



# FREEDOM UNDER THREAT

CLAMPDOWN ON FREEDOMS OF EXPRESSION,  
ASSEMBLY AND ASSOCIATION IN RUSSIA

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*Cover photo:* Riot police clash with protesters on 6 May 2012, Bolotnaya Square, Moscow, on the eve of President Vladimir Putin's inauguration.

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# EXECUTIVE SUMMARY

One year after Vladimir Putin's third inauguration as Russia's President, the rights to freedom of expression, association and assembly have come under increasing attack, despite the fact that these rights are explicitly guaranteed by the Russian Constitution and international human rights treaties to which Russia is party.

At least two new laws have been introduced and eleven (five Federal and six regional) laws have been amended including broad provisions that allow for arbitrary interference with the rights to freedom of expression, association, and assembly despite legally binding decisions of regional and universal human rights bodies in this regard. As a result, the space for political opposition and other forms of dissent is rapidly shrinking, as well as for operations of non-governmental organizations, in particular those reliant on overseas funding.

These recent legal initiatives have the declared aim of ensuring public order and the protection of the rights of citizens. Their effect has been the opposite: prominent government critics, opposition voices, watchdogs and ordinary individual protesters (on a wide range of issues) have all seen their rights restricted over the course of the last year.

The right to freedom of assembly has been restricted through excessively onerous approval procedures, sharply increased sentences, the imposition of additional responsibilities on organizers, and increased liability for the actions of participants. The few large scale protests that have been authorized cannot obscure the great many, both large and, mostly, very small, that have been arbitrarily banned or dispersed.

New restrictions on the freedom of association and expression have had serious implications for civil society in the Russian Federation. Organizations in receipt of foreign funding are required to describe themselves as "foreign agents", if considered to be involved in undefined "political activities". This requirement is inconsistent with international human rights standards. A wave of inspections of NGOs across the country by prosecutors and tax officials in March and April 2013 appears to have set the grinding wheels of this law's application in motion.

The freedom of expression risks being further curtailed through new legislative initiatives such as the re-criminalization of defamation, the new Treason law and draft legislation on blasphemy that is currently before the Duma.

This report analyses these legislative developments and documents several cases in which the rights to freedom of expression, association and assembly have been violated. The result is a long list of human rights violations that collectively testify to the shrinking of fundamental freedoms in Russia.

## CONSTITUTION OF THE RUSSIAN FEDERATION

### Article 29

1. Everyone shall be guaranteed the freedom of ideas and speech.
2. The propaganda or agitation instigating social, racial, national or religious hatred and strife shall not be allowed. The propaganda of social, racial, national, religious or linguistic supremacy shall be banned.
3. No one may be forced to express his views and convictions or to reject them.
4. Everyone shall have the right to freely look for, receive, transmit, produce and distribute information by any legal way. The list of data comprising state secrets shall be determined by a federal law.
5. The freedom of mass communication shall be guaranteed. Censorship shall be banned.

### Article 30

Everyone shall have the right to association, including the right to create trade unions for the protection of his or her interests. The freedom of activity of public association shall be guaranteed.

### Article 31

Citizens of the Russian Federation shall have the right to assemble peacefully, without weapons, hold rallies, meetings and demonstrations, marches and pickets.

# 1. INTRODUCTION

The results of the December 2011 Parliamentary elections sparked some of the largest protests for 20 years in the capital, Moscow, and other parts of the country. The ruling party Yedinaya Rossiya (United Russia) claimed victory, but opposition groups contested the results and tens of thousands of Russians took to the streets during the weeks following the elections, amidst wide-spread reports of vote-rigging.

Presidential elections on 4 March 2012 concluded with the landslide victory of Vladimir Putin, who was inaugurated as President of Russia on 7 May 2012. But while Vladimir Putin celebrated his victory together with outgoing President Medvedev, the result fuelled further protests in different parts of Russia. While a number of large-scale protests were authorized and passed off peacefully, others – both authorized and unauthorized - led to arrests of peaceful protesters.

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) international election observers to the March 2012 presidential elections concluded that “Russia’s presidential elections were marked by unequal campaign conditions, and that although all presidential candidates were able to campaign unhindered, conditions were clearly skewed in favour of one of the contestants, the then Prime Minister Vladimir Putin.”<sup>1</sup> They further stated that while the “voting on election day was assessed positively overall, the process deteriorated during the vote count which was assessed negatively in almost one-third of polling stations observed due to procedural irregularities”; and overall, “the voter’s choice was limited, electoral competition lacked fairness and an impartial referee was missing.”<sup>2</sup> Experts monitoring the election also noted that “although the authorities made some effort to improve transparency, there remained widespread mistrust in the integrity of the election process” and there was a pressing need for “thorough investigation of all allegations of electoral violations.”<sup>3</sup> At the same time they noted that “demands for honest elections by citizens and candidates led to greater civic involvement in observation efforts to enhance the integrity of the process.”<sup>4</sup>

On 7 May 2012, the day of his inauguration, President Putin spoke in favour of greater participation of citizens in public affairs and encouraged greater consultation with different sectors of society about legal reforms. The reverse has happened.

The Russian authorities’ response to the protest movement has been almost entirely repressive. Over the last year, the Russian government has adopted a number of legislative and administrative initiatives in breach of Russia’s international legal obligations placing inappropriate restrictions on the rights to freedom of expression, assembly and association. The effects of these initiatives are not limited to the most visible political opponents, civil society organizations and human rights activists; all Russian citizens wishing to raise their voice in protest have seen their rights curtailed.

## 2. RESTRICTIONS ON THE FREEDOM OF ASSEMBLY

*Article 31 of the Constitution of the Russian Federation:*

*Citizens of the Russian Federation shall have the right to assemble peacefully, without weapons, hold rallies, meetings and demonstrations, marches and pickets.*

The wave of protest sparked by the recent parliamentary and presidential elections has, with the exception of a few authorised large-scale demonstrations, been met with a consistently repressive response. The regulation of the freedom of assembly was already restrictive, and frequently applied repressively, before the Putin-Medvedev reshuffle. Since then, the situation has deteriorated markedly.

Significant changes to the Federal Law on assemblies were pushed through in June 2012 that have significantly increased the scope for the arbitrary banning of demonstrations and the dispersal of those, even small events, that proceed without explicit authorisation. Organizers of protests face significantly increased sanctions for violations committed by them – or other participants – of regulations relating to public events.

These changes to the law, and the manner in which they have been applied, have frequently resulted in violations of the freedom of assembly. Political protest has been the primary target of this clampdown, but public events for and against other causes have suffered also. Civic activism – across a range of issues - has increased markedly in Russia over the last decade. The retrograde steps of the last year risk, indeed appear calculated, to suck the oxygen from this development. In the long run, this can only be detrimental to Russia's development.

### THE JUNE 2012 AMENDMENTS TO THE FEDERAL LAW ON ASSEMBLIES

In its current version, the 2004 Federal Law of the Russian Federation “[o]n assemblies, meetings, demonstrations, rallies and pickets”<sup>5</sup> (hereinafter the “Federal Law on assemblies”) prescribes an “approval” (*soglasovaniye*) procedure, requiring the organizers of any public event to obtain prior approval from local authorities.

Requests for the approval of all public gatherings, except for one-person pickets, must be submitted not earlier than 15 and not later than 10 days prior to the event; group pickets – not later than 3 days. Holding an event in specially designated areas (the so-called “Hyde Parks”) does not require prior notification, if the number of participants does not exceed the prescribed maximum, but cannot be less than 100 people.

The Constitutional Court of the Russian Federation in February 2013 clarified<sup>6</sup> that the “approval” procedure does not entitle executive authorities to arbitrarily ban public events or change their aims, location, timing or form. It also explained that the grounds of refusal to grant the approval are strictly limited.<sup>7</sup> The Constitutional Court stated that local authorities have the discretion to suggest changes to the location or timing of the event on the grounds of maintaining the normal functioning of public infrastructure or transport, maintaining public order and safety.<sup>8</sup> In practice this “discretion” has often been used to ban or block public events.



The failure to obtain an authorisation renders any public gathering illegal. During 2012 this often resulted in police interfering with an event and detaining the participants and organizers, irrespective of whether the gatherings were peaceful and whether it was even practical under the circumstances to apply for approval.<sup>9</sup>

The Federal law on assemblies has been amended gradually over the years, invariably increasing the restrictiveness of the procedures. Human rights defenders have had some success in securing less restrictive interpretations of these norms, primarily through litigation.<sup>10</sup> However, in the course of 2012, a number<sup>11</sup> of changes to the regulation of assemblies were pushed through that have significantly altered the playing field.

In June 2012, President Putin signed a bill introducing amendments to the Federal Law on assemblies and the Code of Administrative Offences – in relation to violations of regulations governing public events. The bill became law and came into force on 9 June 2012.<sup>12</sup> The bill was introduced to the Russian Parliament (State Duma) by the ruling Yedinaya Rossiya (United Russia) party and passed through the Duma in a matter of weeks, with very limited public consultation.

The amendments sharply increased the maximum punishment<sup>13</sup> for individuals from 5,000 roubles (US\$160) to 300,000 roubles (approx US\$9,600). They also included the introduction of penalties of up to 20,000 roubles (approx. US\$640) for the vaguely worded “violation of prescribed order” for both organizers and participants of events. It further imposes a fine of between 20,000 (approx. US\$640) and 30,000 roubles (approx. US\$960) for individuals; between 20,000 and 40,000 roubles for officials; and between 70,000 and 200,000 for organizations, if the organizers of a public event fail to submit an advance request, with no exceptions provided for spontaneous meetings or rallies, where the timeline prescribed by the law cannot reasonably be met.

The June 2012 amendments also introduced the new offence of organizing or participating in the “mass simultaneous presence and/or movement of persons in public places”<sup>14</sup> (or inciting others to participate in them) that lead to the violation of public order, sanitary norms, the obstruction of traffic or pedestrians or access to residential buildings, vital infrastructure, transport or social infrastructure or result in damage to greenery. The broad wording of this provision has resulted in police interpreting it as covering events like spontaneous demonstrations or flashmobs<sup>15</sup> which were previously excluded from the scope the Federal Law on assemblies.

Another novelty was the introduction of a sanction in the form of compulsory public labour. This sanction was previously reserved for criminal offences and is not imposable in respect of any of administrative offence. The result is that criminal law sanctions can now be imposed for violations of administrative offences set out in the law on assemblies in judicial proceedings that do not offer the same procedural guarantees as would be available in respect of criminal prosecutions.

The amendments to the Federal Law on assemblies also imposed additional duties, responsibilities and restrictions on organizers and participants, such as the organizers’ responsibility for ensuring that that number of participants who attend a public event does not exceed the number approved by the authorities; and that the participants do not violate traffic rules, sanitary rules and public order. The amendments provide for the possibility of holding organizers directly liable in of the event of the failure of participants to observe these duties and responsibilities.<sup>16</sup>

The amendments also prevent persons previously sentenced for a broad range of administrative or criminal offences, including violations of regulations on demonstrations or other public events, from organizing any public events in the future, until their conviction is served. The effect of this provision has been to effectively ban a number of leading opposition figures from organizing any public events on account of their having been convicted already of protest-related offences.<sup>17</sup> Considering the breadth of the prohibition, the law summarily

denies them the right to freedom of peaceful assembly, regardless of the gravity of offence, or whether they had served their sentence.<sup>18</sup> The law also changed the time when all public events should end, from 11pm to 10pm and provided for local authorities to identify a list of places where no public meetings can be held. The amendments also stipulate that the participants must not hide their faces.

## AMENDMENTS TO REGIONAL LEGISLATION ON ASSEMBLIES

Following the adoption of the amendments to the Federal Law on assemblies, at least 13 regional legal initiatives were drafted to reinforce and cement the new restrictive legal order on freedom of assembly in different parts of the country, with the first provincial law to this effect being adopted in Kemerovo region on 9 July 2012.<sup>19</sup> This regional law served as a model law for other regions of the Russian Federation and, in the second half of 2012, similar bills passed the first readings in a number of other regions of the country.<sup>20</sup> All of these bills identify a long list of places that are banned for organizing public gatherings, including one-person pickets.<sup>21</sup> The strict observance of some of these regional laws arguably imposes a near total ban on public gatherings in public spaces and renders it nearly impossible to hold public protests within the city limits. They also impose additional obligations on the organizers, on top of those already prescribed by the federal laws.<sup>22</sup>

In December 2012 and February 2013 the Moscow and St. Petersburg regional Dumas adopted similar bills introducing new rules on public gatherings, regulating *inter alia* special areas in the cities.<sup>23</sup> The majority of regional bills impose bans on meetings in the proximity of premises of regional and local executive bodies, on pavements and public roads and “in proximity” thereof, without precise limitation, which allows for the extended interpretation of the bans.<sup>24</sup> Some regions have gone even further. Thus, in Kemerovo region, the law contains a very broad list of prohibited places, which includes airports, malls and markets, educational institutions, religious, medical and sport facilities, isolated territories and objects and constructions [on those territories], pavements, public transport stops, as well as the areas immediately surrounding these places.<sup>25</sup> In Chelyabinsk region and in Chuvashiya, the bans extend to private property, whereas in Sverdlovsk region it extends to the areas outside apartment buildings and places of worship.<sup>26</sup> On 28 February 2013 a similar provincial law was adopted in Perm.<sup>27</sup> The list of places where protest is banned could be further extended in St. Petersburg, where on 22 February in addition to the recently adopted provincial law on meetings, the legislators also approved in first reading a bill imposing an obligation on authorities to consult with religious communities’ leaders, if a public event is due to take place near a place of worship.<sup>28</sup>

These recent amendments risk significantly curtailing the right to freedom of assembly and contradict the core idea behind this right, since under these rules, demonstrations and other public events, in particular protests, are effectively restricted to locations in which demonstrators cannot reach out to a wider public or target the audience they are seeking to address. Demonstrations and public events will invariably involve a certain level of disruption to ordinary life or the rights of others, including disruption of traffic. International human rights standards are clear, however, that authorities must ensure that any responses to these disruptions are necessary and proportionate and that they do not put in jeopardy the right to peaceful assembly itself.

## THE FEBRUARY 2013 CONSTITUTIONAL COURT RULING ON THE AMENDMENTS TO THE LAW ON ASSEMBLIES

On 14 February 2013, the Constitutional Court of the Russian Federation delivered a decision following the application of a group of the Russian MPs (deputies of the State Duma) and the leader of the unregistered Other Russia party, Eduard Limonov,<sup>29</sup> in which they contested the June 2012 amendments to the law on meetings.<sup>30</sup>

The MPs asked the Court to find the law unconstitutional in its entirety due to:  
a number of procedural irregularities during its passing through the Parliament,  
the excessive increase of administrative fines,<sup>31</sup>  
the introduction of the penalty of compulsory public labour<sup>32</sup> for violations of procedures relating to the  
organization and conduct of public events,<sup>33</sup>  
the extension of statutory limitations for such violations to one year,<sup>34</sup>  
the imposition of an obligation on organizers to prevent the exceeding of the declared number of participants,<sup>35</sup>  
the shifting of the burden of responsibility for harm or damage caused by participants onto the organizers,<sup>36</sup>  
the requirement of mandatory approval for all public events,<sup>37</sup>  
the excessive regulation of one-person pickets, undermining the mere possibility of holding protest in such a  
form,<sup>38</sup>  
the wide discretion of local authorities to determine specially allocated zones for public gatherings, which may  
significantly restrict freedom of assembly.<sup>39</sup>

They also sought to challenge the constitutionality of the provision of the new law banning persons who have  
two or more “unexpired” convictions<sup>40</sup> from organizing any public event.

On 14 February 2013, the Constitutional Court delivered its opinion,<sup>41</sup> concluding that banning persons from  
organizing public events merely because they had previously been convicted for administrative violations was  
not incompatible with the Constitution. The Court based this conclusion, in part, on the notion that the ban  
“does not prevent him from requesting other persons, political parties or public entities to organize an event  
and does not strip him of the possibility to participate in the public gatherings, including as an administrator,  
appointed by other organizers.”<sup>42</sup>

The Constitutional Court ruled that the monetary value of the maximum fines was not unconstitutional, though  
it took into consideration the fact that the minimum fines were equal to or superior to the maximum fines for  
all other administrative offences provided in the Code of Administrative Offences. The Court did, however,  
conclude that the provisions regarding fines did not allow courts to individualize the punishment in a manner  
incompatible with the Constitution. As a result, the Court temporarily suspended the mandatory minimum fine  
level pending adoption of the new amendments to the law that should bring the law in compliance with the  
Court’s decision. The Court also ruled that the sanction of compulsory public labour for a number of violations  
of the law on assemblies could be “considered as a tool for the suppression of dissent.”

The Constitutional Court also found that while it was, in principle, constitutional to impose administrative  
liability on organizers for certain actions of participants, any provisions imposing civil liability on organizers for  
damage caused by participants, irrespective of their participation in those actions, would have a chilling effect  
on freedom of assembly, and would therefore be unconstitutional.

On the issue of special designated areas (often referred to by the media as “Hyde Parks”), the Court concluded  
that, while the aim was ostensibly to create additional possibilities for the enjoyment of the freedom of  
assembly, such locations needed to be offered in sufficient number in adequate locations. The wide discretion  
of local authorities in deciding on the number and location of such places at the time of adoption of the Court’s  
decision in February 2013 had resulted in significant variations in practice across the country, rendering the  
provision discriminatory and unconstitutional.

The Constitutional Court found procedural irregularities in the adoption of the law, but concluded that they had not undermined the aim and the results of the legislative process and that they did not therefore suffice to render the law unconstitutional in its entirety.<sup>43</sup>

In an opinion published on 11 March 2013, the Council of Europe's Venice Commission<sup>44</sup> noted that this Constitutional Court decision reflected many of the critical points of the law, but failed to solve all the problems. It also noted that "there might be a lack of clarity for the executive authorities and the organizers and participants of assemblies" and that for so long as the implementation of the decision of the Court remained pending, considerable legal uncertainty would prevail.<sup>45</sup>

Following the ruling, the Vice Chairman of the State Duma's Constitutional Legislation Committee, Dmitri Viatkin, declared that the Duma intended to adopt amendments compliant with the Court's ruling within the next six months (i.e. by mid-August 2013).<sup>46</sup>

Satisfying the limited requirements imposed by the Constitutional Court judgment will not go far enough, however, in eliminating the broad scope that currently exists under the Law on assemblies to arbitrarily restrict the right to freedom of assembly.

## APPLICABLE INTERNATIONAL HUMAN RIGHTS STANDARDS ON FREEDOM OF ASSEMBLY

The right to freedom of assembly is enshrined in the major human rights treaties, to which Russia is party, including the 1966 International Covenant on Civil and Political Rights (ICCPR) and the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The right is also protected by the Russian Constitution. In practice, however, the authorities are guided by domestic laws and by-laws, irrespective of their level of compliance with international standards and the Constitution.<sup>47</sup>

The right to freedom of association is widely recognised as a fundamental right in a democratic society - in fact, one of the foundations of such a society<sup>48</sup>- as well as being important for the full enjoyment of other human rights.<sup>49</sup>

As has been reiterated by the European Court of Human Rights (ECtHR) on numerous occasions, the right to freedom of assembly covers both private meetings and meetings on public thoroughfares, as well as static meetings and public processions; this right can be exercised both by individual participants and by those organizing the assembly.<sup>50</sup>

International human rights law is very clear that the right to peaceful assembly and association can only be restricted for specific reasons, under specific conditions. The European Convention on Human Rights stipulates that restrictions on the right to peaceful assembly and association must be "prescribed by law and ... necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others."<sup>51</sup>

Many of the restrictions introduced into the new Federal law on assemblies, and certainly the manner in which it is being implemented, fail to satisfy these requirements for restrictions on the enjoyment of the right to the freedom of association.

## APPROVAL PROCEDURES

In its case-law, the ECtHR has repeatedly noted that the purpose of notification requirements must be to allow the authorities to take reasonable and appropriate measures to guarantee the smooth conduct of any assembly, meeting or other gathering.<sup>52</sup> Secondly, the Court has clarified that there is a right to spontaneous protest which “override[s] the obligation to give prior notification to public assemblies .... if an immediate response to a current event is warranted in the form of a demonstration [and in] particular ... if a delay would have rendered that response obsolete.”<sup>53</sup> Thirdly, the Court considers that while authorities may use notification requirements to prevent disorder or crime, they should not “represent a hidden obstacle to the freedom of peaceful assembly protected by the Convention.”<sup>54</sup>

The UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association (the UN Special Rapporteur on Freedom of Assembly and Association) recommends that the “exercise of the right to freedom of peaceful assembly should not be subject to prior authorization by the authorities, but at the most to a prior notification procedure, which should not be burdensome”. He has stressed that “spontaneous assemblies should be recognized in law, and exempted from prior notification.”<sup>55</sup>

The OSCE ODIHR and the Council of Europe’s Commission for Democracy through Law provide clear guidelines for the implementation of the right to peaceful assembly, through the OSCE Guidelines on Freedom of Peaceful Assembly.<sup>56</sup> These guidelines are clear that prior notification of assemblies is not generally necessary, and should “only be required where [the] purpose [of the notification] is to enable the state to put in place necessary arrangements to facilitate freedom of assembly and to protect public order, public safety and the rights and freedoms of others.” The guidelines note that where notification of assembly is required, this must constitute “a notice of intent rather than a request for permission”<sup>57</sup> and that a notification process should allow adequate time for the completion of an expeditious appeal to (and ruling by) a court should any restrictions be challenged.<sup>58</sup> It is further suggested that if the authorities do not promptly present any objections to a notification, the organizers of a public assembly should be able proceed with their activities according to the terms presented in their notification and without restriction.<sup>59</sup>

The ECtHR has stressed that it is important for public authorities to show a certain degree of tolerance for the inevitable disruption that demonstrations entail.<sup>60</sup> The withholding of approval solely on the basis of the possibility of disruption of traffic, for example, would not be permissible under the Convention. Authorities must ensure that responses to this disruption are necessary and proportionate and do not lead to restrictions that render the freedom to peaceful assembly meaningless.

The ECtHR has also stated that “any measures interfering with the freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities – do a disservice to democracy and often even endanger it. In a democratic society based on the rule of law, the ideas which challenge the existing order must be afforded a proper opportunity of expression through the exercise of the right of assembly as well as by other lawful means.”<sup>61</sup> The Court makes it clear “that it has been [the Court’s] constant approach to require very strong reasons for justifying restrictions on political speech or serious matters of public interest ... as broad restrictions imposed in individual cases would undoubtedly affect respect for the freedom of expression in general in the State concerned”.<sup>62</sup>

Specifically with regard to the Russian Federal Law on assemblies, the Venice Commission has emphasized that “the co-operation between the organizers and the authorities...should be settled on a voluntary basis respecting the assemblies’ autonomy and without depriving the organizers of the right to hold an assembly on the ground of a failure to agree on any changes to the format of an assembly or to comply with the timeframe

for notification of the public event”.<sup>63</sup> The Venice Commission also stressed that blanket restrictions on the time and places of public events currently provided in the Russian law should be narrowed.<sup>64</sup>

When it comes to authorities’ discretion to suggest an alternative location for an assembly, the principle of proportionality “requires that the least intrusive means of achieving the legitimate objective being pursued by the authorities should always be given preference.”<sup>65</sup> Reasonable alternatives should be offered if any restrictions are imposed on the time, place or manner of an assembly. And as a general rule, assemblies should be facilitated within “sight and sound” of their target audience.

The Venice Commission recommended to the Russian authorities that “the power of the executive authorities to alter the format of a public event should be expressly limited to cases where there are compelling reasons to do so, with due respect for the principles of proportionality and non-discrimination and the presumption in favour of assemblies, while spontaneous assemblies and urgent assemblies as well as simultaneous and counter demonstrations should be allowed as long as they are peaceful and do not pose direct threats of violence or serious danger to public safety”.<sup>66</sup>

The Venice Commission expressed the view that the ban on the organization of assemblies of persons who have prior convictions for crimes or violations of rules governing assembly was excessive. It stressed that an important part of the right to assemble peacefully includes the right to become involved in all aspects of the organization of an assembly including playing the role of “organizer.”<sup>67</sup> Only extremely compelling reasons can justify depriving a person of their right to organize public events. The exclusion of whole categories of people for breaches of law, irrespective of the gravity of such breaches, represents a disproportionate restriction of the right to freedom of assembly.<sup>68</sup>

This report details a host of public events, pickets and protests that have been either banned, or whose organizers and participants have been punished for failing to obtain approval, when there was no legitimate reason – under international human rights law – for this to be withheld or even required in the first place.

## THE LIABILITY OF ORGANIZERS OF PUBLIC EVENTS FOR THE ACTIONS OF PARTICIPANTS

The UN Special Rapporteur on Freedom of Assembly and Association has emphasized that “States have a positive obligation to actively protect peaceful assemblies”, which “includes the protection of participants of peaceful assemblies from individuals or groups of individuals, including agents provocateurs and counter demonstrators, who aim at disrupting or dispersing such assemblies.”<sup>69</sup> In view of this, the Special Rapporteur recommended that “assembly organizers and peaceful participants should not be held responsible and liable for the violent behaviour of others.”<sup>70</sup>

Under the June 2012 amendments to the Federal law on assemblies, organizers can be held liable for the actions of participants at public events. The Venice Commission noted that while the organizer is “indeed responsible for exercising due care to prevent disorder, he or she cannot exercise police power and cannot be required to do so.”<sup>71</sup> Moreover, the right to freedom of peaceful assembly generates a state duty to facilitate and protect this right and therefore “the overall responsibility to ensure public order must lie with the law enforcement bodies, not with the organizer of an assembly”.<sup>72</sup> The obligations of organizers should be reduced to the exercise of due care, taking into account the limited powers of the organizer, more so because of the responsibility of the authorities to provide public security, medical aid etc.<sup>73</sup> The Venice Commission additionally considered it disproportionate to require organizers to take measures to contain the number of participants and to impose penalties on organizers if they fail to do so.<sup>74</sup>

Considering the number and severity of the sentences provided by Russian law for violations related to administration of assemblies, it is also important to note that penal sanctions should only be imposed in proceedings that have strong procedural guarantees. In this respect, the ECtHR has noted that even where an offence is classified as administrative, the nature of the offence and the imposable sanctions may nevertheless be “criminal in nature”,<sup>75</sup> entailing an obligation on the State to ensure fair trial guarantees to those accused.<sup>76</sup> The domestic classification of the offence is considered to be “of relative weight”.<sup>77</sup> The ECtHR attaches more importance to “the nature of the offence”,<sup>78</sup> and/or<sup>79</sup> “the severity of the potential penalty which the person concerned risks incurring”.<sup>80</sup>

## THE POLICING OF DEMONSTRATIONS

States have a positive duty to take steps to allow peaceful assemblies to take place without participants fearing violence. Police should therefore prioritize the peaceful settlement of disputes and the use of persuasion, negotiation and mediation, both before and during assemblies, as a means of avoiding violence and recourse to the use of force.<sup>81</sup> International standards require police to apply non-violent means before resorting to the use of force.<sup>82</sup> The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials stipulates that police officers “may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result”.<sup>83</sup> The use of force by the police should be limited to situations where it is absolutely *necessary* and *proportional* to the legitimate aim pursued.<sup>84</sup> The Russian authorities have an obligation to investigate allegations of excessive use of force and bring any perpetrators of abuse to justice.

The decision to disperse an assembly should be taken only as a last resort and carefully in line with the principles of necessity and proportionality, i.e., only when there are no other means available to protect a legitimate aim and when the level of threat of violence outweighs the right of people to assemble.<sup>85</sup> The fact that an assembly is illegal, or that minor violations of the law occur during a peaceful assembly, should not necessarily lead to a decision to disperse an assembly.<sup>86</sup> As the Venice Commission noted in its opinion on the June 2012 amendments, the reasons for suspension and termination of assemblies should be limited to public safety or the risk of imminent violence.<sup>87</sup>

Similarly, where a small minority tries to turn a peaceful assembly into a violent one, police should ensure that those who are protesting peacefully are able to continue to do so, and not use the violent acts of a few as a pretext to restrict or impede the exercise of rights of a majority.<sup>88</sup> Any use of force must conform to international law and standards governing the use of force by law enforcement officials, while law enforcement officials should always be identifiable during public order operations (through either name tags or number tags).<sup>89</sup>

## VIOLATIONS OF THE FREEDOM OF ASSEMBLY SINCE THE DECEMBER 2011 PARLIAMENTARY ELECTIONS

### POST-ELECTION PROTESTS

Even before the adoption of the latest legal initiatives, the authorities were already using the existing legal framework to impose impermissible restrictions on the freedom of peaceful assembly and prosecute peaceful protesters in violation of the Russian Federation’s international obligations and its own Constitution. Such instances have sharply increased since the parliamentary elections in December 2011. This is, in part, due to a sharp rise in the early months of 2012 in the public appetite for protest, but it is also the result of a deliberate, undisguised policy of controlling the visible public expression of political discontent. The few large-scale

protests that have been allowed to proceed unhindered cannot obscure the fact that countless others – both large and small – have been banned or dispersed in violation of the right to freedom of assembly. The examples provided below are but some of these.

According to the OVD-Info project,<sup>90</sup> from early December 2011 (when the protests against the results of parliamentary elections started<sup>91</sup>) through to the end of December 2012, some 5,169 arrests occurred in the course of 228 public gatherings, 3,857 of which took place in Moscow and surrounding towns.<sup>92</sup> According to the report, 1,079 persons were arrested in the course of public events approved by the authorities, while 4,090 arrests were carried out during unauthorized gatherings or those that at the time did not require prior approval (pickets).<sup>93</sup>

## 5 MARCH 2012 PROTESTS ON PUSHKINSKAYA AND LUBIANSKAYA SQUARES

On 5 March, after the announcement of the results of the 2012 Presidential election, and despite a heavy police presence, tens of thousands of Russians took to the streets of central Moscow to register their protest. A demonstration had been approved by the authorities and organized on Pushkinskaya square<sup>94</sup> in Moscow. It was attended by an estimated 14,000-30,000 people.<sup>95</sup> The meeting was peaceful during the day and was supposed to end at 9pm. At that time, one of the speakers, Duma representative Ilya Ponomarev, proposed to start an unlimited “meeting with a member of parliament” (meetings with MPs do not require prior approval or sanctioning by the authorities).<sup>96</sup> Some 800 persons expressed their intention to remain for the meeting, but the police started dispersing the crowd using riot police forces (OMON). The police reportedly used gas,<sup>97</sup> clubs and tasers<sup>98</sup> to disperse the crowds, and a number of injuries were documented and reported by civic activists.<sup>99</sup> At least one activist sustained a fractured arm, when she was dragged off the stage by police;<sup>100</sup> four other protesters reportedly sought medical help in the aftermath of the events.<sup>101</sup>

The same evening activists of the Other Russia party attempted to hold an unauthorized meeting on Lubyanskaya square. Several persons were injured, including journalists from “Kommersant FM” and “Moscow News”, as well as other journalists. The detainees also complained of beatings on the way and in the police department “Zamoskvorechye”. One of them, Tatyana Kadieva, sustained multiple facial injuries, including a broken nose, some injuries to the forehead and multiple bruising. A medical examination also revealed concussion and possible brain hemorrhage. She and eight other Other Russia activists announced a “dry” hunger strike (i.e. self-deprivation of both food and water) to protest against the police brutality.<sup>102</sup> Altogether, more than 250 persons were detained in Moscow that night.

The Russian Ombudsman’s office, which was monitoring the events, did not support claims that the police had reacted with excessive force and stated that police behaviour had been appropriate. However, they noted that the order to detain the protesters was illegal, since the spontaneous meetings had been peaceful.

On 7 March, Vladimir Putin told journalists that the police did not beat anybody, even though some protesters were provoking them to use force, and applauded the actions of the police as being very professional. In response to journalists’ questions regarding their injured colleagues, Putin explained that they were media representatives, whom the police “saved”.<sup>103</sup>

In respect of the 5 March protests, the Russian authorities ignored their obligation to ensure that peaceful spontaneous protests to immediate political events were able to proceed and that restrictions imposed were proportionate. The Russian authorities have also failed in their obligation to investigate effectively the allegations of excessive use of force and bring perpetrators of abuse to justice.



## 6 MAY 2012 PROTEST ON BOLOTNAYA SQUARE

In May 2012, several opposition leaders announced an opposition rally and meeting for 6 May, the day before Putin's inauguration ceremony. The protesters were supposed to walk through the city centre and gather for a meeting at Bolotnaya square, not far from the Kremlin. Both the march and the meeting were sanctioned by the local authorities. The request for approval submitted to the local authorities noted that the organizers planned for 5,000 participants. According to different estimates tens of thousands actually turned up.<sup>104</sup>

According to police accounts presented by the Investigative Committee in the criminal cases related to these events, the participants gathered near the entrance to Bolotnaya square, where they attempted to break through the police line, failed to respect police orders, and attacked police officers. According to the police, this resulted in the dispersal of the meeting and the legitimate use of force against protesters. However, according to many protesters' accounts, the police changed the location of the police line<sup>105</sup> without consulting or informing the organizers. The line was moved closer to the planned route of the protesters and additional metal detector frames were placed at the entrance to the square.<sup>106</sup> This resulted in one of the two earlier agreed entrances to the square being blocked, leaving one single entrance for protesters which created a bottleneck as the protesters approached the square from a bridge. The police also changed the location of the stage from the original plan announced by the police without prior notification.

According to protesters spoken to by Amnesty International<sup>107</sup> and available video evidence,<sup>108</sup> as more and more people approached the bottleneck, pressure grew on the front rows for those standing in front of the police line and in the centre of the crowd. In order to prevent further built-up of pressure and protest against the police actions, the organizers of the event decided to ask protesters to sit down. The authorities, however, state that the bottleneck was itself created by the sitting protest and prior to the sit-down the protesters had had unimpeded access to the square. The police also claim they were making announcements about the possibility for the protesters to access the place of the meeting at the square through a passage by the riverside.<sup>109</sup>

The policing of the event appears to have fallen short of best practice for the policing of peaceful assemblies.<sup>110</sup> In Amnesty International's assessment, based on interviews with protesters and the examination of available video evidence, it is clear that the police did change the arrangements for entrance to the square and the location of the stage at the last moment.<sup>111</sup> It is also clear that these decisions were not explained or justified by police and were not consulted with or relayed effectively to the organizers. The police did relocate the police lines considerably closer to the previously agreed upon passage-way to the square. This relocation resulted in the blocking of the second entrance to the square, which certainly contributed to the creation of the bottleneck. Regardless of the timing of the sit-down protest, these facts render the police at the very least partially responsible for obstructing the protest and as a result endangering the safety of those participating in the meeting. This fact should have prompted a thorough review of police and local authorities' preparations for the event. No steps have been taken to conduct such a review at the time of writing.

At the same time Amnesty International notes that the sit-down protest and the fact that some of the organizers called on protesters, who had made it to the Bolotnaya stage, to return to the bottleneck were also contributing factors. However, the responsibility rests with the police for ensuring the security at the event and for protecting the right to peaceful assembly of those who did not engage in any violent acts.

Nevertheless, from the information available from open sources and in particular video footage of the entrance to the square from different locations, the police first of all left protesters with a rather narrow passage to enter the square and secondly did not adequately communicate where this entrance was to those approaching the square. The police used loudspeakers to make announcements about the entrance, but only did so in a few locations. As a result, these announcements reached only parts of the front rows.<sup>112</sup> The police could have

moved the police lines back to the originally planned location, so as to ease the growing tension in the bottleneck and facilitate the safe and unhindered access of the protesters to the previously approved place of the meeting.

Video footage also supports the claim that the pressure was visibly and rapidly growing in the front rows and the centre of the growing bottleneck. Soon after the beginning of the sit-down protest, several dozen people broke through the first police line.<sup>113</sup> Footage seen by Amnesty International does not suggest that those people were behaving violently. Rather, it appears that the majority of them headed towards the second entrance to Bolotnaya square, while some held a peaceful sit-in protest between the first and the second police lines. At the same time, the police quickly re-established the first police line and declared the meeting cancelled. In Amnesty International's assessment, the senior police officers responsible should have taken into consideration the fact that even when minor violations of the law occur during a peaceful assembly (as was still the case on Bolotnaya square at that point in time), this should not automatically lead to a decision to disperse the entire assembly. As already noted, police must seek to ensure that those who protest peacefully are able to continue to do so, even where some protesters engage in violent or other criminal behavior. It is also important to note that the decision to disperse the assembly should have been taken only as a last resort and, in line with the principles of necessity and proportionality, when the level of threat of violence outweighed the right of people to assemble peacefully. In Amnesty International's view this threshold was not met when the cancellation of the meeting was announced by the police. Nevertheless, when some protesters engaged in a sit-down protest, the police started arresting the protesters and dispersing the meeting.

Between 400 and 650 people were detained in connection with the events on Bolotnaya Square, not only on the square itself, but also at different locations in the city centre.

Numerous eye-witnesses reported to Amnesty International<sup>114</sup> that some of the arrests on the square appeared to be random. These allegations appear to be corroborated by available video footage.<sup>115</sup> In some instances it appears that police officers initially attempted to detain protesters involved in violent acts, but having failed to do so, started detaining nearby peaceful protesters apparently arbitrarily.

Protesters have complained that the police actions and detentions in several instances were accompanied by excessive use of force against the protesters, as seen on some of the video footage<sup>116</sup> and photographs taken in the square.<sup>117</sup> The Public Monitoring Commission – an independent entity comprised of civil society representatives that monitors the human rights situation in detention facilities - visited several police detention facilities where the Bolotnaya square detainees were kept, and came to similar conclusions.<sup>118</sup> According to police data, some 30 police officers were injured as a result of clashes with protesters at the Bolshoy Kamenny bridge, near the entry to Bolotnaya Square, while hospitals confirmed that 47 protesters were hospitalized.<sup>119</sup>

Several complaints against the police actions were formally submitted<sup>120</sup> and calls for independent, objective and thorough investigations were voiced by well-known Russian writers, civil society activists and other actors.<sup>121</sup> However, at the time of writing such an investigation has not been forthcoming.<sup>122</sup> Indeed, the Press Secretary of President Putin in one of his first comments on the 6 May 2012 events was quoted in the media as saying that the police should have acted more harshly<sup>123</sup> and in a private conversation with an opposition MP he stated that for acts against the police "their [the protesters'] lives should have been spread on the street".<sup>124</sup>

The authorities initiated criminal cases against several of the protesters on account of their participation in "mass riots".<sup>125</sup>

Amnesty International recognizes that a considerable amount of violence broke out on that day in Moscow and that some of those accused and still in custody do appear to have been involved in some violent acts. Amnesty International notes however, that the publicly presented evidence against some of them is thin indeed, and that

the duration that they have now been in custody pending trial is difficult to justify. As of April 2013, some 26 persons had been charged in connection with the events on Bolotnaya Square on 6 May, of which 15 are in detention (1 post conviction).

Of those still in detention at the time of writing, Amnesty International believes there are strong grounds to believe that – at the very least - Vladimir Akimenkov, Artiom Saviolov and Mikhail Kosenko are prisoners of conscience, wrongly detained for the peaceful exercise of their right to freedom of assembly and freedom of expression, while participating in the protest in Bolotnaya square on 6 May.

There were moments on the square – and movements of three accused - that were either not recorded on camera, or are at least not visible in available video records, which prevents Amnesty International at this stage from accounting with absolute certainty as to peaceful actions of the three men in question. Such video evidence as is available – and additional evidence adduced below – certainly does not indicate the commission of any offence. To date, the only incriminating evidence presented against these three men is police testimonies, which appear to have modified over a course of time. There is little apparent justification for their detention pending trial, and none that justifies its excessive length.

Amnesty International therefore calls on the Russian authorities to ensure that all those accused in connection with the Bolotnaya Square demonstration are promptly brought before an independent and impartial tribunal and that all fair trial guarantees are observed in their trial.

#### **Vladimir Akimenkov**

Vladimir Akimenkov is an activist of the opposition Left Front movement. He was detained on Bolotnaya square on 6 May a few minutes after the police line was breached by protesters. Video footage of his arrest clearly shows that Akimenkov remained in front of the police line, casting doubt on the allegation that he actively participated in the breach.

On 14 June the Basmany district court in Moscow sanctioned Akimenkov's detention on remand. His detention was subsequently extended three times in August and October 2012 and March 2013. On 1 March, his detention was extended until 10 June 2013. Initially, he was accused of participation in mass riots (article 212(2) of the Russian Criminal Code) and violence against state official (article 318 of the Criminal Code), though the latter charge was subsequently dropped.

The available video footage also does not suggest that he was acting violently or disorderly, nor does it indicate that he was involved in any illegal conduct. Akimenkov denies that he was involved in any violence or any act inciting violence during these events. Considering that he was detained immediately after the eruption of the first violence (and therefore could not possibly have participated in any violence that erupted later on the square that day) and his involvement with this initial episode does not appear to be substantiated, the accusations against Akimenkov are highly questionable. Akimenkov believes that he was detained because of his political activism, known to the authorities. Reportedly, the only evidence against him is the testimony of a police officer, who allegedly witnessed Akimenkov throwing a flag pole at the police, hitting one of them. This testimony, initially vague (stating that he saw how somebody threw the pole, without further details) has, however, substantially changed and became more detailed half a year since the initial statement was made.

Vladimir had a serious eye condition prior to his detention, which has since deteriorated further. His lawyer and family are afraid this might result in blindness. In January 2013 his advocate submitted an application to the European Court of Human Rights alleging arbitrary detention and inhuman treatment in relation to his conditions of detention.

#### **Artiom Saviolov**

Artiom Saviolov was also detained immediately after the first breaking of the police line. Saviolov crossed the police line and was detained between the first and the second police lines, but he claims that he did not participate in the breaking of the police line,

but was rather pushed through it; the available video footage seems to corroborate this statement. Saviolov has no previous history of political activism or association with any particular group; he came to Bolotnaya square, along with thousands of others, to participate in an authorised protest against the results of the presidential elections.

He is charged with participation in mass riots, using force to prevent a police officer from detaining another protester and shouting "Down with the police state". He firmly denies these accusations and explains that he was careful to avoid any confrontation with police and that he did not obstruct police, including during his arrest. He and his lawyer also contest the accusations related to the slogans he was allegedly shouting, explaining that he could not possibly have shouted these slogans, since he has a serious speech impediment – he has a stutter and it is difficult for him to speak, let alone shout slogans. It appears that the only evidence against him is the statement of the police officer, which he contests.

It is clear from available video footage that Saviolov was not in the first row. He maintains that he was pushed from behind and did not actively participate in the breach of the police line. The video footage is consistent with this statement. It appears from the footage (which, however, does not cover all of the actions and movements of Saviolov prior to his detention) that between the first and second police lines Saviolov was not acting violently or disorderly, but participated calmly in the non-violent sit-in action protesting against police actions.

He remains in detention pending trial since 10 June 2012. During this period, his detention was also extended by the court three consecutive times, and he is due to remain in detention until 11 June 2013.

#### **Mikhail Kosenko**

Mikhail Kosenko has been in detention since 8 June 2012. He is accused of participation in mass riots and violence against a police officer. In particular, he is accused of being an accomplice in the severe beating of a police officer, for which another person, Maxim Luzianin has already been convicted. According to Kosenko's lawyers, he was standing in the front row of protesters, when a police officer, who was attacked by several violent protesters, fell backwards to the line where Kosenko was standing and he pushed the two away from himself. The manner in which Kosenko did it cannot be considered as beating, hitting or kicking the police officer, contrary to the accusations against him. He did not touch or interact with the police officer from there onwards. The available video footage of the events is consistent with this statement. It is clear that the police officer was indeed attacked by at least two violent protesters, but it appears that Kosenko did not assist them. It can also be seen that during this episode he remained standing in the front line, without engaging in any violent activities. From the video footage it appears that he only once had physical interaction with the police officer – when the latter fell on him – and it indeed appears that Kosenko pushed him away or helped him to his feet. It does not indicate that Kosenko had any further physical interaction with the police officer. Except for the video footage, the only other evidence in the case is the testimony of another police officer, who claims he saw Kosenko beating the police officer.

Mikhail does not belong to any political party or group. He has a mental disability, which his family and defence state does not present danger to society. He has not been accused of any violent acts in the past and medical examinations prior to his arrest reportedly do not suggest that he poses any danger to society. However, during pre-investigation, the police requested additional expertise of his condition, the conclusions of which suggest that during that period of time there was a drastic deterioration in his condition. On the basis of this, the prosecution is requesting his mandatory treatment, which may result in prolonged confinement in a medical facility.

Amnesty International is also concerned over the allegation of abduction from Ukraine in October 2012 and subsequent ill-treatment while in custody in Russia of Leonid Razvozhayev.

In October 2012, a television programme called "Anatomy of Protest-2" was aired on the NTV channel, alleging that the leaders of the Left Front Sergey Udaltsov, Konstantin Lebedev and Leonid Razvozhayev had a meeting with former Georgian MP, Givi Targamadze, in which they plotted mass riots in different parts of the country. The allegations and the programme were based on an alleged hidden video recording of the meeting that the TV channel later explained it received from an "unknown source" on a "street". The Investigative Committee

initiated criminal proceedings against the above mentioned activists. On 15 October 2012, Leonid Razvozhayev went to Ukraine, where he sought asylum. However, on 19 October he was reportedly abducted from outside the offices of a partner organization of the UN Agency for refugees (UNHCR) in Kyiv. The day before that he appeared on the wanted list in Russia. The Investigative Committee reported that on 21 October Razvozhayev had returned to Russia and confessed to organizing a mass riot on Bolotnaya square on 6 May 2012 and was plotting other mass riots in different parts of Russia, testifying also against Udaltsov and others. However, the same day, a video was posted on the website Life News showing Razvozhayev leaving a Moscow courthouse shouting that he had been kidnapped and tortured.<sup>126</sup> In an interview a few days later, Razvozhayev stated that he “had been held in a tumbledown house and not allowed to eat, drink or use the bathroom for three days” and that he was threatened that his children would be killed.<sup>127</sup> According to him, after he signed the confession, his captors delivered him to the authorities in Moscow.<sup>128</sup> It appears that there has been no effective investigation into these allegations to date. Amnesty International calls for fair trial and an effective investigation into the alleged abuses – including both the enforced disappearance and the allegations of torture and ill-treatment.

In December 2012 the “Bolotnaya case” on events of 6 May 2012 was combined with the investigation into the preparation of mass riots in several parts of Russia against the three opposition “Left Front” activists (the so-called “Anatomy of Protest” case).<sup>129</sup> Whatever the merits of the charges in the so-called “Anatomy of Protest” (and it is difficult to square some of the accusations aired with the actual events of the 6 May protest) it is also clear that a very deliberate attempt is being made on the part of the authorities to construct a narrative according to which the protest movement and political opposition more broadly is seeking – in the interests of and at the behest of “foreign interests” – to overthrow the legitimate organs of the state. This narrative, repeatedly reinforced by members of the ruling party, senior government officials and President Putin himself, has become the driving and supposedly legitimising force behind the range of restrictions on the rights to freedom of expression, association and assembly with which this report is concerned. Government critics, human rights NGOs, opposition groups and individual protesters have all become susceptible to this critique. Collectively tarnished, they have all become individually liable – the clear danger being that the justification of bans, closures and restrictions and prosecutions will cease to lie in the rigorous application of just laws, but be advanced instead in terms of the political necessity of rooting out a dangerous fifth column.

## THE MAY 2012 PEOPLES’ WALKS (“WHITE CITY”) AND “OCCUPY ABAI”

Following the 6 May protests, between 7 and 9 May 2012 the police continued to detain large numbers of people walking on Moscow’s Red Square and along boulevards on “Sadovoye Koltso” in the city centre while wearing white ribbons as a sign of protest or otherwise presumed to be supporting the protest movement. The walks were coordinated online through social networks. Amnesty International was told by eye-witnesses that the arrests primarily targeted people wearing white ribbons, including those that were just sitting on benches in the city centre.<sup>130</sup> Amnesty International was also told that the police officers frequently failed to identify themselves as police officers and explain the reasons for the arrest, as required by law.<sup>131</sup> Amnesty International was told by eye-witnesses that people were not carrying any placards and no slogans were shouted. In fact, the strolls were orderly and people peacefully walked along boulevards. According to the witnesses, people were mostly walking or standing in small or larger groups, but some of them were walking alone, but not far from main groups.

In most cases the detainees were released after being brought to the police station, on account of the absence of any grounds for arrest in the first place.<sup>132</sup> Nevertheless, on many occasions people were deprived of their liberty for several hours before being taken to police stations and sometimes released only in the early hours of the morning. In apparently several instances those detained were denied access to lawyers, or this access was seriously delayed or impeded by police, even when the lawyers were waiting at the entrance to the police stations. In at least one instance, on 8 May, people who were not acting disorderly or violently were blocked on

their way along one of boulevards and then dispersed by riot police without any clear explanation or justification; many again spent several hours in police vehicles before being released without explanation. Amnesty International recalls that States have a positive duty to take steps to enable peaceful assemblies to take place without participants fearing violence.

Among those detained in Moscow during the walks were opposition activist and blogger Alexey Navalny and the Left Front leader Sergey Udaltsov. They were later sentenced by a court to 15 days' imprisonment and a fine of 1,000 roubles (approx. US\$30) as an administrative punishment, briefly rendering them prisoners of conscience.<sup>133</sup> Navalny attempted to contest his conviction and fine, claiming that on 9 May he was in the city centre, just meeting with people who went on a walk in the city; but the appellate court upheld the earlier verdict.<sup>134</sup>

In respect of these arrests and administrative sanctions, the police interfered with a peaceful assembly in an arbitrary manner and not in compliance with international law standards. In particular, these restrictions on the enjoyment of the right to freedom of peaceful assembly were not based in law. Furthermore, there was no pressing social need to disperse the orderly and peaceful walks, such as the protection of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

At the same time, opposition activists also organized a camp in the city centre, on the Chistiye Prudy boulevard, which they called the "Occupy Abai".<sup>135</sup> According to media reports, the camp was attended by several hundred people over a period of a week, representing various political groups, as well as civil society activists not affiliated with any political groups.<sup>136</sup> Eye-witnesses told Amnesty International that the behaviour of the protesters was orderly and that they did not litter; on the contrary, they regularly cleaned the surrounding area, did not make noise in the evening or at night, and were not engaging in any conduct that was not peaceful or that could present a danger to public health, morals, public order or national security.<sup>137</sup> Nevertheless, on 16 May, the Basmany district court in Moscow ordered the removal of the camp based on anonymous complaints that protesters were littering in the neighbourhood of the camp, a claim that the protesters contested. Following the ruling, the police broke into the camp around 6am,<sup>138</sup> and arrested around 20 protesters, who refused police orders to abandon the camp.<sup>139</sup> The protesters complained of excessive use of force by the police; some had their belongings confiscated and have not been able to recover them.<sup>140</sup> The remaining protesters attempted to re-establish the camp on another central square, Kundrinskaya (near Barikadnaya metro station), but were also dispersed by the police, while several activists were detained.<sup>141</sup> Amnesty International was also told that on Barikadnaya square the police confiscated drinking water and a box with donations, albeit not a big amount, that were being collected by protesters for charity.<sup>142</sup>

## ACTIONS IN SUPPORT OF ALLEGED "POLITICAL PRISONERS"

Also in late October several Opposition Coordination Council<sup>143</sup> members used social networks to call on their supporters to participate in protests against repression and the use of torture and to support opposition figures in jail, whom they considered to be political detainees. The proposal was for the protesters to form a "chain of one-man pickets", as this was the only form of protest that did not require prior authorisation from the local authorities. On 27 October about 100 people,<sup>144</sup> including, some Opposition Coordination Council members came to Lubienskaya Square, from which the pickets were planned to start. Around one hundred people showed up for the event. The chain of pickets was spread out along a pavement between Solovetsky stone on the Lubienskaya Square<sup>145</sup> to the Lefortovo pre-trial detention centre.<sup>146</sup> Soon after the start of the event, several persons, including some prominent opposition figures were detained while heading to or attempting to take part in the protest. Later almost all of them were sentenced to administrative fines for participating in or organizing an unauthorised public event.<sup>147</sup> Available video footage indicates that none of the arrested politicians made any public political statements at the event. The footage also suggests that none of them was

engaged in any disorderly conduct, and that they were arrested while walking on the pavement, without violating any traffic rules or engaging in any behaviour or activity that was not peaceful; or presenting danger to public order, national security, health or morals or rights of other person.<sup>148</sup> But the courts failed to give this evidence due consideration and, in at least one instance, refused motions to cross examine the police officers who carried out the detentions.

On 21 November, the Moscow authorities blocked a planned meeting against political repression and human rights violations, contrary to the law on meetings, which sets out limited grounds for banning a public event. The refusal was justified by reference to the belief of the respective officials that political repression was not occurring in the country. However, whether or not the officials agree with the premise or message of a public meeting is not a valid ground to restrict the right to freedom of assembly, neither in Russian nor international law.<sup>149</sup>

On 15 December 2012, activists decided to gather near the Solovetsky stone - a memorial to victims of Soviet repressions, at the Lubianskaya square in Moscow. This gathering came after authorities and activists had failed to agree on the route for an announced opposition rally and meeting. The opposition activists had proposed a route and meeting place that was similar to that previously granted for a ruling party rally and meeting, but the authorities refused to authorise it. The part of the square with the Solovetsky stone - where the protesters were called upon to come and bring the flowers - was very crowded. According to reported police estimates, around 700 people gathered on the square; according to the opposition there were between 1,500 and 2,000 people.

Several prominent opposition figures were detained on their way to the meeting, in violation of international standards prohibiting arbitrary arrest. Several protesters were also detained on the spot when they attempted to open placards or start public speeches, although their actions were peaceful and were not presenting danger to public order, security, health or morals or the rights of other persons.<sup>150</sup>

### STRATEGY 31 PROTEST IN TRIUMFALNAYA SQUARE

The authorities' handling of protests organized by the Strategy 31 movement<sup>151</sup> is illustrative of the way some of the vague provisions in the Law on assemblies are being used to impose undue restrictions on freedom of peaceful assembly. The movement, which campaigns for the respect for the freedom of assembly (and is named after the article of the Russian Constitution guaranteeing this right) started off as a joint initiative by several opposition and civil society activists groups, was by the second half 2012 primarily supported and carried on by the unregistered "Other Russia" party.<sup>152</sup> Strategy 31 attempts to organize public gatherings on the 31st day of every calendar month that has this date.<sup>153</sup> The authorities routinely refuse to grant approval for Strategy-31 meetings, including by reference to previous convictions for the violation of the rules for public gatherings by the party's leader, Eduard Limonov. As a result, Strategy 31's leader and members were routinely detained in 2012, during their attempts to stage unauthorised meetings on Triumfalnaya square in Moscow and in other cities in Russia.<sup>154</sup>

On 31 October 2012, the Strategy 31 protest in Moscow and St. Petersburg resulted in numerous arrests followed by brief periods of police detention and fines.. On 16 October, Other Russia had submitted a request to the authorities for approval (*soglasovaniye*) of the Strategy 31 demonstrations that were planned in several cities across Russia for end October. On 18 October, Eduard Limonov, the leader of Other Russia, declared to the media that the Moscow authorities had refused to grant approval because he had more than two prior convictions for violations of the rules on public gatherings and those sentences had not expired. When the protesters attempted to stage a demonstration anyway, police started to arrest them. At least 12 persons were arrested before the event could even start. Those arrested included Limonov, who was convicted for violating the rules for organizing a public event and sentenced to an administrative fine in November 2012. On 31

December 2012 and 31 January 2013 a total of 22 and 26 supporters of Strategy 31 were arrested, following meetings denied prior authorisation.<sup>155</sup>

As already noted earlier in the international legal standards section, the banning of persons who have prior unserved convictions for violations of regulations governing assemblies from organizing any future assemblies does not meet the proportionality and necessity test.

## REGIONAL PROTESTS

Over the course of the last year, authorities in several regions outside Moscow have shown a similar tendency to limit protests, irrespective of peaceful intent. Below is a list of incidents representing just some of the events that have been banned or dispersed by authorities, highlighting once again the deficiencies in the regulation of freedom of assembly flowing from the restrictive amendments to the Law on meetings introduced in June 2012.

On 12 June 2012, protesters took to the streets in different parts of the country, but Astrakhan and Kemerovo regions became the first ones where the amended law was applied to prosecute alleged violations of rules on assemblies.<sup>156</sup> That day, police in the Kemerovo region arrested three residents of the city, who were on their way to a meeting and accused them of organizing an unauthorized mass rally. Two of them earlier had earlier been in contact through social media and agreed to go to a demonstration together - this turned out to be sufficient for police to arrest and bring charges against them.<sup>157</sup> Two of them were carrying white balloons, while the third was wearing a white ribbon – a symbol of the protest movement against electoral fraud - with the inscription “For fair elections! Down with the power of swindlers and thieves!”.<sup>158</sup> The white ribbon was reportedly sent for expert analysis as potentially extremist and one of the protesters was called to the police anti-extremism department for questioning.

In another city, Astrakhan, the local leader of Spravedlivaya Rossiya (Just Russia), Oleg Shein, was detained together with three other activists, also for participation in an unauthorized rally, as they were walking along the river bank. Oleg Shein maintains that they were not carrying any placards or posters, shouted no slogans and did nothing that might in any way constitute a public event.<sup>159</sup> Earlier, he had applied for approval of a public event on this date, but the city authorities had refused without suggesting alternatives, as required by national law.<sup>160</sup>

On 16 September 2012, police in Rostov-upon-Don detained three opposition activists and one person, who were accompanying them for attempting to organize an unauthorized opposition protest in the city centre. Administrative charges were brought for the violation of procedures for public gatherings.<sup>161</sup> All of them were sentenced to administrative fines. Two of them were pensioners and for one the amount of the fine was almost four times higher than her monthly pension and for the other – more than twice his pension.<sup>162</sup> An attempt to appeal against the sentence by one of them was unsuccessful, and the decision became final in late November 2012.<sup>163</sup>

On 15 December 2012 a rally and a meeting were organized in Chelyabinsk, as part of the “March of the Millions” opposition event that was organized in different parts of the country.<sup>164</sup> The protest was approved by authorities, but at the end of the meeting, five protesters were arrested. On 30 January 2013, a court in Chelyabinsk sentenced these five protesters to administrative fines of 10,000 Russian roubles each for wearing scarves and hoods. The authorities charged them with violating the law on meetings, prohibiting protesters from covering their faces. Explanations that the protesters were protecting themselves from very cold weather conditions that day, supported by meteorological data, were not accepted by the court.<sup>165</sup>



## PRO-GOVERNMENT DEMONSTRATIONS

Public gatherings planned by President Putin's Yedinaya Rossiya party very rarely appear to encounter problems obtaining approval for rallies and demonstrations. This has been true even in respect of rallies and meetings held in close proximity to government buildings and other central locations, where opposition groups have not been granted permission to rally. Amnesty International has identified only two incidents where administrative proceedings were initiated with respect to meetings of supporters of Yedinaya Rossiya. In one instance, on 4 February 2012, one of the organizers of a Yedinaya Rossiya meeting in Moscow was fined for exceeding the announced number of participants.<sup>166</sup> Also, in October 2012, in the city of Aramile, near Yekaterinburg, the police dispersed a protest against the results of elections in the district, for lack of prior approval from the local authorities.<sup>167</sup> The organizers quoted the lack of time and the prescribed 10 days of advance notice for public meetings as the main reason behind lack of prior approval of the protest.<sup>168</sup>

## NON-POLITICAL PROTESTS

The restrictions on spontaneous (unauthorized) protests and meetings have not been limited to political gatherings and actions. Over the past year, they have also been used against peaceful flashmobs and artistic performances, which in the past had not triggered police interventions. Thus in Moscow, on 7 July 2012, the police detained several participants of a "Monstration" action, a form of mock political action, with participants carrying absurd placards such as "Let's replace English with Japanese", "We need another weather", "LSD, people, order".<sup>169</sup> Earlier the local authorities had refused to approve this action, even though in previous years similar actions had not breached public order and did not present a danger to public health or morals. The authorities also failed to respond to suggestions by the organizers for alternative routes. The police prevented the participants from holding the event, and detained several persons for attempting to hold placards and take photos. They also detained the organizer of the event.

Since the introduction of amendments in the Federal Law on assemblies, at least three peaceful flashmobs were dispersed by police in St. Petersburg, with their organizers being arrested and either sentenced to hefty fines for administrative offences introduced in the June 2012 Law amending the Federal law on assemblies or facing charges that may result in similar fines, when the cases come to court.

On 10 June 2012, around 200 people gathered on Mars field in the city centre to have a pillow-fight.<sup>170</sup> Identical events that were organized in the city in previous years provoked no reaction, but this time police arrived and dispersed the crowd. They also detained seven persons, who were informed that they had violated the law on mass meetings.<sup>171</sup> This was due to the introduction in the Code Administrative of Offences of responsibility for organizing a new form of mass gathering – "simultaneous mass presence or movements of citizens" resulting in violations of public order. On 5 September 2012 five of the participants were sentenced to administrative fines: four to 10,000 Russian roubles (approximately US\$ 320) and one – to 15,000 roubles (approximately US\$ 480).<sup>172</sup> In late October and early December 2012 the decision was upheld by the second instance court with respect to three of them and at the time of writing their lawyers were planning to apply for supervisory review ("nadzor") of the cases.<sup>173</sup>

On 7 January 2013, St. Petersburg's police dispersed participants of another flashmob: university and school students, who gathered on Mars field for a snow-ball fight.<sup>174</sup> The event was interpreted by police as a "mass presence or movement of persons" that since June 2012 falls within the ambit of the law on assemblies and, according to the city police, required prior approval by authorities. The organizers were reported as claiming they had unsuccessfully tried to obtain the approval for an event for three months. An identical event was organized in the city on 13 January. This time the authorities also refused to grant approval,<sup>175</sup> however during the event, the police did not intervene. Finally, on 2 February the same event was organized on Mars field with the permission of the local authorities.<sup>176</sup>

On 3 March 2013 around 300 persons gathered near the Saint Petersburg's Gallery mall to organize a flashmob in the form of a popular Harlem Shake dance session.<sup>177</sup> The police again detained the organizer, a minor, but did not initially inform him of the reason for his arrest. He was released after the police completed the paperwork detailing the alleged violation – the organization of unauthorized public meeting. The case had not yet been heard by the time of writing.<sup>178</sup>

On 9 July 2012, police in Barnaul region dispersed an ecological picket which had been approved by authorities. The action was called to protest against the cutting of rare species of trees and planned fossil fuel production in the Zalesk reserve. The formal grounds for dispersing the actions was the presence of one flag calling for fair elections, since it was not correlating to the stated aim of the action. The organizer's attempts to explain that the call for fair election is an indication of their belonging to the "League of voters" movement were to no avail.<sup>179</sup>

The newly amended Federal law on assemblies has also been used as a basis for intervention with religious worship, in potential further violation of the freedom to manifest one's religion and beliefs. For example, in Vladivostok, on 18 July 2012, the local authorities issued a warning to the local Muslim community for failing to obtain an approval for a religious service and prayer on the streets, in alleged violation of the law on meeting. Similarly, on 10 September 2012 the police arrested the pastor of a demolished Evangelic church in Novokosino district of Moscow city. According to news reports, the pastor was conducting a religious service that the police considered to be an unauthorized meeting.<sup>180</sup> A similar incident took place in Maikop (in the Republic of Adigeys), where on 28 August 2012 a priest of the Evangelical Christian Centre "Vozrozhdeniye" (Renaissance) was sentenced to an administrative fine of 10,000 roubles for violation of the rules related to public assemblies.<sup>181</sup> On 10 October 2012 this decision was quashed by the second instance court that decided to close the administrative case, and all charges against the priest were lifted.<sup>182</sup> The Russian Constitutional Court on 5 December 2012, clarified the applicable legislation in relation to freedom of conscience and belief and explained that the law on assemblies should not be applied in these circumstances.<sup>183</sup>

In early October 2012, the Moscow authorities initially refused to grant approval for a meeting in the city centre commemorating the murder of prominent journalist and activist, Anna Politkovskaya. Authorities referred to other events taking place the same day and suggested an alternative location further away from the city centre.<sup>184</sup> Amnesty International was told by the organizers that it was only after media attention to this issue that the authorities reversed their decision and granted approval.<sup>185</sup>

On 10 November 2012, two students standing in one-person pickets near the building of the Caspian branch of the Sea University in Astrakhan in protest against the closure of this educational institution were arrested for violation of the federal rules related to organization of public meetings. Unlike other forms of assembly, the one-person pickets do not require prior approval of the authorities, provided that the minimum distance between pickets is maintained. The issue before the court was whether the distance and other conditions under which the peaceful protest of the two students standing on different sides of the building was held transformed the two one-person pickets into a 'public meeting' requiring prior approval. The issue is additionally complicated by the fact that the regional law regulating the minimum distance between the one-person pickets was not adopted at the time.<sup>186</sup> Regardless, however, of these fine legal distinctions, the fact that such a small and ostensibly innocuous protest should have been stopped at all, is itself indicative of the attitude of authorities towards the freedom of assembly in Russia.

A further indication of the entitlement authorities have abrogated to allow and refuse peaceful protest is provided by the refusal, in early December 2012, of approval by the Moscow authorities for a picket that a group of journalists was planning to hold in front of the Belarusian embassy in support of colleagues in Belarus. City officials quoted the UN Charter and the principle of sovereignty and non-interference with domestic affairs

of member states as a justification for not allowing the picket, though these general principles of international law quite obviously apply only to inter-state relations. Moreover, the authorities had not interfered with protests outside the US, Estonian, and Latvian embassies a couple of months earlier organized by the youth branch of the ruling party and other groups supporting the official line of the Russian authorities.<sup>187</sup>

On 10 December 2012, a group of Tuvinian youth<sup>188</sup> organized a flashmob in the city of Kyzyl dedicated to the “International Day of solidarity with Tibet” that is celebrated by Buddhists annually. The meeting was advertised through social networks. Around 20 young people, mostly minors, gathered peacefully in the centre of Kyzyl. They lit candles and held placards with the slogan “Save Tibet”. Similar actions were organized in Moscow and St. Petersburg and went peacefully without police interference. However, in Kyzyl, soon after the event started the young men were approached by police who informed them that the meeting was illegal, since the organizers had failed to request and obtain prior approval. All the participants of the meeting were detained and questioned. Five of them were charged with the administrative offence for organizing an unauthorized gathering. However, on 27 March 2013, all of them were acquitted.

On 23 December 2012, 60 persons were arrested for participating in an unauthorized meeting in St. Petersburg. The participants were protesting against what they considered to be a lack of an effective investigation into the death of a St. Petersburg’s resident.<sup>189</sup> Five of them were sentenced to three days of detention and a fine of 20,000 Russian roubles (approximately US\$640) as the organizers of the event, while 10 more got lesser fines as “ordinary participants”.<sup>190</sup>

## LGBT PRIDES AND PROTESTS AGAINST THE BILL BANNING “PROPAGANDA OF HOMOSEXUALITY”

In 2010, the ECtHR concluded that Russia had failed to uphold the right to freedom of assembly, after the Moscow city authorities had repeatedly prevented Nikolai Alekseyev from organizing a Pride March in Moscow over a five-year period. The Court also found a violation of the right to non-discrimination on the basis of sexual orientation.<sup>191</sup> Despite this, municipal authorities continue to oppose Pride events, and other demonstrations by lesbian, gay, bi-sexual and transgender rights activists in violation of Russian and international human rights law.

On 22 January 2013, the ECtHR communicated a similar case concerning prohibitions on Pride marches in Saint Petersburg.<sup>192</sup> The applicants are gay right activists who had attempted to organize Pride marches in the city in 2010 and 2011 in order to raise the public awareness over the violations of the rights of LGBT persons and “the need to introduce a statutory prohibition of discrimination on the grounds of sexual orientation or gender identity”.<sup>193</sup> They complained of a violation of their right to freedom of assembly because the city authorities repeatedly refused to approve their marches, meetings and pickets, with reference to concerns over road safety, disruption to traffic, the potential hindering of other citizens’ access to their homes or shops or because they were coinciding with other public events. In violation of domestic law, the authorities failed to suggest alternative venues in June 2010 and in June 2011, the authorities initially proposed an alternative location, but once this proposal was accepted by the applicant, withdrew its approval, in another instance the alternative suggested by the authorities was unsuitable for the aims of the assembly, because it was located in a remote and sparsely populated village surrounded by a forest, 20 kilometres from the city centre. The applicants nevertheless participated in a Gay Pride march in the centre of St Petersburg in June 2011, for which they were arrested and charged with the administrative offence of breaching the established procedure for the conduct of public assemblies. The applicants also complained over the lack of effective remedy, since the judicial review did not allow them to obtain a final decision prior to the date of the planned events. Lastly, applicants complained of the discrimination on account of sexual orientation, because the refusals to approve their assemblies were motivated by the authorities’ discriminatory attitude towards homosexuals.<sup>194</sup>

In 2012, the authorities in Moscow continued to use the Federal Law on assemblies to refuse to grant approval for gay pride marches, as has been their practice from May 2006. The situation has not improved since the return of Vladimir Putin as President in May 2012, indeed, has deteriorated following the adoption of regional laws and the introduction of a federal bill outlawing “propaganda of homosexuality”.

In 2012, the requests for the approval of the prides and demonstrations were submitted for 26 and 27 May 2012. The Moscow authorities did not approve any of the proposed events, even though LGBT activists were willing to organize an event in any place in Moscow, including the outskirts of the city. Initially they indicated two locations in the city centre, but also expressed a willingness to change location and stated that during the event there would be no demonstration of nudity or indecency. Nevertheless, the city authorities rejected the application - in blatant violation of international human rights law standards on freedom of expression - with reference to public opinion that allegedly considered events related to discussion of sexual relations in open and public spaces as a provocation, causing moral damage to children and teenagers that could accidentally witness the events, insulting religious and moral sentiments, as well as humiliating human dignity. The authorities also reminded them of the liability for violation of the rules for public events and assemblies.<sup>195</sup>

Following this notification, a small group of Lesbian, Gay, Bisexual and Transgender (LGBT) activists gathered outside the Moscow City Court and the Moscow mayor’s office on 27 May 2012, where they attempted to unfold rainbow flags and raise small pieces of paper calling for an end to homophobia. Almost immediately the gathering was dispersed by police, even though it was peaceful and did not present a risk to public order or national security, health or morals. Around 40 LGBT activists were arrested and later charged with organizing and/or participating in an unauthorised gathering. As with other gatherings examined in this report, the interference with the right of freedom of peaceful assembly by police did not meet the test of necessity and proportionality. At the same time, another group of people was allowed to gather for at least an hour in front of the Mayor’s office to protest against the Pride and shout homophobic slogans. Police did tell the counter-demonstrators that their protest was “unauthorized”, but only arrested those who attempted to physically attack LGBT activists.<sup>196</sup>

The LGBT activists attempted to challenge the local authorities’ decision in court, but the representative of the Moscow Mayor’s office stated in the court that the letter they sent in reply to the request was not a refusal, although she admitted that it was not an approval either. Nevertheless, the court sided with the city authorities in rejecting the activist’s application.<sup>197</sup>

In June 2012 LGBT community attempted to organize another awareness raising event, but in view of the previous negative experience they decided to expand the aim of the event to raising awareness on all forms of discrimination. The application for approval was submitted by a person not belonging to LGBT community and it contained advance agreement for alternative locations and times. The authorities granted approval for 2 June 2012 in a remote part of Moscow; but informally warned the organizers that the display of placards or posters in support of LGBT or rainbow flags would not be tolerated. Nevertheless, on the day of the event the police did not interfere with the event, despite the waving of a few rainbow flags and LGBT related slogans; nor did they detain any LGBT activists. Instead they detained two aggressive individuals who were shouting homophobic slogans and attempted to attack the demonstration. At the time of writing this, however, remains the only event of this kind.

In December 2012 and January 2013 LGBT activists attempted to hold peaceful protests against the adoption of a Federal bill banning “propaganda of homosexuality” in front of the State Duma in Moscow.<sup>198</sup> But due to the previous experience with rejection of approvals the activists decided not to hold a regular public event and organize a flashmobs instead.

On 19 December 2012, as the bill was due to go for its first reading, activists gathered in front of the Duma and started kissing. They were attacked by counter-protesters describing themselves as “Orthodox activists”, who started throwing eggs at them.<sup>199</sup> The police arrested activists from both groups and they spent two days in detention. However, the number of LGBT activists was disproportionately higher than those of homophobic activists, even though it was well documented by numerous journalists covering the event, that LGBT activists were the victims of the attack. Several activists were initially fined, though these were subsequently quashed on procedural grounds.

The hearing of the bill was postponed to 22 January, when LGBT activists attempted to organize another protest action in front of the Duma. However, this time the police was not present, despite repeated advance requests from LGBT activists warning the police of the presence of aggressive homophobic activists and risk of violence.<sup>200</sup> When violence did break out, several police officers guarding the entrance to the Duma declined to interfere. In the end, additional police arrived more than quarter of an hour after the LGBT activists were attacked, despite the proximity of the police station from the State Duma.<sup>201</sup> At least two LGBT activists were beaten and had their noses broken. The police detained the attackers. However despite numerous witness statements confirming the homophobic comments of the attackers prior, during and after the attack, one month later the injured party learned that the police closed the investigation only a week after the event. This decision was challenged in court, but a hearing had yet to be scheduled by the beginning of April 2013.

The next protest against the bill took place on 28 January 2013, however this time LGBT activists were supported by other activists, who prevented the violence from homophobic activists by enforcing a safe dividing line between the two groups. The police dispersed the meeting soon after, detaining exclusively LGBT activists and their supporters, even though they were acting non-violently.<sup>202</sup>

LGBT activists in St. Petersburg also sought to organize a protest against the Federal bill, on 19 December 2012, but all five of the requests they submitted to the city authorities were rejected with reference to the possibility that the protesters might obstruct the traffic, or snow clearing. The authorities also expressed the fear that the protests would provoke violence against the LGBT activists - referring to events in the city in May 2012, when a flashmob by gay-rights activists had been attacked by self-proclaimed “Orthodox Christian activists” and neo-Nazis. International human rights standards are clear that states are obliged to protect the human rights of all, including those advancing unpopular views. The local administration failed to suggest an alternative location for the meeting, thereby effectively banning the protest. On 7 March 2013, the city court ruled that the actions of the city administration were illegal.<sup>203</sup>

On 24 February 2013, the Administration of St. Petersburg again banned a meeting by LGBT activists seeking to protest against the same Federal bill. All of the 20 alternative routes proposed by the organizers were rejected by the authorities. In some instances the authorities made reference to other meetings taking place at the same location, although no information on such events was made available. There was also no assessment as to whether the two events could be held in parallel without interfering with each other. In other instances the authorities stated that the LGBT meeting would distract drivers and pedestrians, thus creating a hazard for traffic. Instead, the authorities proposed a location in a village of Novoselkin, on the outskirts of the city. The organizers noted that this option was unacceptable, since it would prevent them from reaching a meaningful audience rendering their protest pointless. The organizers of the meeting decided not to hold an unauthorized meeting and instead challenged the local administration’s actions in the court.<sup>204</sup> The outcome was still pending by the beginning of April 2013.

## 3. RESTRICTIONS TO FREEDOM OF ASSOCIATION

*Article 30 of the Constitution of the Russian Federation:*

*Everyone shall have the right to association, including the right to create trade unions for the protection of his or her interests. The freedom of activity of public association shall be guaranteed.*<sup>205</sup>

The right to freedom of association is enshrined in the 1966 International Covenant on Civil and Political Rights (ICCPR) and the 1949 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The right is also protected by the Russian Constitution. However, a number of laws adopted in the past year are putting the enjoyment of the right to freedom of association under threat.

### APPLICABLE INTERNATIONAL HUMAN RIGHTS LAW ON FREEDOM OF ASSOCIATION

The right to freedom of association is protected in the Russian constitution as well as in various human rights treaties.<sup>206</sup> As the ECtHR has noted, “where a civil society functions in a healthy manner, the participation of citizens in the democratic process is to a large extent achieved through belonging to associations in which they may integrate with each other and pursue common objectives collectively.”<sup>207</sup> For this reason, Article 9 of the European Convention on Human Rights requires that restrictions on the right to freedom of association must be prescribed by law and necessary, in a democratic society, for the protection of national security, public safety, health, morals or the rights of others. The ECtHR has been clear that “the exceptions to this right are to be construed strictly; only convincing and compelling reasons can justify restrictions on freedom of association; [and that] in their determination whether such a necessity, the States have only a limited margin of appreciation.”<sup>208</sup>

Likewise, the UN Human Rights Committee emphasizes that in order for the interference with freedom of association to be justified, “any restriction on this right must cumulatively meet the following conditions: (a) it must be provided by law; (b) may only be imposed for one of the purposes set out in paragraph 2; and (c) must be ‘necessary in a democratic society’ for achieving one of these purposes. The reference to the notion of “democratic society” indicates, in the Committee’s opinion, that the existence and operation of associations, including those which peacefully promote ideas not necessarily favourably received by the government or the majority of the population, is a cornerstone of a democratic society.”<sup>209</sup> The Committee has further noted that “the existence of any reasonable and objective justifications for limiting the right to freedom of association is not sufficient. The State party must further demonstrate that the prohibition of an association is necessary to avert a real and not only hypothetical danger to national security or democratic order, and that less intrusive measures would be insufficient to achieve the same purpose.”<sup>210</sup>

The UN Special Rapporteur on Freedom of Assembly and Association stressed that “the ability of associations to access funding and resources” is “another integral and vital part of the right to freedom of association” and that “without the ability to access funding, from sources local, regional or international, this right becomes void.” In view of this, he recommended that “any associations...should be allowed to function freely... in an enabling and safe environment”, they “should be free to determine their statutes, structure and activities and to make decisions without State interference”, they should also “enjoy the right to privacy” and “be able to access domestic and foreign funding and resources without prior authorization.”<sup>211</sup>

In view of concerns over the vague wording of domestic laws and bills that might hamper the freedom of association of certain groups in Russia, it is important to note that the ECtHR has emphasized, specifically with regard to Russia, that “one of the fundamental aspects of the rule of law is the principle of legal certainty.”<sup>212</sup> The Court further explained that when it comes to restrictions on such rights as the right to freedom of assembly and association and the right to freedom of expression, domestic law “should be accessible to the persons concerned and formulated with sufficient precision to enable them... to foresee ...the consequences which a given action may entail”.<sup>213</sup> Failure to meet those criteria may render the law and restrictions imposed thereunder illegitimate.

## NGOS AS “FOREIGN AGENTS”

On 21 July 2012, President Putin signed into force a law imposing an obligation for non-governmental organizations (NGOs) receiving overseas funding and involved in “political activities” to register as “foreign agents”.<sup>214</sup> Nowhere does Russian law clearly define what constitutes “political activities.” The law also requires foreign-funded NGOs to submit quarterly information about the purpose of their expenditure and the use of other assets; twice a year - a report of their activities and the persons composing its governing bodies; and annually to undergo a financial audit. The law also obliges NGOs to display the label “foreign agent” on their websites and publications. Failure to abide by this new regulation is punishable by fines of up to 300,000 roubles (approx. US\$9,600), suspension of activities of the NGO in question and a prison sentence of up to two years for its leadership. MP Aleksandr Sidyakin, who authored the bill, was quoted in the media as saying that “in Russia there is a whole network of non-governmental organizations whose paid activities raise suspicions about the aims of the client,” and that this law would force foreign-funded NGOs to reveal “the true nature of their activities” and promote the “national interests and sovereignty of Russia”.<sup>215</sup>

Due to the existing negative connotation of the “foreign agent” notion in the Russian language (closely associated with “spy”), the newly introduced requirements for NGOs receiving overseas funding to register as “foreign agents” not only puts additional administrative burdens on them, but more importantly, is clearly intended to tar them in the eyes of the public, while providing additional pretexts for inspections and, possibly, sanctions.

On the day of entry into force of this law, on 21 November 2012, the premises of several human rights groups were vandalized.<sup>216</sup> Inscriptions implying the “foreign agents” status appeared on the buildings of Russia’s prominent human rights NGOs Memorial, the Public Movement For Human Rights and the Moscow Helsinki Group.<sup>217</sup>

The majority of leading Russian human rights NGOs have declared their intention not to register as “foreign agents”. The NGO Schit i Mech (Shield and Sword), however, decided to register to test and highlight the numerous deficiencies of the law. One issue of concern that they wanted to highlight is that the law does not provide for a process of de-registration, and thus once an organization is registered as a foreign agent, there is no set procedure for de-registering, for instance on account of the discontinuation of overseas funding or change in the activities of the organization.<sup>218</sup> On 22 January 2013, the Ministry of Justice announced on its website<sup>219</sup> that the NGO Schit i Mech had been denied registration. The Ministry explained that the “political activities” indicated in the NGO’s registration application, related to the protection of human rights and the prevention of torture are compliant with “principles of protection of human rights in the Russian Federation, enshrined in [its] Constitution... and implemented in all spheres of Russian law” and “are not aimed at changing the State policies”<sup>220</sup>

However, when addressing the State Duma on 16 January 2013, the Russian Minister of Justice, Alexander Kononov, admitted that there was a lack of certainty as to how the law ought to be applied and that a body of

case-law was required to enable the Ministry to apply the law more precisely and correctly.<sup>221</sup> He noted that the notion of “political activities” was indeed unclear and that “debates and discussions would go all the way up to the Constitutional Court”.<sup>222</sup>

On 6 February, an application to the European Court of Human Rights (ECtHR) was lodged on behalf of a group of eleven leading Russian human rights NGOs to contest this law. The NGOs complained of the violation of their rights to freedom of association and expression and argued that the law unnecessarily and unjustifiably puts them at risk of serious sanctions, including criminal prosecutions of individuals and the possible suspension of their organizations.<sup>223</sup>

On 14 February 2013, addressing the annual convent of the Federal Security Bureau (FSB), President Vladimir Putin announced that “the constitutional right... to freedom of speech is inviolable”, however he emphasized that “nobody has the right to speak on behalf of the Russian people, especially not the entities that are governed and financed from abroad and hence inevitably serving foreign interests”. He referred to laws “concerning NGO operations in Russia, including related to foreign funding” and stated that “these laws, undoubtedly, should be enforced”.<sup>224</sup> His words have since been translated into action.<sup>225</sup>

Towards the end of February the Russian authorities started a wave of inspections of the offices of NGOs, foreign cultural organizations and human rights groups. At the time of writing more than 200 NGOs were affected by inspections in 50 regions of the country,<sup>226</sup> including representations of foreign NGOs, like Amnesty International and Human Rights Watch, but also some of the country eldest and most prominent human rights groups, like Moscow Helsinki Committee and Memorial. The General Prosecutor's office stated that they intend to inspect 700 NGOs receiving foreign funding.<sup>227</sup>

In most cases, the inspection teams consisted of representatives of the local prosecutor's office, departments of justice and the tax authorities. In some instances the inspectors presented the NGOs with documents referring to the officials' authority to check for “compliance with the laws of the Russian Federation” in general. However, during inspection in Memorial, the officials refused to explain the reasons behind it. Memorial submitted a formal complaint requesting the official explanation of the inspections. It should be noted that absolute majority of the NGOs inspected are already subject to regular audit and submit the documents that were requested by inspectors to relevant authorities on an annual basis, in accordance with Russian laws.

The General Prosecutor's office later stated that the checks were based on the need to identify ultra-right and radical religious organizations engaged with extremist activities,<sup>228</sup> however the Ministry of Justice explained that the checks were based on the need to identify “foreign agents”.<sup>229</sup> One of the NGOs managed to obtain a copy of instructions to local prosecutors' offices for conducting inspections specifically urging them to analyze sources of foreign funding for the groups and their involvement in political activities, as well as any evidence of “extremism”. But, in some regions the composition of the inspecting group was more diverse and included health, fire fighting departments and sanitary inspections.

In April, the General Prosecutor explained to the Council of Europe Commissioner on Human Rights, that the “foreign agents” law was behind the inspections; however, he denied that the inspections were ad hoc, stating that they were planned and that “nobody bans the activities of the NGOs”, and that NGOs were only required to provide information “on the funds it operates on”.<sup>230</sup> As Oleg Orlov from “Memorial” has pointed out, however, NGOs are already required to publish and disclose information about the sources of their funding, including overseas funding, on a regular basis and this information is submitted to the competent government authorities and available in public domain.<sup>231</sup>



On 28 March, President Putin stated that in his opinion the inspections of NGOs were intended to verify whether their operations correspond with their declared aims and compliant with Russian laws banning foreign funding.<sup>232</sup> He also called on the Russian Ombudsman to control the situation in order to avoid excesses.<sup>233</sup>

For the most part, NGOs complied with requests of inspectors. However, three cases relating to the commission of administrative offences were initiated against Lev Ponomarev, as the head of three human rights groups (“For Human Rights” movement, interregional human rights public organization Goriachaya Liniya (Hotline) and a Fund for protection of detainees rights), which refused to provide copies of the NGO’s documents to the inspection. Ponomarev explained the refusal on the grounds that that officials failed to explain the reasons for the inspection, either in writing or verbally and, moreover, that all three NGOs had recently undergone a complete audit by the Ministry of Justice and the latter Ministry had all the documents for these organizations.<sup>234</sup>

The NGO Schit and Mech also refused to provide information to inspectors,<sup>235</sup> (albeit not during their visit, but in response to a written request) explaining that they consider the actions of the prosecutor’s office illegal, while documents of the NGOs relating to its activities were already in the possession of the Ministry of Justice, while information on its funding – with tax authorities.<sup>236</sup> On 5 April the NGO sent a complaint to the General Prosecutor’s Office inquiring about the legality of the actions of the Ministry of Justice, which had earlier denied the NGO registration as “foreign agents”.<sup>237</sup>

On 8 April 2013, NGO Human Rights Centre Memorial lodged a formal complaint to court against the actions of the prosecutors. In their complaint they alleged violation of their right to freedom of association and challenged the legality of the prosecutors’ actions. The NGO complained that the inspection had interrupted its operations for four days and obstructed their legitimate work. They also challenged as ultra vires the actions of the officials, arguing that the instruction to conduct inspections issued by the General Prosecutor’s Office were not in line with the grounds provided by the Federal Law “On the Procuracy” governing their competence in this regard. The NGOs also challenged the officials’ failure to explain the reasons for inspection and its scope, as well as the failure to notify NGO staff of their rights and procedural safeguards.<sup>238</sup>

Regardless of the legality, or otherwise, of the recent wave of NGO inspections under Russian law, there is no question that the “foreign agents” requirement imposes a restriction on associations – a significant one, with serious implications for their work – that is neither necessary for or proportionate to any legitimate aim under international human rights law. The requirement consequently violates the right to freedom of association of organizations in receipt of foreign funding carrying out lawful activities – which are, moreover, in the vast majority of cases of significant public benefit.

#### CASE OF THE NGO GOLOS

On 9 April 2013, the Ministry of Justice announced that it was initiating proceedings against the Association of Non-Profit Organizations In Defence of Voters’ Rights Golos (Voice) and its executive director, Lilia Shibanova, for its failure to register as “foreign agent”.<sup>239</sup> The Ministry alleges that the NGO is in receipt of foreign funding and is conducting “political activities” in Russia. In relation to receipt of foreign funding the Ministry referred to the information in the possession of the Federal Service for Financial Monitoring. The Ministry of Justice considered the project the NGO has been running since 2008 aimed at increasing the transparency of the electoral process in Russia through discussion and advocating a unified Electoral Code to constitute “political activity”. The Ministry stated that as the NGO’s advocacy in favour of the Electoral Code focuses on raising awareness on the need for its adoption, the NGO seeks to influence public opinion the decisions of government bodies, all of which would constitute “political activity”.

Golos rejects both the allegations of involvement in political activities<sup>240</sup> and the receipt of foreign funding and explained that the only instance referred to by the Federal Service for Financial Monitoring as a proof of foreign funding was the award in October 2012 of prize money for winning the Andrei Sakharov Freedom Award 2012 (awarded by the Norwegian Helsinki Committee) amounting to approximately 7700 Euros.<sup>241</sup> However, Golos, being fully aware of the risks after the adoption of the Foreign Agents law, was cautious not to receive any foreign funding and decided to decline the monetary part of the award.<sup>242</sup> The money only reached the transit account in the bank and has not been credited to Golos' account. They also noted that they received no warning or requests from the Ministry of Justice for information or clarification. On 10 April 2013, the Ministry of Justice referred the administrative case against Golos to the court.<sup>243</sup>

It is not surprising that Golos should be the first NGO to face legal proceedings for alleged breach of the "foreign agents" law. It played a prominent role in organizing election monitoring and reporting allegations of electoral fraud. At the end of February 2013, a Duma representative from the Russian Liberal Democratic Party (LDPR) sent formal requests to the General Prosecutor's Office and the Russian Investigations Committee to conduct checks on the activities of the Golos to establish whether it had violated the law on NGOs and whether it should be registered as a "foreign agent".<sup>244</sup> The head of the association has described this move as part of a broader campaign to secure the closure of the organization.<sup>245</sup>

Council of Europe Commissioner for Human Rights, Nils Muižnieks, at the end of his ten day visit to Russia in early March 2013, expressed concerns about the 2012 Law on Non-Commercial Organizations Performing the Function of Foreign Agents, which as he noted "contains a very broad and vague definition of the notion of political activity". He emphasized that "non-governmental organizations have an invaluable role in defending human rights and need to function in an environment conducive to their work" and noted that "the recent inspections and their further consequences, along with official rhetoric stigmatising NGO work, have generated serious concerns."<sup>246</sup>

Earlier the OSCE Representative on Freedom of the Media, Dunja Mijatović, voiced her specific concern over the inspections of media NGOs and called on the authorities "to end these exceptional measures, and allow the NGOs to continue their essential work for the benefit of... the whole society."<sup>247</sup>

Amnesty International believes that the "foreign agents" law constitutes a restriction on the right to freedom of association which serves no legitimate purpose under international human rights law. It should be therefore be repealed.

## THE "ANTI-MAGNITSKY LAW"

The "foreign agents" law is not the only legislative amendment to have been introduced over the last year to restrict foreign involvement in Russian civil society. On 28 December 2012, President Putin signed the Federal Law of the Russian Federation no. 272-FZ of 2012-12-28 "On Sanctions for Individuals Violating Fundamental Human Rights and Freedoms of the Citizens of the Russian Federation" (also informally called "Dima Yakovlev Law"<sup>248</sup> or "Anti-Magnitsky Law").

The law was initially developed as a response to the adoption in the US passing the Magnitsky Act. The US Magnitsky Act prohibits Russian officials alleged to be responsible for the persecution and death in custody in 2009 of lawyer Sergei Magnitsky from entering the United States and using the US banking system. Magnitsky had reportedly revealed a multi-billion corruption scheme by Russian officials.

In its initial draft, the Anti-Magnitsky bill imposed similar restrictions to the US law – on travel and freezing of assets in Russia, for US officials responsible for serious human rights violations. However, by the second reading, the bill was expanded to include a ban on the adoption of Russian children by US citizens and additional provisions relating to NGOs. The law ultimately adopted enables the Ministry of Justice to arbitrarily

stop activities and freeze the assets of NGOs believed to be involved in “political activities” (undefined), which receive funding from US citizens or organizations or conduct activities threatening the interests of the Russian Federation. The bill also contains an explicitly discriminatory provision banning dual US and Russian nationals from being leader or a member of Russian, international or foreign NGOs participating in “political activities” in Russia. Organizations found to violate these provisions risk closure and the seizing of their assets. The vague wording of this law is likely to have a chilling effect on human rights defenders and civil society and may serve as an additional ‘catch all’ instrument to clamp down on government critics and people who expose its abuses.<sup>249</sup>

The consequences of this move are not hypothetical however. Already, in mid-September 2012, it was announced that the United States Agency for International Development (USAID) will close its offices in Russia following an order from the authorities to cease operations.<sup>250</sup> All of the agency’s programs in Russia had been wound up as of 1 October 2012. On 23 November, the National Democratic Institute (NDI), a US based non-profit organization that promotes democratic development, moved its senior staff from Russia to Lithuania on account of the unpredictable and increasingly hostile climate for NGO workers in Russia. On 14 December 2012, the International Republican Institute – the US-funded pro-democracy group, was ordered to leave the country, since it was funded by USAID;<sup>251</sup> the organization decided to pull its staff out of Russia for the same reason as NDI. On 30 October 2012 the Ya Vprave (I have a right) project funded by USAID stopped its operations providing legal aid citing the seizure of funding from USAID as the main reason behind the cessation of its activities.<sup>252</sup>

## 4. RESTRICTIONS ON FREEDOM OF EXPRESSION

*Article 29 of the Constitution of the Russian Federation:<sup>253</sup>*

- 1. Everyone shall be guaranteed the freedom of ideas and speech.*
- 2. The propaganda or agitation instigating social, racial, national or religious hatred and strife shall not be allowed. The propaganda of social, racial, national, religious or linguistic supremacy shall be banned.*
- 3. No one may be forced to express his views and convictions or to reject them.*
- 4. Everyone shall have the right to freely look for, receive, transmit, produce and distribute information by any legal way. The list of data comprising state secrets shall be determined by a federal law.*
- 5. The freedom of mass communication shall be guaranteed. Censorship shall be banned.*

The right to freedom of expression is enshrined in the major human rights treaties, to which Russia is party, including the 1966 International Covenant on Civil and Political Rights (ICCPR) and the 1949 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The right is also protected by the Russian Constitution. A series of legislative changes and proposals brought in over the last year risk violating this right and are indicative of the increasingly suffocating attitude that the Russian authorities are taking to freedom of expression.

## APPLICABLE INTERNATIONAL HUMAN RIGHTS STANDARDS ON FREEDOM OF EXPRESSION

As noted above, the right to freedom of expression is protected by various provisions under international human rights law.<sup>254</sup> The UN Human Rights Committee has noted that freedom of expression is an indispensable condition for the full development of the person and is essential for any society.<sup>255</sup> It applies to information and ideas of all kinds including those that may be deeply offensive.<sup>256</sup> It is key to enabling individuals to exercise their other human rights and has been described as essential for any society and an indispensable condition for the full development of the person.<sup>257</sup>

The exercise of the right to freedom of expression may be subject to certain restrictions but only if they meet all elements of a stringent three-part test: 1) they must be provided by law (which must be formulated with sufficient precision to enable an individual to regulate their conduct accordingly); 2) demonstrably necessary and proportionate (the least restrictive measure to achieve the specified purpose); and 3) for the purpose of protecting specified public interests (national security, public order, or public health or morals) or the rights or reputations of others. Restrictions within this framework must never jeopardize the right to freedom of expression itself.<sup>258</sup> Furthermore, there must be procedural safeguards against abusive imposition of restrictions, including provision for appeal to an independent body with some form of judicial review.

Restrictions which do not comply with this test violate freedom of expression even where no penalty results. And they violate not only the right to freedom of expression of those people on whom the restriction is imposed, but also the right of others to receive information and ideas.

Restrictions must also not be discriminatory in their intention or effect, as discrimination is universally banned under international law.<sup>259</sup> Any restrictions that prevent people from seeking, receiving or imparting information key to exercising other human rights (e.g. right to health or sexual or reproductive rights) would likely be a violation of the right to freedom of expression, as well as of those other rights.

## NEW LEGISLATION THREATENING THE ENJOYMENT OF THE RIGHT TO FREEDOM OF EXPRESSION

### THE TREASON LAW

On 14 November 2012, the Federal Law concerning Treason and Espionage of 23 October 2012<sup>260</sup> entered into force. The law is extremely broad in its scope and wording. Treason is defined in the law as the “transfer of classified information to the foreign state, international or overseas organization or their representatives by Russian national, who was entrusted with such information or gained knowledge of it through his/her service, work or study and in other cases provided by the Russian law, or the provision of financial, material and technical, consultative or any other assistance to foreign states, international or overseas organizations or their representatives that is aimed against the security of the Russian Federation.”<sup>261</sup> This broad definition opens the door for the arbitrary interpretation and application of the law.

The Law potentially imposes harsh new restrictions on a wide range of activities on Russian human rights defenders and civil society activists cooperating with international organizations. As the definition of the “security of the Russian Federation” is vague, the new could be used to criminalize assistance to a foreign state or international organization (like the UN the Council of Europe or the OSCE) or other overseas organization (including potentially, NGOs like Amnesty International), that could be used to generate criticism, or undermine Russia’s position, in international fora. In the absence of a definitive interpretation of this law, it risks becoming yet another tool that could be arbitrarily used against a dissent and for suppression of the civil society and freedom of expression. The risk is that Russian civil society will be sucked into isolation – not behind an iron curtain, but a legal one.<sup>262</sup> In light of the regular discourse from senior officials – including President Putin himself – consistently alleging that Russian human rights NGOs are serving the nefarious interests of foreign governments, this risk is real, not speculative.

## THE RE-CRIMINALIZATION OF DEFAMATION

On 30 July 2012, President Putin signed a law re-criminalizing defamation.<sup>263</sup> This move came only six months after defamation was decriminalized under President Medvedev. The threat posed by this provision to the freedom of expression in Russia was well demonstrated by the drawn out case against Oleg Orlov, the Chairman of the Executive Committee of the Human Rights Centre Memorial. The criminal case against him on charges of defamation was initiated in 2009 on the complaint by the President of Chechnya, Ramzan Kadyrov. The complaint was based on a statement by Orlov, where he evoked the responsibility of the Chechen President after the killing in Grozny of Natalia Estemirova, who has been working with Memorial since 2000.<sup>264</sup> Orlov was acquitted by the first instance court and the decriminalization of defamation in 2011 resulted in a formal discharge of the case by an appeal court. As was noted by the observers,<sup>265</sup> the case that lasted two and a half years, compelled Memorial to use its resources to defend itself before courts of law, instead of dedicating it to their human rights work.<sup>266</sup>

In addition to the possibility of criminal prosecution, civil lawsuits on defamation charges are being used by public officials to generate a chilling effect on freedom of expression, despite extensive international jurisprudence reiterating that the standard of criticism of public figures should be quite different than that applicable to ordinary citizens.<sup>267</sup>

On 4 June 2012, for instance, a Moscow court ordered blogger and opposition activist Alexey Navalny to pay a member of the Putin's Yedinaya Rossiya party 30,000 roubles (approximately US\$990) for defamation, in relation to Navalny's public description of Yedinaya Rossiya as a party of "thieves and swindlers".<sup>268</sup> On 10 October 2012 an appeal court upheld the decision. One of Yedinaya Rossiya's MPs suggested in media interviews that every member of the party should lodge a similar lawsuit against Navalny, such that, were they all to be awarded the same damages, they would face a bill of up to 60 billion roubles (nearly US\$2 billion). The MP referred to such potential lawsuits as a good educational opportunity for the blogger and other activists, including some of his fellow MPs, comparing it to rubbing a kitten's nose in its excrement.<sup>269</sup>

Although the position of one MP might not be representative of that of the ruling party as the whole or of the authorities of the Russian Federation, these cases serve as an illustration of how allegations of defamation, through civil or criminal proceedings, can be used to stifle dissenting and opposing views.

On 2 October 2012, the Russian Minister of Interior passed an order 900 "On organization of protection of honour and dignity, as well as business reputation within the Ministry of Interior system". It contained instruction to the respective heads of police departments to monitor media reports and internet publications concerning police and to seek legal protection against untrue information or information otherwise harming the rights of police officers. Hence, this order will effectively provide a higher level of legal protection of the reputations of police officers than of other people. In this regard Amnesty International expressed concern that public officials should not receive state assistance or support to bring civil actions for defamation, over and above any legal aid or other ordinary assistance they may qualify for.

International human rights standards put a high value on uninhibited expression in the context of "public debate concerning public figures in the political domain and public institutions."<sup>270</sup> The Human Rights Committee has been clear that the "mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties."<sup>271</sup> The use of defamation laws with the purpose or effect of inhibiting legitimate criticism of government or public officials violates the right to freedom of expression. Amnesty International opposes laws criminalizing defamation, whether of public figures or private individuals, which should be treated as a matter for civil litigation.

## THE DRAFT "BLASPHEMY" LAW

On 26 September 2012, a new bill was introduced to the State Duma, "On amendments to the Criminal Code of the Russian Federation and certain legal acts for countering insult to religious beliefs and feelings, abomination of religious and sacred objects (objects of pilgrimage), place of worship and religious rites".<sup>272</sup> The protection under this bill is extended only to "religious communities, which constitute part of the historic legacy of the peoples of Russia". This notion is not defined in the Russian legislation, but the term is used in the preamble of the 1997 Russian law "On freedom of conscience and religious associations", where it appears to extend to Christianity, Islam, Buddhism and Judaism<sup>273</sup> and other religions, but does not contain any explanation whether this is understood as including all denominations of these religions and what those "other" religions are.

Originally, the drafters of the bill intended to introduce a new article in the Russian Criminal Code that would criminalise such actions as "public insult or humiliation of religious services or other religious rites and ceremonies", "public insult of religious feelings and beliefs" and "abomination of sacred objects or places of worship". However, on 15 April 2013, already after the bill went through its first reading in the State Duma, MP Yaroslav Nilov, the Head of the Committee of Duma on public and religious associations, announced that they decided to abandon this idea following a wave of criticism.<sup>274</sup> Instead they intend to develop the already existing Article 148 (interference with freedom of conscience and religion) to include "public actions expressing explicit disrespect to society and committed with an aim of insulting the religious sentiments of the believers".

The bill introduces harsh punishments - up to one year of imprisonment or up to 1 year of compulsory labour or 240 hours of mandatory public service or a fine of up to 300,000 roubles (approx. US\$9,600) - for "public actions expressing explicit disrespect to society and committed with an aim of insulting the religious sentiments of believers" and up to three years of imprisonment or three years of compulsory labour or 480 hours of mandatory public service, or a fine of up to 500,000 roubles (approx. US\$16,000) if the offence is aggravated by its commission in "places designated for religious services, religious rites and ceremonies".

The bill is commonly recognized as a reaction to the Pussy Riot performance in the Church of the Christ the Saviour in Moscow in February 2012.<sup>275</sup>

The bill has raised heated debate in Russian society.<sup>276</sup> In December 2012, President Putin ordered to conduct a thorough study of the bill, with participation of members of the Federal Assembly (Upper Chamber of the Russian Parliament), the Russian Public Chamber, experts and "interested NGOs" thus putting it on hold till spring 2013.<sup>277</sup> However, on 9 April 2013, the controversial bill passed the first reading in the State Duma, despite the criticism of the bill by some ruling party members, the Presidential Human Rights Council and the Public Chamber.<sup>278</sup>

Quite apart from the fact that the bill discriminates in arbitrary manner between traditional and non-traditional religions, it offers a protection against criticism and ridicule that no religion ought to enjoy. The UN Human Rights Committee has been clear that prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the International Covenant on Civil and Political Rights, unless they constitute incitement to discrimination, hostility or violence (hate speech).<sup>279</sup> Even for laws aimed at addressing hate speech the CCPR emphasized that it would be "impermissible to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers", nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.<sup>280</sup>

## THE BANNING OF “PROPAGANDA OF HOMOSEXUALITY”

On 28 March 2012, a bill proposing the banning of “propaganda of homosexuality among minors” was introduced to the State Duma (the Lower Chamber of the Russian Parliament). The bill follows the adoption of similar legislation in 10 regions between 2006 and 2012, with six more regions reported to be considering the introduction of such bills.

The bill before the State Duma does not contain a definition of “propaganda of homosexuality”. If adopted, the bill would make the “promotion of homosexuality among minors” an administrative offence in federal law. The maximum penalty foreseen in the bill is up to 5,000 roubles (approx. US\$ 165) for individuals, 50,000 roubles (US\$ 1,650) for public officials and 500,000 roubles (US\$ 16,500) for organizations.

At its first reading on 25 January 2013, the State Duma voted almost unanimously in favour of the controversial measure with only one parliamentarian against and another abstaining. The second reading was expected to take place in late spring or early summer. On 31 March 2013, in a TV talk-show during which the bill was discussed, Duma representative Olga Batalina, one of the leading advocates of the bill in the Parliament stated her certainty that the bill would pass the second reading in May 2013 and noted that by the second reading the ban would be expanded to “all [other] forms of non-traditional sexual relations”.<sup>281</sup>

This move came despite the publication of the UN Human Rights Committee’s opinion in case of *Fedotova v Russia* on 19 November 2012.<sup>282</sup> This case related to a provincial law imposing a ban on “public actions aimed at propaganda of homosexuality among minors” in Ryazan, which was the first region to adopt such a law.

In March 2009, Fedotova had displayed posters declaring “Homosexuality is normal” and “I am proud of my homosexuality” near a secondary school building in Ryazan. She was arrested, convicted for an administrative offence, and ordered to pay a fine of 1,500 roubles (approx. US\$ 50). The appeal court upheld the decision, and the Constitutional Court ruled that the prohibition of information that was “capable of harming health, morals and spiritual development, as well as forming perverted conceptions about equal social value of traditional and non-traditional family relations” could not be considered a violation of the right to freedom of expression. The Human Rights Committee held that Russia had violated Fedotova’s rights to freedom of expression and to be free from discrimination.<sup>283</sup>

In similar cases, in Saint Petersburg and Arkhangelsk, LGBT activists were fined for propaganda of homosexuality. In one episode, on 12 April 2012, an LGBT activist was standing in front of the Saint Petersburg City Administration holding a placard with a citation from the famous Russian actress Faina Ranevskaya “Homosexuality is not a perversion. Grass hockey and ice ballet are.” In another case, on 11 January 2012, three LGBT activists were arrested in front of Arkhangelsk regional children’s library, holding placards that contained statements like “Russia has the highest suicide rate among teenagers. Many of them are homosexuals. They do this because of a lack of information. Members of Parliament are killing children. Homosexuality is good”, “Great people can also be gay. Gay people can also great. Homosexuality is normal”, “Homosexuality is a healthy form of sexuality. Both adults and children should know that”. In both instances LGBT activists were sentenced to administrative fines by courts under the local laws banning the promotion of homosexuality among minors. These court decisions were challenged, but eventually upheld by the Russian Supreme Court<sup>284</sup>, which subsequently issued two more rulings, upholding regional laws banning “propaganda of homosexuality” in Kostroma<sup>285</sup> and Samara<sup>286</sup>.

There is no question that the bill currently under consideration violates the rights to freedom of expression and the prohibition of discrimination. It is also likely to further stigmatize LGBT people, including children, many of whom are already discriminated against and harassed and often become targets of violent attacks based on

their sexual orientation or gender identity. Were it to become law it would, in virtue of its vagueness, also risk preventing LGBT people from accessing information specific to their needs and interests.

The bill is based on the presumption that the moral, spiritual and psychological development of children is best served by denying them access to support and information about their sexuality. This notion runs counter to Russia's obligations under the Convention on the Rights of the Child. The Committee on the Rights of the Child has notably clarified, in its General Comment on Adolescent Health, that "adolescence poses new challenges to health and development... includ[ing] developing an individual identity and dealing with one's sexuality."<sup>287</sup> In the same document, the Committee expressed concern that "states parties have not given sufficient attention to the specific concerns of adolescent as rights holders and to promoting their health and development."<sup>288</sup> The Committee is clear that the right to non-discrimination in the convention includes the right to non-discrimination on the basis of sexual orientation, also for children.<sup>289</sup>

Sexual orientation is part of a person's innermost and immutable identity,<sup>290</sup> little susceptible to "propaganda" - in any direction - rendering the law senseless as well as counter to Russia's international human rights obligations.

If adopted, the law in question is likely not only to be in violation of prohibition of discrimination and explicitly infringe on the right to freedom of expression and assembly, but also freedom of association, since the fines established for organizations are so high, that

there is scarcely an LGBT organization that would survive the imposition of such a fine without being bankrupted.

## THE PUSSY RIOT CASE

On 19 February 2012 a feminist group "Pussy Riot" staged a performance that they called a punk prayer "Mother of God, Chase Putin Away!" near the altar of the Cathedral of Christ the Saviour, Russia's central Orthodox Christian church in Moscow. The stunt itself lasted around 40 seconds and guards quickly evicted the members of the band from the church.<sup>291</sup> The band then published on the web a music video using video footage of the event in the church.<sup>292</sup> The song called on the Virgin Mary to become a feminist and banish Vladimir Putin. It also criticised the dedication and support shown to Putin by some Russian Orthodox Church representatives. It was one of a number of performances intended as a protest against Vladimir Putin in the run-up to Russia's presidential elections in March that year.

On 26 February 2012 the members of the band were put on the wanted lists on charges of hooliganism under the Criminal Code. On 4 March two suspected members of the band Maria Alekhina and Nadezhda Tolokonnikova were arrested, and on 15 March - Ekaterina Samutsevich was also arrested; the other alleged members of the band were not identified. The three women were accused of hooliganism with aggravated circumstances on the grounds of religious hatred. Amnesty International declared them prisoners of conscience, as the severity of the response of the Russian authorities was not a justifiable response to the peaceful – even if, to many, offensive – expression of their political beliefs.<sup>293</sup>

The case split Russian society. In June, more than 200 Russian cultural figures, well-known writers, musicians and actors, among others, signed an open letter in support of Maria Alekhina, Nadezhda Tolokonnikova and Ekaterina Samutsevich, calling for their release.<sup>294</sup> The letter was posted on the Echo Moskvy radio website and collected around 50,000 further signatures.<sup>295</sup> Also in June 2012, a group of Orthodox believers sent an open letter to Patriarch Kirill, the leader of the Russian Orthodox Church, asking for mercy for the three arrested women.

At the same time, the leader of the Russian Orthodox Church, patriarch Kirill referred to the Pussy Riot's performance as "scoffing at a shrine" and expressed deep sorrow over the fact that their actions were being justified by others, including Orthodox



Christians.<sup>296</sup> According to public opinion surveys, majority of population were considering Pussy Riot's performance as an act of hooliganism or humiliation of a shrine.<sup>297</sup> International human rights law is clear, however, that the freedom of expression extends to expressions that are considered, even by a majority, to be offensive and distasteful.

The Pussy Riot trial started on 30 July 2012 in Moscow's Khamovnicheskii District Court and lasted eight days. Prosecution relied primarily on the conclusions of psychological and linguistic expertise, which was later contested by a group of psychologists.<sup>298</sup> There are also concerns that fair trial standards might have been violated.<sup>299</sup>

Nevertheless, on 17 August 2012 the judge sentenced the three members of the band to two years' imprisonment in a penal colony. The band members appealed the decision and on 10 October 2012 the court of cassation upheld the verdict with respect to Alekhina and Tolokonnikova, who remained behind bars, each serving their sentence of two years imprisonment at labour camps. The court commuted the sentence for Samutsevich to two years of suspended sentence, since she was prevented from participating in the performance by the church guards. She was subsequently released from prison.

On 29 November the Pussy Riot video was declared extremist and banned by a court in Moscow, following an application by the prosecution on the grounds that it was offensive to religious feelings of the Orthodox Christian population and was inciting hatred. Under the counter-extremism law, once such a decision enters into force, access to the video should be blocked and the reprinting or distributing of it constitutes a criminal offence. The video is still available online at the moment of writing in defiance of the court decision.

On 16 January 2013, Maria Alekhina had her appeal rejected. She had asked to have her sentence postponed until her child reached 14. The court decision was compared by media to an infamous case in Russia, when in 2010 in Irkutsk, a woman drove her car onto a sidewalk, killing one woman and leaving another confined to a wheelchair; her sentence was deferred on the basis that she had a newborn baby.<sup>300</sup> The woman turned out to be a daughter of a senior local official, prompting allegations of selective justice.<sup>301</sup>

At the time of writing, Alekhina and Tolokonnikova remain in detention. Alekhina has been put into a punishment block, apparently for her own safety after receiving threats from fellow inmates, which she believes were instigated by the prison authorities.<sup>302</sup> Tolokonnikova has complained of health problems.

On 6 February 2013, both women filed a complaint with the European Court of Human Rights, arguing that the convictions against them violate their rights to free speech, a fair trial, and liberty and security, as well as defying the prohibition of torture.<sup>303</sup>

Amnesty International continues to campaign for the immediate and unconditional release of Alekhina and Tolokonnikova and quashing of sentences with respect to all three convicted band members.

## 5. SUMMARY AND RECOMMENDATIONS

The Russian Constitution enshrines the people's right to freedom of expression, association and assembly in Articles 29, 30 and 31. The wave of protest that followed the parliamentary elections of December 2011 and the May 2012 "Putin-Medvedev" switch has prompted a raft of restrictions on these rights. Old laws have been amended, new ones introduced; all have consistently been applied in a restrictive manner.

These restrictions have repeatedly been justified with reference to the need to preserve public order and political stability in the face of those seeking, in concert with hostile international interests, to overturn it. This rhetoric is familiar from repressive regimes the world over. It is not new in Russia either. But while the discourse of stability might have had resonance in the early years of Vladimir Putin's rule, it is increasingly appearing a device to promote the interests of the few over the rights of the many.

One of the features of the current clampdown on freedoms in Russia is the repeated application of small restrictions in individual instances to achieve the bigger goal of restricting dissent more broadly. For the most part, administrative not criminal law has been the method of choice. Protest is not banned outright, but the interruption of the free flow of traffic will serve as grounds to ban or disperse a particular demonstration. The organizers of demonstrations are fined not imprisoned: they are left free to walk the streets, but not to protest in them. Likewise, NGOs are not banned, but subject to stringent administrative requirements they constantly risk falling foul of, while their income streams are restricted and reputations blackened.

Once set in motion repressive policies are difficult to contain. Indeed, another feature of the current clampdown is how wide the net has spread. Public events of all kinds, both large and small, in support of political causes, non-political causes and even no cause at all, have all been restricted. Many NGOs doing charitable work are no less likely to be affected by restrictions on foreign funding and staffing as human rights defenders.

There has been a significant increase in civic activism in Russia over the last ten years. This activism has grown up around a huge variety of causes and interests, particularly in the social and cultural spheres. This development is, in part perhaps, a consequence – though many would hesitate to describe this as an achievement – of the relative political and economic stability of the last decade. It is also inevitable that this broader trend should eventually spill over into the political sphere and doubtful whether this can be reversed or, in the longer term, resisted. It should not be.

Civic engagement is precious social capital. It is in Russia's interest to invest in it. The current government is stifling it, however, through a wide range of violations of the rights to freedom of expression, association and assembly. These need, urgently, to be reversed.

**Amnesty International urges the Russian authorities to:**

- Ensure the right to freedom of peaceful assembly to all persons within its jurisdiction wishing to peacefully express their views, whether critical of the authorities or not, whether approved of by them or not, in accordance with international human rights law and the Russian Constitution;
- Amend the Federal Law on Assemblies so as to qualify the requirement for the prior notification of authorities of the intention to hold a public event in a manner consistent with international human rights law standards on spontaneous demonstrations;
- Ensure that, in practice, the requirement of prior notification is not abused by local authorities to impose undue restrictions on public events or arbitrarily withhold their authorization;
- Revise the amendments to the Federal Law on Assemblies introduced in June 2012 so as to:
  - limit the liability of organizers of public events for the actions of persons participating in them and the exceeding of the number of authorized participants;
  - reduce the severity of the administrative fines and sanctions imposable for violations of the Federal Law on Assemblies (including removing the penalty compulsory public labour) so as to render them proportionate to other administrative offences;
  - lift the blanket ban on persons who have been convicted twice or more during the preceding year for violations of regulations governing the organization of meetings, demonstrations, rallies or pickets from organizing any public event and replace this with a procedure allowing for the individual's right to freedom of assembly to weighed against the interests of the protection of public order and security;
- Implement the March 2012<sup>304</sup> and March 2013<sup>305</sup> Venice Commission recommendations concerning the Federal Law on assemblies;
- Ensure that regional regulations on assemblies are also in line with international standards on the freedom of assembly, ensuring in particular, that legislation prohibiting the organization of public events in proximity to particular locations, or limiting their authorization to particular areas do not impose excessive restrictions on the right to freedom of assembly;
- Ensure that the policing of public events is in line with Russian law and international standards on the right to freedom of assembly and the use of force;
- Ensure that law enforcement officials receive adequate instruction on the proportionate use of force in the course of public events and the legitimate grounds for the dispersal and arrest of those participating in them;
- Ensure that law enforcement officials provide adequate protection to participants of public events subject to threats and violence by counter-demonstrators;

- Ensure the effective investigation of allegations of unlawful arrests and the excessive use of force by law enforcement officials in the context public events and the imposition of appropriate disciplinary and/or criminal sanctions on those found culpable;
- Ensure that all groups, including LGBT rights activists, opposition groups and protest movements, are able to exercise their right to freedom of assembly without discrimination;
- Establish an independent inquiry into the events on Bolotnaya square on 6 May 2012;
- Ensure the prompt and fair trial of all those accused of criminal offences in connection with the events on Bolotnaya Square of 6 May 2012; ensure that those presenting no risk of absconding, endangering public security or prejudicing the course of justice are released pending trial;
- Immediately and unconditionally release prisoners of conscience Maria Alekhina and Nadezhda Tolokonnikova;
- Repeal the provisions of Federal Law no.212 FZ (the “Foreign Agents Law”) requiring NGOs engaged in “political activities” in receipt of foreign funding to register and publicly describe themselves as “foreign agents”;
- Repeal the provisions of Federal Law no. 272-FZ, the “Anti-Magnitsky Law” prohibiting NGOs engaged in “political activities” from receiving funding from US citizens or organizations and prohibiting dual US-Russian nationals from leading or being a member of an organization engaged in “political activities” in Russia;
- Amend the broad provisions of the October 2012 Federal Law on Treason and Espionage so as to ensure that they cannot be applied to prosecute the legitimate activity of NGOs, human rights defenders and other concerned citizens providing assistance, or lawfully obtained information, to foreign states and international or foreign organizations.
- Refrain from the public denigration of human rights defenders;
- Demonstrate a commitment to the protection of human rights and fundamental freedoms by fostering the greater participation of civil society in public affairs and displaying greater tolerance for the criticism of public officials and government policies;
- Ensure the effective protection of human rights defenders and journalists subject to threats and intimidation;
- Effectively investigate threats and violent attacks against human rights defenders and journalists and bring perpetrators to justice;
- Decriminalize defamation;
- Refrain from the adoption of Federal legislation banning the “propaganda of homosexuality” and ensure the repeal of Regional legislation introduced to this effect;
- Refrain from the adoption of any amendment to the Criminal Code having the effect of criminalizing blasphemy, or the offending of religious believers through the expression of beliefs or opinions that fall short of inciting discrimination, hostility or violence.

# ENDNOTES

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- 1 The observers also noted that all candidates had access to the media, but the Prime Minister was given a clear advantage over his competitors in terms of media presence, while state resources were mobilized at the regional level in his support. Also, overly restrictive candidate registration requirements limited genuine competition. See for more details the Final Report of the OSCE/ODIHR Election Observation Mission of the Russia's Presidential Elections on 4 March 2011, published on 11 May 2012, available at <http://www.osce.org/odihr/elections/90461>; the OSCE/ODIHR Press release: "Russia's presidential election marked by unequal campaign conditions, active citizens' engagement, international observers say", March 2012, available at <http://www.osce.org/odihr/elections/88661>; also the statement of Preliminary Findings and Conclusions is the result of a common endeavour involving the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the OSCE Parliamentary Assembly (OSCE PA) and the Parliamentary Assembly of the Council of Europe (PACE), available at <http://www.osce.org/odihr/88667>
- 2 See for more details, the OSCE/ODIHR Press release: "Russia's presidential election marked by unequal campaign conditions, active citizens' engagement, international observers say", March 2012, available at <http://www.osce.org/odihr/elections/88661>
- 3 Ibid
- 4 Ibid, see the statement by Ambassador Heidi Tagliavini, the Head of the Election Observation Mission of the OSCE Office for Democratic Institutions and Human Rights (ODIHR)
- 5 Federal Law of the Russian Federation "On assemblies, meetings, demonstrations, rallies and pickets" no. 54-FZ, dated 19 June 2004
- 6 See The Decision of the Constitutional Court of the Russian Federation no.4-П "On case concerning the review of constitutionality of the Federal Law "On amendments to the Code of Administrative Offences of the Russian Federation and to the Federal Law "On assemblies, meetings, demonstrations, rallies and pickets", based on application of group of MPs of State Duma and complaint by Mr. E.V.Savenko", dated 14 February 2013 and the Ruling of the Constitutional Court of the Russian Federation no. 484-О-П, dated 2 April 2009, see also the summary of the Decision available [in Russian] at the official website of the Court: <http://www.ksrf.ru/ru/news/pages/viewitem.aspx?paramid=3074>
- 7 Article 12(3) of the 2004 Federal Law on assemblies - only in cases, when it is submitted by a person, who under Federal Law cannot be an organizer or the event is planned at a location, where organization of such events is restricted under the Federal or regional laws.
- 8 Article 12 (1(1,2,4)) of the Federal Law on assemblies
- 9 E.g. no exemptions provided for cases where the period between when the event in question has become known to the public and possibility of public reaction to it is less than the minimum time provided for notification in the law
- 10 See for further details the brief overview on the situation in Russia prepared by Sergey Shimovolov, the Chairman of the Nizhny Novgorod Human Rights Union for the OSCE Conference on freedom of assembly and new technologies, November 2012, available at <http://sutyajnik.ru/news/2012/11/2049.html>
- 11 One federal law was adopted during 2012 and at least 13 regional bills were adopted or under consideration.
- 12 Federal Law n°65-FZ of 8 June 2012 amending Federal Law No. 54-FZ of 19 June 2004 on assemblies, meetings, demonstrations, marches and picketing and the code of administrative offences of the Russian Federation.
- 13 The fines have been increased 150-fold, with the maximum fine for participation been increased to 30,000 roubles (approx. \$960 US) and up to 300,000 roubles (\$9,600 US) if the event causes damage to property or personal injuries.
- 14 Article 20.2.2 of the Code of Administrative Offences of the Russian Federation no.195-ФЗ dated 30 December 2001
- 15 "a group of people summoned (as by e-mail or text message) to a designated location at a specified time to perform an indicated action before dispersing", according to the Merriam Webster Online Thesaurus definition, available at <http://www.merriam-webster.com/dictionary/flash%20mob> (accessed 2 April 2013)
- 16 For further details, please see the February 2013 Constitutional Court Decision.
- 17 Including, but not limited to, the popular blogger and opposition activist Alexey Navalny, the leader of the Left Front Sergei Udaltsov, the leader of the "Other Russia" party Eduard Limonov
- 18 The amendments also introduced high fines for blocking pedestrians and traffic, damaging green areas and littering in the context of a "public meeting", for which the organizers would be held accountable without consideration of situations not uncommon in large gatherings, when the misconduct and disorderly behaviour of participants are beyond their control. Thus the authorities have shifted responsibility for order and to some extent, security, of public gatherings to the organizers. The proposed fines and sanctions also are much higher than those for causing similar damage outside of protests.

19 See for further details the brief overview on the situation in Russia, prepared by Sergey Shimovolos, the Chairman of the Nizhny Novgorod Human Rights Union for the OSCE Conference on freedom of assembly and new technologies, November 2012, available at <http://sutyajnik.ru/news/2012/11/2049.html>

20 Tomsk, Kirov, Oryol, Sverdlovskaya, Ulyanovsk, Ivanovo, Chelyabinsk, Nizhny Novgorod and Samara regions and Republics of Chuvashiya and Tatarstan, as well as a number of other regions. In the end of December 2012 similar amendments were considered by the regional Duma in Kaliningrad.

21 E.g. in St.Petersburg meetings are prohibited in the proximity of public offices, government buildings, etc.

See for further details the brief overview on the situation in Russia, prepared by Sergey Shimovolos, the Chairman of the Nizhny Novgorod Human Rights Union for the OSCE Conference on freedom of assembly and new technologies, November 2012, available at <http://sutyajnik.ru/news/2012/11/2049.html>

22 For further details on examples of additional obligations imposed by regional laws, see the above cited brief by Sergey Shimovolos, supra note 24.

23 The bill was adopted by the Moscow regional Duma on 26 December 2012; the bill introduces amendments under which public events involving transport are banned within Sadovoye ring (in the city centre), provide for the so-called "Hyde Parks" and outlined that one-person pickets should have a minimum distance of 50 metres. The latter, however, does not preclude the finding that a series of one-person pickets may form a public event requiring prior approval – even if the distance exceeded the 50 metres limit. For further details, see <http://svpressa.ru/society/news/62587/>.

24 See supra note 24

25 Ibid

26 Ibid

27 Ibid

28 <http://www.baltinfo.ru/2013/02/27/Deputaty-ZakSa-podderzhali-zakon-o-mitingakh-u-khramov-339082>

29 Real name referred to in the decision is Eduard Savenko.

30 The Federal law no.65-FZ dated 8 June 2012, introducing amendments to the Code of Administrative Offences of the Russian Federation and the Federal law "On meetings, demonstrations, rallies and pickets".

31 Up to 300,000 Russian roubles for individuals (approx. US\$ 9,600) and up to 600,000 for public officials (i.e. approx. US\$ 18,200) – Article 1 (3,6,7,8,9) of the June 2012 Federal Law.

32 Up to 200 hours of public service work – Article 1 (4,7,8,9 and 10) of the June 2012 Federal Law

33 Up to 300,000 Russian roubles for individuals (approx. US\$ 9,600) and up to 600,000 for public officials (i.e. approx. US\$ 18,200) – Article 1 (3,6,7,8,9) of the June 2012 Federal Law.

34 Article 1 (5) of the June 2012 Law.

35 Under Article 1(7) and Article 2(1b(4,5,)) the applicants also referred to such obligation as effectively impossible and also noted possibility of provocations leading to exceeding the declared numbers on the part of opponents of the organizers of events in question.

36 The applicants also noted that this also requires special competence, skills and knowledge that is part of the police function.

37 Article 1(7) and Article 2 (1 (f), 6 and 8) of the June 2012 Law.

38 Article 2(3) of the June 2012 Law.

39 Article 2(4 a).

40 In practice this means two or more convictions during the year preceding the planned event.

41 The Decision of the Constitutional Court of the Russian Federation no.4-П "On case concerning the review of constitutionality of the Federal Law "On amendments to the Code of Administrative Offences of the Russian Federation and to the Federal Law "On assemblies, meetings, demonstrations, rallies and pickets", based on the application of a group of State Duma representatives and a complaint by Mr. E.V.Savenko", dated 14 February 2013, available at <http://www.rg.ru/2013/02/27/mitingi-dok.html>

42 Ibid

43 <http://www.ksrf.ru/ru/News/Pages/ViewItem.aspx?ParamId=3074>

44 The European Commission for Democracy through Law, (the Venice Commission), is the Council of Europe's advisory body on constitutional matters. Established in 1990 and initially conceived as a

tool for emergency constitutional engineering, the commission has become an internationally recognised independent legal think-tank and it played a leading role in the adoption of constitutions that conform to the standards of Europe's constitutional heritage. For further details, see [http://www.venice.coe.int/WebForms/pages/?p=01\\_Presentation](http://www.venice.coe.int/WebForms/pages/?p=01_Presentation)

45 See para.10 of the Opinion on Federal Law No. 65-FZ 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), CDL-AD(2013)003, [document available provisionally at [http://www.venice.coe.int/files/cdl-ad\(2013\)003-e.pdf](http://www.venice.coe.int/files/cdl-ad(2013)003-e.pdf)]

46 <http://www.rg.ru/2013/02/14/gosduma-anons.html>

47 Articles 15(4) and 17(1) of the Russian Constitution provide that international legal instruments, which Russia has ratified or acceded to, form part of its legal system.

48 See judgments of the European Court of Human Rights (ECtHR) in *Djavit An v. Turkey*, no. 20652/92, § 56, ECHR 2003-III, and *Kokkinakis v. Greece*, judgment of 25 May 1993, Series A no. 260-A, p. 17, § 31

49 See, the Human Rights Council Resolution 15/21, adopted in October 2010 (A/HRC/RES/15/21), available at [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/15/21](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/15/21)

50 See *Djavit An v. Turkey*, no. 20652/92, § 56, ECHR 2003-III, and *Christians against Racism and Fascism v. the United Kingdom*, no. 8440/78, Commission decision of 16 July 1980, Decisions and Reports 21, p. 138, at p. 148

51 European Convention on Human Rights, Article 11(2).

52 See *Sergey Kuznetsov v. Russia*, no. 10877/04, § 42, 23 October 2008, and *Rai and Evans v. the United Kingdom (dec.)*, nos. 26258/07 and 26255/07, 17 November 2009, *Bukta and Others v. Hungary*, no. 25691/04, § 35, ECHR 2007; *Oya Ataman v. Turkey*, no. 74552/01, 5 December 2006, § 39; *Rassemblement Jurassien Unité v. Switzerland*, no. 8191/78, Commission decision of 10 October 1979, DR 17, p. 119; and also *Plattform "Ärzte für das Leben" v. Austria*, judgment of 21 June 1988, Series A no. 139, p. 12, §§ 32 and 34

53 *Éva Molnár v. Hungary*, no. 10346/05, § 38, 7 October 2008

54 *Éva Molnár v. Hungary*, no. 10346/05, § 37, 7 October 2008

55 See the statement by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, at the 20th session of the Human Rights Council, Agenda item 3, 20 June 2012, p.4, para.1, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12349&LangID=E>

The Special Rapporteur further suggests that "in case an assembly is not allowed or restricted, a detailed and timely written explanation should be provided, which can be appealed before an impartial and independent court."

56 OSCE Guidelines on Freedom of Peaceful Assembly, OSCE Office for Democratic Institutions and Human Rights, 2010, available at <http://www.osce.org/odihr/73405?download=true> (accessed on 21 March 2013).

57 *Ibid.*, Principle 4.1 Notification.

58 OSCE Guidelines on Freedom of Peaceful Assembly, OSCE Office for Democratic Institutions and Human Rights, 2007, Principle Advance notice, para.1, p.15, available at <http://www.osce.org/odihr/24523>, see also OSCE Guidelines on Freedom of Peaceful Assembly, OSCE/ODIHR, 2010, Principle 4.1 Notification.

59 *Ibid.*

60 See *Galstyan v. Armenia*, no. 26986/03, §§ 116 and 117, 15 November 2007; *Bukta and Others v. Hungary*, no. 25691/04, § 37, ECHR 2007-III; *Oya Ataman v. Turkey*, no. 74552/01, §§ 38-42, ECHR 2006-XIII; and *Akgöl and Göl v. Turkey*, nos. 28495/06 and 28516/06, § 43, 17 May 2011, *Berladir v. Russia*, no. 34202/06, § 38, 10 July 2012.

61 see *Stankov and the United Macedonian Organization Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 97, ECHR 2001-IX, *Sergey Kuznetsov*, § 45. The Court also stated that "the State is compelled to abstain from interfering with [the right to freedom of assembly], which also extends to a demonstration that may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote (see *Ollinger v. Austria*, no. 76900/01, 29 June 2006, § 36 and *Plattform "Ärzte für das Leben" v. Austria*, 21 June 1988, Series A no. 139, § 32)

62 *Karman v. Russia*, no. 29372/02, § 36, 14 December 2006; *Feldek v. Slovakia*, no. 29032/95, § 83, ECHR 2001-VIII, and *Sürek v. Turkey (no. 1) [GC]*, no. 26682/95, § 61, ECHR 1999-IV

63 The Venice Commission Opinion on Federal Law on Assemblies, § 49, March 2012, available at [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2012\)007-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)007-e)

64 *Ibid.*

65 OSCE Guidelines, Principle 2.4 Proportionality.

## 48 FREEDOM UNDER THREAT THE CLAMPDOWN ON FREEDOMS OF EXPRESSION, ASSEMBLY AND ASSOCIATION IN RUSSIA

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66 The Venice Commission Opinion on Federal Law on Assemblies, March 2012, available at [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2012\)007-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)007-e), § 49

67 The Venice Commission Opinion on Federal Law on Assemblies, March 2013, available at [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)003-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)003-e), §§16-19

68 The Venice Commission Opinion on Federal Law on Assemblies, , March 2013, available at [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)003-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)003-e) §§16-19

69 See the statement by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, at the 20th session of the Human Rights Council, Agenda item 3, 20 June 2012, p.4, para.1, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12349&LangID=E>

70 Ibid

71 The Venice Commission Opinion on Federal Law on Assemblies, March 2013, available at [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)003-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)003-e), §§25,26

72 Ibid

73Ibid.

74 The Venice Commission Opinion on Federal Law on Assemblies, § 24, March 2012, available at [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)003-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)003-e)

75 See Schmutz v. Austria, judgment of 23 October 1995, Series A no. 328 A, §28

76 See e.g. Lutz v. Germany, judgment of 25 August 1987, Series A no. 123, p. 23, §§ 57, 64 (presumption of innocence presumption of innocence) Lauko v. Slovakia, no. 4/1998/907/1119, 2 September 1998, Reports of Judgments and Decisions 1998-VI §§ 59, 64 (hearing by an independent and impartial tribunal). Fair trial guarantees are enshrined in Article 6 of the ECHR, for further details on these guarantees, see N.Mole and C.Harby "The right to a fair trial. A guide to the implementation of Article 6 of the European Convention on Human Rights" Human rights handbooks, No. 3, available at

<http://www.echr.coe.int/library/DIGDOC/DG2/HRHAND/DG2-EN-HRHAND-03%282006%29.pdf>

77 ECHR publication, "Key case-law issues. Compatibility Ratione Materiae. Article 6. (Notion Of "Criminal Charge")" 31 December 2006, para.5, available at

[http://www.echr.coe.int/NR/rdonlyres/B4F32DE3-8D21-403C-87D6-22A2F0FC34B3/0/COURT\\_n1946214\\_v2\\_Key\\_caselaw\\_issues\\_Article\\_6\\_\\_Notion\\_of\\_\\_criminal\\_\\_charge2.pdf](http://www.echr.coe.int/NR/rdonlyres/B4F32DE3-8D21-403C-87D6-22A2F0FC34B3/0/COURT_n1946214_v2_Key_caselaw_issues_Article_6__Notion_of__criminal__charge2.pdf)

78 Ibid, para.6, also see Jussila v. Finland [GC], no. 73053/01, ECHR 2006, § 38, cited there

The Court also notes that in determining the nature of the offence, it uses the following criteria (see in Ibid, para.6):

- whether it constitutes a general rule (Bendenoun v. France, judgment of 24 February 1994, Series A no. 284, § 47),
- whether the body instituting the proceedings have statutory powers of enforcement (see Benham v. the United Kingdom, judgment of 10 June 1996, Reports of Judgments and Decisions 1996 III, § 56),
- whether the legal rule has a punitive or deterrent purpose (see Öztürk v. Germany, judgment of 21 February 1984, Series A no. 73, p. 19, § 53; Bendenoun v. France, cited above, § 47) and
- whether the imposition of any penalty is dependent upon a finding of guilt (see Benham v. the United Kingdom, cited above, § 56);
- how comparable procedures are classified in other Council of Europe Member states (see Öztürk v. Germany, cited above, § 53

79 The Court noted that these two criteria "are alternative and not necessarily cumulative... it suffices that the offence in question is by its nature to be regarded as "criminal" from the point of view of the Convention, or that the offence made the person liable to a sanction which, by its nature and degree of severity, belongs in general to the "criminal" sphere" (see Ibid, para.7; see also Öztürk v. Germany, cited above, § 54 and Lutz v. Germany, no. 9912/82, 25 August 1987, Series A no. 123, p. 23, § 55). Furthermore, the Court also noted that cumulative approach may however be adopted where separate analysis of each criterion does not make it possible to reach a clear conclusion as to the existence of a criminal charge (see Bendenoun v. France, cited above, § 47).

80 See Engel and Others v. the Netherlands, judgment of 8 June 1976, Series A no. 22, p. 34-35, § 82-83, as cited in ECHR publication, "Key case-law issues. Compatibility Ratione Materiae. Article 6. (Notion Of "Criminal Charge")" 31 December 2006, para.4 available at

[http://www.echr.coe.int/NR/rdonlyres/B4F32DE3-8D21-403C-87D6-22A2F0FC34B3/0/COURT\\_n1946214\\_v2\\_Key\\_caselaw\\_issues\\_Article\\_6\\_\\_Notion\\_of\\_\\_criminal\\_\\_charge2.pdf](http://www.echr.coe.int/NR/rdonlyres/B4F32DE3-8D21-403C-87D6-22A2F0FC34B3/0/COURT_n1946214_v2_Key_caselaw_issues_Article_6__Notion_of__criminal__charge2.pdf)

The Court also notes that this criterion is determined by reference to the maximum potential penalty which the relevant law provides for (see Ibid, para.7 and Campbell and Fell v. the United Kingdom, judgment of 28 June 1984, Series A no. 80, § 72; Demicoli v. Malta, judgment of 27 August 1991, Series A no. 210, p. 17, § 34, as cited there).

81 See the OSCE Guidelines on Freedom of Peaceful Assembly, "Implementing Legislation on Freedom of Peaceful Assembly" , OSCE Office for Democratic Institutions and Human Rights, 2007, p.16, para.2 [www.osce.org/odihr/24523](http://www.osce.org/odihr/24523) (accessed on 2 April 2013)

82 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990).



83 Ibid, para. 4.

84 Ibid, para 5(a).

85 See Amnesty International Policy Summary on Freedom of Peaceful Assembly, July 2012. This Policy is not a provides an overview of the current state of the law and the direction of its development. It summarises provisions of universal and regional international law instruments, jurisprudence of international bodies and documents of international bodies containing interpretation of applicable norms and existing or emerging practice of states, as well as the views of prominent scholars.

86 See the OSCE Guidelines on Freedom of Peaceful Assembly, "Implementing Legislation on Freedom of Peaceful Assembly", OSCE Office for Democratic Institutions and Human Rights, 2007, p.60, para.132 [www.osce.org/odihr/24523](http://www.osce.org/odihr/24523) (accessed on 2 April 2013)

87 The Venice Commission Opinion on Federal Law on Assemblies, March 2012, available at [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)003-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)003-e)

88 See e.g. Statement by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, at the 20th session of the Human Rights Council, Agenda item 3, 20 June 2012, p.4, para.1, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12349&LangID=E>

89 Amnesty International, "Policing demonstrations: Good Practice For Law Enforcement Officials", available at

[https://www.amnesty.nl/sites/default/files/folder\\_vn\\_en\\_politie.pdf](https://www.amnesty.nl/sites/default/files/folder_vn_en_politie.pdf)

90 OVD-info is a project monitoring situations of detainees arrested during political events and actions in Moscow. The project was created in the aftermath of mass detentions during and after 6 May 2012 in Moscow. It monitors the places and condition of their detention, charges brought against them and their sentencing.

91 The protesters considered the elections that ended with majority win for the Putin's "Yedinaya Rossiya" (United Russia) party to be deeply flawed and were calling for re-elections.

92 See independent detention monitoring OVD-info project's report available at <http://reports.ovdinfo.org/2012/report/>.

93 The report notes that some of the activists were detained several times during the reporting period and therefore the number of incidents of detention is not fully representative of the total number of person detained. While the authors of the report note that it is impossible to indicate the exact number of persons detained, according to their estimates, this could amount to more than 3,000 persons.

94 Original request was placed for Lubyanskaya square, Pushkinskaya was the compromise between the opposition and Moscow authorities.

95 14,000 is the official estimation by Moscow police, while 30,000 is the estimate provided by most journalists.

96 He also started shouting "We shall not go", see <http://www.youtube.com/watch?v=d2-BZwWCte4>

97 <http://grani.ru/Politics/Russia/activism/m.196256.html>

98 During detentions near Triumphalnaya square, approximately two blocks from Pushkinskaya square, where some of the protesters attempted to reunite after the dispersing of the meeting on Pushkinskaya square. For further details, see article by the Svobodnaya Pressa online newspaper, available at <http://svpressa.ru/society/article/53278/> (accessed 2 April 2013)

99 <http://reports.ovdinfo.org/2012/report/>

100 <http://www.newsru.com/russia/06mar2012/popova.html>

101 See article by the Svobodnaya Pressa online newspaper, available at <http://svpressa.ru/society/article/53278/> (accessed 2 April 2013)

102 <http://grani.ru/Politics/Russia/activism/m.196256.html>

103 <http://grani.ru/Politics/Russia/activism/m.196256.html>

104 According to official figures there were only 8,000 people on the square, whereas some of the opposition members claimed that up to 100,000 protesters attended. As for the official estimates, both the opposition and external observers highly questioned the assessments used and the reliability of data, suggesting that the authorities attempted to significantly decrease the actual number of attendees in their reports.

105 Compared to the originally announced plan that was available from the Ministry of Interior official website.

106 The original police scheme is available here: <http://petrovka38.ru/news/38875/> The actual location of police lines on the day of the event is seen on this video footage: <http://www.youtube.com/watch?v=1SKUyIPgCuE> and also here: <http://grani.ru/tags/may6/m.208591.html>

107 Interview with Eleonora Davidyan, Memorial Human Rights Center's staff, on 14 February 2013, Oxana Omarova, freelance photographer, on 11 March 2013, Tatyana Volkova, civil society activist, on 4 April 2013, Sergey Gubanov, insurance agent and LGBT activist, on 11 April 2013.

108 See e.g. <http://www.youtube.com/watch?v=g4Xbd8owKaM>

109 There were also allegations that the sitting protest and the breakthrough of police lines was part of the original plan of some of the organizers or the protesters; this, however, was never confirmed or endorsed by them and apparently such intentions were in any case not known or shared by the majority of those who gathered on the square that day.

110 For recommendations regarding policing peaceful assemblies, see e.g. the OSCE Guidelines.

111 Considering that the above police plan was available on their website on 5 May 2012, i.e. just a day prior to the event

112 Eye-witnesses told Amnesty International that where they were standing they couldn't hear any of the police announcements. Interview with Eleonora Davidyan, Memorial Human Rights Center's staff, on 14 February 2013, Tatyana Volkova, civil society activist, on 4 April 2013, Sergey Gubanov, insurance agent and LGBT activist, on 11 April 2013, Daniil Lipin, lawyer and human rights defender, on 15 April 2013.

113 The video footage of the events suggests that those who went through the break in the police line did not act violently and did not attempt to break through the second police line, blocking the way to Kremlin; it appears that many of them turned and started moving towards the second entrance to the square through a park

114 Interview with Eleonora Davidyan, Memorial Human Rights Center's staff, on 14 February 2013, Tatyana Volkova, civil society activist, on 4 April 2013, Daniil Lipin, lawyer and human rights defender, on 15 April 2013.

115 [http://www.youtube.com/watch?v=2\\_ObV3TmczE](http://www.youtube.com/watch?v=2_ObV3TmczE), <http://www.youtube.com/watch?v=ZtordmGo4eo>, <http://www.youtube.com/watch?v=XoOxoDSg9vM>

116 <https://www.youtube.com/watch?v=nGv3lgiPuc0>

117 <http://grani.ru/tags/may6/m.208591.html>

118 See the Public Monitoring Commission's report on human rights violations related to detention of protesters on 6 May (including on conditions in detention), available at <http://www.vestnikcivitas.ru/news/2313>

119 [http://www.bbc.co.uk/russian/russia/2012/05/120507\\_udaltsov\\_navalny\\_court.shtml](http://www.bbc.co.uk/russian/russia/2012/05/120507_udaltsov_navalny_court.shtml)

120 See e.g. the case concerning the beating by police of Turan Varjabetyan, YOB 1945, further information available at <http://publicverdict.ru/topics/news/10640.html>; of Denis Lutskevich (currently in detention in relation to Bolotnaya case), further information available at <http://lenta.ru/news/2012/10/24/lutskevich/> and of Alexey Gaskarov, further information available at <http://lenta.ru/news/2012/05/28/antifa/>. See the Public Monitoring Commission's report on human rights violations related to detention of protesters on 6 May, available at <http://www.vestnikcivitas.ru/news/2313>; see also the Grani.ru report on the events listing the injured protesters and information on the formal complaint actions undertaken by them, available at <http://grani.ru/tags/may6/m.208591.html>

Alexey Navalny has also submitted two complains with respect to the 6 May events – one relating to falsification of documents related to his detention and arbitrary arrest against three police officers and the other one against the actions of police during the events that allegedly provoked the violence; in October 2012, the case was submitted to the European Court of Human Rights - <http://pravo.ru/interpravo/news/view/79072/>

121 See open letter calling for objective investigation of the 6 May 2012 events on Bolotnaya square with signatures, available here: <http://zaprava.ru/201209213498/glavnyie-novosti-dnya/pisateli-uchenye-i-pravozashchitniki-trebyut-ot-vlastej-otkaza-ot-obvinenij-v-massovyx-besporyadkax-po-sobytiyam-6-maya>

122 There have been attempts of inquiries by several groups, including the Working Group of the Human Rights Council under the Russian President, however, at the time of the writing none of these had resulted in the publication of the findings, let alone endorsement by authorities. The report of the Working Group reportedly concluded that the police actions led to violence and contested the qualification of the events as "mass riots". It called for justice and the humane treatment of the accused and their release (to substitute it for preventative measure other than detention). See further details at <http://izvestia.ru/news/544064>, <http://lenta.ru/news/2013/02/01/provocation/>

123 For more information, see <http://hro.org/node/14682>

124 For more information, see [www.gazeta.ru/politics/news/2012/05/08/n\\_2333093.shtml](http://www.gazeta.ru/politics/news/2012/05/08/n_2333093.shtml)

125 At the time of writing, criminal charges had been brought against 23 persons, one was sentenced to 4.5 years prison sentence, 16 were awaiting trial in detention, some of them remained in detention for over half a year. It should be noted that among several criminal cases instituted in relation to these events, some bear the charges of assault against the police officers, whereas several of the accused were charged with participation in mass riots only. In February 2013, the Investigation Committee announced that investigation in the Bolotnaya Square case was extended till 6 July

2013, referring to the complexity of the case (at the time of writing already exceeding 60 volumes) and the large number of accused and witnesses.

126 <http://lifenews.ru/news/104270>

127 See the New York Times article "Russian Opposition Figure Says Abductors Threatened His Children", 24 October 2012, available at [http://www.nytimes.com/2012/10/25/world/europe/leonid-razvozhayev-says-abductors-threatened-his-children.html?\\_r=0](http://www.nytimes.com/2012/10/25/world/europe/leonid-razvozhayev-says-abductors-threatened-his-children.html?_r=0)

128 Ibid

129 Among them are Sergey Udaltsov, Leonid Razvozhayev and Konstantin Lebedev who have been charged with organization of mass riots on 6 May 2012 and conspiracy to organize other mass riots in different parts of the country. In February 2013, a court in Moscow has also issued an arrest warrant against a former Georgian MP and member of the Georgian government, Givi Targamadze, who is also accused in absentia of instigating and sponsoring an alleged mass riots in different parts of Russia. The accusations and the criminal case concerning preparation of mass riots is reportedly primarily based on materials of a program aired on one of Russia's federal channels that was contested by Sergey Udaltsov as fraudulent and defamatory. The attempt by Udaltsov to sue the TV channel on defamation charges was rejected by the court. In late February 2013, Givi Targamadze gave an interview to a Russian newspaper, where he explained that he had never met with his alleged Russian accomplices and stated that the case against him in Russia was fabricated (see <http://lenta.ru/news/2013/03/01/more/>)

130 Interview with Eleonora Davidyan, Memorial Human Rights Center's staff, on 14.02.2013, Oxana Omarova, freelance photographer, on 11 March 2013, Tatyana Volkova, civil society activist, on 4 April 2013, Igor Yasin, member of the "March of Equality" public campaign, on 11 April 2013.

131 Ibid

132 Ibid

133 This became the third incident of detention of Sergey Udaltsov and the fourth for Alexey Navalny in the preceding 72 hours. Amnesty International recognized them as prisoners of conscience and called for their release.

134 [http://www.bbc.co.uk/russian/russia/2012/05/120509\\_navalny\\_udaltsov\\_arrest.shtml](http://www.bbc.co.uk/russian/russia/2012/05/120509_navalny_udaltsov_arrest.shtml)

135 Named partly in reference to the then on-going Occupy Movement and partly – to Abai Kunanbayev, the Kazakh philosopher and poet, near whose monument on the Chistiye Prudy boulevard they organized the camp.

136 See report by Elena Vlasenko, dated 18 May 2012, available at <http://uncut.indexcensorship.org/2012/05/police-crack-down-on-moscow-occupy-protests/>

137 Interview with Eleonora Davidyan, Memorial Human Rights Center's staff, on 14 February 2013, Oxana Omarova, freelance photographer, on 11 March 2013, Tatyana Volkova, civil society activist, on 4 April 2013, Igor Yasin, member of the "March of Equality" public campaign, on 11 April 2013

138 The media report notes that at that time, unlike any other time, no journalists were on the spot and the protesters were mostly still asleep

139 <http://uncut.indexcensorship.org/2012/05/police-crack-down-on-moscow-occupy-protests/>

140 Interview with Tatyana Volkova, civil society activist, on 4 April 2013

141 Ibid

142 Interview with Tatyana Volkova, civil society activist, on 4 April 2013

143 Members of this body were elected (primarily on-line) in late October 2012 to represent of opposition and protest movement and coordinate protest activities.

144 According to the data of the Russian Ombudsman, who was monitoring the event, published on his website at <http://ombudsmanrf.org/goryachaya-stranichka/obshchestvennyj-nablyudatel/9-6-2012>

145 Solovetsky Stone is a memorial to the victims of political repressions in the Soviet Union and Lubienskaya Square houses the building of the Russian Federal Security Service (FSB) – the successor of the Soviet KGB

146 Lubienskaya Square houses the building of the Russian Federal Security Service (FSB), while the Lefortovo pre-trial detention centre (SIZO), where Leonid Razvozhayev, an opposition activist allegedly abducted from Ukraine was detained.

147 The Left Front leader, Sergey Udaltsov, was detained on the way to the place, while blogger and political opposition activist Alexey Navalny along with the member of the opposition 'Solidarity' movement Ilya Yashin were detained after they stood in pickets and started walking along the above mentioned route. Also during this event, journalist and opposition activist, Sergey Parkhomenko and activist Maxim Sannikov, were detained. Maxim Sannikov, Alexey Navalny and Sergei Udaltsov were ordered by Moscow City courts to pay fines of 30,000 roubles (approximately US\$ 950) each, i.e.

maximum penalty for organizing and participating in an unauthorised rally that violated public order.

148 Video footage available at <http://www.youtube.com/watch?v=7R-zg6D4nFO>, (from 0:00 to 1:20) covering the arrest of Maxim Sannikov indicates that originally he was detained on account of violating the rules governing one-person pickets, namely for not observing the minimum allowed distance (50 metres) to the next person in a picket. It also contains no indication that he was participating in disorderly conduct, violated traffic rules or engaged in any behaviour or activity that was not peaceful.

149 See above chapter on international law. <http://hro.org/node/15135>

150 Video coverage of the events is available here <http://freedomrussia.org/2012/12/15/marsh-svobodyi-15-dekabrya-2012-goda-pryamoy-efir-translyatsiya/>;

151 Article 31 of the Russian Constitution guarantees the right to freedom of peaceful assembly;

152 The Other Russia Party is often seen as a successor of the "National Bolsheviks Party" (NBP) that was banned by the authorities for extremism. The former leader of the NBP, Eduard Limonov, headed the Other Russia party, the latter was also accused of using symbols and flags very similar to the NBP symbols. The attempts to register the Other Russia were rejected by the authorities with the latest judicial decision dating to July 2011.

153 i.e. January, March, May, July, August, October and December

154 See e.g. Amnesty International Public Statement of 2 November 2012, AI Index: EUR 46/043/2012 (available at <http://www.amnesty.org/en/library/asset/EUR46/043/2012/en/0646c9de-4cf8-4ca0-b050-6fa5624418d9/eur460432012en.html>)

155 <http://lenta.ru/news/2012/12/31/more/>, <http://grani.ru/Politics/Russia/activism/strategy31/m.211158.html>

156 <http://newsru.com/russia/14jun2012/province.html>

157 <http://www.ambarnews.ru/e/3218050-nachalos-troe-zhiteley-kemerovo-zaderzhani-k#.UTUxOJEvdNs>

158 See the Vedomosti news report, 14.06.2012, available at [http://www.vedomosti.ru/politics/news/1847870/troe\\_uzhe\\_massa](http://www.vedomosti.ru/politics/news/1847870/troe_uzhe_massa)

159 <http://newsru.com/russia/14jun2012/province.html>

160 [http://www.vedomosti.ru/politics/news/1847870/troe\\_uzhe\\_massa](http://www.vedomosti.ru/politics/news/1847870/troe_uzhe_massa)

161 Report by Gazeta.ru quoted at <http://www.nr2.ru/incidents/403919.html>

162 <http://www.rbcdaily.ru/society/562949985582443>

163 <http://161.ru/text/newsline/592358.html#comments/c592358/last>

164 <http://uralpress.ru/news/2012/12/15/v-chelyabinske-uchastnikov-marsha-svobody-zaderzhali-posle-mitinga>

165 <http://hro.org/node/15654>

166 <http://www.itar-tass.com/c302/334335.html>

167 The meeting was reportedly attended by some 70 protesters, who were equipped with placards and loudspeakers. Twelve of them were briefly detained, out of which eight were fined for violations related to organizing public events. See for further details <http://www.rg.ru/2012/10/19/reg-urfo/miting-anons.html>

168 For further details, see media report available at <http://lenta.ru/news/2012/10/19/aramil/>

169 See for further details <http://grani.ru/Culture/art/m.198887.html>, <http://www.mk.ru/moscow/article/2012/07/07/723039-monstratsiya-v-moskve-zakonchilas-zaderzhaniyam.html>

170 Photo report of the event is available at <http://www.ridus.ru/news/36137/>

171 <http://www.mr7.ru/articles/66235/>

172 For further details, please see the Gazeta.ru report on the trial, available at [http://www.gazeta.ru/politics/2012/09/07\\_a\\_4758821.shtml](http://www.gazeta.ru/politics/2012/09/07_a_4758821.shtml);

173 Phone interview with advocate A.Anikin and I.Sakhno, dated 16 April 2013

174 See RosBal news agency's report available at <http://www.rosbalt.ru/piter/2013/01/07/1078732.html>

175 See RosBal news agency's report available at <http://www.rosbalt.ru/piter/2013/01/12/1080476.html>

- 176 See RosBal news agency's report available at <http://www.baltinfo.ru/2013/02/02/Snezhnaya-bitva-na-Marsovom-pole-proshla-s-odobreniya-vlastei-334121>
- 177 See for further information <http://gaude.ru/news/22727> or <http://www.rosbalt.ru/piter/2013/01/07/1078732.html>
- 178 <http://www.firstnews.ru/news/organizatora-harlem-shake-v-peterburge-grozit-shtraf-v-20-tysyach-roubley-ili-obyazatelnye-raboty/>
- 179 <http://hro.org/node/14585>
- 180 <http://www.newizv.ru/accidents/2012-09-10/169488-snesli-chuzhoj-krest.html>
- 181 See for further details <http://cef.ru/news/roshve?id=5851>
- 182 See for further details [http://www.sclj.ru/news/detail.php?SECTION\\_ID=351&ELEMENT\\_ID=4617](http://www.sclj.ru/news/detail.php?SECTION_ID=351&ELEMENT_ID=4617)
- 183 See the Constitutional Court' Decision ("Postanovleniye") regarding constitutionality of Article 16(5) of the Federal Law "On freedom of conscience and religious associations" and Article 19(5) of the Law of Tatarstan "On freedom of conscience and religious associations" pursuant to the complaint of the Ombudsman of the Russian Federation", available [in Russian] at <http://www.rg.ru/2012/12/19/svoboda-sovesti-dok.html>
- 184 <http://hro.org/node/14784>
- 185 Statement from Vladimir Chercasov, Chairman of the Human Rights Centre "Memorial", 11.03.2013
- 186 [http://www.punkt-a.info/view\\_page/view/17068](http://www.punkt-a.info/view_page/view/17068)
- 187 <http://hro.org/node/15240>
- 188 Tuva (or Tyva) is a region of Russia with traditional Buddhist majority population
- 189 <http://www.fontanka.ru/2012/12/23/022/>
- 190 See the BaltInfo news report, available at <http://www.baltinfo.ru/2012/12/25/Okolo-20-uchastnikov-skhoda-v-podderzhku-semi-Kochneva-ostalis-v-politcii-na-vtoruyu-noch-5-arestovany-326102>
- 191 See Alekseyev v. Russia, nos. 4916/07, 25924/08 and 14599/09, 21 October 2010, §§ 107-110
- 192 See Application No. 19700/11 in the Statement of Fact on these cases combined together with other cases, available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-116762>
- 193 Ibid
- 194 Ibid
- 195 [http://www.bbc.co.uk/russian/society/2012/05/120518\\_gay\\_pride\\_moscow.shtml](http://www.bbc.co.uk/russian/society/2012/05/120518_gay_pride_moscow.shtml)
- 196 <http://www.amnesty.org/en/news/russia-moscow-must-end-shameful-clampdown-pride-2012-05-28>
- 197 Interview with Igor Yasin, member of the public campaign "Equality March", on 11 April 2014
- 198 For further information, please see AI Index: EUR 46/002/2013 Russian Federation Date: 29 January 2013
- 199 Ibid, Interview with Sergey Gubanov, insurance agent and LGBT activist, on 11 April 2014
- 200 Ibid
- 201 Ibid
- 202 Interview with Sergey Gubanov, insurance agent and LGBT activist, on 11 April 2014
- 203 <http://hro.org/node/15970>
- 204 The aim of the meeting that was organized by the coalition "Democratic Petersburg" upon the initiative of the "Alliance of heterosexuals for equality of LGBT" was the protection of constitutional rights, the critique of the bill banning "propaganda of homosexuality" and to protest against homophobia and discrimination of LGBT in Russia. <http://hro.org/node/15846>
- 205 <http://www.constitution.ru/en/10003000-03.htm>
- 206 Articles 20,23 of the Universal Declaration of Human Rights (UDHR), Article 8 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 21, 22 of the International

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Covenant on Civil and Political Rights (ICCPR), Article 15 of the Convention on the Rights of the Child, Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)

207 Gorzelik and Others, § 92; and The Moscow Branch of the Salvation Army, § 61

208 See, e.g., Sidiropoulos and Others v. Greece, 10 July 1998, pp. 1614-15, § 40, Reports of Judgments and Decisions 1998-IV; Stankov and the United Macedonian Organization Ilinden and Others, nos. 29221/95 and 29225/95, § 84, ECHR 2001-IX and The Moscow Branch of the Salvation Army, no. 72881/01, § 76, 5 October 2006

209 Korneenko et al v. Belarus, Communication No. 1274/2004, Views adopted on 31 October 2006, para.7.3.

210 Jeong-Eun Lee v. Republic of Korea, Communication No. 1119/2002, Views adopted on 20 July 2005, para.7.2.

211 See the statement by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, at the 20th session of the Human Rights Council, Agenda item 3, 20 June 2012, p.4, para.1, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12349&LangID=E>

212 Ryabykh v Russia, no. 52854/99 24 July 2003, § 51

213 Ibid, see also Sunday Times v. the United Kingdom (no. 1), judgment of 26 April 1979, Series A no. 30, p. 31, § 49; Larissis and Others v. Greece, judgment of 24 February 1998, Reports of Judgments and Decisions 1998-I, p. 378, § 40; Hashman and Harrup v. the United Kingdom [GC], no. 25594/94, § 31, ECHR 1999-VIII; and Metropolitan Church of Bessarabia and Others v. Moldova, no. 45701/99, ECHR 2001-XII

214 The Federal Law no.212-FZ "On Introducing Changes to Certain Pieces of Legislation of the Russian Federation as Regards Regulation of Activities of Non-Commercial Organizations Performing the Functions of Foreign Agents"

215 For more information, read The Moscow Times, "NGOs Must Register as 'foreign agents'", available at <http://www.themoscowtimes.com/news/article/ngos-must-register-as-foreign-agents/461357.html#ixzz2MeMQvgb1>

216 See Amnesty International Public Statement "Russian Federation: Harassment of NGOs must stop", 23 November 2012, AI Index: EUR 46/049/2012, available at <http://www.amnesty.org/fr/library/asset/EUR46/049/2012/fr/f81e5960-77a4-416d-981f-9343443851d7/eur460492012en.pdf>

and Amnesty International Press release, 13 July 2012 Russia: End 'smear campaign' against NGOs, available at <http://www.amnesty.org/en/for-media/press-releases/russia-end-smear-campaign-against-ngos-2012-07-13>

217 See Amnesty International Public Statement "Russian Federation: Harassment of NGOs must stop", 23 November 2012, AI Index: EUR 46/049/2012, available at <http://www.amnesty.org/fr/library/asset/EUR46/049/2012/fr/f81e5960-77a4-416d-981f-9343443851d7/eur460492012en.pdf>

218 [http://www.gazeta.ru/politics/2013/01/22\\_a\\_4936473.shtml](http://www.gazeta.ru/politics/2013/01/22_a_4936473.shtml)

219 See the press-release of the Ministry of Justice, available [in Russian] at <http://minjust.ru/node/4433>

220 Ibid

221 See RIA News agency report, available at <http://ria.ru/society/20130116/918352997.html>

222 Ibid

223 For further information, see EHRAC news release, available at <http://www.mdx.ac.uk/aboutus/news-events/news/russia-foreign-agent-law.aspx>

224 See the First federal TV channel's news report, available at <http://www.1tv.ru/news/polit/226378>

225 See the EuroNews report "Russian search for 'foreign agents' widens as NGOs raided". 28 March 2013, available at <http://www.euronews.com/2013/03/28/russian-search-for-foreign-agents-widens-as-ngos-raided/>

226 According to the information of the Human Rights NGO "Agora", as quoted by InterFax news agency, at <http://www.interfax.ru/russia/tx.asp?id=300692>

Radio Svoboda (Radio Freedom) and Russian Human Rights NGO "Agora" has drawn a map of NGO inspections, which is available here: <http://www.svoboda.org/info/map-of-ngo/3180.html>

227 As quoted by the InterFax news agency, at <http://www.interfax-russia.ru/view.asp?id=394413>

228 See the InterFax news agency report, available at <http://interfax.ru/russia/news.asp?id=298125>

229 See the InterFax news agency report, available at <http://interfax.ru/russia/news.asp?id=297503>

- 230 See the InterFax news agency report, available at <http://www.interfax-russia.ru/view.asp?id=394413>
- 231 Ibid
- 232 See the transcription of the meeting of the President Putin with the Russian Ombudsman Lukin on the official website of the Russian President, available at <http://pda.kremlin.ru/news/17766>
- 233 Ibid
- 234 See the InterFax news agency report "Lev Ponomarev did not tell [them] about NGO" dated 28 March 2013, available at <http://interfax.ru/russia>
- 235 See "Commerzant" newspaper, no. 50 (5081), 23.03.2013, also available at [www.kommersant.ru/doc/2153488](http://www.kommersant.ru/doc/2153488)
- 236 See the reply of the Chairman of the Council of Chuvashia Human Rights Organization "Schit I Mech" to the prosecutors, dated 25 March 2013, published on the website of the Human Rights Council under the President: [http://www.president-sovet.ru/structure/group\\_detst/materials/otvet\\_predsedatelya\\_soveta\\_chuvashskoy\\_respublikanskoy\\_pravozashchitnoy\\_obschestvennoy\\_organizatsii.php](http://www.president-sovet.ru/structure/group_detst/materials/otvet_predsedatelya_soveta_chuvashskoy_respublikanskoy_pravozashchitnoy_obschestvennoy_organizatsii.php)
- 237 See the BBC news "NGO from Chuvashia is asking prosecutors to inspect the Ministry of Justice", available at [http://www.bbc.co.uk/russian/russia/2013/04/130405\\_chuvash\\_ngo\\_vs\\_ministry.shtml](http://www.bbc.co.uk/russian/russia/2013/04/130405_chuvash_ngo_vs_ministry.shtml)
- 238 For more details, see the text of the Memorial's complaint, available [in Russian] at <http://www.memo.ru/uploads/files/968.pdf>
- 239 See the Ministry of Justice press release dated 9 April 2013, available at <http://minjust.ru/node/4878>
- 240 Golos deputy executive director Grigory Melkonyats was quoted by ItarTass as stating that "Golos does not engage in politics", see the ITAR TASS report "United Russia urges 'Golos' association to address adopted children's rights in foreign foster families", available at <http://www.itar-tass.com/en/c154/702266.html> (accessed on 12 April 2013)
- 241 See the Golos's statement explaining their position on their website at <http://www.golos.org/news/7008>
- 242 Ibid
- 243 See the Ministry of Justice press release dated 9 April 2013, available at <http://minjust.ru/node/4878>
- 244 See RIA News Agency article "MP is requesting to check 'Golos' for possible violation of the NGO Law", available at <http://ria.ru/politics/20130222/924163400.html>
- 245 Ibid
- 246 See CoE press release "Russia: reforms should strengthen human rights in the justice system", Ref. CommDH 009(2013), available at [http://hub.coe.int/en/web/coe-portal/press/newsroom?p\\_p\\_id=newsroom&\\_newsroom\\_articleId=1403059&\\_newsroom\\_groupId=10226&\\_newsroom\\_tabs=newsroom-topnews&pager.offset=0](http://hub.coe.int/en/web/coe-portal/press/newsroom?p_p_id=newsroom&_newsroom_articleId=1403059&_newsroom_groupId=10226&_newsroom_tabs=newsroom-topnews&pager.offset=0) (accessed on 11 April 2013)
- 247 See OSCE press release "Inspections of Russian media NGOs could affect media freedom, says OSCE representative", 9 April 2013, available at <http://www.osce.org/for/100569> (accessed 11 April 2013)
- 248 Called after Dima Yakovlev, Russian child, who was adopted by US parents and died in 2009 due to parental negligence
- 249 See Amnesty International news release, available at <http://www.amnesty.org/en/news/dima-yakovlev-bill-no-one-s-best-interests-2012-12-20-0>
- 250 BBC news "Russia expels USAID development agency" 19 September 2012, available at <http://www.bbc.co.uk/news/world-europe-19644897>
- 251 <http://en.rian.ru/politics/20121214/178143843.html>
- 252 [http://vprave.org/files/week/N\\_Vprave-weekly-news-2012.pdf](http://vprave.org/files/week/N_Vprave-weekly-news-2012.pdf)
- 253 <http://www.constitution.ru/en/10003000-03.htm>
- 254 Article 19 of the Universal Declaration of Human Rights (UDHR), Article 19 of the International Covenant on Civil and Political Rights (ICCPR), Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Article 3 of the Convention on the Elimination of Discrimination Against Women (CEDAW), Article 13 of the Convention on the Rights of the Child (CRC), Article 10 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (1950) (ECHR). The freedom of expression is also the cornerstone of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information that were endorsed by the UN Special Rapporteur on Freedom of Expression in 1996
- 255 General Comment no.34 of the UN Human Rights Committee, para.1, CCPR/C/GC/34.
- 256 See the UN Human Rights Committee General Comment no. 34, para. 11; see also European Court of Human Rights, *Handyside v. UK* (1976), para. 49

257 See Human Rights Committee, General Comment No. 34 para.1; the European Court of Human Rights reiterates this approach and stated that it is one of the basic conditions for the progress of democratic societies and for the development of each individual (see *Handyside v. the United Kingdom*, judgment of 7 December 1976, Series A No. 24 § 49)

258 General Comment no.34 of the UN Human Rights Committee, para.21, CCPR/C/GC/34;

259 The UN Human Rights Committee, stated that "non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights" (See CCPR General Comment 18, Non-discrimination, 10/11/89, CCPR/C/37, para. 1). The UN General Assembly adopted resolution 60/251 of 15 March 2006, in which it reaffirmed that the UN Human Rights Council should be responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner. The Vienna Declaration and Programme of Action restated that, "it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms" (See Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993, A/CONF.157/23, para. 5).

Although the prohibition of discrimination based on sexual orientation is not explicitly spelled out in most international human rights instruments, it has been reaffirmed as a protected ground enshrined in the non-discrimination provisions by a number of UN and regional human rights. Hence, the Human Rights Committee on numerous occasions reiterated that States are obligated to protect individuals from discrimination on the basis of their sexual orientation (See e.g. case of *Toonen v. Australia*, communication No. 488/1992, CCPR/C/50/D/488/1992 case of *Young v. Australia*, communication No. 941/2000, CCPR/C/78/D/941/2000, para. 10.4; case of *X v. Colombia*, communication no. 1361/2005 (CCPR/C/89/D/1361/2005, para. 9; and concluding observations on Mexico (CCPR/C/MEX/CO/5), para. 21, and Uzbekistan (CCPR/C/UZB/CO/3), para. 22. The other UN human rights treaty bodies endorsed the same approach (see See Committee on Economic, Social and Cultural Rights, general comment No. 20 (E/C.12/GC/20), para. 32; Committee on the Rights of the Child, general comment No. 13 (CRC/C/GC/13), paras. 60, and 72(g); Committee against Torture, general comment no. 2 (CAT/C/GC/2), para. 21; and Committee on the Elimination of Discrimination against Women, general recommendation No. 28 (CEDAW/C/GC/28), para. 18. Likewise, The ECtHR reiterated that sexual orientation is a concept covered by Article 14 on prohibition of discrimination and that difference in treatment that is based solely on the applicant's sexual orientation would amount to discrimination under the ECHR (see, e.g. *Kozak v. Poland*, no. 13102/02, § 92, 2 March 2010, *Alekseyev v. Russia*, nos. 4916/07, 25924/08, 14599/09, § 92, 21 October 2010).

260 Federal Law no.190-FZ "On amendments to the Criminal Code of the Russian Federation and Article 151 of the Criminal Procedure Code of the Russian Federation" dated 12 November 2012 , available in Russian at <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=137651>

261 Article 1(2) of the Law amending Article 275 (1) of the Criminal Code.

262 For further details, see AI news release at <http://www.amnesty.org/en/for-media/press-releases/russia-president-putin-due-sign-high-treason-bill-2012-11-02>.

263 Federal Law no.141-FZ "On amendments to the Criminal Code of the Russian Federation and certain legal acts of the Russian Federation" dated 28 July 2012.

264 The criminal case was initiated after Kadyrov was awarded pecuniary and non-pecuniary damages for defamation in a civil lawsuit.. For more details on the case, see [http://www.omct.org/files/2012/02/21655/russia\\_analytical\\_note\\_orlov\\_eng.pdf](http://www.omct.org/files/2012/02/21655/russia_analytical_note_orlov_eng.pdf)

265 The Observatory for the Protection of Human Rights Defenders, a joint programme of the International Federation for Human Rights (FIDH) and the World Organization Against Torture (OMCT)

266 The Observatory for the Protection of Human Rights Defenders, Russian Federation: Human rights work is legitimate and needs to be protected - Publication of an Analytical Note <http://www.omct.org/human-rights-defenders/reports-and-publications/russia/2012/02/d21655/>

267 See e.g. *Dalban v. Romania* [GC], No. 28114/95, judgment of 28 September 1999, Reports 1999-VI, §49. and

General Comment no.34 of the UN Human Rights Committee, para.47, CCPR/C/GC/34

268 The lawsuit was lodged in relation to Navalny's interview to the *Esquire* magazine, in which he stated: "But if you joined "Yedinaya Rossiya", then you nevertheless are a thief. And if you are not a thief, then certainly a swindler, because then you cover up with your name for the other thieves and swindlers", for further details on the case, see <http://er.ru/news/2012/6/4/burmatov-kazhdjy-chlen-edinoj-rossii-dolzhen-obratitsya-v-sud-s-iskom-k-navalnomu/>

269 <http://er.ru/news/2012/6/4/burmatov-kazhdjy-chlen-edinoj-rossii-dolzhen-obratitsya-v-sud-s-iskom-k-navalnomu/>

270 See General Comment No. 34, para. 38. Available at <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

271 Ibid

272 The text of the bill is available in Russian at <http://www.komitet2-22.km.duma.gov.ru/site.xp/052057124052057052.html>

273 It is also not clear whether different denominations belonging to these religions would be covered by the provisions of this bill,

274 <http://www.itar-tass.com/c1/707570.html>



- 275 See media reports, available at <http://www.interfax.ru/russia/txt.asp?id=300542>, <http://www.kommersant.ru/doc/2166451>, <http://www.pravda.ru/news/politics/09-04-2013/1151772-0/>, <http://www.vz.ru/politics/2012/9/26/599869.html>, <http://www.aif.ru/society/article/62122>, <http://www.lenta.ru/news/2013/04/09/law/>, <http://www.pravda.ru/news/politics/09-04-2013/1151772-0/>
- 276 See e.g. the reaction of the Chairman of the Human Rights Council under the President of Russia suggesting that the bill needs to be changed <http://ria.ru/society/20130118/918671924.html>, similar reaction of the Russian Ombudsman <http://ria.ru/society/20120928/761194394.html>, and of the Head of the Public Council <http://ria.ru/society/20121004/766183425.html> ; at the same time, surveys suggest that 80% of Russian supported the idea of increasing the responsibility for insulting the religious feelings: <http://ria.ru/society/20120926/759273197.html>
- 277 <http://ria.ru/society/20121214/914830333.html#ixzz2MfotoZID>
- 278 See Kommersant newspaper article "Laws are brought to senses", available at <http://www.kommersant.ru/pda/kommersant.html?id=2166451> (accessed 11 April 2013)
- The article also notes that the Communist Party MP Riabov raised concern that atheist could be subjected to prosecution under the proposed law; whereas Yedinaya Rossiya MP Kuzin expressed concern over the use of the notion of "feelings/sentiments" in the law, that is not defined by Russian legislation.
- 279 General Comment no.34 of the UN Human Rights Committee, CCPR/C/GC/34, para 48
- 280 Ibid
- 281 [http://www.ntv.ru/peredacha/Jeleznie\\_ledi/m26880/o157156/](http://www.ntv.ru/peredacha/Jeleznie_ledi/m26880/o157156/)
- 282 Available at <http://www2.ohchr.org/english/bodies/hrc/HRCCommitteeCaseLaw.htm>
- 283 See for further details: <http://www.icj.org/russia-human-rights-groups-hail-historic-decision-on-homosexual-propaganda-ban/> and the UN HR Committee views at <http://www2.ohchr.org/english/bodies/hrc/HRCCommitteeCaseLaw.htm>
- 284 The rulings ("Opredeleniye") of the Supreme Court no. 1-АПГ 12-11, dated 15 August 2012, concerning Arkhangelsk regional law and ruling no.78-АПГ 12-16, dated 3 October 2012, concerning St.Peterburg regional law are available at <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=ARB;n=232940> and [http://www.vsr.ru/stor\\_pdf.php?id=508846](http://www.vsr.ru/stor_pdf.php?id=508846)
- 285 The ruling ("Opredeleniye") of the Supreme Court no.87-АПГ 12-2, dated 7 November 2012, is available at [http://www.vsr.ru/stor\\_pdf.php?id=512110](http://www.vsr.ru/stor_pdf.php?id=512110)
- 286 The ruling ("Opredeleniye") of the Supreme Court no.46-АПГ 13-2, dated 27 February 2013, is available at [http://www.supcourt.ru/stor\\_pdf.php?id=533334](http://www.supcourt.ru/stor_pdf.php?id=533334)
- 287 Committee on the Rights of the Child, "General Comment No 4: Adolescent health and development in the context of the Convention on the Rights of the Child," UN Doc CRC/GC/2003/4, 1 July 2003, para. 2.
- 288 Ibid., para. 3.
- 289 Ibid., para. 6.
- 290 For example, the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity understand the term "sexual orientation" as referring to "each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender." Yogyakarta Principles, available at [http://www.yogyakartaprinciples.org/principles\\_en.htm](http://www.yogyakartaprinciples.org/principles_en.htm) (viewed 3 August 2012).
- 291 The original video of their performance is available at <http://www.youtube.com/watch?v=grEBlSkpDWQ>
- 292 Punk prayer <http://www.youtube.com/watch?v=GCasuaAczKY>
- 293 See Amnesty International Public Statement "Release punk singers held after performance in church", AI index: EUR 46/014/2012, 3 April 2012, available at <http://www.amnesty.org/en/library/asset/EUR46/014/2012/en/c9edb950-30b6-4b90-a4d3-ddf8b97bc4c3/eur460142012en.html>
- 294 The text of the letter and the list of signatures is available at the website of Radio "Echo Mosky" at <http://www.echo.msk.ru/doc/903154-echo.html>
- 295 The figure as provided by the Radio Echo Mosky website <http://www.echo.msk.ru/doc/903154-echo/signatures.html#comments-507> (accessed on 10 April 2013)
- 296 <http://ria.ru/society/20120324/604695745.html>
- 297 According to the results of survey conducted in August 2012 by the Russian Public Opinion Research Center (VCIOM), 34% considered it as an act of hooliganism and 24% as a humiliation of a shrine; 7% more thought that their actions constituted extremism and only 11% considered it as political protest and 1% - as an artistic performance. See the results of the survey, available at the website of the Centre at <http://wciom.ru/index.php?id=459&uid=112985> (accessed on 10 April 2013).
- 298 <http://www.svoboda.org/content/article/24675522.html>

299 See Amnesty International news release available at <http://www.amnesty.org/en/news/russian-court-jails-pussy-riot-2012-08-17>.

300 See e.g. BBC Russia article, available at [http://www.bbc.co.uk/russian/russia/2013/03/130212\\_alekhina\\_deferral\\_pussy\\_riot.shtml](http://www.bbc.co.uk/russian/russia/2013/03/130212_alekhina_deferral_pussy_riot.shtml), "Vesti" news program article, available at <http://www.vesti.ru/doc.html?id=1007311>, <http://www.kommersant.ru/Doc/2105304>, Radio Freedom article, , available at <http://www.svoboda.org/content/liveblog/24825140.html>

301 [http://www.gazeta.ru/auto/2011/03/11\\_a\\_3552065.shtml](http://www.gazeta.ru/auto/2011/03/11_a_3552065.shtml)

302 Elena Masiuk, member of the Human Rights Council under the President, after monitoring the penitentiary facility, where Alekhina is serving her sentence, reported to the Council that "there are sufficient grounds to conclude that situation around Alekhina was provoked by the administration of the colony, using women [inmates] from the section of discipline and order that were created to assist the administration". See Masiuk's report presented to the Council available at the website of the Council: [http://www.president-sovet.ru/structure/group\\_10/materials/otchet\\_masyuk.php](http://www.president-sovet.ru/structure/group_10/materials/otchet_masyuk.php) (accessed 10 April 2013)

303 <http://www2.amnesty.org.uk/blogs/campaigns/pussy-riot-one-year-still-imprisoned-still-defiant>

304 The Venice Commission Opinion on the Federal Law on Assemblies, Opinion no. 659/2011, CDL-AD(2012)007, March 2012, available at [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2012\)007-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)007-e)

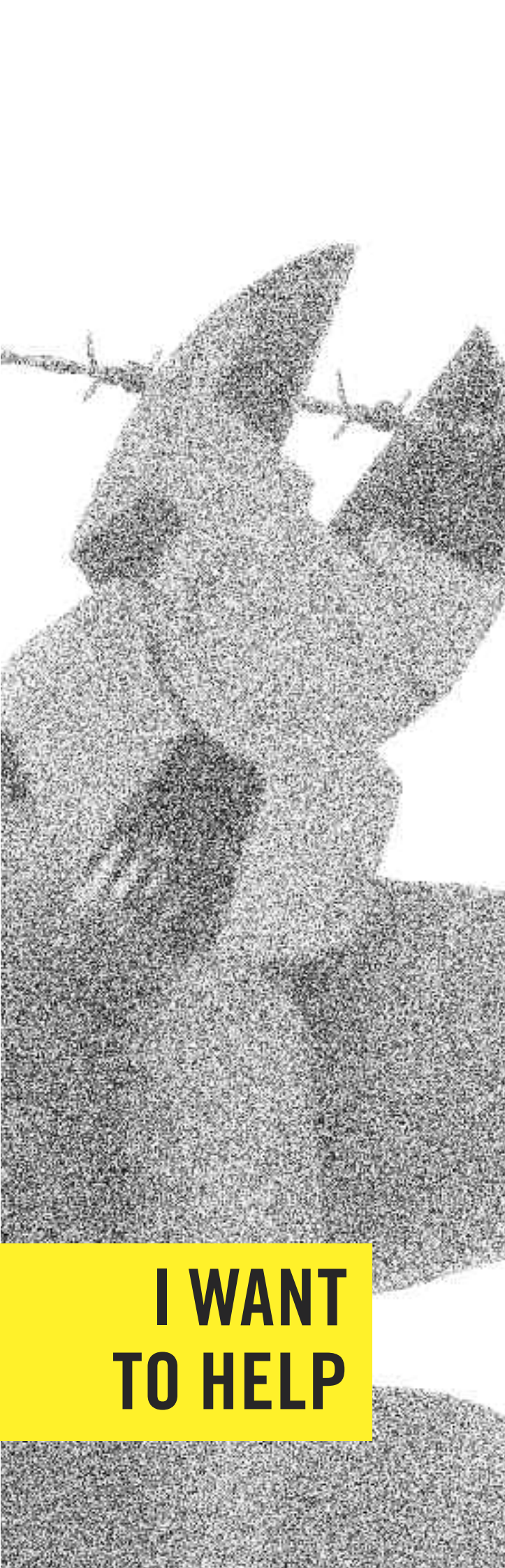
305 The Venice Commission Opinion on the Federal Law No. 65-Fz Of 8 June 2012 Of The Russian Federation; Opinion no. 686/2012, CDL-AD(2013)003, March 2013 available at [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)003-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)003-e)



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## **FREEDOM UNDER THREAT**

### **CLAMPDOWN ON FREEDOMS OF EXPRESSION, ASSEMBLY AND ASSOCIATION IN RUSSIA**

A year since Vladimir Putin's return as President of The Russian Federation, the space for political opposition and other forms of dissent is rapidly shrinking. New laws have restricted people's rights to freedom of expression, association and assembly.

The right to freedom of assembly, in particular that of political opponents of the government, has been curtailed through amendments brought into force in June 2012.

Other restrictions have been placed on freedoms of association and expression through various laws, which have serious implications for all civil society across the country. Particularly affected are human rights defenders and activists funded from abroad, who are labelled as "foreign agents" and can be prosecuted.

Freedom of expression continues to be further curtailed through the abusive use of anti-extremism legislation, and through additional legal initiatives such as re-criminalization of defamation.

This report is based on first-hand research of cases where people's rights to demonstrate peacefully with others, to speak out in public, or to join groups of any kind have been violated. It urges the Russian government to act in accordance with its own Constitution as well as international human rights standards.

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