter-demonstrations, established a criteria of “a fair balance”<sup>123</sup> between the freedoms ensured by Art. 11 and Art. 10 of the Convention taken in conjunction,<sup>124</sup> since the nature of a counter-demonstration presupposes speech which “may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote”<sup>125</sup>. Therefore, a counter-demonstration refers to a speech having a form of an

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<sup>118</sup> Opinion of the Venice Commission on the Assembly Law, para 38

<sup>119</sup> *Alekseyev v. Russia*, Application nos. 4916/07, 25924/08 and 14599/09, Eur. Ct. H.R. Judgment of 11 April 2011, para 75

<sup>120</sup> *Barankevich*, para 33

<sup>121</sup> *Alekseyev*, para 63

<sup>122</sup> *Barankevich*, para 30

<sup>123</sup> *Öllinger*, para 42

<sup>124</sup> *Ibid.*, para 38

<sup>125</sup> *Barankevich*, para 32

assembly. The Court emphasized, that Art. 11 of the Convention may be construed as acknowledging the principle of predominance of a lawful demonstration over a counter-demonstration.<sup>126</sup> In outlawing a counter-demonstration, the State should take into consideration the context of it, namely, its time and venue, whether it is aimed at causing disturbances to non-participants of such demonstration and whether disturbances is “likely to occur in the light of the experience of previous years.”<sup>127</sup> In case, when the context of a counter-demonstration presupposes threat to public order and safety and when such event is likely to result in violation of the rights and freedoms of others, the interference of the State may be justified.

Hence, the problematic of the freedom of simultaneous assemblies in Russia is primarily based on impermissibly restrictive norms of the Assembly Law, which allow differentiated treatment of assemblies depending on the danger they may pose to political foundations of the State. Such norms are discriminatory by nature and contrary to the principle of pluralism. Therefore, due to deliberate or accidental defects in the scope of regulation of the Assembly Law and prejudicial attitude towards simultaneous and counter-demonstrations in general, the problem of discrimination of the undesirable peaceful assemblies having an opposing political direction in favor of more neutral events remains unsolved. As regards spontaneous assemblies, due to impermissibly narrow obligation to comply with a time-frame for the notification submission and at the same time exemption them from the regulation of the Assembly Law, such form of public events, being of a significant importance, is not recognized as a legitimate way to express an opinion on the issues of public interest. This prohibitive approach, chosen by the State agents, is

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<sup>126</sup> *Öllinger*, para 37

<sup>127</sup> *Ibid.*, para 41

contrary to the idea of a democratic society as it encroaches the very essence of the freedom of assembly, depriving it from its original meaning.

## Conclusion

The present thesis was aimed at highlighting the most significant problems, existing in the current legislation of the Russian Federation on the freedom of assembly, and analyzing them through the prism of practice of the European Court of Human Rights and standards on the freedom of assembly, established by the Organization for Security and Cooperation in Europe in its respective Guidelines. The novelty of this research is in its comparative approach, which is directed primarily at ascertainment of the defects in Russian assembly legislation through a profound analysis of a wide spectrum of Federal and Regional Laws, decisions of the Constitutional Court of the Russian Federation, Acts of Regional Governments, etc.

As it was highlighted in the present thesis, the freedom of assembly in Russia is subject to various limitations. These limitations take different forms, incarnating in blanket (absolute) prohibitions, intentionally imprecise norms or deficient legal regulation. What is important to mention is that both opinions of the Venice Commission with regard to the freedom of assembly in the Russian Federation, appeared to be ineffective due to remarkable resistance of the internal policy players. The grievous Russian reality explicitly demonstrates, that the freedom of assembly ceased to be a universal value, instead it turned into an instrument of manipulation, abuse and suppression.

The Assembly Law, as we see it now does not provide substantial protection neither to the organizer of the public assemblies, nor to its participants. Decisions of the Constitutional Court of the Russian Federation, mentioned in the present work, signified of a perilous tendency to keep the Assembly Law as it is, without any clarifications as to the scope of the discretion of public authorities, or sound justifications of such scope. In fact, even though the Assembly Law provides

for certain guarantees to the freedom of assembly, they are inoperative in practice, therefore allowing public authorities to act in abuse of their powers. As for the judicial review of decisions made by the State agents within their discretionary powers, such review may not be effective until the Assembly Law delimits the verges of such discretion.

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