Approaches Of The Constitutional Court Of The Russian Federation Towards Freedom Of Expression And Freedom Of Assembly

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Abstract

The paper consists of seven sections describing the Constitutional Court's practice in respect of freedom of expression and freedom of assembly issues. The matters covered by the paper includes challenges of the constitutionality of laws forbidding civil servants to give public statements, regulation of religious organisations public events, regulation of restricted urban areas where freedom of assembly is limited, the content-based restrictions in respect of LGBT-speech.

Key words: The Constitutional Court of the Russian Federation, freedom of assembly, freedom of expression, individual complaint, constitutional review.

I. INTRODUCTION

The Russian Constitution guarantees both freedom of expression and freedom of assembly. These two freedoms are enshrined in the text of the Constitution's Chapter 2, "The rights and freedoms of man and citizen" in Article 29 and Article 31.[1] These articles correspond to the European Convention for the Protection of Human Rights and Fundamental Freedoms[2] which Russia has been a part of since 1998.

[1] The Constitution of the Russian federation, 1993, available at: http://www.ksrf.ru/en/Info/LegalBases/ConstitutionRF/Pages/Chapter1.aspx [accessed 15 September 2015].

[2] Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, available at: http://www.refworld.org/docid/3ae6b3b04.html [accessed 15 September 2015].

Association of people is one of the channels to express their opinions on various social and political matters in the country. However, association is not intended solely to the expression of citizens' opinions and translating it to the authorities or other citizens. This social institute is designed to make collective solutions to problems related to the activities of parties, trade unions, commercial, public and religious organisations. As it concerns freedom of expression, it is implemented not only by the way of rallies (meetings, demonstrations, marches and pickets), but also through the media, through creative and educational activities etc. Thus, freedom of assembly and freedom of expression can be considered either individually or in conjunction. This paper discusses these freedoms from a perspective of the Constitutional Court practice in two ways: individually and in their interrelation.

Before describing the Constitutional Court case law, there is a need for a brief introduction. The Constitutional Court expresses its opinions in respect of constitutional rights and freedoms when it receives complaints from citizens on the matters of law.[3] However, jurisdiction of the Constitutional Court is limited. Many complaints are solved by ordinary courts or through non-judicial activities of prosecutors and ombudsmen. Moreover, some issues are not in the agenda of the Constitutional Court due to the passivity of citizens in defending their rights using the constitutional complaint procedure. Therefore, on the one hand, the practice of the Russian constitutional justice is not able to show the whole picture of the problems in the sphere of realisation of freedom of assembly and freedom of expression. On the other hand, the practice of the Constitutional Court, of course, can be regarded as a mirror, which reflects the most acute problems in this area with the highest degree of popular interest. Below we discuss these problems and the ways constitutional justice solves them.

[3] See: Federal Constitutional Law on the Constitutional Court of the Russian Federation, available at: http://www.ksrf.ru/en/Info/LegalBases/FCL/Pages/default.aspx [accessed 15 September 2015].

II. DISCUSSION

Constitutional Court of Russia: a brief overview

The legal grounds for the functioning of the Constitutional Court of the Russian Federation are Articles 118-128 of the Constitution of the Russian Federation adopted on 12 December 1993; Federal Constitutional Law "on the Constitutional Court of the Russian Federation" of 21 July 1994 (with amendments). The Constitutional Court is composed of 19 judges appointed by the Federation Council upon nomination made by the President of the Russian Federation. The term of office is not limited to a fixed term; however, judges shall resign when they reach the age limit of 70 years. The latter does not apply to the Chairman of the Court.

The Constitutional Court in its sessions considers and decides any question within its competence. The sessions of the Constitutional Court are called by the Chairman, who runs the preparation of the sessions and presides. Decisions of the Constitutional Court are passed in its sessions provided that two thirds of the total number of judges are present. In case the petition meets the formal requirements of the Federal Constitutional Law, the Chairman of the Constitutional Court assigns judges for a preliminary review of the petition. Conclusions of the judges on preliminary review of the petition are reported in the Court session, where the decision on the admissibility of the petition is delivered. Parties are notified about the result of the preliminary review of the petition.

When the petition is found to be admissible the Constitutional Court takes a decision on the procedure of examination of the case. Cases assigned for the hearing are considered in the open sessions. The hearings are oral. The Court hears the arguments of the parties and testimonies of experts and witnesses and reads available documents. In cases provided for by Article 47.1 of the Federal Constitutional Law, the Court may decide cases without holding a hearing. The Constitutional Court:

1. decides cases on conformity with the Constitution of the Russian Federation of:
   a. federal laws as well as enactments issued by the President of the Russian Federation, the Federation Council, the State Duma or the government;
   b. constitutions and charters of republics as well as laws and other enactments issued by component entities of the Russian Federation on matters pertaining to the jurisdiction of bodies of State power of the Russian Federation and to the joint jurisdiction of bodies of State power of the Russian Federation and bodies of State power of component entities of the Russian Federation;
   c. agreements between bodies of State power of the Russian Federation and bodies of State power of component entities of the Russian Federation, and agreements between bodies of State power of component entities of the Russian Federation;
   d. international treaties of the Russian Federation that have not come into force;
2. settles disputes about the competence:
   a. between federal bodies of State power;
   b. between bodies of State power of the Russian Federation and bodies of State power of component entities of the Russian Federation;
   c. between supreme bodies of State power of component entities of the Russian Federation;
3. following complaints on the violation of constitutional rights and freedoms of citizens, verifies the constitutionality of a law that has been applied in a specific case;
4. following inquiries of courts, verifies the constitutionality of a law that ought to be applied in a specific case;
5. interprets the Constitution of the Russian Federation;
6. delivers an advisory opinion on the observance of a prescribed procedure for charging the President of the Russian Federation with high treason or with the commission of other serious offences;
7. takes legislative initiative on matters within its jurisdiction.

The Court rules exclusively on matters of law. The Court refrains from establishing and investigating of actual facts whenever this falls within the competence of other courts or other bodies. The final decision on the case is usually a ruling. The rulings are passed in the name of the Russian Federation. The final decision on the merits of the inquiry on the observance of a prescribed procedure for charging the President of the Russian Federation with high treason or with the commission of other serious offences is an advisory opinion. All other decisions of the Court are interlocutory orders. The decisions of the Constitutional Court are binding on all representative, executive and judicial bodies of State power, bodies of local government, businesses, agencies, organisations, officials, citizens and their associations. The decisions are final, may not be appealed and come into force immediately upon announcement.

Applicable standards of international law

The ICCPR's perspective

The International Bill of Rights is the most universal means of human rights protection[4] which has its own approach towards balancing and limiting fundamental rights. Article 18 of the International Covenant on Civil and Political Rights says that:

> Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.[5]

Freedom of expression according to the Covenant

> Shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.[6]

[4] Whereas one can argue that different parts of the Bill have different nature. For example The Declaration – is not binding document for the UN members. Another example is the Covenant on Economic, Social and Cultural rights which is not ratified by the United States.

[5] UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, art.18 para. 1.

[6] *Ibid*. Art.19 para.1.

Paragraph 3 of art.19 of the ICCPR permits only two types of limitations towards freedom of expression, i.e. "respect of the rights or reputations of others; and for the protection of national security or of public order *(ordre public),* or of public health or morals".[7] In any case limitations should be necessary and proportionate.[8] The UN Human Rights Committee considered the case of a Canadian teacher who was fired by the Government on the grounds that he had published certain materials stirring up religious hatred. The Committee found that limitations were necessary to protect the interests of believers.[9]

The Human Rights Committee in its 102nd session adopted General Comment No. 34, where among other issues it explained the Committee's view towards correlation between art. 18 and art.19 of the ICCPR.[10] This commentary is a good illustration of the current state of international law towards these principles.

General approach of the ECtHR towards freedom of expression and freedom of assembly

As it was highlighted above, Russia is a party to the European Convention on Humna Rights (*hereinafter* the ECHR). Cases where fundamental rights to freedom of assembly and freedom of expression were discussed by the European Court of Human Rights (*hereinafter* the ECtHR) separately or together are quite often. The Court in every case has to apply the following criteria: the interference must be prescribed by law,[11] it must fulfil a legitimate aim,[12] the interference must be necessary in a democratic society,[13] and the interference must be proportionate.[14]

As it concerns, freedom of expression (including freedom of the press, freedom of artistic expression) and freedom of assembly, which are considered as deeply connected, the Court established the following:[15]

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[7] *Ibid*. Art. 19 (3).

[8] UN Human Rights Committee (HRC), *General comment no. 34, Article 19, Freedoms of opinion and expression*, 12 September 2011, CCPR/C/GC/34 , available at: http://www.unhcr.org/refworld/docid/4ed34b562.html, paras. 33 – 34, [accessed 15 September 2015].

[9] *Malcolm Ross v. Canada*, CCPR/C/70/D/736/1997, UN Human Rights Committee (HRC), 26 October 2000, available at: http://www.unhcr.org/refworld/docid/3f588efco.html [accessed 15 September 2015].

[10] UN Human Rights Committee (HRC), *General comment no. 34, Article 19, Freedoms of opinion and expression*, 12 September 2011, CCPR/C/GC/34, available at: http://www.unhcr.org/refworld/docid/4ed34b562.html, [accessed 15 September 2015].

[11] See: Foka v. Turkey, App. No. 28940/95 (ECtHR: 24 June 2008).

[12] See: Gorzelik and others v Poland App. No. 44158/98 (ECtHR: 17 February 2004).

[13] Handyside v the United Kingdom, App. No 5493/72 (ECtHR: 7 December 1976), at para 49.

[14] See: *Vajnai v. Hungary*, App. No. 33629/06 (ECtHR: 8 October 2008).

[15] Criteria cited by the ECtHR decision on the case of *Mosley v. United Kingdom*, App. No. 48009/08 (ECtHR: 10 May 2011).

- The Court "must determine whether the reasons adduced by the national authorities to justify the interference were "relevant and sufficient", and whether the measure taken was "proportionate to the legitimate aims pursued";[16]
- The Court takes into account the role which the press has in a democratic society, the role of "public watchdog", contribution of the press into political debates, solving of questions of political importance;[17]
- It is not for the Court to establish methods of the press' work;[18]
- Freedom of expression implies that information which shocks, provokes and is disturbing also has the right to be delivered;[19]
- The Court makes a distinction "between reporting facts – even if controversial – capable of contributing to a debate of general public interest in a democratic society, and making tawdry allegations".[20]

All the standards described above are applied by the Strasburg Court when it deals with cases where there is a conflict between fundamental rights. When requirements towards these cases are strict enough the Court has to apply balancing approach towards both freedoms. The first case explaining the ECtHR methodology is the case concerning prohibition of the film "Visions of Ecstasy" in *Wingrove v. The United Kingdom*. Mr. Wingrove, the applicant, was a film director who directed a movie named Vision of Ecstasy. The movie was telling the story about life of a nun who experienced powerful ecstatic visions of Jesus. The film was submitted to the British Board of Film Classification for an expertise. The Board rejected the application on the grond that the movie could be offensive towards religious feelings.[21]

[16] See: UJ v Hungary, Application No. 23954/10 (ECtHR: 19 July 2011); Chauvy and Others v. France, App. No. 64915/01 (ECtHR: 29 June 2004), para. 70.

[17] See: Financial Times Ltd and Others v. the United Kingdom, App. No. 821/03 (ECtHR: 15 December 2009), para. 59; De Haes and Gijsels v. Belgium, App. No.19983/92 (ECtHR: 24 February 1997), para. 37.

[18] See: *Times Newspapers Ltd v. United Kingdom (nos. 1 and 2),* App. Nos. 3002/03 and 23676/03 (ECtHR: 10 March 2009), para. 42; *Jersild v. Denmark,* App. No. 15890/89 (ECtHR: 23 September 1994). para. 31.

[19] See: *Gündüz v. Turkey,* App. No. 35071/97 (ECtHR: 4 December 2003); *Handyside v. The United Kingdom*.

[20] *Mosley v. United Kingdom,* para. 114.

[21] *Wingrove v. The United Kingdom*, App. No. 17419/90 (ECtHR: 25 November 1996).

The case touched upon the issue of blasphemy. The ECtHR in its decision found no violation of Mr. Wingrove's right on freedom of artistic expression. Firstly, the Court stressed that there is no universal European understanding of what constitutes blasphemy: "national authorities must therefore be afforded a degree of flexibility in assessing whether the facts of a particular case fall within the accepted definition of the offence".[22] Then the Court held that the interference in the Applicant's rights was legitimate as it was aimed at protection of interests of Christians.[23] The main argument of the Court was that a blasphemy law in principle does not prohibit views or statements which are contrary to the religious doctrine, the law prohibits (restricts) the manner in which such an expression is made.[24] The last argument is connected with the possibility of the movie to be widely distributed once it appeared on the market.

The second case is the case of *Otto Preminger Institut v. Austria*. The applicant association was intended to screen the film *Das Liebeskonzil* (Council in Heaven). The public prosecutor initiated suspension of the movie screening because of attempted criminal offence of disparaging religious precepts. The applicant lost the case in national courts on the ground that there could be a "severe interference with religious feelings caused by the provocative attitude of the film outweighed the freedom of art".[25]

Like in the previous case, here the Court found no violation. Firstly, the Court reiterated that states have a certain margin of appreciation when there is a matter of protection of public order and the interest of the society.[26] Secondly, the Court took into account the fact that the Roman Catholic religion was the dominant religion in the Tyrol region. When the movie was banned from screening the Austrian authorities were searching prevention of offensive effect of it towards religious feelings of the Tyroliennes.[27] And the last argument of the Court was that article 10 cannot be interpreted as prohibiting forfeiture of the movie.[28]

[22] *Ibid*, para. 41.
[23] *Ibid*, para. 45.
[24] *Ibid*, para. 57-58.
[25] *Otto Preminger Institut v. Austria, App. no. 13470/87 (ECtHR: 20 September 1994).*
[26] *Ibid*, para. 55.
[27] *Ibid*, para. 56
[28] *Ibid*, para. 57.

Both cases have been much criticised.[29] Since the Court has left the states – parties wide margin of appreciation towards balancing two fundamental rights. Article 9 states that "Everyone has the right to freedom of thought, conscience and religion…".[30] It does not say that religions themselves have certain rights. But in both cases the Court took the position of protecting religions *per se*.[31] The Court departed from protection of religious freedom and moved out of the conventional frames towards protection of religious feelings. In conclusion of this paragraph we have to admit that at the international level, including the level of the Council of Europe there are certain standards in respect of freedom of expression and freedom of assembly. These standards are applicable towards the conflict between these rights and interests of the others or public order. Because of the practical reasons international tribunals and other instruments of human rights protection leave to the states wide margin of appreciation which national judiciary deals with. In the next paragraphs we will discuss the practice of the Constitutional Court of Russia and reflection of these international principles in its case-law.

Freedom of expression

In 2011 the Constitutional Court considered the complaint of the citizens who challenged constitutionality of laws forbidding civil servants to give public statements, evaluations and to estimate activities of state bodies or their heads in the media, when it was not within their competence. In case of violation of this provision an employee shall be subjected to official dismissal. As it was stressed in the media, such a ban to some extent was caused by spreading of the Internet video services, such as the U-Tube. These web-pages were utilised by some officials who posted their revelatory videos describing the state of affairs in the departments where they were serving (the newspaper "Kommersant", №118,

[29] See: Sir Patrick Elias and Jason Coppel, *Freedom of expression and freedom of religion: Some Thoughts on the Glenn Hoddle case* in *Freedom of Expression and Freedom of Information. Essays in Honour of Sir David Williams* (edited by Jack Beatson and Yvone Crips) Oxford: Oxford University Press (2000) pp. 51-63.

[30] European Convention for the Protection of Human Rights and Fundamental Freedoms.

[31] See: joint dissenting opinion to *Wingrove*.

01.07.2011).[32] One of the applicants in this case posted a video message on the Internet, where he criticised the police department, where he was serving. Then, in an interview, he said that the abuses in the abovementioned police department, as they were mentioned in the video, are still not eliminated. On the basis of this information, the applicant was dismissed from his duty for repeated violations of the ban on expression of public opinions in respect of a state body. On June 30th, 2011 the Constitutional Court announced its Judgement on the case.[33] The Court found that the challenged law cannot be applied automatically to any out of public criticism by a civil servant. The disputed provision of the law cannot be considered as prohibiting public expression of civil servants opinions (including in the media), in respect of the work of state bodies. The Constitutional Court elaborated a number of tests which must be regarded when evaluating the actions of a public servant:

a. the content of public statements, their social significance and motives;
b. the ratio of real or potential damage to the state or public interests to the harm, prevented as a result of the civil servant's actions;
c. whether there is a possibility for a civil servant to protect his or her rights or state or public interests, which caused the act of expression, in other legal ways; are there any other relevant circumstances.

Law enforcement decisions which provoked the appeal to the Constitutional Court in case if they were adopted on the basis of the contested law, interpreted differently than the Court's interpretation, shall be subjected to review. This decision of the Constitutional Court is of great importance for the ordinary courts, which have to move away from formalism in consideration of disputes on dismissal for public criticism of the authorities, and have to seek the objective truth. The courts need to act in such a way which shows the fine line that separates unauthorised slander and disloyalty from a legitimate expression in the lawful form.

[32] Available in Russian, URL: http://www.kommersant.ru/doc/1670271 [accessed 15 September 2015].
[33] Judgement No. 14-P of 30th of June, 2011.

Freedom of Assembly

In 2012, the Constitutional Court reviewed the complaint of the Commissioner for Human Rights (the Federal Ombudsman) concerning the Federal Law on Rallies and Regional Law (the Republic of Tatarstan) on Freedom of conscience. The Ombudsman lodged the complaint protecting the religious organization "Jehovah's Witnesses".[34] The organisation was fined for not having informed the authorities of the municipality about its religious meeting. This meeting was held not in the prayer house of the said organisation but in one of the public buildings of the city, which had been rented by the organisation. Both the Federal and the Regional laws prescribe that the rules of holding rallies are fully applicable to any religious meetings if they are held outside the places of worship, as well as outside cemeteries or hospitals where certain rituals are performed. In particular, the contested legislative provisions oblige to notify the municipality about an upcoming religious gathering.

What is the purpose of this regulation? From the first sight it is unclear why should the municipality be notified if a religious organisation conducts a public event in a rented space situated not in a private but in a public building. In a multi-religious country the aim of such provisions is that the municipality must be aware of the upcoming meeting to assess whether to take steps to ensure security and order in the area of the event. However, it is not always when religious meetings are held in conditions which require mandatory adoption of preventive measures. For example, they may be held outside the places of worship, not in the municipal buildings, but in private houses.

Therefore, the Constitutional Court declared that the disputed laws do not contradict the Constitution of the Russian Federation. This is so to the extent that they introduce (as a general rule) the notification procedure in respect of worship and religious gatherings in places such as those places where the citizens, on whose behalf the Ombudsman addressed the Court, held their meetings. At the same time the Constitutional Court declared the challenged provisions partly unconstitutional. They were declared unconstitutional to the

[34] Judgement No. 30-P of 5th of December, 2012.

extent applicable to prayer and religious meetings, procedures for holding rallies, demonstrations and marches to the extent applicable without distinction between religious meetings, which may require the public authorities to take measures to ensure public order and safety, and those religious meetings which does not involve such a necessity.

Interrelation of freedom of expression and freedom of assembly

Abovementioned examples of freedom of expression and freedom of assembly cases were considered as their own, outside of any relationship between them. Now we consider the situation where these freedoms are realised one through another, namely: freedom of expression of citizens is realised through meetings, marches, demonstrations, pickets. As the Constitutional Court case law shows conflicts over freedom of assembly were not associated with restrictions on the expression of certain opinions as such, while processions, rallies, and demonstrations exist for expression of an opinion on a particular political issue. In other words, the difficulties in conducting meetings occurred not because of the content of the problems submitted for public discussion, but because of the technical conditions of such meetings. Opposition groups of citizens often challenge organisational modalities of the meetings. And this is a manifestation of these opposition views against the power of the government, which, in their opinion, has established such rules which are disproportionate and unreasonable. In several press publications the position of some opposition leaders, who were encouraging "instead of protesting against a specific issue" "just gather", was considered as the non-constructive one ("Literary Gazette" № 39 (6293) of 6 October 2010).[35]

The first block of the Constitutional Court decisions concerns regulation of venues, prohibited for public gatherings. Currently the law names a number of areas where conduct of public events is prohibited. In particular these are areas around the courts. Back in 2007, the Federal Ombudsman lodged a complaint to the Constitutional Court, arguing that the boundaries of the territories directly

[35] Available in Russian, URL: http://www.lgz.ru/article/N39--6293---2010-10-06-/ [accessed 15 September 2015].

adjacent to the buildings occupied by the courts are uncertain. When these boundaries are not specified clearly, it is difficult to comply with the ban on holding the public event, punishable with administrative liability in the form of fine.

By the decision of 17th July, 2007[36] the Constitutional Court rejected the complaint of the Ombudsman, but at the same time the Court gave a detailed answer to the question in the complaint. The Constitutional Court pointed out that restricted areas, adjacent to buildings and other facilities, are territories the boundaries of which are defined by decisions of regional authorities or decisions of municipalities in accordance with the legislation in the field of land management, the use of land and urban planning. The Court concluded that if there is no decision of a public authority on designation of the appropriate territory, there is no reason to consider picketing or another public event violating the prohibition of public events on the territory adjacent to the building with a special legal regime. Consequently, there is no reason to find protestor liable. Thus, the legal uncertainty about compliance with the ban on holding public events near buildings with a special regime has been overcome.

In 2014 the Constitutional Court considered the notion of unconstitutionality of the regional law of St. Petersburg on rallies. The law prohibits holding meetings, rallies, marches and demonstrations in the Palace Square, St. Isaac's Square and the Nevsky Avenue. However, the city's public authorities designated a special place for holding public gatherings in the heart of St. Petersburg: a platform located on the Field of Mars. Moreover, there is no requirement of notification of public authorities on an event there. The applicant claimed that this regulation is groundlessness because the disputed law does not prohibit organising cultural, sport, and other celebrations on the Nevsky Avenue. The Constitutional Court decision of 22nd April 2014,[37] rejected the complaint, stressing that non-political public events are not as controversial as public events or celebrations of a political nature. Taking into account the designation of a special place at the very city

[36] Decision No. 573-O-O of 17th July, 2007.
[37] Decision No. 976-O of 22nd April, 2014.

centre, the Court found that the ban on public rallies of political nature on the Nevsky Avenue cannot be considered as a violation of constitutional rights of citizens and has no objective justification. The Constitutional Court also referred to the decision of an ordinary court (the decision of the St. Petersburg City Court) which, while considering the applicant's case, said that the ban on holding meetings on the Nevsky Avenue appears objectively necessary, as this avenue is one of the main highways for public transportation and is characterised by high pedestrian congestion.

Another example of the dispute over the conduct of a public event in the territory with a special regime is the decision of the Constitutional Court from June, 2015. The complainant, an organiser of a public event, submitted to the prefecture of one of the Moscow districts a notice of intention to hold a march promoting healthy lifestyle and Vaishnavism beliefs. Deputy Prefect informed the applicant that the public event must be coordinated with agencies in charge of the relevant territory. The territory in question was the territory of the nature reserve "Sparrow Hills". In the constitutional complaint the applicant challenged the constitutionality of the law which was the legal foundation for the prefect's answer. He believed that this provision allows arbitrary decisions with regard to refuse to conform public religious missionary activities. The Constitutional Court decision of 23rd June, 2015[38] № 1296-O dismissed the appeal, stating that the law obliges the executive authority, in case when they have a reasonable expectation that a public event could violate legal restrictions, to warn the organiser of a public event about it. The Constitutional Court emphasised that the applicant was not denied the right to organise a procession. Since the selected place is situated within the protected territory, the applicant was asked to communicate with the agency responsible for the maintenance of the protective regime of this area about the conduct of a public event there.

The second block of the Constitutional Court decisions is not bound to the "forbidden" or "regime" territories, but it is devoted to the debates over coordination of conventional (non-proscribed) venues of meetings. Issuing decisions of 2nd April,

[38] Decision No. 1296-O of 23rd June, 2015.

2009[39] and of 1st June, 2010[40] № 705-O-O, the Constitutional Court reviewed the provisions of the Federal law, which implies the need to negotiate a place and time of a public event if the place and time offered by organisers were rejected by the authorities. The Constitutional Court took into account the information from the report of the Federal Ombudsman (Commissioner for Human Rights in the Russian Federation). Ombudsman provided examples of the challenged norm application, when it *de facto* blocked public events. Nevertheless, not all such activities were subjected to the actual restrictions, but only those which were perceived (perhaps imaginary) not just as disagreement with public authorities but as denial of their legitimacy, the possibility of any cooperation with them and, more importantly, change of the constitutional order.

It is clear that when a proposal to change the location and time of the event is not only a pretext for its factual ban, and is really conducted to negotiate a venue and time, the goals of participants and third parties, such a restriction of freedom of assembly correspond to constitutional goals. However, if the provision of approval of the location time of the public event is utilised for blocking it, such a practice, of course, contradicts the purpose of the rule. The Constitutional Court clearly indicated in its decision that a public authority may not prohibit an event solely on the ground of this provision. It can only suggest another venue or time. Moreover, such a change is permissible if it does not impede the achievement of the legitimate objectives of the public event. In this regard, the Court's decision included the principle *dictum*: the suggestion should be of adequate social and political significance. The Constitutional Court also elaborated in respect of the reasons why a public authority has the right to offer a different place and time of the meeting. As it was pointed out, establishing an exhaustive list of such reasons would unreasonably restrict the discretion of public authorities in respect of the implementation of their constitutional duties. In respect of the decision it should be noted that if the legislature cannot in a case like this limit the administrative authority's discretion, there are great

[39] Decision No. 484-OP of 2nd April, 2009.
[40] Decision No. 705-O-O of 1st June, 2010.

opportunities for the judiciary to check the validity of a particular administrative decision on the ban of a meeting. Whether the decision of the administrative body is motivated? Whether there are substantial reasons for the ban, were not they imaginary, and were they really obstacles to the rally? The Constitutional Court as well as the legislator, which adopted the 2015 Code of Administrative Justice, focuses ordinary courts on the fact that in dealing with such disputes they have to play an active role in collecting evidence on their own initiative.

In addition, the Constitutional Court has made guidelines regarding the timing for consideration of such disputes. It is crucial for the organisers of the meeting to hold their event on a specific date where the event as such is reasonable if it is confined to a specific holiday or a memorial day. Therefore, the Constitutional Court has expressly stated that judicial review of such cases should be conducted as soon as possible, as provided for dispute resolution in the field of electoral rights, i.e., before the date of the scheduled public event. The Constitutional Court stressed that otherwise the judicial protection would be significantly weakened.

The third block of the Constitutional Court decisions reflects other conflicts around the rules governing the technical organisation of meetings. Application of the law on meetings identified the problem of fulfilling the time requirements for the appropriate applications for public gatherings. The law establishes a specific period of time when one can fill a notice of a public event (no earlier than 15 and no later than 10 days before the alleged date of the event). However, with regard to regulation of public holidays, as well as by-laws regulating the process of filing of such notifications, in reality there were insurmountable obstacles for public events. Such obstacles take place when the deadline for the notice of the public event is during non-working holidays.

In respect of this problem the Constitutional Court adopted the Judgement of 13th May, 2014[41], in which it noted: the parameters of public events, including its form, timing and venue are subjected to change and adjustment only within the framework of conciliation between the organiser and competent public

[41] Judgement No. 14-P of 13th May, 2014.

authorities. Implementation of specific time limits for notification about the meeting ensures equal conditions for the realisation of the right to freedom of peaceful assembly and prevents possible abuse of this right. The establishment of the initial terms of the notice about the meeting is related to the notification submitted long before the intended date of a public event, seeking prevention of other stakeholders from having their gatherings at the same time and in the same place. The deadline for submission of notifications is intended to ensure appropriate time opportunities for the coordination of the public event with the competent public authority. Meanwhile, the legal regulation of labour relations can permit a situation when a number of consecutive public holidays may exceed the period when the organiser of a public event shall submit a notice of the event. As a result, the organiser is in a situation of intolerable uncertainty as to the proper procedure for submitting an appropriate notice, and he or she is deprived of the opportunity to hold this public event, what violates the Constitution. That was the reason why the Constitutional Court declared the contested provision unconstitutional, and ordered the Federal Legislator to introduce necessary changes in the legal regulation for ensuring the possibility of submitting a notice of a public event, in cases when the period of submission, while counting as a general rule, is identical to non-working holidays.

The next example concerns disputes over alleged inconsistencies in a number of participants in a public event as it was suggested by the organisers of the event and an actual number of participants. In identifying the inconsistency the organiser of the action was subjected to liability in the form of a significant monetary penalty. This issue was considered by the Constitutional Court, which as a result adopted its Judgement No. 12-P on 18th May, 2012.[42] In Particular the Constitutional Court pointed out:44

A number of participants exceeding the number which was stated in the notice of its organiser in itself is not sufficient to bring him or her to administrative liability, as well as exceeding the rules of occupancy limit of the venue space in itself;

[42] Judgement No. 12-P of 18th May, 2012.

Responsibility of the organiser in case of violation of the established order may occur only when the excess of the declared number of participants of the public event and creation of a real threat to public safety and order were caused by the organiser of the public event; or when the organiser, allowing the excess of the participants, has not taken appropriate measures to limit the access of citizens to the event, and did not maintain public order and security, which led to a real threat of violation of public order and security, as well as damage to property;

Liability of the organiser for violation of the public order in case when a number of participants exceeded the number stated in the notification is possible only when the organiser is undoubtedly guilty.

The final conclusion of the Constitutional Court is that the challenged statute is not unconstitutional only when abovementioned conditions are met. Thus, the Constitutional Court *de facto* added its own binding instructions to the contested regulation.

Constitutional review of the proposed reform of the legislation on assemblies of 2013

The Judgement of 14th February, 2013[43] has a special and very important place in the Constitutional Court practice. This decision is characterised with the fact that there is no assessment of the constitutionality of a specific provision or provisions regarding the notion of meetings (i.e. it is not limited to some narrow aspect). Firstly, it evaluated a large complex of norms governing the exercise of freedom of assembly. From a perspective of quality, the Constitutional Court was assessing not just a set of rules on a range of issues. In fact, the Constitutional Court verified the legislation reform of rules of conduct of public events. This reform substantially toughened these rules and liability for their violation. It is not surprising that much of the opposition MPs who voted against the reform, appealed to the Constitutional Court requesting review of the constitutionality of these legislative innovations. Along with the request of opposition MPs, the

[43] Judgement No. 4-P of 14th February, 2013.

Constitutional Court also received a complaint of a citizen. Both appeals were reviewed in a Court session with the participation of all stakeholders.

The applicants challenged the provisions which:

prohibited a person from being an organiser of a public event, if he or she was brought to administrative responsibility for offenses in the sphere of organisation of rallies twice or more times;

included disproportionate administrative fine as well as the possibility of such punishment as mandatory works for violating the rules of conduct or holding of a public event, if it has led to public order violations;

permitted a preliminary agitation campaign from the date of coordination of time and place of the public event with the authorities.

This is not the whole list of innovations in the reform of the rules of holding rallies. There is no need to name all the provisions, since the core challenge was the new legal regime of holding rallies as such, which was much stricter than the prior one. The Constitutional Court in its Judgement significantly softened the severity of the contested regulations and, in fact, softened the legal regime of rallies, lowering the degree of the reform.

For example, the Constitutional Court stated that a citizen, who was twice punished for violation of the rules of conducting of the rally, has no right to act as an organiser of a new event only where the re-imposition of responsibility took place within the sentence for the offense committed earlier – that is the period of 1 year. Moreover, such a ban may not be imposed indefinitely: it is designed only for the period during which the person is considered to be punished. The Constitutional Court noted that during this period the organiser of a public event has the right to be the initiator of such events, acting indirectly, for example, referring to the initiative to other citizens, political parties and other public associations and religious organizations. He or she is not deprived of an opportunity to take a personal part in public gatherings, including the role of the person performing administrative functions at the time of the meeting or demonstration.

Increased fines were found inconsistent with the Constitution. The legislator was called to amend the relevant legislation, and before that the courts were allowed to reduce the penalty below the lower limit prescribed for the commission of a relevant offense. However, the statute providing for mandatory work as a form of administrative punishment was found constitutional, with certain reservations. Such a penalty may not be imposed for violations of the formal rules of rallies. It can be imposed only if the offense had serious consequences: for example, when it caused harm to the health of citizens, property of individuals or legal entities, or if there were other similar consequences.

From the point of view of the Judgement of the Constitutional Court the applicants did not have a "complete victory": they were not satisfied with the result, as their desire to reset the reform failed. But the defence - a parliamentary majority - also embraced the decision critically. The Upper Chamber of the parliament, the Council of the Federation, was critical about the decision. However, despite the complaints about the fact that the effectiveness of measures in the framework of the reform is weakened, the parliamentarians stressed: the decision should be respected and enforced.[44]

Substantive aspect of freedom of expression

The only decision of the Constitutional Court, not on the organisational but on the substantive aspect of freedom of assembly was uphold in respect of public actions of sexual minorities, which voiced the matters that these community believed relevant and socially significant. The Constitutional Court in the Judgement No. 24-P of 23rd September, 2014[45] assessed the Statute prescribing punishment for the propaganda of non-traditional sexual relations among minors. The applicants who appealed to the Constitutional Court were referring to the fact that their goal was not to propagate but to inform minors. However, as the only possible means to achieve this goal they have chosen a public space in the immediate vicinity of a school. They were considering any restrictions in respect

[44] The news agency "Interfax", 14th February, 2013.
[45] Judgement No. 24-P of 23rd September, 2014.

of such public gatherings as a violation of freedom of expression. Thus forefront was not to inform or convey their opinion in itself (what is feasible through contacts with authorities in the field of education, school authorities, parents committees), but holding a public event near the children facility.

The impugned provision was recognised not contrary to the Constitution with certain reservations. Firstly, the provision is aimed at protecting constitutional values such as family and childhood, as well as at preventing harm to the moral and spiritual development of minors. Secondly, it does not involve intervention in the sphere of individual autonomy, including sexual self-determination of individuals. Thirdly, the rule is not intended to prohibit or reprimand non-traditional sexual relationships. The Constitutional Court emphasised that the law cannot be considered as impeding the unbiased public debate on the legal status of sexual minorities, as well as the use by their representatives of legal ways of expressing their position on these issues and protection of their legitimate rights and interests, including the organisation and conduct of public events.

According to the media the applicants were largely satisfied with this decision, arguing that despite some incompleteness, it is a step forward in protecting the rights and freedoms of sexual minorities, including protection of freedom of expression through public gatherings. One of the applicants considered the decision of the Constitutional Court as a "grand breakthrough for the rights of sexual minorities in Russia." Although other gay activists said that "nothing fundamentally new in the CC decision was stated", and the only new position in the Court's decision "is equating the crimes against the LGBT community to criminal acts against the social group".[46]

III. CONCLUSION

Summarising the practice of the Constitutional Court of Russia regarding freedom of expression and freedom of assembly, one could come to following conclusions. Decisions of the Constitutional Court do not reflect the entire

[46] "BBC - Russian Service" 25th September, 2014.

spectrum of the issues in this area, which is related only to challenges of the constitutionality of law by the citizens and the parliamentary opposition. These are the laws, which set certain limits on freedom of expression and freedom of assembly. Nevertheless, the practice of the Constitutional Court is a mirror which reflects the most acute and urgent problems of the implementation of these freedoms. These problems demonstrate an increased conflict level in this area.

The practice of the Constitutional Court until 2012 primarily constituted of the Court's decisions rejecting constitutional complaints. However, in the recent years the Court adopts judgements more often, considering the cases involving all stakeholders, and allowing them also to use the written procedure. This shows that problems in this area has accumulated to a certain critical mass and have been exacerbated by a complex legislative tightening the public events regulation.

The main feature of these problems was that the conflict and sometimes just misunderstanding about the rules of holding rallies are not related to the content of the ideas, opinions or calls. The authorities are not following one ideology, they demonstrate practicality, readiness to perceive critical or opposition opinions on a wide range of issues. They demonstrate openness to a variety of ideologically different rallies. They also create advisory councils and advisory bodies for consideration of abovementioned critical opinions at a maximum. Decisions of the Constitutional Court illustrate that tension occurs around the organisational aspects of public actions. This applies to the territory of rallies, the rules for notification about a rally or a demonstration, specific timing and places of their holding, the number of participants, the role and responsibilities of the organisers. It may seem that for the organisers of public events, and for government bodies the technical aspects of rallies rather than ideological ones are of primary importance. For the participants of public rallies the participation is a way of organised and sometimes force or psychological pressure on the government. For the government to establish a clear mode of organisation and holding of rallies and marches is a way of preserving public order and safety and preventing undue influence upon the work of public authorities, including

the judicial, the electoral ones, etc. And there is only one decision of the Constitutional Court which demonstrates a certain conflict or tension regarding the content of the opinion which was translated trough the assembly. That was the abovementioned decision concerning public activities of sexual minorities.

Such characteristics of disputes over the rules of public actions are reflected in the place of the Constitutional Court as an arbiter – whether it takes an active or restrained role. To a greater extent this is a restrained role. But this does not exclude that the same decision of the Constitutional Court may be perceived by the opposition as insufficiently bold and by the authorities as intemperate and unreasonably levelling efforts of the legislator. In any case, decisions of the Constitutional Court, in spite of their compromise nature, eliminate unnecessary tension around the rules of the public rallies. Even acknowledging that contested legislative provisions do not contradict to the Constitution, the Court has supplied the contested norms with correct interpretation, obliging the ordinary courts and non-judicial bodies to be guided by such an interpretation. At the same time, the Constitutional Court gave the legislator certain instructions for making adjustments to the regulation of freedom of assembly. And in cases where the rules governing public rallies were obviously irrational, arbitrary or block freedom of assembly (as in the case of the deadlines for notification) the Constitutional Court found such rules clearly unconstitutional.

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