Protesters on Pushkinskaya Square, Moscow, January 23, 2021 / Photo: Evgeny Feldman for Meduza

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СТАТЬИ

OVD-Info's position on mass persecution in connection with the protest rallies of January 23, 2021

On January 23, 2021, protests were held across the country demanding the release of Alexei Navalny. There were protest events in at least 185 cities across Russia — from solitary pickets to public gatherings of thousands of participants.

Позиция ОВД-Инфо по массовым преследованиям в связи с акциями 23 января

The total number of events and their participants cannot be estimated easily, but what is known is that in a number of cities, from Vladivostok to St. Petersburg, the authorities employed forceful dispersal of the protesters. In 125 cities, the police detained at least 4,033 people. The detainees

spent several hours to several days at the police stations, many were then sentenced to administrative arrests.

In many cities, the police used unreasonable and excessive violence while making arrests; in addition, intentional beatings of participants were recorded both at the rallies and after an arrest took place. In addition, OVD-Info reported hundreds of cases of human rights violations: from obstruction of the lawyers, legal counselors, and journalists' work to torture at police stations. The detainees were prosecuted for administrative offenses under articles that imply administrative arrests or massive fines. The rally participants also faced threats of expulsions; some were arrested for spreading information about the protests. Already in the first week, the law enforcement agencies opened more than two dozen cases under various articles of the Criminal Code, which provided a basis for detentions, raids, interrogations, and arrests in different regions.

OVD-Info assesses the authorities' actions regarding the January 23 protests as the most large-scale and flagrant attack on the right to freedom of assembly in the entire modern history of Russia.

The authorities are obliged to provide citizens with the opportunity to express their opinions and assemble peacefully and without weapons, and it is the responsibility of the police to ensure the safety of participants during public events. This unequivocally stems both from the Russian Constitution and from the norms of international law, which the Russian state voluntarily recognized as an integral part of its legal system. A similar position was taken by UN Secretary-General António Guterres, who reminded of the fundamental right to freedom of assembly and stated that people should not be detained for expressing an opinion. UN Special Rapporteur on Freedom of Assembly Clément Voule drew attention to police violence and called on the

Russian government to allow the protesters to exercise their rights and release all the detainees.

The authorities assess the protests differently. President Putin called the actions illegal and compared their organizers to terrorists. His press secretary, Dmitriy Peskov, said that few people showed up at the protests, and the police violence was confined to just some «regrettable moments». The head of the Presidential Human Rights Council, Valeriy Fadeev, saw «no violations whatsoever» in the detentions. Nevertheless, it is wrong to think that the state does not hear its citizens. On the contrary, it hears them very well. And it answers to every voice with threats, batons, detentions, raids, and arrests. The January 23 protests were declared illegal by the authorities in advance due to their «unauthorized» status.

But it is not protests that are illegal; rather, the Russian legislation on rallies does not comply with the human rights framework.

The protests could not get «authorization» under the current legislation since it does not provide the legal basis for a spontaneous protest: notification for the event must be submitted 10-14 days before it takes place. Meanwhile, the very reasons for the protests — the arrest of Aleksei Navalny, reasonable concerns for his life, as well as the resonance caused by the «The Putin's Palace» film — demanded an immediate reaction from the society. Naturally, this reaction manifested itself on the streets and squares during the closest weekend. In some cities, activists tried to notify the authorities and engage them in a dialogue but the authorization was denied under multiple pretexts.

Moreover, in St. Petersburg, Moscow, and other cities, for almost a year, since March 2020, any public events have been banned; that is, it has been basically impossible to hold any authorized public rally. In some regions, public events have not been completely prohibited, but there have been

significant limitations to the possible number of attendees. All of this is due to the COVID-19 pandemic. As early as in April 2020, the UN Special Rapporteur on Freedom of Assembly and the Council of Europe drew attention to the fact that «anti-COVID» restrictions on public events must be proportionate to the situation, and governments still had an obligation to ensure the rights of citizens to freedom of assembly. In the context of the return to face-to-face classes in schools and the relaxation of restrictions for sports and entertainment events introduced in Moscow just before January 23, the ban on outdoor events is difficult to perceive otherwise than as a deliberate obstruction of protest activity.

Thousands of people have already faced persecution.

The detainees are accused of participating in «unauthorized» rallies, shouting slogans, obstructing transport and pedestrian movement, disobeying the lawful demands of the police, and violating regional quarantine regulations. A whole arsenal of articles of the federal and regional codes of administrative offenses has been used for the sole purpose of preventing the protest events from happening. Thus regardless of what is written in the police reports and what the protesters are accused of, these cases should be considered in the context of exercising the right to freedom of assembly; this should be mentioned both in Russian courts and when applying to the European Court of Human Rights and the UN Human Rights Committee.

OVD-Info documented hundreds of cases of violations of the laws and human rights during arrests and at police stations. Here are just the most serious ones:

- The detainees complained about poor conditions in the police vans: heat, cold or stuffiness, crowded police vans standing for hours on the street at the entrance to a police station, lack of seats, and the necessity to stand. They were not allowed to go to the toilet. Due to the lack of places in special detention centers, people were transported around the city in police vans for days. At the stations, the detainees were not provided with a bed, water, food, they were not allowed to go to the toilet and were forced to take off medical masks. In Kazan, the police officers were going to detain a pregnant woman for the night; in Kostroma, they left the mother of a minor at the station for the night. In Moscow, the mother of two one-year-old children was not released from the police for two days; she was not allowed to contact her family for a long time and was fed with biscuits and water from the tap. In Voronezh, a woman was held at a police station together with drunken men.

- Detainees from 23 cities reported being threatened while at a police station. They were threatened with extending the term of detention, worsening the detention conditions, frightened with a criminal prosecution, arrest, expulsion, threatened with physical and sexual violence. Some detainees told OVD-Info that threats were used to force them to give their fingerprints, be photographed, give a confession, sign a police report, and name their place of work.

- The detainees were deprived of their phones or were forbidden to call. As a result, they could not report violations, relatives and friends could not contact them, find out where they were and hand over the necessary things, and defenders and lawyers could not provide legal assistance at the police stations or in court.

- The detainees were deprived of the right to defense: defenders and lawyers were not allowed into many police stations, and the «Fortress» plan was announced in a number of stations. This time, there was even a case of persecution of a lawyer practically for intending to fulfill his professional obligations. In Krasnodar, lawyer Mikhail Benyash was put under arrest for five days: the court equated his call to colleagues to provide legal assistance to the detainees to the organization of an unauthorized event. There were reports of cases where detainees were not released after the trial, requiring payment of a fine before the entry of the verdict into force; after the trial, without a summons, they were taken away for interrogation or interview; court sessions were appointed on an emergency basis, without giving time for preparation.
- OVD-Info received information about the detention of 46 journalists in 18 cities. Most of these reports came from St. Petersburg, where at least 17 journalists were detained. Some of them stressed they had an official written editorial task for protest coverage, armbands and vests with the «Press» inscription, or press cards.

The scale of the campaign to put pressure on and prosecute organizers and participants of the protests under the Criminal Code no longer allows us to speak only of freedom of assembly: it is about freedom as such.

The rapidly emerging criminal cases not only make it possible to prosecute specific people, but also provide the authorities with a whole set of tools for further suppression of protests and threaten to expand the scale of oppression. Many people have come under the threat of prosecution, which will require minimal effort to prove. An opportunity presented itself for searches and summons for interrogations, suppression of the dissemination of information about protests and discrediting the protest movement and its participants.

One of the lines of the new wave of repression is related to the coronavirus. In Moscow, a criminal case was initiated on violation of sanitary and epidemiological rules which led to a mass infection. The suspects in the case are several dozen associates and supporters of Alexei Navalny, journalists, bloggers, activists, actors, and writers. More than a dozen raids have already been carried out; the politician's brother Oleg Navalny, the producer of the Navalny LIVE YouTube channel Lyubov Sobol, Pussy Riot member Maria Alyokhina and the head of the Alliance of Doctors Anastasia Vasilyeva have been detained. The accusation is based on the data of «Social Monitoring», the quality of which does not inspire confidence. Detention itself obviously creates more risks of infection than participation in a protest event because it leads to long hours in crowded police vans and police stations where the necessary sanitary requirements were not met, and facial masks were torn off the detainees, according to them.

The criminal cases on blocking roads and sidewalks, which were initiated in three cities, also require close attention. In Moscow, the cases concern blocking Pushkin Square; in St. Petersburg, it is Nevsky Prospect; and in Vladivostok, the central streets. The corresponding article of the Criminal Code was amended in December 2020, and now it criminalizes such a wide range of actions that its application is completely unpredictable. In fact, this is a criminal analogue of the administrative offense of obstructing traffic, which, in the context of the right to freedom of assembly, the authorities should treat with tolerance. Even though it was the police who forced the protesters onto the roads by their actions, charges could potentially be brought against thousands of protesters as part of this criminal case.

In addition, the authorities have been accusing the organizers of the protests of manipulating teenagers and agitating schoolchildren to participate in the protests. It was in this

context that Putin compared the protesters to terrorists, and the law enforcement agencies, in turn, opened a criminal case on «involving minors in committing unlawful acts». In fact, there was no campaigning on the part of the organizers of the rallies intended to involve specifically teenagers in them. The predominance of minors among the participants of the rallies was also nowhere to be seen. But what could be observed was the intention of the police to detain teenagers specifically, probably both for the collection of criminal case materials and for propaganda purposes. In total, OVD-Info recorded detentions of about 200 minors across the country. This is 5% of all detainees and only a fraction of percent of the participants of the rallies. It is also important that participation in rallies is not an «illegal action», and freedom of assembly has no age restrictions because the Russian laws allow teenagers not only to participate in rallies but also to be their organizers from the age of 16.

Finally, the authorities are trying to convince society of «unprecedented violence» on the part of the participants of the rallies, which allegedly were not peaceful. To support this thesis, several criminal cases have been initiated on calls to mass riots, causing physical harm to police officers, as well as property damage and hooliganism. Here it is important to understand the following. The non-peaceful character of the rallies is indeed one of the key factors for the permissible restriction of freedom of assembly. And isolated cases of violence were indeed recorded. However, individual cases of aggression do not turn the whole event into a non-peaceful one and do not justify either the forceful dispersal of the rallies or the mass detentions of their participants.

The testimonies of journalists, independent observers, participants, and detainees, confirmed by video recordings of the rallies, clearly show the peaceful nature of the protests and the absence of violence on the part of the absolute majority of the participants of the rallies. At the same time, reports of the use of force by the police making arrests were

received by the OVD-Info from 27 cities; at least 64 people were injured. The detainees reported hematomas, bruises, broken fingers, dislocations, broken heads and noses, and a cut arm. People were beaten on the head with batons, thrown on the floor of police vans and kicked; the use of stun guns was reported.

OVD-Info defends the right to freedom of peaceful assembly and condemns violence both by the police and by participants of the rallies. However, it is the responsibility of the police to ensure the safety of participants of public events and to prevent offenses, rather than to provoke people to violence and to create conditions in which it is no longer possible to ensure the safety of participants. The forceful dispersal of protesters, the excessive use of force during arrests, forcing people onto roadways are difficult to regard as anything other than a planned provocation, as such police actions inevitably turn a peaceful rally into chaos.

The deputies of the State Duma, commenting on the actions of the police on January 23, noted that «with rare exceptions, these people — very worthy citizens of our country — acted professionally, courageously, skillfully, with dignity and honor, protecting the safety of people, protecting the rule of law and independence of our homeland». By January 29, not a single criminal case had been initiated on the fact of the use of violence by law enforcement officers — even for a high-profile case in St. Petersburg, where an officer of the National Guard violently kicked Margarita Yudina in the stomach: the very fact of violence was recognized by the security forces, the employee was identified, but the criminal proceedings were not initiated.

In this context, the persecution of only the protesters on charges of violence clearly indicates the political motivation of these criminal cases.

Each criminal case initiated on charges of hooliganism, causing physical harm or damage to property, must be the

subject of a thorough investigation and considered not in isolation, but in the context of what was happening at the rally until the very fact of the alleged offense. Experience shows that standards of fair investigation and trial are not ensured in such cases in Russia. On the contrary, the proceedings in such cases are distinguished by an ostentatious disregard for procedural norms and defense evidence, and punishments are disproportionate even to official charges. It should not be forgotten that everyone has the right to protection and a fair trial.

OVD-Info considers it necessary to seek a fair trial on all criminal cases against the participants and organizers of the rallies, as well as conduct investigations into and initiate appropriate criminal proceedings in all cases of unlawful violence on the part of the security forces.

All of the mentioned above is far from a complete overview of the events surrounding the protest rallies of January 23, 2021. We shall continue to scrupulously collect and analyze information about all facts of human rights violations in the context of this and future rallies. We shall use all information and legal mechanisms available to us both to help individual detainees and arrested persons, and to protect freedom of assembly as such.

We call for solidarity with those detained and arrested. The wave of political violence launched by the authorities is already threatening not only individuals, but the entire society and the well-being of our country. This wave must be stopped. And it can be stopped — for this, society has many peaceful ways to express its position and an entire arsenal of legal methods for protecting both its rights and the rights of its fellow citizens. That would require a lot of energy and a lot of work, but if it is not done, the current wave of violence will turn into a tsunami that will sweep away the remnants of civil liberties in its path.

Legal analysis of the mass detentions of assembly participants on January 23, 2021

Правовой анализ задержаний 23 января 2021 года

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