



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



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Ambassador Alexander ALEKSEEV
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to the Council of Europe
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Dear Ambassador,

During my recent visit to the Russian Federation, I had the opportunity to continue my discussions with the Chairman and members of the Council of Civil Society Institutions and Human Rights under the President of the Russian Federation, the Federal Ombudsman, and civil society actors on a variety of human rights issues.

In this context, I would like to share with your authorities some of my findings and observations on the right to freedom of assembly. They are contained in the appendix to this letter and I would be grateful if you could transmit them to your authorities.

Yours sincerely,

Thomas Hammarberg

Appendix

Finding and observations of the Commissioner for Human Rights on the right to freedom of assembly

1. The right to assemble peacefully, together with freedom of association and freedom of expression, are central to the effective functioning of a democratic society. This fundamental human right - which can be enjoyed and exercised by individuals and groups, unregistered associations, legal entities and corporate bodies - is clearly stated in several international and regional treaties and other documents ratified by the Russian Federation, including the European Convention on Human Rights (ECHR), the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR). In order to assist the member States of the Council of Europe and participating States of the Organization of Security and Co-operation in Europe (OSCE) in ensuring that their legislation on freedom of peaceful assembly complies with European and international standards and OSCE commitments, in October 2010 the Council of Europe Commission for Democracy through Law (Venice Commission) and the OSCE Office for Democratic Institutions and Human Rights (ODIHR) issued the second edition of the Guidelines on Freedom of Peaceful Assembly.
2. The right to freedom of assembly is enshrined 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." Between 1991 and 2004, demonstrations in Russia were regulated by a decree which was first issued by the Supreme Soviet in 1988 and reaffirmed, with minor modifications, by presidential decrees in 1992 and 1993. In 2004 these were replaced by the Federal Law of the Russian Federation No. 54-FZ "on assemblies, rallies, demonstrations, marches and picketing" ("Law on Assemblies") which was amended in December 2010.
3. The view among human rights experts in the Russian Federation, e.g. those of the Moscow Helsinki Group, appears to be that the provisions of the Law on Assemblies broadly comply with international standards. In Russia – as in most other European states – the legal framework on assemblies provides for a notification procedure which does not require the organisers of a meeting to seek authorisation from the authorities, but rather to inform them about their intention to hold the meeting. The foregoing principle was highlighted by the Russian Federal Ombudsman, Vladimir Lukin, in his special report from 2007 on *Compliance on the territory of the Russian Federation with the Constitutional right to Freedom of Peaceful Assembly*¹ and reiterated by him after he witnessed the dispersals of several peaceful rallies in 2010.
4. The general normative framework set out in the federal legislation on assemblies comprises inter alia provisions concerning the notification procedure as well as the limits of the right to freedom of assembly. However, the Commissioner has been informed that regulations or decisions promulgated by regional or local authorities have at times delimited this right more narrowly or in a different spirit from that of general normative framework. By way of example, in certain localities longer time-limits have been set for notifying the authorities about sports or cultural events than those required for assemblies, rallies or demonstrations. Clearly, this gives an advantage to organisers of the former types of

¹ <http://old.ombudsmanrf.org/doc/spdoc/0107.shtml>

gatherings in terms of being able to reserve a time and a venue in advance of an event. The Commissioner would therefore recommend to the Russian authorities to ensure consistency between the federal legislation and regulations or decisions promulgated locally.

5. The Guidelines on Freedom of Peaceful Assembly recommend that the organiser of an assembly should not be compelled or coerced either to accept whatever alternatives the authorities propose or to negotiate about the key aspects, such as time or place, of a planned assembly. However, one of the provisions of the federal law which appears to have been applied often is the prohibition of the holding of assemblies if the organisers disagree with the local authorities' "motivated" proposals to change the venue or time of the assembly.² Assemblies may also be prevented from proceeding in case they overlap with another assembly or public event. Insofar as the case of simultaneous events is concerned, the Commissioner was informed that, in the past, the practice was for the authorities to hold discussions with the organisers of the different events with a view to achieving consensus. This appears to be a positive and constructive approach, and it may be advisable to review the legal framework with a view to including effective, foreseeable and clearly defined procedures which relate to the resolution of any disagreements which may arise in the context of simultaneous assemblies.
6. The Commissioner's attention has also been drawn to a case of the particular interpretation given by a District Court of the procedure of notification of an assembly. On 24 December 2009, Lev Ponomarev and Evgueni Ihlov notified the Moscow authorities about their intention to organise on 19 January 2010 a march and an assembly to commemorate the killing of Stanislav Markelov and Anastasia Baburova. On 11 January 2010 the Head of the public order department of Moscow banned the assembly on the grounds that the notification had been submitted too early - on 24 December, i.e. 26 days before the event - whereas the earliest time for submitting a notification provided for by the legislation is 15 days before the event concerned. According to the organisers, they calculated the notification period based on the number of working days prior to the event, i.e. excluding from their calculations the national holidays from 1 to 10 January. On 27 February 2010 the Tverskoy District Court dismissed the organisers' appeal and stated that, taking into consideration the national holidays and the requirement to submit a notification 15 days prior to an assembly, the Law on Assemblies excludes the possibility to hold any kind of assembly between 15 and 21 January. The Commissioner would appreciate the comments of the Russian authorities on this matter, as well as information on whether the reasoning of the Tverskoy District Court is being referred to by local or regional authorities or by other courts.
7. Experts and representatives of non-governmental organisations have also highlighted the absence of legal provisions on spontaneous assemblies in the current legal framework. Spontaneous assemblies are those which take place in response to some occurrence, incident, other assembly or speech where the organiser is unable to meet the legal deadline for prior notification or where there is no organiser at all. The ability to hold such events is important because a delay would weaken the message to be expressed. Sometimes these kinds of assemblies can be random – with people gathering at a particular location with no prior advertising or invitation – or they can occur when potential participants are informed of an event through various forms of communication (Internet, social networks, short text messages or telephone). Further, if a lone picketer is joined by other persons expressing the same message, this situation should be treated similarly as a spontaneous assembly. The Commissioner was informed in this context that there have been instances where provocateurs joined peaceful picketers, and that this has constituted grounds for banning peaceful pickets. The European Court of Human Rights has already found that banning such peaceful assemblies might amount to a disproportionate restriction

² Cf. Articles 5(5) and 12(2) of the Law on Assemblies.

on freedom of assembly.³ Therefore, the Commissioner would like to urge the Russian authorities to consider the possibility of introducing legal provisions which would allow spontaneous peaceful gatherings.

8. In order to enjoy protection, gatherings should have a peaceful nature. The riots provoked by groups of extremists on Manezhnaya Square in December 2010 clearly do not fall into this category and the authorities had a legitimate right to exercise their powers.
9. As regards the approach of law enforcement officials vis-à-vis assemblies, the Commissioner was informed that on many occasions their actions have been aimed at intervening in or dispersing assemblies which are regarded by the authorities as “unlawful”, despite compliance by organisers with the notification procedure envisaged in the law. Force has often been used – at times excessively - and participants in assemblies have been apprehended, even during peaceful events. As noted by the Federal Ombudsman following the assembly on 31 May 2010 on Triumfalnaya Square in Moscow, during which over 150 participants were apprehended, the participants – who were peacefully standing on the pavement – were treated brutally by the police. A clear message should be delivered to law-enforcement officials at all levels that they should respect and protect the right to freedom of assembly and act lawfully in the context of such events.
10. Public assemblies can pose challenges to law enforcement officials, at times placing them in difficult or dangerous situations and requiring them to take split-second decisions based on uncertain and rapidly evolving information. Appropriate training in the policing of public assemblies incorporating human rights principles should be provided on a regular basis to such officials.
11. It has been brought to the Commissioner’s attention that law enforcement personnel do not wear clear and visible identification signs during assemblies. This makes it difficult to hold them accountable for any illegal acts committed during an assembly. Furthermore, according to local experts, statistics about unlawful acts by law enforcement officials during assemblies are not readily available. The compiling of such information with the aim of encouraging adherence to laws, regulations and human rights standards by law enforcement officials would be highly encouraged.
12. Another aspect of the exercise of the right to freedom of assembly relates to sanctions and penalties imposed after an assembly. During 2009 and 2010, the legislative framework was amended to include significantly more severe punishments for administrative and criminal offences relating to assemblies. The Commissioner has also been concerned to note that courts have imposed administrative arrest even upon participants of lawful rallies. By way of example, dozens of persons were detained prior and during the rally on 31 December 2010 on Triumfalnaya Square, and many of them were subsequently sanctioned with administrative arrests of up to 15 days. It has been claimed that some of the court hearings which resulted in the imposition of administrative detention failed to meet international standards of fairness and that persons were detained solely for peacefully exercising their constitutional right to freedom of assembly.
13. The Commissioner would like to recall that the principle of proportionality applies to liability arising after an assembly. The European Court of Human Rights has on several occasions found that subsequent sanctions have constituted disproportionate interference with the right to freedom of assembly and expression. Moreover, any person charged with an offence relating to an assembly must enjoy the right to a fair trial.
14. As you will recall, on 26 October 2010 the Commissioner posted a Human Rights Comment entitled “Freedom to demonstrate is a human right – even when the message is critical”, in

³ *Bukta and Others v. Hungary*, (no. 25691/04, judgment of 17 July 2007, § 36);

which he referred to the “Strategy 31” rallies in Russia. At that time, the recently-appointed Moscow authorities gave some indications that the rally which had been announced for 31 October could take place. The Commissioner saw this as a positive sign and an opportunity to demonstrate a renewed commitment to uphold and protect the right to freedom of assembly. The fact that the rally took place on the announced date without major incidents or intervention by law-enforcement bodies shows that the authorities and civil society can find ways for constructive dialogue.

15. However, subsequent rallies have been marred by numerous arrests of protesters and lengthy administrative detentions. While the need to ensure public order and to protect the rights and freedoms of others during an assembly may be legitimate grounds for restrictions, the presumption in favour of holding peaceful assemblies is the overarching principle which should be followed. The Commissioner would recall the findings of ECHR that “an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour.”⁴
16. Finally, the Commissioner was pleased to note that the working group on civil liberties and civil activism acting in the framework of the Presidential Council, which brings together some of the most prominent human rights activists and experts in the Russian Federation, proposed to examine the legal framework related to freedom of assembly and formulate concrete proposals for ensuring the effective exercise of this right. As the Commissioner has said before, freedom of assembly must be protected as crucial to supporting pluralism and democracy.

⁴ *Ezelin v. France* (no. 11800/85, judgment of 26 April 1991) and *Ziliberberg v. Moldova* (no. 61821/00, judgment of 01 February 2005)