

(Translated from Russian)

Permanent Mission of the Russian Federation

No. 4729

The Permanent Mission of the Russian Federation to the United Nations Office and other international organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and, with reference to the joint enquiry by the Working Group on Arbitrary Detention of the Human Rights Council and the Special Rapporteurs of the Human Rights Council on the promotion and protection of the right to freedom of opinion and expression, on the rights to freedom of peaceful assembly and of association and on the situation of human rights defenders, has the honour to transmit herewith the reply of the Russian Federation.

Reference: AL RUS 6/2019

The Permanent Mission of the Russian Federation takes this opportunity to convey to the Office the renewed assurances of its highest consideration.

Geneva, 28 November 2019



Information from the Russian Federation with reference to the joint enquiry by the Working Group on Arbitrary Detention of the Human Rights Council and the Special Rapporteurs of the Human Rights Council on the promotion and protection of the right to freedom of opinion and expression, on the rights to freedom of peaceful assembly and of association and on the situation of human rights defenders

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The Russian Federation has studied the joint enquiry by the Working Group on Arbitrary Detention of the Human Rights Council and the Special Rapporteurs of the Human Rights Council on the promotion and protection of the right to freedom of opinion and expression, on the rights to freedom of peaceful assembly and of association and on the situation of human rights defenders, and wishes to submit the following:

1. Under article 29 of the Constitution of the Russian Federation, the right to freedom of thought and expression is guaranteed for all. Nevertheless, propaganda or agitation that incites social, racial, ethnic or religious hatred or enmity is prohibited. The right of citizens of the Russian Federation to assemble peacefully, without arms, and to hold meetings, rallies, demonstrations, marches and pickets is established in article 31 of the Constitution.

Federal Act No. 54-FZ on Meetings, Rallies, Demonstrations, Marches and Pickets was adopted with a view to realizing this right of citizens. The Act establishes the principles and procedure for holding and organizing public events, safeguards for citizens' enjoyment of the right to hold public events; it also establishes the public event notification procedure, which reflects the democratic nature of the legislation on public events. Act No. 54-FZ establishes that the legislation of the Russian Federation in this area is based on the provisions of the Constitution, the generally recognized principles and rules of international law and the international treaties to which the Russian Federation is a party.

Articles 10 (2) and 11 (2) of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) of 4 November 1950 establish that no restrictions may be placed on the human right to freedom of expression and peaceful assembly 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.

In accordance with article 7 of Act No. 54-FZ, the organizer of a public event (except for meetings or pickets held by a single participant without the use of fast-erecting demountable structures) must submit notification, in writing, to an executive body of a constituent entity of the Russian Federation or to a local self-government body no earlier than 15 and no later than 10 days before the public event.

Article 5 (5) of Act No. 54-FZ states that the organizer of a public event may not hold the event if the notification was not submitted on time or if a change to the reasoned proposal for the place and/or time of the public event was not agreed with an executive body of a constituent entity of the Russian Federation or a local self-government body.

The procedure for notifying an executive body of a constituent entity of the Russian Federation or a local self-government body about a public event in advance is intended to make the relevant public authorities aware, prior to the event, of essential information about the form, place or route, and start and end times of the public event, the estimated number of participants and the methods for ensuring public order and organizing medical care, as well as about the organizers and persons authorized to carry out administrative functions for organizing and holding the public event. If this is not done, the public authorities, without a reliable idea of the public event that is planned and its nature and scope, are denied the opportunity to fulfil their obligation to observe and protect human and civil rights and freedoms and take essential measures, including preventive and organizational measures, to ensure safety at the public event, both for the participants and for other persons.

Under article 20.2 of the Code of Administrative Offences of the Russian Federation, it is an administrative offence to violate the established procedure for organizing or holding a public event or to participate in an unauthorized meeting, rally, demonstration, march or

picket that hinders the functioning of critical facilities, transport or social infrastructure, communications, pedestrian and/or vehicle traffic, or citizens' access to residential property or transport or social infrastructure.

It is also necessary to bear in mind the legal position of the Constitutional Court of the Russian Federation, as set out in its Decision No. 24-P of 18 June 2019, which states that, in the Russian Federation, in conjunction with other rights and freedoms enshrined in the Constitution, the right to assemble peacefully, without arms, and to hold meetings, rallies, demonstrations, marches and pickets provides citizens with a meaningful opportunity, through public events (meetings, rallies, demonstrations, marches and pickets), to influence the activities of the public authorities in a civilized peaceful dialogue between civil society and the State. This does not rule out the possibility that public events might take the form of protests, either against specific actions and decisions of the State authorities and local authorities or against their policies as a whole.

Consequently, the legislative, organizational and other measures taken by the public authorities to properly ensure the right to freedom of peaceful assembly should not lead to excessive State control over the activities of the organizers of public events and the participants therein with unreasonable restrictions on the freedom to hold meetings, rallies, demonstrations, processions and pickets.

Nevertheless, as the realization of this right is associated with serious risks such as those inherent to large gatherings of people in one place and the possibility of violence, irrespective of the intentions of the organizers of public events and the participants therein, both citizens themselves, by virtue of the constitutional ban on the exercise of human and civil rights and freedoms that violate the rights and freedoms of others (Constitution, art. 17 (3)), and the State, in fulfilment of its constitutional obligation to observe and protect human and civil rights and freedoms (Constitution, art. 2), must use all lawful means to prevent and suppress any gatherings that do not embody the very essence of the right to peaceful assembly.

The State authorities and local self-government bodies concerned with the issues that gave rise to a public event are required to consider these issues on the merits, adopt the necessary decisions thereon in accordance with the procedure established by the legislation of the Russian Federation and inform the organizer of the public event of the decisions taken (Federal Act No. 54-FZ, art. 18 (2)).

Under article 149 of the Criminal Code of the Russian Federation, it is a criminal offence to unlawfully obstruct a meeting, rally, demonstration, procession or picket or participation in such an event or to force a person to participate in such an event, if these acts are committed by an official using his or her position or with the threat or use of violence.

In accordance with article 16 (2) of Federal Act No. 54-FZ, one of the grounds on which a public event may be dispersed is the commission by the participants in the event of unlawful actions.

In order to properly protect public order and ensure public safety, Federal Act No. 3-FZ of 7 February 2011 on the Police and the Code of Administrative Offences grant police officers the right to use such coercive measures as escorting and administrative detention.

In accordance with article 27.1 (1) of the Code of Administrative Offences, in order to put a stop to an administrative offence, identify the perpetrator, officially record an administrative offence when it is not possible to do so at the place where the offence was discovered and ensure the timely and proper consideration of a case concerning an administrative offence and the enforcement of a decision adopted in the case, an authorized official has the right, within his or her powers, to take measures to ensure that proceedings can be brought in a case concerning an administrative offence, including measures involving the temporary coercive restriction of liberty, such as escorting and administrative detention.

Escorting is the coercive handover of a person so that the administrative offence can be officially recorded when it is not possible to do so at the place where the offence was discovered (Code of Administrative Offences, art. 27.2), and administrative detention is

used in exceptional cases if it is necessary to ensure the proper and timely consideration of a case concerning an administrative offence and the enforcement of a decision in the case (Code of Administrative Offences, art. 27.3 (1)). The relevant powers of police officers with respect to the use of escorting and detention are set out in articles 13 (1) (13) and 14 (2) (5) of the Federal Act on the Police.

According to article 17 (4) of Federal Act No. 54-FZ, non-compliance with the lawful demands of police officers or failure to obey or resistance to such demands by individual participants in a public event constitutes an offence under the legislation of the Russian Federation.

In accordance with article 16 (2) of Federal Act No. 54-FZ, one of the grounds on which a public event may be dispersed is the commission of unlawful acts by the participants in the event.

A repeat violation of the established procedure for organizing or holding meetings, rallies, demonstrations, marches and pickets constitutes a criminal offence (Criminal Code of Russia, art. 212.1).

This criminal law provision contains a note, which states that a violation of the established procedure for organizing or holding meetings, rallies, demonstrations, marches and pickets is recognized as a repeat violation of this procedure if the person concerned previously committed more than two offences under article 20.2 of the Code of Administrative Offences during a period of 180 days.

Article 212.1 of the Criminal Code is currently applied with due regard to Constitutional Court Decision No. 2-P of 10 February 2017 in the case concerning the constitutionality of article 212.1 of the Criminal Code in connection with a complaint by I.I. Dadin.

Specifically, the Constitutional Court took the position that, according to article 212.1 of the Criminal Code, a person may be found criminally responsible for an offence under this article only if his or her violation of the established procedure for organizing or holding meetings, rallies, demonstrations, marches and pickets resulted in harm to the health of citizens, the property of individuals or legal entities, the environment, public order, public security or other constitutionally protected values or a real threat of such harm. According to the Judicial Division of the Supreme Court of the Russian Federation, there were no convictions under article 212.1 of the Criminal Code of Russia over the period 2017–2018.

The international community recognizes the principles of unhindered access to justice and of the right to a fair trial as fundamental. Article 10 of the Universal Declaration of Human Rights states that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Building on these provisions, the International Covenant on Civil and Political Rights (art. 14 (1)) and the European Convention on Human Rights (art. 6 (1)) establish that everyone is entitled to a fair and public hearing within a reasonable time by a competent, independent and impartial tribunal established by law in accordance with the principle that all persons are equal before the courts.

Chapter 2 of the Code of Criminal Procedure of the Russian Federation establishes the principles of criminal proceedings, which are consistent with international human rights law.

The right of every person who has been detained, remanded in custody or accused of a crime to be assisted by a lawyer (defence counsel) from the moment he or she is detained, as enshrined in article 48 (2) of the Constitution, guarantees everyone, including suspects and accused persons, the right to qualified legal assistance.

The Code of Criminal Procedure, which defines the right of suspects and accused persons to a defence as a principle of criminal proceedings, establishes that they can exercise this right themselves or with the assistance of a lawyer and/or legal representative (Code of Criminal Procedure, art. 16 (1)) and that lawyers act as the defence counsel in

criminal cases, with the suspect or accused person having the right to invite several defence lawyers (Code of Criminal Procedure, arts. 49 (2) and 50 (1)).

Thus, if a person is unable to defend his or her own rights, the right to be assisted by a defence lawyer has been established in law.

In addition, Federal Act No. 68-FZ of 30 April 2010 on Compensation for Infringement of the Right to Trial and to Enforcement of Judicial Decisions within a Reasonable Time Period was adopted in order to fulfil the obligation of the Russian Federation under the Constitution and the European Convention on Human Rights to ensure the right of everyone to a fair trial within a reasonable time, which is an integral part of the right to judicial protection. In addition, the adoption of the Act was a response to the need to create the appropriate conditions for the exercise of the right to compensation from the State for harm caused by the unlawful actions, or inaction, of public authorities or their officials and for the exercise of the rights of victims of crimes and abuses of power to the protection of their rights by law, access to justice and compensation for the harm caused (Constitution, arts. 52–53). The adoption of the Act also served to fulfil the obligations of the Russian Federation arising from article 13 of the European Convention on Human Rights to create effective domestic remedies for violations of the right to a fair trial within a reasonable time.

The Constitutional Court has repeatedly noted that the right of everyone to judicial protection of his or her rights and freedoms, as set out in article 46 of the Constitution, does not imply that a citizen or organization has the discretion to select one procedure of judicial protection over another, the specificities of such procedures in relation to particular types of proceedings and categories of cases being determined by the Constitution and federal law.

If the person concerned disputes the court decision, he or she may challenge it in accordance with the procedure established by law through the appeal or cassational courts and may also request a supervisory review.

Representatives of human rights organizations are granted entry to holding facilities, administrative detention centres and the temporary holding centre for foreign nationals under the Ministry of Internal Affairs Central Department for Moscow, in accordance with:

- Federal Act No. 76-FZ of 10 June 2008 on Public Oversight of Respect for Human Rights in Places of Detention and on Assistance for Persons Held in Places of Detention
- Ministry of Internal Affairs Order No. 196 of 6 March 2009 on the procedure for visits by representatives of public oversight commissions to places of detention of the local bodies of the Ministry of Internal Affairs

Between January and September 2019, representatives of human rights organizations carried out 40 visits to holding facilities, administrative detention centres and the temporary holding centre for foreign nationals under the Ministry of Internal Affairs Central Department for Moscow, and 26 visits to offices of Ministry of Internal Affairs agencies for the city of Moscow.

No complaints were received from human rights organizations regarding their safety during visits to these facilities.

2. In Moscow, in July and August 2019, attempts were made to hold a number of unauthorized protest-like public events, but they were suppressed by the police.

In order to properly ensure the safety of citizens and the protection of public order, prevent events that had not been authorized in accordance with the established procedure and other antisocial gatherings, the Ministry of Internal Affairs Central Department for Moscow drew up special plans for 27 July, 3 August and 10 August 2019.

In accordance with the plans that had been drawn up, in the places in which it was possible that an event that had not been authorized by the executive authorities might take place, a raft of counter-terrorism measures was fully implemented in accordance with a pre-prepared protocol.

In this context, the actions of the police officers were consistent not only with the legislation of the Russian Federation, but also with section A (5) and (12) of the Declaration on the Police (Strasbourg, 8 May 1979), according to which a police officer must oppose violations of the law and, in performing his duties, must use all necessary determination to achieve an aim which is legally required or allowed.

In this connection, the police officers interfered in the applicants' exercise of the right to freedom of assembly because the applicants had violated the legislation of the Russian Federation on participation in a public event, and the police officers also had a duty to protect the individual, society and the State from unlawful infringements and to prevent and combat administrative offences.

According to available information, around 10,000 people participated in events that had not been authorized by the executive authorities on 27 July 2019, around 3,500 people on 3 August 2019 and around 20,000 people in the rally on 10 August 2019.

On 27 July 2019, 1,431 people were detained for committing administrative offences during these protest events and escorted to local bodies, and 1,225 administrative offences were officially recorded; on 3 August 2019, 941 people were detained and escorted, and 922 offences were officially recorded; and, on 10 August 2019, 136 people were detained and escorted.

With regard to the protest participants mentioned in the enquiry, we wish to report the following.

Administrative measures were taken against K.A. Konovalov, A.S. Semenov, E.V. Dubinin, K.M. Belousov, Y.A. Terekhov, A.V. Goluenko, A.V. Statov, A.A. Kostyuk, K.R. Mikhaylov, V.S. Milov and A.V. Zaburdyaev under article 20.2 (5) of the Code of Administrative Offences (Violation by a participant in a public event of the established procedure for holding such events), and they were fined; against K.S. Zhukov, E.V. Kovalenko and S.V. Fomin under article 20.2 (6.1) of the Code (Participation in unauthorized public events that hinder the functioning of critical facilities, transport or social infrastructure, communications, pedestrian and/or vehicle traffic, or citizens' access to residential property or transport or social infrastructure); and against K.A. Kotov and V.S. Milov under article 20.2 (8) of the Code (Repeat commission of an administrative offence under article 20.2 (1) to (6.1), if this action does not involve a criminally punishable act). The administrative responsibility of the perpetrators was established in court decisions, which contained an assessment of the actions of the police officers. The administrative penalty imposed on V.S. Milov was 30 days' administrative detention.

The court decisions in these cases concerning administrative offences were checked for legality and validity by the procurator's office for the city of Moscow. There are no grounds for lodging objections to the court decisions.

Administrative proceedings were not brought against S.V. Abanichev, D.G. Konon, A. Parushina, B. Kantorovich, A. Kurgin, D.A. Sosnovskaya and A. Minyaylo.

On 30 July 2019, the first department for the investigation of critical cases, working under the Ministry of Internal Affairs Central Department for Moscow, a unit of the Investigative Committee of the Russian Federation, opened a criminal case under article 212 (1), (2) and (3) of the Criminal Code in connection with the organization of mass disorders and participation therein. The case was combined with five criminal cases brought under article 318 (1) (Use of violence against a representative of the authorities) of the Criminal Code. In this case, E.D. Kovalenko, [REDACTED], K.S. Zhukov, [REDACTED], A.A. Minyaylo, E.S. Zhukov, S.V. Abanichev, D.G. Konon and [REDACTED] were formally charged with the commission of the aforementioned crimes. Once these persons had been questioned, they were remanded in custody as a preventive measure. On 6 August 2019, the president of the Investigative Committee transferred the criminal case to the director of the Investigative Committee central investigation administration for further investigations.

On 12 August 2019, the Investigative Committee central investigation administration for the city of Moscow brought criminal proceedings under article 212.1 of the Criminal Code (Repeat violation of the established procedure for organizing or holding

a meeting, rally, demonstration, procession or picket) against K.A. Kotov, a member of the district electoral commission for constituency No. 1131, the Novokosino district of the city of Moscow, with the casting vote. On 14 August 2019, Mr. Kotov was remanded in custody as a preventive measure. Mr. Kotov was formally charged with the commission of the crime in question and, on 20 August 2019, the criminal case was referred to the Tver District Court, in the city of Moscow, for consideration on the merits.

The investigating agency for Tver district under the Investigative Committee central investigation administration for the city of Moscow received reports from K.A. Konovalov, A.V. Semenov, V.V. Dubinin, K.M. Belousov, Y.A. Terekhov, A.V. Ziburdaev, A.V. Kurgin, A. Statov, V.V. Kostyuk and D. Sosnovskaya regarding unlawful actions by law enforcement officers during the unauthorized rallies on 27 July 2019 and 3 August 2019. Following its consideration of these reports, the investigating authority found that there were no grounds on which to conduct checks in accordance with the procedure set out in articles 144 and 145 of the Code of Criminal Procedure.

3. Article 25 of the International Covenant on Civil and Political Rights (16 December 1966) establishes that every citizen should have the right and the opportunity, without any distinctions and without unreasonable restrictions, to vote and to be elected at genuine periodic elections which are by universal and equal suffrage and are held by secret ballot, guaranteeing the free expression of the will of the electors.

In addition, the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Cooperation in Europe (29 June 1990) contains a number of provisions on elections. It states in particular that the participating States hold free elections at reasonable intervals, as established by law.

Article 9 (6) of the Convention on Standards for Democratic Elections, Electoral Rights and Freedoms in the States Members of the Commonwealth of Independent States (7 October 2002) establishes that genuine elections require equal and fair legal conditions for the registration of candidates, candidate lists and political parties or coalitions. The registration requirements should be clear and not include conditions that could serve as grounds for privileges or discriminatory restrictions. The arbitrary or discriminatory application of provisions on the registration of candidates, candidate lists and political parties or coalitions is prohibited.

It should be noted that the international standards that establish general requirements for the organization of the electoral process in a State also prescribe that elections should be organized in accordance with national legislation.

The provisions outlined above and other provisions of international instruments are given full effect in the Constitution and federal legislation on elections.

The Federal Act on Basic Safeguards of the Electoral Rights and Right to Participate in a Referendum of Citizens of the Russian Federation establishes that democratic, free and regular elections to State authorities and local self-government bodies and referendums are the highest direct expression of the authority of the people. The State guarantees the free expression of the will of the citizens of the Russian Federation at elections and referendums and the protection of democratic principles, electoral law and the right to participate in referendums. Moreover, article 38 of the Act, relevant provisions of other federal laws and the legislation of the constituent entities of the Russian Federation (including the laws of the city of Moscow) establish uniform requirements for the registration of candidates and candidate lists, which are the same for all participants in elections and rule out the possibility of discrimination on any grounds.

In this connection, we consider that the electoral legislation of the Russian Federation is fully in line with international electoral standards and that the requirements for the registration of candidates for election in the Russian Federation are consistent with international human rights standards.

On the nationwide polling day of 8 September 2019, around 6,000 elections were held in the Russian Federation, across all levels and in all 85 constituent entities of the Russian Federation. Over 56 million voters were included on the electoral rolls (almost half of all voters in the country). During these elections, over 47,500 mandates and elective

offices were allocated. Over 118,500 candidates, including over 91,000 candidates nominated by various political parties, were put forward for election across all levels; this shows that electoral associations are highly politically active. However, it is important to note that the electoral commissions included around 105,700 registered candidates, which represents 89 per cent of the total number of candidates put forward, on the ballot papers. On the grounds established by law, 7,200 candidates (6.4 per cent) were refused registration for the elections across all levels, and a further 5,700 candidates (4.6 per cent) lost their candidate status for various reasons, including failure to provide the electoral commissions with the information required for registration.

This large number of registered candidates ensured that the elections were highly competitive. For example, on average, there were nine candidates per mandate in the special elections of deputies to the State Duma, the lower house of the Federal Assembly of the Russian Federation, five candidates per mandate in the elections of high-ranking officials to the constituent entities of the Russian Federation and seven candidates per mandate in the elections of deputies to the regional parliaments.

The 47,500 deputies of various State authorities and local self-government bodies, high-ranking officials of the constituent entities of the Russian Federation and heads of municipalities who were elected on 8 September 2019 include members of 24 political parties and 1 voluntary association and over 5,500 independent candidates.

The fact that the elections were highly competitive and the presence of observers and other participants in the electoral process at polling stations ensured that the elections on the nationwide polling day of 8 September 2019 were held openly and transparently.
