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**Opinion no. 686/2012**

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

**EXTRACTS OF DECISION no. 12-O**  
**[12-П IN THE ORIGINAL RUSSIAN TEXT]**  
**OF 18 MAY 2012**

**OF THE CONSTITUTIONAL COURT**  
**OF THE RUSSIAN FEDERATION\***

\*Unofficial translation

DECISION no. 12-O [12-П in the original Russian text]

OF THE CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION

in the case of verification of the constitutionality of the provisions of Article 20.2 paragraph 2 of the Code of Administrative Infringements of the Russian Federation and Article 5 paragraph 4 sub-paragraph 3 and Article 7 paragraph 3 sub-paragraph 5 of the Federal Law "On assemblies, rallies, demonstrations, marches and picketing" in connection with the complaint lodged by Mr S.A. Katkov.

Saint Petersburg, 18 May 2012

The ground for examining the complaint was the uncertainty that has emerged as to whether the legal provisions challenged by the applicant comply with the Russian Federation Constitution.

The citizen disputing the constitutionality of the aforementioned legal provisions, S.A. Katkov, was convicted of an administrative infringement by decision of the lay magistrate of judicial district no. 72 of the Sovietskiy rayon [district] of the city of Tula of 29 November 2010, left unamended by decision of the Sovietskiy rayon [district] court of the city of Tula of 30 May 2011 and decision of the President of Tula oblast [province] court of 22 July 2011, and sentenced to a fine of 1,000 roubles for a breach of the established procedure for holding public events; the courts held that S.A. Katkov had failed to fulfil an obligation incumbent upon him as the organiser of a public event/march and failed to ensure compliance with the requirements governing the holding of the march by allowing 300 people to take part in it, whereas the notification submitted by him to the administration of the city of Tula proposed that 150 people would take part in this public event.

In the opinion of S.A. Katkov, the provisions of the Code of Administrative Infringements of the Russian Federation and the Federal Law "On assemblies, rallies, demonstrations, marches and picketing" applied in his case by the courts violate his rights and freedoms guaranteed by the Russian Federation Constitution and fail to comply with the following provisions thereof: Articles 2, 4 (paragraph 2), 6 (paragraph 2), 15 (paragraphs 1 and 4), 17 (paragraph 1), 18, 21 (paragraph 1), 31, 45 (paragraph 1), 54 (paragraph 2), 55, 71 (sub-paragraphs "a" and "c" ["a" and "b" in the original Russian text]), 72 (sub-paragraphs "b" and "j" ["б" and "к" in the original Russian text] of paragraph 1) and 76 (paragraphs 1 and 2).

[...]

It follows from the legal position of the Constitutional Court of the Russian Federation established in Ruling no. 484-N-O [484-O-П in the original Russian text] of 2 April 2009 that an executive authority of the Russian Federation constituent entity or a local authority may not prohibit/refuse to authorise the holding of a public event. It is entitled merely to propose a change in the venue and/or time for holding that event, and such a proposal must necessarily be accompanied by reasons and prompted solely by the necessity of preserving the normal and uninterrupted functioning of municipal or transport infrastructure sites of importance to vital activities or the necessity of upholding public order or ensuring public safety (both of the persons participating in the public event and of persons who may be in the place where it is held at the time scheduled for it) or other similar reasons; if the holding of a public event in the scheduled place is impossible owing to the necessity of safeguarding public interests, the executive authority of the Russian Federation constituent entity or local authority is under obligation to propose to the event organiser, for discussion, an alternative solution for the holding of the public event so that its aims may be achieved.

[...]

The Federal Law "On assemblies, rallies, demonstrations, marches and picketing" places the executive authority of the Russian Federation constituent entity or local authority under obligation to appoint an authorised representative for the purpose of assisting the organiser of a public event with the holding of that event in accordance with the requirements of the aforementioned Federal law and to guarantee public order and public safety during the holding of the public

event, within the limits of its competence, jointly with the organiser of the public event and the authorised representative of the internal affairs authority, as well as providing emergency medical services where necessary (Article 12 paragraph 1 sub-paragraphs 3-5, Article 14 paragraph 3 sub-paragraph 2).

[...]

Since the Federal Law "On assemblies, rallies, demonstrations, marches and picketing" contains no restrictions on the number of participants in a public event, the obligations of upholding public order incumbent upon the organiser of a public event include ensuring that the number of participants does not exceed the number announced in the notification or, at least, regardless of it exceeding that number, and with due consideration for the norms governing the maximum occupancy norms applying to the area/premises where the public event is held, does not constitute a real threat to public safety, life or public health or to the property of physical individuals and corporate entities. Accordingly, conscientious fulfilment by the organiser of a public event of their obligations regarding the holding of the public event presupposes that the measures taken by them to guarantee public order and safety must be adequate for the number of participants in the public event and the extent of the threat to safety and public order, including any danger resulting from the announced number of participants in the public event being exceeded.

This means that participation in a public event by a larger number of participants than that announced by the organiser in the notification is still not in itself sufficient grounds for prosecuting that individual for an administrative infringement, and nor in itself is the exceeding of the maximum occupancy norm applying to the area/premises where the public event is held. Administrative liability for a breach of the established procedure for holding public events may be incurred solely in a case where the exceeding of the announced number of participants in a public event and the constitution thereby of a real threat to public safety and public order was caused by the actions of the organiser of the public event or where, if the number of participants is exceeded, the organiser of a public event failed to take the measures incumbent upon them under the Federal Law "On assemblies, rallies, demonstrations, marches and picketing" to restrict citizens' participation in a public event and safeguard public order and safety, resulting in a real threat of breaches thereof and violation of the security of both participants in the public event and non-participants as well as damage to the property of physical individuals and corporate entities.

Prosecution for an administrative infringement in other cases may result in the organiser of a public event unjustly incurring administrative liability for the actions of other persons, namely the participants in a public event who are lawfully exercising their constitutional right to peaceful, unarmed assembly and to hold assemblies, rallies, demonstrations, marches and pickets, and would be contrary to Article 31 of the Russian Federation Constitution enshrining that right of Russian Federation citizens and to the purposes, aims and principles of the Federal Law "On assemblies, rallies, demonstrations, marches and picketing", the concept of an administrative infringement, the purposes and aims of the Code of Administrative Infringements of the Russian Federation and the principle established thereby of personal liability of a physical individual for an administrative infringement.

4.2. As the Constitutional Court of the Russian Federation has repeatedly pointed out, within the meaning of Articles 49, 50, 52-54 and 64 of the Russian Federation Constitution, the principles of presumption of innocence and fault-based liability, i.e. the presence of guilt as a necessary constituent element of an offence (and, consequently, ground for prosecution), express the general legal principles governing the application of public enforcement in the sphere of public liability, including liability for administrative infringements.

[...]

In the light of the foregoing and on the basis of Article 6, Article 71 paragraph 2 and Articles 72, 74, 75, 78, 79 and 100 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", the Constitutional Court of the Russian Federation rules as follows:

1. The inter-related provisions of Article 20.2 paragraph 2 of the Code of Administrative Infringements of the Russian Federation and Article 5 paragraph 4 sub-paragraph 3 and Article 7 paragraph 3 sub-paragraph 5 of the Federal Law "On assemblies, rallies, demonstrations, marches and picketing" are hereby declared as not contravening the Russian Federation Constitution, as, according to their own constitutional law interpretation within the system of existing legal regulation, they allow the non-concordance of the actual number of participants in a public event with the number proposed in the notification of the holding of that public event to be regarded as a ground for incurring the administrative liability of its organiser for a breach of the established procedure for holding a public event only in cases where it is established that it is this non-concordance arising by the fault of the organiser that constituted a real threat to public order and/or public safety and the security of both participants in the public event and non-participants as well as damage to the property of physical individuals and corporate entities.

2. The constitutional law interpretation of the inter-related provisions of Article 20.2 paragraph 2 of the Code of Administrative Infringements of the Russian Federation and Article 5 paragraph 4 sub-paragraph 3 and Article 7 paragraph 3 sub-paragraph 5 of the Federal Law "On assemblies, rallies, demonstrations, marches and picketing" elucidated in the present Decision is universally binding, which excludes any other interpretation thereof in the practical application of the law.

3. The judgments in application of the law in respect of Sergey Alekseyevich Katkov on the basis of the provisions of Article 20.2 paragraph 2 of the Code of Administrative Infringements of the Russian Federation and Article 5 paragraph 4 sub-paragraph 3 and Article 7 paragraph 3 sub-paragraph 5 of the Federal Law "On assemblies, rallies, demonstrations, marches and picketing" follow an interpretation which is at odds with their constitutional law interpretation elucidated in the present Decision and should be reviewed under the established procedure.

[...]

Dissenting opinion of V.G. Yaroslavtsev, judge of the Constitutional Court of the Russian Federation

[...]

Undoubtedly, the organiser of a public event must give thoughtful and balanced consideration when determining the potential number of participants in the public event. However, notwithstanding all the conscientious efforts made by an organiser to determine the proposed number of participants, that number may grow several times over owing to various factors, including as a result of both ill-considered actions and careless statements on the part of representatives of state authorities. It stands to reason then that if the number of participants exceeds the proposed figure, additional efforts are required on the part of both the organiser and the authorised representative of the executive authority of the Russian Federation constituent entity or local authority and the authorised representative of the internal affairs authorities in order to guarantee, within the limits of their competence, public order and the safety of both the public and the participants in the event themselves so that the event is accessible to anyone wishing to participate of their own freewill, ie so that constitutionally significant purposes are served and, thereby, citizens are enabled to exercise their constitutional right (Article 5 paragraph 4; Article 12 paragraph 5; Article 14 paragraph 3 sub-paragraph 2 of the Law).

Accordingly, the actions of the three aforementioned players in the public event must be geared, in line with the requirements of the law, precisely to making it possible for the public event to be held and not to halting it in connection with the number of participants being exceeded, which, in turn, may result in the organiser's administrative liability being incurred (Article 20.2 of the Code of Administrative Infringements of the Russian Federation). In other words, the holding of a public event when the number of proposed participants is exceeded is possible only as a result of coordinated action by the aforementioned three players and if the authorised representatives of the authorities genuinely intend to provide assistance for the holding of the public event in line

with the requirements of the Law (Article 13 paragraph 2 sub-paragraph 2; Article 14 paragraph 3 sub-paragraph 1 of the Law).

It must furthermore be considered that, in their legal essence, the disputed provisions of the Law, which are in regulatory harmony with other provisions of that law, are actually an obstacle to the Law's requirements to provide assistance for the holding of a public event and they oblige the authorised representatives of the public authorities to take measures, in a unilateral procedure, to suspend or halt the public event. In formal terms, if the number of participants in the event exceeds the proposed figure, this is a breach of the procedure for holding a public event. As a result, the authorised representatives are obliged to demand that the public event's organiser and participants comply with the applicable procedure (Article 13 paragraph 1 sub-paragraph 1; Article 14 paragraph 2 sub-paragraph 2), and the authorised representative of the internal affairs authorities is entitled to demand that the organiser of a public event announce that public access to the public event will be halted and take independent action to halt public access to it in the event of the maximum occupancy norm of the area being exceeded (Article 14 paragraph 2 sub-paragraph 1). In this connection, the participants in the event are de facto in the situation of "outlaws" despite having come to exercise their constitutional right, not breaching public order and acting on the assumption that, in accordance with the law, the public event is accessible to all. Instead of undertaking an operational response to the situation that has arisen and taking the necessary organisational steps to make it possible for the public event to be held, the authorised representatives of the public authorities are obliged to decide to halt the event. Furthermore, if instructions to halt a peaceful public event are not carried out, the police force must then take the necessary steps to halt that event (Article 17 paragraph 2), which incurs the liability of both the event's organisers and participants for failing to comply with the lawful requests of police officers or refusing to obey/resisting them (Article 17 paragraph 4).

Moreover, under Article 16 paragraph 2 of the Law the authorised representatives of the public authorities may assume that the organiser of the public event deliberately infringed the requirements of the Law with regard to the procedure for the holding of the public event, in particular because the proposed number of participants was exceeded. However, the exercise by citizens of their constitutional right may not be dependent on the arbitrary discretion of authorised representatives of public authorities. Consequently, authorised representatives of public authorities formally acting within the framework of the law may, in essence, instigate a real threat to the lives and health of both the general public and the participants in the event as well as to the property of physical individuals and corporate entities. It follows that the fact that the proposed number of participants in a public event is exceeded does not in itself constitute a real threat to the lives and health of citizens as well as to the property of physical individuals and corporate entities where adequate organisational measures are taken by the authorised representatives of the public authorities geared precisely to making it possible for the public event to be held and not halting it. Otherwise, we would have to conclude that the people, the country's citizens peacefully participating in a public event, are themselves a real threat to the State and society.

Accordingly, the legal configuration of the disputed provisions - within the system of applicable legal regulation - is such that in the aforementioned circumstances the organisers and participants of a peaceful event are, from the outset, placed in the position of a guilty party, which in turn is a violation of citizens' constitutional right to legal protection (Article 46 paragraph 1 of the Russian Federation Constitution).

In the light of the foregoing, I believe that the disputed legal provisions - within the system of applicable legal regulation - do not comply with Articles 31, 46 (paragraph 1) and 55 (paragraph 3) of the Russian Federation Constitution).