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Opinion no. 659/2011

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Or. Engl.

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**OPINION**

**ON THE FEDERAL LAW No. 54-FZ OF 19 JUNE 2004**

**ON ASSEMBLIES, MEETINGS, DEMONSTRATIONS, MARCHES  
AND PICKETING**

**OF THE RUSSIAN FEDERATION**

**Adopted by the Venice Commission  
at its 90<sup>th</sup> Plenary Session  
(Venice, 16-17 March 2012)**

**on the basis of comments by**

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

## I. Introduction

1. By a letter dated 19 December 2011, the President of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe asked the Venice Commission to provide an opinion on, inter alia, the Federal Law on assemblies, meetings, demonstrations, marches and pickets of the Russian Federation (CDL-REF(2012)010, hereinafter “the Assembly Law”). The Monitoring Committee refers specifically to its concern relating to “the ambiguous provisions allowing for the refusal to authorise demonstrations”. This opinion focuses on this issue.

2. Mr Richard Clayton, Ms Finola Flanagan and Mr Wolfgang Hoffmann-Riem were appointed as rapporteurs. They travelled to Moscow on 9 and 10 February 2012 and met with representatives of the Ministry of the Interior and of the Council of Federation of the Federal Assembly of the Russian Federation, with the Ombudsman, with the Institute for Legislation and Comparative Law under the government of the Russian Federation and with representatives of the civil society. The Institute for Legislation and Comparative Law provided comments on the law under consideration (CDL(2012)023), which were duly taken into account in the preparation of the opinion. The working group found useful information in the Comments of the Russian Federation on the letter of the Council of Europe Commissioner for Human Rights on ensuring the right to freedom of assembly in the Russian Federation.<sup>1</sup>

3. The present opinion is based on an unofficial English translation of the Russian Assembly Law. The translation may not accurately reflect the original version on all points and, consequently, certain comments can be due to problems of translation. Further, the law under consideration is a Federal Law, which is to be complemented by legislation of the relevant subjects of the Russian Federation. The Venice Commission has not examined such acts of the subjects of the Federation. It recalls that it is the task of the Federal level to ensure that such acts are in full compliance with the international obligations of the Russian Federation, in particular the European Convention of Human Rights. In addition, the law under consideration often refers to other legal acts, that were not at hand of the Venice Commission and are therefore not in the scope of this opinion. This holds as well for the sanctions regime established in the Penal Code, the Administrative Code etc.

4. The present opinion was discussed at the meeting of the sub-commission on fundamental rights on 15 March 2012 and subsequently adopted by the Commission at its 90<sup>th</sup> Plenary Session of 16-17 March 2012.

## II. Standards on freedom of assembly

5. Freedom of assembly constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and each individual’s self-fulfilment. On national level it is enshrined in Article 31 of the Constitution of the Russian Federation with the following terms: “Citizens of the Russian Federation shall have the right to meet peacefully, without arms, and to organise discussions, meetings and demonstrations, as well as processions and pickets.” It may only be subject to restrictions under the conditions laid down in Article 55.3 Constitution (the protection of constitutional order, morality, health, rights and lawful interests of others and the security of the state), as well as in state of emergency as foreseen in Article 56 Constitution.

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<sup>1</sup> CommDH(2011)32, 30 September 2011, <https://wcd.coe.int/com.instranet.InstraServlet?Index=no&command=com.instranet.CmdBlobGet&InstranetImage=1967194&SecMode=1&DocId=1794540&Usage=2>.

6. At the European and international level, freedom of assembly is guaranteed by Article 11 of the European Convention on Human Rights (ECHR) and Article 21 of the International Covenant in Civil and Political Rights (ICCPR), together with the corresponding case law.

7. As the European Court of Human Rights has reiterated in the *Barankevich v. Russia* judgment,<sup>2</sup> *“the right of peaceful assembly enshrined in Article 11 is a fundamental right in a democratic society and, like the right to freedom of thought, conscience and religion, one of the foundations of such a society (...). As has been stated many times in the Court’s judgments, not only is democracy a fundamental feature of the European public order but the Convention was designed to promote and maintain the ideals and values of a democratic society. Democracy, the Court has stressed, is the only political model contemplated in the Convention and the only one compatible with it. By virtue of the wording of the second paragraph of Article 11 (...), the only necessity capable of justifying an interference with any of the rights enshrined in those Articles is one that may claim to spring from a “democratic society” (...). The right to freedom of assembly covers both private meetings and meetings in public thoroughfares as well as static meetings and public processions; in addition, it can be exercised by individuals participants of the assembly and by those organising it (...). States must refrain from applying arbitrary measures capable of interfering with the right to assemble peacefully. (...).”*

8. The OSCE/ODIHR and the Venice Commission have elaborated a set of Guidelines on freedom of assembly (hereinafter referred to as “the Guidelines”),<sup>3</sup> which reflect the ECtHR case-law as well as the practice in other democratic countries adhering to the rule of law. Although they are not binding, these guidelines provide useful guidance for implementing national legislation on freedom of peaceful assembly in accordance with Article 11 ECHR.

### **III. Analysis of the law**

#### **A. Title and scope of the law**

9. At the outset, the Venice Commission wishes to emphasise, as it has done on previous occasions<sup>4</sup>, that this law should guarantee freedom of assembly and not merely regulate the conduct of public events. Therefore, after due amendment of the law as indicated in the present opinion, its title should include the words “freedom of assembly”.

#### **B. The notification procedure**

10. Articles 5, 7 and 12.1 of the Assembly Law set out the procedure of notification of public events.<sup>5</sup> Written notice must be given by the organiser to the authorities not earlier than fifteen and not later than ten days prior to the holding of the public event (not earlier than three days for pickets). The law does not provide that such notification must be followed by an authorisation by the executive authorities: Article 7 therefore requires a “notice of intent” and not a request for permission. The Venice Commission recalls in this context that the subjection of public assemblies to an authorisation or notification procedure should not encroach upon the essence of the right as long as the purpose of the procedure is to allow the authorities to take

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<sup>2</sup> ECtHR, *Barankevich v. Russia* judgment of 26 July 2007, paras. 24 and 25.

<sup>3</sup> OSCE/ODIHR - Venice Commission Guidelines on Freedom of Peaceful Assembly, as revised in 2010, [http://venice.coe.int/docs/2010/CDL-AD\(2010\)020-e.asp?PrintVersion=True](http://venice.coe.int/docs/2010/CDL-AD(2010)020-e.asp?PrintVersion=True).

<sup>4</sup> See among others, CDL-AD(2010)031; CDL-AD(2010)050; CDL-AD(2010)049.

<sup>5</sup> Single-person assemblies and pickets are exempted from notification. It should be noted in this regard that under the ECHR an assembly requires multiple participants, while a picketing of only one individual enjoys protection under freedom of expression as it is enshrined in Article 10 ECHR.

reasonable and appropriate measures in order to guarantee the smooth conduct of any assembly, meeting or other gathering, be it political, cultural or of another nature.<sup>6</sup>

11. Upon receipt of the notification, the executive authority must issue a receipt (Article 12.1): this is a positive provision.<sup>7</sup>

12. Article 12.1.3 requires the executive authority to "*deliver to the organiser..., within three days from receipt of the notice on holding the public event ...a well-motivated proposal to alter the place and/or time of holding the public event and also suggestions that the promoter...remedy any discordances, if any, between the goals, forms and other conditions for holding the public event specified in the notice and the requirements of [the] law.*"

13. Article 12.3 of the Assembly Act indicates that the proposal must be "well-reasoned". The Assembly Act sets out some of the grounds for proposing alternatives: a danger that the building collapse or any other threats for the participants in the demonstration (Article 8 § 1), if the assemblies are planned to be held in banned places (listed in Article 8 §2) and if the intended location of assembly may accommodate fewer persons than are expected to participate (Article 12.1.4). In addition and in general, Article 12.1.3 indicates as a ground for amending the format "*discordances, if any, between the goals, forms and other conditions for holding the public event specified in the notice and the requirements of [the] law*".

14. The Institute of Legislation and Comparative Law under the Russian Government has explained<sup>8</sup> that "the executive authorities of the constituent entities of the Russian Federation or local self-government authorities may request changing the venue and/or time-frames of an event only for appropriate reasons, such as either the need to further the normal and smooth operation of crucial elements of public utility systems and transport infrastructure or the need to maintain public order and ensure the security of citizens (both the participants in the public event and persons who may be present at the venue of the event when it takes place), or *any other such reason.*"

15. The Ombudsman indicated to the Venice Commission delegation that there was a high degree of confusion about what was required to be in the motivated proposal.

16. Pursuant to Article 5.4.2, the organiser has to react on the alternative proposals of the authorities within three days prior to the scheduled assembly date at the latest, indicating to the authorities whether he/she accepts the modifications. According to Article 5.5, he or she has to reach an agreement (as already referred to in Articles 5.3.1 and 5.4.3) with the authorities, failing which the assembly cannot take place.

17. Indeed, Article 5.5 provides that the promoter has no right to hold an event where no agreement is reached with the executive authority on the alteration of the format of the event. The tenor of Article 5 § 5 was confirmed by the Russian representatives: where an alternative location for a public event is proposed by the municipal authorities, it is illegal to assemble elsewhere, as originally notified. Illegal public events may be terminated (Article 16.2) and indeed are often immediately dispersed by the police.

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<sup>6</sup> ECtHR, Sergey Kuznetsov v. Russia of 23 October 2008, § 43; Bukta and Others v. Hungary, § 35; Oya Ataman v. Turkey of 5 December 2006, § 39; Rassemblement jurassien et Unité jurassienne v. Switzerland, no. 8191/78, Commission decision of 10 October 1979, DR 17, p. 119; and also Plattform "Ärzte für das Leben" v. Austria, judgment of 21 June 1988, Series A no. 139, p. 12, §§ 32 and 34.

<sup>7</sup> See Guidelines, Explanatory notes, para. 117.

<sup>8</sup> Comments of the Institute of Legislation and Comparative Law under the Russian government, CDL(2012)023; CommDH(2011)32, 30 September 2011. These comments do not contain references to court decisions on assembly law or empirical/statistical Data on the practice of assemblies in Russia or on the restrictions imposed by public authorities.

18. The Constitutional Court of the Russian Federation has examined Article 5.5 of the Assembly Act<sup>9</sup> and has set out the key principles which should guide its interpretation. As concerns the precision of the law, the Court has indicated that the legislative recognition of an exhaustive list of such reasons would groundlessly limit the discretion of public authorities to carry out their constitutional obligations.

19. In the view of the Russian Constitutional Court, the terms “motivated proposal” and reconciliation in Article 5 are unambiguous and this provision does not confer on the authorities the right to prohibit assemblies. The Court has also indicated that the alternative time and place should correspond to the social and political objectives of the event.

20. The Court further indicated that if agreement was not achieved as a result of reconciliation, the organisers had the right to apply to the court of general jurisdiction (Article 19 of the Assembly Act), which had jurisdiction to examine the lawfulness of the decision of the authorities. The courts were competent to decide cases involving value judgments to ensure the balance of interests between the public in general and particular political associations. Courts had to assess the lawfulness of the actions of the authorities in order to prevent unjustified restrictions of the right to assembly guaranteed by Article 31 of the Russian Constitution.

21. The Venice Commission stresses that, while the Assembly Law formally does not empower the executive authorities not to accept a notification or to prohibit a public event, it does empower them to alter the format originally envisaged by the organiser for aims which go far beyond the legitimate aims required by the ECHR. One of these aims is the “need to maintain a normal and smooth operation of vital utilities and transport infrastructures”: which is practically impossible in case of large or moving demonstrations. It has further been conceded and is indeed explicitly set out in Article 5.5 of the Assembly Law that if the organisers disagree with the local authorities’ motivated proposal to change the format of the public event, the latter is de facto prohibited. Therefore, in the Venice Commission’s view, since the permission is rarely given, the notification or notice, in substance, amounts to a substitute for a request of a previous permission, to an “authorization procedure de facto”.<sup>10</sup>

22. While the terms “proposal”, “suggestion” and “agreement” in particular create an impression of non-directive instruments and while the Constitutional Court refers to a procedure of reconciliation of differing interests, there is no specification in the law as to how this should take place. Due to this kind of regulation, there is a high risk that in practice reconciliation does not take place.<sup>11</sup> Thus, if the organizer fails to accept the authorities’ proposal, the public event is simply not authorised. The organizer is thus often left with the choice of either giving up the public event (which will then be de facto prohibited) or accepting to hold it in a manner which may not correspond to the original intent. The need to choose only between these two options is not compatible with Article 11 ECHR. This regulation of the notification procedure in the Assembly Act therefore calls for the following comments from the Venice Commission.

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<sup>9</sup> Judgment N 484-O-P of 2 April 2009. The Venice Commission could not read the full text of this judgment. It had access to an abstract in English, published by Oxford Reports on International Law, ILDC 1480 (RU 2009) and also to a summary of the main findings of the judgment, in CommDH(2011)32.

<sup>10</sup> This latter expression is used in the opinion of the dissenting constitutional Judge Kononov in relation to Judgment N 484-O-P of 2 April 2009. The same view was expressed by the Commissioner for Human Rights in the Russian Federation: “the notification procedure of holding all kinds of public assemblies established by the Federal Law on Assemblies, Meetings, Demonstrations, Processions and Picketing tends to degenerate into an authorisation procedure, which is not founded in the law”: Special Report of the Commissioner for Human Rights in the Russian Federation “On the constitutional right to peaceful assembly in the Russian Federation”, 2007.

<sup>11</sup> The realisation of this risk may be the basis for the information, the Venice Commission received from representatives of NGOs, that in practice an agreement is rarely reached on the terms requested.

23. The alteration of the place of the assembly by the authorities means that events cannot be held in places chosen by the organizer within sight and sound of their targeted audiences or at a place with a special meaning for the purpose of the assembly. The Venice Commission recalls that respect for the autonomy of the organizer in deciding on the place of the event should be the norm. The Constitutional Court has rightly specified that the newly proposed time and place must correspond to the social and political objectives of the event, and this requirement provides some safeguard against depriving the proposed public event of any impact. But even assuming that the alternative proposals do comply with this principle, it must be underlined that in principle the organisers should be permitted to choose the venue and the format of the assembly without interference. The Venice Commission agrees with the Institute of Legislation and Comparative Law that “organisers, while implementing their right to determine the place and time of the event should, in turn, endeavour to reach an agreement on the basis of a balance of interests” and indeed the Commission has recently pointed out the benefits to the organiser, if he/she is willing to cooperate with the authorities, thus preventing “the imposition of further restrictions (and even the termination of the entire assembly, if this is proportionate in the circumstances)”. However, this is only true where the changes in the format are caused by *compelling* reasons as required by Article 11.2 ECHR. In all other cases, the authorities should respect the organisers’ autonomy in the choice of the format of the public assembly. In this respect, the Guidelines clearly state: “An assembly organizer should not be compelled or coerced either to accept whatever alternative(s) the authorities propose, or to negotiate with the authorities about key aspects (particularly the time or place) of a planned assembly. To require otherwise would undermine the very essence of the right to freedom of peaceful assembly.”

24. As concerns *de facto* prohibitions to hold public events, it must be remembered that “in order to be “necessary in a democratic society” the limitation of the freedom must correspond to a pressing social need, be proportionate (i.e. there must be a rational connection between public policy objective and the means employed to achieve it and there must be a fair balance between the demands of the general community and the requirements of the protection of an individual’s fundamental rights), and the justification for the limitation must be relevant and sufficient.”<sup>12</sup> Use of public space for an assembly is just as much a legitimate use as any other. Restrictions are only permitted where an assembly will actually disrupt unduly and a mere possibility of an assembly causing inconvenience does not justify its prohibition. Indeed, inconvenience to designated institutions or to the public, including interference with traffic, should not be as such a sufficient basis for prohibition.

25. The Venice Commission agrees with the Russian Constitutional Court that the Assembly Law needs to leave some discretion to the executive authorities. It recalls in this respect that the European Court of Human Rights has clarified that “a *law which confers a discretion must indicate the scope of that discretion*”, but has recognised “*the impossibility of attaining absolute certainty in the framing of laws*”.<sup>13</sup> Discretion must be exercised “reasonably, carefully and in good faith”.<sup>14</sup> In the opinion of the Commission, however, the Assembly Law confers too broad discretion and fails to indicate in clear terms that interferences by the executive authorities with the organisers’ right to determine the format of the public even must always comply with the fundamental principles of “presumption in favour of holding assemblies”, “proportionality” and “non-discrimination”. Under the current law, for example, the executive authorities are empowered to transform a moving event into a static event in order to prevent mere traffic perturbations, which is not in conformity with Article 11 ECHR. As the Assembly Law itself

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<sup>12</sup> ECtHR, *Christian Democratic People’s Party v. Moldova*, no. 28793/02, § 70; *Barankevich v. Russia* judgment of 26 July 2007, paras. 26. ; *Sergey Kuznetsov v. Russia* of 23 October 2008, § 40.

<sup>13</sup> In primis ECtHR, *Sunday Times v. UK* judgment of 26 April 1979, para. 49.

<sup>14</sup> See *mutatis mutandis* ECtHR, *Barankevich v. Russia*, § 26.

confers on the executive authorities too broad a discretion and fails to set out the essential principles within which such discretion must be exercised, there is a high risk that judicial review may not lead to a reversal of decisions even if they are based on grounds not justified by Article 11.2 ECHR.

26. The Venice Commission welcomes the possibility for the organisers to apply to the courts to seek reversal of the municipal authorities' decision (Article 19 of the Assembly Act). The Venice Commission recalls that one of the fundamental principles of a democratic society is the rule of law, which is expressly referred to in the Preamble to the ECHR<sup>15</sup>). The rule of law implies, inter alia, that interference by the executive authorities with an individual's rights should be subject to an effective control which should normally be assured by the judiciary, at least in the last resort, as judicial control offers the best guarantees of independence, impartiality and a proper procedure.<sup>16</sup> The Constitutional Court of the Russian Federation has clarified that courts must review the legality of the decisions of the executive authorities.

27. In addition, the Venice Commission underlines that it is crucial not only that the court may genuinely review the decision of the public authorities, but also that it may do so before the assembly takes place, or else that a system of relief via court injunctions be available.

28. The Venice Commission has found information about the appeal process in the Communication submitted by the Russian authorities to the Committee of Ministers of the Council of Europe in relation to the Alekseyev case.<sup>17</sup> According to these submissions, appeals against the decisions of the municipal authorities are examined within ten days (the common time-limit is two months). Within a further ten days, the appeal judgments may be appealed to the Court of Cassation; if there is no appeal on points of law, the appellate decision becomes final and may be immediately enforced.

29. The Venice Commission notes that it is unlikely that the appeal procedure may be completed in time before the date proposed by the notification for the public event and there does not seem to be provision for an injunction enabling the organiser to proceed with the public event pending the appeals.

30. In conclusion 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". Judicial review is potentially rendered ineffective because the courts do not have the power to reverse decisions which are within the broad discretion of the executive authorities and they cannot complete review in time before the proposed date of the public event to preserve its original timeframe. As a consequence, 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

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<sup>15</sup> EctHR, Golder judgment of 21 February 1975, Series A no. 18, pp. 16-17, para. 34

<sup>16</sup> ECtHR, Klass and others v. Germany judgment of 06/09/1978, § 55.

<sup>17</sup> Communication from the Russian Federation concerning the case of Alekseyev against the Russian Federation, at:  
<https://wcd.coe.int/ViewDoc.jsp?id=1849691&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

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.

31. The Assembly Law should secure the autonomy of the assembly, fostering co-operation on a voluntary basis only. If an agreement cannot be reached, a prohibition may only be considered if it is justified in itself and not due to the failure of cooperation, i.e. of not reaching an agreement. The executive authorities may only suggest to the organiser to change the place and time under Article 12.2 of the Assembly Law, but their decision should necessarily be motivated on the grounds of concrete and direct threats and dangers to public safety (including to the safety of citizens, both participants in the public event and passers-by) and to national security. Other kinds of reasoning should be excluded.

### C. Blanket rules

32. The Assembly Law contains several so-called blanket prohibitions,<sup>18</sup> that is, absolute prohibitions that do not allow for any exception. Blanket rules will often be disproportionate because no consideration may be given to exceptional cases which should be treated differently. As the European Court of Human Rights has stated,<sup>19</sup> “sweeping measures of a preventive nature to suppress freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities, and however illegitimate the demands made may be – do a disservice to democracy and often even endanger it.”

33. Art 5.5 of the Assembly Law states in terms that the promoter shall not have a right to hold an event when notice was not filed in due time. This rule is disproportionate: as a blanket rule, it does not permit any exceptional circumstances of a particular case to be taken into consideration.

34. A list of excluded premises is supplied in Articles 8.2 and 3 Assembly Act. The Institute of Legislation and Comparative Law has indicated to the Venice Commission that the concerned buildings have a strategic purpose and their exclusion is designed to protect the safety of participants in the public event as well as other citizens (Article 8.2.1), to protect the special constitutional status of the President, to avoid pressure on court trials and for security reasons (8.2.3). The Venice Commission agrees with the Institute that it may be necessary and legitimate to prevent a public event from taking place on the premises listed in Article 8.2. However, such a decision should be taken in view of each specific case and according to the criteria indicated by the European Court of Human Rights (notably when it is necessary in a democratic society). Not all assemblies (of all sizes, for example) may be considered to endanger court buildings, or monuments of history and culture. The term “territories directly adjacent” (Article 8.2.3) is overly broad and calls for narrow interpretation.<sup>20</sup> Rather than listing premises on which public events are always prohibited or are dependent on a procedure determined by the President of the Russian Republic (see Article 8.4 Assembly Act), general criteria in the Assembly Act should set out in what circumstances and to what extent an assembly might pose a threat to the listed buildings or to the function carried out in them. Such criteria could then be applied to specific cases when an assembly is proposed. These criteria should be laid down in the Assembly Act itself in order to give adequate guidelines for

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<sup>18</sup> Under Article 5 of the Assembly Law, non-citizens, persons younger than 18 (for demonstrations, marches and pickets) and younger than 16 (for meetings and rallies) and legally incapable persons cannot organise public events. This is a blanket prohibition which is excessive: see CDL-AD(2010)033, § 28 ; CDL-AD(2009)052, § 29.

<sup>19</sup> ECtHR, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* judgment (2001), para. 97.

<sup>20</sup> See also the Special Report of the Commissioner for Human Rights in the Russian Federation “On the constitutional right to peaceful assembly in the Russian Federation”, 2007.



implementing decrees. The same suggestions must be made in relation to Article 8.2.3.1 Assembly Act (concerning regulations on the procedure for holding public events at transport infrastructure sites).

35. Article 9 prohibits assemblies taking place between 11 p.m. and 7 a.m. This is a restriction of the right to freely choose the time of an assembly. According to the Institute of Legislation and comparative Law, this general restriction pursues the aims of protecting public order and the tranquillity of citizens. The Venice Commission stresses however that the subject/goal of the assembly may justify holding a specific assembly after 11 p.m. or one that lasts for more than a single day. Decisions should be taken by the executive authorities in each single case with due respect for the principle of proportionality.

D. Spontaneous assemblies, urgent assemblies, simultaneous assemblies and counter demonstrations

36. The absolute terms of Article 7.1 in relation to the notification period of 10-15 days entail that there is no possibility to hold an assembly at shorter notice. In the opinion of the Institute of Legislation and Comparative Law, these terms are sufficient for the effective implementation of the constitutional right of citizens to assemble peacefully, they are proportionate and serve as a procedural guarantee as to organisers and for the authorities. The establishment of such terms allows state organs and local authorities to ensure the security of the participants, to prevent breaches of public order, to facilitate within its competence the conduct of a public event.

37. The Venice Commission agrees, in general, that provision for a timeframe for the notification of public events may be helpful as it enables the authorities to take reasonable and appropriate measures in order to guarantee their smooth conduct. It recalls however that there may be cases in which a public event is organised as an urgent or spontaneous response to an unpredicted event, in which case it may not be possible to respect the ordinary timeframe for notification. Spontaneous and urgent assemblies are protected by Article 11 ECHR: indeed the ECtHR has stated that "a decision to disband the ensuing, peaceful assembly solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly".<sup>21</sup> Assemblies which carry a message that would be weakened if the legally established notification period were adhered to, especially if assemblies take place as an immediate response to an actual event, require protection as well. Such spontaneous assemblies, including counter demonstrations are required by ECHR to be facilitated by the authorities, even if they do not meet the normal notification requirement, as long as they are peaceful in nature.

38. As regards simultaneous demonstrations, the Commission understands from the Institute of Legislation and Comparative Law that simultaneous and counter demonstrations are generally considered to be a danger to safety and order and, as such, they are not allowed in the sense that the competent executive authorities change the format of an event if it is scheduled to take place at the same time and place of a previously notified one. Some regional and local legislation expressly empowers the executive authorities to do so.

39. The Commission underlines in this respect that where notification is given for more than one assembly at the same place and time, they should be facilitated as far as possible. It is a disproportionate response not to allow more than one assembly at a time as a blanket rule. It is only where it would be impossible to manage both events together using adequate policing and stewarding that it would be permissible to restrict or even move one of them. A policy described as "separate and divide" where the same place is sought by several organisers is not permissible. Similar considerations apply for counter demonstrations.

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<sup>21</sup> See ECtHR judgement, *Bukta v. Hungary* (2007), para.36.

40. The Commission delegation was told that the previous organisation of other events, especially cultural events to be held at the venue and on the day of the notified public assembly, regularly entailed the proposal by the municipal authorities to alter the format of the latter. Since such other events are not covered by the time limitation for a notification the organizer of an assembly has to comply with (Article 7 Assembly Law), it violates the freedom of assembly if the assembly cannot take place solely due to the fact that someone else wants to use the place for another kind of event at the same time, who is not bound by the same timeframe-restriction as the organizer of an assembly. Public spaces should be available to all and other events like cultural events should not have automatic priority. The constitutional protection to conduct cultural or similar events is not superior to the constitutional protection of the freedom of assembly.

#### E. Obligations of the organiser

41. Article 5.4 of the Assembly Law imposes a number of obligations on the organiser. While most of them can be seen as reasonable taking into account that the organiser bears the primary responsibility for the assembly, others seem too onerous or should be formulated less strictly. This applies to Nos 4, 7 and 8 of Article 5.4 of the Assembly Law, requiring the organiser to uphold certain aspects of public order. Whereas the organiser is indeed responsible for exercising due care to prevent disorder, he/she cannot revert to the exercise of police power and cannot be required to do so. Moreover, the citizen's 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.

42. The term "to ensure public order" in Article 7.3 No 6 should be revised in view of the above, too. The latter especially refers to No 6 of Article 5.4 of the Assembly Law, requiring the organiser "to suspend or terminate the public event in case of perpetration by its participants of any illegal actions", which refers to the grounds for termination in Article 16 Assembly Act. This does not reflect proportionality, since on the one hand the illegal actions are not further specified, thus comprising even minor breaches of the law such as administrative offences, on the other hand misbehaviour of just one participant, irrespective of the conduct of the assembly as a whole, does necessarily lead to the suspension/termination of the entire assembly. In the light of proportionality the Russian legislator should adopt a more appropriate wording allowing for a wide range of flexible solutions adjusted to the different types of imminent infringements.

#### F. Suspension or termination of public events

43. A public event may be suspended (and subsequently terminated) in case of "violation of law and order" by the participants (Article 15). It can also be terminated in case of "deliberate violation" by the organiser of the provisions on the procedure for holding a public event (Article 16.2).

44. These provisions appear too rigid. Not all violations of the law should lead to the suspension and termination of the public event, which should be measures of last resort. Reasons for suspension and termination should be narrowed to public safety or a danger of imminent violence (see Article 16.1 of the Assembly Law).

G. Legal consequences of failure to comply with the Assembly Law

45. There are several references in the Assembly Law to legal consequences of failure to comply with the Law itself. Article 12.2 of the Assembly Law mentions a motivated written warning which may be addressed by the executive authorities to the organiser that he/she may be held responsible as appropriate.

46. The Russian authorities have clarified<sup>22</sup> that “according to the Federal Law, actions of an organiser of a public event are declared unlawful and therefore entail administrative penalties in the following three cases: if a notification of a mass gathering has not been submitted within the legally defined time-limits; if the executive authority of the constituent entity of the Russian Federation or local self-government authority has not been invited to negotiate its request for changing the venue and/or time-frames of the public event; or if an organiser of a public event has not removed inconsistencies between the purposes, format and other modalities of the public event and the Federal Law from the notification of the event to satisfy a well-reasoned request made in writing by a designated authority under part 2 of Article 12 of the Federal Law. In the third case, if information contained in a notification of a public event and other information convey the suggestion that the purposes and format of the planned public event are inconsistent with the provisions of the Constitution of the Russian Federation and/or constitute violations of prohibitions envisaged in the administrative and criminal laws of the Russian Federation, the executive authority of the constituent entity of the Russian Federation or local self-government authority immediately informs the organiser of a public event via a well-reasoned written warning that in case such inconsistencies and (or) violations occur during the event, the organiser of the public event, as well as other participants therein, may be brought to justice in accordance with the established procedure. The designated authorities consider other information in each case on the basis of an evaluation criterion, taking into account specific evidence, such as communications from individuals and legal entities, mass media reports and operational information indicative of the possibility that the organisers of a mass gathering and participants therein may commit crimes or administrative offences while such gathering is being arranged and held, although the executive authority or local self-government authority possessing such information is not entitled to prohibit a mass gathering. In this context, the literal interpretation of the legislation and the law enforcement practice are illustrative of the fact that the designated authorities decide on “other evidence” in each case on the basis of an evaluation criterion, taking into account specific evidence, such as communications from individuals and legal entities, mass media reports and operational information indicative of the possibility that the organisers of a mass gathering and participants therein may commit crimes or administrative offences while such gathering is being arranged and held.”

47. The Venice Commission did not have access to court decisions or other sources which allow an evaluation of the practice on sanctions on failures to comply with the Assembly Law as described by the Russian authorities and to confront this description with the criticism raised by NGOs. The Venice Commission restricts its comment to raising concern that sanctions following the mere failure by the organiser to meet the time-limits for notification or to “invite the authorities to negotiate” their request for changing the venue and/or time-frames of the public event or to comply with the alternative proposal of the authorities are likely to be disproportionate and have an unwarranted chilling effect on organisers of public events.

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<sup>22</sup> CommDH(2011)32.

#### IV. Conclusions

48. The Venice Commission recalls that the right of peaceful assembly enshrined in Article 11 of the European Convention on Human Rights is a fundamental right and one of the foundations of a democratic society. In its view, the effective guarantee of the right to freedom of assembly depends in primis on the quality of the legal regulation of its exercise, but also and importantly on the manner in which such legal regulation is interpreted and implemented. The presumption in favour of assemblies is essential and must influence the use by the executive authorities and by the law-enforcement agencies of the discretionary powers which the legal regulations confer upon them.

49. The main results of the analysis of the Assembly Law by the Venice Commission with regard to Article 11 ECHR can be summarised as follows:

- 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.

50. The Venice Commission hopes that the Russian authorities will engage in a constructive dialogue with a view to improving the Assembly Law and ensuring the unimpeded exercise of the right of freedom of peaceful assembly in the Russian Federation. The Venice Commission stands ready to assist.