

The Art of the Ban

How Russian authorities refuse permission for rallies and other protests

About this report

This report examines the mechanisms of how Russian authorities refuse permission to public protests. The report examines the law around permission to protest, and uses examples of attempts to seek approval for specific protests to analyze the methods used by the local authorities to ban undesirable events.

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Foreword	4
Chapter 1. The Content of the Notice	6
Notice filing date	6
Objective of the event	7
Form of the event	8
Location of the event	9
Date of the event	9
Time of the event	10
Number of participants	10
Organizer	11
Authorized persons and medical aid	11
Chapter 2. Deadlines for filing notices and occupied locations.	12
Deadlines for submitting a notice	13
The first day	13
The last day	14
2018 legislative changes	15
Timeframe and days of the week	16
Regulations for pickets	17
Location occupied by another event	19
The most common problem with local authority approvals is that the planned location of the action is occupied. The reason could be repair or improvement works, as well as an another public event (rallies, demonstrations, processions, assemblies and pickets) or entertainment (cultural events, sports and so on). These reasons have one thing in common: the organizer of an action, when choosing the location and time, cannot be sure, that the location will be available.	19
Occupied by other activities	19
Repair and maintenance works	21
Other activities and works as basis for refusal	21
Chapter 3. Prohibited locations	23
Nationwide bans	24
Regional bans	24
Lists of prohibited territories	24
Acceptable distance to prohibited locations	26
The consequences of regional bans	27
Conditional Restrictions	29

Chapter 4. Communication timelines	30
Calculating the correct time period for the response	30
Regulating the time allowed for a response	34
Chapter 5. Locations with complicated approval procedure	35
The border area	35
Ownership	35
Other authority	36
Transport infrastructure	37
Cultural monuments	37
Chapter 6. The content of responses	39
The refusal to approve	40
An evidenced proposal	41
A proposal of an alternative time and location	42
Where to relocate assemblies to	42
An evidenced warning against violating the law.	44
Approval revoked	44
Chapter 7. Approval procedure: a view from the inside and from the outside	45
View from the inside: the procedure from the point of view of the authorities.	45
How the system functions as a whole	47
Chapter 8: External control	48
Transparency of the approval procedure	49
Appeal of authorities' decisions, actions and inaction	50
Responsibility of Government Officials	51
Criminal cases	51
Administrative Cases	52
Chapter 9. The roots of the restrictions.	53
Creation of the "designated areas"	53
Regulation of public assemblies during the World Cup	54
General properties of the regulatory framework	55
A prohibitive trend in regulation	56
The complexity and multiple levels of the legal framework formed by the three branches of power	56
The absence of a public list of necessary information	57
Documents on different levels sometimes repeat and sometimes contradict one another	57
Discrepancies and omissions in legislation.	57

The stated and the actual objectives	59
Summary	59
The regulatory framework	59
Gaps in the regulatory framework	60
Problems and infractions in the approval process	61

Foreword

From the point of view of Russian legislation, any spontaneous political assembly is illegal if more than one person participates in it. The authorities should be notified of such events in advance and are obliged to ensure safety and help convey the demands of the protesters to the addressees¹.

What happens in reality? The law mandates notification, but in practice it is not enough to notify the authorities: you also need to get their approval. City administrations come up with absurd reasons to prevent people from expressing their opinions. Having received a document refusing approval of a protest from city halls, the courts fine and imprison participants of peaceful demonstrations. Lawmakers impose increasingly harsh penalties for participating in assemblies that have not received authorities' permission. In the news headlines, such assemblies are called "unapproved," "unauthorized," and "illegal."

The approval procedure is an opaque tool of the state for managing rallies and pickets. Remaining invisible, it determines how the public event will take place and how the media will report on the event, and sometimes even decides the fates of the participants. Few activists or researchers dare to look into this topic – it is very complicated and requires immersion in the bureaucratic details of the process. It is time for us to do so.

This text is not an instruction how to organise a protest: there are no rules that would guarantee its approval. Rather, we offer an analysis of the factors and tools of the system that refuses approval: who gives peaceful protests the status of incorrect, illegal, disturbances of public order, and how - in the legal, and then in the media field; whether this status arises from Russian laws or is a consequence of their violation.

We studied the requirements of laws and bylaws of different levels, from federal to municipal, and looked at how they are applied in practice. This was not easy to do: the authorities, as a rule, do not seek to disclose data that could clarify the scope of refusals and their causes. Although someone does appear to be collecting this data: for example, we know from the human rights ombudsman's 2014 report that the number of refusals to approve events that year ranged from 8.5% in Yekaterinburg to almost a quarter (!) - 23% - in Samara².

In March 2016, the first deputy minister of the Interior Alexander Gorovoy openly stated: "We have noticed an increased number of refusals to hold rallies and demonstrations. The number of non-approvals is increasing."³ Even this fragmentary official data demonstrates that many events of which the organizers notify the authorities, cannot get approval or be carried out legally. But in order to understand the reasons for this, it's imperative to take a deeper look at stories of unsuccessful negotiations between the organizers and the authorities, and consider the arguments of both parties.

¹ Article 12 (1.6) of the Federal Law No. 54-FZ of 19 June, 2004 "On Gatherings, Meetings, Demonstrations, Processions and Pickets".

² URL: <https://rg.ru/2015/05/06/doklad-site-dok.html>

³ URL: <https://tass.ru/politika/2707418>

The difficulties with approval appear evidently during the preparation of nationally coordinated protest actions: because of the anti-government theme, authorities are interested in cancelling events of this type, while for organizers it is important to conduct them on a specific day. Our conclusions on the practice of such refusals are based on observing the preparation of two nationally coordinated days of action. The “Anti-crisis Spring” was planned to be held on 1st March 2015. A national day of action against corruption was planned for 26 March 2017.

The first action was cancelled after the murder of RPR-Parnas party co-chair Boris Nemtsov on the night of 27th February 2015. The second, which was conducted two years after, saw more than one and a half thousand people detained by police all over the country. This was preceded by refusals to approve actions in dozen of cities.

In the first few days after the protests of 26th March 2017, in Moscow alone 64 people were placed under administrative arrest on charges of disobeying legitimate orders of police officers⁴, for a total amount of 646 days, and the total amount of penalties exceeded the sum of 5 million rubles in the first month. There were criminal cases opened against ten participants of the anti-corruption protests.

This report is based on information collected by OVD-info in 2015: questionnaires of “Spring” organizers, their posts on Facebook and VK, press commentary, as well as notifications filed in 2017 and local authorities’ answers to them. All the documents concerning the approval process were provided by regional authorities in 43 cities upon the Human Rights Council’s request during the preparation of its report on the freedom of assembly in 2017⁵. Some judicial decisions were used in particular cases. Documents and organizers’ comments are quoted verbatim.

This research would have been impossible without the help of our colleagues and friends. We’d like to thank Anna Chertova and Grigory Durnovo, who collected the comments of “Spring” organizers in 2015, Liliya Shibanova of the Moscow Helsinki group who assisted in gathering information about protest approvals in 2017, all the volunteers who helped us research restrictions on protest during FIFA World Cup, and Olga Nikolaenko, who coordinated their work, Konstantin Tikhonov who was the first to read this text, Grigoriy Okhotin who over many months advised us and helped overcome obstacles, and finally, Konstantin Polivanov, Boris Beilinson and Daniil Belinson - thanks to their work and their aesthetic sense this text acquired its physical and digital form, eloquent illustrations and design. Finally, you would never read this report, if it were not for the tremendous translation work that our volunteers did.

⁴ Article 19.3 of the Code of Administrative Offenses of the Russian Federation.

⁵ URL: <http://president-sovet.ru/documents/read/575/>

Chapter 1. The Content of the Notice

What is a notice of holding a public event, and how any of its parts may become a reason to ban the event

Communication with the authorities on the matter of a public assembly's approval begins with filing of a notice. Russian law prohibits holding public events with more than one participant if these events are not previously approved by local authorities. One cannot inform the authorities neither too early, nor indeed too late: the Law on Rallies strictly restrains the time frame, leaving the organizer only a few days to file a notice. The federal law defines the information that one should include in the notice as follows⁶:

- Date when the notice is filed;
- The public event's objective and form;
- Place, time and date;
- Estimated number of participants;
- Organizer's name, address and phone number;
- Names of persons "authorized by the organizer to conduct executive functions with regard organising and carrying out the assembly";
- Forms and methods of ensuring public order and medical aid;
- Intents to use sound amplification and vehicles.

These are nine points and not very detailed. All told, problems may emerge with any of them.

Notice filing date

In 2016, journalists of *66.ru*, a local news website in Yekaterinburg, performed an experiment, filing notices for protests dedicated to various topics at different locations in the city. None of the assemblies were approved on the first try. The responses by the regional Department of Public Safety informed the organisers that "the filing date is missing from the notice you submitted". *66.ru*'s journalists note that the date was present, although noted not by the organizers of the protests, but by the clerk who received and registered the notices⁷.

In addition, the officials regarded as invalid the form of the notices used, even though it was published on the official website of the department.

⁶ URL: Article 7 (3) of the Federal Law No. 54-FZ dated 19 June, 2004 "On Gatherings, Meetings,

⁷ URL: <https://66.ru/news/politic/183630/>

Objective of the event

Among the paperwork coming from the March 26th 2017 events there is a peculiar ruling by the Voroshilov district court in Volgograd, in response to an appeal against the district's refusal to allow a protest. The document is published on the court's website in a somewhat reduced form - without dates and initials⁸. The part describing the arguments of the parties features the representative of the respondent, the Committee for Cooperation with the Civic Society of the Administration of Volgograd, asking the court to:

“take into account that in the course of the hearing of the case it became known to the Committee that the public event announced by Volkov A.A. **is part of a national day of action, led by A. Navalny, which effectively aims to propagate ideas undermining the foundations of the constitutional order and economic stability**; this is not in correlation with the principles of holding public events and intrinsically prevents the competent authority from its approval.”

Federal law indeed mandates the local authority to revise the event's objective. While considering an event notice, the authorities are supposed to check whether the declared objective violates the Constitution or the proscriptions by the Criminal Code and the Code on Administrative Offenses.

“The declared objective of the public event violates principles, does not stand with the provisions of the Russian Constitution, and can be interpreted as aiming to undermine the security of the state and propagate social and national animosity and strife. The Department therefore cannot permit you the public event.”

The above response came in Spring 2016 to the Yekaterinburg journalists who tried to secure approval for two assemblies: one to call for the resignation of President Vladimir Putin and his envoy in the Ural Federal District Igor Kholmanskikh; the other in favour of welcoming the foreign policy of the United States of America and its president Barack Obama⁹.

In December 2011, in response to the notice of an event entitled “We won't allow impostors into parliament”, the Moscow Mayor's office refused it as contradicting the Russian Constitution¹⁰. In October 2012, the prefecture of Moscow's Central District refused to approve a picket in support of “labor and trade union activists in Kazakhstan”, declaring that public events are limited to “consideration of various issues by Russian citizens **with regard to actions of their country**”¹¹. The law does not contain such a restriction, and defines the objective of public events as following: “free

⁸ URL:

https://vor--vol.sudrf.ru/modules.php?name=sud_delo&srv_num=1&name_op=doc&number=22036015&delo_id=1540005&new=0&text_number=1%5C

⁹ URL: <https://66.ru/news/politic/183630/>

¹⁰ URL: <https://www.novayagazeta.ru/articles/2011/12/22/47501-naryshkina-posadili-na-pyat-let>

¹¹ URL: https://article20.org/news_old/prefektura-cao-goroda-moskva-zapretila-obsuzhdat-kazahstan/

expression and forming of opinions, making claims concerning various questions of political, economic, social and cultural life in the country, and foreign policy”.

In 2017 the same local authority banned a protest action that had the stated purpose of “expressing concern about sporadic and systematic cases of unlawful acts and negligence by the law-enforcement, investigative, juridical and other state authorities, as well as the related relevant aspects of internal and foreign policy of the Russian Federation, including the inadmissibility of politically-motivated repressions and deprivation of liberty”¹². This notice was rejected on the grounds of “**lack of specificity**”.

What these examples primarily illustrate is federal law regarding an authority’s duty to check the admissibility of an event’s objectives is phrased in such a way as to make it possible to refuse an event without any criteria or detailed reasoning.

Form of the event

Russian federal legislation provides strict definitions of a variety of allowable forms of public event. It is worth noting several of these definitions here to clarify what follows.

A picket, according to Russian law, is “a form of expressing opinion which is conducted in a stationary way without using sound amplification, by citizens standing by the target of the picket with picket signs, banners and other means of visual propaganda, as well as rapidly erected prefabricated constructions”. Rallies and processions, according to legal definitions, involve the movement of participants, with and without visual propaganda respectively.

Some local authorities use and misuse definitions of types of public assemblies as grounds to refuse their consent for an event. The administration of Saratov refused a notice by organizers of the 2015 “Spring” to hold a picket with the reasoning that the notice “lacks the target of picketing, which makes picketing impossible”¹³. The law never directly asks the organizer to specify the object of picketing in a notice to a local authority, but free interpretation of this law serves as a convenient reason to ban an event.

During the preparation of the March 26th 2017 protests in Oryol, the deputy head of the administration replied with refusal for all six notices for pickets, on the grounds that no intention for using sound reinforcement was indicated. (Pursuant to the definitions given by the law, a picket differs from an assembly by the fact that sound amplification is not used, and by the presence of a target of picketing.)

But what makes a real difference is not the legal definitions of the forms of public protest, but the procedure for their approval by a local authority. The form is defined by two key characteristics of the event, which are crucially important for the organizers: event location and approval time frame. Picketing enjoys a huge advantage when it comes to location: various regional regulations that prohibit events in certain areas do not apply to picketing. The time window for filing the notice also

¹² URL:

<https://ovdinfo.org/documents/2017/04/14/reshenie-taganskogo-suda-o-priznanii-zakonnym-otkaza-soglasovat-piket-v>

¹³ URL: <https://fn-volga.ru/news/view/id/30106>

differs: a notice for picketing may be filed much later than for other types of event: three or four days in advance, as opposed to ten.

Location of the event

“They did outwit us, after all,” - wrote one of the Spring organizers in Izhevsk. “In our first Spring notice from the March the 1st, filed on the very first day when it was possible to file a notice for a public assembly, they found formal mistakes (the description of the route from the Eternal flame monument to the Square was insufficiently detailed). While we were busy editing the notice, someone “pegged out” the location, both the Eternal flame and the Square, for other events.”¹⁴

“Insufficiently detailed” routes may become a basis for rejection, causing the organizer to file a new notice. Federal law does not elaborate on how detailed the description of a route should be, hence leaving this unclear for the organizer.

Trying to avoid all possible objections where the law does not provide enough particularities, some organizers file notices with exaggeratedly detailed information. For instance, the organizer of the Tula March 26th assembly appended the location’s map to the notice, while in Oryol the location description began with “The Solar system, planet Earth” and contained geographical coordinates.

Date of the event

In theory, the organizer can schedule the assembly to any date. In practice, this is somewhat more complicated. For example, one should consider that the timeframe for filing the notice depends on the date of the planned event. Of importance here are not only the precise dates, but also the days of the week: the fewer working days are left, the shorter the time left for the organizers to communicate with the authorities.

But even if the organizer takes care of all this, it is not unlikely that unexpected reasons prohibit an event. A peculiar story took place in Volgograd: the city administration declined to approve the March 26th assembly, explaining that “in the entire area of Volgograd” there will be a “spring month campaign of sanitation, cleaning and renovation of amenities”. The local authority claimed that “The cleaning and renovation of amenities will be performed using specialised large municipal equipment, which presents a hazard to the safety of the participants of the rally you are proposing”. Just like that - the local authorities restricted assemblies by banning them from the whole area of the city for a month and a half.

That isn’t all. The organizers of the protest in Volgograd filed their notice on the 15th of March, while the administrative resolution declaring the “spring month campaign” was passed only on the next day¹⁵. The administration’s reply to the notice with reference to the resolution is dated to the 17th of March, a day before the resolution was published in the Gorodskie Vesti newspaper.

¹⁴ URL: <https://www.facebook.com/events/735836349848571/permalink/739275872837952/>

¹⁵ Resolution No. 355 by Volgograd City Administration dated 3 March, 2017.

Time of the event

The federal law restricts the time for holding public events to 7:00 to 22:00. An exception is made for public events of “cultural content” or those dedicated to Russia’s commemorative dates; these are not affected by the time restriction. Such a ban on holding assemblies during the night time formally prohibits indefinite protests that run continuously with a rotation of participants or tent camps.

Approval issues regarding event times commonly arise not because of late hours, but because of the authorities’ disinclination for open communication and negotiation for mutually beneficial solutions. On the 5th of March 2017 in Vologda, organisers filed a notice for holding a rally on the Kremlin Square from 14:00 to 16:00 on the 26th of March to the local administration. On the very same day the administration requested information on upcoming events on the Kremlin’s grounds from the Department for Culture and Cultural Heritage. On the same day, the Department answered that an exhibition entitled “Spring Fantasy” would take place there on the 26th of March from 12:00 to 15:30. Two days after, on the 17th of March, the administration replied the organizers of the protest that another event would be held on the Kremlin Square, specifying neither its name nor its end time. As a result, the assembly could not be held in the chosen location, although it would have been enough to postpone it for a few hours for the events not to overlap.

Similar communication issues prevented the approval of the March 26th assembly in Istra. The organizer planned to hold the rally from 13:00 to 14:30. The administration replied to the notice dated 16th of March on March the 21st, and required to change the time and location of the event due to a celebration of Culture Professionals Day from 13:00 to 15:00 and a march of children’s ensembles. On the next day, the organizer suggested postponing the rally to a later time, from 16:00 to 17:00. Only then the administration announced that the march of children ensembles would take place until 19:00. It was already too late for filing a new notice.

Number of participants

Problems may also emerge with the estimated number of participants in the rally. The organizer is supposed to guess this number before beginning to promote the event, and detail it in the notice. For some sites, regional byelaws can set an occupancy limit or an eligible crowd density, and therefore a restriction on number of potential participants.

In Penza, the organisers of the March 26th rally were offered to change the location of their proposed rally of 200 persons on grounds that the “the number of actual participants in the public event (rally) is expected to be 20-30 persons”. Later, in a report to the presidential Council for Human Rights, the local authorities stated that 300 persons took part in the protest.

The organizers of the rally in Moscow were arbitrary told by the authorities not only to relocate it away from the city center, but also to slim down the number of participants to 10.000 from the initial 15.000 if rallying in Lyublino, or to 2.000 if the rally took place in Sokolniki.

Organizer

The seventeen-years-old organizer of the March 26th protests in Yakutsk filed a notice for a “picketing with the purpose of a rally”. On the same day the notice was returned with a request to specify the format of the event. The organizer corrected the mistake, indicating picketing in the notice, just to receive a refusal a few days later, where it was said that a picketing’s organizer should be 18 or above.

According to the law, the eligible age of the organizer depends on the format of the event. For holding a demonstration, a procession or picketing, the organizer should reach full legal age, but starting from the age of sixteen one is allowed to hold rallies. As a rule, the latter are significantly more numerous and difficult to administer than picketing. The organizer of the Yakutsk protest failed to take into account this counterintuitive rule.

Together with this, the Law on Rallies puts several other limits on who can organise rallies. The organizers cannot be:

- Non-citizens of Russia;
- Persons deemed by a court to be fully or partially incapable of conducting their affairs;
- Persons who have an unexpunged conviction or criminal history on record for crimes against public safety or against the foundations of the constitutional order (since 2012);
- Persons who were twice in the recent past found guilty for breaking the order of a public event (since 2012).

If the organiser falls under one of these criteria, this is one of the few legal grounds for a direct refusal of an event. However, the law does not specify who is responsible for checking and proving the lack of an organizer’s criminal record or his capability.

For instance, the Deputy Mayor of Cherepovets decided that this duty falls on the organizer themselves. In response to the notice for a rally on March 26th 2017, she listed the conditions in the Meetings Act and summarized: “Taking the foregoing into account, I am asking you to provide the City Hall the information to prove your compliance as organizer to these requirements”.

This dry bureaucratic formula masks a refusal: firstly, it implies a requirement to file a new notice; secondly, one has to collect numerous documents and verification letters from a handful of agencies. Bearing in mind the limited time available to the organiser, it is unlikely that they can manage to file a new notice on time.

Authorized persons and medical aid

Replying to the notice for the March 26th rally in Cherepovets, the same official noted that it lacks the information on forms and methods of maintaining public order, provision of medical aid, and about persons “authorized by the organizer to conduct executive functions with regard organising and carrying out the assembly”, and suggested to “correct the above-mentioned incompliances”. The administration of Makhachkala made the same requests to the organizers of the 26th March action there: to detail the form and method of public order maintenance and medical aid. This kind of

formality-based delay can result in a de facto ban on the rally. In Makhachkala the organizer responded to the administration's requirements on the 20th of March and received a refusal three days later: the administration argued that the time window for approval of the rally had already passed.

The corresponding requirement in federal law is very vague: it is unclear whether and which information exactly the authorities expect from the organizer, and which parts of it are compulsory. All the more so in cases when the organizer does not plan to assign an "authorized person". For example, the organizer of the May 26th rally in Pavlovsky Posad named himself as "authorized person" in the notice. Persons who were named as "authorized" for the March 26th rally in Moscow were at the same time organizers in other places; this became one of the grounds for refusal. However, neither the federal law, nor local regulations in Moscow prohibit this.

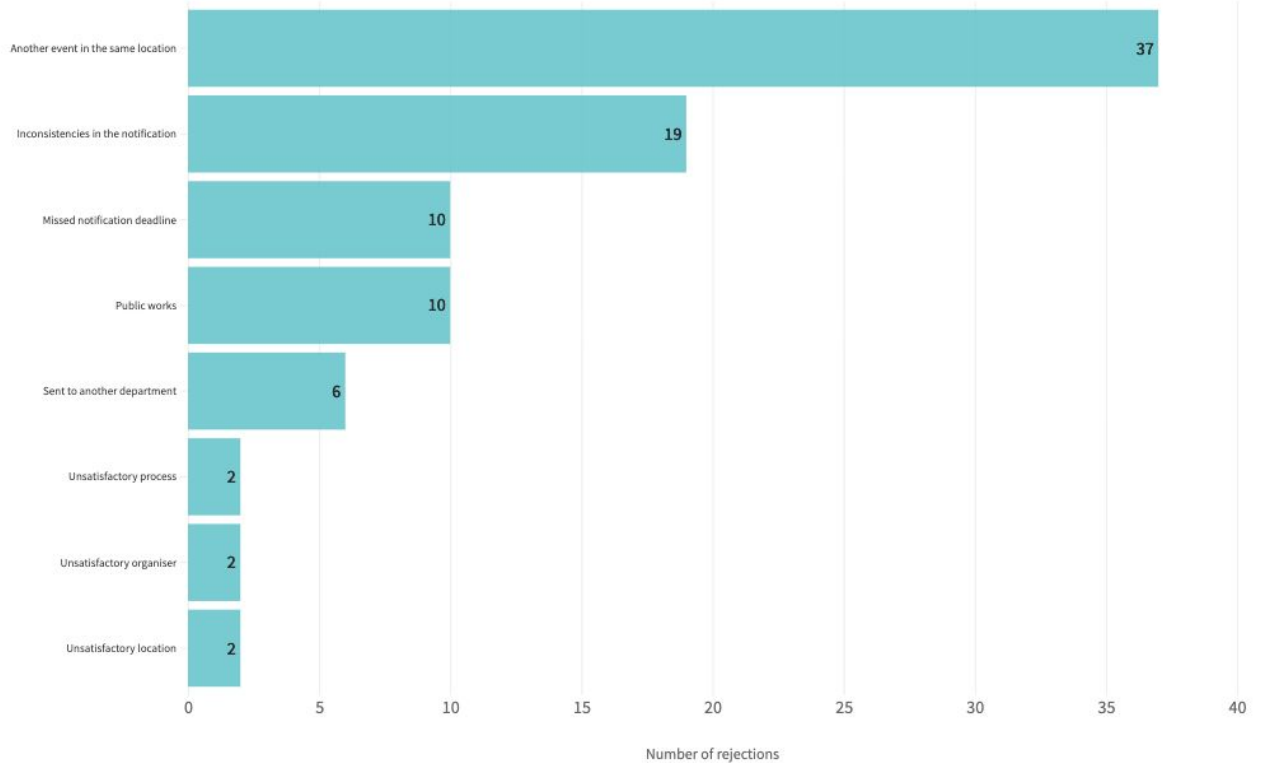
Chapter 2. Deadlines for filing notices and occupied locations.

How deadlines for filing a notice are calculated and why this matters for holding an assembly at an appropriate location

In some cases, local authorities clearly violate the law when they prohibit assemblies. In others, prohibitions are based on legislation, whose various requirements and restrictions are expressed vaguely and leave a lot of room for interpretation. As a result, any aspect of the notice may become the reason for a direct or indirect refusal.

Even the protests on March 26, 2017, scheduled for the same date and day of the week, having the same theme, and organized by the same political actors, were not approved for a variety of reasons:

Street protests on 26 March, 2017: reasons for rejection



Based on 76 notices of street protests to be held in 38 cities on 26 March, 2017. City administrations could cite several different reasons to reject an event notice. The data was provided to the Presidential Council on Human Rights by the regional authorities.

In this chapter we will describe the two most common reasons for refusals: non-compliance with deadlines for filing a notice, and non-availability of the proposed location because another gathering, repair work, or urban improvement work is planned there.

According to the Law on Rallies, organizers are required to notify city authorities of a public assembly no earlier than 15 and no later than 10 days before the proposed day of the event. There is an exception for pickets. The notice of holding them may be submitted no later than three days before the event. To submit a notice in a timely way, the organizer must to correctly determine the first and the last day of the time window.

Deadlines for submitting a notice

The first day

It is not obvious from the law whether the day of filing the notice is included in the 15-day period. It is also unclear when to file the notice if the first day of the period is a non-working day.

Both the “Spring” and March 26 assemblies were planned for a Sunday, so the first possible day of the notification period was a Saturday or Friday two weeks before. The organizers of “Spring” tried to file notices as early as possible but interpreted the law differently. In almost all cities, the notices for holding the “Spring” were filed either on Friday, February 13, or on the first day after the weekend – Monday, February 16.

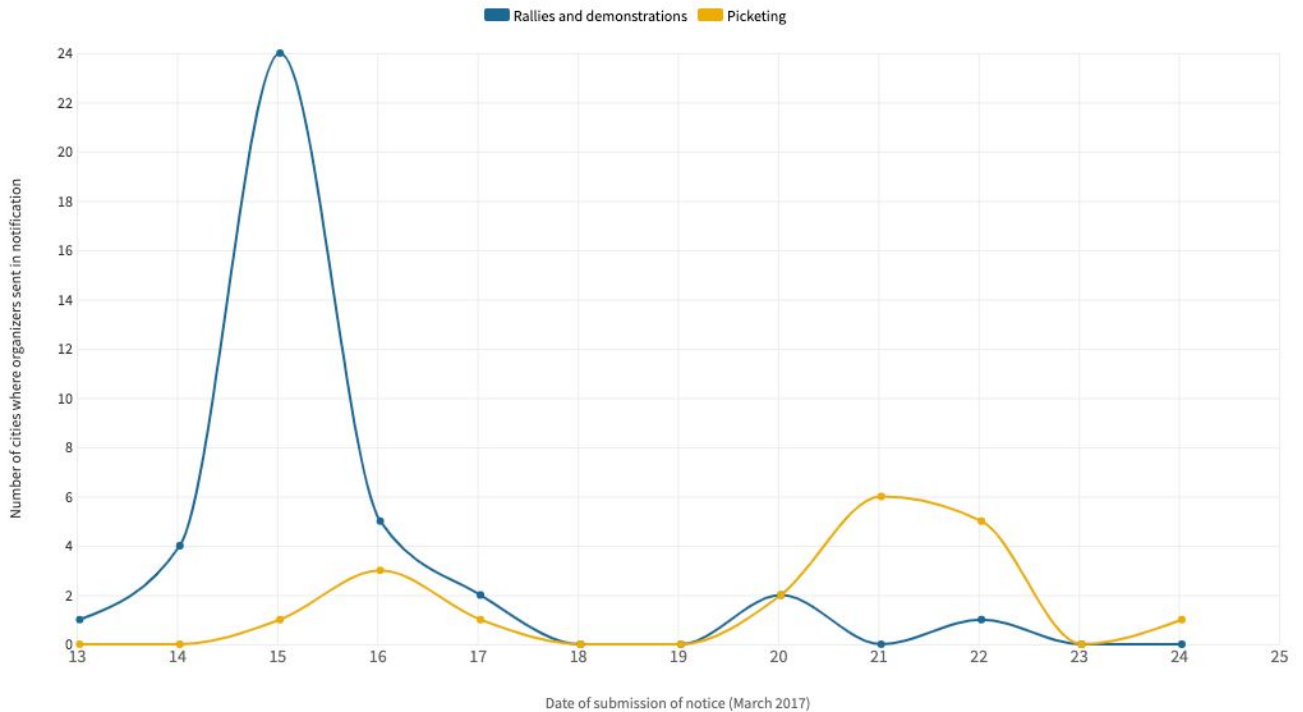
The local authorities also responded differently. Some notices filed on February 13 were accepted, while others were not. In Barnaul, the event, the notice of which was filed on Friday, was approved. In Voronezh, Vologda and Perm, the notices were accepted, but the assemblies were banned for other reasons. In Kaliningrad, the local authority rejected the notice filed on February 13, reasoning that the notification period had not yet started. “We filed a notice with the mayor’s office, as the law requires,” says one of the organizers of in Kaliningrad. “We filed it three times. The first time was on Friday, the 13th, considering that the 15-day period would start on the weekend, and we filed [the notice] in advance. **To these notices they replied that it was too early.**”

Just like the Kaliningrad mayor’s office, many assembly organizers in other cities believed that the first possible day for filing a notice was Monday, February 16. “We decided to organize a rally in Kazan and **on the first day when it was possible to file a notice**, we went [and] filed a notice of a rally in the city center, on Tukay Square. We filed a notice at 9:00 am, and there was no one before us in the line,” one of the organizers of the event in Kazan told OVD-Info.

The last day

Depending on whether to include the assembly day in the notification period, the deadline for the notice was on Wednesday or Thursday. For the March 26 assemblies, this would have been March 15 or 16. Among dozens of the assembly notices we analyzed, most – in 24 cities – were filed on March 15. In five cities, the notices were filed on March 16 (this is already a disputable date), and in several cities – after this date.

Protests on 26 March, 2017: dates of submission of notice letters



Based on notice letters for protests on 26 of March in 44 cities.

Once again, the authorities' reactions differ. Among the cities where the notices were filed on a disputable day, March 16, only in Sochi did the authorities refuse, reasoning that the deadline was missed. In Istra and Mozhaisk, the authorities proposed to change the assembly time due to other events. Makhachkala has already been mentioned above: there, the authorities first required the organizers to specify how they would ensure public order and medical assistance, and having received a response with clarifications on March 20, announced that the assembly could not take place because the deadline was missed.

Thus, the date of filing a notice that is considered by the authorities to be too early or too late may be the reason to refuse the permission. However, there is no common understanding of how to calculate the deadlines correctly, neither among the organizers, nor among the authorities considering notices in different cities.

2018 legislative changes

In the summer of 2018, the Supreme Court adopted a resolution on cases related to public events¹⁶. Among other things, the Supreme Court clarified that there should be 10 to 15 days between the submission of the notice of holding a public event and the assembly itself, which do not include the day of the notice nor the day of the assembly: "A notice to conduct a public event must be received by

¹⁶ Ruling No. 28 by the Plenum of the Supreme Court of Russian Federation dated 26 June, 2018.

the public authority not earlier than the day after which 15 days remain until the day on which the public event is scheduled to take place, and no later than the day after which 10 days remain before the day on which the public event is scheduled ". As such, this Supreme Court decision shifts the deadlines a day earlier.

If we apply this interpretation of the law to our two case studies, we will get the following timeframe: from Friday two weeks earlier, that is, on February 13, 2015 and March 10, 2017, to the following Wednesday, February 18, 2015 and March 15, 2017 respectively.

Timeframe and days of the week

Ascertaining the legal timeframe for filing a notice filing does not mean that it can be submitted on any of the six days: one of them is sure to fall on weekend. Federal law does not directly address this, but an indirect conclusion can be made from its text that it is impossible to submit a notice on Sundays and public holidays. If the legal timeframe completely falls on long public holidays (for example, public holidays are held in Russia between 1 - 8 January), then "a notice to hold a public event may be filed on the last working day preceding public holidays"; this clause was included in the law at the request of the Constitutional Court in 2016. If the last day of the timeframe falls on a Sunday or a public holiday, then the term is reduced – you must submit a notice on "the working day prior this day"; the Supreme Court added this condition in 2018. As for Saturdays, there are no provisions on them in the federal law. Technically, it is not a "Sunday or a public holiday", so that, by law, on these days you can file notices to hold assemblies. However, in actual practice, notices are accepted only within working days from Monday to Friday.

The federal legislators have delegated a more precise definition of the "procedure for notification" to the regions¹⁷. But regional regulations generally try to avoid the question of timeframes. A rare exception is the Bryansk region, where a local law postulates that the notice "may be filed during the weekday day in accordance with the work hours" of the authorities¹⁸.

Sometimes acceptable days and hours of notice submission are specified in byelaws set by the local authorities. For instance, according to such regulations in St. Petersburg, the Committee on Law, Order and Security accepts notices for holding a public event only from Monday to Thursday from 9:00am to 6:00pm, until 5:00pm on Fridays and a day before public holidays, with a lunch break from 1:00pm to 1:48pm¹⁹. District administrations of Yaroslavl accept notices from 8:30am to 5:30pm from Monday to Thursday and until 4:30 on Friday, also with a 48 minutes lunch break (depending on the district, lunch starts between 12:00pm and 1:00pm)²⁰. The regulations for Moscow say nothing of the days and times

¹⁷ Article 7 (2) of the Federal Law No. 54-FZ dated 19 June, 2004 "On Gatherings, Meetings,

¹⁸ Law of Bryansk Region No. 13-3 dated 26 February, 2018.

¹⁹ Instruction No. 234-R, St. Petersburg City Administration's Committee for Legality, Law Enforcement and Security, dated 31 August, 2016.

²⁰ Decree No. 4812, Office of the Mayor of Yaroslavl, dated 22 December, 2010

of accepting notices²¹. In general, the availability of comprehensible regulations is the exception rather than the rule. In any case, the timeframe for submitting a notice is limited to five days (for assemblies on Tuesday and Wednesday), or four (in all other cases).

Regulations for pickets

The last timing issue we will consider is that of timing for filing notices of pickets.

According to the Federal Law, notice of picketing may be filed for a week longer than other public events: it should be submitted “within three days before the picketing day. In case these specified days overlap with Sundays or public holidays, the notice should be submitted no later than four days before the picketing day”.

On the face of it, the regulation is simple. Considering the decree of the Supreme Court, the notice of pickets held as part of “The Spring” and the March 26 day of action should have been submitted at the latest on Wednesday (25th February 2015 and 26th March 2017 respectively). But things are not so simple in practice.

The Spring organizers in Stavropol decided to picket after their failure to agree on rally. They submitted the notice on 25 February – well within the timeframe even considering the Supreme Court correction to timeframes. But the city administration refused, alleging that the notice was outside of the timeframe²². Three pickets for the March 26 day of action in Tula and one in Ulan-Ude weren’t agreed for the same reason, even though the notices were handed in on time (22 March).

After receiving the rejection, the organizers of picket in Ulan-Ude appealed in court, which upheld the position of city administration on 25th March. The court decision states: “The court has established that notice of picketing was submitted on 22th March 2017. The day of the public event specified in notice is on Sunday 26/03/2017. According to legislation, the time limit for filing the notice of picketing should be no later than 3 days before the day of the event. In case those **specified days** overlap to Sunday or non-business days (holidays) the notice should be submitted no later than 4 days before the day of the event. In accordance with the general provisions of the civil legislation the time-limit runs from the following day. Thus, the notice from 22/03/2017 was submitted by Nazarov E.V. with violation of the requirements of the p.1 art.7 Federal Law of Russian Federation from 19th June 2004 №54-FL ‘On assemblies, rallies, demonstrations, processions and picketing’, since 26/03/2017 was a **Sunday.**”²³

Both the city administration and the court appeared to agree that the ‘specified days’ mentioned in the law include not only the three days before the picketing, but the picketing day itself. The Law on Rallies allows this kind of interpretation, and it might be a sensible one if keeping in mind that it is harder for authorities to prepare for protests during non-business days. That could be a valid reason to

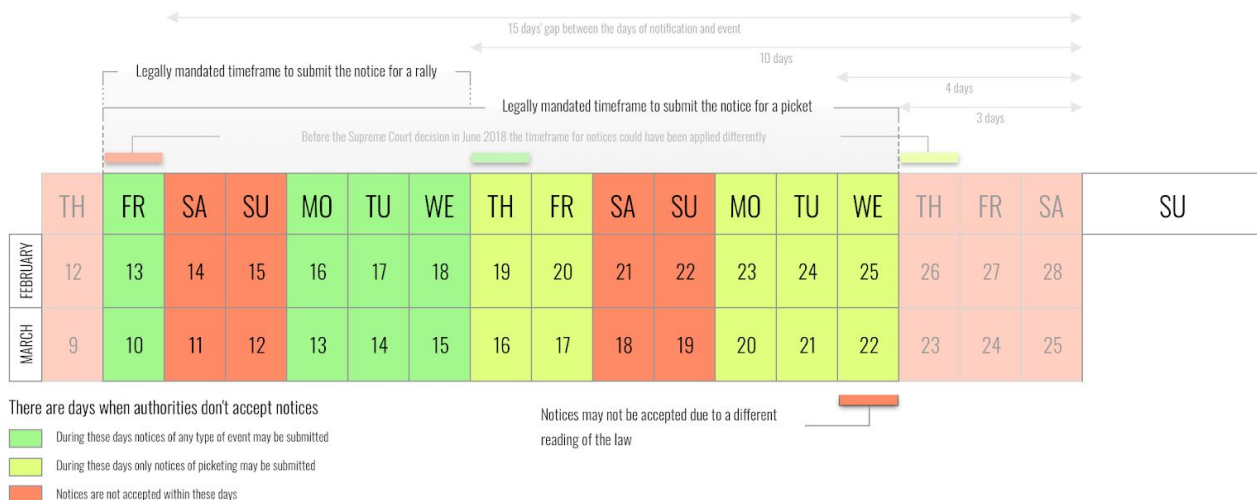
²¹ Decree No. 55-PP, the Government of Moscow, dated 22 January, 2008.

²²URL: <https://www.facebook.com/events/1058385680844843/permalink/1063661223650622/>

²³ Decision of Sovetsky District Court of Ulan-Ude on case No. 2A-1126/2017.

bring the notice period forward by a day. However, in this case, planning the action on a weekend day had no impact on preparation. So there is little chance that the legislative language has actual practical rationale behind it. For people organising a picket on a Sunday or public holiday, it is therefore entirely unclear what day the timeframe to submit a notice ends. It is up to the authorities to decide whether to accept the notice or not.

Considering all of these details, the timeframe for filing the notice for the Spring and March 26 days of action turns out to be fairly tight: four days for assemblies and demonstrations (which in practice shrunk to only three days, because until the decree of the Supreme Court, the first Friday would not have been considered by most organisers as eligible) plus four additional days for pickets:



Why is it so important to correctly calculate the submission timeframes? If the notice submitted too far in advance or too late, the authorities could reject it. Even if the notice is submitted on time, there is a chance that the area would be occupied by another public event. So it's better to submit in the early morning of the first day of the timeframe. Finally, after submitting the notice, time is required for negotiating with the authorities.

The Law on Rallies prohibits organizers from holding an assembly if they failed to submit a notice in time²⁴. At the same time the law restricts the powers of the local authorities: a notice that hasn't been submitted on time is not a ground for outright rejection²⁵. However, in 2018 the Supreme Court added a third possible reason for outright rejection to the two existing under federal law (inappropriate organizer or prohibited location). The Supreme Court held that a notice submitted outside of the legal timeframe "is not subject to review" by the authority.

²⁴ Article 5 (5) of the Federal Law No. 54-FZ dated 19 June, 2004.

²⁵ Article 12 (3) of the Federal Law No. 54-FZ dated 19 June, 2004.

Location occupied by another event

The most common problem with local authority approvals is that the planned location of the action is occupied. The reason could be repair or improvement works, as well as an another public event (rallies, demonstrations, processions, assemblies and pickets) or entertainment (cultural events, sports and so on). These reasons have one thing in common: the organizer of an action, when choosing the location and time, cannot be sure, that the location will be available.

Occupied by other activities

Events with a large number of participants are organized in a different way and according to a different timescale than rallies and pickets. For example, in Moscow²⁶ and Nizhny Novgorod²⁷ they are agreed at least a month in advance, and in St. Petersburg²⁸, 15 days in advance. It would seem that collisions with other public events should be easy to avoid, because in theory the same rules and terms of agreement are valid for every organization, so to ensure the availability of a location one should simply file a notice at the earliest possible moment. But in practice, this doesn't work. The Spring organizers in Voronezh, who submitted their notification on 13 February, were told that another application had already been filed for the same place and time. One of the applicants explained: "The notice of our march was filed on the first day allowed by the law in the morning, and there was no one queueing before our representatives. We are not surprised and perfectly understand how this could happen. For example, Sam Fisher, Spiderman and Prince of Persia slid past our three representatives and quietly filed a notice for the same route and the same square."²⁹

The situation when the opposition rallies hadn't been agreed because of doppelganger actions is typical and has been observed in many cities. During the preparation of Spring in Kaliningrad, one of the locations turned out to be occupied by the festival of war songs "70 steps to Victory"³⁰. The organizer was the regional youth organization "Union of Active Youth". In Saratov, the city administration demanded an opposition rally be relocated because of single-person pickets "to protect the environment and to improve work on greening the city." (Note that "single-person pickets" emerged in Russian practice as protests with the participation of only one person, which therefore exempted them from regulations covering other types of protest.) At the Theater Square in Saratov, the opposition action was not allowed because of the "patriotic auto flashmob" organized by the youth project

²⁶ Order No. 1054-RM by Mayor of Moscow of 5 October, 2000. URL: <https://cao.mos.ru/activities/public-event/1054-%D0%A0%D0%9C.html>

²⁷ Resolution No. 3881 by Nizhny Novgorod City Administration dated 27 September, 2011. URL: <http://docs.cntd.ru/document/944954920>

²⁸ Decree No. 28-P by Governor of St. Petersburg dated 2 April, 1999. URL: <http://docs.cntd.ru/document/201329>

²⁹ URL: <https://openrussia.org/post/view/2710/>

³⁰ URL: <https://www.newkaliningrad.ru/news/briefs/politics/5396303-marsh-vesna-ne-pustili-na-pl-vasilevskogo-iz-za-patrioticheskogo-festivalya.html>

“Generation 7.0”, as an unnamed source in the regional government alleged journalists³¹. It remained unexplained why this action dedicated to the 70th anniversary of Victory Day (celebrated in May) was going to be held in March.

Here are some examples of doppelganger actions for the 26th of March day of action. In Sochi, the alternative event was commemorating the Day of patients with epilepsy. In Nizhny Novgorod, a square was occupied by a picket of support of children with cerebral palsy, which according to the notification would take place from 7am to 10pm. Rallies and pickets “Against the fifth column inside the government” were announced at several other places. In St. Petersburg, the organizers of the rally the 26th of March were informed that from 10:00 to 20:00 the territory of Marsovo Polye would be taken up with a “mass cultural event with a view to calling for the protection and revival of traditional moral and family values.” In Mozhaisk, the planned site of the rally would be occupied by a ceremony: the opening of a ceremonial watch in memory of the Great Patriotic War, organized by the Mozhaisk Youth Center. The Administration for Physical Culture and Sports of the city of Ulan-Ude was going to hold an event entitled “Hooray. Vacation!”. The Mordovian patriotic association “Search” was organizing an event in Saransk, the Udmurt Federation of hand-to-hand fighting in Izhevsk. In Ivanovo, the local authority was going to carry out an emergency preparedness review in accordance with its security plan for 2017.

The administration of Sergiev Posad informed the organizer of the action of the 26th of March about another event without specifying organizer or topic. But it was possible to find out who organized the doppelganger action from internal documents: in a note to the Department for Extremism Prevention it was indicated that the alternative event was conducted by United Russia (Russia’s ruling political party). United Russia also acted as the organizer of the doppelganger action in Komsomolsk-on-Amur. In Krasnodar, Saransk, Sochi and Cheboksary the doppelganger actions were organized by the youth wing of United Russia.

It is evident that doppelganger actions are often organized by pro-government organisations. It is possible that in some cases they may be held by someone not affiliated with the administration, but it is difficult to judge, because the authorities are reluctant to disclose information on the alternative actions. Out of 37 responses to notifications of protest actions on March 26 which referred to other events, 24 did not mention the name of the doppelganger, 23 did not refer to the organizer, and 16 did not specify either. Sometimes it is even impossible to tell whether the reason is a public assembly or an entertainment event. Several notifications of rallies on March 26 in Kazan were rejected "in connection with events previously planned in these places", in Belgorod the organizer was simply informed that both suggested locations "will be occupied".

The lack of detailed information about the doppelganger actions does not constitute an infraction, but indirectly indicates infractions on the part of the local authority. In some cases, these infractions can only be discovered when other event notifications are publicly available. A clear case of this can be seen in the story of the March 26 action in Cheboksary.

On 14 March the Young Guard of United Russia booked out a huge number of sites throughout the city from 7am to 10pm, indicating the number of participants as 200. The next day, the organizer of the

³¹ URL: <https://fn-volga.ru/news/view/id/29955>

anti-corruption rally notified the local authority of the intention to hold the action on one of these sites. The city administration replied that the location was occupied and suggested to postpone the action for another day. The organizer demanded to be offered an alternative location, but the authority insisted on its offer to change the date instead. On 22 March he filed a notice to hold a picket at a location that was not among the sites occupied by the Young Guard. The day after, the Young Guard requested to append the same location to the list of sites used for their event. Despite the lateness of this supplementary application, the administration accepted the Young Guard's document and informed the organizer of the protest action that the location would be occupied.

Repair and maintenance works

Local authorities have even more room for maneuver by using repair works, urban improvement and similar activities organized directly by local authorities. The lack of clarity in legislation here is easy to use to ban an event.

The organizers of Spring in Stavropol were not allowed to hold a rally in its original place, apparently simply because of the snow clearing works. City administration response stated that "a sanitary area cleanup operation following the winter period is commencing on Krepostnaya Mountain Square in Stavropol." Snow removal is a common reason for banning the March assemblies³². It repeatedly emerged in responses to notices of public assemblies of March 26. Sometimes the replies contain obvious mistakes: for example, in Yakutsk, the organizers were banned from holding a rally on Victory Square, because at that time snow clearing would take place in Karl Marx Square.

In Novosibirsk, the local authority ruled that the next possible day for an assembly would be April 30 (!), because from March 20 to April 29, the location would be unavailable due to repair works following pavement subsidence. Interestingly enough, the organizer submitted the event notice on March 15, while the official specification for pavement repair was signed on the March 20.

What distinguishes repair works as a reason for refusal is that the authority can refer to the urgency of repairs and cancel an already approved assembly at the last minute, when a new notice can no longer be submitted due to the legally set timeframe. In Omsk, the organizer of the March 26 rally was informed that there would be repairs conducted at the planned location, and offered to relocate the assembly to Decemberists Square. On March 20, the organizer agreed to transfer the assembly. However, on March 23 the administration informed the organizer that the new site was also not suitable for the event, due to emergency repairs in a place nearby. The letter stated that "from 9:00am to 6:00pm emergency work will be conducted on the trade fair complex premises and the adjacent territory to eliminate identified deficiencies in sanitary conditions, routine electrical equipment works, and also in accordance with the implementation of measures to eliminate fire safety violations requirements as ordered by the state fire supervision authorities", and therefore, "the access to the surrounding area will be limited."

Other activities and works as basis for refusal

The law does not specify what kind of works are a legitimate basis to restrict the freedom of assembly, and to what extent. It only contains a general ban on holding public events in places where this may

³² URL: <https://www.facebook.com/events/1058385680844843/permalink/1060255237324554/>

"create a threat of collapsing buildings or structures or other threats to security of the participants in the public event."³³ Some regional regulations ban holding rallies near construction or major renovation works. In the Magadan region, assemblies cannot be held within 20 meters from such facilities, in Komi - within 50 meters, in Kalmykia - within 100 meters, in Mordovia and the Nizhny Novgorod region - in "immediately adjacent" territory to such activities. Urban improvement works are only mentioned in the law of Krasnodar Territory, where it is prohibited to organize assemblies within 50 meters from "construction sites, repair and restoration works, landscaping and sanitation works". In other regions there are no equivalent legal bans.

On some rare occasions, local authorities provide explanation as to why an event should not be held simultaneously with certain repair works. For example, the authorities of Sarapul refused consent for a March 26 assembly, due to "works investigating the water supply and sewage networks involving **high risk machinery and equipment**". But in most cases, authorities consider it sufficient to refer only to the fact of planned works.

The explanations, if given, do not seem convincing. The authorities of Saransk, prohibiting March 26 assembly due to the presence of "Merry train" rides in that area, explained it by the fact that other events may create danger for the participants and the organizer of the public assembly. The organizer of the rally in Krasnodar was informed that "a mass public event" with distinct goals would be held in the same area which could lead to a conflict. As it turned out later, the event in question was a rally of the Young Guard of United Russia "in support of the fight against "death groups" on social media."

The Central District Court of Novosibirsk made an interesting and, alas, atypical decision. It overturned the banning of March 26 rally due to pavement subsidence works³⁴. "By itself, the planning of repair work on the opening and restoration of pavement and underground networks cannot serve as an unconditional reason for refusing to agree on the time of a public event. The materials of this administrative case do not contain and the administrative defendant has not submitted any relevant and admissible evidence that the NAMT "Globus" square or part of its territory in which a public event was planned to be held would be closed for public visits due to the construction and technical works, which could indeed have created obstacles for the safe conduct of a public event at the time requested by the organizer." The court made this decision on March 25, and on the next day the rally took place as planned.

Federal law does not explicitly prohibit simultaneously holding several assemblies on a common location. Sometimes a ban on holding rallies and demonstrations near cultural, sports and entertainment events is enacted on a regional level. In this way the law of Tyumen Region prohibits holding assemblies on territory directly adjacent to buildings of cultural and sports institutions during "cultural, sports, entertainment and other events", as well as two hours before and after those. A similar ban is in force in Chukotka: a rally cannot be held near cultural, sports, entertainment, educational centers while they are holding events, as well as events where children are participating. In Kabardino-Balkaria, it is prohibited to hold rallies at fairs and "other places of mass gathering of citizens."

³³ Article 8 (1) dated the Federal Law No. 54-FZ dated 19 June, 2004.

³⁴ Decision of Central District Court of Novosibirsk in case No. A-2520/2017. URL: https://centralny--nsk.sudrf.ru/modules.php?name=sud_delo&srv_num=1&name_op=doc&number=24486877&delo_id=1540005&new=0&text_number=1

An outright ban on the simultaneous holding of two assemblies can be found neither in Russian law on rallies, nor in the international regulations that are a part of the Russian legal system. Moreover, Strasbourg Court rulings directly confirm the right to counter-demonstrations, in which one can express disagreement with the position of the main rally³⁵. The OSCE Guidelines on Freedom of Peaceful Assembly state that in such cases,

“Emphasis should be placed on the state’s duty to protect and facilitate each event where counter-demonstrations are organized or occur, and the state should make available adequate policing resources to facilitate such related simultaneous assemblies, to the extent possible, within “sight and sound” of one another.”³⁶

If the two events cannot take place at the same time, then instead of the principle of first come first served, the OSCE allows for the drawing of lots.

The original wording of the Supreme Court resolution of 2018 contained a clause regarding simultaneous assemblies. The draft of the resolution stated: “Holding several events in one place, cannot be an independent (sufficient) basis for the public authority to propose a change in location and/or the time of the public event, unless their joint holding <...> exceeds the maximum occupancy of the public event venue and does not allow for the peaceful conduct of these events.” This clause did not make it to the the final version of the resolution.

Chapter 3. Prohibited locations

On the difficulties of finding a suitable place for an assembly.

There are not so many places for rallies and pickets, especially in city centers. At some sites, public events are expressly prohibited by law, while for others the approval procedure is more complicated.

The organizers of the rally on March 26 in Vologda filed their notice and received a response that their chosen location is an urban park (*skver*) and according to city byelaws public assemblies cannot be held there. In Stavropol, the authorities refused a notice for a march along October Revolution Avenue, citing the fact that the route included “locations where rallies, rallies, processions and demonstrations are prohibited.”³⁷ (Stavropol regulations prohibit demonstrations less than 10 meters away from residential buildings and sidewalks.)

There is a huge legislative iceberg hidden beneath these laconic bans. In the last few years this iceberg has quietly but rapidly expanded.

³⁵ Paragraphs 43-51 of the Judgement by the European Court of Human Rights in the case of "Öllinger v. Austria" dated 29 June, 2006, application No. 76900/01.

³⁶ Paragraph 102 of the Guidelines on Freedom of Peaceful Assembly / OSCE/ODIHR, 2007, Warsaw. URL: <https://www.osce.org/odihr/73405?download=true>

³⁷ URL: <https://www.facebook.com/photo.php?fbid=935564456467609>

Nationwide bans

Location bans can be divided into two groups: ones that apply throughout Russia and ones that apply only in some regions. The former kind is relatively clear.

Firstly, federal law prohibits public events in **potentially dangerous sites**: near hazardous manufacturing facilities, railways, oil and gas pipelines, and power lines³⁸. The Code of Administrative Offenses reserves a specific punishment for holding of an unapproved event near nuclear facilities and radioactive substances storage. This offence carries a fine of 150 to 300 thousand rubles or up to 15 days of imprisonment³⁹.

Secondly, the law on rallies prohibits holding public events **near certain public authorities**: buildings and land belonging to institutions that execute sentences of imprisonment, near the residences of the President of the Russian Federation, and court buildings. In 2014, after police detained protestors en masse in Moscow during the hearing for the Bolotnaya case, a new punishment was imposed for organizing, participating and calling for participation in “simultaneous mass presence” near locations where federal law bans public events, including court buildings. The fine ranges from 150 to 300 thousand rubles and up to 200 hours of community service, or up to 20 days of imprisonment.

Regional bans

The system of regional location bans is more complicated: it emerged relatively recently and is still in the process of formation. In June 2012, the federal Law on Rallies was amended to allow additional local restrictions on public assembly locations. According to these amendments, regional legislators have to determine locations where “in order to protect human and civil rights and freedoms, and ensure legality, law and order, and public security”, “assemblies, processions, rallies, and demonstrations” shall be prohibited. Unlike federal prohibitions, regional ones **do not apply to pickets**⁴⁰.

There are no specific criteria for such prohibitions, only an open list of possible reasons: “if holding public events in the specified locations may lead to disruption of vital infrastructures, transportation, social, or communications infrastructures; disrupt pedestrian traffic and/or vehicles, or deny access to residential premises or objects of transportation or social infrastructure.”

During the following years, the constituent territories of the Russian Federation adopted new regulations and modified old ones, to enshrine lists of locations where public assemblies are prohibited.

Lists of prohibited territories

Prohibitions may concern **specific places and streets in certain cities**: for example, Nevsky Prospect, St. Isaac Square and Palace Square in St. Petersburg, Susaninskaya and Sovetskaya Square in Kostroma, Kremlin territory in Nizhny Novgorod, Red Square in Kursk, and Stefanovskaya Square in

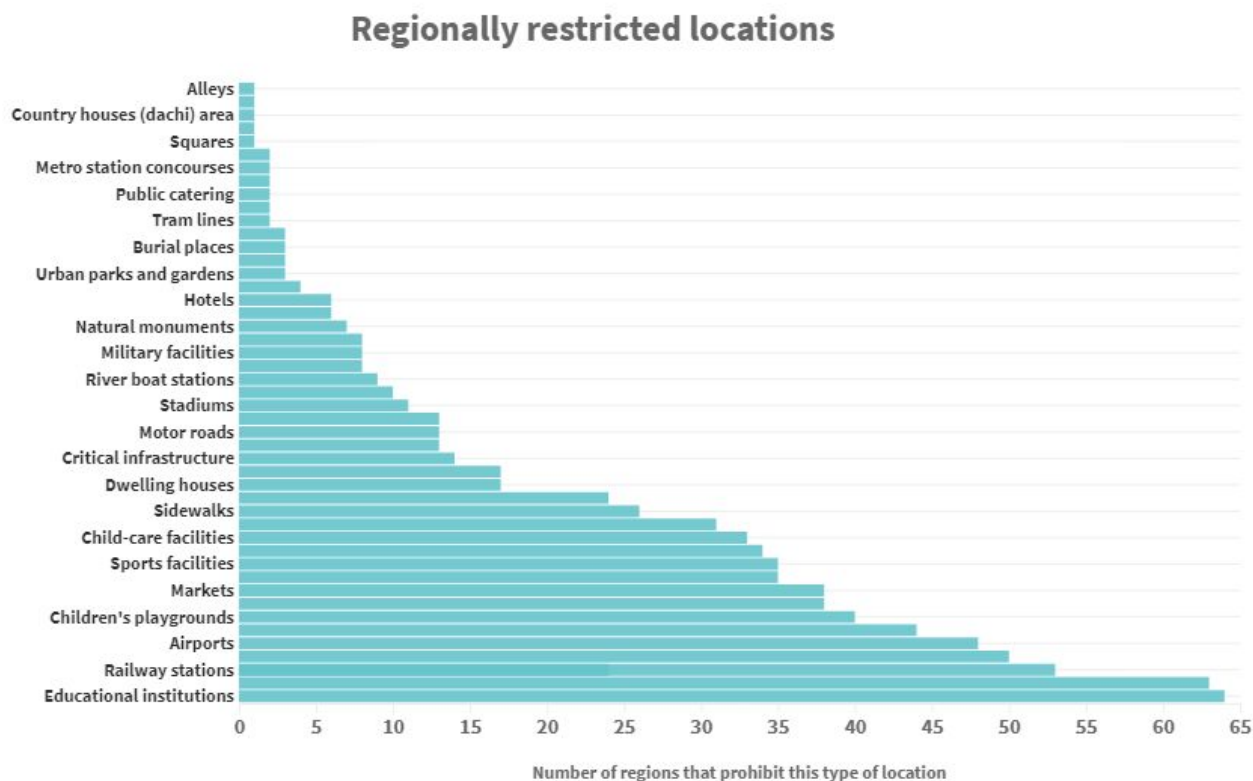
³⁸ Article 8 (2) of the Federal Law No. 54-FZ dated 19 June, 2004.

³⁹ Article 20.2 (7) of the Code of Administrative Offenses of the Russian Federation.

⁴⁰ Article 8 (2.2) of the Federal Law No. 54-FZ dated 19 June, 2004.

Syktyvkar .

For instance, this is how Kostroma local deputies explained the ban: “We have come to a carefully weighed decision to prohibit all mass events on the central squares,” said Vladimir Vnukov, a local government spokesperson. - Kostroma is a tourist city. Susaninskaya Square is the center of the city where people come to admire the architectural beauty. The purpose of this bill is to eliminate the collision of tourist flows with political assemblies that are held in central squares. From this point of view, we made a wise decision that will benefit the city.”⁴¹



Based on regional legislation data on May 2017.

More often, restrictions are determined not by specific addresses, but according to **the types of locations**. For example, public transport stops, railway stations or government buildings. The lists of these types vary considerably from region to region. For example, in Moscow and Voronezh region there are no such restrictions at all. In some regions, there are dozens of prohibited types of locations. A record high - 24 types - are prohibited in the laws of Karachay-Cherkessia⁴², Krasnodar Territory⁴³ and the Khanty-Mansi Autonomous Area⁴⁴. (Hereinafter, our comparison of prohibited locations follows regional regulations texts as of May 2017). Although the categorisation of prohibited locations is rather arbitrary, it still allows to reliably illustrate regulatory differences between regions.

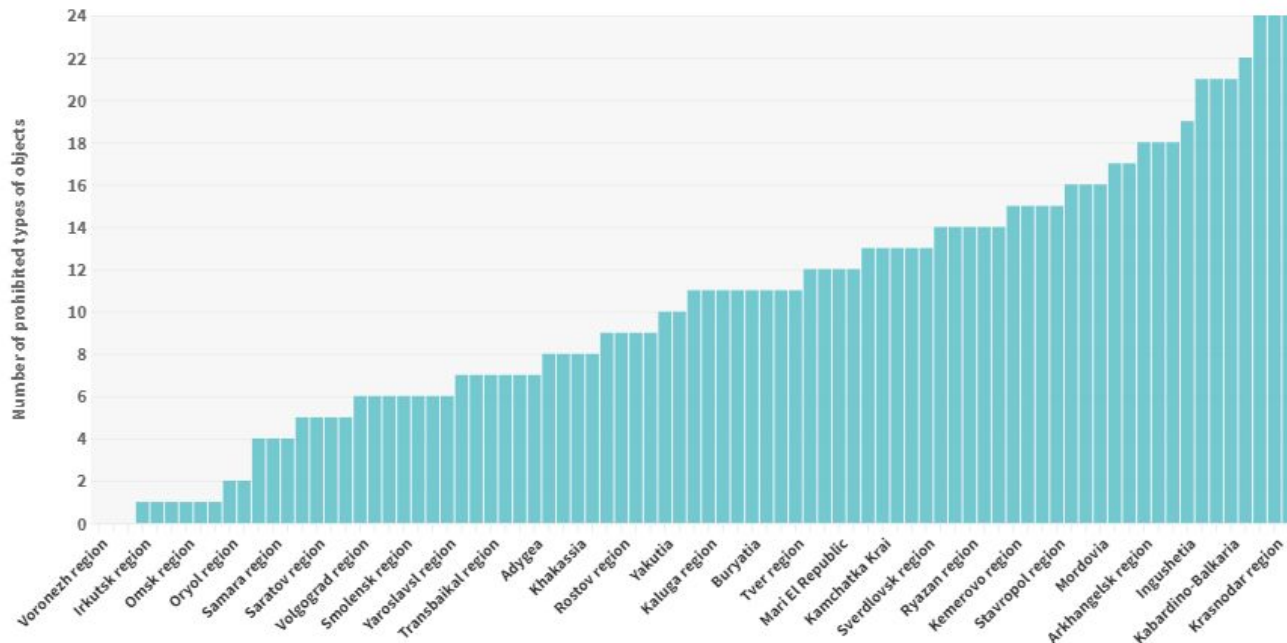
⁴¹URL: http://www.kosoblduma.ru/press/article/Susaninskaja_i_Sovetskaia_pod_zapretom.html

⁴² URL: <http://docs.cntd.ru/document/819008998>

⁴³ URL: <http://pravo.gov.ru/proxy/ips/?docbody=&nd=140012240&rdk=&backlink=1>

⁴⁴ URL: <http://docs.cntd.ru/document/429056549>

Regional location bans



Based on regional legislation data on May 2017.

The text of such bans in regional law is often unclear. The scrupulous organizer will have to peruse other regulatory documents to understand what location is considered a “facility for children”, “social welfare institution”, “vital infrastructure”, “residential area”, “grounds of buildings” and “communication objects”. It may turn out that such definitions do not exist at all.

Acceptable distance to prohibited locations

As a rule, bans do not merely apply to a location but also to its surroundings. Regional laws set the acceptable distance from the entrance or from the building perimeter that range from a common 50–200 meters to a maximum of 500 meters (around military facilities in the Ivanovo region⁴⁵ and military facilities and vital infrastructures in Tatarstan⁴⁶).

Often legislators do not set the distance in meters, but resort to indefinite formulations, such as: “territories immediately adjacent” or “adjacent” to a particular location. With rare exceptions⁴⁷, there are no precise definitions of these terms in regulation, so it makes it extremely difficult to formally determine such “territories”.

Some laws even deal with territories adjacent to other territories, and not to specific locations. For

⁴⁵ URL: <http://docs.cntd.ru/document/453362623>

⁴⁶ URL: <http://docs.cntd.ru/document/422403340>

⁴⁷ Article 5 (2) of the Law of St. Petersburg No. 390-70 dated 21 June, 2011.

example, in Kirov region it is prohibited to hold a public assembly on the **territories immediately adjacent to buildings and plots of land attached to railway stations**. In the Sakhalin region, the ban extends to “**territories adjacent to internal land plots** at a distance of up to 50 meters from the facilities listed in paragraphs 8-15” (medical centers, children's and educational institutions, entertainment centers and others).

The lack of a clear definition not only confuses the organizer - it may expose its participants to the risk of administrative prosecution, and also become an additional reason for local authorities to prohibit rallies. Taking this problem in consideration, the Supreme Court in 2018 mandated the judicial system not prosecute organizers where events were held on such territories, if the borders of these territories were not accurately identified⁴⁸.

The consequences of regional bans

Direct consequences are clearly evident from the example of prohibiting protests next to various state authority buildings: an obvious target for protests. Such prohibitions are in place in one form or another in fifty Russian regions.

An indirect consequence of regional prohibitions is the growth of ambiguity in legislation. The number of documents regulating public events has increased. Now it is not enough for the organizer to read the federal law on rallies: they must thoroughly study regional and local regulations and byelaws, which may not be easy to locate.

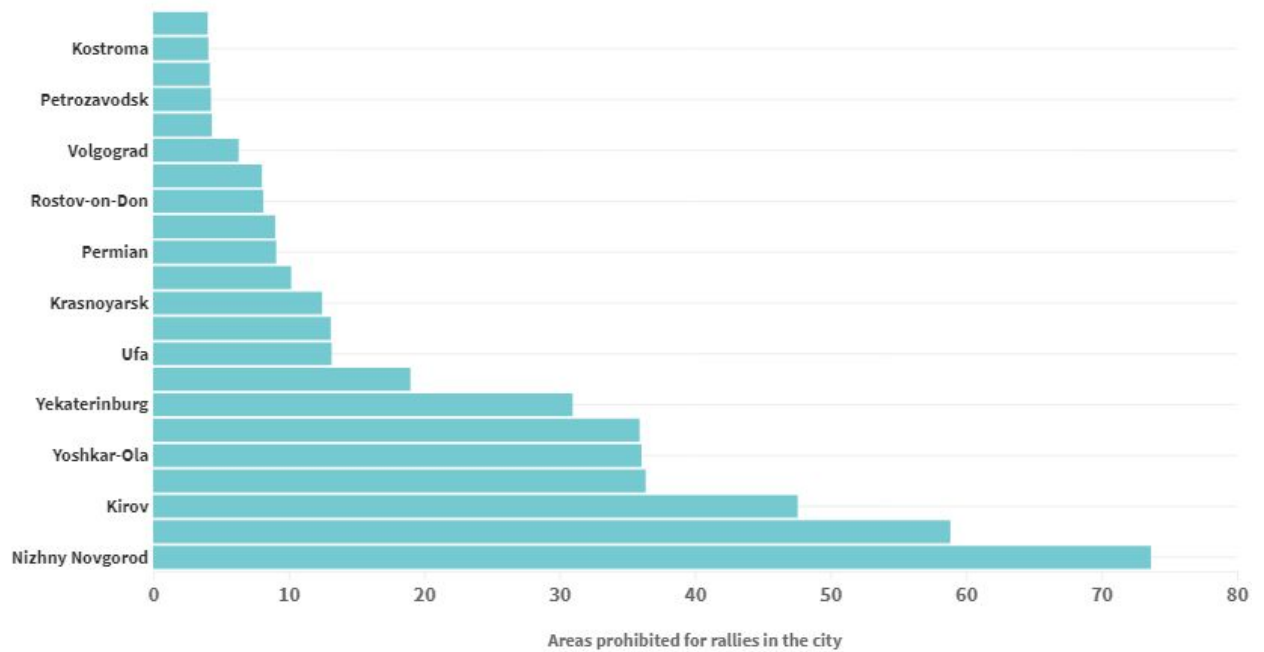
But even an excellent organizer who was able to find all the necessary documents can hardly draw practical conclusions from them. The prohibitions are formulated in such manner that the text, without a map representation or reference, says nothing about whether or not a rally can be held in a specific location. Attempting to formalise the regulatory text and map the prohibited locations results in many ambiguities and questions, as we saw while working on the project “Forbidden territory”⁴⁹ Our goal was to evaluate the real extent of the new regional bans on the examples of large Russian cities (population over 1 million). We tried to determine whether the restrictions really cover individual sites, or if they add up to form a widespread ban covering entire cities.

According to the approximate estimates obtained during that project, the bans cover up to 20-30% of the territory of large Russian cities, and in some cases extend to more than half of a city's area. Among the large cities, the largest prohibited areas were 73.7% in Nizhny Novgorod and 58.9% in Novosibirsk.

⁴⁸ Paragraph 29 of Ruling No. 28 by the Plenum of the Supreme Court of Russian Federation dated 26 June, 2018.

⁴⁹ URL: <https://tn.ovdinfo.org>

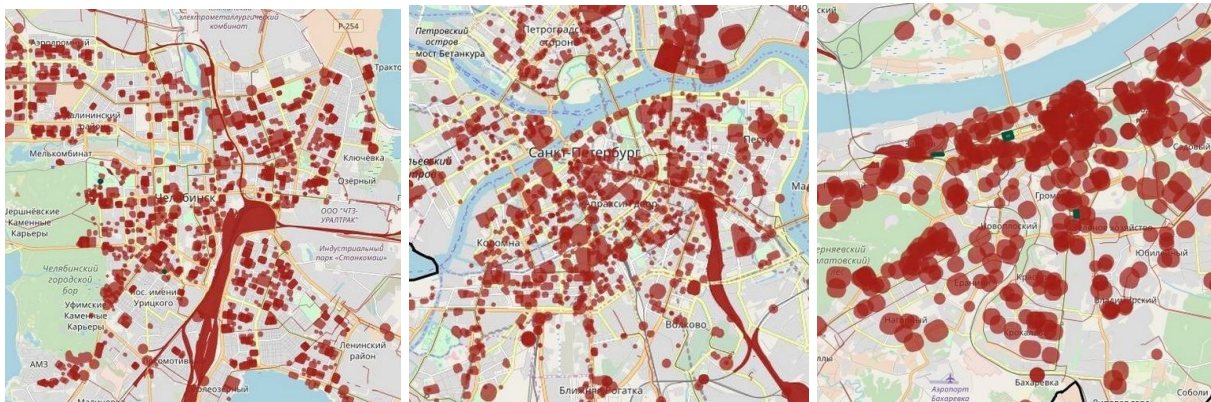
Location bans in cities



Based on the data from "Forbidden territory" project of August 2018.

It is the list of locations that the regional authorities decided to protect from protests, and the established allowable distance to them, that draw the geography of protests in each particular city. In this way, it is obvious that prohibitions pertaining to locations of higher foot traffic in the center of the city may result in pushing the rallies out to the suburbs, where they will be less visible and, presumably, less numerous. This can happen as a result of the relatively common bans on public events near public transportation stops, for example, in the Kursk Region, the Khanty-Mansi Autonomous Area and Karachay-Cherkessia where rallies are prohibited within a 50 meter radius of public transport stops. The same result follows from the widespread bans on assemblies near various institutions and facilities (in the Republic of Mariy El, the allowable minimum distance from educational, religious and medical facilities is a record-breaking 200 meters).

"Forbidden territory" maps show how in some cities with a relatively small banned area, certain restrictions result on a complete ban on protest in the city center.



Chelyabinsk (total ban area is 10%), St. Petersburg (13%), Perm (9%). Places marked red indicate bans on rallies.

Conditional Restrictions

Some locations are not completely prohibited, but set conditions which must be met in order for a public assembly to be allowed.

The Law on freedom of conscience prohibits holding public events as well as placing texts and images that **“offend religious feelings of citizens”**, next to “objects of religious veneration”⁵⁰. It is hardly predictable what could be considered to “offend religious feelings”, so this formulation threatens any assemblies next to temples and other sacred places.

The law on basic guarantees of the electoral rights prohibits to **campaign “in military barracks, military organizations and agencies”**, which can include holding public assemblies near them⁵¹.

The prohibition of **“propaganda of non-traditional sexual relations”** among minors became law in 2013⁵². And since then it constitutes ground for preventing any assemblies with an LGBQ theme wherever they are held, but especially if there are children’s libraries, schools and other childcare facilities nearby. In 2014, the Constitutional court emphasized, that the ban on “propaganda” should not be used to prevent public events⁵³. Nevertheless the practice of rejecting assemblies persists.

Regional lawmakers tend to try to keep public assemblies away from children. Beside the specific prohibitions on holding public assemblies next to educational institutions, “childcare facilities” and playgrounds, in several regions there is a prohibition of holding assemblies in locations (or sometimes territories adjacent to locations⁵⁴) where activities “involving minors” are taking place at the same time⁵⁵ or, sometimes, are simply planned in the future (Transbaikal region, Kemerovo region, Novgorod region, Buryatia, Dagestan, North Ossetia - Alania, Chukotka Autonomous region).

⁵⁰ Article 3 (6) of the Federal Law No. 125-FZ dated 26 September, 1997.

⁵¹ Article 53 (7) of the Federal Law No. 67-FZ dated 12 June, 2002.

⁵² Article 6.21 of the Code of Administrative Offenses of the Russian Federation.

⁵³ URL: <https://ovdinfo.org/articles/2014/10/06/lgbt-i-zakon>

⁵⁴ URL: <http://docs.cntd.ru/document/895288995>

⁵⁵ Law of Novgorod Region No. 940-OZ dated 10 March, 2011.

Chapter 4. Communication timelines

How the authorities stall when negotiating with the organizers

Legally, after the authorities have received the notice of holding a public event, there are only three possible scenarios. The first one is the simplest and rarest in the cases under consideration. In this scenario, the authorities permit the assembly, accept all the conditions the organizers have suggested, appoint their representative for any further negotiations, and prepare to ensure public safety during the event. In the second scenario, the authorities reject the notice. According to federal law, the authorities can only have two reasons for rejection: either the organizers themselves have no right to organize an assembly, or they have chosen a prohibited location⁵⁶. In the second case, the authorities do not have to reject the notice completely, since according to the Supreme Court, they can offer an alternative location for the event instead⁵⁷. Finally, in the third scenario, communication between the authorities and the organizers continues, in the case that the authorities are concerned about inconsistencies in the notice or are not satisfied with the suggested place, time, form or aim of the assembly⁵⁸. In this case, the administration suggests some changes and the organizer can agree to them or propose their own changes. This goes on until the event is permitted or until the time limit expires.

Yet time is strictly limited. Apart from the formal deadlines we have already discussed, there are additional time limits both for the administration and the organizers.

Calculating the correct time period for the response

If the administration suggests a change in time or place of the assembly, the organizer must respond no later than three days prior to the proposed date of the event⁵⁹. Then the authorities have three days to reply to that response⁶⁰. Silence is interpreted as a sign of consent, meaning that if within three days of receiving the organizer's response, the city hall has not objected, the assembly is considered to be permitted⁶¹.

Here we are again faced with the problem of determining the proper time period for the response. In Russian civil law, a time period starts on the day after the “the event which marks its beginning”⁶². The end of the period, if it falls on the weekend, is postponed till the next work day⁶³. In the case of filing the notice of holding a public event, the time period also starts on the day after submitting the notice and does not include the day of submission, nor the day of the event. However, if the the last day of the period falls a weekend or a holiday, then the previous work day marks the end of the period, not the day after the holiday. The period in which the administration has to consider the notice of holding a public event is governed by yet another rule. In 2018, the Supreme Court clarified that this three-day

⁵⁶ Article 12 (2) of the Federal Law No. 54-FZ dated 19 June, 2004.

⁵⁷ Paragraph 13 of Ruling No. 28 by the Plenum of the Supreme Court of Russian Federation dated 26 June, 2018.

⁵⁸ Paragraph 9 of Ruling No. 28 by the Plenum of the Supreme Court of Russian Federation dated 26 June, 2018.

⁵⁹ Article 5 (4.2) of the Federal Law No. 54-FZ dated 19 June, 2004.

⁶⁰ Article 12 (1.2) of the Federal Law No. 54-FZ dated 19 June, 2004.

⁶¹ Paragraph 10 of Ruling No. 28 by the Plenum of the Supreme Court of Russian Federation dated 26 June, 2018.

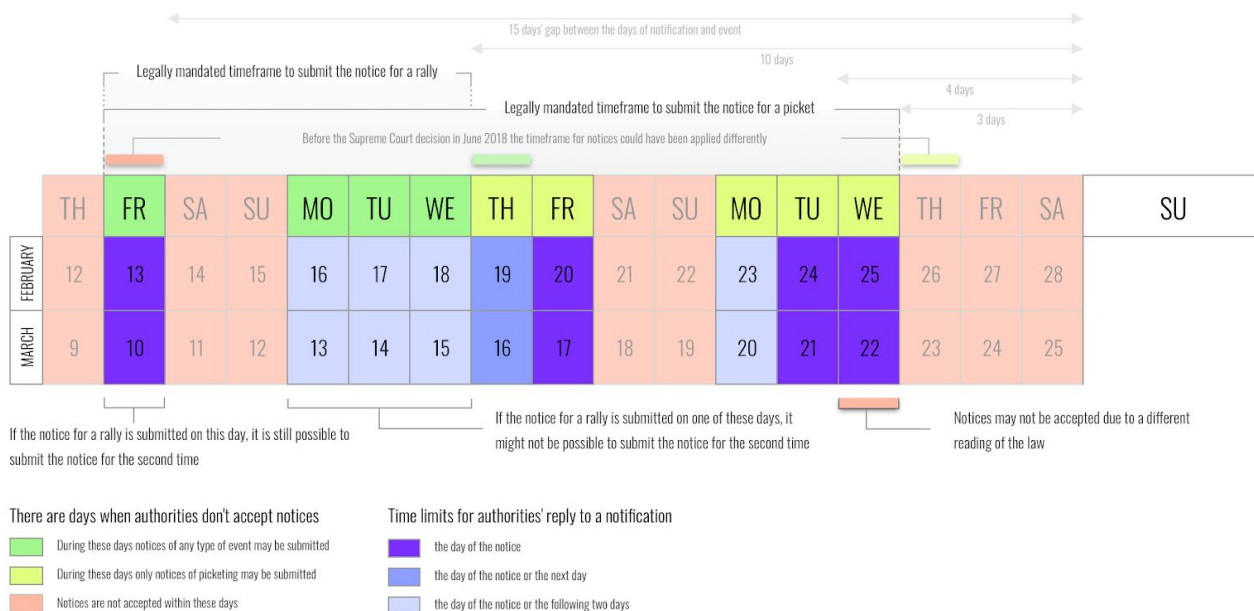
⁶² Article 191 of the Civil Code of the Russian Federation.

⁶³ Article 193 of the Civil Code of the Russian Federation.

period includes the day on which the notice was received and the day the reply must be given⁶⁴. At the same time, the extension of the period “in the case when one of the days of this period falls on a weekend or a holiday” is “not provided for”.

In reality, this means that if the local administration’s working days are Monday through Friday, as usually is the case, then the officials have to respond on Wednesday to a notice received on Monday, on Thursday to one received on Tuesday, and on Friday to one received on Wednesday, Thursday or Friday.

Additional difficulties arise when it comes to pickets, since if the notice is submitted less than five days prior to the event, then the response must be given on the same day the notice was submitted.

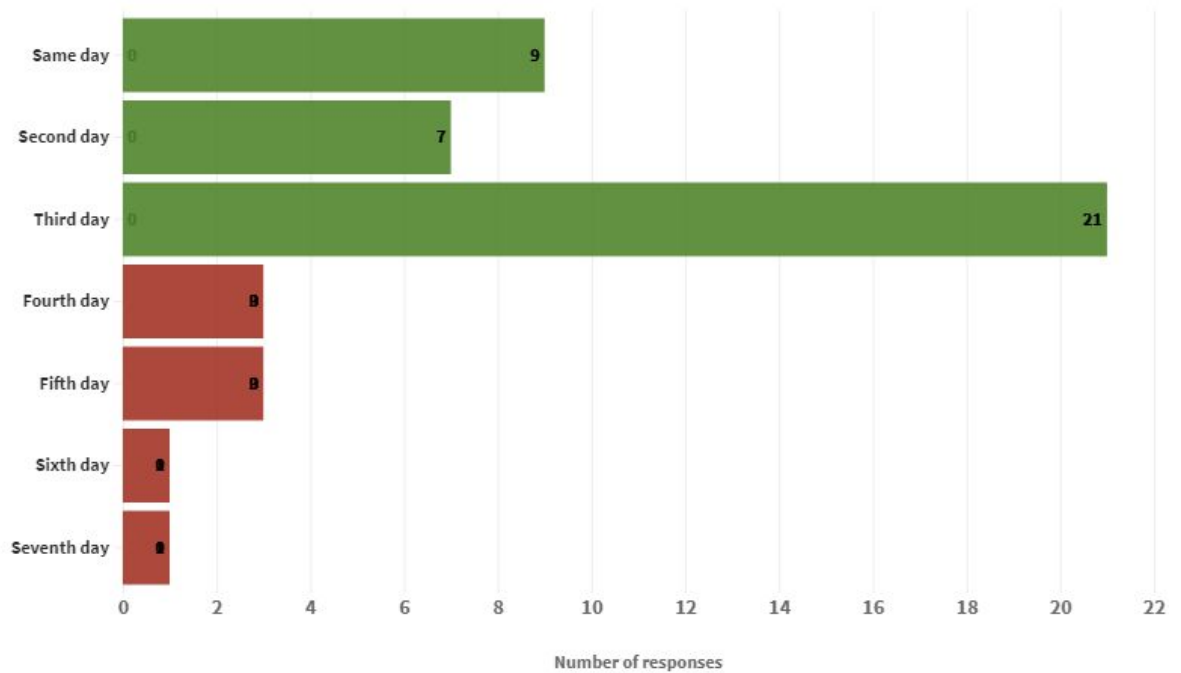


Using the interpretation of the rules above, let us calculate the appropriate time periods for local administration responses in the case of the anti-corruption assembly on March 26. The organizers had four working days to submit the notice: Friday, March 10, and Monday March 13 through Wednesday 15. The local administrations had to respond to any notices submitted on Friday on the same day; they could respond to other notices within three days. If the notice was rejected, the organizer would have had enough time to submit a new notice only if the original one was submitted on Friday. It was already risky to submit the notice on Monday: the authorities could have responded on Wednesday just before the end of the work day, and on Thursday it was already only possible to apply for permission to picket, but not to hold other types of assembly.

⁶⁴ Paragraph 10 of Ruling No. 28 by the Plenum of the Supreme Court of Russian Federation dated 26 June, 2018.

Protests on 26 March, 2017: speed of response to notices

Review of notice letters requiring a response within three days

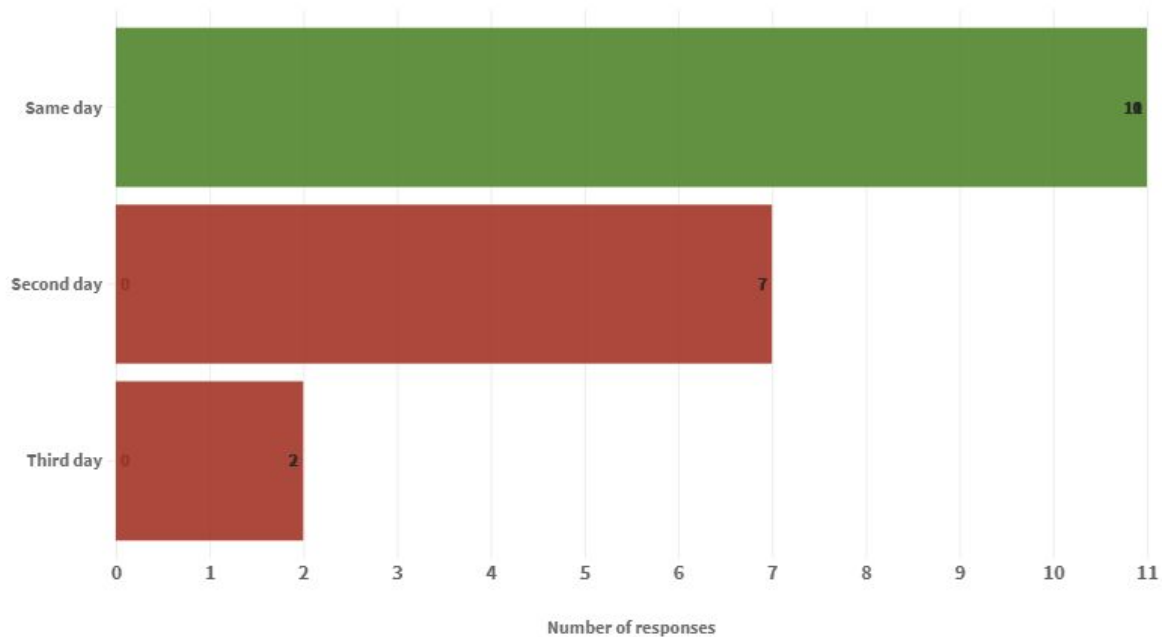


Based on 45 notice letters regarding protests in 34 cities on 26 March, 2017.

It was still possible to apply for a picketing permit from Thursday March 16 through Wednesday March 22. If the notice was submitted on Thursday, the authorities should have replied on Friday, and to a notice submitted on Monday the response should have been given at the latest on Wednesday. If the notice was to be submitted on any other remaining day the response should have been given on the same day.

Protests on 26 March, 2017: speed of response to notices

Review of notice letters requiring a response within one day



Based on 20 notice letters regarding pickets in 10 cities on 26 March, 2017, that were submitted on 21-22 of March.

In reality, the officials did not always meet the deadlines. Among the cases we have reviewed, 18% of the responses for notices of holding anti-corruption assemblies on March 26 were issued too late (8 out of 45). The situation was even worse when it came to pickets — almost every other answer (9 out of 20) was overdue by a day, or even two days. Legally, if the authorities do not respond to a notice on time, the event is considered to be permitted. It means that the organizer can start the preparation for the event, since according to the law, neither any further changes nor the prohibition of the event is possible after the time period allowed for the response expires.

However, the communication between the organizers and the authorities is not limited to the notices and responses to them. And that's where things get interesting, since in the federal law there are no clear deadlines for any further communication. Upon submitting requested clarifications or amendments, the organizers of the assemblies on March 26 had to wait for much more than three days.

In Vologda, the organizers demanded that the administration offer them an alternative locations for the assembly and received a reply after 9 days, on March 29: too late for the day of action. In Samara the equivalent response arrived after three weeks, on April 13.

There is another problem. Sometimes there is a gap between the official date of the response (usually it is stamped on the document itself) and the day the organizers actually receive it. The organizer of the assembly in Cherepovets told us that on Friday, March 17, on the third day after the notice was submitted, she received a call informing her that the response was ready. The call came 3 minutes before the end of working day, so she could not collect the response, as it is only possible to do so

during working hours. Eventually, she received the response only after the weekend, on Monday, March 20. The organizers of the assembly in Ivanovo received responses dated March 16 and March 22 on March 17 and 23rd respectively.

Sometimes organizers receive the response on the correct date, but at the very end of the day, so they have no time to react to it. In Ulan-Ude, the decision to prohibit the assembly on March 26 was issued on March 22, in accordance with the law on the same day the notice was submitted. Yet, the officials waited till the very end of the working day - the decision was given at 5:55 PM. The organizer of the “Spring” in Kazan says that she “called the Executive Committee every day to check if the response was ready, but it was not. I suspected that they would stall till the end of the working day on the third day and then would prohibit the assembly. <...> Of course, they gave us the answer at 5:55 PM. ”

For the organizers every day matters, yet, the officials might choose to send their response by post. For example, during the preparation for the assembly on March 26 in Cherepovets, the authorities claimed that they had sent their demand to change the time of the assembly by Russian Post and, since they did not received any reply from the organizer, they considered the assembly to not have received consent.

As it turns out, this is common practice, sometimes even formally approved. The St. Petersburg administrative regulations state that the authorities by default inform the organizer “by sending a hard copy of the letter containing the results of the consideration of the notification” and would only give this document to the organizers personally after a special request. Similar regulations in Yaroslavl require the officials to send a response within one day by registered mail if the applicant does not pick it up at the appointed time.

Regulating the time allowed for a response

Regulations at different levels of legal hierarchy, from federal law to local authority policies, frequently contradict each other. Thus, in the Moscow Law on Assemblies, the three days allowed for a response turn into three working days. And if the notice is given in less than five days prior to a picket and later than at 4 PM, the administration has the right to answer on the next working day.

In general, the legislation clearly does consider the possibility of prolonged communication between the organizer and the authorities. The federal law describes in some detail the submission of the notice, mentions the right of the authorities to demand certain changes, but the subsequent negotiations, during which the organizers and authorities should be trying to reach common ground, are almost completely ignored. In reality, the authorities often do not treat clarifications provided by the organizers as a part of the ongoing communication. They treat the clarifications as a part of a new notice, which means the time limits are much more stringent.

The organizers of the anti-corruption assembly in 2017 in Omsk filed their first notice on March 15. On March 17, the city authorities proposed to move the assembly to another location due to repair works in the chosen location. On March 20, the organizer accepted the new location, the letter was registered only on March 21, and on March 23, the authorities claimed that the modified location would also be unavailable due to emergency repairs. On the same day, the organizer wrote a statement in which he stressed that such grounds for prohibiting an assembly are not provided for by law, the repairs can be suspended, and the authorities did not meet the three day deadline for suggesting an

alternative location. Next, the organizer notified the authorities that a public event in the form of a “mass presence” would be held at the first location he suggested. The estimated number of participants was 99 people and the aim was to “express public opinion on the pressing issues of a predominantly social and political nature.” On the next day, March 24, the authorities responded that since the organizer had in fact filed a new notice, they would not consider it, as it did not meet the deadline.

A similar situation occurred in Makhachkala, where the city officials first demanded that the organizers indicate the form and methods of ensuring public safety and medical assistance during an event. Then they regarded the clarification on that point sent on March 20 as a separate notice which did not meet the legal deadline. At the same time, in Cheboksary, during the preparation for the March 26 assembly, the Young Guard of United Russia in the notice sent on March 14 applied for several locations at once and then repeatedly sent “annexes to the notice”, significantly expanding the list of locations.

The Supreme Court only partially filled in the legislative gaps in the summer of 2018, noting that the organizers have the right to suggest a change in time or location, if the event has not been approved yet and the authorities have enough time to respond⁶⁵. The suggestion to change the date of an event, however, is considered to equal submitting a new notice.

Chapter 5. Locations with complicated approval procedure

Why meeting the deadline to respond is not that simple

Above we have referred to cases where either federal or regional legislations prohibit public assemblies in specific locations and in cases when the location turns out to be occupied. There are several other characteristics of locations that further complicate the already difficult process of approvals.

The border area

For public assemblies in a “border area” the law requires the organizer to obtain “special permission from the relevant border authorities”⁶⁶. Border areas are established in 46 Constituent entities of the Russian Federation, and the precise boundaries as well as the towns and villages which form part of it are established by the FSB (Federal Security Service). There are warning signs at the entrances to border zones⁶⁷. In that case, the timeframe of the approval process is entirely unpredictable, as the relevant 2017 FSB order “On the approval the Border restriction requirements” specifies neither response time nor any requirements for how the decision would be taken⁶⁸.

⁶⁵ Paragraph 13 of Ruling No. 28 by the Plenum of the Supreme Court of Russian Federation dated 26 June, 2018. Paragraph 18 of Ruling No. 28 by the Plenum of the Supreme Court of Russian Federation dated 26 June, 2018.

⁶⁶ Article 8 (2.4) of the Federal Law No. 54-FZ dated 19 June, 2004.

⁶⁷ Article 16 (2) of the Law of the Russian Federation No. 4730-1 dated 1 April, 1993.

⁶⁸ Order No. 515 of the Federal Security Service of the Russian Federation of October 15, 2012. URL: <http://docs.cntd.ru/document/902385674>

Ownership

The approval procedure might also depend on the ownership of land where the assembly is to take place. If the land is private property or owned by a state or municipal institution, the organizer has to get the owner's consent before sending in the notice.

In May 2017 the Moscow Northwestern Administrative District Prefecture refused to approve a public assembly in front of the Kurchatovsky cultural centre, referring to the said venue being a private property and the need to obtain the owner's consent. The organizer, in turn, emphasized that the Prefecture had already approved assemblies there. The Unified State Register of Immovable Property (ECRI) states that the land belongs to the Russian Federation and is permanently used by Kurchatovsky Institute.

Earlier on, some regional laws banned public assemblies at locations "owned by an individual or a legal entity by proprietary right" without written consent from the owner (e.g. in Bryansk and Chelyabinsk regions, in Tuva). However, only in the summer of 2018 it became a general rule after the Supreme Court extended this practice to the whole country. Now if a rally is to be carried out in a privately owned location, e.g. a shopping mall parking lot, the organizer has to obtain the owner's consent first and then get the assembly approved by the authorities⁶⁹.

Even though it is not stated in the Law On Rallies, the organizer is de facto supposed to check the cadastral map or better yet to order a ECRI extract in advance in order to distinguish private and public properties. Yet even with the owner's consent there are no guarantees of the possibility of an assembly. Firstly, it will still have to be approved by the authorities. Secondly, now the negotiations will be influenced not only by the decisions of the organizer and the authorities, but also those of the landowner who is not legally bound to response timeframes. In Omsk an already approved assembly on March 26th was canceled due to urgent remedial works "in the space of the trade center and the adjacent area".

Other authority

Regional law may include different rules for submitting notices on assemblies on different types of locations.

The administration of Stavropol in their reply to organizers of March 26 picket stated that the Lenin Square is within the territory of the community center of the city. According to the existing local law, picketing in the center of Stavropol must be approved not with the city authorities but with the government of the region⁷⁰.

Organizers of the anticorruption picket in Yakutsk were asked to redirect their notice to regional Ministry for the development of civil society, since "Komsomol Square allocated to the administration of the Head of Government of Sakha (Yakutia) Republic". According to the Yakutia laws, assemblies within the historic city center and on locations adjacent to the buildings of state authorities should be

⁶⁹ Paragraph 8 of Ruling No. 28 by the Plenum of the Supreme Court of Russian Federation dated 26 June, 2018.

⁷⁰ Article 3 (3) of the Law of Stavropol Region No. 115-KZ dated 20 December, 2012

approved by the government of the region⁷¹. Considering that Yakutia is Russia's largest region, whose peripheral towns may lie more than a thousand kilometres from the regional capital, this might become a great challenge for organizers in remote towns. This problem also affects Arkhangelsk region and several others.

Transport infrastructure

A special procedure for approval also extends to transport infrastructure facilities.

Lists of such facilities is established by regional laws and tend to contain vague definitions. For example, in the law of the Kaluga region, instead of a definition, a reference is made to the federal law on transport security. Often, the definition lists the types of locations - various roads, terminals and stations. But most importantly, the lists varies from region to region, and the boundaries of the locations are not always obvious.

The approval procedure for public events in such places is also determined at a regional level⁷². For example, in the Volgograd region, the following scheme is in effect: the authority where the notification has been received sends a request to the traffic police and the regional authority responsible for transport services to the population⁷³. The latter have two days (!) to prepare an opinion on the possibility or impossibility of holding the action in the intended place and time. In case of a negative conclusion, the organizer of a public event is sent a proposal to modify the action. Similar procedures are provided for in other regions.

Problems arise immediately. Firstly, the response to the notification is delayed since a new participant joins the negotiations. Secondly, the procedure allows for unpredictable or arbitrary reasons to disallow a location. Finally, the law does not formulate any criteria to substantiate the negative conclusion of the traffic police or transport department. And while the conduct of the local authority that deals with the notice is to some extent regulated by law, the evaluation of road safety concerns regulated by some sort of departmental act or instruction at best. Most likely the decision of the administration sent to the organizer will simply contain the report of the negative response of another department, so the chances of successfully appealing such a refusal in court vanish.

In addition to the complicated approval procedure, in some regions there are direct prohibitions on holding public assemblies in or near various transport infrastructure facilities. For example, in one form or another, a ban on holding assemblies on highways in May 2017 appeared in 13 regional laws, assemblies at bus stations were banned in 34 regional laws, assemblies at public transport stops in 38, and at railway stations in 53.

Cultural monuments

The procedure for holding a public event in the area of historical and cultural monuments is also determined at the level of region, not by legislative but by executive authorities⁷⁴.

⁷¹ Article 2 (1) of the Law of the Republic of Sakha (Yakutia) No. 617-Z No. 125-IV dated 26 November, 2008.

⁷² Article 8 (3.1) of the Federal Law No. 54-FZ dated 19 June, 2004.

⁷³ Article 3 (3) of the Law of Volgograd Region No. 2489-OZ dated 30 March, 2011.

⁷⁴ Article 8 (3) of the Federal Law No. 54-FZ dated 19 June, 2004.

There are two options: either the authority that received the notification of the action sends a request to the agency dealing with cultural issues (for example, in Moscow, St. Petersburg and Yaroslavl) or the organizer must initially submit a notification to the relevant department (as in Mordovia and Chuvashia).

The first scenario is similar to that used with regards to transport infrastructure facilities. In Moscow, the city Department of Cultural Heritage is involved in the process of approval in such cases⁷⁵. Without its positive conclusion a rally cannot be held in the area of the “object of cultural heritage”.

The way this procedure slows down the approval procedure can be clearly seen from the rules for considering notifications for Moscow municipal authorities⁷⁶. According to this document, the prefecture must send a copy of the notification to the Department of Cultural Heritage on the day of its receipt, or on the next business day if the notification was submitted after 4 p.m. Two more days are provided for the preparation of the opinion. It is difficult to imagine how the prefecture can respond to the organizer within the statutory period of three days (which, we recall, cannot be extended on weekends and in some cases is reduced to one day).

Meanwhile in St. Petersburg, communication is not delayed as long. The city Committee on State Control, Use and Protection of Historical and Cultural Monuments participates in the process of coordinating in the area of cultural monuments⁷⁷. Unlike in Moscow, the department does not have the authority to ban an event: the committee’s role is to prepare “a list of requirements that all participants of a public event must comply with to ensure the protection and preservation of St. Petersburg’s historical and cultural heritage” (the resolution does not specify the requirements). The regional regulation allows two days to the preparation of this list, but since it cannot be the basis for refusal, it is not necessary to transfer it to the organizer within three days⁷⁸.

This two-step procedure once again blurs the boundaries of the requirements of federal law on how local authorities must evaluate their responses. The law requires the authorities to explain their decision to the organizer, but this norm does not necessarily apply to other institutions involved. For example, the Moscow Department of Culture may declare that the public assembly is not possible because of group tours or in case the event can hypothetically prevent citizens from accessing a cultural monument. As a result, the city administration can simply issue a refusal referring to the Department of Culture’s conclusion, and abdicate its responsibility.

A representative of the city administration of Volgograd, justifying in a legal hearing the lawfulness of the refusal to approve an anti-corruption assembly on March 26, noted that it had not received a conclusion from “the authorized body for the protection of cultural heritage” on the “suitability of the location for the proposed rally, in accordance with the resolution of the head of the Volgograd region

⁷⁵ Resolution of the Government of Moscow No. 757-PP dated 28 August, 2007. URL: <http://docs.cntd.ru/document/3677162>

⁷⁶ Resolution of the Government of Moscow No. 55-PP dated 22 January, 2007. URL: <http://docs.cntd.ru/document/3687480>

⁷⁷ Resolution of the Government of St. Petersburg No. 1996 dated 26 December, 2005. URL: <http://docs.cntd.ru/document/8423008>

⁷⁸ Paragraph 2.3 of Regulations approved by St. Petersburg Governmental Decree No. 1996 dated 26 December, 2005.

administration dated April 12, 2011 No. 324⁷⁹. In fact, the decree of the head of the administration referred to here imposes the obligation to obtain such a conclusion on the city authorities, not on the organizer⁸⁰. But this logical inconsistency in the arguments of the representative of city authorities had no effect on the court's decision, which recognized its refusal as lawful.

Other problems occur in regions where assemblies beside cultural monuments must be agreed directly with the relevant regional departments. Similarly to the cases where the proposed location is adjacent to state institution buildings, the organizer can easily make a mistake and submit a notice to the wrong department. According to the Supreme Court, in this case, the officials considering the notification should suggest that the organizer hold the event in another place, but in practice authorities confine themselves to a direct refusal, suggesting to contact a relevant department⁸¹.

During the preparation of the assembly on March 26, the administration of Astrakhan did not agree on a picket in the Bratsk garden near the monument of the Unknown Soldier, claiming that this area is a cultural monument, and the notification should be submitted to the regional ministry of culture and tourism. For the same reason the authorities of Saransk refused to allow the pickets close to the monument of the Stratonauts on Railway Station Square, and the monument to Polezhayev in the alley on Proletarskaya Street on March 26. In both cases, the authorities suggested that the organizers submit a notice to the Ministry of Culture of Mordovia, and also reminded them of the special platforms for holding public assemblies, immediately stating that at the indicated time these sites would be occupied.

Sometimes holding assemblies on the territory of cultural monuments is completely prohibited by local laws. Thus, in Karachay-Cherkessia, the territories of objects of “environmental, scientific, historical, cultural, recreational, health and other value” are banned, and in Tyva it is prohibited to hold assemblies closer than 20 meters from cultural heritage sites.

It should be noted that cultural heritage monuments are not always few and far between. For example, in St. Petersburg there are more than nine thousand cultural heritage sites and the official list in Moscow includes more than 8 thousand sites⁸². In a city centre, which obviously is more attractive to protest organizers, the concentration of these sites significantly higher than on the outskirts. And the lists contain not only buildings but also open spaces like squares, boulevards, manors and parks.

Chapter 6. The content of responses

How the wording of authorities' responses in and of itself becomes a tool for censorship.

The kinds of local authority responses to the notice of a public assembly are mandated by the Federal

⁷⁹ Decision of the Voroshilovsky District Court of the city of Volgograd in case No. 2A-1294/2017. URL: https://vor--vol.sudrf.ru/modules.php?name=sud_delo&srv_num=1&name_op=doc&number=22036015&delo_id=1540005&new=0&text_number=1

⁸⁰ Resolution No. 324 of the Head of Administration of the Volgograd Region dated 12 April, 2011. URL: <http://pravo.gov.ru/proxy/ips/?docbody=&prevDoc=143009130&backlink=1&nd=143016662&rdk=>

⁸¹ Paragraph 14 of Ruling No. 28 by the Plenum of the Supreme Court of Russian Federation dated 26 June, 2018.

⁸² According to the information published on the Moscow City Government open data portal. URL: <https://data.mos.ru/opendata/530/data/table?versionNumber=5&releaseNumber=116>

law on rallies:

- A confirmation of receipt and registration of the notice;
- Information about the appointment of the authorized authority representatives at the assembly;
- A refusal to approve a public assembly;
- An evidenced proposal to change something in the way the assembly will be held (for example, to transfer it to another location or time);
- An evidenced warning against violating the law.

A receipt confirmation is only a technical stage of approval, whereas when an authorized representative is actually appointed this means that the event has been approved and the organizer can proceed to preparation and promotion. Since we are more concerned with problem cases, we are interested in the last three situations that can be considered as tools for restricting freedom of assembly.

The refusal to approve

There are two problems with refusals. First, they are not always in compliance with the law, and second, it is not always clear whether a particular response of the authorities is an actual refusal.

Legally, everything is simple: there are only two reasons for refusing to approve an assembly - either the organizer has no right to organize public assemblies, or the indicated location cannot be used to hold the assembly. But in practice things are much more complex.

One reason for refusals is present but not directly worded in law: failure to comply with the deadlines for submitting the notice⁸³. Authorities take various actions in such cases: sometimes they simply don't accept or register an overdue notice, and sometimes they do accept it, and then in their written response inform the organizers of a missed deadline⁸⁴. In the latter case, the organizer may lose several days: for example, in Makhachkala, the organizers were denied approval of the anti-corruption rally on March 26, 2017 on the basis of a missed the deadline and received this refusal a whole three days after, and in Belgorod on the fourth day.

A vivid example of a non-statutory basis for refusal was provided to us by the city authorities of Volgograd. Citing street cleaning works, the administration responded to the anti-corruption rally organizers as follows: "In order to ensure the safety of the rally participants, the administration of Volgograd refuses to approve the public event you applied for." In response to the organizers' appeal, the Voroshilovsky District Court of Volgograd concluded that the authority's response was in fact not a refusal, but "essentially a proposal to change the date of the public event"⁸⁵.

⁸³ Article 5 (5) of the Federal Law No. 54-FZ dated 19 June, 2004.

⁸⁴ Regulations approved by Moscow Governmental Decree No. 55-PP dated 22 January, 2008.

⁸⁵ Decision of the Voroshilovsky District Court of the city of Volgograd in case No. 2A-1294/2017. URL: https://vor--vol.sudrf.ru/modules.php?name=sud_delo&srv_num=1&name_op=doc&number=22036015&delo_id=1540005&new=0&text_number=1

But direct refusals are relatively rare. The authorities normally use more complicated formulations. For example, in Belgorod, the authorities responded to the organizers that “due to the absence of other suitable locations for the picket that you filed for, it is not possible to offer you another place for it. Given that there were notices filed earlier than yours, it is also not possible to offer you another time.”

In Belgorod, Vladimir, Saratov and Samara, holding assemblies on March 26 was also “not possible”, and the authorities in Khabarovsk “did not recommend” the organizer to hold the event.

Even more often, city authorities issue entirely unclear responses. Thus, the city administration in Ivanovo informs the organizer of the rally that it “reviewed and took note of the notice”, and further informs the organizer that on March 26, “there will be an inspection of the means” of preparedness for emergency situations “during the flood and fire hazard periods” at the indicated location.

Such answers allow the authorities to formally meet the deadline, while not clearly stating whether or not approval has been granted.

An evidenced proposal

The law allows the administration to propose changes in the conditions of the assembly. Authorities can make such a proposal for almost any reason. The only, but crucial, legal requirement is that this proposal must be justified⁸⁶.

In an attempt to make this clause more specific, the Constitutional Court points out that “the authorized public authorities representatives must satisfactorily substantiate the fact that the holding of a public event in the declared location and/or at the declared time is not merely undesirable, but impossible.”⁸⁷ In turn, the Supreme Court notes that “the proposal of the public authority to change the location and/or the start and end time of a public event cannot be arbitrary or unmotivated and must contain specific data indicating the obvious impossibility of holding of the [proposed] event.”⁸⁸

In reality, these requirements often remain unmet. At their best, the authorities may use the repair works or other events as a reason, considering this sufficient. The following response wording is quite popular: “Holding public events in these places may entail functional disruption of vital infrastructures, transport or social infrastructures and communications, interfere with pedestrian and/or vehicles traffic, or deny residents' access to their homes or transport or social infrastructure.” During the March 26 assembly, the city authorities in Stavropol and Moscow resorted to this formulation.

It is curious that the wording on “functional disruption” is taken from the article of the Federal law, which describes the reasons for regional legislators to prohibit holding of events in various places. That is, they must determine the territories where a rally cannot be held by adopting regional regulation, and “functional disruption” is one of the criteria for determining such locations. However, the wording is not used by the legislative, but by the executive authorities in the process of dealing with specific notifications - as an argument for refusing to hold assemblies.

⁸⁶ Article 12 (1.2) of the Federal Law No. 54-FZ dated 19 June, 2004.

⁸⁷ Paragraph 2.2 of the Resolution No. 4-P by the Constitutional Court of the Russian Federation dated 14 February, 2013.

⁸⁸ Paragraph 12 of Ruling No. 28 by the Plenum of the Supreme Court of Russian Federation dated 26 June, 2018.

The Supreme Court finally legalized this state of affairs in 2018, pointing out that “preserving and/or restoring the normal and uninterrupted functioning of vital facilities of communal, social or transport infrastructure and communications” and so on is a public interest which can serve as a basis to relocate or postpone assemblies.

In 2014, a new administrative offence was introduced: “participating in an unauthorized assembly, which caused an interference with the functioning of vital facilities, transport or social infrastructure, communications, pedestrian and/or vehicle traffic, or residents' access to their premises or transport or social infrastructure”⁸⁹. The penalty for this offence is a fine of ten to twenty thousand rubles, up to one hundred hours of community service, or up to 15 days of imprisonment.

A proposal of an alternative time and location

One of the main complaints against the Moscow city authorities from the organizers of the anti-corruption rally on March 26 was that the mayor’s office offered an alternative place and format for holding the rally only seven days after receiving the application from the organizers. Before this, the authorities only expressed that an event held in the proposed location "may entail disruption of the functioning of vital facilities, transport and social infrastructure, interfere with the pedestrians and vehicle traffic, limit residents' access to their premises, violate the rights and interests of citizens who are not participating in the event." No definite refusal or approval was issued. In a similar manner the authorities responded to March 26 notifications in at least 23 cities, without proposing any specific alternatives.

In the federal Law on Rallies, there is no clearly formulated requirement for the authorities to offer a specific place or time as an alternative to for those that were refused⁹⁰. However, the Constitutional Court confirmed this requirement⁹¹, and finally enshrined by the Supreme Court in the summer of 2018⁹².

Not so long ago in 2017, the Moscow City Court justified a different legal position: “The appellant’s argument that the defendant should have offered an alternative location for the rally cannot lead to the cancellation of the defendant’s decision, as the appellant’s arguments are based on selective interpretation of the norms of the substantive law.” Judges of the Moscow City Court also noted that “the administrative defendant had no direct responsibility to propose other places for holding a rally in Moscow”.⁹³

Organizers are often unhappy with alternative sites proposed by the authorities: quiet and remote locations. But there is even more dissatisfaction when the authorities refuse the proposed location and do not provide any concrete alternatives.

⁸⁹ Article 20.2 (6.1) of the Code of Administrative Offenses of the Russian Federation.

⁹⁰ Article 12 (1.2) of the Federal Law No. 54-FZ dated 19 June, 2004.

⁹¹ Definition No. 705-O-O of the Constitutional Court of the Russian Federation dated 1 June, 2010.

⁹² Paragraph 13 of Ruling No. 28 by the Plenum of the Supreme Court of Russian Federation dated 26 June, 2018.

⁹³ URL:

https://www.mos-gorsud.ru/mgs/services/cases/appeal-admin/details/511104eb-a26b-4727-8e27-26225c04f987?participant_s=%D0%94%D0%B0%D0%B2%D0%B8%D0%B4%D0%B8%D1%81+%D0%A1%D0%9A.

Where to relocate assemblies to

By law the authorities may respond with a direct refusal if a notice specifies a location where it is prohibited to hold an assembly⁹⁴. In other cases, after providing a reasonable argumentation, they may offer to move the event to another place or time⁹⁵. The Supreme Court clarified in 2018 that in the latter case, the authorities must offer a specific location or time for the event, one that would “ensure the possibility of reaching the legitimate goals of this event and correspond to its social and political significance.”⁹⁶

In reality, local authorities most often simply report that the location is occupied, or suggest that the organizer changes the time, location or even the date of the assembly. The administration of Vladimir, responding to the picket notice for March 26, at first simply informed the organizer that it was “not possible” to approve the event because of another event that had been applied for earlier. To the organizer's request to provide a reasonable proposal for a change of location, the administration responded that the law “does not obligate the executive authorities of a constituent territory of the Russian Federation or a local government body to propose a specific alternative venue for the event, **because it would limit the rights of the event organizer to choose the venue.**”

Less often, the administrations themselves choose and propose an alternative site. Let's take a look at where local authorities in different cities proposed to move events as part of the Spring day of action in 2015.

Samara did not approve any of the six events that were applied for. “We were offered a route that doesn't correspond to the format of the event: along Alma-Atinskaya Street to Olympic and from Olympic to Maria Aveide. This is like a walk between the garages. To try to get approval, we applied for five rally sites in the center, and on the last day of filing for another route - along Leningradskaya Street. Supposedly, everything was taken. We applied for squares and urban parks - locations where we would not cause any particular disruption. Instead we were offered the parking lot for the Kozhi-Mekh shopping center ... People trade there. We were there last Sunday - the space is full of cars. As a result, on Saturday evening the parking lot will be blocked, people will not find parking anywhere. People work there; it's their way to earn living, their bread. But the authorities couldn't care less about them. They reason: let's send those protesters further away from the center, and let the two or three hundred businesses suffer loss and inconvenience.”

In Voronezh, the authorities suggested an alternative route for the procession, which, as the organizer notes, begins “almost in the yard”, follows a less busy street and is almost three times shorter than the original one. In Izhevsk, where the location for the “Spring” turned out to be occupied by another event, an opposition rally was proposed to be moved to an official Speakers Corner at the “Friendship of Peoples”. The organizer notes that this place is “almost invisible from the road,” and fewer people pass by.

In St. Petersburg, the organizers submitted applications for seven routes. Instead, the authorities

⁹⁴ Article 12 (3) of the Federal Law No. 54-FZ dated 19 June, 2004.

⁹⁵ Article 12 (1.2) of the Federal Law No. 54-FZ dated 19 June, 2004.

⁹⁶ Paragraph 13 of Ruling No. 28 by the Plenum of the Supreme Court of Russian Federation dated 26 June, 2018.

suggested that they hold a rally in the remote Polustrovsky park, where one of the city's Speakers Corners is located. One organiser comments, "I was often asked why didn't we agree to the routes proposed by [the city administration]. I will explain. Polyustrovsky Park, where officials are always trying to send us, is a place where there is not even a subway. You probably know what kind of snow removal system this park has - with current weather conditions it looks like a large puddle with floating dog feces. To say yes to this option means to have no self-respect and or respect for our fellow citizens."⁹⁷

An evidenced warning against violating the law.

Municipal and regional authorities have yet another tool in their hands: "An evidenced warning against violating the law.". It can be sent to the organizer as a separate letter or together with a proposal to change something about the protest.

The Supreme Court notes that "a reasoned warning is **informational and preventative in its nature**". Should "the information contained in the text of the notification of the public event and other data suggest" that the goals or a format of the planned public event are not in compliance with the Constitution, Criminal Code or Administrative Offenses Code of the Russian Federation, the warning needs to be communicated to the organizer "immediately".

While the organizer of a public event can control the content of their own notification, evidently they have no access to control over the "other data" mentioned above. The possible sources of this "other data" are completely unclear. The warning appears similar to warnings used in crime prevention⁹⁸. Such a warning may become a tool to put pressure on the organizer. At the same time, the warning itself is not a formal refusal to approve an assembly, and it is unclear whether an assembly can be conducted after such a warning. In this way, the Moscow administrative regulations document contains the requirement to immediately send a warning to the organizer⁹⁹. However, it does not explain whether a proposal to change the assembly or the refusal to approve it should follow from it.

Approval revoked

Although this is not provided for in law, authorities sometimes revoke their approval after it has already been issued. The Supreme Court notes that a "public authority is not allowed to change a previously approved location, time and conditions to conduct a public event."¹⁰⁰ However, the organizers of anti-corruption assemblies in Magnitogorsk, Saratov and Nizhny Novgorod faced exactly this situation. In the first two cities, repair works were used as reasons to recall an already approved rally. In Nizhny Novgorod, the approval was revoked on the basis of a previously planned event in the same location.

In Magnitogorsk, the organisers of the March 26 day of action filed a notice on March 15, 2017, requesting approval for a rally of 200 people from 3:00 pm to 5:00 pm on the People's Square. The administration response on the very same day stated: "on March 26 of the current year, from 3:00 pm

⁹⁷URL: http://www.parnas-spb.ru/news/andrej_pivovarov_o_marshe_net_vojne_net_krizisu_1_marta/2015-02-25-78

⁹⁸ Article 20 of the Code of Administrative Offenses of the Russian Federation.

⁹⁹ Regulations approved by Moscow Governmental Decree No. 55-PP dated 22 January, 2008.

¹⁰⁰ Paragraph 18 of Ruling No. 28 by the Plenum of the Supreme Court of Russian Federation dated 26 June, 2018.

to 6:00 pm, a cultural mass event will take place at the site at the same time and location where you intend to organize your rally. The event is a Military Equipment Show that carries a patriotic character and is intended to serve as an educational event for the residents of Magnitogorsk.”

On March 17, the organizer sent a new notice, proposing to move the assembly forward by few hours - from 11:00 am to 01:00 pm. And in case for some reason it was impossible to hold this event on the People’s Square, the organizer indicated ten more locations and asked to be offered another location if none of these places work. The notice stated: “We would need 2 hours for the event, one after another, in the time frame of 11:00 am to 5:00 pm”.

On March 20, the administration issued a resolution (!) to approve the assembly on one of the proposed addresses on Victory Square. From that point on, the organizer could prepare for a rally and disseminate information about the location and time of the event. However, three days later, on March 23, the administration canceled the previous decree and replaced it with a new one. They sent another response to the organizer: “According to the information we received from the machine-building enterprise Vodokanal, there is an emergency situation on the water supply networks that needs urgent repair work at the location where you planned your rally. Due to the threat to life and health of the people at the repair site, holding a rally there would be equally unsafe for its participants. Therefore it is impossible to hold it at that time and place”. According to the regional authorities’ briefing note for the presidential Human Rights Council, the unapproved rally and procession did take place next to the Magnitogorsk Central Library. Two protestors were detained by police as a result.

Chapter 7. Approval procedure: a view from the inside and from the outside

How the approval process looks to an official and to an external observer.

View from the inside: the procedure from the point of view of the authorities.

The inner workings of the approval process are best understood using administrative policies, which are usually invisible to an outside observer. These documents are made by the authorities for their staff and they guide the officials’ conduct.

As an example, let take a look at the administrative policy of the Committee on Rule of Law, Law and Order and Security of the city of St Petersburg, regulating the “public service to review according to the established order notices for holding rallies, demonstrations, street processions, and picketing.”¹⁰¹ The committee reviews notices to hold assemblies of more than 500 people, rallies and processions that cross municipal boundaries, and all public assemblies held in central squares.

The authors of St. Petersburg's regulations tried to fit the approval procedure into the time-frame established by federal law. A proposal to change the conditions of an assembly is meant to be issued in three days, including the day of the notice, and a response to a notice to hold a picket (where the notice was submitted less than five days before the event date) should be issued on the same day the notice was received. What do officials have to do during this period?

¹⁰¹ URL: <http://docs.cntd.ru/document/456014428>

To begin with, they have to check the credentials and identification documents of the applicant or their representative. Then, the official accepts the notice and assigns it a registration number. As soon as possible after that, the head of the department must be informed by telephone that the documents were received. The notice itself is sent to the government committee organizational department. There, the notice gets registered again within the framework of the program for citizens' applications, and transferred to the chair of the committee for processing. The chair reviews the notice to hold an assembly and instructs someone to prepare a response. After this the notice is returned to the organizational department, registered again, and a copy of it is sent to an authorized executive officer (who will be the one to process it). At the same time, the chair gives the appropriate instructions to their deputy, who, if necessary, makes oral comments on the notice to the head of the department or to the authorized officer. One working day is allocated for all of this. In cases of picket notices where the event will be taking place within five days, the whole process must take one hour.

The authorized executive first looks at whether they should review this notice at all. If it turns out that it is not within the remit of the Committee, he prepares a draft to the event organizer containing the "appropriate explanations". Note that the regulations, unlike the Supreme Court, do not suggest offering the organizer another location.

Then the official checks whether the timeframe for filing the notice was met. If yes, they review the applicant's profile: the latter's legal capability, Russian citizenship, and any convictions and administrative charges. For this, the official may need to send requests to regional offices at the Ministry of Internal Affairs and the Ministry of Justice. (By the way, in Moscow, the age and citizenship of the organizer are checked right at the time of notice submission. If there are any discrepancies, the documents simply are not accepted for a review. On one hand, this saves time and stress for the organizer, and on the other hand, as a result of such practice, statistics on refusals are distorted, as any notices not accepted at this stage are eliminated without being accounted for.)

At the next review stage, the authorized employee's attention is directed at the location of the assembly specified in the notice. As we have seen in previous chapters, when it comes to locations there is always a space for some creativity. First, the official checks whether regional and federal laws do not prohibit to hold events in this place. Then they look to see if there will be any threat to participants' safety; whether the traffic will be blocked somewhere on the route (for processions and demonstrations); and whether there will be any other public, cultural or sporting events. In all these cases, it may be necessary to send a request to other departments.

Then the purpose, format and other conditions of the event are reviewed, and after that the official returns to the question of the location and checks whether it overlaps with the land of a cultural monument. If this is so, then a letter is sent to the committee on state control, use and protection of historical and cultural monuments.

When the draft response to the organizer is ready, it is handed over to the head of the department, and in case of a refusal, also to the head of the legal department. There it is finalized and sent for a signature to the chair of the committee. And finally, it is forwarded to the organizer.

It is obvious that the purpose of these procedures in the logic of the administrative policy is to prepare a response to the organizer, and not to support them to realise their constitutional right to freedom of

assembly, and not even to approve a specific assembly. In this way, what the organizer sees as a process of negotiation over an approval, for local authority employees breaks down into several independent notices with separate deadlines for reply. At the same time, the policy abides the officials to take a considerable number of actions when working on the approval of each notice. This in itself is not easily done within three days, and even more so is not an easy task for one day.

How the system functions as a whole

Prohibited territories, occupied locations, delayed answers, faulty or vague argumentation from a local authority: each of these problems may seem insignificant and solvable if taken separately. However, in reality organizers usually face a whole bouquet of such problems, and all together they make it possible to ban an action completely.

The story of coordinating the action in Volgograd on March, 26 has already been repeatedly mentioned. That's no surprise – it has revealed a plenty of problems and infractions.

The application for holding a rally at Lenin's square was submitted on March, 15th. The organizer received a reply, dated March, 17th only after the weekend, on March, 20th. It stated that the administration of Volgograd “declines the approval of the said public event”, due to cleaning and urban improvement works “using large scale machinery” that are planned for the period of mid-March – mid April and will take place all over the city. The administration referred to its own yet unpublished resolution.

The organizer appealed in court. During the legal proceedings March 24, a representative of the administration gave the following arguments: 1) because of the cleaning works, there were no locations for a rally of 500 people in the city and it was impossible to ensure the safety of people during the rally; 2) the Lenin monument is an object of cultural heritage, therefore it was necessary to check whether it was suitable for holding a rally; 3) asked to take into account that during the court hearing the administration learned that the rally coincided with Navalny's day of action, “actually aimed at promoting ideas that undermine the foundations of the constitutional system and economic stability, which does not correlate with the principles of holding a public assembly and blocs the approval of such a rally by public authority in general”.

In turn, the organizer emphasised that instead of a reasonable offer to change the date and the place of the action he received a groundless prohibition. The court agreed with the arguments of the administration. Its decision stated that in substance the administration's reply presupposed a change of the date, not a prohibition¹⁰². The court also emphasised that the rights of the organizers were not violated, as they could still scale back the number of participants and hold the event in a “designated location”. (This is in fact incorrect, but we will get back to “designated locations” later.)

According to regional authorities, this case resulted in the police detention of 28-31 people.

¹⁰² Decision of the Voroshilovsky District Court of the city of Volgograd in case No. 2A-1294/2017. URL: https://vor--vol.sudrf.ru/modules.php?name=sud_delo&srv_num=1&name_op=doc&number=22036015&delo_id=1540005&new=0&text_number=1

In another case, the authorities of Bryansk convinced the organizer of the action on March 26 to withdraw his application. As a result, the action took place without approval, five people were arrested. The notice was submitted on March 16th in the morning. According to the Supreme Court, this is too late, but until the summer of 2018, the dates were usually calculated differently, so this was the last possible day for submitting the application. We do not have access to documents regarding the approval of this action, but we can judge what happened based on media reports that express two opposing points of view.

A note published in “Bryansk Today” on March 20 stated that the organizers of the anti-corruption action “fooled away the rally”¹⁰³. With reference to an unnamed source in the administration, the Internet newspaper wrote that on March 17, the organizers submitted a request to withdraw and cancel their notice, and then filed a new notice requesting the same time and place for the rally, although the deadline for such application had already passed.

“The reason for revoking the application remains a mystery, - the newspaper quoted the words of an anonymous source. “Either the guys decided to correct grammar mistakes in their application, or they decided to give up their plan, but later changed their minds, or there was a planned provocation, to make the authorities deny the event and thus smear the authorities.”

“Bryanskaya Street” the same day published a description of the same events, but from the point of view of an organizer of the action. According to him, he received a call from the administration in the afternoon of March 17 and was told that “difficulties had arisen” and his presence was requested¹⁰⁴.

“In the city hall they explained to me that the application was to be addressed not to the regional government, as we wrote earlier, but to the city administration. I was offered to cancel the first application and write the second one and date it March 17, otherwise the first one would not have passed the approval procedure. By law, because of this delay, we could not notify the city authorities in time. We were reassured-that it was just a formality. But it turned out that it was not. I have a question - why did the administration accept our first application if it was incorrect? ”

In the Bryansk region, a notice can be submitted, depending on the location of the proposed action, either to the local administrations of urban or municipal districts, or to the regional department of internal policy¹⁰⁵. Apparently, the organizer managed to choose the right department, but mistakenly addressed the regional government instead of the city administration (located in the neighbouring building) in the header of the notice. The administration accepted the notice with this mistake, but once they detected their own error, they tackled the problem at the expense of the organizer's interests. Tellingly, the first press article with comments from the administration featured a photo of the notice, but the header with the addressee did not appear on it.

¹⁰³ URL:

<https://bryansktoday.ru/2017032048949/society/V-Bryanske-organizatory-aktsii-On-vam-ne-Dimon-profukali-miting.html>

¹⁰⁴URL: <https://bryansku.ru/2017/03/20/v-bryanske-sorvan-miting-storonnikov-oppozicionera-alekseya-navalnogo/>

¹⁰⁵ Article 3 of the Law of Bryansk Region No. 87-3 dated 2 November, 2016.

Chapter 8: External control

Why rallies will keep getting prohibited

A lot of the examples examined above came to our attention almost accidentally: we just happened to come across them in the unpublished appendix to the report on freedom of assembly in Russia prepared by the presidential Council for human rights¹⁰⁶. This means that all of this could have remained unknown, even the cases of gross violation of the Law on Rallies - the ones regarding the timing of the response or the ones with doppelganger assemblies approved retroactively. It's safe to assume that we still don't know about most of the violations.

Sometimes, a violation is easy to see with a naked eye, but it takes some mass media activity for it to become noticeable. For example, organizers of the "Spring" assembly in Kazan were told by the authorities that Tukay square was occupied by a different event. "Later, when the media made requests, it turned out that it was an event by Young Guard of United Russia and that the square would be used for a movie shoot, - one of the organizers said to OVD-Info. - We were also told that Young Guard representatives filed their notice at 8:30, which is illegal, because the department that accepts applications doesn't open till 9:00".

Something similar happened to the "Spring" assembly in Saratov: the organizers' notice got the response saying that the space by the monument to Chernyshevsky was already occupied. Later, an unnamed source from the city police informed FreeNews-Volga, that sometime earlier the city hall received a notice of holding a series of single-person pickets by the monument from 8:00 to 20:00¹⁰⁷. However, single-person pickets do not require prior approval and, therefore, notification is not prescribed by law.

The organizers of "Spring" in Novosibirsk were told that the location of their picket would be occupied for some "previously announced events." Note that the notice of the procession was filed on February 16, and, according to the list of public assemblies that city hall provided to Taiga.info on February 17, none of the "previously announced" events had been scheduled for March 1. City hall officials had trouble telling the organizers who was it that took up the locations, " - says "Taiga.info" with reference to one of the organizers.

All of this is a vivid demonstration of the lack of effective external control over the assembly approval procedure. By external control we mean, first, public control: for example, free public access to the information on whether an assembly is approved or banned, to statistics and documents, to the schedule of planned activities and to the list of submitted notices indicating the reasons for refusals. Secondly, judicial control, which is indispensable for human rights to be ensured in any area, including freedom of assembly and expression. Finally, external control can be implemented in the form of bringing officials to responsibility for violation of human rights and freedoms.

¹⁰⁶ Presidential Council for Civil Society and Human Rights report on issues related to the observance of the constitutional rights of citizens at public events in the Russian Federation. Moscow, 2017. URL: <http://president-sovet.ru/documents/read/575/>

¹⁰⁷URL: <https://fn-volga.ru/news/view/id/29563>

Transparency of the approval procedure

We have never come across any comprehensive public datasets on filed notices of holding an assembly, on the motivation and the timing of responses, on the approval results in city regions or certain cities.

The administrative policy on assembly approval in St. Petersburg provides for the possibility for citizens and public associations to receive information on the number of notices received, as well as on the number of assemblies approved and banned¹⁰⁸. At the same time, the regulations provide for the provision of such data for a period of not more a year and a half before the date of receipt of the request. However, we have not found a similar provision in other cities' regulations - for example, neither in that of Moscow nor in that of Yaroslavl.

The lack of transparency in the approval procedure creates a fertile ground for abuses by the authorities. As a result, there is a mismatch between opportunities and risks for citizens and authorities: the former have small opportunities and big risks, the latter, vice versa. Open information about the time of scheduled events would help reduce communication between the organizers and the authorities and would shed light on the unfounded decisions of the latter.

Appeal of authorities' decisions, actions and inaction

In theory, an organizer has two possible ways to appeal a missed deadline, an unjustified refusal or a proposal to change any elements of the assembly. The first is to file a complaint to the same municipal or state authority (out-of-court appeal), the second is to file an administrative claim in court. In both cases, the subject of appeal is almost the same, but the terms are arranged in such a way that the organizer would have to choose one. The court can be contacted within 10 days after the discovery of the violation, and the complaint procedure inside the authority might take a month¹⁰⁹. Once an appeal is submitted to a court, the internal complaints procedure is no longer available.

According to Yaroslavl regulations, out-of-court complaints are, as a general rule, handled within 15 work days (or 5 work days if it's an appeal of a refusal to register a notice, or of a violation in correction of typographical errors)¹¹⁰. St. Petersburg regulations do not set any specific time limits for appeals procedures, which could mean that there's a common period of 1 month for all citizen appeals¹¹¹. Under such conditions, it is absolutely pointless to use the internal complaints procedure before the day of the assembly.

Administrative appeals in court are different. In accordance with the decision of the Constitutional court of 2013, the courts must handle complaints about banning or unsubstantiated proposals to change elements of assemblies as quickly as possible before the suggested day of the assembly¹¹². This legal

¹⁰⁸ Paragraph 2.15.12 of Regulations approved by St. Petersburg Governmental Decree No. 1996 dated 26 December, 2005.

¹⁰⁹ Article 219 (4) of the Code of Administrative Justice of the Russian Federation.

¹¹⁰ Paragraph 5.7 of Regulations approved by the Decree of the Office of the Mayor of Yaroslavl No. 4812 dated 22 December, 2010.

¹¹¹ Article 12 (1) of the Federal Law No. 59-FZ dated 2 May, 2006.

¹¹² Resolution No. 4-P by the Constitutional Court of the Russian Federation dated 14 February, 2013.

position was subsequently developed by the Supreme court and extended to subsequent appeals¹¹³. When we take into consideration that the judicial framework provides at least some procedural guarantees, in addition to the shortened time limits, we understand that a court appeal is much more attractive for an organizer of an assembly than a complaint to the same authority. In addition, in the latter case, the authority would be acting as its own judge. The advantage of a judicial appeal is an additional opportunity to draw the attention of the media and the public to the assembly, as well as the possibility of a subsequent use of international mechanisms for protection of rights and freedoms, for example, an appeal to the European court of human rights (ECHR).

Alas, a court appeal of a refusal to approve a protest assembly is no panacea. We studied several court cases dealing with complaints of organizers of anti-corruption rallies on March 26 in different cities. Among them, only in Novosibirsk did the court partially satisfy the requirements of the organizer, which eventually allowed for the assembly to be held in accordance with the requirements of the law. In all other cases, the courts took the side of the authorities.

If we consider the decision of the Supreme court of 2018 as an instruction for lower courts on disputes about assembly approvals, it can be noted that the Supreme court has put some clarity in the control over the observance of the time limits for the response from the authorities. It also clarified the requirement to offer an alternative location for the assembly, whenever a modification is proposed. At the same time, the crucial problem of lack of argumentation in the authorities' decisions was not only not solved by the Supreme court, but it was made even worse due to the legalizing of the wording about "functional disruption" as a reason for postponing the action¹¹⁴.

Thus, the judicial system handles the formal side of assembly approval processes but not their content or the guarantees of human rights and freedoms in each case.

In other words, the problem with substantive consideration of disputes on assembly approval is closely related to the existing regulatory framework and the extremely broad remits of the authorities, allowing them to interfere with the exercise of freedom of assembly by citizens. This imbalance of legal regulation has been repeatedly attested by international experts¹¹⁵, as well as judges of the ECHR¹¹⁶.

Responsibility of Government Officials

Criminal cases

Russian legislation allows for administrative¹¹⁷ and criminal¹¹⁸ charges against officials for unlawful restriction of freedom of assembly. Based on appeal case files regarding denials of criminal proceedings in response to complaints about inaction of investigative authorities or prosecution office,

¹¹³ Paragraph 4 of Ruling No. 28 by the Plenum of the Supreme Court of Russian Federation dated 26 June, 2018.

¹¹⁴ Paragraph 12 of Ruling No. 28 by the Plenum of the Supreme Court of Russian Federation dated 26 June, 2018.

¹¹⁵ Council of Europe, Venice Commission. 686/2012 - Opinion on Federal Law No. 65-FZ of 8 June 2012 of the Russian Federation amending Federal Law No. 54-FZ of 19 June 2004 on Assemblies, Meetings, Demonstrations, Marches and Picketing and the Code of Administrative Offences. URL: www.venice.coe.int/webforms/documents/?opinion=686

¹¹⁶ Judgement by the European Court of Human Rights in the case of "Lashmankin and Others v. Russia" dated 7 February, 2017, application No. 57818/09.

¹¹⁷ Article 5.28 of the Code of Administrative Offences of the Russian Federation.

¹¹⁸ Article 149 of the Criminal Code of the Russian Federation.

we can see that protest organizers have repeatedly tried to use this legislation. However, in recent years, according to the Judicial Department at the Supreme Court, no one has been charged with criminal charges for the restriction of freedom of assembly.

In the summer of 2017, the organizer of the ecological protest rally in the rural settlement of Stremilovskoye, Moscow region, received a suggestion to postpone the assembly on account of the already scheduled festival «Summer Music Marathon»¹¹⁹. The organizer made a request to the prosecution office to check legality the responses. In particular, the organizer referred to “systematic rejections in conducting public events coming from the Tchekhov municipal district officials, that demonstrate their efforts to obstruct execution of the constitutional civil right to peaceful unarmed assembly, to conduct assemblies, rallies and demonstrations, processions and picketing, which is liable to prosecution according to the Article 149 of the Criminal Code of the Russian Federation». The prosecution office requested the approval papers from the authorities, thereafter responded to the organizer of the canceled assembly that it did not see any grounds for initiating criminal proceedings. The organizer was not satisfied by this conclusion by the prosecution office and filed an administrative case in court. However, the court also refused to meet the organizer’s demands.

The Supreme Court resolution highlighted that the following actions “Addressing the organizer of a public event by the public authority body with a reasonable proposal to change the place and/or time of the public event, or with a suggestion for the organizer of a public event to correct the failure of the declared goals, forms and other conditions of carrying out a public event to comply with the law on Public Assemblies, as well as with a reasoned warning” are “not to be considered an obstruction to organizing or conducting a public event, since these actions of the public authority are executed in the framework of its statutory legal power”¹²⁰.

Under such interpretation, it became de facto impossible to implement the already difficult to use article of the Criminal Code when the rights and freedoms of the organizers during the process of assembly approval are infringed.

Administrative Cases

Regarding administrative charges against public officials for violating of the Law on Rallies, the Supreme Court specifies that “obstruction to organizing or conducting a public assembly can manifest itself as, in particular, avoidance to accept a notice of holding a public event; purposefully unlawful refusal to approve a public event; failure to communicate to the organizer information on the established norms of maximum occupancy at the location of a public event; failure to appoint a duly authorized representative of the public authority body in order to render assistance to the public event organizer in holding the public event in accordance with legal requirements; failure to provide, within the official’s ambit and jointly with the public event organizer and duly authorized representative of the law enforcement authorities, of public order and security while holding a public event”¹²¹.

¹¹⁹ Decision of the Serpukhovskiy City Court of the Moscow Region in case No. 2A-2278/2017.

¹²⁰ Paragraph 27 of Ruling No. 28 by the Plenum of the Supreme Court of Russian Federation dated 26 June, 2018.

¹²¹ Paragraph 22 of Ruling No. 28 by the Plenum of the Supreme Court of Russian Federation dated 26 June, 2018.

Police are entitled to initiate administrative proceedings against public officials on such cases where a complaint is lodged by a civilian¹²², and these cases can be adjudicated only by federal judges of district courts¹²³.

There are isolated instances when such administrative cases have been considered by the court. In 2013, Russian courts reviewed just eight such cases, and only on three occasions were the officials found guilty. The average administrative fine in these cases constituted 30 thousand rouble: the minimum punishment on this section for a public official. In 2014, another 10 cases were adjudicated, and only four of them concluded with a guilty verdict, inflicting a total of 55 thousand roubles of penalty.

In 2017, in the Perm region, a public official who rejected the notice for a picket with the use of a “cube” temporary structure was held administratively liable¹²⁴. The goal of the event was specified as “raising public awareness about the approved public rally on June, 12, 2017 in Berezniki city at Pervostroiteley square from 16:00 till 19:00 and communicating to the public on the goals of the planned rally as well as allegations of corruption”. The rejection was issued citing an allegedly missed deadline for notice submission, although it had been submitted four days in advance, as is legally appropriate for picketing. This case is indicative of the point introduced above: judicial control acts more efficiently when it comes to observing deadlines, rather than in controlling the rationales and contents of the public authorities’ judgements.

In the context of complete non-transparency of the approval procedure, there can be no efficient public control. Taking into consideration the obscurity, gaps, and contradictions in legislation, and the broad ambit of public authorities, the duty to create and execute rules should be delegated to the courts. The situation, however, is exacerbated by the absence of definite court precedents, which would put under restraint infringements of freedom of assembly and expression on the part of state authorities.

Chapter 9. The roots of the restrictions.

How the prohibitive legal framework is created

Previous chapters focused on the part of the approval process that concerns immediate handling of the notices by the administration and the problems that occur at this stage. However, the approval or prohibition of every public event is preceded by many years of law-making that creates the framework implemented by the executive, legislative, and judiciary powers. Above, we have referred to particular legal acts and rules that regulate the approval process. Now we will take a closer look at them and will attempt to generalize our observations.

Let’s start with two relatively recent cases that illustrate the changes in legislation that guides the approval process: the creation of the “designated areas” for public events in 2012 and the regulation of public events during the FIFA World Cup in 2018.

¹²² Article 28.3 (2.1) of the Code of Administrative Offenses of the Russian Federation.

¹²³ Article 28.1 (3) of the Code of Administrative Offenses of the Russian Federation.

¹²⁴ Decision of the Perm Regional Court in case No. 12-281 / 2018.

Creation of the “designated areas”

In 2012 federal legislators demanded that local authorities allocate special areas for the “collective discussion of socially relevant questions and the expression of public sentiments”. Such areas are called “Hyde Parks” in Russian, a reference to the Hyde Park Speakers’ Corner in London where speakers can freely (and without a pre-approval) address the public. Initially the suggestion was that actions in these areas would not need approval, but in the end this did not happen.

The rules on the Speakers Corners were up to the regional legislative bodies. This is the first level of limitations. According to federal law, it is possible to hold only events with a limited number of participants without prior approval. In the majority of the regions the participants’ limit was set to one hundred people. If an event is for a higher number of participants, the designated areas are no different from other public spaces in terms of legal procedures.

The next level of limitations has to do with the local executive bodies. They determine the precise locations of the Speakers Corners. In the recent years the authorities in big cities have started to decrease the number of designated areas and force them from the city centres to the suburbs.

Finally, the legislators could not help regulating the exact ways of carrying out public events that do not require approval. As a result, to hold an assembly in a Speakers Corner in many regions the requirement to send a notice about an upcoming action was simply replaced with a demand to “send information” about it to the authorities. In 2018 the Supreme Court made this regulation applicable across Russia, thus definitively defeating the initial purpose of the “designated areas”¹²⁵.

Nevertheless the designated areas are still in use, first of all, by local executive bodies. Federal law amendments of 2012 that initiated the creation of the Speakers Corners also added an ambiguous note that following the designation of the special areas public assemblies are “usually to be held in the designated places”. Though this phrase does not constitute a concrete restriction, it nudges local administrations to suggest to move public meetings to the Speakers Corners in any conflictual situation. And Speakers Corners, as noted above, are often located in remote and unpopular areas. In some cases local authorities claim that public events can be held only in the designated areas.

Here is a response of the local authorities to an organizer of the March 26, 2017 anti-corruption rally in Belgorod: “In Belgorod there are two designated areas for public events. One is a concert venue in the Victory Park, opposite the Belgorod State Museum of History and Local Lore, another one is a venue at the entrance to the Lenin Belgorod City Park of Culture and Recreation. You should take into consideration that only one of the two – namely, the concert venue in the Victory Park, - is suitable for a public assembly with over 500 participants that was proposed in your notice. In Belgorod there are no other suitable locations for the assembly. Since there are no other suitable areas, we cannot offer you another location. Taking into account the previously sent notices, it is also not possible for us to offer you another time slot for the assembly.”

¹²⁵ Paragraph 15 of Ruling No. 28 by the Plenum of the Supreme Court of Russian Federation dated 26 June, 2018.

Regulation of public assemblies during the World Cup

The work on legislation to regulate public assemblies during the 2018 FIFA World Cup started long before the actual event.

In 2013 the first federal law about the preparation and carrying out of the championship was adopted. In order to administer public safety, the law allowed the president to prohibit public events that are not directly connected to the sport competitions¹²⁶.

In May 2017 a presidential decree on safety measures during the World Cup was published. It gave local authorities power to restrict the conduct of public events not directly connected to the World Cup during the period from May 25 to July 25, 2018¹²⁷. Here three things need to be noted:

1. The restrictions can concern only the number of participants, the location (or the itinerary) and the time of the action;
2. The restrictions can be implemented only in the regions where enhanced measures of security are put in place (the regions where the infrastructure¹²⁸ for the World Cup is located¹²⁹);
3. The decree allows local authorities to take such measures, but they are not mandatory.

As usual with local decrees it is difficult to establish the exact scale and geography of the resulting restrictions. We were able to find such restrictive decrees issued by authorities in 10 cities¹³⁰, however it is possible that the measures were adopted in other places too.

In the ten cities the authorities tended to designate particular “designated places” (usually different from the Speakers Corners) for public events. They also significantly restricted the number of participants (in most cases, the limit was 100-150 people) and put in place strict regulations on the allocated time slots for the assemblies (for instance, in Yekaterinburg it was allowed to hold public events only between 2 and 4 pm).

In some cases municipal authorities go beyond the authority given to them by the presidential decree. In Rostov-on-Don, not only the time of the actions was limited but also their duration (no longer than two hours). In Nizhny Novgorod, the resolution listed venues where public events could not be held, even if they were related to the championship. In the majority of the cities there is a clause about informing local divisions of the Ministry of Internal Affairs and FSB at the receipt of notice, and sometimes even about the necessity to obtain an approval to hold an action directly from these institutions.

¹²⁶ Article 12 (1.1) of the Federal Law No. 108-FZ dated 7 June, 2013. URL: <https://rg.ru/2013/06/11/chempionat-dok.html>

¹²⁷ Paragraph 11 of the Presidential Decree No. 202 dated 9 May, 2017. URL: <https://rg.ru/2017/05/10/prezident-ukaz202-site-dok.html>

¹²⁸ URL: <https://rg.ru/2018/04/13/fifa-dok.html>

¹²⁹ Paragraph 1 of the Presidential Decree No. 202 dated 9 May, 2017

¹³⁰ In Rostov-on-Don, Volgograd, Voronezh, Yekaterinburg, Kazan, Kaliningrad, Krasnodar, Nizhny Novgorod, Samara and Sochi.

There is confusion about the time frame as well: in some cities, the restrictions applied to the actions held between 25 May and 25 July, while in others, they apply to notices received by the authorities within this period. In the second case, the restrictions would then also apply to events held after the end of the championship.

General properties of the regulatory framework

The above two stories reflect the problems of legislation governing the conduct and approval of public events.

A prohibitive trend in regulation

Over the past few years, legislation on rallies has been actively amended and supplemented. Both at the federal and regional levels, this involved the introduction of new prohibitions, restrictions and requirements for the organizers and participants of the rallies. Significant amendments added to the federal law on rallies in summer of 2012 modified the process of getting approval for holding rallies. It was these amendments that introduced criteria for eligible organizers of public events as a possible reason for refusal. At the same time, the list of requirements to organizers was expanded, and the promotion of rallies prior to local authority approval banned (previously it was permitted to start promotion right after submitting the notice). Furthermore, the amendments introduced new sanctions for the organization of public assemblies without notifying local authorities.

In subsequent years, lawmakers have continued creating more restrictions for organizers and participants of rallies. The 2013 ban on ‘propaganda of nontraditional sexual relations’ became a common reason for rejecting permission for protests about LGBTQ rights and issues. In 2016 the State Duma officially proclaimed the organization of assemblies a ‘political activity’. This became a reason for requiring NGOs who get funding from abroad and organised rallies to register as “foreign agents”. The term “public assembly” also acquired new meanings: the requirements for assemblies and demonstrations were extended to religious events, car rallies, individual pickets using temporary structures, and elected representatives’ meetings with constituents.

The federal amendments of 2012 prompted regional lawmakers to introduce lists of banned areas and to determine the rules for the use of the “designated location”. Regional authorities adopted the prohibitive trend coming from the federal authorities, which can be seen with examples of the regulation of Speakers Corners and limitations for public gatherings during the World Cup 2018. Apart from that, regional authorities initiate limitations themselves, particularly concerning additional requirements for the organizers. For instance, since 2012 the law in Khabarovsk region requires organizers “to take reparative measures in case of any damage to green areas, buildings, equipment, furniture or any other property at the site”.

Sometimes local lawmakers initiate bans which are later introduced on a federal level. For instance, the ban on meetings with elected representatives without prior approval, which came into force nationwide in 2017, had been introduced in Moscow several months earlier.

The complexity and multiple levels of the legal framework formed by the three branches of power

Imagine yourself in the shoes of a law-abiding organizer who wants to hold an event according to the rules. They have to examine a few federal laws, figure out their interpretation using The Constitutional Court's and Supreme Court's provisions, familiarize themselves with the Code on Administrative Offenses, find regional laws which regulate the organization of public assemblies in general, and in some cases concerning cultural monuments and transport infrastructure in particular, find the lists of local Speakers Corners compiled by the local authorities, administrative regulations and plans of events agreed by local administration, and to make sure that there are no temporary limitations at that particular period of time.

When choosing the place for a rally and determining the authority that is responsible for giving permission, an organizer has to find out who owns the land where the rally is supposed to take place (in case it is a private, state or municipal enterprise). They also have to ensure that the site is not under a federal ban and is not a Speakers Corner, in which case different laws would apply; to check whether the site is in a border zone, belongs to a cultural or historical monument or transport infrastructure.

After all this, the administration, having considered the application, can still reject it referring to some unknown federal provision on the protection from terrorism, or a newly passed resolution on a city-wide cleaning programme, as happened before the rallies in Khabarovsk and Volgograd on 26 March.

The absence of a public list of necessary information

This difficult legislative situation is compounded by the absence of complete lists of the right regulations, and the difficulty in finding the legislative texts themselves, particularly where at and below the regional level.

Problems with this arise quite often. For example, public assemblies are banned near presidential residences, but there is no exhaustive public list of these. The using of prohibitions to public assemblies on specific kinds of land becomes more difficult due to the fact that the boundaries are not always defined in practice.

Documents on different levels sometimes repeat and sometimes contradict one another

Regional laws frequently for the most part repeat the federal law on the public assemblies, with rare inserts of new information. Reading of the documents can be difficult and in this form, new information introduced by local legislators is lost. Legislators often allow obvious contradictions in the interpretation of existing laws and sometimes go beyond the remit set for them in legislation. This is the case, for example, in the interpretation of the Supreme Court of notice periods or its enshrinement of the refusals based on "functional disruption"; in the way local authorities applied the presidential decree during the preparation of the World Cup; in the way the Moscow administrative policy swapped "days" to "working days" and so on. Here is just one more example.

The administrative policy of the St. Petersburg Committee on law, order and security contains a list of territorial restrictions that are imposed by various laws¹³¹. Among other things, it indicates that the Federal law on freedom of conscience prohibits public assemblies near religious buildings. Compare with the text of the law: the law prohibits to hold public assemblies, show texts and images, which offend religious feelings of citizens, near religious buildings. In law, there is total ban on assemblies near religious buildings, but the officer of the Committee who makes the decision on approval will be guided by the local policy.

Discrepancies and omissions in legislation.

Perhaps, the lack of clear legislation in certain issues that directly determine the practice of approval is the reason that more actors are introduced into the legislative development process: local executive administrations and the Supreme Court.

The timeframe for submitting an event notice to a local authority was so poorly defined in law that before the Supreme Court ruling no one knew when the correct time frame was. But the Supreme Court did not resolve all the ambiguities. For example: to hold a picket on a Sunday, should a notice be submitted three or four days in advance? The possibility of submitting a notice on a Saturday also resides in a legal lacuna: Federal legislation only excludes Sunday submissions, but regional regulations often restrict notice submission to weekdays.

The correspondence that follows the first notice of a public event has indefinite status: is it a continued negotiation or does each new piece of communication from an organizer constitute a new notice? Deadlines for responses during such a negotiation are also unregulated. How much detail should a notice provide regarding the address of the proposed location?

The Federal law on rallies itself contains textual and substantial contradictions. For example, one paragraph¹³² prohibits public assemblies in the immediate surroundings of presidential residences, but another¹³³ stipulates that inside on the territory of the Moscow Kremlin, where one of the presidential residences is located, all public assemblies regulated by the President. Together, these two rules create a paradox: are assemblies in the Kremlin banned or not?

Another problem is that some legislative documents use the term “socio-political events” rather than “public events” as defined in the Federal law on rallies. It is unclear whether the two terms mean the same thing. For example, “Socio-political events” are mentioned in the presidential decree about the Kremlin and in the law on the state border.

This state of legislation suggests the conclusion that freedom of assembly is not considered when legislation is updated or revised. Besides that, it is not always possible to follow the logic of new legislation. A vivid example of concerns single-person pickets, which are an expression of freedom of expression but not freedom of assembly. Nonetheless the federal legislature decided to extend

¹³¹URL: <http://docs.cntd.ru/document/456014428>

¹³² Article 8 (2) of the Federal Law No. 54-FZ dated 19 June, 2004.

¹³³ Article 8 (4) of the Federal Law No. 54-FZ dated 19 June, 2004.

provisions on the regulation of public assemblies to single-person pickets. Another questionable norm is the rules which restrict the organizers of rallies to persons above 16 years of age, and those of picket, above 18 years. Similar illogical regulations can also be found regionally. For example, in the historical center of Stavropol pickets must be approved by the higher level regional authorities, but all other (and potentially larger) actions, by city authorities¹³⁴.

All these technical and substantive errors, lacunae and contradictions leave many important practical issues unaccounted for in regulation.

The stated and the actual objectives

All branches of the state are involved in turning the process of approval into a tool for censorship. Legislative authorities both on federal and regional levels continue to impose more restrictions and bans. Executive authorities determine the procedure of considering a notice and implement the procedure. Finally, the courts recognize these prohibition as legal.

According to the law in the Volgograd region, the local governor must provide the police with a copy of every notice of a public event¹³⁵. In the Kaliningrad region, all information about yet to be approved events is sent to the regional counter-terrorism organization¹³⁶. In Saint-Petersburg, copies of any reply to a protest organizer are sent to the police and the local FSB office, regardless of content¹³⁷.

All of this speaks to a change in the meaning of the process of prior notification. Instead of helping protesters express their opinions, the authorities use the received information to prevent it.

The freedom of assembly is easily restricted due to events as occasional as the Olympics or the World Cup. Legislators could prohibit or considerably hamper the any assembly that was not related to sports. Neither the Supreme¹³⁸ nor the Constitutional Court¹³⁹ had any objections to this situation. These sports-related nationwide bans are a huge-scale replica of the cases where particular cities ban protests due to local sports day or children's festival. The constitutional right to freedom of assembly is so easily foregone.

Summary

Russian legislation does not provide an opportunity to hold spontaneous public assemblies. All public events with more than one person involved have take place with prior notice to, and consent from, the authorities. This report reviews key mechanisms that transform the procedure of approval into a tool for censoring and banning unwanted protests. These restrictions and bans can be based on the specifics of the regulatory framework, or be applied illegally.

¹³⁴ Article 3 (3) of the Law of Stavropol Region No. 115-KZ dated 20 December, 2012.

¹³⁵ Article 2 (3) of the Law of Volgograd Region No. 2489-OZ dated 30 March, 2011.

¹³⁶ Article 4 (1) of the Law of Kaliningrad Region No. 188 dated 26 December, 2012

¹³⁷ Paragraph 3.4.2.1. of Regulations approved by St. Petersburg Governmental Decree No. 1996 dated 26 December, 2005.

¹³⁸ Appeal definition No. APL17-356 of the Supreme Court of the Russian Federation dated 31 October, 2017.

¹³⁹ Definition No. 1148-O of the Constitutional Court of the Russian Federation dated 29 May, 2018.

The regulatory framework

Numerous public event restrictions are imbedded in the regulatory framework concerning the approval procedure.

Russian laws put public event organisers onto an extremely tight schedule. Organisers have a window of only four or five days to submit a notice depending on what day of week they plan to hold their event. If any problems occur, in most cases the authorities' response deadlines do not leave organisers any time to correct mistakes and resubmit their notice. In addition, Russian legislation clearly prioritizes mass cultural and entertainment events over political events: their approval can be moved to an earlier date and the most popular city locations are often occupied by these kinds of events.

Recently the regulatory framework has been updated with new restrictions. There are criteria limiting who can or cannot organize a public event, and new limitations have been applied to the subject matter of assemblies. Federal Law amendments have led to in further regulations on a regional level. Regional authorities' restrictions have significantly increased areas where public assemblies are altogether banned, especially in central city parts.

Executive authorities have also participated in the proliferation of prohibitions. During the FIFA World Cup in 2018, public assemblies unrelated to sport were banned for two months. And at any other time, local authorities frequently reject public assembly notices based on their own directives - for instance, about snow removal works or repairs that make an entire city unavailable for public assemblies for several weeks. Sometimes these directives can be issued after a public event has been submitted for approval.

As a result, the approval procedure is regulated by a variety of laws and regulations which are, in turn, formed by all the levels and branches of the state. There are direct contradictions in these regulations on different levels, for example regarding the possibility of submitting a notice on a Saturday: Federal Law does not prohibit submitting notices on Saturday, while regional or local acts often limit the acceptable time window to office hours from Monday to Friday. Some regional acts turn the three day deadline for answering a notice into three working days, which results in dramatic delay in communication between an organizer and the authorities

The regulatory framework is so difficult and multi-layered that an organiser has to not only get to know the Law on Rallies, but also to put together a puzzle of uncoordinated and sometimes illogical rules. Only in order to check the eligibility of a location that for an event, an organiser needs to find out who owns the land, check whether the location is under federal or regional ban, whether it is a designated area for public events with distinct rules of notification and approval, and if there are cultural monuments or transport infrastructure nearby. Each of these factors will influence the approval procedure to some extent. Regional laws also define which authority an event notice should be submitted to, depending on the number of participants, event format, and location. This complexity invariably leads to mistakes and, consequently, to refusals.

Gaps in the regulatory framework

A lot of problems with approval for public events arise not out of legislative restrictions but on the lack of regulation on particular matters. It lets the authorities to respond on these matters arbitrarily, which leads to more bans.

Problems appear even at the stage of preparing a notice. It is unclear what format is expected for the description of the location of an event, and whether the organizer has to appoint “deputies” if none are going to be present at the event. Federal Law lists suitability requirements for organizers (such as Russian citizenship, age, lack of prior convictions) but does not state whether organizers have to prove their compliance with these requirements. If an event is planned on a private land, the law requires to get the owner’s permission, but there’s no information on the form of this permission. In reality all these gaps can become a reason for delay of approval and even to an outright ban. The local authority may demand clarification and papers proving that an organizer has the owner’s permission or demonstrating their lack of criminal record, but when the organizer submits these papers, the authority can consider them to be a new notice and consider the deadline for submission missed.

Before summer 2018, public authorities and organizers both had no common way to calculate notice submission timeframes. The Supreme Court partly clarified the situation, although some conditions have been left unresolved. It is too early to tell whether and how the Supreme Court decision will influence approval procedures in practice.

There is barely any regulation concerning communication and negotiation after the notice has been submitted, if the event is not approved right away, although it is this communication that defines if consensus is going to be met and an event is going to be approved. The authorities can treat any further communication from an organizer as a new notice, which in most cases leads to a refusal because of missed deadlines. Besides the law sets the local authority only a deadline for an initial response, and does not restrict how long further communication takes. Federal law provides that the local authority can send the organizer a warning regarding the inadmissibility of violation of the law, but gives no details on what this warning means for the status of the approval of the event or further correspondence. The law does not specify the means of communication to be used by the authorities to contact the organizer, so an answer can be sent to an organizer via land mail and lose several days in an already tight timeframe.

The requirements to the grounds and evidence to be used in authorities’ responses to event notices are still not properly described in regulations, even though both the Constitutional and Supreme courts have made statements on the subject. For example, in case an assembly is proposed near designated cultural monuments and transport infrastructure, the local authorities can refer to a negative decision of another state institution whose conduct in this case is not regulated by any law.

Legal terminology is also frequently problematic or contradictory. For example, some regulations do not use the term “public event”, as used in federal law, but refer to “social and political events”. Different regions define the notion of “transport infrastructure” differently. When regional regulations ban assemblies at or near particular kinds of sites, their definitions are often unclear. Boundaries of locations also cause problems, for example, where assemblies are banned in “territories directly

adjacent to”, for instance, medical facilities or transport infrastructure, or where special locations are designated for public events.

Problems and infractions in the approval process

The prohibitive legislative base and gaps in the regulation lead to a complicated approval procedure, and provide the authorities reviewing notifications with a variety of tools for banning undesirable actions. Yet in many cases local administrations refuse to approve a public assembly in violation of the law. This becomes possible due to the lack of transparency and to the absence of external means of control.

The wording of authorities’ answers to notifications commonly poses problems. Some answers contain neither a confirmation of approval, nor a direct refusal, nor any counter-proposals. In this case an organizer will not know what the status of the planned action and what to do next. Other covert refusals include authorities’ demands for a new notice to be submitted and demands to the date of an action, and not its place or time.

The law foresees only two possible reasons for an outright refusal (an unsuitable organizer or a legislative ban on the specific location), as well as not requiring the authorities to review notifications submitted too early or too late. But in practice refusals are explained by other reasons not provided for by the law, for example, by the fact that an action will “disrupt the functioning” of infrastructures or impede the movement of transport and pedestrians.

The two most widespread reasons for refusals or for demands to relocate or postpone an action are, firstly, other concurrent events (public assemblies or mass sport, cultural, or entertainment events), and secondly, repair or urban improvement work.

The law does not provide for an outright ban in such conditions and requires the authorities, firstly, to clearly explain why the public assembly is impossible in the proposed time or place, and, secondly, to propose an alternative place or time to the organizer. In practice the authorities, as a rule, consider the fact of another event or repair works as sufficient justification for proposing to relocate or outright refusing an event. Organizers are often not proposed an alternative location and when they are, the locations on offer will be more remote and less suitable for their event. By the time the organizer has received the offer to relocate their event, there may not be any time remaining to re-submit their notification.

Often the local authority’s response does not specify the time of the event occupying the proposed site at the proposed time, which means the organizer cannot reschedule the event to a different time the same day. Local authorities do not publish comprehensive data on approved public events or planned repair works, nor on the public assembly notifications they have received, approved, or refused. This makes it easy to dissimulate direct infractions like back-dating decrees on repair work, approving public events outside of the legal schedule, or prohibitions with reference to non-existent events.

The public events that serve as a reason to refuse consent for a protest action frequently turn out to be held by the local authority’s direct subsidiaries, or youth and patriotic organizations linked to the authority. The scheduling of repair and improvement works is even further subject to the authorities’ direct control. The works can be initiated urgently and used by authorities to canceling events that had

already been approved, despite the fact that there is no provision in law for revoking local authority consent.

The speed of negotiations between organizers and the authorities also poses problems. Authorities may delay communication in various ways and for various reasons, not necessarily in direct violation of law. An administration not inclined to favor an organizer can simply withhold information in its responses, causing a chain of requests for clarification.

Frequently local authorities miss the legal deadlines for responding to a notification. Legally, if the authority has not issued a refusal or a demand for modifications on time, the organizer can consider an action to be approved and begin preparing for it. In this case, authorities' demands for modifications or outright refusals constitute a cancellation of their consent - not provided for by the law. Frequently the official response is dated in accordance with the legal deadline, but the organizer only receives the document the day after its stated date, or even later.

The prolongation of negotiations with the authorities is clearly against the organizer's interests. The sooner the day of the planned action, the less time remains for its approval, the more reasons the authorities have to refuse it, and the less time to prepare for and promote the action. Since 2012, federal law allows promoting an action only after has received the authorities' consent.

The way a protest is reported by the mass media and the number of arrests made by the police depends on whether or not consent is obtained from the authorities. Nonetheless, the approval procedure itself attracts less attention and remains in the shadows.