

Legal analysis

Draft laws 1057213-7, 1057230-7, 1060657-7 and 1060689-7 submitted to the Russian State Duma in November 2020 by deputy D. F. Vyatkin

Introduction

In November 2020, deputy of the State Duma Dmitry Fedorovich Vyatkin submitted several draft laws aimed at changing the legal framework for organising, preparing and conducting public events, increasing the liability for violations at the preparation stage and during the events and introducing liability for illegal use of press badges during a public event.

Please see below a table with details of the draft laws, relevant Committee of the State Duma and deadlines for presenting opinions to the relevant Committees.

No.	Draft law name	Relevant Committee	Stage of parliamentary scrutiny
1.	On amending the Russian Federation Administrative Offense Code to increase liability for violations in preparing and conducting public events No. 1060689-7, submitted to the Russian Federation State Duma on 23 November 2020.	State Duma Committee on State-Building and Legislation	The first reading on December 24, 2020
2.	On amending Federal Law “On assemblies, rallies, demonstrations, marches and pickets” No. 1057230-7, submitted to the Russian Federation State Duma on 17 November 2020.	State Duma Committee on Civil Society, Public and Religious Associations	The second reading on December 22, 2020
3.	On amending Federal Law “On assemblies, rallies, demonstrations, marches and pickets” No. 1057213-7, submitted to the Russian Federation State Duma on 17 November 2020.	State Duma Committee on Civil Society, Public and Religious Associations	The second reading on December 22, 2020
4.	On amending Art. 20.2 of the Russian Federation Administrative Offense Code to introduce liability for illegal use of press badges No. 1060657-7, submitted to the Russian Federation State Duma on 23 November 2020.	State Duma Committee on State-Building and Legislation; associate committee – State Duma Committee on Information Policy, Information Technologies and Communications	The first reading on December 24, 2020

1. Review of key issues with the proposed regulations

First, the approval procedure for public events will become even less balanced and more like asking the authorities for permission, which is in conflict with the notification procedure enacted in Federal Law No. 54-FZ “On assemblies, rallies, demonstrations, marches and pickets” of 19 June 2004. In particular, changes to the time, venue and other features of a public event proposed by the relevant authorities would *de facto* turn into an ultimatum that the organisers can only either accept or forgo the public event completely. It also provides the authorities with a longer time limit to respond to a notification of a public event if the deadline falls on a non-banking day. Meanwhile, the organisers of public events are required to provide additional information in their notifications. Such suggestions are not only in conflict with the current court practices enforced, among others, by the Russian Supreme Court Plenum Order No. 28 of 26 June 2018, they also impose additional duties on the

organisers, which in substance erodes the balance of public and private interests in organising and conducting public events and gives the authorities excessive control over the activities of public event organisers and participants associated with unjustified restrictions on freedom of assembly, rallies, demonstrations, marches and pickets, which the Russian Constitutional Court has repeatedly pronounced unacceptable, including in Judgement No. 24-P of 18 June 2019.

Secondly, it suggests that any public event, approved or not, can be banned, even on the eve of the event or on the day of the event, if the relevant authorities cannot ensure safety of its participants as a result of an emergency situation, terrorist act or a real threat thereof. Such regulation is deemed excessive, since the legal mechanism for terminating a public event in case of real threat to the life and health of citizens and to the property of legal entities and individuals is already provided for in Art. 16 of Federal Law No. 54-FZ “On assemblies, rallies, demonstrations, marches and pickets” of 19 June 2004. Furthermore, there are concerns about potential court practices that may result from enacting the proposed draft law: the authorities would be able to ban any public event, while the organiser would be unable to challenge such a decision in court due to time constraints. This regulation actually cancels out the legal position of the Russian Constitutional Court and Supreme Court that aims to provide effective legal remedies to challenge a refusal to approve a public event (for example, Russian Constitutional Court Judgement No. 4-P of 14 February 2013 and Russian Supreme Court Plenum Order No. 28 of 26 June 2018).

Thirdly, it proposes to prohibit foreign sponsoring for public events and funding from anonymous sources or non-profit organisations included by the Ministry of Justice in the list of organisations acting as foreign agents. In our opinion, this legal initiative is disproportionate and discriminatory in limiting the right to freedom of assembly for foreign citizens and legal entities and Russian non-profit organisations. Under Art. 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms, everyone has the right to freedom of peaceful assembly. Under Art. 14 of the same Convention, the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground. Besides, this regulation actually expands the list of persons who cannot be organisers of public events under Art. 5.2 of Federal Law No. 54-FZ “On assemblies, rallies, demonstrations, marches and pickets” of 19 June 2004. For example, Russian non-profit organisations included in the list of organisations acting as foreign agents will be unable to incur expenses associated with their own public events (pay for erecting the stage, sound amplifying equipment, promotional materials, etc.) directly. In the meantime, this legislative proposal requires additional reports from the organiser of a public event, turning the enjoyment of a fundamental right to freedom of assembly into an overly complicated and bureaucratic process.

Fourthly, introducing administrative liability for journalists for illegal use of a press badge during a public event seems an excessive and unjustified restriction of the freedom of press and expression. The press are already required to comply with public order during a public event, and a press badge by itself does not grant any additional rights to journalists. However, introducing a special administrative liability for journalists will have a “cooling” effect on the press, because it will give the police legal grounds to detain any journalist and take them to a police station, with three hours to hold them there while they are establishing if said journalist was using the badge legally. Even if the journalist manages to convince the police that the journalist’s actions were legal, one will hardly be able to recover the time they lost or stop fearing a similar detention in the future. Also, if a journalist is repeatedly held liable under

the new administrative law, there is already a criminal liability with up to 5 years of confinement (Art. 212.1 of the Russian Criminal Code).

In addition to the above, these draft laws propose additional restrictions on solo pickets, another federal territorial restriction on public events near “emergency response services”, an increased liability for violations committed while organising or conducting public events and other restrictive changes (please see attachment for a detailed legal analysis of all submitted draft laws).

Many provisions of the draft laws under review are in conflict with the principle of legal certainty that is elaborated in detail in the case law of the Russian Constitutional Court. On the contrary, these documents use broad and uncertain terms, leaving large gaps in regulation, which hardly makes their enforcement predictable. These flaws in the draft laws can shatter the citizens’ trust in the law and the state’s actions.

2. Adverse effect on the international obligations of the Russian Federation

Various concerns relating to disproportional restrictions of the freedom of assembly have been repeatedly raised at the level of national and international human rights institutions. For instance, since the European Court of Human Rights (ECHR) extended its jurisdiction to the Russian Federation in 1998, by early 2020 it has acknowledged violations of the freedom of assembly by Russian authorities in 45 cases. This is almost 16% of all cases where the ECHR has ever recognised a violation of the freedom of assembly in 47 European Council member countries. The aggregate amount of compensations imposed on the Russian Federation in these cases exceeded EUR 900 thousand (over RUB 81 million at the exchange rate of 4 December 2020). In 2020, ECHR passed at least 19 rulings acknowledging that the Russian authorities violated the right to freedom of peaceful assembly.

The higher number of such rulings is due to existing unresolved issues with the legal framework and court practices in relation to organising and conducting public events. Thus, at the session on 3 September 2020, the Committee of Ministers of the European Council determined (CM/Del/Dec(2020)1377bis/H46-33) that ECHR judgement on Lashmankin and others vs. Russia of 7 February 2017 remained unexecuted. It also highlighted serious issues with the existing procedure for approval of public events, territorial restrictions on assemblies, etc. The Committee of Ministers instructed the Russian authorities to amend effective legislation to incorporate the relevant positions of the European Court on Human Rights.

9 key judgements of ECHR recognising violation of the freedom of assembly by Russian authorities are still not executed. These are the cases where the Court detected a systemic problem inhibiting a right or freedom. Enforcement of such judgements requires major changes in the current legislation and related court practices.

The draft laws under review not only don’t bring the Russian legal system closer to resolving the issues with the freedom of assembly detected by the ECHR, on the contrary, they are aggravating the situation, which will in turn lead to more complaints about restrictions on the freedom of peaceful assembly and ECHR judgements recognising violations of the Convention for the Protection of Human Rights and Fundamental Freedoms by the Russian Federation.

Conclusion

Proposed draft laws are aimed at a disproportionate restriction of the freedom of peaceful assembly and expression of opinions. Multiple provisions of the draft laws are in conflict with Federal Laws in force, rulings of the Russian Constitutional Court and the current court practices, including judgements passed by the Russian Supreme Court.

We believe that such regulations are not justified, while if enacted, these draft laws will demonstrably increase the level of legal uncertainty. Furthermore, enactment and application of these draft laws will have an adverse effect on the international obligations of the Russian Federation in the sphere of human rights and freedoms.

Appendix: Table with a detailed legal analysis of draft laws 1057213-7, 1057230-7, 1060657-7 and 1060689-7.