



Strasbourg, 5 March 2013

CDL(2013)013*

Opinion no. 686/2012

Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT OPINION

ON FEDERAL LAW NO. 65-FZ OF 8 JUNE 2012

OF THE RUSSIAN FEDERATION

AMENDING

**FEDERAL LAW NO. 54-FZ OF 19 JUNE 2004 ON ASSEMBLIES,
MEETINGS, DEMONSTRATIONS, MARCHES AND PICKETING
AND THE CODE OF ADMINISTRATIVE OFFENCES**

on the basis of comments by

Mr Richard CLAYTON (Member, United Kingdom)
Ms Finola FLANAGAN (Member, Ireland)
Mr Wolfgang HOFFMANN-RIEM (Member, Germany)

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I. Introduction

1. By a letter dated 5 July 2012, the Chair of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe asked the Venice Commission to provide an opinion on the Federal Law of the Russian Federation as amended by law of 8 June 2012.

2. Mr Richard Clayton, Ms Finola Flanagan and Mr Wolfgang Hoffmann-Riem were appointed as rapporteurs.

3. The present opinion is based on an English translation of the amendments of June 2012 provided by PACE (CDL-REF (2012)028 hereinafter “the amendments of June 2012”; see also CDL-REF(2012)029).

4. *The present opinion was discussed at the Sub-Commission on Fundamental Rights on 11 October 2012 and was subsequently adopted by the Commission at its ... Plenary Session (Venice, ...).*

II. Previous opinion of the Venice Commission

5. Federal Law No. 65-FZ of 8 June 2012 (CDL-REF (2012)028, hereinafter “the amendments of June 2012”; see also CDL-REF(2012)029) has amended both the Code of Administrative Offences and Federal Law No. 54-FZ of 19 June 2004 on assemblies, meetings, demonstrations, marches and picketing (“the Assembly Act”).

6. In March 2012, prior to the adoption of the amendments of June 2012, the Venice Commission adopted an opinion on the Assembly Act (CDL-AD(2012)007), at the request of PACE. In its Opinion on the Assembly Act, the Venice Commission has dealt with its standards for evaluating laws on the freedom of assembly (para 5-8) and it has referred to its Guidelines on the freedom of assembly¹. The Guidelines reflect the Commission’s deep conviction that the protection of the freedom to peacefully assemble is crucial to creating a tolerant and pluralistic society in which groups with different beliefs, practices or policies can exist peacefully together. As a fundamental right, freedom of peaceful assembly should, insofar as possible, be enjoyed without regulation. The state should always seek to facilitate and protect public assemblies². The Venice Commission is aware of the fact that several assembly laws in Europe, especially older ones, contain provisions which are drafted in rather restrictive terms³. The Commission

¹ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, as revised in 2010.

² Guidelines, § 1.3-2.2.

³ During the process of amending the Russian Assembly Law, a paper was posted on the Duma’s website under the title “Analytical Review. Individual Norms in Foreign Legislation regarding a Responsibility for Failure to Obey Regulations in the Conduct of Mass Events” (Аналитическая справка Государственной Думы РФ, май 2012,

stresses in this respect that the manner of implementation of similar provisions may contribute to restricting their negative impact on the exercise of freedom of assembly. At any rate, as the Commission has previously said⁴, “risks of an overbroad use of discretionary powers in order to suppress assemblies can always arise and therefore any assembly law must aim at reducing them as far as possible”: it is the Commission’s firm belief that when designing or amending assembly laws, Council of Europe member states should reflect the fundamental principles of “presumption in favour of holding assemblies”, “proportionality” and “non-discrimination” in their wording.

7. In its March 2012 Opinion, the Commission made the following recommendations:

- *It is recommended that the presumption in favour of holding assemblies and the principles of proportionality and non-discrimination be expressly included in the Assembly Law*
- *the regime of prior notification under Article 5.5, 7 and 12 Assembly Act should be revised; the co-operation between the organisers and the authorities in Article 12 Assembly Act should be settled on a voluntary basis respecting the assemblies’ autonomy and without depriving the organisers of the right to hold an assembly on the ground of a failure to agree on any changes to the format of an assembly or to comply with the timeframe for notification of the public event; the power of the executive authorities to alter the format of a public event should be expressly limited to cases where there are compelling reasons to do so (Article 11.2 ECHR), with due respect for the principles of proportionality and non-discrimination and the presumption in favour of assemblies.*
- *the right to appeal decisions before a court (Article 19 Assembly Act) is welcomed; it should be provided that a court decision will be delivered before the planned date of the assembly, for instance via the availability of court injunctions;*
- *spontaneous assemblies and urgent assemblies as well as simultaneous and counter demonstrations should be allowed as long as they are peaceful and do not pose direct threats of violence or serious danger to public safety;*
- *the grounds for restrictions of assemblies should be narrowed to allow application of the principle of proportionality in order to bring them in line with Article 11.2 ECHR and reasons for suspension and termination of assemblies should be limited to public safety or a danger of imminent violence;*
- *the obligations of the organisers in Article 5.4 Assembly Act should be reduced; their responsibility to uphold public order should be restricted to the exercise of due care;*
- *the blanket restrictions on the time and places of public events should be narrowed.*

8. Regrettably, the amendments of June 2012 to the Assembly Act failed to address the Commission’s recommendations.

9. On 10 July 2012, a Chamber of the European Court of Human Rights issued a judgment (Berladir and others v. Russia) which relates to the Assembly Law and in which the Court found no violation of Article 11 ECHR. The Court noted that the applicant had not fully exhausted legal remedies. It further accepted that - in the instant case - the authorities had acted within

"Отдельные нормы зарубежного законодательства об ответственности за несоблюдение правил проведения массовых мероприятий" <http://iam.duma.gov.ru/node/3/4910/19824>). Some of the information on the basic legislative norms in the countries referred to in this paper does not match with the information collected by the Venice Commission. The Venice Commission in particular strongly disputes the conclusions that “there is not a single democratic state in which rallies, marches or demonstrations can be organised and carried out on the basis of strictly formal notification” and that “the demands of legislation in developed democratic countries are considerably (when compared to Russian) harsher in prioritising public order and in detailing the authorities of the police”.

⁴ CDL-AD(2012)007, para. 30 in fine

their broad margin of appreciation as concerns the reasons for amending the modalities of the planned demonstration and for rejecting the proposal by the organiser. In the *Berladir* case, as usual, the ECtHR did not examine the compatibility of the Assembly Law with the ECHR *in abstracto*, but limited itself to the examination of the application of the Law in that case. The ECtHR therefore did not examine whether the Assembly Law contains a violation of the ECHR, for instance a potential for abuse, which, by chance, did not materialize in that case. In this opinion the Venice Commission will also deal with this topic.

10. The constitutionality of certain specific amendments contained in the law of June 2012 was challenged by a group of deputies of the State Duma before the Constitutional Court of the Russian Federation which reviewed the law in open sitting. Judgment in the case was delivered on 14 February 2013 and published and came into force immediately (the English translation of extracts of this judgment appears in document CDL-REF(2013)013). The judgment is in principle welcomed by the Venice Commission. It reflects many of the critical points seen by the Commission, though it does not solve all problems. Besides this, the Venice Commission bears in mind that it still needs to be implemented by the executive authorities and the courts. In particular with respect to those provisions which the Constitutional Court decided to interpret in conformity with the Constitution rather than demanding clarifications in the law itself, there might be a lack of clarity for the executive authorities and the organizers and participants of assemblies. The implementation in practice remains to be seen.

11. In this regard it should be noted that in its judgment the Constitutional Court addressed only the arguments (which were of limited scope) that were made by the applicants in the case who alleged the unconstitutionality of certain specific provisions of the law of June 2012. In contrast the role of the Venice Commission in preparing this Opinion and the previous Opinion on Federal Law No. 54-FZ of 19 June 2004 on assemblies, meetings, demonstrations, marches and picketing (“the Assembly Act”) which was adopted in March 2012(CDL-AD(2012)007), is to address the laws as a whole in relation to their compatibility with international human rights standards. The Court’s analysis does not therefore address or propose remedies for all of the problems identified by the Venice Commission in this previous Opinion. Furthermore, some of the issues considered by the Court appear not to have been discussed in our Opinion in any detail. The Venice Commission therefore recommends that each of its conclusions in the previous Opinion on Federal Law No. 54-FZ of 19 June 2004 on assemblies, meetings, demonstrations, marches and picketing (“the Assembly Act”) should be addressed so that the laws in their entirety comply with international human rights standards. The Duma has yet to decide on the amendments to the Assembly Law which are required following the judgment of the Constitutional Court and it is hoped that the Venice Commission’s Opinion concerning those parts of the law which were not dealt with by the Court will be taken into consideration as well as its opinion in regard to the Court’s judgement.

12. The careful analysis of international human rights norms and, in particular, the discussion of Article 11 and the ECtHR’s jurisprudence at point 2 (pp10-12) of the Constitutional court’s judgment are welcomed. Amongst other points, the Constitutional Court acknowledges that “...the right of freedom of peaceful assembly is not subject to any restrictions other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.” The Constitutional Court also acknowledges that the State bears an obligation to guarantee protection, including judicial protection, for civil and human rights and freedoms and notes that “...the reaction of a public authority to the organisation and holding of assemblies, rallies, demonstrations, marches and picketing must be neutral and in all cases...geared to ensuring conditions...for the lawful exercise by citizens and associations thereof of their right to freedom of peaceful assembly...”

13. The Venice Commission notes that the judgment speaks only of the guarantee of the freedom of assembly in relation to “citizens”. However it is required to be extended to all persons on the national territory. This reference to “citizens” is repeated throughout the judgment. Care should be taken to ensure that guarantees of fundamental freedoms in the law should not be limited to citizens but be applied to all persons.

III. Analysis of the Law

A. The amendments to the Assembly Act (Article 2 of Federal Law 65-FZ of 8 June 2012)

14. The June 2012 amendments have introduced several amendments to the Assembly Act. A new provision (Article 5.2.1.1) bans from organising public events persons having been convicted of serious crimes against constitutional order and State security as well as persons having been convicted more than once of Articles 5.38 (violation of the Assembly Act), Article 19.3 (Failure to Follow a Lawful Order of a Militiaman, a Military Serviceman, an Officer of the Bodies for Control over the Traffic of Narcotics and Psychotropic Substances or an Officer of the Criminal Punishment System), Article 20.1 (Disorderly Conduct), Article 20.2 (Violating the Established Procedure for Arranging or Conducting a Meeting, Rally, Demonstration, procession or Picket), Article 20.3 (Displaying Fascist Attributes and Symbols), Article 20.18 (Blocking Transport Lines) and 20.29 of the Code of Administrative Offences. The bans applies pending the execution of the sentence.

15. The judgment of the Constitutional Court finds this provision “not contrary to the Russian Federation Constitution”. It observes in its judgment (CDL-REF(2013)013, page 8) that the restrictions introduced by this provision of the law do not “encroach upon the very essence of the right to freedom of peaceful assembly, as it does not create insurmountable barriers to the organisation and holding of a public event and does not hinder participation in it by a citizen in respect of whom such a ban is imposed: a citizen in this situation is restricted only in their right to be the organiser of a public event, and only for a defined period; they are not deprived of the right to take part in public events and retain the possibility of requesting other citizens and also political parties, other public associations and religious associations, their regional branches and other structural sub-divisions to organise such events; they are not prohibited from providing assistance to the organisers of public events, including the performing of administrative/stewardship functions, in the capacity of persons authorised by the organiser, relating to the organisation and holding of a public event...”

16. The Venice Commission observes that an important part of the right to assemble peacefully includes the right to become involved in all aspects of the organisation of an assembly including playing the role of “organiser” as provided for in the 2004 Law on Assemblies.

17. Article 5.2.1.1 (coupled with new para. 3 of Article 12) provides a blanket prohibition (limited in time) in respect of the exercise of the right guaranteed by Article 31 of the Russian Constitution “*to organise discussions, meetings and demonstrations, as well as processions and pickets*”. The right to freedom of peaceful assembly as enshrined in Article 11 ECHR also guarantees the right to be an organiser of an assembly.

18. Only compelling reasons may justify that a person be deprived of his/her right to organise public events which is part of the freedom of assembly. The exclusion of whole categories of people for breaches of a variety of not only severe criminal but also administrative provisions, and irrespective of the gravity of such breaches, represents, in the Commission’s view, a disproportionate restriction of the right of freedom of assembly. Restrictions must always be justified. Under paragraph 3 of Article 55 of the Russian Constitution, restrictions to individual rights and freedoms are possible “only to the extent needed for the purposes of protecting the

foundations of its constitutional system, morals, health, rights and legitimate interests of other persons, and ensuring the defence of the nation and security of the state.” The requirements for justification are strict since the restrictions relate to the core of the freedom of assembly. The interpretation provided by the Constitutional Court (“*the aforementioned prohibition may be imposed only in a case where a repeat administrative prosecution of that person for the corresponding administrative infringement has occurred within a period for which administrative punishment is applicable for an administrative infringement previously committed by them and has resulted in the imposing of administrative punishment, and only for the period during which the person in question is considered to be subject to administrative punishment*”) does not satisfy the requirements, since there is no distinction made in relation to the kind (severe or minor) of the administrative offence or punishment. The basic restriction is the limit in time. That is not sufficient.

19. The Venice Commission stresses again that an important part of the right to assemble peacefully includes the right to become involved in all aspects of the organisation of an assembly including playing the role of “organiser” as provided for in the 2004 Law on Assemblies. The right to organise should not therefore be limited in the blanket fashion prescribed in the Law and merely allowing an individual to participate but not organise is not a legitimate restriction under the terms of article 11(2) ECHR.

20. The June 2012 amendments (Art. 5 para 3.6) give the organisers the right to demand that an authorized representative of the internal affairs authorities remove from the site of the public event those participants who do not comply with their lawful requests. The Venice Commission considers that this provision should specifically indicate that failure to do so will not entail any negative consequences for the organiser. It must be stressed that the authorities are entitled (and may even be obliged) to act even without such a demand from the organiser.

21. The June 2012 amendments also add to the responsibilities of the organiser a responsibility that concerns the number of participants. Under Article 7 para. 3.5 of the Assembly Act, the organiser has to indicate in the notice the expected number of participants in the public event, and under Article 5 para. 4.3 he or she has to “ensure compliance with the conditions for holding an event specified in the notice or with those that have been altered as a result of the agreement reached with the authorities”. New paragraph 4.7¹ of Article 5 of the Assembly Act requires the organiser specifically “to take measures to prevent the number of participants announced in the notice from being exceeded, where exceeding that number creates a threat to public order and/or public safety, the safety of participants or other persons or risks to damage the property”. It is placed after Article 5 para. 4.7 which refers to the “holding capacity of the premises of the public event”.

22. In May 2012 the Constitutional Court of the Russian Federation issued a decision⁵ whereby it found that Article 5 para. 4.3 was not contrary to the Russian Constitution, insofar as the discrepancy between the expected number of participants declared in the notice and the actual number of participants entails the organiser’s administrative responsibility “only if it is established that this discrepancy, due to the fault of the organiser, has caused a real threat to public order and/or public safety, and the safety of both the participants in the public event and those not participating in it, as well as damage to the property of physical individuals and moral persons”. The wording of new paragraph 4.7¹ echoes this decision.

23. The Venice Commission agrees with the important principle stated by the Russian Constitutional Court that an organiser may not incur administrative responsibility on account of a mere failure to comply with the notice of the public event. This provision was also challenged before the Constitutional Court in 2012 and, again, the Court found that the organiser’s possible

⁵ Decision of 18.05.2012, N 12-P, CDL-REF(2012)036

liability where the numbers who attend an event exceed the number anticipated in the notice of the holding of the event does not contravene the Constitution of the Russian Federation. The Court noted the constitutional presumption of innocence in favour of the organiser, if prosecuted, and that the organiser must be “directly at fault” for the anticipated number being exceeded and that “irremediable doubt as to their guilt must be interpreted in their favour”. The Court noted that in deciding whether to apply administrative sanctions to the organiser of a public event, special attention must be devoted to clarifying what objective possibility that person had of correctly estimating what the real number of participants in the public event would be. The Court pointed out that in a prosecution there might be legal appraisal of the organiser’s actions/failure to act. The Venice Commission agrees that these are matters that must be taken into account in any prosecution.

24. However, as concerns the holding capacity of the premises of the public event and an estimate of how many people will turn up to the assembly, the Venice Commission considers it unrealistic to assume that an organiser could foresee the number of participants or that he or she could count them at the time of the event, or that he or she could always be able to prevent participants from staying if the number has been exceeded. An organiser is entitled to encourage as many participants as possible to attend and persons who wish to attend have the right in principle to do so as part of their freedom of assembly. The Venice Commission therefore considers it disproportionate to require the organiser to take measures (what measures is unclear) to contain the number of participants and to make the organiser responsible if he or she does not succeed. The organizer should only be liable, if he/she intentionally provided false information relevant to estimating the possible number of participants or tried to impede measures taken by the authorities in order to keep the number of participants within the holding capacity of the place of the assembly during the event and that this caused a threat to public order. The Commission therefore recommends that this provision as well as Article 5 para. 4.3 be amended.

25. Under the June 2012 amendments, organisers are made responsible for damages caused by the participants at the public event in case of non-respect of the obligations listed in para. 4 of Article 5 of the Assembly Law. Damages are to be determined by a court. The Constitutional Court found unconstitutional the rule making the organiser of the public event civilly liable for damage caused by a participant because it effectively places the organiser under obligation to indemnify the damage even when it was not linked to the actions or failure to act of the event organiser. The Court considered that this would have a deterrent effect on the exercise of the freedom of peaceful assembly and would result in the unjustified restriction of the property rights of persons who are organisers of public events.

26. The Commission welcomes this finding and stresses in the first place, as it has previously done⁶, that whereas the organiser is indeed responsible for exercising due care to prevent disorder, he or she cannot exercise police power and cannot be required to do so. Moreover, the right of peaceful assembly mirrors the state’s duty to facilitate and protect such events. This leads to the conclusion that the overall responsibility to ensure public order must lie with the law enforcement bodies, not with the organiser of an assembly. The obligations of organisers should be reduced to the exercise of due care, taking into account the limited powers of the organiser, the more so since the responsibility of the authorities to provide public security, medical aid etc. is already set out in Article 18.3 of the Assembly Law. In any case, the primary responsibility for damages should be on the perpetrators and not on the organisers of the event.

⁶ CDL-AD(2012)010, para. 41.

27. Under the new amendments (Article 5 para. 4.11 of the Assembly Act as amended), the organiser is required to demand that participants do not conceal their faces, and participants are obliged (Article 6 para. 4.1 of the Assembly Act as amended) not to conceal their faces, including through the use of masks, means of disguise or other items “specially intended to make them more difficult to identify”.

28. The Venice Commission and OSCE/ODIHR have previously expressed the view that “the wearing of a mask for expressive purposes at a peaceful assembly should not be prohibited so long as the mask or costume is not worn for the purposes of preventing the identification of a person whose conduct creates probable cause for arrest and so long as the mask does not create a clear and present danger of imminent unlawful conduct.”⁷ In the Commission’s view, a blanket ban on wearing any kind of mask at a peaceful assembly represents a disproportionate restriction of freedom of assembly.

29. Participants may not carry weapons etc. (Art. 6 para 4.2). This is adequate in order to guarantee the peaceful nature of assemblies. The prohibition against bringing or consuming alcohol (Article 6 para. 4.2 of the Assembly Act as amended) should instead be restricted to cases where there are objective and reasonable grounds for believing that the person in question has consumed alcohol and that the consumption may lead to risks of concrete violations of public order or where people, being in a state of inebriation, want to participate. In addition and importantly, the prohibition of alcohol should not be used as a justification for routine controls of all participants.

30. Pickets by one single person under the Assembly Act are exempt from notification (indeed an assembly is made up of more than two persons). New Article 7 para. 1¹ specifies that there must be a distance to be determined but of no more than 50 metres between single picketers. The possibility is given to the courts to declare (retrospectively) that the sum of the single picketers “united by a single concept and overall organisation” constituted a public event. The consequences of such a decision would be that the public event has not met the applicable legal regulations, and the organisers and the participants are exposed to administrative liability.

31. The Venice Commission notes in the first place that this provision makes the administrative offence dependent on the subjective assessment carried out a posteriori by a court of the unity of the concept and the common arrangement. This makes it impossible for a picketer to anticipate whether his or her a priori lawful conduct – picketing without prior notice – will lead to an administrative offence, which is incompatible with the requirement of legality of any interference with the right to freedom of free expression as well as of assembly.

32. In addition, the Venice Commission is of the opinion that, as the ECtHR has said, state authorities are entitled to require that the reasonable and lawful regulations on public events be respected and to impose sanctions for failure to respect such regulations. When rules are deliberately circumvented, it is reasonable to expect the authorities to react. The Commission however recalls the important principle stated by the Constitutional Court of the Russian Federation in 2012 that administrative responsibility may not arise only out of the non-respect of the rules, but must be dependent on an actual threat to public order and safety. Where sporadic and scattered picketers do not represent any such threat, they should not be sanctioned even though they did not follow the rules. The fact alone that they do not adhere to the norm does not pose a threat in itself. The Venice Commission welcomes the statement by the Constitutional Court (CDL-REF(2013)013, page 22) that the rules concerning single pickets “...are intended to prevent abuses of the right not to notify the public authorities of the holding of a one-person picket, [but] they do not rebut the presumption of lawfulness of the actions of a citizen observing the established procedure for holding a one-person picket, and they intend the

⁷ See Guidelines, para. 98.

sum total of picketing actions carried out by a single participant to be declared as a public event only on the basis of a court decision and only where it is established by the court that these picketing actions were from the outset united by a single concept and overall organisation and do not amount to a coincidental coming together of actions of individual pickets”.

33. Former Article 9 of the Assembly Law prohibited assemblies taking place between 11 p.m. and 7 a.m. Under the June 2012 amendments, this restriction has been extended with no justification and now applies between 10 p.m. and 7 a.m., except in cases of commemorative dates of Russia or cultural events. The Venice Commission has already expressed the view that blanket restrictions should be avoided and decisions to limit the time of a public event should only be taken by the executive authorities in each single case with due respect for the principle of proportionality⁸. An extension of the period, as provided for in the Amendment, increases the problem of disproportionality.

34. Under the June 2012 amendments, campaigning for a public event is no longer permitted starting from the time of submission of the notice, but only starting from the time of agreement between the organiser and the authorities on the format of the event. This provision is problematic because it enables the authorities to delay the organisers' campaigning, thus hampering severely the possibility in practice to campaign for and organise a public event. The constitutionality of this provision was challenged in the case before the Constitutional Court. The Constitutional Court found that this rule was “not tantamount to establishing a procedure for authorising...citizens to exercise the rights guaranteed to them by Article 31 of the...Constitution” and “did not exceed the discretionary powers defined by the ...Constitution”. The Constitutional Court (CDL-REF(2013)013, page 11) draws a distinction between providing information about an event which is permitted once the notice is submitted on the one hand, and prior promotion/inciting citizens to take part which is not permitted until agreement is reached on the other:

“Permitting prior promotion of a public event following agreement with the corresponding public authority on its place and/or time does not mean that, prior to that time, the organiser of a public event is not entitled to disseminate any information on it whatsoever: Article 4 of the Federal Law "On assemblies, rallies, demonstrations, marches and picketing" does not rule out informing potential participants of a public event – both before and after the corresponding notice is submitted to an executive authority of the Russian Federation or a local authority. Informing potential participants of a public event – as distinct from prior promotion of an event, which, within the meaning of the legal viewpoint expressed by the Constitutional Court of the Russian Federation in Judgment no. 15-P of 30 October 2003, pursues the aim of inciting citizens and their associations to take part in the public event, – enables its organisers to provide timely information to potential public event participants on a planned rally, demonstration, march or picketing and also, where necessary, on the process of its agreement. In providing such early warning, the organiser of a public event is entitled to disseminate information through any means on the aims, form and announced place and time of the event, the anticipated number of participants and other details of the public event; however, that information must not contain invitations or incitements to take part in it.”

35. Contrary to the judgment of the Constitutional Court, the Commission is of the view the distinction between giving information and promotion is not clearly described in the Law so as to be readily understood. In any event the Venice Commission considers the purported distinction not to be a real one and therefore likely to give rise to arbitrary decisions which will

⁸ CDL-AD(2012)010, para. 35.

limit the capacity of organisers to advertise assemblies. Besides this, the lack of clarity can cause chilling effects.

36. In the Commission's opinion, this change confirms its previous conclusion that the notice is in substance a request for authorisation or permission: "As regards the procedure for notification of public events as set out in the Assembly Law, the Venice Commission considers that this procedure is in substance a request for permission. Furthermore, the Assembly Law confers too broad discretion on the executive authorities to restrict assemblies, for instance by giving them the power to alter the format of the public event for aims (in particular the need to preserve the normal and smooth circulation of traffic and people) which go beyond the legitimate aims contained in Article 11 ECHR. The Law fails to indicate explicitly that such discretion must be exercised with due respect for the essential principles of "presumption in favour of holding assemblies", "proportionality" and "non-discrimination". In the opinion of the Venice Commission the Assembly Law does not sufficiently safeguard against the risks of an excessive use of discretionary power or even arbitrariness or abuse. Risks of an overbroad use of discretionary powers in order to suppress assemblies can always arise and therefore any assembly law must aim at reducing them as far as possible." The Venice Commission sees no reason to change this evaluation of the law. The amendment of Article 10 para. 1 leads to further problems related to the system of notification.

37. It should be made clear in the law that the courts have the power to reverse decisions which are within the broad discretion of the executive authorities and the review must be completed in time before the proposed date of the public event to preserve its original timeframe. At page 16 of its judgment the Constitutional Court states that where there is failure to reach agreement with the authorities there is a right to judicial review and that the judicial examination must be carried out "within the shortest possible time ... i.e. before the planned date for holding the public event. If not, judicial protection would largely lose its sense, which would not be permissible under Article 46 of the Russian Federation Constitution (Ruling no. 484-O-P of the Constitutional Court of the Russian Federation of 2 April 2009)." However, the Constitutional Court did not address problems arising when a court decision will be rendered shortly before the date of the planned assembly. The fact that after an agreement or a court decision all forms of advertising can be used does not compensate for drastically shortening the period that remains until the event takes place. In many cases there will not be sufficient time to promote the assembly effectively.

38. A major novelty brought about by the June 2012 amendments is the provision of "specialty designated places" for public events to be designated by the public (local) authorities. As a rule, public events must be held there. In exceptional cases, the organiser may submit a notice for holding a public event elsewhere following the ordinary procedure, and the law specifies that the executive authorities may only refuse to agree on the event under the terms of Article 12 para. 3 of the Assembly Act (when the organiser cannot act as organiser and when the chosen venue is prohibited under the law). The regional and local authorities may determine the prohibited sites for reasons including hindrance to pedestrians or traffic. The procedure for using the specialty designated places may be simplified. The Russian authorities have explained to the Venice Commission that in some cases notification may not be necessary, but this is not clearly indicated in the Assembly Act (Article 8 para. 1.1 seems to subordinate the exemption from notification to a given maximum number of participants). As for the criteria for determining the specialty designated places, the Assembly Act specifies that they must "provide for the possibility of attaining the aims of the public event and must be accessible, respect safety and health rules and so on".

39. The Venice Commission has already had occasion to examine laws of other countries providing for a list of specialty designated places for public events. The Commission considered that "designation by the authorities of assembly locations raises concerns as it is incompatible

with the very concept of the right to peaceful assemble as a fundamental freedom⁹; the existence of such facilities may be acceptable only so long as it facilitates the exercise of freedom of assembly and in particular only if it is clear that these places represent an additional option - and not the only option or the rule – to hold an event¹⁰ or if the places are explicitly indicated as notification-free¹¹.

40. In the present case, instead, the Commission notes that the specially designated places become the “natural” venues for public events, while other venues, possibly “within sight and sound” of the target of the public event, become an exception which needs a special justification. Even though the law limits the possibility for the authorities to refuse to agree on an event, the law removes the discretion of the authorities and requires them to prefer the specially designated places to any other location. The authorities will therefore propose to hold the event at one of the specially designated places instead, or at any rate change the format of the event, thus obliging the organiser either to agree or to give up. In the eyes of the authorities, the possibility to hold the public event at one of the specially designated places practically with neither burden nor notice will weigh against the organiser’s claim that the public event must be held in another specific place. Article 8 para. 1.1 thus removes the autonomy of the organiser to choose the location of the public event. The Commission notes that the European Court of Human Rights, while in the context of the *Berladir* judgment it ruled that there was no right to the forum chosen by the organisers, has always required that the reasons given by the authorities for changing the format of a public event be relevant, sufficient and in pursuit of a legitimate aim¹². The Court has gone on to examine whether the organiser was afforded an opportunity to express his or her views at another suitable and equivalent¹³ location.

41. As concerns the “prohibited locations”, the Commission refers to its previous criticism on blanket prohibitions.

42. In conclusion, the Venice Commission stresses that it is the privilege of the organiser to decide which location fits best, as in order to have a meaningful impact, demonstrations often need to be conducted in certain specific areas in order to attract attention (“Apellwirkung”, as it is called in German)¹⁴. Respect for the autonomy of the organizer in deciding on the place of the event should be the norm. The State has a duty to facilitate and protect peaceful assembly¹⁵. The judgment of the Constitutional Court finds the law unconstitutional (CDL-REF(2013)013, page 15) in relation to the powers of the Russian Federation constituent entities’ to establish specially designated sites but only insofar as it does not set clear statutory criteria for the executive authorities which adequately guarantee equal legal conditions for all citizens to exercise their right of assembly when deciding upon such sites. The judgment confirms that such sites are, in principle, permissible. The Venice Commission does not agree with this position.

⁹ Joint OSCE/ODIHR, Venice Commission Opinion on the Public Assembly Act of the Republic of Serbia, CDL-AD(2010)031, para. 38)

¹⁰ In its opinion on the draft amendments to the law on freedom of assembly in Azerbaijan, the Venice Commission accepted a list of designated places to the extent that “The list referred to in paragraph VI contains the places which are proposed, not designed, for assemblies. In addition, this list can be changed. This means without ambiguity that the holding of an assembly in a venue not explicitly mentioned in the list is not necessarily prohibited as the list cannot be exhaustive” (CDL-AD(2007)042, para. 25).

¹¹ Joint OSCE/ODIHR – Venice Commission Opinion on the amendments to the law on the right of citizens to assemble peaceably without weapons to freely hold rallies and demonstrations of the Kyrgyz Republic, CDL-AD(2008)025, para. 42

¹² *Berladir*, paras. 58-59

¹³ notably, equally in the city centre: *Berladir*, para. 60

¹⁴ See e.g. Opinion on the law on conducting meetings, assemblies, rallies and demonstrations of Armenia, CDL-AD(2004)039, para. 38; Joint Opinion on the Public Assembly Act of the Republic of Serbia, para. 34

¹⁵ Guidelines, principle 2.

43. The Venice Commission has already expressed the view that the Russian Assembly Law confers too broad discretion on the executive authorities to restrict assemblies, for instance by giving them the power to alter the format of the public event for aims (in particular the need to preserve the normal and smooth circulation of traffic and people) which go beyond the legitimate aims contained in Article 11 ECHR. The Assembly Law fails to indicate explicitly that such discretion must be exercised with due respect for the essential principles of “presumption in favour of holding assemblies”, “proportionality” and “non-discrimination”.

44. In conclusion, the Commission finds that the provision in the June 2012 amendments of specially designated places as the venues to be used as a rule for all public events will hinder rather than facilitate the exercise of the right to freedom of assembly and is therefore incompatible with international standards.

45. New paragraph 3 of Article 12 empowers the executive authorities to refuse to agree to the holding of a public event if the notice has been submitted by an individual who is banned from organising a public event (see paras. 14-20 above) or if it concerns a prohibited venue.

46. In addition to reiterating its criticism of Article 5 para. 2.1.1 and of Article 8 para.2.2, the Venice Commission recalls that the Constitutional Court of the Russian Federation has stated in very clear terms¹⁶ that the authorities may not prohibit a public event, and may only propose an alternative time and place corresponding to the social and political objectives of the event. New paragraph 3 of Article 12 is in contradiction with this judgment and also with international standards.

B. The amendments to the Code of administrative offences (Article 1 of Federal Law 65-FZ of 8 June 2012)

47. The impact of the amendments of the Federal Law on Assemblies on the freedom of Assembly is further increased by the amendments of the Code of administrative offences introduced by the Law of 8 June 2012. These amendments consist in:

- a) an increase in the upper end of the scale of penalties applicable in case of violation of the Assembly Act, notably: Article 5.38¹⁷ (only paras 1-4 for officials), Article 20.2¹⁸,

¹⁶ Judgment N 484-O-P of 2 April 2009

¹⁷ Article 5.38. Violating the Laws on Meetings, Rallies, Demonstrations, Processions and Picketing Obstructing the arrangements for, or the conduct of, a meeting, rally, demonstration, or a procession, or picketing held in compliance with the laws of the Russian Federation, or obstructing participation therein, as well as forcing to take part therein - shall entail a warning or the imposition of an administrative fine on citizens in the amount of up to one minimum wage and on officials in the amount of from one to three times the minimum wage. (unofficial translation)

¹⁸ Article 20.2. Violation of the established procedure for organising or holding assemblies, rallies, demonstrations, marches and picketing (provision amended by Federal Law FZ-65 of 8 June 2012, unofficial translation)

1. The violation by an organiser of a public event of the established procedure for organising or holding assemblies, rallies, demonstrations, marches and picketing, except in the cases provided for in paragraphs 2 - 4 of the present Article, shall entail the imposition of an administrative fine on citizens of between ten thousand and twenty thousand roubles or community service for a period of up to forty hours; on officials of between fifteen thousand and thirty thousand roubles; and on legal entities of between fifty thousand and one hundred thousand roubles.

2. The organising or holding of a public event without submitting notice thereof under the established procedure, except in the cases provided for in paragraph 7 of the present Article, shall entail the imposition of an administrative fine on citizens of between twenty thousand and thirty thousand roubles or community service for a period of up to fifty hours; on officials of between twenty thousand and forty thousand roubles; and on legal entities of between seventy thousand and two hundred thousand roubles.

Article 20.2.2 (introduced by the amendments of 2012, see CDL-REF(2012)028), Article 20.18¹⁹ and (for citizens only) Article 20.25 §4 (also introduced by the amendments of 2012): from 5,000 to 300,000 RUR for citizens and from 50,000 to 600,000 RUR for officials; there is no indication about the lower end of the scale.

- b) the introduction of a new kind of sanction - community work:

Article 3.13 Community work

1. Community work shall entail unpaid work of public utility performed by a physical individual having committed an administrative infringement, carried out during free time outside their principal work, duties or studies. Community work shall be imposed by a judge.

2. Community work shall be established for a period of between 20 and 200 hours and shall be performed for no more than four hours a day.

3. Community work shall not be applicable to pregnant women, women with children under three years of age, category-I and -II invalids, servicemen, citizens conscripted for military training or special-ranked staff of internal affairs agencies, criminal law enforcement system authorities and institutions, the state fire service, agencies combating trade in narcotics and psychotropic substances and customs authorities.";

- c) the creation of a new offence (Organisation of a mass simultaneous presence and/or movement of citizens in public places resulting in a breach of public order, Article 20.2.2, see CDL-REF(2012)028).

3. Acts/failures to act provided for in paragraphs 1 and 2 of the present Article resulting in hindrance to the movement of pedestrians or traffic or overcrowding exceeding the maximum occupancy norms applying to an area/premises, shall entail the imposition of an administrative fine on citizens of between thirty thousand and fifty thousand roubles or community service for a period of up to one hundred hours; on officials of between fifty thousand and one hundred thousand roubles; and on legal entities of between two hundred and fifty thousand and five hundred thousand roubles.

4. Acts/failures to act provided for in paragraphs 1 and 2 of the present Article resulting in harm to human health or property, where such acts/failures to act entail no action that is punishable under criminal law, shall entail the imposition of an administrative fine on citizens of between one hundred thousand and three hundred thousand roubles or community service for a period of up to two hundred hours; on officials of between two hundred thousand and six hundred thousand roubles; and on legal entities of between four hundred thousand and one million roubles.

5. The violation by a participant in a public event of the established procedure for holding assemblies, rallies, demonstrations, marches and picketing, except in the cases provided for in paragraph 6 of the present Article, shall entail the imposition of an administrative fine of between ten thousand and twenty thousand roubles or community service for a period of up to forty hours.

6. Acts/failures to act provided for in paragraph 5 of the present Article resulting in harm to human health or property, where such acts/failures to act entail no action that is punishable under criminal law, shall entail the imposition of an administrative fine of between one hundred and fifty thousand and three hundred thousand roubles or community service for a period of up to two hundred hours.

7. The organisation or holding of unauthorised assemblies, rallies, demonstrations, marches or picketing in the immediate vicinity of an area occupied by a nuclear installation, a radiation source or a site used to store nuclear materials and radioactive substances or active participation in such public events, where this has made it more difficult for workers at the aforementioned installations, sources or sites to fulfil their duties or has created a threat to the safety of the population and environment, shall entail the imposition of an administrative fine of between one hundred and fifty thousand and three hundred thousand roubles or administrative detention for a period of up to fifteen days; on officials of between two hundred thousand and six hundred thousand roubles; and on legal entities of between five hundred thousand and one million roubles."

¹⁹ Article 20.18. Blocking Transport Lines

The organisation of the blocking, as well as an active participation in the blocking of transport lines except in the cases provided in paragraph 3 of Article 20.2 and Article 20.2.2 of the present code, shall entail the imposition of an administrative fine in the amount of from twenty to twenty five times the minimum wage or administrative arrest for a term of up to fifteen days. (provision amended by Federal Law FZ-65 of 8 June 2012, unofficial translation).

Article 20.2.2 Organisation of a mass simultaneous presence and/or movement of citizens in public places, resulting in a breach of public order

1. The organisation of a mass simultaneous presence and/or movement of citizens in a public place that is not a public event, public calls for a mass simultaneous presence and/or movement of citizens in a public place or participation in a mass simultaneous presence and/or movement of citizens in a public place, where such a mass simultaneous presence and/or movement of citizens in a public place has resulted in a breach of public order or health standards and rules, the compromising of the functioning and integrity of facilities serving vital activities or communications or in damage to green spaces or created a hindrance to the movement of pedestrians or traffic or to citizens' access to dwellings or transport or social infrastructure facilities, except in the cases provided for in paragraph 2 of the present Article, shall entail the imposition of an administrative fine on citizens of between ten thousand and twenty thousand roubles or community service for a period of up to fifty hours; on officials of between fifty thousand and one hundred thousand roubles; and on legal entities of between two hundred thousand and three hundred thousand roubles.

2. Acts provided for in paragraph 1 of the present Article resulting in harm to human health or property, where such acts/failures to act entail no action that is punishable under criminal law, shall entail the imposition of an administrative fine on citizens of between one hundred and fifty thousand and three hundred thousand roubles or community service for a period of up to two hundred hours; on officials of between three hundred thousand and six hundred thousand roubles; and on legal entities of between five hundred thousand and one million roubles.

Note. An organiser of a mass simultaneous presence and/or movement of citizens in a public place that is not a public event shall, for the purposes of the present Article, be taken as meaning an individual having de facto fulfilled an organisational/administrative function for the organisation or holding of a mass simultaneous presence and/or movement of citizens in a public place that is not a public event.

48. The constitutionality of the provisions of paragraphs 3, 6, 7, 8, 9 and 10 of Article 1 of the Law was challenged on the basis that the amendments introduced by them to the Code of Administrative Infringements of the Russian Federation increased the amounts of administrative fines for administrative infringements linked to the organisation and holding of public events or other mass events resulting in breaches of public order, up to three hundred thousand roubles for citizens and up to six hundred thousand roubles for officials. The Constitutional Court held that the maximum fines prescribed by the Law were permissible since the maximum amount did not need to be applied. However in relation to the minimum fines the Court held that this was not in accordance with the Constitution because even the minimum possible amount of the fine frequently exceeded the average monthly wage and where it was not possible for a court in all cases to fully to take into account all the circumstances of the offender, the administrative fine could change from a measure intended to prevent infringements into an instrument of extreme restriction of citizens' right to property that was incompatible with the requirements of fairness. The Venice Commission welcomes this aspect of the Constitutional Court's judgment.

49. Nonetheless, the Venice Commission considers that the judgment is not far-reaching enough as the Court unfortunately stops short of clearly demanding both the minimum and the maximum amounts to be substantially lowered. The Commission recalls that, as concerns sanctions for failure to comply with the legal regulations on the exercise of freedom of assembly, the European Court of Human Rights has stated the following principles:

- An authorisation procedure is in keeping with the requirements of Article 11 § 1, if for the purpose of enabling the authorities to ensure the peaceful nature of a meeting. Thus, the requirement to obtain authorisation for a demonstration is not incompatible with Article 11 of the Convention. Since States have the right to require authorisation, they must be able to apply some sanctions to those who participate in demonstrations that do not comply with the requirement (see Berladir and others v. Russia judgment of 10 July 2012, 41; Ziliberberg v. Moldova (dec.), no. 61821/00, 4 May 2004, and Rai and Evans v. the United Kingdom (dec.), nos. 26258/07 and 26255/07, 17 November 2009). The impossibility to impose such sanctions would render illusory the power of the State to require authorisation (Ziliberberg, cit.);
- Conviction of an administrative offence and the subsequent imposition of a sanction for failure to comply with the applicable rules on the exercise of freedom of assembly represent an interference with the right to freedom of assembly guaranteed by Article 11 of the European Convention on Human Rights, and as such they must be not only foreseen by the law but also proportionate to the legitimate aim pursued (Berladir, cit., para. 50, 54);
- These administrative sanctions are criminal and thus require “particular justification” (Rai and Evans, cit.);
- In order to assess its proportionality, the amount of the administrative fine imposed on the applicant and its impact on his/her revenue must be taken into consideration (Rai and Evans, cit.; Berladir, cit., para. 61).

50. In their joint guidelines on freedom of assembly, the OSCE/ODIHR and the Venice Commission have argued that “the imposition of sanctions (such as prosecution) after an event may sometimes be more appropriate than the imposition of restrictions prior to, or during, an assembly”. They have added that “as with prior restraints, the principle of proportionality also applies to liability arising after the event. Any penalties specified in the law should therefore allow for the imposition of minor sanctions where the offence concerned is of a minor nature.”²⁰

51. While the proportionality of an administrative conviction and sentencing must be assessed in each single case, the Venice Commission will examine the amendments brought about by article 1 of Federal Law No. 65-FZ of 8 June 2012 against the background of the applicable international standards.

52. By application of the June 2012 amendments:

- a) the penalties applicable in case of violation of the Assembly Act have been dramatically increased;
- b) such amounts are expressed in figures and not by reference to the minimum wage, as is normally done in the code of administrative sanctions;
- c) the maximum amounts (300 000 RUR for citizens and 600 000 RUR for officials) have the potential to severely affect the revenue of the individual concerned when compared to the average per capita monthly money income in the Russian Federation, which in 2011 was of RUR 20 702,7²¹: the new maximum amounts of the administrative fines correspond to 14,5 and 29 times the average monthly income respectively;
- d) violations of the Assembly Act are treated in a significantly more severe manner than any other administrative offence;
- e) the new sanction of community work (up to 40 hours, 50 hours, 100 hours, 200 hours or 300 hours, for up to 4 hours a day, of compulsory, unpaid work) is severe and carries undoubtedly a chilling effect.

²⁰ OSCE/ODIHR-Venice Commission Guidelines on freedom of assembly, Explanatory notes, § 109 (CDL-AD(2010)020) [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)020-e.pdf](http://www.venice.coe.int/docs/2010/CDL-AD(2010)020-e.pdf).

²¹ See http://www.gks.ru/free_doc/doc_2012/rus-eng12.pdf

53. The Venice commission appreciates that the Constitutional Court derives a prohibition of forced labour both from the Russian Constitution and human rights guarantees under public international law. Moreover, it even points out correctly that applying community work only with respect to organizers of public assemblies gives rise to concerns that it might be intended primarily as a means to crush dissent, including political dissent. However, there is no justification for applying community work to organizers, where their failures have “caused damage ...to the property of a physical individual or corporate entity or the onset of other similar consequences”. Damage to property is quite a broad term and minor damage can easily occur in the course of public assemblies. Hence, this cannot be seen as a sufficient criterion for distinction. As far as damage to human health” is concerned, community work may be an adequate sanction, but only in cases of severe damage.

54. Even though their actual implementation depends ultimately on the courts²², the June 2012 amendments impose penalties (both pecuniary sanctions and community service) which are excessive for administrative offences with no violence involved and would be disproportionate. These amounts will undoubtedly have a considerable chilling effect on potential organisers and participants in peaceful public events. In addition, the different and more severe treatment which is reserved to violations of the Assembly Act as compared to any other administrative offence does not appear to be prima facie justified.

55. The Venice Commission therefore recommends that the sanctions be revised and drastically lowered.

56. As concerns the new offence (Article 20.2.2, “Organisation of a mass simultaneous presence and/or movement of citizens in public places resulting in a breach of public order”), it has been explained to the Venice Commission by the Russian authorities that it applies to events which do not have as an object “to exercise the free expression and shaping of opinions and to put forward demands concerning various issues of political, economic, social and cultural life of the country and also issues of foreign policy” (see the definition of public event in Article 2 of Federal Law 54-FZ). Examples of these events are sport events, concerts, flash mobs and so on.

57. The Commission stresses its conviction that sanctioning as an offence – with rather heavy minimum and maximum penalties - not only the organisation of, but also “public calls for” and “participation in a mass simultaneous presence or movement of citizens” which have caused the almost inevitable consequences of a mass presence of people, that is any “damage to green spaces or hindrance the movement of pedestrians or traffic or to citizens’ access to dwellings or transport or social infrastructure facilities”, amounts to a disproportionate interference with the right to freedom of assembly. As it stands, this provision will have deterrent effects on many events, notably creative activities using new forms of public activities and of participation in matters of public interest, including flash mobs. The freedom of assembly is not restricted to traditional forms of assemblies; the guarantee is open to new ones.

IV. Conclusions

58. In March 2012 the Venice Commission examined the Law on assemblies, meetings, demonstrations, marches and picketing (the Assembly Act), and expressed the view that it presented several fundamental shortcomings; the Commission made several recommendations designed to assist the Russian Federation in bringing the Assembly Act in line with the applicable international standards. The Venice Commission regrets that none of these

²² A report of the Ombudsman of the Russian Federation suggests that the proceedings of application of administrative fines do not meet the requirements of adversarial proceedings and equality of the parties on account of the role of the prosecutor (he provides evidence of the administrative violations).

recommendations has been taken into consideration by the Russian authorities, when they amended the Assembly Act in June 2012.

59. The Venice Commission is firmly convinced that the June 2012 amendments to both the Assembly Act and to the Code of Administrative Offences raise a number of serious concerns and represent a step backward for the protection of freedom of assembly in the Russian Federation; their implementation may result in infringements of the fundamental right to peaceful assembly guaranteed by the Russian Constitution and by the European Convention on Human Rights. Therefore, in order to ensure compliance of the Assembly Act with international standards, the Venice Commission makes the following recommendations, in addition to those contained in its previous opinion on the Assembly Act and it strongly recommends to reconsider the amendments:

- a. It is recommended to reconsider new Article 5 paragraph 2.1.1 and to remove the exclusion from the right to organise public events of whole categories of people for breaches of a variety not only of criminal but also of administrative offences, irrespective of their gravity;
- b. It is recommended to indicate in sub-paragraph 6 of paragraph 3 of Article 5 that failure by the organiser to demand the intervention of the internal affairs authorities will not entail any negative consequences for the organiser;
- c. It is recommended to reconsider paras. 4.3 and 4.7.1 of Article 5 so as to exclude responsibility on the part of the organiser on account of the number of participants in the public event;
- d. It is recommended to limit, in paragraph 6 of Article 5, the organiser's responsibility for damages to cases of failure to exercise due care;
- e. It is recommended to reconsider the blanket ban on wearing masks or similar ;
- f. It is recommended to limit the responsibility of picketers to cases of actual threats to public order and safety;
- g. It is recommended to reconsider the time-limitations on public events in Article 9;
- h. It is recommended to reconsider the limitations to campaigning for a public event to after the authorities' agreement;
- i. It is recommended to reconsider the provision of specially designated place where public events should take place 'as a rule';
- j. It is recommended to remove Article 12 paragraph 3;
- k. It is recommended to revise and lower drastically the penalties applicable in case of violation of the Assembly Act;
- l. It is recommended to reconsider Article 20.2.2
- m. Care should be taken to ensure that guarantees of fundamental freedoms in the law should not be limited to citizens but be applied to all persons.