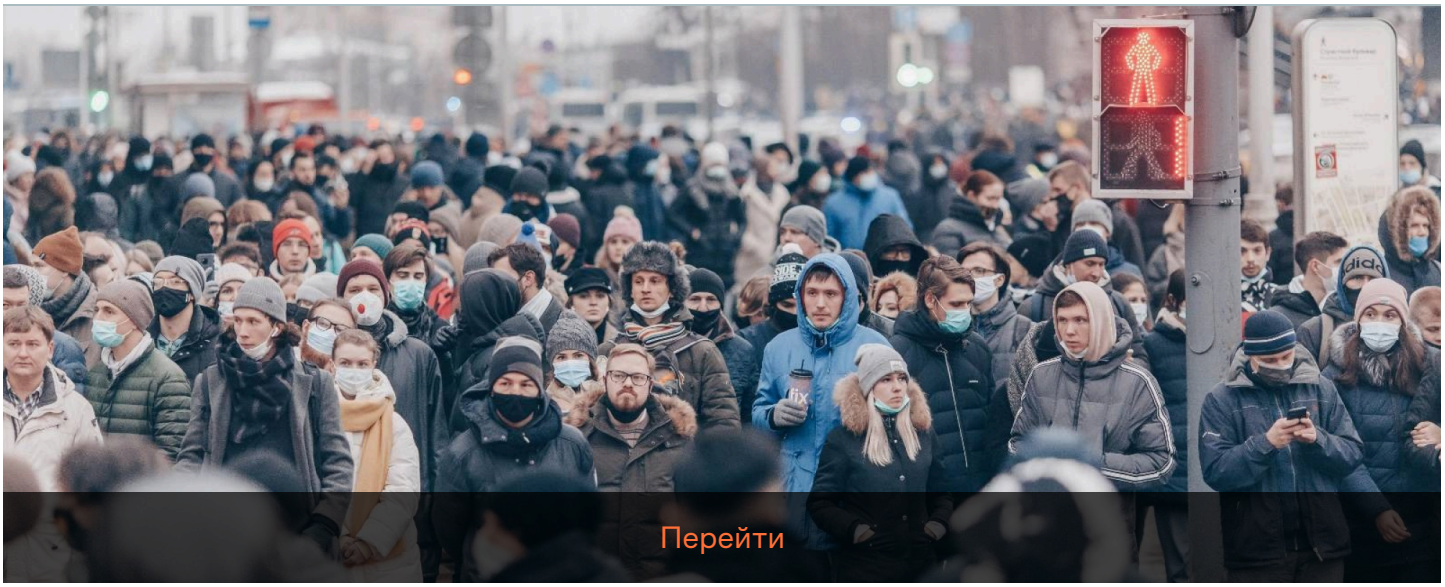

Shutterstock

15.02.2024

Russia on the Road to Freedom of Assembly: Challenges and Instruments for Change

Русская версия

INTRODUCTION

This report was first published in 2021. In December 2023, at the request of the Reforum project, we updated the information: we described the problems associated with the war in Ukraine, updated the data, added factual circumstances and new tools for change. At the same time, the main points have remained unchanged — they are still relevant.

Freedom of assembly is a vast area closely linked to many aspects of public life. Many years of experience in dealing with cases of restrictions on freedom of assembly in Russia convince us that improvements are virtually impossible if they are not connected to changes in many other areas, such as the overall quality of regulatory control, guaranteed independent and fair trial, accountability and transparency

of the authorities' actions, and officials' responsibility for their decisions. These problems, as well as proposals for their solution, are outlined in the chapter «Systemic Issues and Cross-cutting Principles of Change». Recognizing the volatility of the socio-political situation, we have outlined a number of proposals as principles rather than concrete steps. For example, there are many options for increasing transparency in the activities of public authorities, each of which may be more convenient and realistic in a particular situation. But increased transparency itself seems to be a necessary component of improving the situation, the effects of which are bound to affect many areas, including freedom of assembly. In the second chapter, we have focused on the possible and not always obvious effects of certain systemic changes on freedom of assembly.

The task of assembling a list of specific problems and proposals for their solution seems no less important. For example, a procedure for arbitrarily banning public events or an imbalance of responsibility resulting in the suppression of people's desire to enjoy the right to freedom of assembly is «assembled» from many details. The specific elements of the prohibitory system may change over time. We aim to keep the list up to date so that it can be used as a guide to remove disproportionate restrictions. However, a compilation of specific problems and an analysis of the details that make up those problems, as well as a list of proposals, can also be used to monitor change and predict the effects of particular regulatory or practical changes. The first chapter on «Specific Solutions on Freedom of Assembly» is such a «bank» of documented problems and solutions on the topic of freedom of assembly.

The third and final chapter, «Tools and Ways of Change», is an attempt to bring the described problems and possible solutions as close as possible to the situation of contemporary Russian society and to highlight the specific actions and spheres of influence that are available to civil

society in Russia. In the early 2021 edition, we have analysed in detail the effects of judicial campaigns and campaigns to change regional legislation on freedom of assembly. We also drew attention to various «intermediaries» in the dialogue between society and the state, such as federal and regional human rights ombudspersons and various public councils affiliated with government bodies. We cited successful examples and shared ideas for their development and scaling up. All of this has not lost its relevance completely, even after the full-scale invasion of Ukraine by Russian troops and the human rights crisis in Russia that has accompanied it. However, at the end of 2023, we would like to focus more attention on those areas where the state has less power than society, namely civic and international solidarity.

WHAT IS HAPPENING WITH FREEDOM OF ASSEMBLY IN RUSSIA

The war in Ukraine has had a negative impact on freedom of assembly in Russia. Mass actions against the invasion are not being authorized at all, and people who come out with solitary anti-war pickets are regularly detained. There are thousands of detentions and administrative prosecutions of peaceful protesters in Russia: since the beginning of the full-scale invasion of Ukraine, security forces have carried out more than 19,000 detentions for taking an anti-war stance. Courts annually impose fines totalling tens of millions of roubles, government agencies fire employees, and universities warn students against participating in unauthorized actions and threaten them with expulsion. In 2023, at least 74 people were charged with criminal offences after being detained at anti-war rallies and protests against mobilization.

Instead of or along with the «classic» Article 20.2 of the Administrative Code (violation of the established procedure

of holding public events), the protesters are charged under a new Article 20.3.3 — discrediting the armed forces of Russia. It was included in the Administrative Code eight days after the full-scale invasion began; the maximum penalty for citizens is a fine of 50,000 rubles. However, this article has a catch: a repeated offence within a year threatens criminal liability under a similar article of the Criminal Code — part 1 of article 280.3, which is also often used by the authorities. Criminal cases under this and other articles are presented in OVD-Info's guide to the «anti-war case».

The Russian authorities perceive street demonstrations not as an instrument of dialogue with society, but as a threat to the stability of the regime. The inability to hold peaceful assemblies destroys the very basis of democracy and impedes the realization of other civil rights and freedoms, which increases the concentration of power in one place and allows political decisions to be made in isolation from the social, political and economic interests of various groups in society. The costs of initiating and conducting hostilities do not affect the respective decisions of the country's leadership but lead to even greater restrictions on civil rights, including freedom of assembly, which in turn affects the duration of the conflict.

People detained at rallies have had fewer opportunities to obtain justice and defend their rights. On 15 March 2022, Russia was expelled from the Council of Europe, an international organization which aims to promote common democratic principles, fundamental freedoms and other human rights standards. This was the Council's response to Russia's military invasion of Ukraine. The resolution of the European Court of Human Rights stated that the court would continue to consider the complaints of Russian citizens on violations that would have taken place before 16 September 2022, and Russia was obliged to execute all rulings. However, the Russian authorities refused to execute the ECHR rulings that were issued after 15 March 2022 and

stopped communicating with the court. Citizens were deprived of the opportunity not only to receive compensation for violation of the right to freedom of assembly but also to influence the improvement of the situation in the country — it had been possible sometimes to solve systemic problems with the help of the European Court. For example, after one of the ECHR rulings, the Constitutional Court ordered the constituent entities of the Russian Federation to exclude territorial restrictions on freedom of assembly from their legislation. Following this, several Russian regions have made these changes.

Russian human rights defenders, including lawyers from OVD-Info, continue to file complaints to the ECHR about violations that occurred before 16 September 2022 (the deadline for admissibility of complaints from Russia, which the ECHR itself has set), and to insist on the enforcement of rulings that have already been handed down. Even though the current Russian authorities have no intention of implementing the judgements of the European Court, it is important for citizens to express their disagreement with the violation of their rights and to receive support from an independent body of justice. In addition, such appeals document the human rights situation in Russia, and it would be possible to enforce the legal positions of the ECHR during a period of regime transformation in order to change legislation and law enforcement.

The pervasive censorship and blocking of independent media websites, the refusal of the Russian authorities to implement ECHR judgements, the increasing threat of criminal prosecution, the announcement of mobilization, and the actions of the Russian military in Ukraine have prompted many citizens to leave the country. According to various estimates, about 800-900 thousand people have left Russia after 24 February 2022.

The repressive policies of officials, as well as mass relocation, have affected the situation with freedom of assembly in Russia: after September 2022 — the announcement of «partial» mobilization — and until the end of December 2023, no major actions took place in the country.

Direction of reforms

Against the backdrop of the aggressive war and growing internal repression, it is difficult to see even the outlines of any positive reforms in the sphere of freedom of assembly on the Russian horizon. Nevertheless, there is a wealth of international experience on this issue — there are many sources that enshrine international standards of freedom of assembly. These include:

- The International Covenant on Civil and Political Rights is universal and is dedicated not only to freedom of assembly. Its provisions are binding for Russia. General Comment No. 37 (2020) on the right to peaceful assembly to Article 21 of the Covenant collects the basic principles for the realization of freedom of assembly. Its authors also have clarified the obligations of the state and the limits of restrictions on the right to freedom of peaceful assembly;

- Key judgements of the ECHR, primarily the judgement in the case of Lashmankin and Others v. Russia, which remain unimplemented in terms of changes in laws and law enforcement practice. Exclusion from the Council of Europe has not released the Russian authorities from their obligation to implement the ECHR judgements, and Russia's unilateral refusal to fulfil its obligations is a violation of international treaties. Human rights organizations have repeatedly sent their expert assessments and proposals for reforms to the Committee of Ministers of the Council of Europe, as well as to the Russian Ministry of Justice. However, as far as systemic changes are concerned, the decision has not yet been implemented. At the beginning of 2020, the European Court of Justice also published a guide to its own case law on the topic of mass rallies. The guide compiles the main legal positions of the ECHR. Following its publication, the guide was translated into Turkish and later into Russian.

- General Comment No. 37 (2020) on the right to peaceful assembly to Article 21 of the UN International Covenant on Civil and Political Rights. This document compiles basic principles for the realization of freedom of assembly, and clarifies state obligations and the limits of restrictions on the right to freedom of peaceful assembly.

- Guidelines and expert compilations: for example, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) Guidelines on Freedom of Peaceful Assembly.

These principles and standards are sometimes found in the text of laws or in court rulings. Rarely, but still there are cases of these principles being realized in practice. Unfortunately, the last time we saw such an example was more than five years ago, in August 2018: at that time, a peaceful «March of Mothers» — an action in support of political prisoners — took place in Moscow, without being authorized by the authorities. The march was not accompanied by detentions; on the contrary, at one point the police blocked traffic for a short time so that the protesters could pass through a pedestrian crossing.

The question is how to make such cases not exceptions, but the norm. Below we outline what specific steps should be taken to regulate public events, what broader systemic issues create a restrictive context for the realization of the right to freedom of assembly, and what existing tools can be used to bring positive changes.

Freedom of assembly is not just about the state, politicians and laws. It is also about people and civic initiatives that realize and defend their right to freedom of assembly in practice. Therefore, the report is addressed not only to the figures of the future Russia but also to contemporary society. The defence of rights and freedoms is not only a function of the state but also our common responsibility.

SPECIFIC SOLUTIONS ON FREEDOM OF ASSEMBLY

This chapter outlines five key issues that need to be addressed in the reform process and steps to resolve them:

1. Prohibition of spontaneous assemblies and the problem of getting an authorization
2. Restrictions during assemblies
3. Collection of personal data and its use against protesters
4. Prosecutions related to street actions
5. Discriminatory approach to assemblies.

1. Prohibition of spontaneous assemblies and the problem of getting an authorization

Russian law does not provide for a legal possibility of holding a spontaneous assembly. Any public event must be approved by the authorities in advance. The deadlines for submitting the notification are strictly limited by law, and in practice, the broad powers of the authorities for changing the place and time of assemblies give them the possibility of banning any undesirable action. When appealing against the authorization or refusal to authorize a public event, the courts often issue judgements late, i.e. after the planned day of the action: for instance, in 2022, the courts considered 1,141 such claims, more than half of them — 611 (53%) — were considered when the planned date of the assembly had already passed. In the first half of 2023, the courts received 759 appeals of refusals, 376 (47.5%) of which were considered with delay.

The «unauthorized» status of an assembly leads to a range of negative consequences, from suppression of the event and prosecution of its participants and alleged organizers to a ban on the dissemination of information about such actions (under the threat of blocking Internet resources or accusations of «organizing» an unauthorized assembly), as well as to the creation of a negative image of peaceful protests and their marginalization in the media.

«Any provocative actions, aggression against police officers, failure to fulfil their lawful demands will be immediately

suppressed. Persons who committed such offences will be detained and brought to justice,» the Interior Ministry declared on the day of the start of the full-scale war with Ukraine and the first spontaneous action against the invasion, on 24 February 2022. On that day, according to OVD-Info, law enforcers detained more than 2,000 people across Russia.

The next day, Russian presidential spokesman Dmitry Peskov said that the detainees «do not have the right, according to the law, to organize actions to indicate their point of view without following the corresponding procedures.» «There are solitary pickets, but they are like, well I wouldn't say mass, but events involving a certain number of persons — they are simply not allowed by law. And that's why certain measures were taken against them,» he told reporters.

Since 2017, the authorities have demanded to be notified in advance of events in the format of a meeting between voters and deputies. Since then, solitary pickets have remained the only form of a public event that does not require prior authorization and, therefore, the easiest way of spontaneous protest. Since 2016, Russian lawmakers have been systematically restricting this way of expressing protest as well: they have introduced the requirement to give advance notice of solitary pickets if they are held with the use of «quickly erected prefabricated structures»; solitary pickets on a single topic and «picket queues», where participants stand in a picket one after another, are recognized as a «hidden form of mass event».

When temporary restrictions on assemblies are imposed (as was the case, for example, during the pandemic in 2020-2021 and with the introduction of regimes of varying degrees of readiness after the declaration of martial law in the Russian-occupied territories), these, often excessive, measures also apply to solitary pickets, which the law classifies as public events. It seems that the participants

of such actions are even more vulnerable to state pressure: without prior communication with the authorities as part of the authorization procedure, they immediately face direct opposition, detention and prosecution.

At the moment, spontaneous solitary anti-war actions are in most cases interrupted by law enforcement officers: the picketer is detained, and at the police station, a report is usually drawn up on an administrative offence under Article 20.3.3 of the Code of Administrative Offences — discrediting the use of armed forces. Such situations occur regardless of whether or not a special response regime has been introduced on the territory of a federal subject.

International standards of freedom of assembly do not exclude the procedure of pre-approval, but impose certain requirements to it: it should not be overly complex or dependent on the content of statements (except when the statements are related to calls to violence); the «unauthorized status» of a peaceful assembly is not a sufficient ground for its suppression; it should provide for the possibility of spontaneous assemblies on issues that require an urgent public response.

Sometimes unapproved protest events in Russia are held without dispersal and detentions: this was the case with the first protest mass marches in Khabarovsk in 2020 and some of the actions in support of Alexei Navalny in Moscow in 2021 (14 February and 21 April). These isolated cases demonstrate both the ability of protesters to maintain the peaceful nature of protest without police interference and the ability of law enforcement agencies not to obstruct peaceful assemblies. This practice should be developed and strengthened, turning it from an exception into a norm. However, the law enforcement agencies did subsequently prosecute the participants of the peaceful march on 21 April 2021. Many of them were found with the help of Moscow's

facial recognition system and reports were drawn up on them under Article 20.2 of the Code of Administrative Offences.

The steps necessary to reform the system of pre-approval are detailed in a report by the Memorial Human Rights centre and OVD-Info in the context of implementing the ECHR ruling in the case of Lashmankin and Others v. Russia. We will summarise them briefly.

1. Russian authorities and courts should show tolerance towards unauthorized but peaceful public events. Spontaneous events should be allowed to take place, and the associated sanctions — administrative prosecution and blocking of Internet resources for publishing information about unauthorized actions — should be abolished. Alleged violations of public order should not entail any sanctions unless proven by the police.

2. Restrictive rules for mass public events should not apply to small actions that do not seriously affect traffic or pedestrians, as well as the functioning of other elements of urban infrastructure.

3. The deadlines for submitting a notification on holding a public event should be increased, and complex variability of deadlines for submitting a notification for different forms of public events should be excluded.

4. Sports, cultural and other mass events, such as fairs, competitions, exhibitions, as well as public events organized by the authorities, should not be prioritized over other gatherings, including in terms of deadlines for submitting notification.

5. It is necessary to oblige the authorities to substantiate in detail any proposals to change the conditions for holding a public event, and to equate an unjustified refusal with an invalid one.

6. The deadlines for responses from the authorities during communication after the notification should be clearly specified and leave the organizer time to prepare the event. Submission of a notification outside the established deadline should not be the only reason for banning an action.

7 An applicant of a public event should be able to submit the notification to the nearest authority, as well as to submit the notification remotely.

8 It is necessary to clarify the legal status of solitary pickets, which should not be subject to the restrictions imposed on mass public events, as well as to exclude from the law the requirement to receive approval for picket queues, solitary pickets on a single topic or with the use of quickly assembled prefabricated structures. For more details on the necessary changes in this area, see the OVD-Info report «Solitary pickets».

2. Restrictions during assemblies

Police officers and representatives of other law enforcement agencies restrict the rights of protesters at both unauthorized and authorized events.

At unauthorized events, mass arrests, unjustified use of force against protesters and passers-by, as well as blocking of streets by the police, disconnection or restriction of mobile Internet traffic in the location of assembly often occur.

- During the spontaneous anti-war protests of late February and early March 2022, which were peaceful in nature, more than 14,000 people were detained in Russia. The scale of detentions in such a short period of time clearly indicates that these were indiscriminate mass detentions. According to the UN Human Rights Committee, «practices of indiscriminate mass arrest prior to, during or following an assembly are arbitrary and thus unlawful». It is not a question of suppressing public order violations, but of suppressing precisely assembly and expression of opinion, of indiscriminate detention not for specific unlawful actions, but only for participation in a protest. It is not uncommon for random passers-by to get detained. The period of detention is calculated from the time of arrival at the police station, which creates grounds for abuse and violation of rights. Sometimes detainees are kept in police vans for several hours before being processed at a police station.

- As a rule, mass detentions are accompanied by cases of unjustified police violence. During large-scale anti-war protests in February and March 2022, detainees were thrown to the ground, beaten with batons, choked, punched in the stomach, face, eyes, slammed against a wall, and had their arms twisted. At the anti-war rallies on 6 March 2022, law enforcers in various Russian cities beat at least 34 people, in some cases using non-lethal weapons: in Saint Petersburg, three men had their heads smashed and one of them was tasered. In Moscow's Brateevo District police station, officers openly abused detainees, using violence, threatening rape, and calling them enemies of the people. In total, in 2022, OVD-Info documented at least 413 cases of police violence in connection with anti-war protests.

- To prevent peaceful protests, the authorities can block streets and entire neighbourhoods, block the exits of metro stations, significantly limiting the functioning of the city's infrastructure and causing serious inconvenience to residents. In this way, the authorities themselves create the negative effects that they are supposed to minimise during public events.
- There have been cases when protesters have reported interruptions in mobile Internet connectivity during public events. Such cases were recorded during the protests in Ingushetia in 2018 and in Moscow in 2019. Such measures can be used by the authorities to isolate protesters from information.
- Surrounding protesters, forcing them onto the traffic area, and creating a crows crush can provoke fear and isolated incidents of retaliatory violence by protesters or bystanders. As a result, the authorities present the entire protest as «not peaceful» and when dealing with a specific case of violence against police officers, do not take into account the aggressive actions of the police themselves.
- Police abuse is not excluded, even when the action is approved by the authorities.
- Police censorship of posters and other communication materials of participants is extensive.
- The authorities apply inadequate security measures, resulting in queues to get to the assembly venue and making the assembly itself look dangerous from the outside.

Detained protesters often face unacceptable conditions of detention in police vans and police stations: some of them spent many hours without access to food, water or even medication, sometimes without being able to go to the toilet. For example, during the anti-war rallies of February-March

2022, in at least 75 police stations, detainees left overnight in police stations were not provided with beds, water or food.

In addition, detainees suffered from extreme temperatures, stifling heat and cramped conditions during transportation. Detainees who spent the night before the court in police stations did not have beds; due to the limited cell capacity in detention centres, many were held for several days in police vans. The cells were either cold or too hot and stuffy, there were no toilets or hygiene products, and people faced unsanitary conditions, and smokers and non-smokers were forced to share the same cells.

- In early 2021, citing a shortage of places in Moscow's special detention centres, the security forces placed people who had been placed under administrative arrest for participating in actions in support of Navalny in the Temporary Detention Centre for Foreign Citizens in Sakharovo (New Moscow). The citizens who were taken there spoke about the inhumane conditions of detention: for a long time, sometimes 12 to 25 hours, they were being held in police vans near the detention centre, after which they were placed in overcrowded cells, where for the first days they slept on iron bed frames, as mattresses were not immediately given out. The toilets were located in the cells themselves; in addition, surveillance cameras were mounted above the toilets. The detention centre staff gave people only three mugs of hot water a day. They started providing drinking water after the Public Monitoring Commission members arrived in Sakharovo. In addition, the people held there were not given medicine. In the autumn of 2021, the lawyers of OVD-Info filed 81 complaints at the ECHR about the detention conditions in Sakharovo. In December 2023, the court considered part of the complaints, recognized violations in the actions of the Russian authorities and awarded the applicants compensation from 4,000 to 5,000 euros.

As we can see, detained participants of assemblies in Russia enter the system that consists of many problems, inconveniences, restrictions, as a result of which, even without the active use of force by the police, the experience of detention can become very difficult and cause serious harm to physical and mental health.

The experience of being detained and other forms of restriction of freedom of assembly may vary and worsen for representatives of various vulnerable groups, such as minors, senior people, people with health problems, and women. There may be additional risks, for example, deterioration of health or additional negative consequences for people who depend on them (for example, minor children). Such risks also have a greater deterrent effect on the exercise of the right to freedom of peaceful assembly.

- During large-scale anti-war actions in early 2022 in Saint Petersburg, a detained man with a group 2 disability felt sick, an ambulance was called for him, but the police did not let him go to the doctors for a long time. In Moscow, a detained man with a disability, who had previously suffered from epilepsy, was not released from the department for more than three hours and was not given water.

- After the start of the full-scale invasion of Ukraine, at least 544 minors were detained at anti-war rallies in early 2022. This also affected those who happened to be on the street during the protests: for example, on 24 February 2022, a 12-year-old boy was detained in Saint Petersburg, left at a police station overnight and then handed over to his parents.

- There are at least 16 known cases of women with children under the age of 14 being detained for a period exceeding three hours prescribed by law. In at least 8 cases, these women were left overnight at a police station. In two cases, a court in Saint Petersburg ordered administrative arrest: for Evgenia Gerasimchuk, the mother of a one-and-a-half-year-old child, and 29 days of arrest for a single mother, Anna Firsova. The latter spent 16 days in a special detention centre, after which the court changed the punishment to a fine of 150,000 rubles (~USD1,650 as of February 2024) and counted the fine as a punishment served due to administrative arrest.

- The repressive policy of the authorities in the field of freedom of assembly has negatively affected the ability of senior citizens to exercise their political rights, including participation in rallies.

In the case of minors, it is important to note their particularly dependent position on social institutions such as family and school. This expands the possibilities for restricting freedom of assembly. There are cases when minors have been publicly

condemned by teachers, social workers, and police officers who came to the educational institution. Pressure is also exerted on the parents of minors detained at rallies in the form of administrative cases and subsequent visits by the guardianship authorities. Also, detained minors do not always find support in their families, as their parents and guardians may not share the political views of their children and, as a result, prevent minors from appealing restrictions on freedom of assembly and related violations made by police.

During detention, women may face exploitation of gender roles by police officers and other government officials. This can manifest in moralising, expressing opinions that married women or women with children should not participate in rallies, etc. OVD-Info described such manifestations of sexism in detail in the report «Violations of the Right to Peaceful Assembly for Women and Girls in Russia from 2010 to 2020». In addition to verbally depriving women of political subjectivity, there are a number of systemic problems (in particular, the chilling effect of traditional gender roles; forcing students and state employees, most of whom are women, to participate in pro-government actions, etc.). At the same time, the political activity of women in modern Russia is high and continues to increase. In early December 2023, OVD-Info recorded 19,844 detentions related to anti-war positions, 45% of those detained were women. During the major protests in the winter of 2021, women accounted for only 25% of the detainees. This indirectly indicates the significant role of women in the anti-war protest.

The following measures should be taken to minimise the problems:

1. Detentions should not be mass and arbitrary. Detention as a preventive measure should be used in extreme cases to prevent or suppress harm when other means do not allow achieving a result. Every case of detention at a public event must be justified, and participation in a peaceful assembly that is not authorized by the authorities should not be a reason for detention. In addition, paragraph 4 of Article 27.5 of the Administrative Code should be amended to clarify that the period of administrative detention is calculated from the moment of actual detention, and not from the time the detained person was taken to a police station. The security forces must stop unreasonably using force against the protesters and putting pressure on them after their detention.

2. The security measures taken by the authorities during public events should be reasonable and not excessive, not aimed at marginalizing or discriminating against the assembly: in particular, police mobilization should be adequate to the number of participants.

3. Stop the practice of censoring banners and posters used during public events. The authorities should not have the authority to assess the compliance of banners and slogans with the event topic. Statements on posters may be restricted only in exceptional cases, such as those related to incitement to hatred or actual calls for violence.

4. Stop the harassment and intimidation of children and their parents for expressing anti-war views. Abolish all penalties imposed on parents in connection with their children's exercise of the right to freedom of assembly, as well as other rights.

5 Develop measures to support the exercise of the right to freedom of assembly by representatives of various vulnerable groups, to take into account the peculiarities of different experiences of certain restrictions, as well as to reduce the chilling effect associated with such experiences on the realization of freedom of assembly. Such measures may include instructions or training for the police on working with various vulnerable groups during assemblies; special State policy to combat the problem of pressure by government officials on minors, the elderly, people with health problems participating in protest actions; legislative changes, for example, in the functioning of the Commission on Rights and Juvenile Affairs.

3. Collection of personal data and their use against protesters

The state collects information about participants of protest actions in various ways, also monitoring reports of unauthorized actions on social networks and in online media. This is how they identify and hold accountable participants of rallies, delete information from Internet resources or block access to them. In the context of rapid digitalization, the problem of uncontrolled collection and storage of data on protest participants by the authorities is becoming more acute, and harassment based on this information is becoming more widespread.

In 2022, the closed data of one of the main restrictive authorities in the country, Roskomnadzor, became publicly available. Thanks to this, journalists of «Important Stories» found out that the Russian authorities monitor the protests of citizens on a daily basis and study their pages on social networks. Officials of the supervisory authority prepare reports on protest sentiments, which include information about the topic of the action, the place and time of the event,

the organizers, participants and whether there have been detentions.

The practice of photographing and videotaping participants of protest actions has become extensive. This is done by plainclothes law enforcement officers, as well as by city video surveillance systems. At authorized actions, law enforcement officers demand that participants pass through frames with cameras installed.

In 2021, the security forces began to detain people more often after the end of an action. Most of the cases are related to the April rally in support of Navalny — OVD-Info is aware of at least 363 such detentions. We explain this by the fact that in order to identify the participants of the actions, the police began to use machine recognition of faces captured in photos and videos.

After the full-scale war began, the authorities started using the tactics of preventive detention of civil activists on public holidays and other events: at least 141 people were detained using a facial recognition system. The authorities confirmed that they use this technology against participants of rallies and enter them into the system database — for this, it is not even necessary to be detained at a mass event.

Security forces often inform detainees that they were «found on camera,» but in official documents — case files and court rulings — the use of facial recognition technology is in most cases hidden. In addition, the facial recognition procedure is not regulated by law — in particular, the terms and grounds for using this tool, the mechanisms for appealing it, and the procedure for excluding personal photos from the database are not established.

The UN Human Rights Committee has pointed out that the right to privacy may be violated when using facial recognition technologies or other technologies that identify individual participants in a crowd meeting. In July 2023, the European

Court of Human Rights issued a ruling »Glukhin v. Russia», where it directly condemned the Russian police for the use of the facial recognition system against dissenters.

However, appealing against such actions of the security forces in Russian courts has not yet brought results: the courts turn a blind eye to violations, even if the defence provided evidence of political motivation for the detention using a facial recognition system. The proceedings in such cases take place in violation of the principle of adversarial nature of the parties: detainees and their representatives are not given access to the documents on the basis of which a person was included in the lists for tracking using the facial recognition system.

In some cases, detainees at public events are forced to submit their fingerprints and to be photographed, and sometimes even to donate DNA samples. OVD-Info is aware of more than 300 such cases in 34 police departments after being detained at anti-war protests (as of April 2022).

The law provides for mandatory fingerprinting for suspects, accused, and convicted in criminal cases. In cases of administrative offences, security forces can take fingerprints from citizens who have been placed under administrative arrest and people whose identity could not be established otherwise. At the same time, law enforcement officers often neglect to comply with the law and take fingerprints from detainees at rallies immediately in the police office when their identity has already been established. In some cases, when refusing fingerprinting or donating a DNA sample, detainees are threatened with an article on disobeying the lawful request of a police officer (Article 19.3 of the Code of Administrative Offences). It provides for a fine or administrative arrest, as well as the possibility to detain a person for 48 hours, and sometimes such threats are realized.

In May 2023, amendments on mandatory genomic registration came into force. This is a procedure where a DNA sample is taken from a person and included in a special database. According to the amendments, everyone convicted and serving sentences in the form of imprisonment, suspects and accused of committing any crimes must undergo genomic registration. And from January 2025, all those who have been placed under administrative arrest by the court will be required to provide DNA samples. The practice of collecting DNA samples will expand.

Police officers can also collect other data about a person and their private life: for example, in some cases, detainees had their unique phone codes (IMEI) copied.

Data on administrative detainees are stored in the databases of the Ministry of Internal Affairs. At the same time, the person is not notified what specific data regarding them is stored in these databases and on what basis the data were placed there. There is no procedure for excluding data from there, and no storage time limits.

Collecting personal information renders an individual more vulnerable: the publication of such information may lead to problems with employment or education. In some instances, sensitive personal information, such as the place of employment, is published by courts handling administrative cases concerning the violation of public event regulations.

In 2021, a database with a list of those registered on a website supporting Alexei Navalny's protests was hacked. The hackers matched email addresses with other personal data, such as places of employment, which, in turn, were leaked by government structures. The contact information was sent to presumed employers. In May, it became known about mass layoffs at the Moscow Metro and units of the Moscow Department of Transportation: the laid-off employees reported that they had registered on the

website in support of Navalny. The state did not take measures to protect workers from dismissals due to their political stance, leading some to turn to the trade union of the capital's metro workers. Subsequently, 37 of them were reinstated through court and were awarded compensation, amounting to several million rubles.

To address the issue of collecting personal data and its use against protest participants, the following recommendations should be adhered to:

1. Legislatively restrict the use of surveillance tools, video surveillance, facial recognition, and social media monitoring.

2. Prohibit the use of facial recognition systems for the purpose of restricting the exercise of political rights.

3. Facial recognition systems should not be employed in administrative offence proceedings, and their use in matters concerning non-violent crimes should be restricted, given that the adverse impacts on privacy in such instances would surpass the societal risk these crimes and violations pose. The outcomes of employing such measures should be deemed inadmissible as evidence in cases concerning liability for actions.

4. Abolish the provisions of the law on mandatory genomic registration and fingerprinting of individuals subjected to administrative arrest, and limit the application of these measures in relation to individuals involved in criminal cases concerning non-violent crimes.

5. Legislatively provide guarantees concerning the storage of personal data in various state databases: establish the grounds and restrictions for access to such data, their storage period, and disposal. Create an effective system for monitoring the acquisition, use, and storage of information about private life by government bodies, preventing information leaks and abuse of authority.

4. Punishments related to street actions

Regarding participants and presumed organizers of peaceful unauthorized actions, two articles of the Code of Administrative Offences are widely applied: the one concerning the violation of the legally established procedure of organizing and holding public events (Article 20.2 of the Code of Administrative Offences) and conducting a «mass simultaneous presence leading to a breach of public order»

(Article 20.2.2 of the Code of Administrative Offences). Both articles provide for punishment in the form of compulsory labour, a fine, or arrest. For repeated offences under these articles, a fine ranging from 150,000 to 300,000 rubles (~USD1,645 to ~USD3,290 as of February 2024), from 40 to 200 hours of compulsory labour, up to 30 days of arrest is provided.

- According to judicial statistics, Russian courts considered 18,183 cases under the «rally» articles (Articles 20.2 and 20.2.2 of the Code Administrative Offences) from 24 February 2022 to 15 February 2023. The number of cases considered is less than the number of detentions, as some cases could have been dismissed, some detainees were charged under Articles 20.3.3 or 19.3 of the Code of Administrative Offences (disobeying a lawful police order), and some were released without drawing up a report.

If an individual is brought to administrative liability three times within six months for violation of the established procedure of organizing and holding public events (Article 20.2 of the Code of Administrative Offences), subsequent violations may lead to criminal proceedings under Article 212.1 of the Criminal Code, which provides for up to 5 years of imprisonment. Real sentences under this article were given to Moscow activists Ildar Dadin and Konstantin Kotov; eco-activist from Arkhangelsk Andrei Borovikov was sentenced to 400 hours of compulsory labour, and politician Yulia Galyamina received a suspended sentence.

In 2017, the Constitutional Court recognized Article 212.1 of the Criminal Code to be in accordance with the Constitution, but provided a restrictive interpretation. Specifically, the Court ruled that criminal liability is possible if the violation resulted in harm or a real threat of its occurrence. However, the Constitutional Court's ruling did not resolve the problem of criminalizing freedom of assembly,

and lower courts often ignore the restrictions on liability established by the Constitutional Court. In particular, in 2019, lawyers for Konstantin Kotov once again appealed to the Constitutional Court with a complaint about this article. In its judgement of 27 January 2020, the Constitutional Court concluded that the courts had applied Article 212.1 of the Criminal Code of the Russian Federation contrary to the constitutional interpretation: «The [ordinary jurisdiction] court did not address whether the harm caused or the real threat of harm was significant, and whether the public event lost its peaceful nature as a result of the applicant's violation of the order of its organization or conduct.»

The authorities use Article 212.1 of the Criminal Code as a tool of intimidation to obstruct the exercise of freedom of assembly. The application of this article presents many problems, which are highlighted in the OVD-Info report »How they taught us the fear of protests».

Participants in anti-war actions — both mass and individual — are regularly charged under Article 20.3.3 of the Code of Administrative Offences for discrediting the Armed Forces of the Russian Federation, which was added to the Code in March 2022. Simultaneously, a similar Article 280.3 was introduced into the Criminal Code, providing for up to 7 years of imprisonment for a repeated violation of the administrative Article 20.3.3, as well as for discrediting the Russian army resulting in harm. Criminal liability for anti-war assemblies and statements can also be imposed under part 2 of Article 280.3 of the Criminal Code if such discrediting of the armed forces is associated with causing death by negligence, harm to health or property, or has led to mass public order disturbance, interference with the functioning of infrastructure facilities. In addition, Article 207.3 — spreading «fakes» about the war and the actions of Russian military personnel, with a maximum penalty of 15 years of imprisonment — was also included in the Criminal Code.

The law on liability for «fakes» was swiftly reviewed by the State Duma and adopted within two days; the following day, it was signed by Vladimir Putin. Thus, the authorities have demonstrated their response to anti-war protests across the country and the dissemination of information about the invasion of Ukraine that is not coming from official sources.

Under Article 20.3.3 of the Code of Administrative Offences, citizens can be fined from 30,000 to 100,000 thousand rubles (~USD330 to ~USD 1,100 as of February 2024): according to OVD-Info, up to 2,000 people have been held liable under this article for peaceful actions. Among other reasons, it is applied to anti-war statements, displaying the national flag of Ukraine or using its colours — for example, in nail art, as well as other anti-invasion symbols.

The right to freedom of assembly is inextricably linked with freedom of expression. Article 20.3.3 of the Code of Administrative Offences is the result of the development of previous negative trends that we have observed in the realm of freedom of assembly: administrative prejudice, broad and vague wording, overlapping of the offence with other articles of the Code of Administrative Offences and the Criminal Code, allowing law enforcers to «choose» one or several articles.

Since the beginning of March 2022, it has become virtually impossible to predict how exactly an anti-war public action will be classified: under the «old» Article 20.2 of the Code of Administrative Offences as an established procedure of organizing and holding public events, or under Article 20.3.3 of the Code of Administrative Offences as discrediting the armed forces, or under both articles simultaneously. In all cases, it is an administrative offence, but under Article 20.3.3 of the Code of Administrative Offences, only a fine is possible, whereas being charged under Article 20.2 of the Code of Administrative Offences may result not only in a fine but also in administrative arrest

and compulsory labour. Moreover, the repetition of the offence affects the qualification and punishment. In simpler terms, discrediting the army can be qualified as a crime if the person has previously been held responsible for it once, and criminal punishment for repeat violations of the public events article may follow the fourth violation of this kind.

In April 2023, lawyers from OVD-Info, in coalition with other human rights defenders, including those from «Memorial» and «Russia Behind Bars,» filed a complaint with the Constitutional Court against Article 20.3.3 of the Code of Administrative Offences. They emphasized that this article violates constitutional rights to freedom of expression, freedom of thought, freedom of assembly, and is discriminatory. The lawyers requested the article be declared unconstitutional, so it could subsequently be repealed, and the rights of the affected individuals restored. Human rights defenders submitted complaints from 23 applicants who were fined for expressing their anti-war stance.

The Constitutional Court refused to consider all these complaints: according to the court's opinion, the article does not contradict the Constitution, hence there is no need to review the complaints in a court session. According to the Court's statement, Article 20.3.3 of the Code of Administrative Offences is necessary to prohibit criticism of the Russian army: anti-war protest has a cumulative nature, thus reducing the effectiveness and motivation of military personnel during the «special military operation.» The Court also noted that defending the homeland is a citizen's duty, and criticism of the armed forces is «assisting forces opposing the Russian Federation.»

However, the submitted complaints did have a significant positive effect: they once again drew attention to the repression, and many globally renowned lawyers spoke out

against Article 20.3.3 of the Code of Administrative Offences.

To sum up, the issues related to punishments for organizing or participating in actions are as follows:

- organizing or participating in a peaceful assembly can be qualified as an offence or crime, even if no negative consequences have occurred and there was no real threat of such consequences.
- the ambiguity of the law's wording and the focus of law enforcement on suppressing protest have led to almost any action potentially resulting in punishment.
- punishments under «rally» and «anti-war» articles are harsh: such «crimes» and «offences» are often punished more severely than violent ones.

To address the issues mentioned above, we propose the following measures:

1. Abolish the articles of the law on repeated and recurrent violations of the legislation on public events (Article 212.1 of the Criminal Code, part 8 of Article 20.2 of the Code of Administrative Offences). The recurrence of a violation does not make it more dangerous, and when differentiating responsibility, the potential negative consequences should primarily be considered. Harsh punishments for repeated violations, up to and including imprisonment, create a «chilling effect» on the exercise of freedom of assembly: people are afraid to use their lawful right.

2. Abolish the articles that have effectively introduced military censorship (primarily Article 20.3.3 of the Code of Administrative Offences of the Russian Federation, Articles 280.3, 207.3 of the Criminal Code of the Russian Federation).

3. Narrow down and define more clearly the concepts used in laws that restrict freedom of assembly and expression; eliminate the duplication of various types of offences and crimes. Remove liability for the «unauthorized» status of a public event, including organizing a public event without notification, participating in such an event, or involving minors in it.

4. Mitigate the punishment and abolish the legally established minimum limit of punishment for all points of Articles 20.2 and 20.2.2 of the Code of Administrative Offences (the need to abolish the lower limit of punishment was indicated by the Constitutional Court of the Russian Federation in its ruling of 14 February 2013).

5. Discriminatory treatment of assemblies

At the moment, we record a discriminatory approach to public events both at the level of normative regulation and law enforcement — as opposed to mass events (shows, cultural, sports, entertainment events) and other activities within the urban space. Public events are subject to more

stringent requirements, and violations in the context of protests may bring forth more severe penalties.

On the authorization stage, there is a significant difference in the limitations for the date of application for the event to be approved: the authorities must be notified of an upcoming rally at least fifteen days in advance. In contrast, the approval procedure for mass events can be initiated significantly earlier. For example, in case of a cultural or sports event in Saint Petersburg, the authorities should be notified 15-30 days in advance, and in Moscow, no later than a month in advance. As a result, by the time the organizers of the rally are allowed to file for event approval, mass events have already occupied all the suitable venues. Some examples of such mass events include a WWII song festival, a patriotic automobile flash mob, an emergency preparedness show, or the «Funny Little Engine» attraction.

Numerous federal and regional laws introduce territorial bans limiting the venues for public events, but not religious, cultural or sports events or shows. Moreover, in some cases, public events organized by state authorities or local governments are exempt from such territorial bans. For example, in the Tyva Republic, it is normally prohibited to hold rallies and demonstrations near public transport stops, communications facilities, train stations or airports, but this prohibition does not apply to any «events held by decision» of the authorities. In the Amur Region (Oblast), the ban on holding rallies and demonstrations on sidewalks does not apply to events organized by authorities to celebrate days of military glory, memorial days, and public holidays.

Both the transport and recreational functions of urban space are conveyed in the laws as a priority over the function as a place for expressing opinions. Participants of unauthorized rallies are subject to administrative liability for obstructing pedestrians and transport, impeding access

to residential premises, transport or social infrastructure, and damaging green spaces. In addition, the corresponding articles of the Administrative Code provide for a maximum of 30 days of arrest for a repeated violation. Judging by the extent of the punishment, the legislator considers such actions to be more socially dangerous than, for example, one occasion of driving under the influence and without a licence (part 1 of Article 12.8 of the Administrative Code).

The severity of the punishment is determined precisely by the context of a political statement: for similar actions outside public events, the sanctions will be incomparably softer. The Administrative Code of Moscow provides for a separate punishment for damage to green spaces (Article 4.18) — for citizens, this is a fine of up to 4,500 rubles (~USD50 as of February 2024) without the possibility of arrest. The maximum penalty for violating traffic rules and interfering with the movement of transport (Article 12.30 of the Administrative Code of the Russian Federation) is a 1,000 ruble fine (~USD11 as of February 2024). The fine for violating traffic rules is 500 rubles (~USD5.5 as of February 2024) for pedestrians outside of rallies, 800 rubles (~USD9 as of February 2024) for cyclists, and up to 1,500 rubles (~USD16.5 as of February 2024) for drunk cyclists. We are not aware of the punishment for interfering with the functioning of vital support facilities, transport or social infrastructure outside the context of unauthorized rallies.

One of the most common criminal charges brought up against participants of protest actions is the use of violence that does not endanger human life or health against a government official (part 1 of Article 318 of the Criminal Code). From 2019 to 2022, the authorities initiated dozens of criminal cases under this article in connection with the protests. Official judicial statistics indicate that, as a general rule, punishment under this article is milder if the case is not related to protests: usually, the case ends with a suspended sentence in jail or a fine, while «rally» cases are

often given prison sentences, and prison sentences are longer.

Criminal cases under parts 2 and 3 of Article 207 of the Criminal Code — for knowingly false reporting of a terrorist attack — have become a distinct tool for persecuting activists and participants of anti-war rallies. These cases served as the basis for conducting mass searches of the homes of people who opposed the war — some of them, in one way or another, called for participation in the protests. In particular, at least 30 people became either suspects or defendants in such cases in Saint Petersburg, Samara and Kazan. The exact number of searches conducted in these cases is unknown, but it amounts to dozens. For example, there were at least 59 searches conducted in Saint Petersburg under the article of knowingly false reporting of a terrorist attack.

A striking example of a discriminatory treatment of the right to freedom of assembly was the restrictions introduced in March 2020 following the COVID-19 pandemic. By September 2020, public events were limited in at least 35 regions and completely banned in 26 of them. The ban even applied to solitary pickets. Meanwhile, authorities began to lift restrictions on other events in summer 2020. In certain regions, authorities allowed festive processions dedicated to Victory Day, preparations and holding of a military parade and artillery salute, the Immortal Regiment march, the international festival «Kamchatka — Russia — World,» an all-Russian exhibition of dogs of all breeds, an exhibition-fair of Kamchatka producers and agricultural workers «Yelizovo Autumn, " „Victory Dictation", 1 September (Knowledge Day) school gatherings, events within the framework of the Far Eastern theatre festival „Golden Mask", film and theatre festival „Amur Autumn", etc. In 2022, the Constitutional Court confirmed the legality of the restrictions on solitary pickets under the pretext of coronavirus restrictions, having considered the complaint of Ekaterina Bazhanova. In its ruling, the court emphasized that the ban on holding solitary

pickets in Moscow was due to the „objective need to respond to the threat of the spread of coronavirus infection“ and is „exceptional in nature.“ The Constitutional Court added that „solitary picketing ...> may potentially attract the attention of other citizens and, accordingly, does not exclude gathering of a crowd at the place where it is held and thus objectively carries risks in terms of the spreading of coronavirus infection.“

At the same time, the court ignored the applicants' argument that at the time of Bazhanova's picket, beauty salons, theatres and circuses were already open in Moscow. Instead, the Constitutional Court noted that on 18 June 2020, the epidemiological situation in Moscow caused by the spread of a new coronavirus infection, «could not be assessed as favourable.»

By May 2021, a complete ban on public events had been in effect in Moscow and Saint Petersburg for over a year, while other forms of large gatherings (use of public transport, visiting educational institutions and public catering establishments, sports and entertainment events) had already been allowed.

In 2023, coronavirus restrictions remain in effect, and officials continue to use them to deny authorization to public events. Such restrictions on freedom of assembly are not limited only to anti-war actions, which the authorities refuse to allow in general. Officials do not allow citizens to hold rallies regarding other problematic topics as well — for example, protests for the return of direct mayoral elections, against domestic violence, in support of political prisoners, environmental protests, protests concerning housing and communal services issues, against electronic summons, and so on.

In many cases, authorities continue to refer in their refusals to the high alert regime that was introduced in connection with COVID-19. According to OVD-Info, in 2023, officials

refused to allow actions at least 15 times under the pretext of Covid restrictions.

Meanwhile, Rospotrebnadzor lifted coronavirus bans a year and a half ago, including on mass events, and WHO declared the pandemic over. However, not all regional authorities have cancelled the high alert regime introduced due to coronavirus: as of December 2023, it was maintained in 27 regions. In case of inconvenient events, officials use this regime as a reason for refusal.

In addition, the heads of the federal subjects of Russia introduced regimes of varying degrees of readiness when Vladimir Putin declared martial law in the occupied territories of the DPR, LPR, Zaporizhzhia and Kherson regions. Officials began to use this as a reason for refusing to allow rallies.

Sometimes, the authorities also prohibit pro-war mass events: in July 2022, the Kemerovo administration refused to allow local National Bolshevism supporters to hold a solitary picket in support of the Russian military in Ukraine, citing coronavirus restrictions. The administration of the city of Kineshma, Ivanovo Oblast, used the same reason when it did not authorize a motor rally in support of the military on 23 February 2023. In August, residents of the Kaliningrad Oblast planned to hold a rally against the inaction of the authorities on problematic issues and in support of Putin's declaration that increasing the citizens' well-being and quality of life was the government's basic priority. The mayor's office did not authorize the event, indicating that an amusement park would be located in the declared location; officials offered the organizers to choose a different date.

The General Comment on the right to peaceful assembly to the UN International Covenant on Civil and Political Rights published in 2020 notes that «peaceful assemblies can in some cases be inherently or deliberately disruptive and require a significant degree of toleration.» According to the document, restrictions on the right to freedom of assembly

«must not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect.» The need for a tolerant attitude towards demonstrations, even if they cause certain inconveniences, has been repeatedly expressed by the European Court of Human Rights.

Based on this, we propose:

1. To stop the discriminatory treatment of persons who exercise their right to freedom of assembly as compared to persons who have other interests. The right to freedom of assembly should be respected, and the interests of participants of rallies should be taken into account when making decisions related to the events and assessing the actions of participants of assemblies. Thus, when determining the location of meetings, not only the interests of tourists and passers-by but also those of people who want to collectively express their opinions should be taken into account.
2. Not to use epidemiological risks and other crisis situations as an unconditional basis for restricting freedom of assembly. International bodies, including health authorities, should develop proposals and best practices on how to exercise freedom of assembly in one form or another in specific crisis conditions. Authoritarian regimes can use any pretext to restrict freedom of assembly, so it is necessary to clearly communicate proposals in their messages and documents, as well as monitor restrictions and their validity.

SYSTEMIC ISSUES AND CROSS-CUTTING PRINCIPLES OF CHANGE

Freedom of peaceful assembly is not an isolated area. It is significantly influenced by the broader systemic context:

the quality of work of legislators, law enforcement agencies, courts, and the structure of the penal system.

In cases where the ECHR recognized a violation of the right to freedom of assembly in Russia, as a rule, there was a whole suite of accompanying violations: torture and inhuman conditions of detention, restriction of personal freedom through detention and long transportation, restriction of the right to legal assistance, various violations of the principle of fair trial, interference with the right to respect for private life, restrictions on various aspects of freedom of expression, discrimination, lack of legal remedies, political motives for persecution, etc. Some of these violations are specific to protests — for example, harassment of journalists covering protests or crackdowns on LGBTQIA protests. Other violations reflect the general dysfunction of existing institutions. For instance, violation of the right to a fair trial due to the refusal to question key prosecution witnesses or improper examination of evidence provided by the defence is a common occurrence outside of «rally» trials. Not only participants in public events face torture and degrading conditions of detention in Russian paddy wagons, police stations, special detention centres and prisons. The vague deadlines for the delivery of detainees provided by the Administrative Code make it possible to manipulate the duration of detention for any administrative offence.

Like corrosion, allowing bad practices in one area leads to the defeat of the entire institution. For instance, at the end of the 2010s, the territorial jurisdiction in cases of bringing to liability for violating order of participation or organization of actions changed almost everywhere: previously, detainees would be tried in courts at the location where they were detained, now — at the location of the police stations where the detainees were taken. That is, in fact, the police themselves can decide in which court the case will be heard — it is enough to place the person in the right paddy wagon. In addition, in court hearings, judges face police

officers from their districts, people they have most likely met several times in other cases and know well. All this was done in order to relieve the workload of the central courts of the cities, which accounted for the main flow of cases after the mass arrests. A similar decision to optimize the pipeline consideration of cases of administrative offences was weaponized when creating a mechanism for the persecution of violators of mandatory self-isolation and other quarantine measures at the beginning of the COVID-19 pandemic in the spring of 2020.

The «experience exchange» also occurs in the opposite direction. For example, video surveillance and facial recognition systems, developed during the first waves of the coronavirus pandemic to ensure compliance with quarantine rules, have been actively used in 2022-2023 to identify and persecute street protesters.

It is hard to expect a fair trial of «non-political» cases from judges who previously committed violations on a massive scale during «political» trials. Unfortunately, we do not have a simple solution for the problem of the general dysfunction of many institutions at once. But the following principles can be used as guidelines:

1. Reject the idea that two institutional work practices can effectively coexist in parallel (for «protest», or more broadly, «political» cases and for «ordinary» cases): the existing dysfunction in one practice will inevitably emerge in the other.

2. Improving the situation with freedom of assembly will help improve the situation in other areas. Moreover, the very possibility of free peaceful assembly and expression of opinion creates the conditions for the necessary public discussion and finding solutions to pressing problems.

3. Improving the situation with the legal and law enforcement infrastructure will also, by design, protect the rights of participants in peaceful protests. Independent and professional courts will commit fewer violations, and a police force that is accountable to the public will be more likely to hold accountable the officers who use violence against peaceful protesters.

Below, we consider in more detail several specific systemic problems that have a distinctive effect on the situation with freedom of assembly.

Quality of regulatory framework

On 16 December 2020, United Russia deputy Dmitry Vyatkin introduced a bill to the State Duma to criminalize intentional «obstruction of movement of vehicles and pedestrians» that created «a threat to the life, health and safety of citizens or a threat of destruction or damage to property.» It was proposed to make corresponding changes to the criminal article on «rendering vehicles or transport routes unusable» (Article 267 of the Criminal Code). Despite the violation of the regulations (lack of argumentation in the explanatory memorandum) and a critical review from the Supreme Court, the State Duma reviewed the bill in three readings and approved the amendments in just a week. On 10 January 2021, the redrafted criminal article came into effect.

Although the author of the bill emphasized during the discussion in the State Duma that the amendments had nothing to do with rallies, as early as 23 January, protesters were prosecuted under this article, and the police began to warn about possible liability under it before unauthorized protests. After the January protests, over twenty people have been prosecuted under this article — which is more than in the previous ten years combined.

Article 20.3.3 of the Code of Administrative Offences (public actions aimed at discrediting the use of the Russian Armed Forces), under which those detained at anti-war protests are often charged, was adopted as an administrative article by the State Duma in three readings over two days — 2 and 3 March 2022. The next day, 4 March, the law was signed by the President of the Russian Federation.

These examples demonstrate common legal regulation problems: rushing through legislation; ignoring critical expert reviews; introducing vague concepts (such as «threat» to life or safety, «threat» of property damage, «discrediting», etc.); increasing vagueness of the distinction between various articles of the Code of Administrative Offences and the Criminal Code, which imply radically different punishments for similar actions; the contradiction of the application of law to the plan originally voiced by the legislator. In general, the catastrophic state of the legislative process is clear.

Even disregarding their meaning, the formal quality of federal and regional laws and regulations regarding public events does not stand up to criticism. The quality of the legal framework (and the legislative process that supports it) is an essential part of the system for ensuring freedom of assembly.

Below, we list the key regulatory flaws in this area.

Complexity and many levels of clearance. Issues related to holding public events are not collected in one place but are

scattered across a huge number of federal and regional laws, presidential decrees, by-laws of regional and municipal authorities, rulings of the Constitutional Court and the Supreme Court plenum. The issue of the authorization procedure alone is addressed not only in federal laws but also in local laws for each region, not to mention by-laws and sometimes even municipal acts. In order to select a permitted location for an event and notify the correct authority, an organizer must find out, at least, who owns the area, whether the location is subject to a federal or state ban, whether it is a «Hyde Park» (subject to different approval rules), and whether it belongs to a border zone, a cultural monument, or a transport infrastructure facility — and this list may not be enough. In addition, regulatory documents are constantly changing, creating complexity and variability of interpretations without obvious priority of one interpretation over another.

Inconsistency. By-laws may contradict federal laws (for example, the order of the government of Saint Petersburg states that the federal law on freedom of conscience prohibits public events near objects of religious worship, but the law itself does not prohibit it) or regional laws (the law of the Arkhangelsk Oblast and a resolution of the regional government contradict each other regarding the content of the notification), and regional laws may contradict federal laws (for example, in some regions the period of «three days» within which the authorities must respond to the notification has turned into «three business days»). Finally, federal laws may contradict each other (for example, the possibility of restricting public events because of sports competitions is included in the federal law on physical culture and sports, although the relevant federal law on assemblies does not provide for such a possibility).

Regulatory gaps and unclear definitions. While describing certain areas in excessive detail, legislators leave large gaps in others. Vague terms and incomprehensible wording are

constantly used: rallies are prohibited in areas «directly adjacent» to certain objects; there is a specific procedure for notifying the government if the event takes place «on the days immediately preceding non-working holidays»; the terms «public», «mass», or «socio-political events» are used interchangeably; the boundary between «organizing», «carrying out» and «participation» is not clear — and so on.

Temporary restrictions are often introduced without specifying an end date. This practice became widespread in 2020 due to the COVID-19 pandemic. In dozens of regions, public events were restricted «until further notice, " „until the high alert regime is lifted, " or „until the ban is lifted.“ Thus, lifting the restrictions required a separate new act. The lack of clear regulation gives broad powers of interpretation to government officials, and the lack of an expiration period for temporary bans causes their unreasonable duration (as shown in the examples we provided above).

Speed of regulation. Often changes are made hastily, without the necessary consideration. This distorts the legislator's intention (at least the declared one) — as was, for example, the case with Dmitry Vyatkin's legislative initiative described above. Conversely, some necessary changes have been ignored for years: for example, the minimum fine under Article 20.2 of the Code of Administrative Offences (violation of the established procedure of organizing and holding public events) has never been reduced, despite the fact the Constitutional Court demanded this back in 2013.

Ignoring the expert community's position. When discussing systemic changes that directly affect freedom of assembly, the authorities ostentatiously refuse to enter into dialogue with relevant non-profit organizations. It's possible for lawmakers to disregard expert opinion, for example, by ignoring the reviews of the Supreme Court.

For positive changes, it is necessary not only to revise, simplify and improve the quality of the existing legal framework, but also to change the rule-making procedure itself. It is necessary to optimize the speed of adoption of laws, expand the discussion around the adoption of rules regulating freedom of assembly, and invite experts from the human rights community to the discussion.

Limitation of power

The Constitution states that human rights, including the right to freedom of assembly, can only be limited by federal law. However, this is not always the case. For example, restrictions on public events due to the COVID-19 pandemic in 2020 and directly before the 2018 FIFA World Cup were provided not by federal laws, but mostly by various regional regulations. In 2022, such restrictions appeared on the basis of presidential decrees, which provided for four different levels of response due to the «special military operation» being conducted. Martial law was introduced in four recently occupied regions of Ukraine, a medium level of response — in six regions of the Central Federal District and in annexed Crimea, a high readiness level — in the remaining regions of the Central Federal District and the Southern Federal District, and a basic readiness level in all other Russian regions.

The measures provided for by these decrees imply «strengthening the protection of public order and ensuring public safety, " which gives senior regional officials the authority „to make decisions on the implementation of measures to protect the population and territories from emergency situations.“ In particular, local authorities began to use these readiness levels to impose restrictions on holding public events. The „basic readiness level“ regime became the basis for refusing to approve protests in Yekaterinburg, Vyborg, Orenburg, Kazan, and Kostroma. The authorities of the Leningrad Oblast first introduced such

a restriction, and then, on Governor Alexander Drozdenko's initiative, they even managed to lift the ban on holding rallies, gatherings and meetings, introduced due to the „basic readiness level" in the region: the administration recognized this measure as excessive.

Due to the spread of COVID-19 in Moscow, from 16 March 2020, any public events have been prohibited by the mayor's decree. The Ministry of Justice, which was tasked by Prime Minister Mikhail Mishustin in June to analyse the practical application of the decree, reported that all measures were taken «within their competence.» In other regions, restrictions were also introduced not by legislators but by executive authorities: heads or governments of constituent entities. They either completely banned public events of any kind or restricted the number of participants and sometimes made additions to the rules of authorization (by law, this falls within the purview of regional parliaments). In Tatarstan, organizers were required to coordinate the protests with Rospotrebnadzor; separate deadlines were established for submitting such notifications, different from those specified in the federal law on assemblies. In mid-2023, coronavirus restrictions were still in force in more than a third of the constituent entities of the Russian Federation (we speak about this in more detail above).

Public events were significantly restricted in at least nine major cities due to the 2018 FIFA World Cup: even solitary pickets were banned everywhere outside the specially allocated places. and a maximum number of participants was set (usually up to 100-150 people), the time for holding rallies was limited (for example, in Yekaterinburg it was only two hours, from 14:00 to 16:00, that were designated for this). Local regulations were based on a 2017 presidential decree on security measures during the championship, and the president was granted temporary powers to limit public events back in 2013 by the federal law on preparing and conducting the FIFA World Cup.

Both the complexity of the legal framework regarding freedom of assembly and its inconsistency stem from the fact that different authorities take part in its creation, either delegating regulatory powers from one level to another or being involved in regulation despite having no authority to do so. This affects not only the form but also the content of the rules since it becomes possible to simply, quickly and quietly introduce new restrictions, impose bans and hinder the holding of public events.

The federal law on rallies used to delegate the regulation of certain issues to regional legislative and executive authorities, the federal government and the president. In 2022, the law was changed and the restrictions that were previously in force at the regional level began to apply throughout Russia. Previously, regional legislators would introduce territorial restrictions for any public events except for pickets. By 2018, due to the introduction of abstract territorial restrictions, in some cities, more than 70% of the city's territory was off-limits, according to rough estimates. In 2019 and 2020, the Constitutional Court adopted two judgements that declared various aspects of abstract territorial prohibitions unconstitutional — without taking into account the specifics of each individual event. In 2021-2022, the number of regional bans has decreased significantly — in particular, all territorial bans were lifted in Tula Oblast on 5 May 2022 and in Chukotka Autonomous Okrug on 19 April 2022.

However, in 2022, at the federal level, demonstrations were banned near government buildings and vital facilities, as well as at railway stations, schools, universities, hospitals, playgrounds, and religious sites. The federal subjects of the Russian Federation were also given the freedom to supplement this list «if it is based on historical, cultural and other objective features of the subject.»

It was left to the regional authorities to select specific sites for «Hyde Parks» and to determine the norms of their «occupancy limit.» In practice, the governments of the constituent entities establish such norms not only for «Hyde Parks» but also for any other places (for example, in the Altai Republic, Magadan Oblast, the Chechen Republic). Administrative liability for violation of the «occupancy limit» is provided for by part 3 of Article 20.2 of the Code of Administrative Offences.

Here are some other examples of what various authorities regulate:

- The president determines the procedure for organizing public events on Red Square (Federal Law No. 54-FZ «On Meetings, Rallies, Demonstrations, Processions, and Picketing» dated 19.06.2004).
- According to the federal law «On Physical Culture and Sport in the Russian Federation, ” the president can also restrict public events to „ensure the safety of international sporting events“.
- The list of „emergency services“ next to which it is prohibited to hold any public events is established by the Russian government. „Distinctive sign for journalists, ” now mandatory to wear when covering an action, is established by Roskomnadzor.
- The decrees on special regimes introduced because of the war with Ukraine effectively delegate to regional authorities any decision-making within the region if it helps to ensure public safety. In the regions, „operational headquarters“ are created, the decisions of which are binding for all authorities and citizens of the subject, and the ban on public events in the regions is now possible by their decision.

A clear separation of powers and a prohibition on the imposition of stricter restrictions on freedom of assembly under delegated rulemaking would significantly improve the quality of regulation of public events and prevent the imposition of excessive restrictions.

Misuse of legal mechanisms

It is not only special laws or mandated authorities that restrict freedom of assembly. Often, legal mechanisms are used for this purpose, which were intended for quite different purposes and, in a democratic society, should have protected human rights and freedoms rather than suppress them. Such a problem can be observed in many areas. For example, the increased attention of guardianship authorities to the activists' families, the use of investigative actions, such as search and interrogation, to put pressure on participants of protest actions, the use of offence prevention mechanisms to enhance the chilling effect in exercising civil rights and freedoms, and much more.

Let us consider how various legal mechanisms are used to enhance political repression based on the example of preventive actions of security forces that prevent participation in a demonstration or picket.

Detentions on the day of or on the eve of an action can be carried out under various pretences. Organizers of an action are often detained because they have been prosecuted for violating the procedure for organizing an action that has not even started yet. The reason for such detention can be: posts on social networks about the time and place of the action, videos on the Internet, or public statements. Sometimes, the reason for detention is clearly fabricated, as the main goal of the security forces in such a situation is not to prosecute for a real offence but to prevent the action from taking place. Preventive detentions may affect not only opposition politicians and well-known activists

but also anyone whom police officers suspect of the intention to participate in a demonstration.

- In 2019, Moscow designer Konstantin Konovalov was detained 3 hours before the start of a demonstration. Rosgvardiya (the National Guard of the Russian Federation) fighters thought that he was running away from them, while Konovalov was just going for a morning jog. His leg was broken during the arrest.

In the section on the collection of protesters' personal data, we mentioned that in 2022, at least 141 people were preventively detained using the facial recognition system in the underground. The detentions took place on public holidays or on days when events important for the authorities were held: most detentions took place on Victory Day and Russia Day, as well as after the announcement of the mobilization and the «accession» [annexation] of Ukrainian territories to Russia. Some of those detained because of cameras in the underground had previously been brought to administrative liability under Articles 20.2 or 20.3.3 of the Code of Administrative Offences, while others had previously participated in demonstrations or election campaigns of opposition candidates. The police had no specific information that the detainees intended to protest. Even in court, it was not possible to find out on what grounds these people were detained in the metro. Information about the facial recognition system in the Moscow metro is partially classified.

A universal instrument of intimidation and obstruction of activities that are not to the liking of the state is a search. Both the organizers of the demonstrations and independent journalists would be searched on the eve of the protests. At the same time, such searches are not necessarily related to searching for any evidence and do not mean subsequent criminal prosecution of the persons at whose homes they were carried out.

There is a widespread practice of visiting opposition politicians and activists at their homes or workplaces, conducting preventive talks and handing out warnings on the «unacceptability of violations of the law» on the eve of a demonstration. Police officers carry out these activities in accordance with the provisions of the federal law «On the Foundations of the System of Prevention of Offences in the Russian Federation.» There is no separate liability for violating a warning: only a crime or offence that has already been committed can be punished. «Dangerous, ” in the state’s opinion, thoughts and beliefs are not an offence. It is possible to refuse a preventive conversation or a warning, but such events, in any case, instil fear of liability for exercising one’s right to freedom of assembly and influence behaviour.

In addition, there is a watch list («preventive register») of persons who participated in demonstrations. There is a separate list for minors and their families. The documents drawn up during the registration on the list are secret: their contents are unknown even to the person who has been registered. According to the law, the watch list is «intended to provide information support for the activities of the offence prevention subjects.» In practice, however, such prevention is rather reduced to intimidating people and taking away their desire to exercise their right to freedom of assembly.

In addition, such «prevention» has a marginalizing effect: a visit by police officers to a home, workplace or place of study may be perceived with suspicion, and the person visited may be perceived as potentially dangerous to society. For example, after the January 2021 demonstrations, police officers came to the homes of some residents of Saint Petersburg and even questioned neighbours about public order violations.

This watch list system and its use is a large and complex problem, part of which is related to the criminalization of peaceful actions to exercise freedom of assembly. After

that, people are subjected to mechanisms that, in a democratic society, are designed for real prevention of offences, not political pressure. In addition, there is a problem with the storage and use of information about people who are on the list in connection with the organizing actions or participating in them. As in the case of facial recognition, the compilation of such databases, in which information about different groups of people and sensitive information about their socio-political views and other beliefs can be stored, creates risks of abuse by the authorities.

Preventive restrictions on freedom of assembly are practised not only directly by the state but also by state-affiliated employers and educational institutions. Some organizations »inform» about the consequences of participating in a demonstration. Russian universities regularly warn students against participating in protests and threaten them with expulsion in case they do participate.

- In January 2021, students of a Ufa college were banned from leaving their dormitory on the day of a demonstration in support of Alexei Navalny.
- In a dormitory in Bryansk on 14 February 2021, when Navalny's team planned the «Love is stronger than fear» action using torches, students were forbidden to use lighting devices and advised not to leave the building.

The abuse of certain legal mechanisms and «administrative resources» in non-state institutions is a complex and difficult problem for which there is no universal cure. A quality regulatory framework, limitation of authority, effective legal remedies and many other cross-cutting principles described in this chapter are all important. Such abuse is in itself an important indicator of the dysfunction of state power and its repressive nature.

Regarding the preventive restrictions example described in this section, the following steps are important to improve

the situation:

1. Eliminate the practice of preventive detention and other procedural actions to prevent the realization of freedom of assembly. Detention may be carried out when a crime or offence has been committed. To do otherwise would be to criminalize intentions, thoughts and beliefs. Coercive and preventive measures and procedural actions should only be carried out in line with the objectives of the investigation of crimes and offences and should not be politically motivated.

2. Use preventive measures only when there is a risk of violent crime or offence. The prevention measures that are currently implemented are clearly disproportionate to the risks of committing crimes and offences by organizers and participants of public gatherings.

3. Inform the citizens about the rights to freedom of assembly, not only about liability in case of violations. The realization of freedom of assembly should be backed up by real guarantees from the state, not accompanied by intimidation.

Lack of legal remedies

The existence of a mechanism for recognizing and appealing a violation, as well as a mechanism for restoring the violated right (cancellation of a prohibition, payment of compensation, etc.), is a necessary condition for the functioning of legal regulation in general and regulation of the sphere of freedom of assembly in particular. The Constitution of the Russian Federation guarantees the protection of human rights and freedoms by the state and also provides for the possibility of independent protection of one's rights and freedoms by all means not prohibited by law (Article 45). The European Convention on Human Rights, which covers violations of rights committed by the Russian state until 16 September 2022, provides for the right to effective legal remedies

(Article 13), which implies the obligation of the state not only to declare but also to create working mechanisms for the protection of rights and freedoms. The ECHR's judgement database contains at least six judgements in which the European Court has found that Russia lacks certain mechanisms of legal protection for violations of freedom of assembly. These cases revealed various aspects of the ineffectiveness of the procedure for appealing against the refusal to authorize an action or offering unsuitable alternative options for holding an action.

As we have written before, in 2022, after the Russian authorities had grossly violated their international obligations, Russians were deprived of the effective ECHR mechanism that recognized violations of their rights and facilitated compensation.

A federal law cannot override the provisions of the European Convention on Human Rights, but that is exactly what has happened. Although the judgements on applications related to the violation of the right to freedom of assembly continue to be handed down, the Prosecutor General's office refuses to execute those decisions and pay compensations. Despite that, Russian human rights defenders, including the members of OVD-Info, help citizens to appeal the Russian authorities' violations, including those in the sphere of freedom of assembly, at ECHR. The judgements of this authority serve as a formal acknowledgement of these violations and can also be executed in the future — such execution has no limitation period. Such acknowledgements may be useful both from a practical point of view, for instance, while applying for asylum in another country, and from a psychological one — the person obtains proof of their case from one of the most respected international judicial bodies.

Among other international authorities which are able to help with legal protection on an international level, some UN organs and mechanisms are still available for Russians —

for example, the Human Rights Committee and the Working Group on Arbitrary Detention. However, Russian procedural legislation has certain gaps, and despite the position of the Constitutional Court of the Russian Federation and the Supreme Court Plenum, in practice, the decisions of the UN HRC and the Working Group do not become grounds for revising national courts' rulings. During the period of Russian membership in the ECHR, the UN bodies were not such a popular way of human rights defence against Russia on the international level. One of the reasons for that was that the ECHR was able to consider more cases than the UN, and the procedure of executing ECHR judgements was far more understandable and predictable. At present, Russian human rights defenders are forced to restructure their work at the international level and find ways to execute the UN bodies' decisions.

In addition to problems with the implementation of decisions, there are other problems, in particular, the lack of resources of the UN HRC to consider a large number of complaints: while the ECHR used to consider thousands of complaints from Russia per year, the Committee counts dozens. At the moment, the Committee is issuing judgements on complaints registered in 2016-2017. Such speed cannot, of course, be an effective means of defence. Other UN mechanisms — special procedures — formulate recommendations to the state, which can still be used primarily to document violations and develop standards rather than for effective assistance. Notable among the special procedures is the Working Group on Arbitrary Detention, which is essentially a quasi-judicial body where proceedings are adversarial and the decisions look like judicial decisions. However, there is also no mechanism for their enforcement.

The problem of the lack of effective legal remedies is also manifested in the lack of possibility to restore the rights of an organizer of an action by revoking an unlawful decision in a timely manner, as we wrote above, or by obtaining

compensation for unlawful decisions of the authorities. In the 2018 plenum ruling mentioned above, the Supreme Court noted that refusals of authorization should be recognized as unlawful, in particular, when the responsible authorities do not offer an alternative place or time for the action. In practice, this position has begun to be applied by the courts and there are a number of cases in which violations by the authorities have been recognized. At the same time, claims to recognize the actions of the authorities as illegal are considered under the procedure established by the Code of Administrative Proceedings, while the issue of collecting compensation for unlawful actions of the authorities is considered in the framework of civil proceedings. This means that an organizer of an action, who has been denied authorization, has to spend a considerable amount of time and effort to prove the illegality of the refusal in one procedure, and then go to court again for compensation. The cumbersome nature of the existing mechanism is aggravated by its practical ineffectiveness: courts either deny compensation or set it at a disproportionately low level. Thus, the existing procedure not only does not contribute to the restoration of the violated right, but also consumes additional efforts of the person affected. In the course of a multi-year appeal, there is a good chance of missing a deadline or losing the will to litigate further.

The situation is partly similar when appealing against being detained at a rally. When considering cases on prosecution of those detained at rallies, courts often point out that in these proceedings, they do not assess the legality of the detention itself: for this purpose, detainees should file separate administrative lawsuits. Such a claim can be filed within three months after detention. The court may postpone consideration of the claim, waiting until the administrative offence case is considered and the issue of whether there are elements of offence in the actions of the detainee is resolved. As a result, a cumbersome and complicated procedure

is again created, increasing the risk of making formal errors, such as missing a procedural deadline, and, as a consequence, preventing the restoration of the violated rights of those detained at the rallies.

There are other gaps in the mechanism of legal remedies for the right to freedom of assembly, as well.

- The police systematically deny access to police stations to defenders who come to the aid of detainees during rallies. During large protests, law enforcers introduce the emergency plan «Fortress» — a regime of special status intended to prevent the seizure of objects of internal affairs bodies. Police officers use this plan without any real threat because it allows no one to be let in or out of a police station.

In 2019-2022 alone, over 200 cases of detainees' defence lawyers being prevented from being admitted on this very pretext have been recorded. There are no effective means of appeal, as the plan is classified; there are few or no successful cases. For example, even the decision of the Krasnogvardeysky District Court in Saint Petersburg, which recognised the non-admission of lawyer Sergei Podolsky to a police station to visit those detained at a protest action as unlawful, was subsequently overturned by the court of appeal. The Constitutional Court, in its turn, refused to consider the complaint against the non-admission of lawyers to police stations, referring to the fact that a detainee's right to use the assistance of a defender only arises from the moment proceedings on an administrative offence are initiated, and not from the moment of detention.

OVD-Info, together with Advokatskaya Ulitsa (lit. Lawyer's Street), reported in detail about this method of pressure, which affects both lawyers and the protesters themselves. We also launched a petition against the unlawful use of «Fortress'' and sent an appeal to the Ministry of Internal

Affairs. However, the law enforcers found no violations in the actions of the police, recognizing them as lawful.

- Even if these actions were later found to be unlawful, this does not negate the negative consequences that the detainee has already experienced due to the violation of their rights — for example, the arrest served due to the defender not being allowed into court. While in cases of appeals against refusals to authorize rallies, there is a procedure for accelerated judicial consideration of such claims before the day of the planned rally, there are no mechanisms in the Russian legal system for accelerated response to the failure to allow defenders into courts and police stations.

- There are no effective legal remedies against collecting personal data from detainees, the forcible lifting of fingerprints and taking photographs, and the use of such data for, for example, training a facial recognition system. Even if such actions are recognized as unlawful, there is no way to control that the data will be deleted.

- Legal remedies against torture or violence during detention at public rallies do not work. Over the past 10 years, not a single police officer has been prosecuted for violence at public protests, although there are hundreds of documented cases. Even when police officers who used violence, including sexualized violence, at the Brateevo police station against girls detained at an anti-war protest were identified, and requests to initiate criminal proceedings were sent along with audio recordings of the incident, such requests were rejected as not containing sufficient evidence of a crime.

- Finally, there are no effective legal remedies to prevent the leakage of detainees' personal data.

This list is not comprehensive. The existing legal remedies are clearly insufficient, and their application is ineffective. There

is also a need for control over the practical implementation of decisions in defence of freedom of assembly. A key part of such control is the transparency of the activities of public authorities, as well as a functioning mechanism of accountability of those responsible for violations.

Liability

One of the crucial mechanisms of legal regulation is responsibility for violation of the law. In the sphere of freedom of assembly, we observe a clear bias in the work of this mechanism: every year in Russia, thousands of people are accused of various violations of the rules of participation or organization of public events, while the number of cases against officials restricting freedom of assembly is negligible.

Russian legislation provides for both administrative and criminal liability for the restriction of the right to freedom of assembly.

The maximum penalty for officials for obstructing the organization or holding of actions or participation in them, as well as for coercing participation, is a fine of 50,000 rubles (under Article 5.38 of the Code of Administrative Offences; ~USD550 as of February 2024). In 2020, Russian courts found only three people guilty under this article, and they were fined a total of 41,000 rubles (~USD450 as of February 2024). By comparison, in the same time period, 2,454 people were prosecuted and 2,062 fined under articles on violating the rules for holding rallies; the total fine amounted to over 33,000,000 rubles (~USD360,700 as of February 2024). In 2022, three people were also found guilty under this article, with fines totalling 65,000 rubles (~USD710 as of February 2024).

Article 5.38 of the Code of Administrative Offences is applicable to officials responsible for unlawful refusal to authorize rallies. This is proved by the scarce judicial

practice, clarifications of the Supreme Court, and statements of the government.

- For instance, in 2020, the head of one of the urban districts in Moscow Oblast was fined for unlawfully refusing to authorize a rally against the felling of a local forest park.
- In 2022, the head of Zapadnodvinsky municipal district was fined 30,000 rubles (~USD330 as of February 2024) for «obstructing the organization and holding of a public event in the form of a rally» on the subject of «Expression of public opinion on the issue of bans related to QR code absence» and «No to rising prices for food and medicine!».
- In the autumn of 2019, Alexei Kurinniy, a Duma deputy from the Communist Party of the Russian Federation (CPRF), proposed introducing a new administrative article on punishment for unlawful refusal to authorize an action. In its response to the bill, the Russian government pointed to the redundancy of such regulation, citing the fact that Article 5.38 of the Code of Administrative Offences already exists in the legislation. The State Duma has not yet considered the bill.
- In 2018, the Supreme Court clarified that liability under Article 5.38 for officials may be incurred «in case of evasion from receiving notification about holding a public event; knowingly unlawful refusal to hold a public event; failure to inform the organiser of a public event about the established norm of maximum occupancy of the territory (premises) in the place of holding a public event; failure to appoint an authorized representative of a public authority in order to provide the organizer of a public event in holding a public event in accordance with the requirements of the Law on Public Events; failure to ensure, within the scope of their authority, together with the organizer of a public event and an authorized representative of an internal affairs body, public order and safety of citizens during the holding of a public event.»

- In 2018, the Supreme Court clarified, that an official can be found liable under Article 5.38 ‘for evasion from receiving a notice about performing a public event; intentionally unlawful refusal of performance a public event; non-informing the organizer of the public event about the limit of the people of the territory (room) available in the place of performing of the public event; non-appointing a representative of the public body in the aims of assistance in performing a public event in line with the provisions on the Law on the public events; non-provision within its competence, together with the organizer of the public event and a representative of the authority of the Ministry of Internal, of public order and people’s security while performing the public event’.

Refusals to grant authorization, recognized unlawful by the courts, are in the hundreds per year (according to the Judicial Department, 277 such claims were fully or partially satisfied in the first half of 2023). It can be assumed that the number of officials responsible for these illegal refusals should be comparable. The fact that there are only a few cases under Article 5.38 of the Code of Administrative Offences shows that this mechanism of prosecution is not effective enough.

The issue is that the recognition of the unlawfulness of a refusal is not automatically followed by the initiation of proceedings on an administrative offence. This position is enshrined in a ruling of the Supreme Court plenum. As a result, in order to restore the violated right and bring to justice the guilty party, the aggrieved party (the organizer of the unauthorized action) has to separately appeal against the violation on the part of the authority as a whole (according to the procedure of administrative proceedings) and apply to the police to initiate proceedings under Article 5.38 of the Code of Administrative Offences against the official responsible.

A similar corpus delicti is laid down in the criminal article on unlawful obstruction of holding a public event or coercion to participate in it (Article 149 of the Criminal Code of the Russian Federation). The difference is that criminal liability is provided for when these actions are committed by an official using their official position or with the use or threat of violence. The article provides for a fine of up to 300,000 rubles (~USD3,300 as of February 2024), compulsory labour, forfeiture of the right to hold certain posts or imprisonment for up to three years.

Thus, the practical application of this mechanism is clearly impeded despite the clarification on the matter given by the Supreme Court. According to the Judicial Department of the Supreme Court records that were processed as part of the dostoevsky.io project, not one single person was convicted under Article 149 of the Criminal Code in 2009-2020. Attempts to prosecute the perpetrators under this article have been made but have not been successful:

- In 2019, The Investigative Committee of the city of Pskov conducted an additional preliminary investigation because of a complaint about the abuse of authority by the police (Article 286 of the Criminal Code) and obstruction of holding a public event (Article 149 of the Criminal Code) filed by a detained solitary picketer. The criminal case was never opened.
- The complaint about attacks on a solitary picketer in Yaroslavl who was opposing the results of a nationwide vote to amend Russia's constitution in 2020 did not lead to a criminal case either.

The problem with the dysfunction of the mechanisms of legal liability is manifested not only in the application of these articles, but]in many other areas as well.

- Attempts to prosecute police or Rosgvardiya officers for causing physical harm to protesters are seriously hampered. According to the Russian human rights organisation Committee Against Torture (CAT), following mass detentions in Moscow in the summer of 2019, CAT lawyers helped six people who had been physically harmed by police officers during rallies to file criminal complaints. In three of the six cases, a preliminary investigation was conducted, but no criminal cases have been opened in the nearly two years that have passed since. The situation is similar after the mass detentions of early 2021: many people have experienced police violence, but there are still no known criminal cases against police officers.

- In many ECHR judgements in which the court recognizes a violation of the right to freedom of peaceful assembly in Russia, it also points out violations of the right to a fair trial. As a rule, these are procedural violations, such as violation of equality of the parties in the proceedings, unjustified obstruction to the presentation of defence evidence, denial of the possibility to question prosecution witnesses, violation of the principle of impartiality of judges, etc. Russia used to recognize ECHR judgements and pay compensation to the victims of violations, although the Russian authorities never prosecuted judges who had violated the right to a fair trial in trials against participants in public events.

- Cases of violations of the procedure for adopting legal norms regulating the sphere of freedom of assembly do not entail liability either. For example, in December 2020, the Supreme Court of the Russian Federation, in its review of the draft law on amendments to Article 267 of the Criminal Code (on rendering vehicles or communication routes inoperable), noted that the author of the bill, Dmitry Vyatkin, had violated the regulations of the State Duma when introducing it: the explanatory memorandum lacked justification for the need to amend the criminal law.

- The application of Article 267 of the Criminal Code in the amended version also appears to be selective, as it does not apply in practice to representatives of the authorities blocking traffic and pedestrians during protests, although the practice of such blocking is extensive.

The presented examples of how mechanisms of accountability for certain restrictions on freedom of peaceful assembly do not work have different reasons and different options for possible solutions. In our opinion, the following measures could improve the situation:

- Amend Article 5.38 of the Code of Administrative Offences to include a provision stating that officials that sign refusals to authorize a public event or proposals to change the conditions of the event are personally legally liable if their responses are not reasonable and motivated or if the proposed alternatives are inadequate to the purpose of the event. In addition, if such a decision (refusal or proposing an inadequate alternative) is found to be unlawful, the courts should be required to draw the attention of the authorities to the violation of the law by sending them a special court ruling (interlocutory order) that would establish the obligation to account for the elimination of the violation or the circumstances that contributed to the occurrence of such a violation.

- Issue an act of judicial interpretation, which would specify the criteria proposed earlier by the Supreme Court for qualifying certain actions as elements of an offence under Article 149 of the Criminal Code of the Russian Federation. In particular, the unjustified use of violence by law enforcement officers against participants of a public event may be an element of such an offence.

- Conduct criminal or other investigations against police officers who have abused their authority in detaining participants in public events, including cases of injury, misappropriation of property (especially mobile phones) and procedural irregularities (e.g. preventing lawyers from accessing police stations to meet with detainees or failing to introduce themselves and explain the reasons for detention).

- Provide for liability for police officers for concealing their badges during protests.

- Develop the practice of disciplinary responsibility of law enforcement officers and judges for violations against participants and organizers of protest actions. However, in some cases, the mechanisms themselves are lacking: there is no provision for liability for violation of the procedure for adopting regulatory acts, and some aspects of the judges' liability have not been regulated.
- Establish legal, legislative, and procedural mechanisms to implement the judgements and recommendations of international bodies, in particular, the mechanisms of the UN and the European Court of Human Rights. Such mechanisms should systematically consider recommendations, allow for monitoring of the work on these recommendations, and establish a system of work at the national level.

Transparency

During the protests in January-February 2021, over 11,000 people in over 125 cities in Russia were detained, according to OVD-Info. In the following three months, the official numbers were not published by the bodies responsible. Rosgvarduya only reported the arrests at two protest actions in Moscow — and not on its own initiative but after a request from the regional human rights ombudswoman Tatyana Potyaeva. In response to a request made jointly by OVD-Info and Team 29 to proactively publish information on detainees, the Ministry of Internal Affairs refused, citing personal data protection. At the anti-war rallies in 2022, the situation was repeated — since 24 February 2022, OVD-Info is aware of 19,915 detainees. There are still no official statistics on the number of detainees, and there were only separate reports regarding major rallies in March 2023.

Not only do the authorities not publish information about the detentions, but on the contrary, they have made efforts to limit its dissemination: they have prevented detainees from

talking on the phone, prevented lawyers from entering police stations, and massively detained journalists covering the protests.

The authorities only responded to an enquiry about the exact number of detainees made by the UN Human Rights Council Special Procedures, quoting a figure of 17,600 detainees at peaceful rallies and stating that there had been no violations. However, this did not help transparency: the official number of detainees at anti-war rallies in February-March 2022 is still unknown. According to OVD-Info alone, there were at least 14,906 detainees between 24 February and 13 March. On this occasion, the authorities did not respond to the UN Special Procedures' enquiry.

The lack of information about the whereabouts of detainees, the alleged offences, the time of detention and the date of trial limited their right to defence at police stations and, when taken from the police station to court, also during the consideration of cases on administrative offences. Relatives were unable to give detainees necessary items, food and medicine, as they did not know where they were. The information blockade created conditions for additional psychological pressure and violence on the part of the police.

The principle of transparency and accountability of the authorities appears to be fundamental to the systemic safeguarding of the right to freedom of assembly, as well as to the reform of this area: to protect violated rights, to hold representatives of the authorities accountable, to identify and correct problem areas.

Information is crucial not only in the case of mass detentions, but also at any other stage.

- The non-transparency of the authorization procedure, including the lack of information on already submitted notifications and planned events, as well as the absence of regular and consistent statistics on the authorities' consideration of notifications of actions — all this creates a fertile ground for arbitrary refusals on the part of the authorities. Information on pending administrative cases related to the rallies is not published on court websites promptly and fully enough. Publicly important information regarding the penalties imposed and the circumstances of detention is excluded from the texts of court rulings. Moreover, a number of cases under Article 20.3.3, which is imputed to participants of anti-war rallies and pickets, are not published at all — the courts explain this by reasons of state security.

- On 24 May 2021, the Investigative Committee Directorate of the Stavropol Krai reported that criminal cases under Article 318 of the Criminal Code related to public events had not been initiated or investigated in the region. However, on 30 January 2021, the department's website had published information about the detention of a participant of the 23 January rally as part of the investigation of a criminal case under this article.

- Courts often disregard the principle of publicity when hearing cases. This problem was exacerbated in 2020-2021, when, amidst the pandemic, access to the courts for journalists and listeners was restricted, and the broadcasting of sessions was not widely available. In addition, court officials often refuse to provide information about criminal cases that have come before the court. Members of the OVD-Info monitoring group regularly try to find information about prosecutions pending in various courts and are often faced with refusals to provide data. If the case is non-public and is filed in a small remote region, it is often problematic to know the verdict; sometimes, the names of the defendants and even their lawyers are hidden in the case files. Together with friendly media accredited in Russia, OVD-Info sends official requests to the courts, but more and more often, we are told that they do not provide information on cases «affecting the security of the state,» or that all available information is published on the court's website — no other information will be provided.

Transparency in the area of freedom of assembly alone will already improve the situation. For this purpose, we believe that a number of measures should be taken, namely:

1. Oblige the authorities to publicly report on the reasons and necessity of suppressing public events, blocking the movement of marches, and the use of non-lethal weapons.

2. Create the legal status of a rally observer, eliminate the suppression of journalists covering rallies, and the non-admission of lawyers defending detained protesters to police stations and courts.

3. Ensure control over the carrying of identification numbers by police and Rosgvardiya officers during public events.

4. Data on the authorization and refusals to authorize public events, reasons for refusals and proposals to change the place and time of the action, as well as on the number of people detained at public events, the place of their transportation and detention, the time and place of their trials, the place and conditions of serving their sentences, and information on criminal cases after the actions should be promptly available to the public.

5. Ensure openness and publicity of court proceedings, including in times of emergency (e.g. by introducing video broadcasts of hearings). Oblige courts to report on cases and reasons for the non-admission of journalists and listeners, as well as to publish all judicial acts issued by courts that do not fall within the restrictions of the law (in certain criminal cases).

6. The law-making process should also be transparent. Draft regulatory acts with the justification of the need for their adoption should be published in advance. It should also be ensured that broadcasts and transcripts of the discussion of amendments are promptly published not only at plenary sessions of the State Duma but also in the relevant committees of the federal parliament and regional legislative bodies. A comprehensive list of regulatory documents concerning public events should be published in one place and kept up-to-date and openly accessible.

TOOLS AND WAYS OF CHANGE

At the end of 2023, it is not so easy to consider tools and ways for positive changes in the field of freedom of assembly. The Russian army is waging an aggressive war in Ukraine, the number of political prisoners within the country is increasing almost daily, new repressive laws are being adopted, new repressive practices are being mastered, and old repressive practices are being developed. In such conditions, protest actions are harshly suppressed, and horizontal social ties and trust within the society are destroyed by marginalizing propaganda, censorship, and totalitarian attention of security forces to many aspects, even of private life, denunciations and fear.

An attempt to hold an event following the existing formal authorization procedure can result in criminal prosecution and the use of punitive psychiatry, as happened with activist Maxim Lypkan, who submitted a notice to hold a public event in Moscow on the first anniversary of the full-scale invasion of Ukraine. A solitary picket can lead to harsh detention and beating by police, as happened in July 2023 with Saint Petersburg activist Vitaly Ioffe.

In the 2021 version of this chapter, we were focusing on two particular possible ways towards change: improving arbitrage practice through work on specific individual cases, and improving regional legislation to be more flexible and responsive to change. We still believe that those paths are important and lead to an improvement of the situation. The original version of this chapter and a more detailed analysis of judicial and regional campaigns can be found in the appendix.

In the updated version, we draw attention to international monitoring mechanisms, ongoing civic activity and solidarity in Russian society. Our focus is on the significance of the elements presented for a positive change. At the same time,

judicial campaigns and campaigns to improve regional legislation can be considered as more individual but by no means less important manifestations of ongoing civic activity.

International monitoring mechanisms

In response to the human rights crisis in Russia, which has been worsening since the full-scale military invasion of Ukraine in February 2022, new instruments have begun to emerge in the system of international mechanisms for the protection of human rights.

- In 2022, the OSCE launched a special monitoring procedure — the Moscow Mechanism — regarding the growing pressure on civil society in Russia. In September 2022, an extensive report was published on the current situation with the implementation of international human rights obligations in Russia.
- In late 2022, the UN Human Rights Council, for the first time, established the mandate of a special rapporteur on the situation of human rights in Russia, and in September 2023, the first corresponding report was published.

Other international platforms are also creating or continuing to operate their own monitoring tools and spaces for dialogue with Russian activists and human rights defenders. The topic of freedom of assembly is the focus of attention of these international mechanisms. Moreover, the presented official documents capture the key problems in detail and provide recommendations for improvement (for example, in special chapters of the report of the OSCE Moscow Mechanism and in the report of the UN Special Rapporteur).

There are no great illusions that the Russian authorities will unconditionally follow the proposed recommendations. But this is an accurate and detailed record at the level

of international organizations in which the Russian Federation still continues to participate. This is the information available to the whole world, coming from reputable sources, which is much more difficult for unscrupulous authorities to ignore. The more such reminders there are and the more accurately and in detail they identify problems and propose solutions, the more difficult it will be for the Russian authorities to claim the authority of a modern state that protects human rights and the higher the likelihood of carrying out effective reforms in the future.

The rhetoric of the top officials of the Russian government shows that at the international level, they are not ready to openly admit to human rights violations or declare their rejection of this principle. On the contrary, various arguments are being voiced that modern Russian authorities are guided by human rights.

- *«Essentially, this is also colonialism, only in a new package, which, by the way, does not look so good, and modern colonialists, hiding behind the good slogans of democracy and human rights, strive to solve their problems at the expense of others, continuing to shamelessly pump out resources from developing countries, »* — Vladimir Putin said at the BRICS summit in August 2023.

- The Russian Federation's report for the UN Universal Periodic Review in November 2023 is replete with statements such as: *«Russian legislation does not create disproportionate restrictions on the exercise of the right to freedom of assembly and expression»* (paragraph 175); *«Civil society is actively developing in Russia»* (paragraph 181); *«Russian legislation has adopted a comprehensive and integrated approach that protects freedom of speech and expression. A ban has been established on obstructing journalists' activities»* (paragraph 179).

Consistent recording of violations, problem analysis, and publication of detailed proposals for their solution help,

among other things, to identify logical contradictions in the attempts to frame the neglect of human rights as decolonization or as promoting them.

In late 1980s, the Soviet authorities released hundreds of political prisoners from imprisonment and allowed them to return from exile; a number of criminal articles applied to political prisoners were repealed or significantly edited (for example, Article 190-1 of the Criminal Code of the RSFSR, Dissemination of knowingly false fabrications discrediting the Soviet state and social system). It is unfair to ignore the contribution of Soviet human rights defenders and activists who consistently documented the application of these articles and substantiated their political and extra-legal nature. From a historical perspective, we see that this was not obvious to everyone and required painstaking argumentation on the part of civil society.

It is important that the emerging mechanisms for monitoring, analysing, and developing proposals for ways to change the human rights situation in Russia were available not only to politicians but also to the broad public. Using the example of the situation with freedom of assembly in Russia, we see that laws can easily be tightened, interpreted prohibitively by law enforcers or completely ignored; in the information space, freedom of assembly can be damarginalized and presented as something harmful and dangerous for society. In such circumstances, the availability and publication of alternative materials that reflect diverse social experiences is critical. For this reason, many international mechanisms for the protection of rights and freedoms provide various formats of participation for members of the public — through the collection and publication of alternative government reports, inviting representatives of civil society to meetings and discussions, etc. It is important to remember that such practices produce results and can only develop with the active participation of a wide range of public representatives.

- As part of the campaign to prepare for the UN Universal Periodic Review of the human rights situation in Russia in 2023, Russian civil society prepared several alternative reports that provided data that refuted official government statements about the improving human rights situation in Russia. Among others, individual reports were submitted from 12 Russian organizations and initiatives that had not previously participated in this UN mechanism.

International mechanisms for monitoring and discussing the human rights situation make it possible to shed light on problems, including those regarding freedom of assembly, for both foreign and domestic audiences. This is also one of the few opportunities for dialogue between society and the state. Such platforms can accumulate detailed descriptions of problems and ways for their solutions and also become a place for discussing the reasons why obvious and overdue problems are not being solved. At the same time, it is important for these mechanisms to involve not only politicians but also a wide range of public initiatives, activists and experts in order to ensure a more complete representation of opinions and ideas reflecting different public interests. This task is anything but trivial, since, historically, international organizations were created by states and essentially are a place for representatives of different states to communicate with each other.

Ongoing civic engagement and solidarity

Almost twenty thousand people have been detained at anti-war rallies since February 2022. This figure reflects not only the level of repression but also the ongoing protest activity. After mass protests at the beginning of the full-scale invasion and around the announcement of military mobilization in September 2022, people expressed their disagreement at smaller rallies or solitary pickets. According to OVD-Info calculations, in 2022, there were only 25 days when no arrests at public events were recorded in Russia.

In addition to the demand for exercising the right to freedom of assembly, we observe people's continuing desire to defend their rights by appealing against violations, including in international legal mechanisms. For instance, since OVD-Info and Memorial launched the ECHR Complaint Generator for cases of detentions during protests, almost 3,000 complaints have been sent to the European Court, a sixth of which have already been decided in favour of the plaintiffs, and the total amount of compensation awarded amounted to almost 2,000,000 euros. Let us recall that the European Court continues to accept complaints about violations that occurred before 16 September 2022. Many applicants in Russia use the complaint generator to declare a violation of their right to freedom of assembly, document and appeal such violation. The process of appealing violations often involves the joint efforts of complainants, lawyers, volunteers, journalists, etc., which allows people to find like-minded people and create new horizontal connections. New cases of arbitrary restrictions on the right to freedom of assembly are also being appealed to the UN Human Rights Committee, which is accessible to Russians.

In addition to filing complaints with international bodies, there are other campaigns against restrictions on freedom of assembly. For example, in October 2023, the women's socio-political movement Myagkaya Sila (lit. «Soft Power») launched a campaign of appeals to the heads of Russian regions and cities to lift unjustified bans on holding Returning the Names, an event in memory of political repression victims.

We also see continued solidarity and public support for victims of violations of the right to freedom of assembly. For example, on the crowdfunding platform «Zaodno», from February 2022 to November 2023, at least 373 fundraisers were successfully completed in support of people persecuted, among other things, for exercising the right to freedom of assembly.

These examples demonstrate the existing demand in Russian society for freedom of assembly and expression and the willingness of a large number of people to defend their violated rights, assert them in new ways, and also support each other. All of these seem to be critical elements for the existence of freedom of assembly. Strengthening and upscaling the demand for rights, defending freedoms, and solidarity with victims whose rights are limited are ways to improve the situation.

CONCLUSION

In the late 2023 version of the report, we have also decided to replace the conclusion. The previous version can be found in the appendix to this text. Like the original version of the chapter on tools and ways of change, it has not lost its relevance, but we decided to focus on some new aspects of the problem of freedom of assembly and possible ways to improve the situation in modern Russia.

Recent years have clearly demonstrated that the human rights situation in one country is linked to international security. Unleashing an aggressive war seems to be a slightly simpler task under the conditions of developed censorship and suppression of civil society institutions and restrictions on the rights and freedoms of citizens. In this regard, the answer to international threats is seen in international solidarity and international dialogue.

In the area of freedom of assembly, this is manifested in a consistent and factually substantiated refutation of government statements that «Russian legislation does not create disproportionate restrictions on the exercise of the right to freedom of assembly and expression.» This also manifests itself in dialogue and exchange of experience with activists and experts working on freedom of assembly issues in other countries and regions. Various international mechanisms for the protection of human rights and freedoms

can be useful in this regard, allowing to appeal specific cases of violation, as well as to make both such cases and more general monitoring mechanisms publicly known. Their use helps to accumulate a variety of publicly available experiences, including detailed descriptions of problems and proposed solutions to freedom of assembly issues.

The ongoing war and escalating repression capture much of the attention of those who think about human rights. Because of this, it is not easy to contemplate any positive change, including freedom of assembly. However, even after February 2022, we are observing multiple examples of how people exercise their right to peaceful assembly. We see that it is indeed a key right that, in practice, is crucial for a wide range of very different people.

Due to the focus of OVD-Info, we primarily observe situations in which people encounter restrictions imposed on their rights: with detentions, ban on holding assemblies, dispersal of gatherings, arrests, administrative and criminal prosecution, physical violence and different forms of pressure being put on those who exercise their constitutional right. Because of this position, we see many examples of fighting for freedom of assembly: on the street, in police stations, in court, in discussions with officials, in conversations with experts and diplomats at the international level. In this strife, violations are being documented and unfounded accusations are being refuted, marginalizing disinformation is being debunked, and political censorship is being overcome, new arguments are being created in support of freedom of assembly and, more broadly, human rights. In this fight, experience of awareness and defence of one's rights, skills of self-organization, and dialogue with different people emerge.

Freedom of assembly is much wider than legal norms or a paddy wagon. It consists of activists exercising their rights; volunteers bringing water and food for those detained

in police stations and coming to courts in support; lawyers breaking through into police stations and creating new and compelling arguments to support the rights and freedoms of peaceful protesters; journalists covering protests, arrests, and trials of demonstrators, and many, many other people. The government can make various forms of participation in developing freedom of assembly more difficult, but it can never completely repress human solidarity.

ANNEX

Chapters from the original text of the report from the **beginning of 2021**

Tools and Ways of Change

A fast way to improve the situation with freedom of assembly could be repealing prohibitive laws and aligning them with human rights standards. Unfortunately, in practice, we observe the opposite trend. The legislative authorities, at least at the federal level, do not express any willingness to address the issue of freedom of assembly. On the contrary, throughout the last ten years, the regulations have consistently been tightened. The procedure of organizing a rally is becoming increasingly complex, and the number and severity of punishments for various actions related to public events are rising. In late 2020, in just a few weeks, a comprehensive set of laws, known as the «Vyatkin package», was adopted, which increased certain penalties, prohibited foreign participation and anonymous funding of assemblies, complicated the procedure of getting the authorities to authorize an action, expanded the list of locations prohibited for demonstrations, as well as significantly impeded the work of journalists during public events. At the same time, few positive initiatives to change legislation remain unaddressed for months, even years, or are rejected.

Most often we observe positive changes in the regulation of freedom of assembly on the part of judicial practice and regional regulation. This is stated by Russian authorities themselves: in reports on the implementation of the key ECHR judgement regarding freedom of assembly in Russia (the case «Lashmankin and Others v. Russia»), the Ministry of Justice cites the rulings of the Constitutional and Supreme Courts, as well as changes in regional legislation, as examples of improvements.

Judicial practice

«The legal system in Russia is not precedent-based» — such a phrase can be heard both in law faculties and in courts. However, if higher courts have the authority to overturn the rulings of lower courts, then lower courts will adjust to the rulings of their «supervisors.» It is courts that adapt legal norms to specific life circumstances, fill the gaps with explanations and resolve contradictions. The legal positions, as elucidated by the courts, especially the higher ones, could be effective tools, including for changing regulatory control.

The Constitutional Court verifies if laws are in alignment with the Fundamental law; the regulations recognized as unconstitutional are subjected to repeal. The influence of the Supreme Court on establishing regulations is also significant, although it is more indirect: it summarizes the practice of lower courts, pointing out «right» and «wrong» interpretations, and also issues mandatory rulings for lower courts, in which it clarifies the application of specific laws. Both Constitutional and Supreme Courts have the possibility to propose legislation on matters within their jurisdictions, as well as to provide commentary on legislative drafts.

In the area of freedom of assembly, the practice of the Constitutional and Supreme Courts is very contradictory. There are examples of the higher courts contradicting their own legal positions stated earlier. There are examples of both restrictive and liberal rulings. In the cases of positive changes

in the regulation of public events and participation in them (that we know of), we can identify two trends.

The use of international mechanisms for the protection of human rights, such as the European Court of Human Rights or the UN Human Rights Committee, contributed to the advancement of cases in national courts. It is not a question of strengthening the argumentation using the positions of international bodies but also of consistently raising, sequentially or in parallel, the same issues at both international and national levels.

- The issue of excessive regional restrictions imposed on holding protest actions near specific objects of urban infrastructure has been repeatedly brought before the Russian Constitutional Court. In 2014, the Constitutional Court found no contradictions to the Constitution in the additional territorial restrictions in Saint Petersburg. In 2019, the ECHR, in a judgement on a similar case, criticized the territorial restrictions in regional legislation, and in the autumn of the same year, the Constitutional Court revisited this issue. Citing the position of the ECHR, the Constitutional Court issued a ruling on the impermissibility of restricting rallies near government buildings.

- In June 2018, the Supreme Court plenum issued a judgement on the application of legislation in the field of freedom of assembly. This document currently serves as the primary juridical interpretation in the field of regulation of the organization and holding of events, as well as liability for various violations on the part of organizers and participants of public events. The judgement was published a couple of weeks after the initial hearing by the Committee of Ministers of the Council of Europe regarding the implementation of the ECHR judgement in the case of «Lashmankin and Others v. Russia» (significant issues with freedom of assembly in Russia were noted there). In subsequent reports on the implementation of this judgement, the Russian government repeatedly noted the positive effect of adopting the aforementioned resolution by the Supreme Court plenum.

Another successful way to engage with higher courts may be to bring before the court a case in which restrictive enforcement and interpretation of the law is most obvious or even borders on the absurd.

- In early 2020, a Kazan resident was prosecuted for organizing a mass public event without notifying the authorities. The action consisted in different people going on solitary pickets for a month with the same poster against the construction of a waste incineration plant. In May 2021, the Constitutional Court recognized this interpretation of legal norms as unconstitutional.

Even under existing circumstances, appealing violations of the right to freedom of assembly to the courts can sometimes be successful. Moreover, appeals allow for the development and strengthening of good practice: each new recognition of a violation of the right to freedom of assembly becomes an argument for future disputes, as well as helping to determine a more winning strategy and consolidating the effectiveness of a particular mechanism for the protection of the right. Even if it is not possible to get a violation of the right to freedom of assembly recognized in Russian courts, it is impossible to appeal to international bodies such as the European Court of Human Rights or the UN Human Rights Committee without making such an attempt. Finally, appealing against violations allows them to be documented and made visible to both the state bureaucracy and the public.

Regional legislation

The problems of regulating assemblies at the regional level have a dual nature. On the one hand, it follows the federal trends (generally prohibitive); on the other hand, it is often characterized by poor quality: contradictions, gaps and direct violation of federal regulations. Ironically, both of these characteristics are also potential tools for positive change. The focus on federal regulation allows to adopt the positive aspects of the federal regulation, while local contradictions give an opportunity for additional actors — primarily the prosecutor's office (its powers include monitoring regional

regulation and its unification) — to get involved in the correction of errors and contradictions.

- In 2019, the Supreme Court recognized regional bans on picketing as unlawful. The reason for this statement of the Supreme Court was a specific case from Tver, where, in 2018, a solitary picketer was detained in front of a regional government building. The police justified their actions on the grounds that the local law prohibits organizing any public events — including solitary pickets — near government buildings. However, federal legislation does not allow regional authorities to restrict locations for picketing. Similar restrictions were found in seven other regions. In 2019, all of these restrictions were lifted after the appeals to the Prosecutor General's Office and regional prosecutors.

- In November 2019, the Constitutional Court ruled that restrictions on public events near government buildings were unlawful. Such restrictions had been in effect in at least 47 regions. Just as with the restriction on solitary pickets, after drawing the attention of the prosecutor's office, as well as the Federal Commissioner for Human Rights and members of the Human Rights Council, most regional legislators removed this restriction. The situation is quite the same with the regional implementation of the ruling passed in 2020, in which the Constitutional Court ruled that regional bans on protests near educational, medical, religious, and military facilities were unlawful. In 2020, such bans existed in at least 60 regions.

- In early 2020, the procedure for a rally on Komsomolskaya Square in Yakutsk was regulated by several regulations providing for different rules. After the appeal to the prosecutor's office, the issue was resolved.

The above examples show that it is possible to solve certain legislative problems at the regional level, although it does not happen automatically. Monitoring regional legislation,

promoting successful practices between regions, and involving additional institutions as mediators can serve as an additional impetus.

A promising way to change the situation with freedom of assembly seems to be involving various federal and local bodies and officials monitoring human rights, such as the federal and regional human rights ombudspersons and the HRC. These institutions can become some kind of intermediaries for discussing specific problems with those who can directly influence their resolution.

- Against the backdrop of the COVID-19 pandemic in 2020, the situation with detentions of solitary picketers deteriorated significantly. In the first six months of 2020, in Moscow and Saint Petersburg, police detained 388 solitary picketers, which was more than in the entire year of 2019. Some human rights organizations appealed to the Moscow and Saint Petersburg human rights ombudspersons with a request to address this issue. In response to that, Saint Petersburg ombudsman for Human Rights, Alexander Shishlov, noted that he had repeatedly discussed the problem of detentions of solitary protesters with the police superiors in the city, and it resulted in a reduction of detentions. The Moscow ombudswoman, Tatyana Potyaeva sent a request to the Moscow Directorate of the Ministry of Internal Affairs, and also contacted the Moscow City Government and the Moscow City Duma.

In the context of shrinking room for dialogue between civil society and the state, such mediating institutions can be one of the opportunities for experts to present their position to the responsible authorities. These institutions also document and include cases of human rights violations in the official discourse. Referring to them makes the problem more visible.

Conclusion

Cardinal positive changes in the field of freedom of assembly are impossible without systemic reforms in the broader context of the functioning of various institutions, along with serious changes in the regulation of public events. We are not witnessing any clear legislative or law enforcement intent to significantly improve the situation. However, even targeted reforms often make the situation better and stimulate positive changes in other spheres. Society already has the tools for such changes.

It seems feasible and promising to implement the principle of transparency in the work of public authorities more and more widely. The principle of openness and transparency is declared by the authorities, so it seems quite achievable to increase transparency in the regulation of freedom of assembly, whether we speak about accessible statistics on the authorization of actions or timely data from law enforcement agencies regarding the number of protesters detained. The use of already existing mechanisms in this area and the development of new ones will help to create a substantive basis for the expertise that would be necessary for further changes.

Some specific mechanisms are also available to the public to defend their rights, such as judicial appeal of violations. Building up the number of such actions makes it possible not only to achieve a positive result in specific cases but, in the long term, to make it more difficult for the authorities to commit such violations in the future. The activity and involvement of the legal community are of no small importance here. The development of positive judicial practice in cases of prosecution for participation in public events would have been completely impossible if every day hundreds of lawyers had not been helping to defend human rights and freedoms in courts.

There are still some intermediaries in the dialogue between society and the authorities, such as ombudspersons and human rights councils, as well as other public and expert platforms and institutions. It is possible to draw their attention to the situation with freedom of assembly, as well as to directly address the authorities with demands to solve existing problems. Appealing to intermediary institutions allows, at least officially, to document a problem, while petitions and open letters make visible the scope of public support for a particular proposal.

Despite significant pressure from the authorities on independent media, the problems of freedom of assembly are widely and thoroughly covered by the media. The role of public attention and press participation cannot be underestimated. Journalists' inquiries and comment requests to authorities make their work more transparent and accountable to the public. In the context of shrinking room for dialogue between the state and civil society, independent media can act as intermediaries, including broadcasting expert knowledge. Investigative journalism and on-the-spot testimonies make it possible, on the one hand, to uncover and document violations of the right to freedom of assembly and, on the other hand, to counter the dissemination of misinformation about the actions and their participants and discrediting of the protests, which is characteristic of official sources of information. Finally, journalists also make visible the positive experience of exercising the right to freedom of assembly and the successes that result from this.

Spreading a wide range of forms of solidarity and support for people whose right to freedom of assembly has been violated is of paramount importance. This includes organizing supplies of food, water, medicine and other necessary items for detainees, helping with transport for those being released from police stations and special detention centres, caring for pets whose owners have been arrested, raising money to pay

fines for protesters, legal assistance and support for relatives of those involved in criminal cases, and letters to prisoners.

With the state introducing new methods of putting pressure on the protesters, new avenues of public support are being created for groups that are particularly vulnerable to such pressure. This can include organizing assistance for those who find it difficult to participate in protests because of the threat of dismissal or withdrawal of residence permit, pressure in the family or educational institutions. This could be both preventive support and minimization and mitigation of the negative effects of specific persecution.

Restricting freedom of assembly aims to reduce protest visibility, as well as to marginalize protest participants. In this regard, society's solidarity and support for those detained and prosecuted for exercising their rights is a way that will not only reduce negative effects but also promote positive change.