



Submission by the NGOs Human Rights Center Memorial and OVD-Info

**under Rule 9.2 of the Rules of the Committee of Ministers
for the Supervision of the Execution of Judgments
and of the Terms of Friendly Settlements**

on implementation of the general measures

in the case of *Lashmankin et al. v. Russia*,

applications nos. 57818/09 and 14 others

judgement of 7 February 2017, final of 29 May 2018

20 April 2020

TABLE OF CONTENTS

GLOSSARY	3
INTRODUCTION	4
EXECUTIVE SUMMARY	6
MEASURES TAKEN BY THE GOVERNMENT	12
ASSESSMENT OF THE MEASURES TAKEN BY THE GOVERNMENT	13
ANALYSIS OF THE CURRENT SITUATION	15
I. Article 11	15
(α) The authorities' proposals to change the location, time or manner of conduct of the applicants' public events	15
A. Lack of legal criteria as to the reasons of the authorities' proposal	15
B. Discretionary and arbitrary reasons of refusal in practice	16
<i>B1. Other public events scheduled at the same location and time</i>	16
<i>B2. Formal disruptions of ordinary life</i>	17
<i>B3. Prohibition of LGBT-events (§429)</i>	18
<i>B4. Other</i>	18
C. Other problems with quality of law	18
<i>C1. Local regulations</i>	19
<i>C2. Special legal provisions during the 2017 FIFA Confederations Cup and the 2018 FIFA World Cup</i>	19
D. No transparency of the notification system	20
<i>D1. No detailed information about a competing event</i>	21
<i>D2. Authorities twisting the rules in favor of pro-governmental groups</i>	21
<i>D3. No open data on this topic</i>	21
E. No requirements as to the alternative place	22
(β) Prohibition to hold public events at certain locations.....	24
A. Changes in the Supreme Court and the Constitutional Court case-law, and local laws	24
B. Local laws.....	26
(γ) Operation of the time-limit for notification of public events	26
A. General: inflexible time-limits (§456).....	27
B. Situations in which the entire notification time-limit fell on a public holiday (§§448-450)	28
C. Spontaneous assemblies (§§451-455)	29
(δ) Procedure for informing the organisers about the authorities' decision in response to a notification of a public event	29
(ε) Dispersals of public events and arrests of the participants.....	31
A. Massive and arbitrary detentions	31

B.	Excessive violence by the police and inhuman treatment of detained participants	32
C.	Procedural violations by police during detentions and further arrests	32
D.	Administrative charges	32
E.	Criminal charges	34
F.	Civil claims against the organizers of the summer 2019 protests in Moscow	34
G.	Students	35
H.	Mobile Internet shutdown during the protest in Moscow	35
I.	Peaceful assemblies involving few participants	35
(ζ)	Security measures taken by the police during public events	36
II.	Article 13 (<i>ineffective judicial control</i>)	38
III.	Article 5 (<i>unlawful arrests</i>)	40
CONCLUSION AND RECOMMENDATIONS		41
EXHIBITS		46

GLOSSARY

CAO	Russian Code of Administrative Offences
Convention	European Convention on Human Rights
Criminal Code	Criminal Code of the Russian Federation
EHRAC	European Human Rights Advocacy Centre
European Court	European Court of Human Rights
FSB	Federal Security Service of the Russian Federation
Government	Government of the Russian Federation
HRC Memorial	Non-governmental organization Human Rights Centre Memorial
Hyde-parks	Platforms or territory specially designated for public assemblies under Public Events Act and Local Laws
<i>Lashmankin</i>	Case of Lashmankin et al. v. Russia, applications nos. 57818/09 and 14 others, judgement of 7 February 2017, final of 29 May 2018
Public Events Act	Federal Law no. 54-FZ of. 19 June 2004 "On assemblies, meetings, demonstrations, marches and pickets"
Ruling No. 28	Plenary of the Supreme Court issued Ruling No. 28 "On Certain Issues Arising in the Judicial Practice in Administrative Cases and Administrative-offence Cases Regarding Application of the Legislation on Public Assemblies" of 26 June 2018

INTRODUCTION

1. The present Report has been prepared by NGO Human Rights Centre Memorial (hereinafter, “HRC Memorial”) and human rights media project OVD-Info according to the Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.
2. HRC Memorial, <https://memohrc.org>, is a Moscow-based NGO, founded in 1992. Human Rights Centre “Memorial” works in partnership with, among others, the London-based European Human Rights Advocacy Centre (hereinafter, “EHRAC”) in a project aimed at bringing cases before the European Court of Human Rights (hereinafter, “the European Court”). More than 700 applications concerning human rights violations in the Russian Federation have been lodged with the Court within the framework of this joint project. One of the priorities of HRC Memorial is the protection of freedom of assembly.
3. OVD-Info, www.ovdinfo.org, is an independent human rights media project aimed at monitoring cases of political persecution in Russia and providing legal assistance to victims of such persecution. OVD-Info was founded during the mass protests of December 2011, as a volunteer project with the purpose of giving publicity to information on arrests of protest participants. Today OVD-Info operates a 24-hour national hotline to collect information on all types of political persecution, to coordinate legal assistance to its victims, to provide legal education to activists, and to research different types of political persecution in Russia.
4. This Report describes the execution by the Russian Federation of the Judgment of the European Court in the case of *Lashmankin et al. v. Russia*, application No. 57818/09 (hereinafter, “*Lashmankin*”).
5. In *Lashmankin*, the European Court found violations of the right to freedom of assembly in Russia. The European Court acknowledged *inter alia* violations of Articles 11, 13, and 5 of the European Convention of Human Rights (hereinafter, “Convention”):
 - Violations of Article 11 were found in the lack of effective legal safeguards against arbitrary and discriminatory exercise of the wide discretionary powers to refuse or to grant requests to hold public events (§ 430); and in the disproportionate measures employed by the authorities towards non-approved peaceful assemblies (§§461-463 and 515), etc.;
 - Violations of Article 13 (in conjunction with Article 11) were found in the absence of an effective remedy to challenge refusals to approve the location, time and manner of conduct of a planned public event (§ 360);
 - Violations of Article 5 were found in the deprivation the participants’ liberty in violation of domestic law.
6. On 13 April 2018, the Government of the Russian Federation (hereinafter, “the Government”) submitted to the Committee of the Ministers an Action Plan on the implementation of the Court’s findings in *Lashmankin*. The Government proposed a number of measures designed to eliminate and prevent the violations of the Convention found by the Court.

7. In the present report, we would like to provide an assessment of the proposals made by the Government, as well as to inform the Committee of the Ministers about the current status of the right to public assembly in Russia, and the additional measures taken by the Government since *Lashmankin*.
8. The report relies on the following:
 - data collected by OVD-Info, which is based on the requests for legal or media help by protesters and organizers of protests;
 - OVD-Info's internal or published statistics, which are based on its own legal experience in helping protesters (e.g. OVD-Info consulted with or provided attorneys for more than 3,000 people during the summer protests of 2019);
 - HRC Memorial's and OVD-Info's experience in challenging refusals to approve public assemblies;
 - the analysis of other published court decisions;
 - OVD-Info's or other media publications.
 - The structure of our analysis (section "ANALYSIS OF THE CURRENT SITUATION" below) generally follows the structure of the problems set out in the European Court's judgment in *Lashmankin* (sections α - ζ of *Lashmankin*).

EXECUTIVE SUMMARY

9. Since *Lashmankin*, the situation with respect to the right to freedom of peaceful assembly in Russia has not changed significantly.
10. On 26 June 2018, the Plenary of the Supreme Court issued Ruling No. 28 “On Certain Issues Arising in the Judicial Practice in Administrative Cases and Administrative-offence Cases Regarding Application of the Legislation on Public Assemblies” (hereinafter, “Ruling No. 28”). This was the only measure taken by the Government that could effectively change the situation. This Ruling is a positive development as it contains several points in compliance with the European Court’s findings in *Lashmankin*. However, not all instructions of Ruling No. 28 are in compliance with the European Court’s opinion. Furthermore, even the positive requirements of Ruling No. 28 are not implemented in practice by the Russian authorities and courts.
11. Below is the short summary of the issues raised in *Lashmankin* and our update as to their status today.

Issue	Violations found in Lashmankin (§ of Lashmankin)	Current situation
Violations of Article 11		
<p>(α) The authorities’ proposals to change the location, time, or manner of conduct of the applicants’ public events</p>	<p>1. Russian law provides that authorities should offer a well-reasoned rationale for their refusal to approve a public assembly. However, there are no legal criteria for what could be considered “well-reasoned”. The law does not provide that assemblies may be refused only if “necessary in a democratic society”, and therefore does not require any assessment of the proportionality of the non-approval (§419). This gives a wide discretion to authorities.</p>	<p>Ruling No. 28 attempted to explain the notion of “well-reasoned”. Ruling No. 28 instructs courts to use the criterion of proportionality. The authorities and the courts often ignore these instructions. Either the authorities and the courts consider Ruling No. 28’s directions vague regarding “specific” argumentation, or these institutions are deliberately ignoring Ruling No. 28.¹</p>

¹ See section I-(α)-A below.

2. The Court found that, in practice, the reasons for refusal to approve an event are often **arbitrary and discriminatory** (§§421-429).

Russian authorities continue to misuse their wide discretion to refuse public assemblies, especially those in support of the opposition or in relation to ecology problems. The reasons for refusal are usually formalistic and not supported by any facts or documentation. As a most common reason for non-approval, authorities refer to some unspecified event that had allegedly been scheduled at the same place and time before, or to formal disruption to ordinary life that may be caused by the claimed assembly.²

3. The law governing the power to propose a change of location, time or manner of conduct of public events does not meet the Convention “quality of law” requirements (§430).

Local (regional) regulations still remain of low quality: they introduce additional requirements that impede the organisation and holding of public events, they contain significant semantic gaps, and they ignore the points practically necessary for organising a public meeting. The Saint Petersburg Public Events Act, for instance, does not explain exactly which government agency shall be notified to hold a public event in the city, referring to subordinate acts.³ Moreover, there are also bans on holding public events at certain times. For example, during the 2017 FIFA Confederations Cup and the 2018 FIFA World Cup in Russia, the local authorities restricted all public events that were not directly connected to the sport competitions.⁴

² See section I-(α)-B below.

³ See section I-(α)-C1 below.

⁴ See section I-(α)-C2 below.

	<p>4. No transparency of the notification system (not mentioned in <i>Lashmankin</i>)</p>	<p>Russian authorities do not publish information about notifications and results of their authorization, or of respective statistics. This practice leads to the non-transparent notification system and facilitates abuses by the authorities.⁵</p>
	<p>5. The law does not require that the location or time proposed by the authorities as an alternative to the location chosen by the organizers should be such that the message which they seek to convey is still capable of being communicated (§426).</p>	<p>Ruling No. 28 further provides that the courts should take into account the requirement that the public authority must suggest a specific alternative location and time for the public event compatible with its purposes and its social and political significance (point 13). In practice, this does not happen. The authorities either do not suggest the alternative place at all, or suggest an incompatible place far from the centre, usually in a platform or territory specially designated for public assemblies (hereinafter, “hyde-parks”).⁶</p>
<p>(β) Prohibition of holding public events at certain locations</p>	<p>There are legislative bans on holding public events at certain locations in Russia. The Court considered these absolute bans disproportionate and unnecessary in a democratic state (§§431-442)</p>	<p>There are still numerous statutory bans on public events in specific places (e.g., in Red Square, near buildings occupied by public authorities, urban housing, roads, pharmacies, bakeries, etc.). The bans are still applied automatically to opposition groups and human rights groups.⁷</p>

⁵ See section I-(α)-D below.

⁶ See section I-(α)-E below.

⁷ See section I-(β) below.

<p>(γ) Operation of the time-limit for notification of public events</p>	<p>1. Time-limits for the notification of public events are applied in an automatic and inflexible manner, without any regard to the specific circumstances of each case (§§456).</p> <p>2. That is especially the case in situations where it is impossible to comply with the time-limit, for example because of public holidays (§§448-450).</p> <p>3. This is also the case with justified spontaneous assemblies (§§451-455).</p>	<p>1. In general, the time-limits remain inflexible. According to the Ruling No. 28, a notification submitted outside of the statutory time-limit is not subject to review by the authorities.⁸</p> <p>2. The problem with public holidays was solved,⁹</p> <p>3. However, Russian law still contains no provisions allowing for spontaneous events without a prior notification.¹⁰</p>
<p>(δ) Procedure for informing the organisers about the authorities' decision in response to a notification of a public event</p>	<p>Authorities notify organizers about non-approvals too late, which prevents organisers from challenging the refusal prior to the planned date of the event (§§457-458).</p>	<p>In Ruling No. 28, the Supreme Court stated that authorities should inform organisers of their decisions within three days, even if the last day of this time-limit falls on weekend. Therefore, the authorities should use all the reasonable communication services, to ensure a timely delivery. In case no response is delivered before the deadline, the public event is presumed to be approved (point 10).</p> <p>However, several serious problems and legislative gaps still remain: the deadlines for the further communication between organizers and the authorities, following the first response, are still not regulated; the local regulations still do not require the authorities to act in good faith, so authorities still tend to respond at the last minute of the deadline or respond by postal mail.¹¹</p>

⁸ See section I-(γ)-A below.

⁹ See section I-(γ)-B below.

¹⁰ See section I-(γ)-C below.

¹¹ See section I-(δ) below.

(ε) Dispersals of public events and arrests of the participants	Russian authorities display zero tolerance towards unlawful assemblies, even if they are peaceful, involve few participants, and create only minimal or no disruption of ordinary life (§§459-463).	Ruling No. 28 contains no recommendations to show tolerance towards any unapproved public assemblies. There are still such problems as: massive and arbitrary detentions (2,700 people detained during the summer 2019 protests), numerous administrative charges (2,320 administrative cases after summer 2019 protests), criminal charges, excessive violence, and procedural violations by police. With respect to the summer protests of 2019, HRC Memorial filed more than 380 applications with the European Court. ¹²
(ζ) Excessive security measures taken by the police during public events	In adopting the exceptionally drastic security measures during the applicants' meeting, the domestic authorities acted in an arbitrary and discriminatory manner (§§464-470)	Public assemblies involving a significant number of participants are still usually subject to the following strict security measures: metal detectors hindering access to the assemblies, disproportionate deployment of policemen and national guards, and the censorship of banners and posters. ¹³
Violations of Article 13		
Ineffective judicial control	The scope of judicial review is limited to examining the lawfulness of the proposal to change the location, time or manner of conduct of a public event, and does not include any assessment of its “necessity” and “proportionality” (see §§342-361, 428, 460).	In practice, courts do not exercise an effective control over arbitrary non-approvals of public assemblies. Courts use a formalistic approach and do not analyze whether the reasons for refusal were real and proportionate. For example, out of 179 cases of appeals challenging non-approvals in Moscow City Court, only five claims of organizers were satisfied (although this occurred, too late—after the planned date of the event). ¹⁴
Violations of Article 5		

¹² See section I-(ε) below.

¹³ See section I-(ζ) below.

¹⁴ See section II below.

<p>Unlawful arrests</p>	<p>The Court considered that applicants had been arrested by the police during the public events for the purpose of drawing up administrative protocols. The Court found that the domestic authorities had failed to provide justification, as required by Article 27.3 of the Russian Code of Administrative Offences (hereinafter, “CAO”), that the arrest was an “exceptional case” or that it was “necessary for the prompt and proper examination of the administrative case and to secure the enforcement of any penalty to be imposed”, and found the arrests unlawful (§§486-492).</p>	<p>In Ruling No. 28, the Supreme Court repeated the provisions of the Code of Administrative Offences that detention as a security measure should be applied only in exceptional circumstances, and that escort to the police station should be done as fast as possible (point 40).</p> <p>However, this has not changed the situation and the same unlawful arrests still systematically take place during public assemblies. With respect to the summer protests of 2019, HRC Memorial has filed more than 380 applications with the European Court, based <i>inter alia</i> on Article 5.¹⁵</p>
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¹⁵ See section III below.

MEASURES TAKEN BY THE GOVERNMENT

12. The Action Plan submitted by the Government on 13 April 2018 indicated further general measures taken by the Government:

- Disseminating copies of the *Lashmankin* judgment among domestic authorities and courts, as well as online publication of the judgment;
- Holding a conference (a public discussion) “Russia and the European Court of Human Rights - Enhancing the Dialogue”;
- The Supreme Court prepared a non-binding review “Universalization of the legal stances of international human rights organizations, including legal positions of the European Court stated in its judgments in the cases of the examined category, concerning the issue of protection of the freedom of assembly and associations”;
- Preparing the Plenary Resolution of the Supreme Court regarding the freedom of public assembly;
- Elaborating on the necessity to make amendments to the Russian legislation and law enforcement practice.

13. On 26 June 2018, the Plenary of the Supreme Court issued Ruling No. 28 “On Certain Issues Arising in the Judicial Practice in Administrative Cases and Administrative-offence cases regarding application of the legislation on public assemblies” (Ruling No. 28).

ASSESSMENT OF THE MEASURES TAKEN BY THE GOVERNMENT

14. In our opinion, it is clear that the measures taken by the Government, except for Ruling No. 28, have had no legal effect and are, therefore, ineffective by their nature.
15. Ruling No. 28 is not binding on Russian courts and authorities. In practice, courts usually follow the Supreme Court's recommendations, therefore, Ruling No. 28 could theoretically be an effective measure.
16. Ruling No. 28 is a positive development, since it provides for various instructions that are in compliance with the European Court's position regarding public assemblies. For example, Ruling No. 28:
 - instructs the courts to examine whether the interference by a public authority with the right to freedom of public assembly was lawful, necessary, and proportionate to a legitimate aim (point 9);
 - states that courts must verify whether the proposal to change the location or time of a public event or the manner of conducting the event was made within the three-day statutory time-limit. Failure to comply with that time-limit means that the public event must be considered to be approved by default (point 10);
 - provides that the courts must take into account that a proposal to change the location or time of a public event or the manner in which it is to be conducted must not be arbitrary or unreasoned and must mention specific facts showing that public interest considerations make it manifestly impossible to hold the public event at the chosen location or time (point 12).
17. However, there are negative aspects in the Ruling. First, it contains some instructions that are not consistent with the European Court's position (e.g., a formal approach allowing authorities to prosecute a participant based solely on the fact that the assembly was not approved). Second, there are still gaps which were not corrected by Ruling No. 28 (e.g., no specified timeline for the follow-up communication between organisers and authorities). Most importantly, in practice, the positive instructions of Ruling No. 28 are seldom complied with by the authorities and courts.
18. In the section "ANALYSIS OF THE CURRENT SITUATION" below, we provide and analyse all the relevant provisions of Ruling No.28, as well as their practical implementation.
19. We submit that the real situation with respect to public assemblies has not changed significantly since Ruling No. 28. Articles 5, 11, and 13 of the Convention cases similar to *Lashmankin* are still constantly violated by Russian authorities and courts. The clear evidence of this is that after the summer protests of 2019, more than 2,700 people were detained and around 2,300 people were charged with administrative violations. To date, around 380 applications regarding such violations have been filed with the European Court.
20. Moreover, after *Lashmankin* the Government took legislative measures regarding public assemblies in Russia that are negative and restrictive.

21. In October 2018, the CAO was amended with a new Article 20.2.3 establishing liability for organisers of a public event, if they do not notify authorities about the cancellation of the public event or notify authorities about a public event without the intention to hold it.¹⁶ Furthermore, on 27 December 2018, liability for involving minors in unauthorized public events was added¹⁷. At the same time, the Physical Education and Sports Act was also amended. According to the new version of this Act, the president of the Russian Federation is authorized to restrict public events during any international sports events.¹⁸ Thus, the Russian legislation was amended to be more restrictive.
22. The above-mentioned statutory problems also remain in a draft of the new Code of Administrative Offence, published by the Russian Ministry of Justice at the end of January 2020.¹⁹

¹⁶ See Article 20.2.3 of CAO.

¹⁷ See Section 1.1 of the Article 20.2 of CAO.

¹⁸ Section 7 of Article 20(14.2) of the the Physical Education and Sports Law No.329-FZ of 4 December 2007.

¹⁹ See: the 1 Part: <https://regulation.gov.ru/projects#npa=99059> (accessed on 25 March 2020); the 2 Part: <https://regulation.gov.ru/projects#npa=99061> (accessed on 25 March 2020). See also a relevant expert opinion of HRC “Memorial” lawyers: <https://memohrc.org/ru/reports/zaklyuchenie-na-proekt-kodeksa-rf-ob-administrativnyh-pravonarusheniyah-i-proekt> (accessed on 25 March 2020).

ANALYSIS OF THE CURRENT SITUATION

I. Article 11

(α) The authorities' proposals to change the location, time or manner of conduct of the applicants' public events

A. Lack of legal criteria as to the reasons of the authorities' proposal

23. *Findings in Lashmankin (§419): according to the Russian law, if the authorities do not approve the place or time of the assembly suggested by an organiser, they should propose an alternative place or time. Such a proposal should be "well-reasoned". In Lashmankin, the Court found that the Russian law does not provide substantive criteria on the basis of which to determine whether the executive authorities' proposals are "well reasoned". The Court further found that there is no requirement that the proposal be considered "necessary in a democratic society", and therefore no requirement for Russian courts to assess proportionality of a measure.*
24. In Ruling No. 28, the Supreme Court stated that the proposal to change the time or place of the public assembly should contain "specific" facts showing that "it is impossible to hold such an assembly in the claimed time and place due to the need to preserve public interests" (point 12). The Supreme Court further listed these public interests: "normal functioning of essential public utilities, social and transport infrastructure and communications (such as emergency maintenance work on engineering and technical networks); maintenance of public order and safety of citizens (both those participating in the public event and passers-by, including the risk of building collapse or an expected number of participants in excess of the maximum capacity of the location); disruption of pedestrians or traffic or of citizens' access to residential premises or to social or transport facilities); and other similar considerations".
25. The Supreme Court noted that a mere inconvenience caused to citizens by a public event, or an assumption by the authorities that there might be a risk of such inconvenience, may not in themselves be considered valid reasons for changing the location or time of a public event. At the same time, the Supreme Court stated that such an inconvenience may be a reason for a non-approval if the public assembly at issue would violate "the requirements regarding the transport and road traffic safety" or would "create obstacles to residents' access to accommodations or transport or social infrastructure, regardless of the additional measures taken by the authorities".
26. The Supreme Court stated that authorities should provide the courts with the evidence confirming their specific obstacles preventing the holding of a public event at the claimed place.
27. Furthermore, the Supreme Court instructs the domestic courts that, when examining complaints against the authorities' decisions to change the purpose of a public event, location, type, or the manner in which the event had to be conducted, to assess whether the interference had been lawful, necessary, and proportionate to a legitimate aim. The Supreme

Court further requires an examination of whether the reasons for the interference advanced by the public authority had been relevant and sufficient.

28. Although the above directions were aimed at improving the existing practice, in fact they have not been effective. As a matter of practice, the authorities still fail to indicate “specific” facts preventing the holding of an assembly (see section I-(α)-B below). In judicial procedures regarding a challenge of the formal refusals, the authorities still fail to provide evidence of such specific facts as well, and nevertheless the courts rule in their favor (see section III below). The courts do not assess the proportionality of the authorities’ measures. The reason for this practice is either, that the authorities consider Ruling No. 28’s directions vague regarding “specific” argumentation, or, that they deliberately ignore Ruling No. 28.

B. Discretionary and arbitrary reasons of refusal in practice

29. *Findings in Lashmankin (§§421-430): the Court found that the Russian authorities exercise wide discretion over whether to refuse a public assembly or not. The Court found that the reasons for refusing to approve an event are often arbitrary and discriminatory.*
30. We submit that the situation has not changed to date. The refusals and alternative proposals are still, as a matter of practice, ill-reasoned. Below are examples of the most common reasons provided by the authorities, as well as an explanation of why these reasons are inappropriate and arbitrary.

B1. Other public events scheduled at the same location and time

31. *Findings in Lashmankin (§422): the Court considered that the refusal to approve the venue of a public assembly solely on the basis that it is due to take place at the same time and at the same location as another public event, and in the absence of a clear and objective indication that both events cannot be managed in an appropriate manner through the exercise of policing powers, is a disproportionate interference with the freedom of assembly.*
32. This problem was not dealt with by Ruling No. 28. The only explanation in Ruling No. 28 concerned competing events in hyde-parks (see section I- (α)-E below).
33. In practice, citing a “competing” event, as grounds for refusal to approve an assembly, is still often used by the authorities in a formalistic way.
34. For example, during September and October of 2019, activists in Neftekamsk filed 20 notifications in order to hold a public ecology meeting, however the administration refused all the 20 notifications. Each time, the administration claimed that some other organization had already requested to hold an event at the same time and place, without explaining why the two events were incompatible. Moreover, in fact no such competing event ever occurred²⁰. As another example: the eco-activists in Krasnoyarsk filed 53 notifications regarding protests on 53 different squares of the city on different days and times (7 to 14

²⁰ See: <https://ovdinfo.org/stories/2019/11/19/v-bashkirii-20-raz-za-dva-mesyaca-ne-soglasovali-ekologicheskii-miting-rasskaz> (accessed on 16 April 2020).

April 2019, 9 a.m. to 9 p.m.). The administration responded that all the locations were already taken by some other unidentified event.²¹

35. Another problem is the collision between public assemblies and cultural events. Cultural events and festivals are organized in a different ways and according to a different statutory time-limit than public events. For example, in Moscow²² and Nizhny Novgorod²³ organisers of a cultural event must notify authorities at least a month in advance, and in St. Petersburg²⁴, organisers of a cultural event have to notify authorities no later than 15 days before the intended cultural event. At the same time, according to the Public Events Act²⁵, for public assemblies the competent authorities shall be notified no earlier than 15 days before the public event. Thus, cultural events take statutory priority over public events.

B2. Formal disruptions of ordinary life

36. *Findings in Lashmankin (§§422-423): the Court found that in a large number of cases the authorities' refusal to approve a public event was based on the claim that the event would disrupt ordinary life, without taking into consideration ways of minimising such disruptions. This was considered as an unjustified interference with the right to freedom of assembly.*

37. The authorities still use standard formulas when refusing notices for public events, e.g., "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." The city authorities resort to this formulation, without explaining what exact interference was possible and without considering ways of minimising such disruptions.²⁶

38. "Reparation works" are also a commonly used reason for a non-approval.²⁷ The authorities usually fail to provide any detailed information about such works or to explain how these

²¹ See: <https://ovdinfo.org/stories/2019/05/17/chastnye-gorodskie-ploshchadi-i-53-feykovyh-piketa-kak-v-krasnoyarske> (accessed on 16 April 2020).

See also: <https://ovdinfo.org/express-news/2019/11/25/vlasti-permi-ne-soglasovali-akciyu-alyansa-vrachej-posvyashchennuyu> (accessed on 16 April 2020).

²² point 3 of the Order No. 1054-RM by Mayor of Moscow of 5 October 2000, <http://docs.cntd.ru/document/3621658> (accessed on 16 April 2020).

²³ point 5 of the Resolution No. 3881 by Nizhny Novgorod City Administration of 27 September 2011, <http://docs.cntd.ru/document/944954920>.

²⁴ point 2 of the Decree No. 28-P by Governor of St. Petersburg of 2 April 1999, <http://docs.cntd.ru/document/201329> (accessed on 16 April 2020).

²⁵ The Federal Law no. 54-FZ of. 19 June 2004 "On assemblies, meetings, demonstrations, marches and pickets".

²⁶ See: <https://ovdinfo.org/express-news/2019/12/01/levomu-soprotivleniyu-ne-soglasovali-akciyu-v-chest-dnya-konstitucii-rossii>;

<https://ovdinfo.org/express-news/2019/11/25/v-moskve-vlasti-ne-soglasovali-akciyu-posvyashchennuyu-probleme>;

<https://ovdinfo.org/express-news/2019/10/26/levomu-soprotivleniyu-ne-soglasovali-akciyu-v-chest-oktyabrskoy-revolyucii>;

<https://ovdinfo.org/express-news/2019/10/29/v-moskve-vlasti-otkazalis-soglasovat-pikety-v-zashchitu-zhivotnyh> (accessed on 16 April 2020);

etc.
²⁷ See : <https://ovdinfo.org/express-news/2019/01/16/vlasti-peterburga-ne-soglasovali-miting-pamyati-markelova-i-baburovoy>; <https://ovdinfo.org/articles/2019/09/05/sokolniki-dlya-nesoglasovannyh-kak-v-moskve-ne-razreshayut-rayonnye-mitingi-i>;

<https://ovdinfo.org/express-news/2019/10/25/v-kirove-sud-priznal-zakonnym-otkaz-vlastey-soglasovat-piket-na-5-chelovek-v> (accessed on 16 April 2020).

works would prevent the public event at issue. When such refusals are further challenged in a court, the authorities may again not provide this information or evidence that such works actually took place, but the court still rules in their favour.²⁸

B3. Prohibition of LGBT-events (§429)

39. LGBT “propaganda” is prohibited in Russia. For this reason, all demonstrations devoted to LGBT-rights are prohibited as well (see in detail, communications regarding the execution of *Alekseyev v. Russia, Nos. 4916/07; 25924/08; 14599/09*). Ruling No. 28 does not contain any positive recommendations or instructions in this regard.

B4. Other

40. *Findings in Lashmankin (§421): the Court found that the authorities refer to a wide variety of reasons to justify their proposals for a change to the location, time, or manner of conduct of a public event. Moreover, the authorities did not have to show that the reasons given were sufficient to justify a restriction of the freedom of assembly, that is to say, that such a restriction was necessary in a democratic society and, in particular, proportionate to a legitimate aim.*

41. It is submitted that the situation has not changed to date. The authorities still cite a wide variety of reasons to justify their proposals for a change to the location, time, or manner of conduct of a public event. Below are the examples of such reasons:

- On 25 February 2020, the prefecture of Moscow’s Central District refused to approve a public event with 15 participants in support of a publisher and activist Julian Assange and media freedom in general²⁹. The authorities decided that the topic of this public event was not connected with Russia and, therefore, would have contravened the following statutory provision: “the objective of public event is free expression and forming of opinions, making claims concerning various issues of political, economic, social and cultural life in the country, and foreign policy”.³⁰
- In March 2017, in Penza, city authorities proposed that organisers change the location of an anti-corruption rally. Organisers had estimated that there would be 200 participants, but the city authorities stated that they anticipated that the number of actual participants would be only 20 to 30 people and that a smaller venue would be more appropriate. After the rally, local authorities stated, in a report to the presidential Council for Human Rights, that 300 people took part in this public event³¹.

C. Other problems with quality of law

42. *Findings in Lashmankin (§430): the Court found that the Russian domestic legal provisions governing the power to propose a change of location, time or manner of conduct of public events do not meet the Convention “quality of law” requirements.*

²⁸ See : <https://www.mos-gorsud.ru/mgs/services/cases/appeal-admin/details/586297a2-7971-44e5-b8dc-63c14fb63109?caseNumber=33%D0%B0-1324/18> (accessed on 16 April 2020).

²⁹ See Exhibit No. 1.

³⁰ See article 2(1) of the Public Event Law.

³¹ See: <https://ovdinfo.org/reports/art-ban#2-7> (accessed on 25 March 2020).

43. It is submitted that the situation has not changed to date (see sections I- (α)-A and B above). Additionally, there are other aspects of the “quality of law” issue to consider in the Russian legal provisions governing public events. First of all, there are local regulations governing the notification of a public event. Secondly, there were special legal regulations during the 2017 FIFA Confederations Cup the 2018 FIFA World Cup in Russia.

C1. Local regulations

44. The Public Events Act does not govern the procedure for submitting a notification in detail, delegating it to the relevant local laws. Moreover, the term “the procedure for submitting a notification” is not defined in the Public Events Act. Consequently, the local authorities understand and regulate this issue in different ways.

45. In general, local regulations introduce additional requirements that impede the organisation and holding of public events³². Being overly detailed in some parts, the local legislation contains significant semantic gaps and ignores the points practically necessary for organising a public meeting. The Saint Petersburg Public Events Act, for instance, does not explain exactly which government agency shall be notified to hold a public event in the city, referring instead to subordinate acts. As of March 2020, there are similar legislative gaps in the local laws of 53 Russian regions.³³ Since no single authority is in charge of processing notifications, a submitted notification may be viewed as submitted to a wrong authority. In this case a public event will not be authorized.

46. The complexity of the regional regulatory framework and contradictions between local acts is another problem. For example, there are three subordinate acts governing differently the notification process for public events on Komsomol Square in Yakutsk³⁴.

C2. Special legal provisions during the 2017 FIFA Confederations Cup and the 2018 FIFA World Cup

47. The work on legislation to regulate public events during the 2017 FIFA Confederations Cup and the 2018 FIFA World Cup started long before the actual sport events³⁵.

48. In 2013, the first federal law about preparation for and carrying out of the championship was adopted³⁶. In order to administer public safety, the law granted³⁷ the president the power to prohibit public events not directly connected to the sport competitions.

49. In May 2017, a presidential decree on safety measures during the Confederations Cup and the World Cup was published³⁸. It gave³⁹ local authorities power to restrict the conduct of

³² See: https://ovdinfo.org/reports/iskusstvo-zapreshchat_2#5 (accessed on 25 March 2020).

³³ See: https://ovdinfo.org/reports/iskusstvo-zapreshchat_2#5 (accessed on 25 March 2020).

³⁴ See: https://ovdinfo.org/reports/iskusstvo-zapreshchat_2#4-3 (accessed on 25 March 2020).

³⁵ See: <https://ovdinfo.org/reports/art-ban#10-2> (accessed on 25 March 2020).

³⁶ See: <https://rg.ru/2013/06/11/championat-dok.html> (accessed on 25 March 2020).

³⁷ Article 12 (1.1) of the Federal Law No. 108-FZ of 7 June 2013.

³⁸ See: <https://rg.ru/2017/05/10/prezident-ukaz202-site-dok.html> (accessed on 25 March 2020).

³⁹ Section 11 of the Presidential Decree No. 202 of 9 May 2017.

public events not directly connected to the Confederations Cup and the World Cup from June 1 to July 12, 2017 and from May 25 to July 25, 2018, respectively⁴⁰.

50. In practice, even solo demonstrators were detained during that period in Russia. For instance, on 14 July 2017, Mr. Egor Ekimov was detained and then charged with the administrative offence according to article 20.2(2) of the CAO. He had held a solo static demonstration against the World Cup and political repressions⁴¹.
51. At least 1721 peaceful participants in public events were detained during the 2017 FIFA Confederations Cup⁴² and, 114 during the 2018 FIFA World Cup⁴³ in Russia.
52. Finally, near the end of 2018 the Physical Education and Sports Act was amended. According to the new version of the law, the president of the Russian Federation is authorized to restrict public events during any international sports event⁴⁴.

D. No transparency of the notification system

53. As a matter of practice, Russian authorities do not systematically publish information about notifications to hold public events or the results of their consideration. The authorities do not provide organisers with detailed information about competing events or other reasons for interference with freedom of assembly. Overall, these omissions lead to a completely non-transparent notification system.
54. It is submitted that, in practice, such an attitude has the following negative effects:
 - the organisers cannot check the veracity of the reasons provided by the authorities;
 - the authorities can use the lack of the transparency to infringe the rules of the authorisation process;
 - civil society cannot monitor the current situation concerning the authorisation of public events.
55. Below are examples of the mentioned problems.

⁴⁰ Furthermore, the local authorities tended to designate special places for public events (usually different from the Hyde-parks). 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 public events (for instance, in Yekaterinburg it was allowed to hold public events only between 2 and 4 pm).

In some cases municipal authorities went beyond the authority given to them by the presidential decree. In Rostov-on-Don, not only the time of the public events 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 was a clause about informing local divisions of the Ministry of Internal Affairs and the Federal Security Service of the Russian Federation (hereinafter, “FSB”) at the receipt of notification, and sometimes even about the necessity to obtain an approval to hold a public event directly from these institutions.

There is confusion about the time frame as well: in some cities, the World Cup restrictions applied to the actions held between 25 May and 25 July, 2018, 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.

⁴¹ See: <https://ovdinfo.org/express-news/2018/07/14/v-peterburge-zaderzhali-piketchika-s-risunkom-kritikuyushchim-chempionat> (accessed on 25 March 2020).

⁴² See Exhibit No. 2.

⁴³ See Exhibit No. 3.

⁴⁴ Section 7 of Article 20(14.2) of the Physical Education and Sports Act No.329-FZ of 4 December 2007.

D1. No detailed information about a competing event

56. The competing events might be 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 events. In 2017, the organizers of protest actions for the March 26 rally received 37 refusals that referred to other events allegedly scheduled in the requested location. Twenty-four refusals (out of 37) did not mention the name of the competing event, 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 26 March 2017 in Kazan were rejected “because of events previously planned in these places”. In Belgorod, an organizer was simply informed that both suggested locations “will be occupied”.⁴⁵

D2. Authorities twisting the rules in favor of pro-governmental groups

57. The lack of detailed information about the authorization process facilitates twisting the rules in favor of pro-governmental groups. A clear example can be seen in the case of the 26 March 2017 action in Cheboksary.

58. On 14 March 2017, the Young Guard of the United Russia booked a huge number of sites throughout the city from 7 a.m. to 10 p.m., indicating the number of participants as 200. The next day, the organizer of the anti-corruption rally notified a local authority about his intention to hold an assembly on one of these sites. The city administration replied that the location was occupied and suggested postponing the assembly for another day. The organizer demanded an alternative location, as prescribed by law. However, the authorities insisted on changing the date instead. On 22 March, the organiser filed a notice to hold a picket at a location that was not among the sites occupied by the Young Guard. The following day, the Young Guard requested to add 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 addition and informed the organizer that the location would be occupied.⁴⁶ These case details were uncovered by chance during research for a report to the Presidential Council for Civil Society and Human Rights’⁴⁷.

D3. No open data on this topic

59. There are no published statistics on this topic. However, the authorities appear to be collecting this data: for example, we know from the human rights ombudsman’s 2014 report⁴⁸ that the number of refusals to approve public events that year ranged from 8.5% in Yekaterinburg to almost a quarter (23%) in Samara.

⁴⁵ See: <https://ovdinfo.org/reports/art-ban#3-2-1> (accessed on 25 March 2020)

⁴⁶ See: <https://ovdinfo.org/reports/art-ban#3-2-1> (accessed on 25 March 2020).

⁴⁷ See: <http://president-sovet.ru/documents/read/575/> (accessed on 25 March 2020).

⁴⁸ See: <https://rg.ru/2015/05/06/doklad-site-dok.html> (accessed on 25 March 2020).

60. In March 2016, the first deputy minister of the Interior Alexander Gorovoy openly stated⁴⁹: “We have noticed an increased number of refusals to hold rallies and demonstrations. The number of non-approvals is increasing.”⁵⁰

E. No requirements as to the alternative place

61. *Findings in Lashmankin (§426): the Court observed that the Public Events Act does not require that the location or time proposed by the authorities as an alternative to the location chosen by the organisers should be such that the message which they seek to convey is still capable of being communicated. The Court considered that the practice whereby the authorities allow an assembly to take place, but only at a location which is not within sight and sound of its target audience and where its impact will be muted, is incompatible with the requirements of Article 11 of the Convention.*

62. Ruling No. 28 further provides that the courts should take into account that the public authority is required to suggest a specific alternative location and time for the public event compatible with its purposes and its social and political significance (point 13).

63. It is submitted that in practice this does not happen.

64. According to the OVD-Info web-site, in at least 225 cases since July 2018, the authorities have not suggested an appropriate alternative place or time for an event.⁵¹

64.1. In 38 cases the authorities have suggested places outside of city centres.⁵² We know of three relevant judicial appeals. In all of them the courts have declared the authorities’ actions as legitimate.

64.2. In 40 cases the authorities have suggested conducting the events in special territories for public assemblies (the so-called “hyde-parks”, more details about them below).⁵³ We are aware of five judicial appeals against the authorities’ suggestions. In four, the courts declared the authorities’ actions to be legitimate and, in one case, illegitimate.

64.3. In 147 cases the authorities have not suggested any alternative place for the event.⁵⁴ We know of 36 relevant judicial appeals. In 25 the courts have declared the authorities’ actions as legitimate and, in 11 as illegitimate.

65. Additionally, it is worth describing the legal regulation and the practice of holding public events in hyde-parks.

Hyde-parks

66. Federal law requires regional authorities to set forth special platforms or territories for public assemblies, the so-called, hyde-parks. In such places, no prior notification should be

⁴⁹ See: <https://tass.ru/politika/2707418> (accessed on 25 March 2020).

⁵⁰ See: <https://ovdinfo.org/reports/art-ban#1> (accessed on 25 March 2020).

⁵¹ See Exhibit No. 4.

⁵² Ibid, Section 1.

⁵³ Ibid, Section 2.

⁵⁴ Ibid, Section 3.

required, if the number of participants is 100 or fewer (the number varies according to regional law).⁵⁵

67. In practice, this provision narrows down the protection of the right to public assembly, for the following reasons:

67.1. Despite a general provision that no prior notification for public events in hyde-parks should be required (if the number of participants is 100 or fewer), some regional laws nevertheless require the organizers of assemblies in hyde-parks to “inform” the authorities about such actions in advance. In practice, such informing appears to be the same as filing notifications in the usual way (see, for example, laws of Kalmykia, Kostroma, Kaliningrad region),⁵⁶ or even worse⁵⁷.

67.2. Hyde-parks are normally located outside of city centres, so that organizers are not able to attract mass public attention.⁵⁸ For example, in Moscow the only hyde-park is in Sokolniki Park. Not only is the Park itself outside of the city centre, but the platform for assemblies is hidden deep inside the park; it takes more than 20 minutes to get there from a subway station.⁵⁹ Previously, there was also a platform for 2000 people in the Gorky Park, but it was closed in 2015 without explanation.⁶⁰

67.3. Hyde-parks become the only location to hold a rally. In Ruling No. 28, the Supreme Court stated that the existence of hyde-parks should not prevent organisers from choosing another place for the public event (point 17). However, in practice the authorities tend to limit alternative options to only hyde-parks.⁶¹ The law, in fact, endorses such conduct, stating that:

*“After the regional authorities determine the special place in accordance with the para. 1.1 of this Article, public assemblies should be held, as a matter of rule, in such places”.*⁶²

Russian courts automatically consider a hyde-park a reasonable alternative suggestion, without reviewing whether it corresponds to the purposes of the event (see para. 65.2 above).

67.4. Rallies in hyde-parks may be denied. According to law, an organizer must file a notification to hold a public event in a hyde-park. In Ruling No. 28, the Supreme Court

⁵⁵ Para. 1.1. of Art. 8 of the Federal Law no. 54-FZ of. 19 June 2004 "On assemblies, meetings, demonstrations, marches and pickets" (hereinafter, “Public Events Act”).

⁵⁶ See: <https://ovdinfo.org/reports/specialnye-ploshchadki-dlya-mitingov#8> (accessed on 16 April 2020).

⁵⁷ For example, in Yamalo-Nenetsky autonomous region and in Stavropol region, notification should be given not later than 10 days before the event. This rule applies to pickets as well, although normally pickets should be declared not later than 5 days before the event (Para. 1. of Art. 7 of the Public Events Act)

⁵⁸ See: <https://ovdinfo.org/reports/specialnye-ploshchadki-dlya-mitingov#11> (accessed on 16 April 2020).

⁵⁹ See: <https://ovdinfo.org/articles/2019/09/05/sokolniki-dlya-nesoglasovannyh-kak-v-moskve-ne-razreshayut-rayonnye-mitingi-i> (accessed on 16 April 2020).

⁶⁰ See: <https://ovdinfo.org/articles/2020/02/27/mesto-ne-dlya-vstrech-kak-unichtozhili-gayd-park-v-stolichnom-parke-gorkogo> (accessed on 16 April 2020).

⁶¹ See: <https://ovdinfo.org/articles/2019/09/05/sokolniki-dlya-nesoglasovannyh-kak-v-moskve-ne-razreshayut-rayonnye-mitingi-i>; <https://ovdinfo.org/reports/specialnye-ploshchadki-dlya-mitingov#11> (accessed on 16 April 2020).

⁶² Para. 1.1. of Art. 8 of the Public Events Act.

stated that authorities may only refuse public assemblies in hyde-parks, if a notice for another “competing” event had been submitted earlier and both events would overrun the territorial limits of the place, or if there is a risk that police would not be able to keep both events peaceful and safe (point 15).

However, some regional laws still set forth the priority of approved assemblies over unapproved assemblies in hyde-parks (see, for example, laws of Astrakhan, Sverdlovsk, Tambov region, Zabaikalye.).⁶³ For example, the regional law in Astrakhan requires an organiser of an unapproved event in a hyde-park to suspend that event, if it clashes with the approved event at the same place and time.

(β) Prohibition to hold public events at certain locations

68. *Findings in Lashmankin (§§431-442): the Court considers that the general ban on holding public events at certain locations is so broadly drawn that it cannot be accepted as compatible with Article 11 §2.*

69. We submit that general bans on holding public events at certain locations are still enforced, both by the Public Events Act and relevant local laws. Also, the statutory term “in the immediate vicinity” is not defined.

70. Despite the fact that there have been positive changes in local laws as well as Supreme Court and Constitutional Court case law, the problem with the unjustified general ban on holding public events at certain locations remains.

A. Changes in the Supreme Court and the Constitutional Court case-law, and local laws

Supreme Court

71. In Ruling No. 28, the Supreme Court stated that, a person organising or holding a public event in the immediate vicinity of the locations specified in the Public Events Act or relevant local laws shall not face administrative charges, if the border of such immediate vicinity of the specific buildings is not determined by law or a special decree (point 29). However, the Supreme Court did not define the term “in the immediate vicinity” in general.

72. According to the Public Events Act, for instance, gatherings in the immediate vicinity of the Presidential residences are prohibited. The Moscow Kremlin is one of the residences, and public events are prohibited in the Red Square, the central square of Moscow located near the Kremlin. Nevertheless, the borders of the immediate vicinity of the Kremlin are not established. Contrary to Ruling No. 28, in practice, participants of public events in the Red Square are also charged with the administrative offence.

73. Below are the examples of such cases:

⁶³ See: <https://ovdinfo.org/reports/specialnye-ploshchadki-dlya-mitingov#7>; <https://ovdinfo.org/express-news/2020/02/18/v-astrahani-ne-soglasovali-piket-pamyati-nemcova-no-predlozhili-provesti> (accessed on 16 April 2020), etc.

- On 15 July 2019, the chairperson of the HRC Memorial, Alexander Cherkasov, the head of the Civic Assistance Committee, Svetlana Gannushkina, and a journalist of the Novaya Gazeta, Elena Milashina were detained during a demonstration in Red Square⁶⁴. It was a three-person static demonstration aimed to raise awareness of the absence of any meaningful investigation of the murder of the human rights activist Natalia Estemirova. The participants were charged with an administrative offence and fined (fines ranged from 120 EUR to 2,000 EUR).⁶⁵
- On 13 May 2019, the famous Russian showman Sergey Zverev was charged with an administrative offence and fined approximately 200 EUR for holding a solo static demonstration to draw public attention to the environmental problems of the Baikal Lake.⁶⁶

74. Overall, according to OVD-Info, since July 2018 at least 57 people have been detained or charged with an administrative offence because of a blanket prohibition against holding public events at Red Square.⁶⁷ Most of them have held a solo static demonstration.

75. Moreover, public events in the immediate vicinity of court buildings are still prohibited in law and in practice. According to OVD-Info, since February 2017, at least 74 people have been detained or charged with an administrative offence because of the prohibition to hold public events near court buildings⁶⁸.

Constitutional Court

76. By the Judgment of 1 November 2019 No. 33-P the Constitutional Court of the Russian Federation declared that blanket statutory bans, enforced by local laws, on the holding of public events in places within a radius of 50 meters of the entrance to buildings occupied by state or local authorities, as well as institutions, go beyond the constitutional limits of legislative powers vested within subjects of the Russian Federation⁶⁹.

77. The Constitutional Court also declared that the general prohibition on holding public events in Stefanovskaya Square in the city of Syktyvkar (which applies to all specified public events without exception) to be a serious threat to human rights and freedoms. Thus, according to the Constitutional Court Judgment, until the necessary legislative changes are introduced, the blanket refusal to allow public events in Stefanovskaya Square in the city of Syktyvkar cannot be justified by formal references to local law. Such a refusal must necessarily contain a justification as to why, taking into account the declared parameters of a particular public

⁶⁴ See: <https://ovdinfo.org/express-news/2019/07/15/na-krasnoy-ploshchadi-v-moskve-zaderzhali-pravozashchitnikov-za-pikety-v> (accessed on 25 March 2020).

⁶⁵ See: https://memohrc.org/ru/news_old/sud-oshtrafoval-gannushkinu-na-150-tysyach-rublej-za-akciyu-v-godovshchinu-ubiystva, https://memohrc.org/ru/news_old/sud-oshtrafoval-pravozashchitnika-cherkasova-za-piket-na-krasnoy-ploshchadi-v-den-desyatoy (accessed on 25 March 2020).

⁶⁶ See: https://memohrc.org/ru/news_old/shoumen-sergey-zverev-obratilsya-v-espch-v-svyazi-so-shtrafom-za-piket-vozle-krasnoy (accessed on 25 March 2020).

⁶⁷ See Exhibit No. 5.

⁶⁸ See Exhibit No. 6.

⁶⁹ The Constitutional Court of the Russian Federation Judgment No. 33-P/2019 of 1 November 2019, <http://doc.ksrf.ru/decision/KSRFDecision435741.pdf>. This Judgment was inspired by the European Court of Human Rights Judgment on case *Kablis v. Russia* of 30 April 2019 (Applications nos. 48310/16 and 59663/17).

event, its holding will cause a real and irreparable threat to human rights and freedoms, legality, law, order and public safety.

78. According to the Russian law, there is a six-month deadline for the legislative bodies to bring the relevant law in line with the Constitutional Court Judgments. In above-mentioned case, this term will expire on 1 May 2020.

B. Local laws

79. As of November 2019, the situation relating to blanket statutory bans on public events in specific places was as follows:

- Bans on public events in the immediate vicinity of various buildings occupied by public authorities were enforced in 46 regions⁷⁰. The distance to such buildings was different in regions and ranged from five to 250 meters, or was not defined at all (in 14 regions).
- Bans on public events in specific territories, such as squares or streets, was enforced in seven regions⁷¹.
- Bans on public events in the immediate vicinity of various pieces of urban infrastructure, for instance, urban housing, roads, pharmacies, bakeries and so on, was enforced in 63 regions⁷².

80. For example, public assemblies are prohibited in more than 73% of the area of Nizhny Novgorod, in more than 58% of Novosibirsk, in more than 47% of Kirov, in more than 36% of Yoshkar-Ola and Kazan, and in more than 30% of Yekaterinburg ⁷³.

81. Due to the Constitutional Court Judgment of 1 November 2019, some Russian regions started to remove bans on public events near buildings occupied by state or local authorities. However, regional legislators have not removed other statutory bans on holding public events at certain locations. As a result, it is still prohibited to hold public events over much of the urban space in Russia.

82. However, there is a positive example. On 25 March 2020 the Constitutional Court of the Republic of Ingushetia declared that all such statutory bans enforced by the Republic local Law are inconsistent with the Constitution of the Republic of Ingushetia⁷⁴.

(γ) Operation of the time-limit for notification of public events

83. *Findings in Lashmankin (§§451-456): the Court considered that the automatic and inflexible application of the notification time-limits without any regard to the specific circumstances of each case amounted to an interference which was not justified under Article 11 §2 of the Convention. That is especially the case for situations where it is impossible to comply with*

⁷⁰ See: <https://ovdinfo.org/reports/regionalnye-zaprety#3> (accessed on 25 March 2020).

⁷¹ See: <https://ovdinfo.org/reports/regionalnye-zaprety#3> (accessed on 25 March 2020).

⁷² See: <https://ovdinfo.org/reports/regionalnye-zaprety#3> (accessed on 25 March 2020).

⁷³ See: <https://tn.ovdinfo.org/nizhniy> (accessed on 25 March 2020).

⁷⁴ The Constitutional Court of the Republic of Ingushetia Judgment No. 25-P of 25 March 2020, <https://ks-ri.ru/?p=4076> (accessed on 16 April 2020).

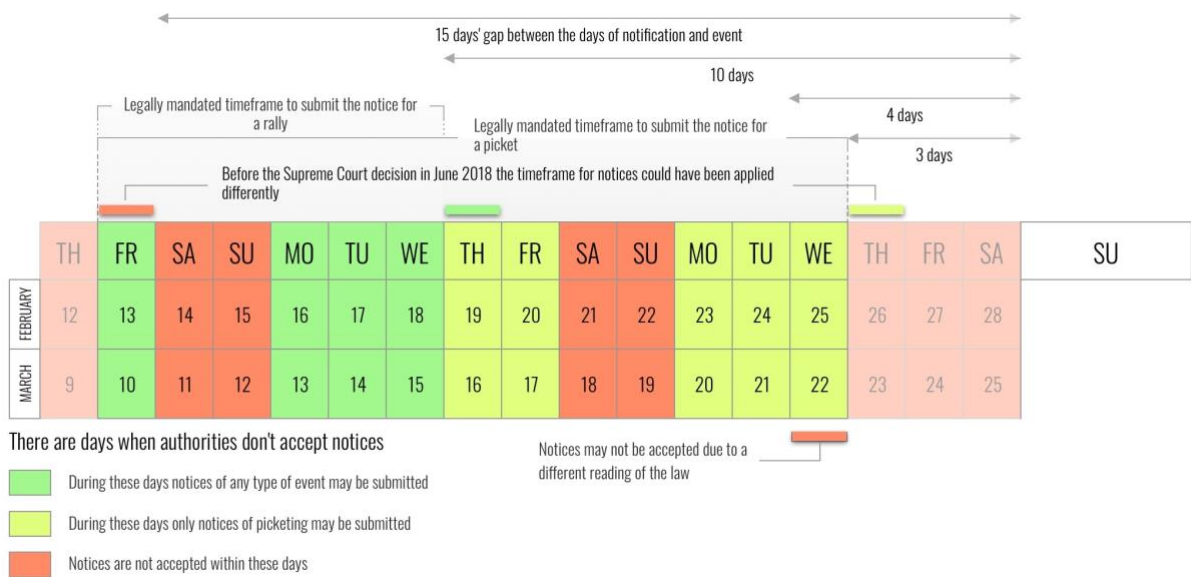
the time-limit, for example because of public holidays, in cases of justified spontaneous assemblies, or in other cases.

84. It is submitted that the situation has not changed to date, as described below.

A. General: inflexible time-limits (§456)

85. According to the Public Events Act, organisers must notify authorities about a public event no earlier than 15 and no later than ten days before the proposed day of the event. There is an exception for pickets; the notice for holding them may be submitted no later than three days before the event. To submit a notice in a timely manner, the organizer must correctly determine the first and the last day of the time window.

86. In Ruling No. 28, the Supreme Court clarified that 10 to 15 day between the notification and the event, do not include the day of the notice nor the day of the event (point 6 of Ruling No. 28). In effect, the Supreme Court shifted the deadlines to make the time window narrower than it had been according to the literal interpretation of the Public Events Act (see a diagram below)⁷⁵. Specifically, the time-limit after which a notification can no longer be lodged shifted in one day farther from the assembly.



87. In addition to the two already existing reasons in Ruling No. 28 (inappropriate organizer and prohibited location), the Supreme Court added one more possible reason for outright rejection of a notice under the Public Events Act. The Supreme Court held that a notification submitted outside of the statutory time-limit “is not subject to review” by the authorities (point 7 of Ruling No. 28). This conclusion was not obvious in the literal content of the Public Events Act.

88. Finally, the Supreme Court stated that, a counterproposal to change a date of an event submitted by organisers shall be treated as a new notification (section 13 of Ruling No. 28).

89. Thus, the time-limit became even more inflexible.

⁷⁵ See also: <https://ovdinfo.org/reports/art-ban#3-1>, (accessed on 25 March 2020).

B. Situations in which the entire notification time-limit fell on a public holiday (§§448-450)

90. In 2016, according to the Constitutional Court Judgment⁷⁶, the Public Events Act was amended. As a result, “a notification to hold a public event may be filed on the last working day preceding public holidays”. In Ruling No. 28, the Supreme Court repeated the rule (point 6).
91. On the one hand, the Supreme Court corrected the deficiency of the Public Events Act. On the other hand, the notification time-limit for such situations became shorter than for ordinary cases. For example, in order to hold a public event on 1 January 2020, an organizer must file an application by 31 December 2019. If the authorities propose a different location, the organizers have no time to negotiate with them.
92. There are still two legal gaps on similar issues.
- 92.1. *Notifications filed on Saturday.* The federal law does not contain any provisions for notifications filed on a Saturday. Technically, Saturday is not “Sunday or a public holiday”. Therefore, the period for notification includes Saturday. However, in practice, notifications are accepted only on working days from Monday to Friday.⁷⁷
- 92.2. *Time-limits to notify authorities about pickets.* According to the Law, if a picket involves several people or the participants plan to use installations, an organizer shall notify about a picket “no later than three days before the picketing day. In case these specified days fall on a Sunday or public holiday, the notification shall be submitted no later than four days before the picketing day”. Picketing is often used as an alternative if attempts to organize a rally have failed, therefore, every day counts. Unfortunately, jurisprudence regarding the deadline for submitting a notification regarding a picket varies. This causes missed deadlines and, as a result, authorities’ refusals to allow the picket.

In 2017, for instance, three pickets in Tula and one in Ulan-Ude were not approved, even though the notices had been submitted four days before the day of the event.

After receiving the rejection, the organisers of the picket in Ulan-Ude appealed in court. The court upheld the position of the city administration. Both the city administration and the court appeared to agree that the ‘specified days’ mentioned in the law include not only three days before the picketing, but also the picketing day itself. In Ruling No. 28, the Supreme Court did not clarify this point.

⁷⁶ Judgment of the Constitutional Court no. 14-P of 13 May 2014, <https://rg.ru/2014/05/21/pikety-ks-dok.html> (accessed on 25 March 2020).

⁷⁷ E.g. In the Bryansk region a local law postulates that the notification “may be submitted during the weekday day in accordance with the work hours” of the competent authorities (Law of Bryansk Region no. 13-3 of 26 February 2018); in St. Petersburg, the Committee on Law, Order and Security accepts notifications 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 1:48pm (Instruction no. 234-R, St. Petersburg City Administration’s Committee for Legality, Law Enforcement and Security of 31 August 2016); District administrations of Yaroslavl accept notification from 8:30am to 5:30pm from Monday to Thursday and until 4:30 on Friday, also with a 48 minutes lunch break (Decree no. 4812, Office of the Mayor of Yaroslavl of 22 December 2010).

C. Spontaneous assemblies (§§451-455)

93. Russian law still contains no provisions allowing for spontaneous events without a prior notification.
94. In contrast, the following countries of the former USSR explicitly provide that spontaneous events may be held without prior notifications of the authorities: Estonia⁷⁸, Moldova⁷⁹, Kyrgyzstan⁸⁰, and Armenia⁸¹.
95. In practice, spontaneous events are still treated as any other public assemblies, i.e., if such events have not been approved by the authorities, then they are considered illegal, and their participants are subject to detentions and prosecution. For example: a march on 27 July 2019 was organized by the opposition, as a reaction to the election commission's refusal to register independent candidates to the Moscow City Duma on 25 July 2019. Neither the police nor the courts considered whether the event was a "justified spontaneous assembly". During the assembly the police detained 1,373 people⁸². Most of them were further charged with administrative offences.⁸³

(δ) Procedure for informing the organisers about the authorities' decision in response to a notification of a public event

96. *Findings in Lashmankin (§§457-458): the Court identified a problem of late responses to notifications being provided by the authorities to the organisers of potential events, when the authorities refused to allow the event to take place. Such late notifications preclude possible legal challenges prior to the planned date of the event.*
97. In Ruling No. 28, the Supreme Court stated that the authorities should inform organisers of their decisions within three days, even if the last day of this time-limit falls on weekend. Therefore, the authorities should use all the reasonable communication services, to ensure timely delivery. In case no response is delivered before the deadline, the public event is presumed to be approved (point 10).
98. This explanation in Ruling No. 28 is a positive development which could enhance the technical side of the approval process. However, several serious problems and legislative gaps still remain.
- 98.1. The deadlines for further communication between organizers and authorities, following the first response, are still not regulated (see para. 17 above⁸⁴). Therefore, the authorities tend to reply to further correspondence with a substantial delay or even after the planned date of the event. This is significant as the authorities' first response is often unclear and requires clarification, or does not contain an alternative suggestion

⁷⁸ Law Enforcement Act, passed 23.02.2011, RT I, 22.03.2011, 4, Art. 67(3)

⁷⁹ Law No.26 of 22 February 2008 "On assemblies", Art. 12

⁸⁰ Law No. 64 of 23 May 2012 "On peaceful assemblies", Art. 3(7)

⁸¹ Law No.3R-72 of 22 April 2011 "On freedom of assemblies", Art. 26

⁸² See: https://ovdinfo.org/reports/mgd-2019_eng#1 (accessed on 16 April 2020).

⁸³ See section I-(ε)-D below.

⁸⁴ See also <https://ovdinfo.org/reports/art-ban#5-2> (accessed on 16 April 2020).

regarding the place of the event, or the suggested alternative place does not meet the goals of the public event (e.g. is far from a city centre).

- 98.2. For example, in Vologda, the organizers of an assembly scheduled for 26 March 2017 demanded that the administration offer them an alternative location for the assembly and received a reply after nine days, on March 29, i.e., after the day of the planned event⁸⁵. In Samara the response regarding an assembly scheduled for 26 March 2017 arrived after three weeks, on April 13⁸⁶.
- 98.3. Local laws in Moscow⁸⁷ and the Republic of Karelia,⁸⁸ as well as local law enforced by the Russian authorities in the territory of Crimea,⁸⁹ extend the deadline for the authorities' response to a notification of a public event. According to those local laws, the three days allowed for a response are three working days.
- 98.4. The local regulations still do not require that authorities act in good faith and respond to notifications regarding protests as soon as possible, in order to give organisers maximum time to prepare the events. On the contrary, the slowest ways of communication are sometimes formally approved. The St. Petersburg administrative regulations state that the authorities, by default, shall inform the organizer "by sending a hard copy of the letter containing the results of the consideration of the notification" and shall 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. This has not changed after Ruling No. 28.
- 98.5. The authorities tend to respond on the last, third day of this deadline. This was the case with, for example, the anti-corruption protests of 26 March 2017: out of 45 notifications regarding protests in 34 cities, 21 were responded to on the third day of the response period.
- 98.6. It is usual practice for authorities to inform organizers of their response at the very last minute of the deadline. For example, the organizer of the anti-corruption protest in Cherepovets received a call informing her that the response was ready on Friday, March 17, 2017, on the third day after the notice was submitted. The call came three minutes before the end of the working day. Consequently, the organiser could not collect the response, as the response could be only collected during working hours. Eventually, she received the response only after the weekend, on Monday, 20 March. As another example, the organizers of a proposed assembly in Ivanovo received responses dated March 16 and March 22 on March 17 and 23, 2017 respectively.⁹⁰

⁸⁵ See: <https://ovdinfo.org/reports/art-ban#5-1> (accessed on 16 April 2020).

⁸⁶ See: <https://ovdinfo.org/reports/art-ban#5-1> (accessed on 16 April 2020).

⁸⁷ Article 2(8) of the Moscow Law No. 10 of 4 April 2007, <http://docs.cntd.ru/document/3672018> (accessed on 16 April 2020).

⁸⁸ Article 2(9) of the Republic of Karelia Law No. 1486-3PK of 10 May 2011, <http://docs.cntd.ru/document/919504273> (accessed on 16 April 2020).

⁸⁹ Article 2(6) of the Law of the Republic of Crimea No. 56-3PK of 21 August 2014, <https://rg.ru/2014/08/25/krim-zakon56-reg-dok.html> (accessed on 16 April 2020).

⁹⁰ See also <https://ovdinfo.org/reports/art-ban#5-1>: "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

(ε) Dispersals of public events and arrests of the participants

99. *Findings in Lashmankin (§§459-463): the Court found that Russian authorities display zero tolerance towards unlawful assemblies, even if they are peaceful, involve few participants and create only minimal or no disruption of ordinary life.*
100. Ruling No.28 adopted no new approach towards this policy. It contains no recommendations to show tolerance towards any unapproved public assemblies. In its own practice, the Supreme Court does not apply the proportionality rule with respect to unapproved public assemblies.⁹¹
101. Point 38 of Ruling No.28 only contains recommendations to choose a penalty for participation in such events, based on proportionality, fairness and criteria of adequacy. However, in practice, these recommendations are not complied with (see para. 113.3 below).
102. Moreover, the Supreme Court confirmed that courts may impose obligatory works as a penalty for participation in unapproved public assemblies, regardless of the prohibition against this by the Constitutional Court (Ruling No. 4-P of 14 February 2013).
103. We submit that, in practice, the governmental attitude towards non-approved public assemblies have not change, either. Below are recent examples of such an attitude.

A. Massive and arbitrary detentions

104. The statistics show a significant number of detentions during non-approved peaceful public assemblies:⁹²

Year	Number of the assemblies involving detentions in Moscow and Saint-Petersburg	Number of detentions during these assemblies in Moscow and Saint-Petersburg (total)
2017	247	4,621
2018	251	2,465
2019	222	4,034

105. For example, during the anti-corruption protests on 26 March 2017, the police detained 1,043 people in Moscow. During protests between 14 July to 31 August 2019, the police detained 2,700 people.⁹³ Both events had been peaceful.

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”.

⁹¹ See for example, Resolution of the Supreme Court of 3 July 2019 No.45-AD19-6; Resolution of the Supreme Court of 12 August 2019 No.75-AD19-4; Resolution of the Supreme Court of 21 June 2018 No.78-AD18-4, etc.

⁹² See: <https://data.ovdinfo.org/detentions/> (accessed on 16 April 2020).

⁹³ See: <https://ovdinfo.org/reports/mgd-2019#1> (accessed on 16 April 2020).

B. Excessive violence by the police and inhuman treatment of detained participants

106. During the summer protests of 2019, police officers used excessive force when arresting people; at least 68 people were assaulted by the police.⁹⁴ The police knocked participants to the ground and beat them with batons.⁹⁵ In one case, they broke the leg of a passer-by who had been jogging past the rally.⁹⁶
107. Those arrested met with harsh conditions inside police transport vehicles (no ventilation, lack of seats, unsafe driving)⁹⁷ and at the police stations (detention in excess of three or even 48 hours, lack of food and water, no sleeping arrangements, etc.)⁹⁸.

C. Procedural violations by police during detentions and further arrests

108. Although the law ‘On the Police’ requires police officers to wear identification numbers at all times, the police officers who make arrests often do not identify themselves or state the reason for the arrests.⁹⁹ Such practices successfully protect the police from potential lawsuits from members of the public injured during the arrests (see, for example, the case of a police officer (or a member of the National Guard) who hit a girl in the stomach, but was not prosecuted because it was impossible to identify him¹⁰⁰).
109. There were many recorded cases of violations of the right to legal representation at police stations. According to OVD-Info, on both 27 July and 3 August 2019, lawyers were not permitted to visit detainees in at least seven police stations, and on 10 August this happened in at least three police stations.¹⁰¹
110. Other violations (such as the confiscation of mobile phones, the taking of photos, fingerprints, and DNA samples of the participants without their consent as well as, intimidation and threats) are listed in the OVD-Info report.¹⁰²

D. Administrative charges

111. In most cases, the participants who had been detained during non-approved public assemblies were also convicted of committing an administrative offence, namely the violation of regulations regarding public assemblies (Art. 20.2 of the CAO) or “non-compliance with the authorities” orders (Art. 19.3 of the CAO RF). Below are the statistics¹⁰³ with respect to Art. 20.2 CAO RF during 2017 and 2018¹⁰⁴:

⁹⁴ See: https://ovdinfo.org/reports/mgd-2019_eng#8-4 (accessed on 16 April 2020).

⁹⁵ See: <https://zona.media/online/2019/07/27/july27#24869> (accessed on 16 April 2020).

⁹⁶ See: <https://esquire.ru/articles/124582-smi-proveli-sobstvennoe-rassledovanie-i-ustanovili-lichnost-policeyskogo-kotoryy-slomal-nogu-dizayneru-konstantinu-konovalovu-vo-vremya-zaderzhaniya/> (accessed on 16 April 2020).

⁹⁷ See: https://ovdinfo.org/reports/mgd-2019_eng#8-4 (accessed on 16 April 2020).

⁹⁸ See: https://ovdinfo.org/reports/mgd-2019_eng#8-8; https://ovdinfo.org/reports/mgd-2019_eng#8-9 https://ovdinfo.org/reports/mgd-2019_eng#8-6 (accessed on 16 April 2020).

⁹⁹ See: https://ovdinfo.org/reports/mgd-2019_eng#8-3 (accessed on 16 April 2020).

¹⁰⁰ See: <https://www.youtube.com/watch?v=fw9hoHJ3vEk>, https://www.znak.com/2019-08-11/pravozachitniki_razyskivayut_rosghvardeyca_kotoryy_izbil_devushku_na_mitinge_v_moskve (accessed on 16 April 2020).

¹⁰¹ See: https://ovdinfo.org/reports/mgd-2019_eng#8-10 (accessed on 16 April 2020).

¹⁰² See: https://ovdinfo.org/reports/mgd-2019_eng#4-2-6 (accessed on 16 April 2020).

¹⁰³ See: https://data.ovdinfo.org/20_2/ (accessed on 16 April 2020).

Year	Number of prosecutions	Penalized with a fine	Arrested	Community service	Cases dismissed
2017	5,177	3,455 (average fine is 12,945 RUB = around 200 EUR)	167	223	346
2018	4,488	2,718 (average fine is 17,246 RUB = around 265 EUR)	448	243	301
2019	4,974	3,571 (average fine is 16,217 RUB = around 250 EUR)	249	214	236

112. In addition, OVD-Info keeps internal statistics with respect to the protests of the summer of 2019 in Moscow, based on the information provided by the participants of the respective assemblies and by the Moscow City Court database. The statistics shows that:

112.1. Since the beginning of the large-scale arrests on 27 July 2019, 34 Moscow district courts processed **2,320** cases under Article 20.2 of the CAO.

112.2. Of these, **1,797** cases came under **point 5** of Article 20.2 (violation by the participant of the established procedure for holding a public event, punishable by a fine of 10,000 to 20,000 roubles), **432** cases fell under **point 6.1** (participation in an event that did not have official permission and involving obstruction of traffic, punishable by a fine of 10,000 to 20,000 roubles or up to 15 days of imprisonment), **37** cases came under **point 8** (repeated violation of the procedure for holding a public event, punishable by a fine of 150,000 to 300,000 roubles or up to 30 days of imprisonment), and **20** cases came under **point 2** (organization or holding of a public event without notifying the authorities, punishable by a fine of 20,000 to 30,000 roubles).¹⁰⁵

112.3. Courts chose random penalties in identical cases. So for the same unapproved peaceful assembly, the penalty varied from a fine of 10,000 roubles to administrative arrests and community service.

112.4. In light of the summer 2019 protests in Moscow, HRC Memorial has already submitted more than 300 applications to the European Court of Human Rights, concerning the detention and prosecution of participants. In these cases, all the applicants were penalized either with a fine, community service, or administrative arrest. Notably, different penalties were applied in identical situations without any mitigating or aggravating circumstances.

¹⁰⁴ Since Art. 19.3 CAO RF involves not only violations with respect to the public assemblies, it is difficult to draw the objective statistics in this regard.

¹⁰⁵ See: https://ovdinfo.org/reports/mgd-2019_eng#5-1 (accessed on 16 April 2020).

E. Criminal charges

113. In response to the Moscow summer protests of 2019, the authorities initiated numerous criminal cases. These cases are known for the disproportionate penalties requested by prosecutors and imposed by courts, as well as absurd convictions. A table of such cases is attached.¹⁰⁶ Some examples from the table are set out below:

113.1. The main "Case 212" addressed events that had occurred on 27 July 2019. Defendants were prosecuted for rioting under Article 212 of the Russian Criminal Code (hereinafter, the "Criminal Code"),¹⁰⁷. Seven men¹⁰⁸ stood accused of non-life-threatening assault against members of the Russian National Guard. The "non-life threatening assault", consisted of actions such as throwing a plastic bottle towards a policemen (Samariddin Radzhabov was fined 1,500 EUR), trying to raise the helmet visor of a member of the Russian National Guard (Kirill Zhukov was sentenced to 3 years of imprisonment).¹⁰⁹

113.2. On 4 September 2019, Konstantin Kotov was sentenced to four years of imprisonment for participating in a non-approved assembly for the fourth time (Art. 212.1 of the Criminal Code). Currently, Mr Kotov is the seventh person to be charged under this Article.

113.3. The case against a Political Science major and blogger, Yegor Zhukov, under Article 280, "extremist speech". These charges were based upon videos published on his YouTube channel in 2017, one of which was specifically dedicated to non-violent resistance movements.

F. Civil claims against the organizers of the summer 2019 protests in Moscow

114. In the aftermath of the protest on 27 July 2019, several businesses, all to some degree affiliated with Moscow City Hall, lodged legal claims for over 14 million roubles against independent candidates running for Moscow City Duma and some members of the staff of the Anti-Corruption Foundation. The plaintiffs in different cases claimed that the protests had caused traffic delays, participants trampled down the lawns, prevented access to restaurants and other business. causing damage to the companies. All the claims were granted by courts in full or partially. Moscow police also filed a claim for damages because it had to provide staff and cars to preserve the public order during the unapproved events.¹¹⁰

¹⁰⁶ Exhibit No. 7.

¹⁰⁷ See: <https://delo212.ru/prisoners>, https://ovdinfo.org/reports/mgd-2019_eng#6-2-1 (accessed on 16 April 2020).

¹⁰⁸ Evgeniy Kovalenko, Kirill Zhukov, Ivan Podkopaev, Danilla Beglets, Samariddin Radzhabov, Nikita Chirtsov, Eduard Malyshevsky

¹⁰⁹ See: <https://delo212.ru/prisoners> (accessed on 16 April 2020).

¹¹⁰ See: <https://ovdinfo.org/reports/mgd2-2019#4-1> (accessed on 16 April 2020).

G. Students

115. In addition to the fact that students were detained and subsequently arrested, several universities have sought to put pressure on students to dissuade them from participating in protests.¹¹¹

H. Mobile Internet shutdown during the protest in Moscow

116. Numerous testimonies by detainees indicate that on the afternoon of 3 August 2019, the day of the protest, the Internet was not working on mobile phones in central Moscow. The Internet Protection Society¹¹² (IPS), on the basis of a study it conducted¹¹³, claims that the shutdown was carried out under direct orders from the authorities. According to the report, mobile phone service providers are obligated to cut off services as directed by law enforcement agencies, and furthermore, are prohibited from disclose information on the matter. The IPS report shows the shutdown of mobile data transmission covered approximately 13 square kilometers of central Moscow.
117. On 3 August 2019, some protesters reported that they had attempted to connect to Wi-Fi in nearby cafés, but staff told them the network had been disconnected at the request of law enforcement.¹¹⁴
118. Clearly, mobile Internet Shutdown causes significant and unnecessary inconvenience to protesters, since it complicates communication and navigation during public events.

I. Peaceful assemblies involving few participants

119. There are still no specific legal regulations or exceptions with respect to assemblies involving few participants and causing minimal interruption of ordinary life. Moreover, Ruling No. 28 stressed that any non-compliance with the initially agreed upon terms of the public event, including the number of participants, can be prosecuted (point 11). So, if the number of actual participants exceeds—even slightly—the number listed on the notice, organizers and participants are subject to arrest and prosecution.
120. In practice, the Russian police and courts show zero tolerance towards “unauthorized” peaceful events, involving few participants, too. For example:
- During the autumn of 2019, the eco-activist, Arshak Makichyan, filed around ten notifications to hold pickets in the centre of Moscow, with the claimed number of participants as up to 70 people. All the notices were refused by the authorities. On 25 October 2019, an “unauthorized” picket, organized by Mr. Makichyan, took place. The picket was attended by three people; it was held on the Suvorovskaya square and caused no disruption whatsoever to ordinary life or transport . The picket was dispersed

¹¹¹ See: https://ovdinfo.org/reports/mgd-2019_eng#7-3 (accessed on 16 April 2020).

¹¹² Russian non-commercial and non-governmental organisation aimed at protecting freedom of Internet. This source is considered to be independent and free of political and governmental influence.

¹¹³ See: <https://ozi-ru.org/news/government-shutdown-otkljuchenie-mobilnogo-interneta-v-moskve/> (accessed on 16 April 2020).

¹¹⁴ See: <https://twitter.com/styazshkin/status/1157646851727876097> (accessed on 16 April 2020).

by the police 15 minutes after it had started and Mr. Makichyan was sentenced to six days of administrative arrest.¹¹⁵

- On 15 July 2019, two human rights activists (Ms. Gannushkina and Mr. Cherkasov) and a journalist, Ms. Milashina, picketed at Red Square. They were arrested and fined, the biggest fine being 150,000 roubles¹¹⁶.

(C) Security measures taken by the police during public events

121. *Findings in Lashmankin (§§464-470): the Court found that in adopting exceptionally drastic security measures during the applicants' meeting, the domestic authorities acted in an arbitrary and discriminatory manner.*

122. Since *Lashmankin*, the policy regarding security measures during public events, especially those concerning opposition protests, has not changed. Public assemblies involving a significant number of participants are usually subject to the following strict security measures:

122.1. *Metal detectors.* Police usually places several metal detectors around the place of the public assembly. As a result, the participants may only attend the assembly after passing through them. In practice, there are not enough detectors; therefore, the entrance to an assembly is too narrow and the passage takes an unreasonable amount of time. For further information see reports from the rally of 10 August 2019.¹¹⁷ Some reporters claimed that the police intentionally hindered the passage in order to obstruct the event:¹¹⁸

¹¹⁵ Case No. 05-2965/2019, 7-17112/2019 <https://www.mos-gorsud.ru/mgs/services/cases/review-not-yet/details/14aac75e-28e5-41df-8c11-35720f101921?participants=%D0%BC%D0%B0%D0%BA%D0%B8%D1%87%D1%8F%D0%BD> (accessed on 16 April 2020).

¹¹⁶ See: https://memohrc.org/sites/all/themes/memo/templates/pdf.php?pdf=/sites/default/files/postanovlenie_gannushkina.pdf (accessed on 16 April 2020).

¹¹⁷ See: <https://ovdinfo.org/express-news/2018/07/30/mosgorsud-poschital-zakonnym-izyatie-bannerov-so-sceny-na-mitinge-6-maya-v> (accessed on 16 April 2020).

¹¹⁸ See: <https://meduza.io/live/2019/08/10/miting-vernem-sebe-pravo-na-vybory-hronika> (accessed on 16 April 2020).



Rally of 10 August 2019 on Sakharov Avenue, Moscow

122.2. *Disproportional deployment of policemen and national guards.* When a public assembly is organized by the opposition, the government ensures the presence of numerous policemen and the Federal National Guard Troops Service. For example, there were 4,023 policemen were present during the 27 July 2019 march of 5000 to 10,000 participants (based on different sources)¹¹⁹. There were 4,463 policemen during the 3 August 2019 march¹²⁰, in which, according to police data, there were only 350 participants¹²¹. Moreover, the police park numerous police vans near rallies. All these actions have a chilling effect on participants and passers-by, presenting the peaceful assembly as a dangerous event.

122.3. *Censorship of banners and posters.* During massive public assemblies, the police usually place a special “censorship tent” near the entrance to the assembly (i.e. near the metal detectors – see above). If a participant enters the assembly with a rolled-up banner or poster, the police requests that the participant go to the censorship tent and show the banner/poster to the policemen there. The participant may only bring the banner or poster to the assembly, if it is approved by the police officers. See, for example, reports from the Boris Nemtsov Memorial Meeting of 24 February 2019¹²² and the respective video filmed inside such tent¹²³.

During the opposition meeting of 6 May 2017 the police dismantled and removed banners that had been arranged on the scene. The banners stated: “Five years after

¹¹⁹ See: <https://bit.ly/3dOxhti> (accessed on 16 April 2020).

¹²⁰ See: <https://openmedia.io/news/mvd-ocenilo-rabotu-policejskix-na-mitingax-ot-1700-do-5000-rublej-na-cheloveka-za-odin-den/> (accessed on 16 April 2020).

¹²¹ See: <https://iz.ru/906131/2019-08-03/mvd-ocenilo-chislo-uchastnikov-nesoglasovannoi-aktcii-v-moskve> (accessed on 16 April 2020).

¹²² See: <https://ovdinfo.org/articles/2019/03/12/palatka-cenzury-kak-vlasti-kontroliruyut-plakaty-aktivistov> (accessed on 16 April 2020).

¹²³ See: <https://www.youtube.com/watch?v=UkqRIVngtLY> (accessed on 16 April 2020).

Bolotnaya, enough with Putin! Enough of war! Stop destroying Russia! Stop repression! Stop bigotry! Stop stealing! Stop putting up with Kadyrov!” and “The Bolotnaya case is the crime of Putin’s regime!” The police stated that the banner did not match the theme of the event, although the organizers claimed it did. On 30 July 2018, the appeals court confirmed that police actions were correct¹²⁴. The victims further filed an application with the European Court regarding this case (No. 58740/19).

II. Article 13 (*ineffective judicial control*)

123. *Findings in Lashmankin: the Court considered that the applicants did not have at their disposal an effective remedy which would have allowed an enforceable judicial decision to be obtained on the authorities’ refusal to approve the location, time, or manner of conduct of a public event, before its planned date. Moreover, the scope of judicial review had been limited to examining the lawfulness of the proposal to change the location, time, or manner of conduct of a public event, and did not include any assessment of its “necessity” and “proportionality” (§§342-361, 428, 460).*
124. It is submitted that there is still no effective judicial control with respect to arbitrary refusals by the authorities.
125. There is no official open data demonstrating the authorities’ approvals and refusals to approve public events or regarding the judicial review of such refusals. However, the High Commissioner for Human Rights in the Russian Federation stated about 1321 judicial review of such refusals in 2019. Herewith, 493 decisions found the refusal illegal.¹²⁵
126. At the same time, the commercial court database Consultant+ makes available the respective decisions, at least with respect to the appeals court in Moscow. We have selected all the Moscow appeal decisions concerning challenges of a refusal to approve a public assembly, rendered after 26 June 2018, i.e. after Ruling No. 28. These cases reveal the following statistics:
- 179 cases reviewed by the courts in total;
 - 174 decisions upheld the authorities' refusal to authorize an assembly;
 - Five decisions found the refusal illegal. However, in these five cases the appeal decisions were rendered long after the planned date of the assembly and, therefore, were not effective.¹²⁶

¹²⁴ See: <https://ovdinfo.org/express-news/2018/07/30/mosgorsud-poschital-zakonnyim-izyatie-bannerov-so-sceny-na-mitinge-6-maya-v> (accessed on 16 April 2020).

¹²⁵ See: http://ombudsmanrf.org/upload/files/docs/lib/doc2019_fin_compressed.pdf (accessed on 16 April 2020), p. 88.

¹²⁶ Appeal ruling of the Moscow City Court N 33a-6392/2018 of 4 September 2018 cancelling the decision of the first instance court of 4 June 2018 with respect to the assembly of 18-28 May 2018;

Appeal ruling of the Moscow City Court N 33a-5109/2018 of 18 September 2018 cancelling the decision of the first instance court of 4 July 2018 with respect to the assembly of 14 May 2018;

Appeal ruling of the Moscow City Court N 33a-8237/2018 of 16 October 2018 cancelling the decision of the first instance court of 3 September 2018 with respect to the assembly of 4-5 September 2018;

127. The courts' decisions do not mention the issue of proportionality. The courts did not request that the authorities substantiate the reasons for their refusals. Rather than providing a reasoned decision, the courts seem to simply copy-and-paste the laws, even Ruling No. 28, and then affirm that the reasons of refusal were legitimate, without any explanation. Below is an example of the reasoning provided regarding a refused picket where the anticipated number of participants was up to 20 people:¹²⁷

“The courts should note that the inconvenience caused by the public assembly for non-participants, as well as concerns of the authorities about the possibility of such an inconvenience, may not per se be a legitimate reason for changing the place and/or time of the public assembly.

As follows from the letter of the administration of the Moscow Central Administrative District, the picket at the claimed place was refused, because it was impossible to ensure the security of the participants and non-participants, since the picket would create obstacles to pedestrians in the crowded place, preventing the functioning of essential public utilities, transport and social facilities.

The court notes that the notification was not in fact refused, because the applicant could choose another place and file a new notification in the manner prescribed by law. Moreover, he was advised to hold the event at the Sokolniki Park.

Therefore, the court finds that the challenged decision of the administrative respondent was legal, the procedure of taking this decision was correct, there were grounds for this decision, and the decision corresponds to the legal rules regulating these relations”.

128. In this decision, the court did not try to establish which obstacles to ordinary life the event would have created; the court did not request the administration to explain it in detail; the court did not analyze the fact that the claimed number of participants was 20 or fewer; and the court did not take into consideration that the suggested alternative place (Sokolniki Park) was a hyde-park located outside of the city centre.

129. Even the Supreme Court does not follow Ruling No. 28 and declares as legitimate the suggestion to change the place of a public event without clearly elucidated reasons. For instance, eco-activist, Ms. Tatiana Pavlova, unsuccessfully appealed in the Russian courts, including the Supreme Court, three such suggestions for alternative venue. On 30 December 2019 she submitted an application to the European Court of Human Rights, *inter alia*, for a violation of Article 13 of the Convention.¹²⁸

130. Notably, there are no effective legal provisions that would provide for the responsibility of officials, in case their non-approval of the public event was not well-reasoned or made in violation of proportionality requirements. The only relevant provision is Art. 5.38 of the

Appeal ruling of the Moscow City Court N 33a-9785/2018 of 26 November 2018 cancelling the decision of the first instance court of 25 June 2018 with respect to the assembly of 26 June 2018;

Appeal ruling of the Moscow City Court N 33a-4522/2019 of 14 August 2019 cancelling the decision of the first instance court of 12 April 2019 with respect to the assembly of 7 April 2019.

¹²⁷ Appeal ruling of the Moscow City Court N 33a-8152/2019 of 22 November 2019

¹²⁸ See: https://memohrc.org/ru/news_old/ekoaktivistka-iz-podmoskovya-pozhalovalas-espch-na-nesoglasovanie-akcii-protesta (accessed on 25 March 2020).

CAO, however, it is not effective. This Article provides administrative responsibility for “preventing organization or conduct of a public assembly, rally, demonstration, march, picket exercised in accordance with the Russian legislation, or participation therein, or compelling to such participation”. This provision is vague and there are no Supreme Court explanations with regard to it. So, in practice, this provision is rarely applied.

III. Article 5 (*unlawful arrests*)

131. *Findings in Lashmankin (§490): the applicants were arrested by the police during public events. The Court found that the domestic authorities failed to provide justification, as required by Article 27.3 of the CAO, that the arrest was an “exceptional case” or that it was “necessary for the prompt and proper examination of the administrative case and to secure the enforcement of any penalty to be imposed”, and found the arrests unlawful.*
132. In Ruling No. 28, the Supreme Court repeated the provisions of the CAO, that detention as a security measure should be applied only in exceptional circumstances, and that escort to the police station should be done as promptly as possible (point 40).
133. However, the same unlawful arrests still systematically take place during public assemblies. In this respect see section I-(ε)-A above. The domestic authorities still do not specify exceptional reasons for such arrests. In connection with detentions during the summer 2019 protests in Moscow, HRC Memorial has already submitted more than 300 new applications with the European Court of Human rights.

CONCLUSION AND RECOMMENDATIONS

134. The foregoing discussion leads to a conclusion that in the period following the delivery of *Lashmankin*, the situation with respect to the rights of public assembly has not changed significantly. In some ways, it has become worse (see section I-(ε) above regarding massive detentions and prosecutions after the summer 2019 protests).
135. The steps undertaken by the Russian authorities, including Ruling No. 28, are inadequate.
136. We believe that, in essence, problems are caused by:
 - 136.1. gaps in the Federal Public Event Law and Ruling No. 28;
 - 136.2. the absence of real punishment for local authorities for non-compliance with the provisions of Ruling No. 28;
 - 136.3. a non-transparent system of approving events and the absence of public statistics;
 - 136.4. the absence of control over regional compliance with the Federal law, Ruling No. 28, or the European Court's *Lashmankin* judgment;
 - 136.5. ineffective control over the police's actions during detentions and arrests at public assemblies;
 - 136.6. general ignorance or negative attitude towards the principles established by the European Court on the part of the authorities, police and courts.
137. In light of the above, we provide the following recommendations to improve the situation with respect to public assemblies in Russia. We kindly ask that the Committee of Ministers requests that the following measures are carried out by the Russian authorities:
 - 137.1. To set forth the following rules in law or in a Ruling(s) of the Supreme Court:
 - a. If authorities refuse an assembly based on some competing event at the same time and place, they should name this specific event, its organizer, and the date of its notification, so that the refused organizer can negotiate with the approved one. In case this information is not included in the refusal/proposal, it should be considered invalid.
 - b. When refusing an event (or making an alternative proposal), authorities should explain in detail why they rejected the notification rather than taking measures to accommodate the event (e.g., measures to eliminate disruption to ordinary life, to make two competing events compatible, etc.). In case this information is not included in the refusal/proposal, it should be considered invalid.
 - c. Require the authorities to act in good faith and respond to notifications regarding protests as soon as possible, in order to give organizers maximum time to prepare to the events.
 - d. Russian authorities and courts should display tolerance towards unapproved but peaceful assemblies, especially those involving few participants and

creating only minimal or no disruption to ordinary life. Stress that if no disruption of ordinary life is proved by the police, no penalties should be given.

- e. Abolish criminal responsibility for repeated violations of legislation concerning public events (Article 212.1 of the Criminal Code).
- f. Request that courts to take into consideration Constitutional Court Ruling No. 4-P of 14 February 2013, which prohibits applying community service as a penalty for participation in or organization of public assemblies, if the participant or organizer has not injured other people or damaged any property.
- g. Regulate the deadlines for further communication between organizers and authorities following the first response.
- h. Provide that spontaneous events and events with few participants may be held without prior notifications of the authorities.
- i. Extend the time-limits for notification. Specifically, either extend the earliest moment of notification (by providing that either an application can be filed two or three months prior to an event), or the latest moment of notification (by providing that a notification may be filed no later than two days before the assembly).¹²⁹
- j. Provide that a notification lodged outside the time-limit shall not be rejected based on this fact only. Absent other reasons, such a notification shall be authorized.
- k. Establish that cultural events shall have no statutory priority over other public assemblies (including political ones), *inter alia* by expressly stating that the notification timeline should be no less favorable for public assemblies than for cultural events.
- l. Prohibit absolute statutory bans on events at certain locations or times, other than bans on public events in the immediate vicinity of dangerous production facilities or other facilities subject to special technical safety regulations.¹³⁰
- m. Define the term “the procedure for submitting a notification” in the Public Events Act in order to harmonize the local laws and simplify the submission procedure in general.
- n. Provide that notification on public events can be submitted to the nearest municipal authorities. Eliminate the complex variability of submission deadlines for the notification.

¹²⁹ E.g. a notification on a collective picket can be submitted in three days before the public event. It appears to be technically possible to enforce this lower time-limit for all kinds of public events.

¹³⁰ See the Section 1 of the Paragraph 2 of the Article 8 of the Public Events Act.

- a. All relevant local laws (not bylaws) should clearly indicate the bodies to which the notification of a public event shall be submitted;
 - b. Bring local laws in Moscow¹³¹ and the Republic of Karelia,¹³² as well as local law enforced by the Russian authorities in the territory of Crimea,¹³³ into line with the Saint Petersburg Public Events Act, establishing that the deadline for a response to a notification of a public event should be three days (not three working days).
- 137.6. Add to Art. 5.38 of the CAO a provision to establish that officials signing refusals or alternative proposals bear personal legal responsibility if decisions are not well-reasoned or made in violation of proportionality requirements. In addition to that, require courts, in cases of finding a refusal/proposal invalid, to call authorities' attention to the breach of law by sending them a special court ruling ("chastnoe opredelenie").
- 137.7. Require authorities to publish the refusals for notifications (and alternative proposals) regarding public events, as well as statistics of their responses to notifications.
- 137.8. Require courts to publish statistics of cases regarding challenges to authorities' non-approvals of public events, as well as statistics of cases involving administrative charges with respect to public assemblies.
- 137.9. Ensure that security measures taken during public events are reasonable and not excessive. Specifically, ensure that the deployment of police is proportionate to the number of participants.
- 137.10. Stop the practice of censoring banners and posters used during public events. The authorities should not have the power to determine the compliance of the banners and slogans with the topic of the event.
- 137.11. Conduct criminal or other investigations of police officers who abused their powers during the detention of participants in public assemblies, including cases of injuries, the taking of property (notably mobile phones), and committing procedural violations (such as preventing attorneys from meeting their clients in police departments; the failure by state agents to introduce themselves and state the reasons for a detention).
- 137.12. Require badge-wearing by all officers serving during public events to make their identification possible.

¹³¹ Article 2(8) of the Moscow Law No. 10 of 4 April 2007, <http://docs.cntd.ru/document/3672018> (accessed on 16 April 2020).

¹³² Article 2(9) of the Republic of Karelia Law No. 1486-3PK of 10 May 2011, <http://docs.cntd.ru/document/919504273> (accessed on 16 April 2020).

¹³³ Article 2(6) of the Law of the Republic of Crimea No. 56-3PK of 21 August 2014, <https://rg.ru/2014/08/25/krim-zakon56-reg-dok.html> (accessed on 16 April 2020).

137.13. Draw attention to the requirement that escorting protesters to the police department is only allowed in exceptional circumstances, and only if an administrative protocol cannot be produced on the scene. The police should state exceptional circumstances for bringing protesters to police stations.

137.14. Hold training and education sessions for police, officials, and courts with respect to the principles of the European Court, as well as their obligation to comply with the relevant legal principles.

138. Finally, we request that the Committee of Ministers keep the case under the enhanced supervision procedure. Given the importance of this issue to public participation in democratic life in Russia – and the lack of progress to date – we also request that the case be reviewed by the Committee of Ministers again before the end of 2020.

Respectfully submitted,

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EXHIBITS

- Exhibit No. 1. Refuse of the Prefecture of Moscow's Central District on 25 February 2020;
- Exhibit No. 2. Table of Detention of Participants in Public Events during the 2017 FIFA Confederations Cup;
- Exhibit No. 3. Table of Detention of Participants in Public Events during 2018 FIFA World Cup;
- Exhibit No. 4. Table of Cases, in which Authorities have not suggested an Appropriate Alternative Place or Time for an Event;
- Exhibit No. 5. Table of Detention at Red Square;
- Exhibit No. 6. Table of Detention near Court Buildings;
- Exhibit No. 7. Table of Criminal Cases after the Moscow Summer Protests of 2019.