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COMMISSAIRE AUX DROITS DE L'HOMME



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**FOLLOW-UP MEMORANDUM
OF THE COMMISSIONER FOR HUMAN RIGHTS
ON FREEDOM OF ASSEMBLY IN THE RUSSIAN FEDERATION**

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Introduction

1. The right to freedom of peaceful assembly, together with the rights to freedom of expression and of association, is among the cornerstones of a democratic society. This right is enshrined in Article 11 of the European Convention on Human Rights (the Convention), as well as in Article 31 of the Constitution of the Russian Federation, which states: “Citizens of the Russian Federation shall have the right to assemble peacefully, without weapons, hold rallies, meetings and demonstrations, marches and pickets.” On 21 July 2011 the Commissioner’s predecessor addressed a letter to the Russian authorities in which he shared some of his observations on the right to freedom of assembly in the Russian Federation, based inter alia on his discussions with national human rights institutions and civil society during his country visit in May 2011.¹
2. Since 2011 there have been significant changes to the legislative framework in the Russian Federation pertaining to the right to freedom of assembly, with various amendments introduced in 2012 and 2014. In March 2017 the Commissioner organised a round-table discussion in Strasbourg with human rights defenders, lawyers, journalists and civil society activists from the Russian Federation, with a view to gaining a better understanding of the current legal framework and its implementation in practice.² Subsequently (April 2017), the Commissioner requested information from the Russian authorities on a number of specific questions in this regard. To date, the Russian authorities have not responded to the Commissioner’s requests for information. The Commissioner’s Office has also been in contact with the national human rights structures of the Russian Federation regarding a number of human rights issues, including freedom of assembly. The present Memorandum takes into account information published by national human rights structures and materials received by the Commissioner’s Office from human rights defenders and civil society actors, including official documents such as domestic judicial decisions, records concerning administrative offences, letters by local or municipal authorities, as well as other procedural documents provided by Russian NGOs and lawyers who have represented individuals in courts.
3. The present Memorandum does not purport to undertake an exhaustive analysis of the application of the right to freedom of assembly in practice in the Russian Federation, but instead outlines the Commissioner’s main observations regarding the revised legal framework (Section I) and certain aspects of its application which, in the Commissioner’s opinion, require attention (Section II). Those sections are followed by the Commissioner’s conclusions and recommendations to the Russian authorities. The Commissioner highlights the fact that specific laws may also interfere with the right of certain groups of individuals to freedom of assembly. The negative effects of the law prohibiting “propaganda of homosexuality”³ have been repeatedly highlighted by the Commissioner and his predecessor in their country and thematic work. For instance, in his report published following a visit to the Russian Federation in April 2013, the Commissioner stressed that these legal provisions were used to limit the freedoms of assembly and of expression of LGBTI activists and their organisations. In June 2012 the Commissioner noted that it was unacceptable to justify restrictions on the freedoms of LGBTI persons with reference to moral considerations and that pride marches

¹ Letter to the Russian authorities [CommDH\(2011\)31](#) of 21 July 2011.

² [1st Quarterly activity report 2017](#) of the Commissioner for Human Rights (1 January to 31 March 2017; page 23).

³ The Federal law No. 135-FZ of 29 June 2013 amended certain legislative acts and introduced administrative responsibility for “propaganda of non-traditional sexual relationships among minors” – see new Article 6.2.1 of the CAO.

must be permitted, as well as the peaceful expression of opposing views, if they do not constitute hate speech.⁴

I. Legal framework governing the right to freedom of assembly in Russia

Main features of the Russian Law on Assemblies

4. The Federal Law No. FZ-54 on “Assemblies, Rallies, Demonstrations, Marches and Pickets” (the Law on Assemblies) adopted in 2004 defines a public event as an open, peaceful event accessible to all, organised at the initiative of citizens of the Russian Federation, political parties, or public or religious associations, with the aim of freely expressing opinions and demands on issues related to domestic public life or foreign policy.⁵ Public events may be held in any convenient location if this does not create risks to the safety of participants.⁶ An important feature of the 2004 law is that it provides for a notification (*uvedomleniye*) procedure, rather than requiring the organisers to seek authorisation from the authorities.⁷ A notification for holding a public event should be submitted to the competent regional or municipal authorities no earlier than fifteen days and no later than ten days prior to a planned assembly and no later than three days prior to collective pickets; notification is not required for holding a single-person picket.⁸ However, no specific provisions are made in the law for spontaneous assemblies.
5. The 2004 Law on Assemblies does not foresee the possibility for the authorities to refuse a planned event,⁹ although it provides that the authorities may suggest a well-founded (*obosnovannoye*) proposal for an alternative venue or time for the event.¹⁰ The Constitutional Court of the Russian Federation has emphasised that, while a public authority has no right to prohibit (or fail to allow) the holding of an assembly, it can suggest a different time or venue provided that the suggestion is reasonable and necessary.¹¹ Apart from a general right to appeal in court against decisions of the authorities, the law does not specify a procedure for solving potential

⁴ See Report [CommDH\(2013\)21](#) following the visit to the Russian Federation from 3 to 12 April 2013, published on 12 November 2013, paragraph 24, and [Human Rights Comment](#) “Silencing voices against homophobia violates human rights”, 21 June 2012

For further information concerning restrictions to the freedoms of assembly and of expression of LGBTI people, see Human Rights Comment “The long march against homophobia and transphobia”, 31 August 2017;

[Report](#) on discrimination on grounds of sexual orientation and gender identity in Europe, 2011;

Opinion on the issue of the prohibition of so-called “propaganda of homosexuality” in the light of recent legislation in some member states of the Council of Europe, [CDL-AD\(2013\)022](#), Venice Commission, June 2013.

[Bayev and others v. Russia](#) (applications nos. 67667/09 and 2 others), judgment of 20 June 2017;

[Alekseyev v. Russia](#) (applications nos. 4916/07, 25924/08 and 14599/09), judgment of 21 October 2010 and

[Status of execution](#) of the judgment in *Alekseyev v. Russia* case.

⁵ Section 2, paragraph 1 of the [Law on Assemblies](#) of 19 June 2004. It may also be noted that, pursuant to amendments introduced by Federal Law No. FZ-107 of 7 June 2017, meetings of elected officials and their electorate fall within the scope of the Law on Assemblies and are therefore subject to the relevant provisions.

⁶ Section 8, paragraph 1 of the [Law on Assemblies](#) of 19 June 2004.

⁷ Even so, the European Commission for Democracy through Law (the Venice Commission) considered that the procedure for notification of public event set out in the 2004 Assembly Law was *in substance* a request for permission. See [Opinion CDL-AD\(2012\)007](#), paragraph 30.

⁸ *Ibid*, Section 7, paragraph 1.

⁹ Pursuant to amendments introduced to the Law on Assemblies on 8 June 2012, the authorities may refuse to agree on holding a planned event if 1) it is organised by a person who is not allowed to organise a public event or if 2) the venue designated for the event is listed as a location where public events are prohibited. See Section 2, paragraph 7-6 of Federal Law No. 65-FZ of 8 June 2012.

¹⁰ Section 12, paragraph 1 of the [Law on Assemblies](#) of 19 June 2004.

¹¹ [Decision](#) of the Constitutional Court No. 484-ОП of 2 April 2009.

disagreements between organisers of an event and the authorities.¹² The 2004 law contains an express prohibition against holding an event if the above-mentioned time-frame for notification is not respected or if no agreement is reached with the authorities regarding their alternative proposals as to the venue or timing of the event.¹³

6. While stressing that human rights experts in the Russian Federation found the legal framework on assemblies to be broadly in line with international standards, the Commissioner's predecessor referred in his observations of July 2011 to certain gaps – notably as regards the absence of provisions on spontaneous assemblies – as well as to regulations and decisions by local and regional authorities delimiting the right to peaceful assembly more narrowly than in the federal legislation. The Commissioner's predecessor also expressed concern about increased penalties for offences relating to assemblies following legislative amendments in 2009 and 2010, and drew attention to reported restrictions to the right to assembly in practice, including: the dispersal of peaceful assemblies; use of excessive force and apprehension of participants; the imposition of administrative detention; and judicial proceedings falling short of fair trial standards. In this context, the Commissioner's predecessor stressed the importance of respecting the principle of proportionality when determining liability arising after an assembly.¹⁴
7. In their reply of 8 September 2011 to the Commissioner's predecessor, the Russian authorities indicated that representatives of the executive branch of government and local officials were entitled to make alternative proposals to the organisers of a public event regarding its time or venue "only for appropriate reasons", such as the proper functioning of vital public utilities and transport infrastructure, or the need to ensure public order or the safety of event participants and others. Moreover, a public event could not be prohibited solely on the basis of information indicative of the possibility that organisers or participants would commit administrative or criminal offences. In the same document, the Russian authorities emphasised that the possible administrative sanctions for violating the rules governing public events included only pecuniary fines. The authorities explained in some detail that administrative detention was not applied for breaching the rules governing public events; rather, this sanction was only imposed on those participants of public events who disobeyed, disregarded or resisted lawful orders by police officers. The Russian authorities also indicated that they took measures to implement judgments of the European Court of Human Rights (the Court) regarding violations of the right to freedom of assembly by the Russian Federation.¹⁵

Amendments to the legal framework on assemblies

8. Following elections to the State Duma in late 2011, a series of protests took place in many Russian cities, including an initially-peaceful rally that erupted in violence on Moscow's Bolotnaya square on 6 May 2012. Arrests, trials and the criminal and administrative convictions of participants of various public events, including the one mentioned above, gave rise to numerous applications to the Court, which has already issued several judgments finding violations of Articles 5, 6, 10 and 11 of the

¹² Section 19 of the [Law on Assemblies](#) of 19 June 2004.

¹³ *Ibid*, Section 5, paragraph 5.

¹⁴ Letter to the Russian authorities [CommDH\(2011\)31](#) of 21 July 2011, paragraphs 3-13.

¹⁵ [Reply](#) of the Russian authorities of 9 September 2011, Section II-2: Comments on specific recommendations made by the Council of Europe Commissioner for Human Rights. The judgments mentioned by the Russian authorities are: [Sergey Kuznetsov v. Russia](#), (application no. 10877/04), judgment of 23 October 2008; [Makhmudov v. Russia](#) (application no. 35082/04, judgment of 26 July 2007 and [Alekseyev v. Russia](#) (applications nos. 4916/07, 25924/08 and 14599/09), judgment of 21 October 2010.

European Convention on Human Rights.¹⁶ In parallel, the above-mentioned events in the Russian Federation were followed by significant changes in June 2012 and July 2014 to the domestic legal framework governing freedom of assembly.¹⁷

9. The Federal Law No. 65-FZ of 8 June 2012 introduced additional restrictions and duties for organisers and participants of public events. The law also provided that certain categories of persons - those convicted for crimes against state security and public order and those with repeated convictions for certain administrative offences – are not entitled to the right to organise public events. Under the law's provisions, organisers of public events have to ensure that the number of participants does not exceed the number indicated in the notification to hold a public event, if the greater number poses a risk to public order, the safety of participants or property; in addition, organisers bear responsibility for damage caused during public assemblies by other participants.¹⁸ The same law also stipulated that the regional authorities may define additional locations where the holding of public events would be prohibited if they disrupted vital public utilities and transport infrastructure, or hindered pedestrians or traffic. Further, the local authorities were to designate specific locations where public events may be organised without prior notification on the understanding that, as a general rule, any public events should be held in these sites.¹⁹
10. Federal Law No. 65-FZ also significantly increased the applicable fines in the Code of Administrative Offences (the CAO) for violating the rules governing public events. Under those provisions, the lower threshold for fines was set at 10 000 roubles (approximately 150 EUR) and the higher threshold of fines was set at 300 000 roubles (approximately 5000 EUR) - if the breaches of the rules governing public events resulted in harm to human health or property.²⁰ Furthermore, the 2012 amendments introduced the sanction of community service for breaching the rules governing public events.²¹
11. On 14 February 2013 the Constitutional Court of the Russian Federation reviewed the constitutionality of Federal Law No. 65-FZ and declared the majority of its provisions to be in line with the Russian Constitution. However, the Constitutional Court clarified certain aspects of the law, notably specifying that: the responsibility of organisers for an excess number of participants in a public event was meant to be engaged only if the organisers had failed to take adequate measures to prevent public disorder; community service should be ordered only if a violation of the rules governing public events had caused damage to the health or property of third persons; and the Russian Parliament should introduce clear criteria for designating special locations where public events should be held, in order to ensure equal enjoyment of freedom of assembly by all

¹⁶ For example: [Frumkin v. Russia](#), (application no. 74568/12), judgment of 5 January 2016; [Yaroslav Belousov v. Russia](#) (applications nos. 2653/13 and 60980/14), judgment of 4 October 2016 and also [Lashmankin and Others v. Russia](#) (applications nos. 57818/09 and 14 others), judgment of 7 February 2017; [Novikova and others v. Russia](#) (applications nos. 25501/07, 57569/11, 80153/12, 5790/13 and 35015/13), judgment of 26 April 2016.

¹⁷ Further amendments have been made to the Law on Assemblies since July 2014, concerning the time-slots for holding public events, the time frame for notification during public holidays, and the regulation of motor rallies and of meetings between members of parliament and the electorate (Federal Laws No. 292-FZ of 4 October 2014, No. 114-FZ of 2 May 2015, No. 61-FZ of 9 March 2016 and No. 107-FZ of 7 June 2017). It may be recalled that the question of the time-frame for notification during public holidays had been raised in the observations by the Commissioner's predecessor of July 2011 and the reply by the Russian authorities as concerns an assembly that Lev Ponomarev and Evgueni Ihlov sought to hold following the January holidays in 2010. The adoption of the Federal Law No. 114-FZ of 2 May 2015 clarified the notification procedure during public holidays and resolved that problem.

¹⁸ Section 2, paragraphs 1-a, 1-b and 1-r of Federal Law No. 65-FZ of 8 June 2012.

¹⁹ *Ibid*, Section 2, paragraphs 4-r, 4-a and 4-b.

²⁰ Section 1, paragraphs 6 and 3 of the Federal Law No. 65-FZ of 8 June 2012.

²¹ *Ibid*, Section 1, paragraph 4.

citizens.²² The Constitutional Court also declared unconstitutional the provisions establishing liability of organisers for damages caused during public assemblies by other participants. The lower threshold for fines was also found to contravene the Constitution, because it did not take into account the situation of low-income individuals.²³

12. Federal Law No. 258-FZ, dated 21 July 2014, further restricted the legal framework on freedom of assembly. The organisation and holding of a public event without prior notification to the authorities became punishable with administrative detention for up to ten days, as an alternative to the existing penalties. Pursuant to that law, any irregularities in organising or holding public events, including a failure to properly notify the authorities, could entail the penalty of administrative detention for up to fifteen or twenty days, depending on the consequences caused by these irregularities.²⁴ Violation of the rules governing public events by participants which results in harm to human health or property became punishable by administrative detention for up to fifteen days. Participation in an “irregular” public event (*nesanktsionirovannoye meropriyatie*) which results in disruption to the functioning of vital public utilities, transport and communication services or pedestrian traffic became a separate administrative offence punishable by either an administrative fine from 10 000 to 20 000 Rubles (approximately from 150 to 300 EUR), community service of up to 100 hours, or administrative detention for up to fifteen days.²⁵
13. The law of 21 July 2014 introduced new provisions into the Code of Administrative Offences and – even more significantly – to the Criminal Code of the Russian Federation. Under certain of those provisions, repeated violations of the rules governing public events or repeated refusal to abide by lawful demands of law enforcement officers in the context of public events constitute a separate administrative offence,²⁶ entailing various penalties including administrative detention for up to thirty days.²⁷ Violation of the rules governing public events can render a person criminally liable, if that person has committed more than two administrative offences within six months. Pursuant to new Section 212.1 of the Criminal Code, such persons can incur a prison sentence of up to five years or a fine up to 1 million roubles (approximately 15 000 EUR).²⁸
14. The constitutionality of the newly-introduced criminal liability of individuals in the context of public events was confirmed on 10 February 2017 by the Constitutional Court. However, for Section 212.1 of the Criminal Code to apply, the Constitutional Court identified the following strict criteria: there must be real damage caused to human health, property, the environment, public order or safety; a person should have shown a deliberate intention to commit the offence; and there must be at least three administrative offences falling under the scope of Section 20.2 of the CAO and three corresponding, enforceable judicial decisions within the six months prior to the new violation of the rules governing public events by the person concerned.²⁹
15. The Council on Human Rights and Civil Society Development under the President of the Russian Federation (Presidential Council) criticised the 2012 amendments, notably as regards the lack of

²² Paragraphs 3,8,6 of the [judgment](#) of the Russian Constitutional Court No. 4-П of 14 February 2013.

²³ *Ibid*, paragraphs 4 and 7.

²⁴ The penalty of 15 days of administrative detention is applicable if the breach of the Law on Assemblies resulted in disruption to vital public utilities, transport, communication services or even pedestrian traffic; the higher penalty of 20 days of detention is triggered if there was damage to human health.

²⁵ Paragraphs 4-a, 4-b, 4-b, 4-r, 4-d of section 3 of the Federal Law No. 258-FZ “Introducing Amendments to Certain Legislative Acts of the Russian Federation Improving the Legislation on Public Events” of 21 July 2014.

²⁶ New paragraph 8 of Article 20.2 and paragraph 6 of Article 19.3 of the CAO.

²⁷ Paragraphs 4-e and 3 of section 3 of the Federal Law No. 258-FZ of 21 July 2014.

²⁸ *Ibid*, section 1.

²⁹ Paragraph 1 of the concluding part of the [judgment](#) of the Constitutional Court No. 2-П of 10 February 2017.

precision in terms of which actions or omissions can trigger administrative liability, and expressed concern about the proportionality of the new administrative penalties. In a letter to the Duma, the Presidential Council recommended that the Duma reconsider the amendments with the input of civil society.³⁰ In its opinion on the 2012 amendments issued in March 2013, the European Commission for Democracy through Law (the Venice Commission) characterised them as being “a step backward for the protection of freedom of assembly in the Russian Federation; their implementation may result in infringements of the fundamental right to peaceful assembly guaranteed by the Russian Constitution and by the European Convention”.³¹ Referring to the 2014 amendments three months prior to their entry into force, the Federal Ombudsman cautioned against establishing criminal liability for violations of the rules governing public events; moreover, she stated that the amendments would “not only not attain their proclaimed objective, but will complicate even more the dialogue between the state and society”.³² For his part, the Commissioner finds that the 2012 and 2014 amendments weaken the guarantees contained in Article 31 of the Russian Constitution and the 2004 Law on Assemblies and raise serious concerns in light of international human rights standards.

II. Implementation of the right to freedom of assembly in practice

Notification and agreement procedure

16. As noted above (paragraphs 4 and 6), a key feature of the 2004 Law on Assemblies was that it did not require organisers of public events to seek authorisation from the authorities, but rather to inform them about the intention to hold a meeting. As the Constitutional Court ruled in 2009, Section 5 of the Law on Assemblies did not give the authorities the power to ban a public event, but only allowed them to make a reasoned proposal on holding the event at an alternative location or time.³³ By introducing additional restrictions and duties for organisers of events and participants, and by conferring wider discretion to the authorities, the 2012 amendments considerably undermined the existing balance of interests. In the absence of an explicit reference to the presumption in favour of holding public events,³⁴ such a shift affects the very essence of the Russian legal framework, in that it tends to transform a system of notification to one where authorisation must be sought.
17. In an interview given in July 2016, the St Petersburg Ombudsman observed that the number of violations of the right to freedom of assembly had increased, and that the local authorities, who are “obliged to accept notifications about the holding of public events, time and again reject them based on made-up pretexts”.³⁵ As for the situation in the capital, an illustrative example of recent practice is the response of the Moscow municipal authorities to the notification by organisers of a march against corruption planned for 26 March 2017. In their letter to the organisers, the authorities

³⁰ Article: “HRC by the President suggested State Duma to return the draft law on assemblies to the first reading”, 30 May 2012: <http://president-sovet.ru/presscenter/publications/read/391/>.

³¹ Paragraph 59 of the [Opinion](#) no. 686/2012 of 11 March 2013 On the Federal Law No. 65-FZ of 8 June 2012 of the Russian Federation adopted by the European Commission for Democracy Through Law at 94th Plenary Session.

³² Article: “Pamfilova called for an analysis of the consequences of the draft law increasing punishments for violation of rules on assemblies”, 5 April 2014: <http://www.president-sovet.ru/presscenter/publications/read/1703/>.

³³ [Decision](#) of the Constitutional Court No. 484-ОП of 2 April 2009, section 2.1.

³⁴ The [Guidelines on Freedom of Peaceful Assembly](#) prepared by the OSCE/ODIHR Panel of Experts and by the Council of Europe Venice Commission, which are based inter alia on the case-law of the European Court of Human Rights, recommend that a presumption in favour of freedom of assembly should be clearly and explicitly established in law (paragraph 2.1).

³⁵ Interview of Mr. Alexander Shishlov, 4 July 2016:

http://ombudsmanspb.ru/ru/dorozhnaja_karta_ombudsmena_intervju_aleksandra_sh.

indicated inter alia that “holding of a march along the suggested itinerary would cause interruption of functioning of vital public utilities, transport and social infrastructure, disruption to pedestrian and vehicle traffic, obstruct access to residential buildings, and would violate the rights and interests of those citizens who do not participate in the said event [...]”.³⁶ However, no alternative proposals were made by the authorities in their letter to the organisers. A group of twenty members of the Council on Human Rights and Civil Society Development under the President of the Russian Federation issued a statement in which they referred to this decision as a “non-reasoned refusal” (*nemotivirovanniy otkaz*).³⁷ In this respect, the European Court of Human Rights has observed that the risk of interruption of traffic flow or other public utilities should not automatically lead to the banning of a public event, as any demonstration in a public place may cause a certain level of disruption to ordinary life, including disruption of traffic. Public authorities must show a certain degree of tolerance towards peaceful gatherings if Article 11 of the Convention is not to be deprived of its substance.³⁸

18. Another reason advanced by the authorities for not agreeing with notifications to hold public events is that they overlap with other public events. The Commissioner’s predecessor had already flagged this issue and recommended including in the legal framework a clear procedure for resolving any disagreements in the context of simultaneous assemblies. However, this does not appear to have been done, and there are several recent examples from Nizhniy Novgorod, Ekaterinburg, Saratov, Pskov, Irkutsk and other Russian cities where the authorities opposed the holding of certain events on the basis of a possible overlapping with other events at the same venue.³⁹ In this context, the Commissioner recalls that, according to international standards, where notification is provided for two or more unrelated assemblies at the same place and time, each should be facilitated as far as possible.⁴⁰
19. As the Venice Commission has repeatedly emphasised, location is one of the key aspects of freedom of assembly, and organisers should have the autonomy and prerogative to decide which location fits best for the purpose of an assembly, in order to have a meaningful impact on the target audience. Pursuant to the 2004 Law on Assemblies, public events may be held in any suitable location that does not jeopardise the safety of participants. However, the right to choose a location has been greatly constrained by the 2012 amendments which require that, as a general rule, public events should take place in special locations designated by the local authorities (see paragraph 9 above). According to information at the Commissioner’s disposal, these specially designated locations are often on the peripheries of cities, far from central areas and therefore outside the reach of potential target audiences. For example, the Ombudsman of St Petersburg stated in his above-mentioned interview that the government of the city designated four locations which - except for the park Marsovo polye - receive very few demands for holding public events. Similar reports have been made as regards Tomsk, Saratov, Samara, Tambov and many other Russian cities. In this respect, the Federal Ombudsman has noted that the venues proposed by the authorities tend to be so remote that the event becomes devoid of any meaning.⁴¹ There have also been instances

³⁶ Letter of the Moscow city department for regional security and counteraction of corruption No. 21-11-135/7.

³⁷ Statement of members of the Presidential Council following the Protest Events of 26 March 2017: <https://civitas.ru/zayavlenie-chlenov-spch-po-itogam-aktsii-protesta-26-marta-2017-goda/>.

³⁸ *Disk and Kesik v. Turkey*, (application no. 38676/08), judgment of 27 November 2012, § 29.

³⁹ For example, a refusal to agree on holding collective pickets in Pskov: <http://www.sovprofpskov.ru/administratsiya-pskovskoy-oblasti-6/> or multiple refusals to agree on holding public events in Irkutsk: <http://www.rosbalt.ru/russia/2017/08/16/1638956.html>.

⁴⁰ [Guidelines on Freedom of Peaceful Assembly](#) prepared by the OSCE/ODIHR Panel of Experts and by the Council of Europe Venice Commission, paragraph 4.3.

⁴¹ Article “The law does not ban minors to participate in assemblies”, 2 August 2017: <https://www.kommersant.ru/doc/3372715>.

where regional or municipal authorities refused to agree on the holding of public events because they were planned outside of specially designated areas, as was the case, for example, in Nizhny Novgorod in June 2017.⁴²

20. According to data provided by Russian civil society activists and journalists, out of a total number of 154 requests to hold public assemblies on 12 June 2017 in various Russian towns and cities, 86 municipal authorities did not agree with the organisers, and 18 of those requests were refused without any alternative proposals on venue and time.⁴³ There have also been reports that three months earlier (March 2017), out of 81 requests to hold public events against corruption in different parts of the country, only 21 had been approved.⁴⁴ In her 2016 annual report, the Federal Ombudsman observed that, despite the federal laws providing for a notification procedure for public events, the situation had - de facto - become one where organisers of events were obliged to seek authorisation by the authorities.⁴⁵

Dispersal of peaceful assemblies and arrests of participants

21. Whereas ensuring the safety of participants and public order in general is certainly a legitimate consideration, this should not translate into a lack of tolerance towards peaceful public events which have not been agreed with the authorities. The 2012 amendments to the legislation on assemblies gave broad grounds for the dispersal of public events, including any irregularities in the organisation or the conduct of public events, some of which are not clearly defined in law.⁴⁶ As already noted in paragraph 15 above, one of the concerns about the 2012 amendments expressed by the Presidential Council was precisely the lack of clarity in terms of which actions or omissions can trigger administrative liability. The earlier clarifications by the Constitutional Court that there must be compelling public order considerations (*veskiye dovody*) to make holding a public event impossible, seem to have had little effect in practice.⁴⁷ A notable example is the violent dispersal and arrests of hundreds of protesters - because of the absence of a prior authorisation from the authorities - during a spontaneous but peaceful gathering on the occasion of the verdict in the Bolotnaya case in February 2014.⁴⁸
22. In recent months (March and June 2017), there has been a sharp response by the authorities against certain unauthorised but mostly peaceful⁴⁹ public protests in Moscow, St Petersburg and other Russian cities. In particular, civil society activists and journalists reported that, on 26 March 2017, the Moscow authorities apprehended 1043 persons, and 866 on 12 June 2017; as for St Petersburg, there were at least 131 and 658 persons apprehended on the respective dates. The overall numbers of participants apprehended in Russian cities during the respective dates were

⁴² Press-release of Nizhny Novgorod Committee for the Prevention of Torture, 10 July 2017: <http://pytkam.net/press-centr.novosti/4603>.

⁴³ The Map of public events in various Russian cities – published by *OVD-Info* project and *Meduza* media agency on 19 June 2017: <https://ovdinfo.org/articles/2017/06/19/skolko-lyudey-i-v-kakih-gorodah-vyshli-na-akcii-12-iyunya-karta-ovd-info-i>.

⁴⁴ Press-release of Amnesty International, 26 March 2017: <https://amnesty.org.ru/ru/2017-03-26-russia/>.

⁴⁵ Annual report 2016 of the High Commissioner for Human Rights in the Russian Federation, 17 May 2017, p.59: http://ombudsmanrf.org/www/upload/files/docs/appeals/doc_2016_medium.pdf.

⁴⁶ Article “HRC by the President suggested State Duma to return the draft law on assemblies to the first reading”, 30 May 2012: <http://president-sovet.ru/presscenter/publications/read/391/>.

⁴⁷ [Decision](#) of the Constitutional Court No. 484-ОП of 2 April 2009, section 2.1.

⁴⁸ [Concluding Observations](#) on the seventh periodic review of the Russian Federation CCPR/C/RUS/CO/7, by UN Human Rights Committee, 28 April 2015.

⁴⁹ Except for a few instances of violence against law-enforcement officers which occurred on 26 March 2017 and 12 June 2017 – see articles by *Rosbalt* of 9 August 2017 and by *Kommersant* of 13 June 2017: <http://www.rosbalt.ru/moscow/2017/08/09/1637324.html> and <https://www.kommersant.ru/doc/3324420>.

1500 and 1769.⁵⁰ Members of the Presidential Council stated that, during the Moscow protest assembly of 26 March 2017, the overwhelming majority of the arrested persons had behaved peacefully and had not engaged in any acts disrupting public order.⁵¹ As for the events of 12 June 2017, the Ombudsman of St Petersburg has stated that arrests of demonstrators in Marsovo polye had been widespread and were not conditioned by any unlawful behavior of participants, contrary to the requirements of the CAO.⁵² The Chairman of the Presidential Council, Mikhail Fedotov, also confirmed that “people were apprehended irrespectively of whether they had violated public order or not, and this was not in line with legal requirements.”⁵³ There has also been information suggesting that journalists, human rights defenders and minors were among those apprehended during the public events of March and June 2017. Some of the minors and their parents reported that they had been subjected to various forms of intimidation as a result of their participation in those events.⁵⁴

23. There have also been reports of a growing intolerance towards unauthorised public events involving relatively low numbers of peaceful participants. This has included even single-person pickets, which are formally exempt from the agreement procedure. The following examples are illustrative of this tendency: the apprehension and escort to a police station of six activists for reading the Russian Constitution aloud in front of the State Duma on 12 September 2016; the reportedly violent arrest in Beslan and imposition of community service upon five mothers of victims of the September 2004 terrorist attack, who wished to commemorate its 12th anniversary while wearing t-shirts with inscriptions critical of the authorities; the apprehension of separate solo picketers, including minors, demonstrating with blank sheets of paper and duct-taped mouths in Moscow on 1 July 2017; and the apprehension of four animal rights activists picketing at a distance of 50 metres from one another in Ekaterinburg on 7 June 2017.⁵⁵
24. The need to maintain public order should not be interpreted in such a way as to strip the right to freedom of peaceful assembly of its meaning. According to international standards, if the domestic legal framework foresees a notification procedure, its objective should be to allow State authorities the opportunity to facilitate the exercise of the right to freedom of assembly. Failure to notify the authorities of an assembly does not render it unlawful and should not be used as a basis for dispersing it.⁵⁶ In this respect, in October 2013 the European Court of Human Rights unanimously held in its judgment *Kasparov and Others v. Russia* (concerning a modestly-sized 2007 demonstration that took place in Moscow, in an area not authorised by the local authorities) that there had been a violation of Article 11, observing that given the heavy police presence, it should

⁵⁰ Articles by *OVD-Info* of 24 April 2017 and 13 June 2017:

<https://ovdinfo.org/articles/2017/04/24/repressii-protiv-uchastnikov-antikorrupcionnoy-akcii-26-marta-2017-goda>;
<https://ovdinfo.org/news/2017/06/13/ot-kaliningrada-do-vladivostoka-ne-menee-1720-chelovek-zaderzhali-po-vsey-rossii-12> and by *Fontanka*, 26 March 2017: <http://www.fontanka.ru/2017/03/26/063/>.

⁵¹ Statement of members of the Presidential Council following the Protest Events of 26 March 2017: <https://civitas.ru/zayavlenie-chlenov-spch-po-itogam-aktsii-protesta-26-marta-2017-goda/>.

⁵² Press-release of Presidential Council of 14 June 2017: <http://www.president-sovet.ru/presscenter/news/read/3982/>.

⁵³ Press-release of Presidential Council of 12 June 2017: <http://www.president-sovet.ru/presscenter/news/read/3976/>.

⁵⁴ Article in *Kommersant*, 2 August 2017: <https://www.kommersant.ru/doc/3373024>.

⁵⁵ Articles by *OVD-Info* of 24 November 2016, 7 June 2017 and 1 July 2017: <https://ovdinfo.org/express-news/2016/11/24/dvoe-moskovskih-aktivistov-oshtrafovany-za-chtenie-konstitucii>;
<https://ovdinfo.org/express-news/2017/06/07/v-ekaterinburge-na-zoozashchitnikov-sostavili-administrativnye-protokoly-za>;

<https://ovdinfo.org/express-news/2017/07/01/v-moskve-vo-vremya-serii-odinonchnyh-piketov-po-vsemu-gorodu-zaderzhano-uzhe> and article by *On-Kavkaz* of 2 September 2016: <https://onkavkaz.com/articles/2899-materei-pogibshih-v-beslane-detei-za-futbolki-protiv-putina-osudili-na-obschestvennye-raboty.html>.

⁵⁶ Joint report of the UN Special Rapporteurs on the rights to freedom of peaceful assembly and of association and On extrajudicial, summary or arbitrary executions [A/HRC/31/66](https://www.unhcr.org/refugees/article/2016/02/16-02-2016-ahrc-31-66), 4 February 2016, paragraphs 23 and 21.

have been possible to maintain public order and safety without resorting to arrests of protesters.⁵⁷ Moreover, in its judgment *Lashmankin and Others v. Russia* delivered in February 2017, the Court concluded - on the basis of the facts of that case, and of other cases examined previously - that the authorities display zero tolerance towards unlawful assemblies, even if they are peaceful, involve few participants and create only minimal or no disruption to ordinary life.⁵⁸

25. The Commissioner welcomes the initiative of the Human Rights Council to prepare amendments to the legal framework governing public events in co-operation with the National Guard, and supports the statements made by the Federal Ombudsman and the Ombudsman of St Petersburg regarding the need to reinforce the right to freedom of assembly and safeguards against arbitrary application of restrictive measures.⁵⁹

Procedural guarantees and sanctions

26. In 2011, the Commissioner's predecessor referred to problems in terms of international standards of fairness, which had allegedly marred certain court proceedings against participants in rallies.⁶⁰ In June 2013 the Supreme Court of the Russian Federation instructed domestic courts to take into account the case-law of the European Court of Human Rights and to apply the proportionality test weighing a balance between the rights of individuals and the interests of the state in dealing with human rights and civil liberties.⁶¹ The Court's recent case-law sheds light on some of the key issues that require attention. Certain cases point to problems as regards the fairness and impartiality of administrative proceedings, and others highlight the absence of free legal aid for individuals facing deprivation of liberty as a sanction. In a number of cases, domestic courts have endorsed unreservedly the information provided by police officers - sometimes basing their judgments exclusively on standardised documents submitted by the police - whereas evidence presented by the defence is given less weight or not accepted. Several have found the sanctions for violating the rules governing public events to be disproportionate.⁶²
27. As regards the mass apprehensions during certain assemblies in the first half of 2017, according to information released by the Moscow city court, 732 judicial cases had been submitted to the Tverskoy district court in relation to administrative offences committed during the protests of 26 March 2017 in Moscow.⁶³ Of those, 138 cases related to alleged refusals to obey lawful demands of police officers, an administrative offence under Section 19.3-1 of the CAO which can entail administrative detention of up to 15 days. Further, 1043 administrative cases were reportedly brought before various St Petersburg district courts in relation to the demonstrations of 12 June 2017, and it has been claimed in the media that the overwhelming majority of judicial decisions established violations of either Section 19.3 or 20.2 (violation of the rules governing public events)

⁵⁷ *Kasparov and Others v. Russia* (application no. 21613/07), judgment of 3 October 2013, § 94.

⁵⁸ *Lashmankin and Others v. Russia* (applications nos. 57818/09 and 14 others), judgment of 7 February 2017, § 461.

⁵⁹ Article by *Kommersant*, 2 August 2017: <https://www.kommersant.ru/doc/3373024>.

⁶⁰ Letter to the Russian authorities [CommDH\(2011\)31](#) of 21 July 2011, paragraph 12.

⁶¹ [Ruling](#) of the Supreme Court of the Russian Federation No. 21 of 27 June 2013, paragraphs 3,5 and 8.

⁶² *Karelin v. Russia*, (application no. 926/08), judgment of 20 September 2016; *Mikhaylova v. Russia*, (application no. 46998/08), judgment of 19 November 2015; *Kasparov and Others v. Russia* (application no. 21613/07), judgment of 3 October 2013; *Frumkin v. Russia*, (application no. 74568/12), judgment of 5 January 2016; *Novikova and others v. Russia* (applications nos. 25501/07, 57569/11, 80153/12, 5790/13 and 35015/13), judgment of 26 April 2016.

⁶³ Press-release of Moscow City Court, 19 April 2017: <https://www.mos-gorsud.ru/mgs/news/podvedeny-itogi-rassmotreniya-de>.

of the CAO, and that demonstrators were acquitted of the charges against them in only four cases.

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28. On several occasions, the national human rights structures in the Russian Federation have expressed concern about the conduct of administrative proceedings in the context of mass apprehensions during peaceful public events. By way of example, in April 2014 the Federal Ombudsman opined that such proceedings amounted to a “conveyor-belt” for convictions of persons apprehended during public events, possibly including many random passers-by; and in April 2017 the Chairman of the Presidential Council noted that reports on administrative apprehensions were drafted in a formulaic manner with no substantiating evidence in the form of video-recordings.⁶⁵
29. The Commissioner’s predecessor already expressed concerns in 2011 about the more severe punishments for administrative and criminal offences related to assemblies following legislative amendments in 2009 and 2010. Having regard to subsequent amendments in 2012 and 2014 whereby the upper threshold of pecuniary sanctions for violating the rules governing public events was significantly increased, and the penalty of administrative detention was introduced (see paragraph 10 above), the Commissioner finds it necessary to stress that such sanctions are grossly disproportionate in the context of peaceful assemblies. In this respect, he finds the following quote, expressed in relation to the 2014 amendments by the Federal Ombudsman, to be particularly pertinent: “Bans, increased severity and restrictions, and the unrelenting battle against symptoms, rather than the causes of society’s ailments, will inevitably only ever lead to the deepening and sharpening of social problems, to the radicalisation of protest movements and their derailment from the sphere of lawfulness”.⁶⁶
30. The Commissioner was interested to learn of the adoption in April 2017 of new legal provisions criminalising the forgery of evidence - including by state officials - in administrative proceedings, as well as the forgery of records on administrative offences. The provisions had been advocated by the Presidential Council to address the phenomenon of unsubstantiated prosecution and punishment for participation in public events.⁶⁷ Another positive development has been recorded by the Committee of Ministers following the entry into force of the new Code of Administrative Procedure in September 2015, whereby domestic courts have been delivering their decisions on the lawfulness of the authorities’ refusals to organisers of public events within the deadline set by law, i.e. prior to the date planned for holding the event.⁶⁸

⁶⁴ Article “522 individuals condemned for participation in the Marsovo polye event”, *Zaks.ru*, 15 June 2017: <https://www.zaks.ru/new/archive/view/168606>.

⁶⁵ Articles “Pamfilova called for an analysis of the consequences of the draft law increasing punishments for violation of rules on assemblies”, 5 April 2014: <http://www.president-sovet.ru/presscenter/publications/read/1703/> and “Head of Presidential Council called for amending the law on assemblies”, 5 April 2017: <http://www.rbc.ru/society/03/04/2017/58e175969a7947a58eb3f>.

⁶⁶ Article “Pamfilova called for an analysis of the consequences of the draft law increasing punishments for violation of rules on assemblies”, 5 April 2014: <http://www.presidentsovet.ru/presscenter/publications/read/1703/>.

⁶⁷ Press-release by Presidential Council, 29 April 2017: <http://www.president-sovet.ru/presscenter/news/read/3894/>.

⁶⁸ [Notes of the 1273 meeting](#) on the status of execution of *Alekseyev v. Russia*, (application nos. 4916/07, 25924/08 and 14599/09), judgment of 21 October 2010.

Conclusions and recommendations

31. The Russian legal framework governing public events has been made considerably more restrictive by the amendments introduced in 2012 and 2014, particularly as regards the organisers' autonomy in deciding on the place and the manner of holding public events. The notification procedure – which was already prone to restrictive interpretations in the past - is becoming in practice a *de facto* obligation to seek authorisation for holding of public events. According to the information reflected in the relevant judgments of the European Court of Human Rights, the authorities have displayed very little tolerance towards any irregularities in organising or holding public events which have not been previously agreed with them. The already severe sanctions, including those foreseeing criminal responsibility for irregularities in organising or holding public events, have been dramatically increased by the legislative changes and - reportedly - widely applied in recent times.
32. The Commissioner recommends that the legal framework on public assemblies in the Russian Federation be thoroughly revised in light of the positions expressed by Russian national human rights structures, the high judicial bodies of the Russian Federation, and in consultation with civil society and human rights groups. In particular, the Commissioner recommends fully implementing the recommendations made by the Venice Commission in March 2013 and the principles reflected in the judgments of the Court.
33. It would be advisable to include an explicit provision in the legislation establishing a presumption in favour of holding public events, and to incorporate the principles of proportionality and of non-discrimination, as well as to put in place adequate mechanisms and procedures to ensure that freedom of assembly is practically enjoyed and not subject to undue bureaucratic regulation. Furthermore, the Commissioner recommends that specific provisions be included in the legal framework regulating spontaneous and simultaneous assemblies, as well as a clear and prompt procedure for solving any disagreements between the organisers of public events and the authorities.
34. In the Commissioner's view, blanket bans on venues for holding public events or persons wishing to hold them should be avoided, and sanctions for violating rules governing public events should be considerably lowered in order to comply with the principles of proportionality and of necessity. The Commissioner also underlines that arrests and criminal responsibility of individuals in the context of peaceful assemblies should be avoided and the responsibility of state officials for unduly restricting the exercise of freedom of assembly should be clearly defined and implemented in practice, as suggested by national human rights structures. Finally, the Commissioner highlights the need for adequate and practical training on European human rights standards for law enforcement officials, judges, prosecutors and other legal professionals, as well as authorities at the local level, in order to ensure the effective exercise of the right to freedom of assembly in practice.