



27.09.2023

Development of practical tools to assist law enforcement agencies in protecting human rights in peaceful protests

INTRODUCTION

This input is prepared by OVD-Info human rights project in response to the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association's call for inputs on development of practical tools to assist law enforcement agencies in promoting and protecting human rights in peaceful protests. OVD-Info¹ is an independent human rights project aimed at monitoring cases of political persecution and violations of basic human rights in Russia. OVD-Info operates a 24-hour federal hotline to collect information on all types of political persecution, does their media coverage, offers free legal assistance and education, researches different types of political persecution in Russia, and engages in international advocacy. This report examines some states' best practices related to facilitating and controlling protests (I) and restrictive measures taken by Russia that undermine the country's protection of freedom

of assembly (II), including in crisis situations such as COVID-19 and war (III). Moreover, this report points to Russia's failure to ensure accountability for law enforcement officials alleged of committing human rights violations in the context of protests (IV). Finally, it provides recommendations for states to improve the protection of human rights by law enforcement while facilitating protests and to prevent unlawful arrests and detention in the context of protests (V).

I. What laws, guidance, protocols, and mechanisms or strategies/practices related to the facilitation and policing of protests did you find to be effective in ensuring human rights are respected and protected by law enforcement before, during and after protests?

1. Although legislation in many countries requires organizers to notify the government in advance, such requirements often do not apply to certain types of protests that are unlikely to cause disruption to public order. In Lithuania, the notification procedure is simplified if the event is expected to have 15 or fewer participants. In South Africa, an event with a maximum of 15 participants does not require any notification. The legislation of the United Kingdom distinguishes between «public processions» and «public assemblies». While the organizers are obliged to notify the police about dynamic rallies, they are allowed to conduct static events without notification.

2. In several countries, such as Poland and Germany, the right to spontaneous gatherings is legally protected. While it is required to notify the government on planned events, the police is not allowed to dismiss spontaneous protests unless they involve any real threats to the public safety. The legal system of Germany distinguishes between spontaneous and

urgent protests. Spontaneous protests are defined as events occurring in response to a momentary event, unplanned and without an organizer and are considered an unquestionable fundamental right. Urgent protests are planned and do have an organizer, but cannot be registered within the deadline established for assembly notifications without endangering the purpose of the event. The right to urgent protest is acknowledged, but the organizer must notify the government as soon as possible.

3. However, the mere establishment of the mechanisms aimed at protecting human rights in the context of protests does not guarantee their effective implementation.

4. In 2015, a Russian political activist Ildar Dadin was sentenced to three years of imprisonment under Article 212.1 of the Criminal Code of Russia (hereinafter — CC).

According to this provision, a repeated «violation» of assembly rules in the presence of more than two court decisions for similar «violations» (that is, based on cases under Article 20.2 of the Code of Administrative Offences (hereinafter — CAO)) within six months may lead to imprisonment up to five years. He appealed to the Constitutional Court of Russia which decided it was unconstitutional to criminally prosecute a person for participating in peaceful rallies unless such rallies involved the loss of their peaceful nature or caused significant harm to constitutionally protected values. The judgment was published in January 2017, and already in February 2017 Mr. Dadin was released.

5. However, Russian national courts fail to properly implement the judgment of the Constitutional Court. For example, in 2019, Konstantin Kotov was sentenced to four years of imprisonment for participation in several peaceful events, such as picketing in support of political prisoners and a rally against the exclusion of viable opposition candidates from the city legislative assembly race. In 2020, the

Constitutional Court adopted a decision stating that in the Kotov's cases the courts failed to apply Article 212.1 of the CC in its constitutional sense previously identified by the Constitutional Court and indicating that the Kotov's case is subject to review. Consequently, the appeal brought Kotov's sentence down to one and a half years.

6. We are aware of at least six more cases of conviction under Article 212.1 of the CC, including three custodial sentences: in 2021, Vyacheslav Yegorov was sentenced to three years and three months in a penal colony and in 2022, Vadim Khairullin received a year-long prison sentence. In 2023, Kirill Ukraintsev was sentenced to one year and four months in prison, but he was released, having already served that time in custody.

II. WHAT ARE THE GAPS AND WHICH OF THE PROTOCOLS AND GUIDANCE TO LAW ENFORCEMENT, AND MECHANISMS RELATED TO FACILITATION AND POLICING OF PROTESTS DID YOU FIND TO BE RESTRICTIVE, UNDERMINING HUMAN RIGHTS PROTECTION, OR ENCOURAGING OR FACILITATING HUMAN RIGHTS ABUSIVE PRACTICES BY LAW ENFORCEMENT AUTHORITIES IN THE CONTEXT OF PROTESTS? HOW SHOULD THESE BE IMPROVED?

7. In Russia, the procedure for holding peaceful assemblies is regulated by Federal Law N 54-FZ «On Assemblies, Rallies, Demonstrations, Marches and Pickets». We observe a large number of loopholes in this law that result in dissemination

of abusive practices against demonstrators by law enforcement authorities.

8. This law formally obliges the organizer only to notify the government about the event. In practice, however, communication with the authorities in the context of protests turns into an authorization-based procedure which usually results in prohibition of the event. Consequently, authorities reject the majority of events referring to speculative risks of functional disruption of vital infrastructures, transport or social infrastructures and communications, interference with pedestrian and/or vehicle traffic without explaining what kind of interference was possible and without considering ways of minimizing such disruptions. The law does not require that the time proposed by the authorities as an alternative to the time chosen by the organizers should be such that the message which they seek to convey is still capable of being communicated as well.

9. The legislation requires regional authorities to set forth special platforms or territories for public assemblies, the so-called, hyde-parks. However, this measure only narrows down the protection of the rights to public assembly because the local authorities tend to limit alternative options to only hyde-parks, and courts automatically consider a hyde-park a reasonable alternative suggestion, without reviewing whether it corresponds to the purposes of the event. Meanwhile, hyde-parks are normally located outside of city centers, so that organizers are not able to attract mass public attention.

10. In addition, the law establishes territorial restrictions on holding public events. For example, public events are not allowed to be held near areas adjacent to hazardous industries, transport routes, high-voltage power lines, railway lines, and territories near the residence of the president, courts, buildings of the Ministry of Emergency Situations, the Federal Security Service, the Interior Ministry, the National

Guard, and the prosecutor's office, railway and bus stations, airports, ports and piers, educational and medical organizations, buildings of social protection, children's and sports grounds, territories of public authorities, places belonging to religious organizations. Additionally, the prohibition applies to areas adjacent to life support objects, including those that provide the functioning of electric, heat, water supply, and gas networks. The law also states that regions may introduce additional bans on assembly places if this measure is deemed necessary and justified «due to historical, cultural, and other objective features of the region».

11. The restrictions imposed on both organizers and participants of public events are excessive in Russia. It is required to notify authorities even of a single-person picket if the protester is using a «prefabricated collapsible construction». At the same time, the law has no definition of such construction.

12. Since 2022, any individual or organization recognised as a foreign agent is also prohibited from organizing public events or contributing money for their organization. Meanwhile, the law on foreign agents in Russia provides the authorities with an opportunity to de facto recognize any person or legal entity «under foreign influence» as a foreign agent. This prevents the majority of independent actors from conducting rallies.

13. Russian law contains no provisions allowing spontaneous events to be held without prior notice. Consequently, for the authorities there is no difference between another unauthorized event and a spontaneous one. At the same time, the measures that the authorities are allowed to take against any unauthorized demonstration are very strict. According to the CAO, a repeated violation of assembly rules results in administrative arrest up to 30 days or fine of up to 300,000 rubles (~US\$3,100 as of September

2023) regardless of whether any real damage was caused. Moreover, administrative cases against demonstrators can further lead to criminal prosecution under Article 212.1 of the CC (see above).

14. In practice, not only organizers or participants, but even those who only disseminate information about rallies are subject to administrative and/or criminal prosecution in the context of protests. Since the law does not clearly define who should be recognized as the organizer of an event, authorities usually consider any person who writes about an upcoming event on their social networks to be an organizer.

15. After the start of Russian full-scale invasion of Ukraine, new laws were adopted aimed at censoring anti-war expression. Article 20.3.3 of the CAO punishes «discrediting the use of Russian armed forces» with a fine. Currently, participation in an anti-war assembly is prosecuted, inter alia, under this provision. If a repeat offense is committed within the same year and while the first administrative penalty under Article 20.3.3 is in effect, the person is in danger of being charged under Article 280.3 of the CC. Moreover, Article 207.3 of the CC punishes dissemination of deliberately false information on the use of Russian armed forces. The prosecution under this provision may lead up to 15 years of imprisonment. Such cases are initiated in connection with anti-war solo-demonstrations and participation in mass public events. Law enforcement decide arbitrarily whether to use Article 207.3 of the CC or 20.3.3 of CAO in any given case. The existence of these articles and the practice of their application effectively prohibit any demonstrations or pickets with anti-war sentiments.

16. Moreover, there is a practice of collecting compensation from organizers for «overtime work of security forces involved in dispersing protesters.» For example, activists who, according to law enforcers, organized protests in 2021, were forced to pay at least 13.7 million rubles (~US\$142,300

as of September 2023). We are also aware of lawsuits brought by state-owned corporations against the organizers.

17. In addition to all of the above, decisions of international bodies, including in cases related to freedom of assembly, are generally poorly implemented in Russia. Prior to the exclusion of Russia from the Council of Europe, the Russian government generally executed the European Court of Human Rights' decisions in respect of paying compensation to the applicants. However, general measures were not usually implemented properly. For example, in 2020, OVD-Info informed the Committee of Ministers of the Council of Europe that no significant changes in the situation with respect to the right to freedom of peaceful assembly took place in Russia after the ECtHR made the judgment in the case of Lashmankin et al. v. Russia. After the expulsion from the Council of Europe on 16 March 2022, the Russian Federation completely ceased to execute judgments of the ECtHR adopted after 15 March 2022. The practice of ignoring the requirements of the international entities expands on the UN mechanisms as well. III. What guidance, protocols and other measures should be developed and what main elements these should include in order to prevent any unlawful restrictions, and to promote and protect human rights when facilitating protests in crisis situations?

a. Protection of public health

18. In 2020, the COVID-19 pandemic caused significant restrictions to the rights and freedoms of people all over the world. Freedom of movement through the countries or even within a city was greatly constricted and with it the freedom to gather in masses to exercise one's right to peaceful assembly. In Russia, authorities banned mass and public events in spring of 2020. That was in line with the generally recommended safety measures such as social distancing. However, in accordance with the Federal Law «On Assemblies, Rallies, Demonstrations, Marches, and

Pickets», solo demonstrations are also considered as public events and therefore were banned under the COVID-19 restrictions. The Constitutional Court of the Russian Federation ruled on 21 July 2022, that a ban on solo demonstrations does not violate the constitutional right to assembly since such events aim at drawing the public's attention which may lead to gathering of people which in turn threatens the health and safety of the population amid the spreading virus.

19. In this regard, a public health crisis should never be used as an excuse to suppress political opposition and activists as it is in Russia. In 2020, mass protests broke out in Khabarovsk region following the arrest of its former head Sergei Furgal and other cities saw mass protests against the new amendments to the Constitution; in 2021, people went to the streets in support of Alexei Navalny after his assassination attempt; and in 2022, an anti-war movement took place. Participants of these assemblies were detained, inter alia, due to COVID-19 restrictions. In these circumstances, when it is vital for people to voice their concerns and views because it can and should influence government policy, depriving them of such an important right of expression as public demonstrations is unacceptable.

20. As of September 2023, COVID-19 restrictions on public events still remain in several regions of Russia, including the Moscow oblast' (Moscow region), despite all other restrictions being lifted. Furthermore, this ban is discriminatory as it does not affect events organized or attended by Russian authorities. No reasons for this exclusion are given.

b. State of emergency and martial law

21. In Russia, mass repressions for anti-war views, including a complete ban on public anti-war events, began immediately after the start of the full-scale invasion of Ukraine and,

respectively, mass protests. And yet, as of September 2023, no war or state of emergency has been officially declared throughout the country. While certain restraints are acceptable under martial law, the lack of consistency in the measures introduced and the announced agenda indicates alternative grounds for such an approach.

IV. WHAT STRATEGIES, POLICIES OR PROTOCOLS, AND MEASURES SHOULD BE PUT IN PLACE TO ENSURE ACCOUNTABILITY FOR LAW ENFORCEMENT OFFICIALS ALLEGED OF COMMITTING HUMAN RIGHTS VIOLATIONS IN THE CONTEXT OF PROTESTS?

22. The Russian Criminal Code provides for the liability of law enforcement officials for alleged protest-related offenses, such as obstruction of protests and rallies (Article 149), as well as unlawful arrest and detention (Article 301). Criminal liability for abuse of power with the use of force or the threat of its use or with the use of weapons is provided for in Article 286 of the CC. However, holding police officers accountable under these articles is very rare, despite the widespread practice of unjustified dispersal of protests and the use of excessive force against protesters. There are several key reasons for the discrepancy:

- Having registered a complaint and conducted a review of the alleged unlawful act or offense by a law enforcement officer, the supervisory authority has determined that the complaint is not sufficiently significant to proceed to court;
- The legality of the actions of law enforcement officers is usually examined in the framework of an administrative or criminal case based on the charges brought against the

victim, and it is possible to terminate the violation of victim's rights, but not to recover damages or apply disciplinary liability to the officer;

- The supervisory authority refused to register the complaint or, after registering the complaint, no further investigation was carried out;
- Victims have not filed any formal complaints due to a lack of evidence, mistrust of authorities and fear of persecution for speaking out against police violence.

a. On-sight policing of protests

23. In Russia, during mass anti-war protests in 2022, there were multiple instances of officers without any insignia or identifiable uniforms detaining protesters while often using excessive force. This creates a number of problems for protesters wishing to appeal the actions of such officials. First, the Criminal Code provides for greater liability for the use of force or insult against law enforcement officers as government officials than against other citizens, and thus the actions of unidentified police officers may constitute provocation. Second, in order to file a complaint or appeal against an officer a protester has to determine an oversight body of such officer and to present as much information and evidence about the incident as possible. Thus, wearing a law enforcement uniform and having a clear and visible identification during public and mass events, including authorized or unauthorized protests, should be mandatory for police officers and other authorities.

24. Investigations into excessive force or unlawful detention of bystanders during protests typically rely on statements from law enforcement officers and complainants, and police testimony is always valued over protester testimony. Human rights activists and lawyers widely advise recording and videotaping all interactions with law enforcement so that the footage can later be used as evidence. However, multiple

reports indicate that on-sight police prevent protesters from filming by deliberately blocking the view of acts of police brutality, taking away mobile phones and physically threatening those who try to record. This in itself is a violation of protesters' rights and should be strictly forbidden by the supervising law enforcement authorities. In countries where this is possible, on-site review of law enforcement officials may also be carried out by trained legal observers from civil society and human rights groups. b. Investigation into human rights violations

25. International bodies have noted that investigations into offenses and crimes allegedly committed by law enforcement officials in Russia lack depth and objectivity. The European Court of Human Rights and the UN Committee on Human Rights both found that Russian authorities often refuse to initiate a criminal case on a citizen's complaint against a law enforcement officer, fail to conduct an in-depth investigation, and base their decision not to prosecute solely on testimony of the officers against whom the complaint is filed. It is clear that police view complaints against an officer as a complaint against the whole agency, and they are reluctant to give rise to an investigation that would negatively impact the entire law enforcement agency.

26. The review of complaints itself is not transparent. The complainant is only presented with a final decision not to prosecute without any information about the steps actually taken for data collection and investigation. Considering this nature of complaints against law enforcement officials, it should be required to initiate a criminal investigation into all filed complaints regarding violations of fundamental human rights, such as deprivation of liberty, torture, ill-treatment and threats to life and health, without the preliminary review.

27. In conclusion, the legal framework in Russia partially provides the right conditions for law enforcement officials to be held accountable for violating the rights of peaceful

protesters. However, in practice, criminal investigations into police actions are rarely initiated and almost never go to trial due to lack of evidence and the subjective nature of testimony.

V. RECOMMENDATIONS

28. States should adopt the following measures to improve the protection of human rights by law enforcement while facilitating protests:

- If there is an obligation to obtain authorization to hold an assembly, the relevant legislation should oblige the authorities to authorize any assembly unless it poses a real, proven threat to public safety;
- The right to spontaneous protest must be enshrined in law;
- Liability for participating in rallies without prior notice should be eliminated;
- Liability for organizing a rally without notifying the authorities should only apply if the event involves a real, proven threat to public order;
- Crowd control and forceful dispersal of protesters should be allowed only in extreme cases;
- In extreme cases, when dispersal of protesters is unavoidable, the rights of journalists, volunteer observers or medical workers should be especially protected;

29. States should adopt the following measures to prevent unlawful arrests and detention in the context of protests:

- In Russia, police officers often prevent defenders and attorneys from entering the departments to provide legal help to protesters referring to the «Fortress» contingency plan — a secret plan to repel an armed attack on the department. The

use of the «Fortress» or similar plan as a cover for violating the detainees' rights should be prohibited;

- Specific guidelines and training on policing protests based on human rights principles should be adopted. Only specially trained police officers should be allowed to work at public meetings;
- The obligation of the police to provide lawyers, defenders, municipal deputies and members of the public monitoring commission with access to departments should be enshrined in law;
- The practice of confiscating mobile phones from detained protesters should be banned;
- Special mechanisms should be put in place to allow an immediate investigation to be launched if a detainee brought to court directly from a police station reports torture, ill-treatment or sexual and gender-based violence;
- The right of detainees to immediate independent examination of their injuries must be guaranteed.

Ещё почитать



«А люди полностью отданы СВО». Рассказ волонтера, на которого составили восемь протоколов за встречи с жителями Курской области

Роман Солодов хотел привлечь внимание власти к бедам жителей российских приграничных сел. Но вместо этого его самого привлекли к ответственности.



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