

# **May 6, 2012 events on Bolotnaya square**

Interim assessment  
by the International  
Expert Commission

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## I.

## About the Commission

The International Expert Commission for Evaluation of the May 6, 2012 events on Bolotnaya Square in Moscow was established in response to an appeal from Russian journalists and human rights defenders to leading international and Russian human rights organisations. The appeal stated that journalists and public observers present at Bolotnaya on May 6, 2012 witnessed a series of detentions and arrests of participants, some of whom were then charged with participation, organisation and incitement to mass riots or using violence against law enforcement personnel. The appeal also stated that, in their view, evidence of police abuse was not properly taken into account and police violence was never properly investigated.

The signatories of the appeal expressed concern that the results of investigation and resulting trials would not be based on the principles of the rule of law, but rather driven by political motives. Thus, they proposed the establishment of a commission of experts on freedom of assembly and policing measures to develop an objective and unbiased evaluation of the events of May 6, 2012.

**The Commission was initiated by major international human rights NGOs:** Amnesty International, Article19, the European Association of Lawyers for Democracy and Human Rights, the International Federation for Human Rights (FIDH), the International Civil Initiative for OSCE (ICI OSCE), Civic Solidarity, the International Protection Centre and Human Rights Watch. These organisations are not, however, the authors of this report and bear no responsibility for its contents. Their views may differ from those of the experts expressed in this report.

The Commission brought together the following leading experts in sphere of freedom of assembly and police measures: Adam Bodnar (Poland), Michael Hamilton (United Kingdom), Neil Jarman (United Kingdom), Evgeny Zhovtis (Kazakhstan), Oleg Martynenko (Ukraine) and Serhey Ostaf (Moldova).

**The Commission's mandate included the following objectives:**

1. to prepare a chronology of the events of May 6 2012;
2. to assess the compatibility of the relevant Russian legal framework (including the concept of mass riots) with international human rights standards;
3. to review the measures taken by the police and the authorities in preparation for, during and after the assembly and consider whether they were justified, necessary and proportional;
4. to review any legal cases resulting from the events of May 6 (focusing in particular on the so-called »Bolotnaya case«);
5. to provide a full report of their findings; and
6. to develop recommendations to the relevant authorities for improving the situation.

**The work of the Commission was based on the following materials:**

- evidence from the official investigation, reports and statements made by the relevant authorities and any other official information available on the case;
- information from public investigations and observations gathered by human rights defenders, journalists and others; and
- reports by observers and journalists, witness testimony and video materials.

The following Russian human rights and civil society organisations issued a statement of support<sup>1</sup> welcoming the Commission's establishment and recognizing the importance of the May 6 events and the need to bring more attention to them and to the resulting administrative and criminal persecution of their participants:

- Citizens' Watch (Saint-Petersburg).
- Civic Assistance Committee (Moscow).
- Human Rights Institute (Moscow).
- Interregional Committee Against Torture (Nizhny Novgorod).
- Komi Human Rights Commission «Memorial» (Syktyvkar).
- Moscow Helsinki Group.
- Youth Human Rights Movement.
- Public Verdict Foundation (Moscow).
- Centre for Democracy Development and Human Rights (Moscow).
- Lawyers for Constitutional Freedoms and Rights (Moscow).
- Human Rights Centre «Memorial» (Moscow).

<sup>1</sup> <http://6maycommission.org/ru/article/podderzhka-rossiyskih-organizaciy>

These organisations stated that they believe that the Commission's work would become an important part of the process of evaluating the current Russian legislation and law-enforcement practices and their compliance with human rights standards for freedom of peaceful assembly and their policing.

The Memorial Human Rights Centre issued its own statement highlighting the importance of and need for an objective legal analysis of the Bolotnaya events.<sup>2</sup>

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<sup>2</sup> <http://6maycommission.org/ru/news/v-moskve-nachinaetsya-bolshoy-politicheskiy-process-zayavlenie-pravozashchitnogo-centra>

## II.

# Introduction

This interim report focuses on the march and the rally on May 6, 2012 in Moscow, starting from the preparations by organizers before the events and including the events of the day up until the final dispersal of the rally that evening. The aim is to provide an independent review and analysis of those events and the legitimacy of the police's actions, including the use of force, from the perspective of existing international human rights standards and best practices for the regulation of assemblies. The report is based on available documents, journalistic reports and expert materials.

As some cases related to these events are currently before the courts while others are still under investigation, the conclusions of this report should be considered to be of an interim nature and a basis for further discussion and update.

In order to provide an objective and complete picture of the events, the Commission developed a series of questions that it distributed to the city administration of Moscow, the Investigative Committee of the Russian Federation, police authorities in Moscow, the Ombudsman of the Russian Federation and event organizers. Unfortunately the Commission did not receive replies from the city administration, police authorities or Investigative Committee. As a result, the analysis contained in this report is based on information from open sources, including materials presented by the event organizers, observers and non-governmental organisations, materials from public investigations and information provided by defense attorneys engaged in the so-called «Bolotnaya case». These materials include: eyewitnesses testimony, videos from the media and private actors, documents and some open data about the Bolotnaya criminal case. The experts analysed more than 50 hours of video-records and 200 documents related to the Bolotnaya events. In addition, they met organizers, participants and observers of the events and attended several court hearings of the Bolotnaya case.

The Commission regrets that neither city authorities nor law enforcement agencies responded to its questions, which to a certain extent may make this analysis incomplete. Nevertheless, the materials presented for the Commission's analysis allow it to set out with a

high degree of confidence the circumstances and events on Bolotnaya square and evaluate how police actions corresponded with existing international standards.

This report does not pretend to provide a complete picture of all the events of this day and is mainly focused at the attempts of participants in the «March of Millions» to reach the rally site on Bolotnaya Square and also on the interaction between the police and the demonstrators that resulted in multiple instances of violence and use of force, detentions and, subsequently, criminal charges.



### III.

## Legal Regulation of Freedom of Peaceful Assemblies

This report does not attempt to review current Russian legislation governing freedom of peaceful assembly in the abstract. Nonetheless, in the context of the events on Bolotnaya Square on May 6, 2012 and the subsequent action of state authorities against those detained, it is important to review key aspects of the legal framework for freedom of peaceful assembly in the Russian Federation.

Russia is a state-party to the **European Convention on Human Rights**. Art. 11 Section 1 of the ECHR provides guarantees regarding freedom of assembly.

*«1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*

*2. No restrictions shall be placed on the exercise of these rights 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. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State».*

Russia is also party to the **International Covenant on Civil and Political Rights**. Art. 21 ICCPR provides that:

*«The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others».*

In interpreting these provisions, one should take into account the existing case-law of the European Court of Human Rights and of the UN Human Rights Committee. Since Russia is also an OSCE participating state, this report relies upon the OSCE ODIHR and Venice Commission **Guidelines on Freedom of Peaceful Assembly** (Second Edition).<sup>3</sup> These guidelines draw – among other sources – from international legal standards, including jurisprudence deriving from the European Convention on Human Rights and the International Covenant on Civil and Political Rights.

Article 31 of the **Constitution of Russian Federation** enshrines the right to freedom of peaceful assembly:

*«Citizens of the Russian Federation shall have the right to assemble peacefully, without weapons, hold rallies, meetings and demonstrations, marches and pickets».*

Art. 51, Section 3 of the Russian Federation Constitution provides for conditions under which freedom of assembly may be restricted. It is a typical limitation clause, which could be found in other democratic constitutions:

*«The human rights and the rights and freedoms of citizens may be limited by federal law only to the extent necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, or for ensuring the defence of the country and the security of the State».*

Organisation of peaceful assemblies is regulated in Russia by federal legislation, in particular the **Federal Law on Assemblies, Meetings, Demonstrations, Marches and Picketing** (no. 54-FZ of August 18, 2004 – «the Assemblies Act»).

This Law has been amended several times:

- by Federal Law no. 344-FZ of December 8, 2010, adopted by the State Duma on November 26, 2010, and ratified by the Federation Council on December 1, 2010;
- by Federal Law 4-FZ of February 7, 2011 (minor changes);
- by Federal Law 424-FZ of December 8, 2011 (minor changes); and
- by Federal Law No. 65-FZ of June 8, 2012.

<sup>3</sup> OSCE ODIHR Guidelines on Freedom of Assembly, Second Edition, Warsaw – Strasbourg 2010, available at <http://www.osce.org/baku/105947?download=true>

Because the events on Bolotnaya Square took place on May 6, 2012 they need to be assessed on the basis of the Federal Law of August 18, 2004, as amended by the law of December 8, 2010 (Law No. 344-FZ). However, it should also be noted that following the events on Bolotnaya Square the Assemblies Act was significantly changed in order to restrict the organisation of assemblies. Those changes are described in a separate part of this analysis.

It should be also noted that assemblies are regulated at the regional level. In particular, the **Moscow Law of 4 April 2007, No. 10** «Concerning the Ensuring of Enforcement of Russian Citizens' Right to Hold Rallies, Meetings, Demonstrations, Marches and Picketing in Moscow» is applicable.

An important legal act with implications for the exercise of the right to assembly is the **Code of Administrative Offences** of December 30, 2001, which provides for fines for breaching legal obligations pursuant to the organisation of or participation in assemblies.

A number of international organisations and institutions reviewed and commented on the Assemblies Act. In March, 2012 the Venice Commission issue an Opinion<sup>4</sup> in which it made numerous recommendations regarding amendments to the Assemblies Act. However, none of the recommendations were adopted. To the contrary, in June 2012, the State Duma adopted further changes to the Assemblies Act further restricting freedom of assembly.<sup>5</sup> The Venice Commission then issued two more Opinions, on August 7, 2012 and March 11, 2013. As they refer to amendments passed after May 6, 2012, however, they cannot be taken fully into account when assessing the Bolotnaya square events.

The European Court of Human Rights in Strasbourg issued several judgments relating to freedom of assembly in Russia. In particular, in the ECtHR analyzed application of Article 11 of the Convention in the cases of **Berladir and others v. Russia**<sup>6</sup>, **Barankevich v. Russia**<sup>7</sup>, **Makhmudov v. Russia**<sup>8</sup>, **Alekseyev v. Russia**<sup>9</sup>, **Sergey Kuznetsov v. Russia**<sup>10</sup> and **Kasparov and others v. Russia**<sup>11</sup>. The Assemblies Act and its application were also subject to assessment by the UN Human Rights Committee in the case of **Olga Chebotareva v. Russia**<sup>12</sup>.

<sup>4</sup> Opinion No. 659/2011, CDLAD(2012)007.

<sup>5</sup> For example, increase of responsibility of organizers for disorder caused by participants, increase in administrative offences penalties, prohibition of wearing masks during an assembly and the designation of common sites for organisation of assemblies.

<sup>6</sup> *Berladir and Others v. Russia*, no. 34202/06, 10 July 2012.

<sup>7</sup> *Barankevich v. Russia*, no. 10519/03, 26 July 2007.

<sup>8</sup> *Makhmudov v. Russia*, no. 35082/04, 26 July 2007.

<sup>9</sup> *Alekseyev v. Russia*, nos. 4916/07, 25924/08 and 14599/09, 21 October 2010.

<sup>10</sup> *Sergey Kuznetsov v. Russia*, no. 10877/04, 23 October 2008.

<sup>11</sup> *Kasparov and others v. Russia*, no. 21613/07, 3 October 2013.

<sup>12</sup> *Olga Chebotareva v. Russia*, UN Human Rights Committee, communication No. 1866/2009, views of 26 March 2012.

The follow is a list of key areas in which the Assembly Law that was in force on May 6, 2012 contradicts existing international human rights standards.

### 3.1. The System of Organising Public Events

The procedure for organising assemblies is set out in Article 7 of the Assemblies Act. It is based on the system of notice-and-endorsement, which means that organizers must notify the authorities of plans for an assembly and the authorities should adjust their activities to this notification.

Under Article 7 of the Assemblies Act, notice to hold a public event should be sent not more than 15 days and no more than 10 days prior to the holding of a public event. In case of a picket, notice should be submitted no later than three days prior to the event (except when those days fall on a Sunday or a non-working holiday – then notification must be made four days in advance).

Under Article 12, Section 2, points 1 and 2 of the Assemblies Act, the authorities should inform the organizers within three days from receipt of the notice (or in the case of a picket when notification was submitted less than five days prior to the event, on the same date) of:

- 1) *«a reasoned proposal to alter the venue and/or time of the public event», and/or;*
- 2) *«any proposal for the organizer of the event to bring the aims, form or other conditions for holding the event as indicated in the notice into the line with the requirement of the Assemblies Act».*

This provision in fact opens up a negotiating process between the organizers and the authorities. As a result of a judgement of the Russian Constitutional Court, there is no procedure in the Assemblies Act for banning the assembly, even if there are reasons to do so.<sup>13</sup> In general, the Assemblies Act promotes freedom of assembly as a constitutional value, but introduces specific limitations to its exercise by inserting a negotiating procedure in Article 12 Section 2. According to the Venice Commission and the Commissioner for Human Rights, this is in fact an authorization procedure and makes the exercise of freedom of assem-

<sup>13</sup> It should be noted that by virtue of Article 12 Section 2 of the Assemblies Act, in case when notice of the assembly may give rise to a suggestion that its actual goals may be contrary to provisions of the Russian Federation Constitution or may violate criminal law, the authorities may give immediately to the organizer „a motivated caution in writing» that may later result in criminal responsibility of the organizers.

bly subject to governmental approval. Lack of consent by the organizer to proposals made by the authorities may result in the de facto prohibition of holding any public event whatsoever. Therefore, the procedure stipulated in Article 12 Section 2 is in fact a «take it or leave it» procedure. Either the organizers agree to a proposal made by the authorities or they cannot hold an assembly. Such an interpretation stems directly from Article 5, Section 5 of the Assemblies Act, which states that

«The organizer of a public event shall have no right to hold it when [...] no agreement has been reached with the executive authority of the subject of the Russian Federation or local self-government body on changes they propose to the place and/or time of the public event».

The Assemblies Act provides the authorities with broad discretion in indicating the place and/or time for holding an assembly. Although organizers may appeal the authorities' decision to the courts (cf Article 19 of the Assemblies Act), in fact this right is illusory, as there is almost no chance to obtain a verdict before the planned date of an assembly (see comments below).

Therefore, the general operation of the system is different from that of a typical notice-and-endorsement system, since it provides the authorities with the possibility to suggest modifications to the location and time of the assembly, in effect giving them the authorization power. In numerous cases, most notably in **Alekseyev v. Russia**,<sup>14</sup> it has been proven that this system is deficient and results in violations of freedom of assembly. Therefore, the Venice Commission in its opinion of March 2012 suggested changing the system.

In the case of **Chernogova v. Russia**,<sup>15</sup> the organizers of the assembly were twice prevented from holding a demonstration in specific locations in the city centre. As an alternative, the authorities proposed they hold pickets in locations far from the centre of Nizhny Novogrod. They also presented arguments about alleged disturbances connected with the organisation of the events, which proved to be unsubstantiated. Accordingly, the UN Human Rights Committee found a violation of Article 21 of the ICCPR, concluding that the reasons given by the authorities for rejecting the requests for pickets were merely a pretext for interference with freedom of assembly.

The issue of the location of a demonstration was the subject of consideration in the case of **Berladir and others v. Russia**. In this case, the

<sup>14</sup> Alekseyev v. Russia, nos. 4916/07, 25924/08 and 14599/09, § 99, 21 October 2010

<sup>15</sup> Olga Chebotareva v. Russia, UN Human Rights Committee, communication No. 1866/2009, views of 26 March 2012.

authorities did not agree with the proposed location of an assembly in front of the Moscow Mayor's office. Instead, they proposed another location, but one that was not sufficiently relevant to ideas to be expressed during the assembly. Because the organizers did not reply to the proposal of alternative venue the authorities declared the picket illegal and decided to disperse it. In this case, the ECtHR found that there was no violation of Article 11. However, Judges Vajić and Kovler issued a dissenting opinion in which they stated that there was a violation of Article 11. They suggested that the Russian legislation could be regarded as a means of restricting assemblies and that in this case the overly-broad application of the law resulted in the violation of the right to organize a peaceful assembly.

### 3.2. The System of Review of Cases before the Date of an Assembly

Under Russian law it is almost impossible to obtain a final decision of a court reviewing the legality of decisions made by the authorities to ban or propose an alternative venue with which the organizers do not agree before the planned date of the assembly. Even if organizers could obtain a judgment in the court of first instance before the planned date of an assembly, it only enters after ten days, long after the date for any assembly.

The international human rights standard is to obtain a final ruling (judgment) before the planned date of an assembly.<sup>16</sup> The authorities should introduce reasonable time-limits within which they should produce a final decision.<sup>17</sup> Any possibility of reaching a post-hoc remedy in the domestic legal system is insufficient to meet this standard.<sup>18</sup>

The problem of a lack of judicial review was underlined in the case of *Alekseyev v. Russia*, which concerned bans on gay pride marches. It was also underlined in the dissenting opinion in **Berladir and others v. Russia**.<sup>19</sup>

Lack of judicial review has important consequences for the exercise of freedom of assembly. If review has only a post-hoc character, the au-

<sup>16</sup> *Baczowski and Others v. Poland*, no. 1543/06, § 81, 3 May 2007; *Genderdoc-M v. Moldova*, no. 9106/06, 12 June 2012. See also para. 139 of the OSCE Guidelines on Freedom of Assembly.

<sup>17</sup> *Baczowski and Others v. Poland*, no. 1543/06, § 83, 3 May 2007.

<sup>18</sup> *Alekseyev v. Russia*, nos. 4916/07, 25924/08 and 14599/09, § 99, 21 October 2010.

<sup>19</sup> See also the dissenting opinion of judges Vaji and Kovler in *Berladir and others v. Russia*. „It appears that no effective remedies were available at the time so as to provide prompt redress in the applicant's situation [...] It is not evident that a remedy was sufficiently established and available in practice in November 2005. In particular, it does not appear that there were any specific procedures or time limits for such cases.»

thorities may act almost in an uncontrolled fashion and adopt decisions contrary to the interests of minorities, marginalized groups or political dissidents. It creates a space for arbitrary decisions, taken without proper grounds or justification. Organizers of such assemblies lack effective possibilities to appeal against such decisions and to challenge their material grounds. Lack of judicial review also has a negative impact on the verification of administrative penalties adjudicated by courts as a result of participation in illegal demonstrations (see comments below).

### 3.3. The Obligation to «Ensure Public Order»

According to Article 7, Section 3, point 6 of the Assemblies Act, in their notice to the authorities the organizers of an assembly must indicate inter alia «the forms and methods to be used by the organizer of the public event to ensure public order». This provision gives the authorities too much discretion to decide whether in fact the forms and methods to be used by the organizers will in fact ensure «public order». If the authorities decide that «public order» will not be sufficiently secured they may submit «reasoned proposal» to change the venue and/or time of the public event, but they may also make other proposals to bring «the aims, forms or other conditions» for holding the event into line with Federal Law.

As previously mentioned, such overbroad formulations give the authorities the ability to enter into negotiations regarding changes to the assembly's venue and the methods of its organisation. There is a general interpretation that the protection of public order does not allow for the organisation of simultaneous demonstrations and counter-demonstrations. The authorities use the notification of a second demonstration in a similar place and time as a previously notified demonstration as grounds to suggest changing the location of the first demonstration, without any attempt to make adjustments so that two or more assemblies can be held in the same place separated from each other. Such an approach runs counter the human rights standard that requires that it be possible to hold two or more assemblies in the same place within «sight and sound» distance.<sup>20</sup>

The authorities often use the scheduling of cultural events or festivities on the same site to propose to change the venue of a demonstration, which approach runs counter to human rights standards.

<sup>20</sup> Para. 101 OSCE Guidelines on Freedom of Assembly.

Court decisions indicate that the authorities have used several other arguments to restrict assemblies later found to be unjustified (e.g. in *Alekseyev v. Russia*). For example, in *Barankevich v. Russia*, the ECtHR found that the mere existence of a risk is insufficient to ban an event. In making their risk assessment the authorities must produce concrete estimates of the potential scale of disturbances in order to evaluate the resources necessary to neutralize that threat. Resort to the banning of an assembly in such a situation is the most radical measure.<sup>21</sup>

In ***Makhmudov v. Russia***, a demonstration directed against the Moscow government's policies was banned on the basis of the argument that there was a potential «terrorist threat». At the same time, however, public festivities organized by the Moscow government were allowed to proceed without incident notwithstanding the alleged «terrorist threat». Therefore, the European Court of Human Rights found a violation of Article 11 of the Convention.

In ***Kasparov and others v. Russia***,<sup>22</sup> the ECtHR assessed the arrest and subsequent administrative detention of protesters going to the demonstration when it was disputable if the demonstrations was authorized or not. According to the ECtHR, regardless of the dispute, the arrests constituted interference in freedom of assembly. The Court found that the sole reason for the arrests and administrative detentions was the authorities' perception that the demonstration was unauthorised. There was no «pressing social need» for the arrests and therefore the Court found a violation of Article 11 of the Convention.

### 3.4. The Obligation of Organizers to Suspend a Demonstration in Case of Violations of Public Order

According to Article 5, Section 4, points 5 and 6 of the Assemblies Act, the organizers of a public event are obliged, within their competence, to ensure public order and the security of citizens during an assembly. They are also obliged to suspend or terminate a public event if participants undertake any illegal actions. At the same time, it is the duty of the authorities to cooperate with the organizers to secure public order (Article 12, Section 1, point 5).

Articles 15-17 of the Assemblies Act provide for a procedure to suspend or terminate assemblies and for interaction between the organ-

<sup>21</sup> *Barankevich v. Russia*, para. 33.

<sup>22</sup> *Kasparov and others v. Russia*, no. 21613/07, 3 October 2013.



izer and administrative authorities in this regard. In general, a public event may be ordered suspended if

«there occurs, during the holding of a public event, through the fault of its participants a violation of law and order not entailing the threat to the life and health of its participants».

In such cases, the authorities may demand that the organizers suspend the assembly in order to remedy or stop the violation. If the organizer fail to suspend the event, then it is within the authorities' remit to do so themselves. When the violation has been remedied, then the assembly may continue. If it cannot be remedied or stopped, then the assembly can be terminated.

The procedure for terminating a public event is provided in Article 17 of the Assemblies Act. In general, the grounds for termination of a public event include:

- 1) the existence of a real threat to the life and health of citizens and also to the property of individuals or legal entities, and
- 2) the perpetration by participants of illegal acts or the deliberate violation by the organizers of the provisions of the Assemblies Act concerning the procedure for holding a public event.

In such a situation it is a duty of the authorities to give instructions to the organizer, fix the time for compliance and, in case the organizers fail to terminate the event, to directly address participants and fix a time limit for compliance with their instructions. In case of non-compliance, the police may intervene and take **«appropriate measures to terminate the public event»**.

The procedure for terminating or suspending public events may be criticized for use of overly-general provisions. However, as such it is quite similar to other legislative acts and cannot be challenged from the point of view of non-compliance with international human rights standards. Certainly, violations may happen in the context of these procedures. For example, a provocation may provide a good opportunity for the authorities to invoke the procedure for suspension (or termination) of an assembly. It is, however, not so much a legislative problem as a problem of how assemblies are administered and whether decisions and assessments made by the authorities are proportional.

However, Article 17, Section 3 of the Assemblies Act may be regarded as contrary to human rights standards. According to this provision, the procedure for terminating public events shall not apply in case of **«the outbreak of mass disturbances, pogroms, arson or in other cases calling for emergency action»**. In such cases the authorities are

not restricted by the procedures for terminating an assembly but may do so «in line with the legislation of the Russian Federation». In practice, it means that police may start actions and to disperse demonstration immediately after existence of any such «emergency» situations.

It should be noted that reference to «mass disturbances» or to «other cases calling for emergency actions» is a broad formula. At the same time, its interpretation depends solely on authorities, and not on an organizer. Certainly, this provision should be interpreted in the context of previous application of procedure for suspension or termination of an assembly. However, in practice it is quite easy for the police to claim that an «emergency» requires more active involvement and that following the normal procedure for suspending or terminating an assembly is not sufficient to stop violations.

### 3.5. Administrative Responsibility

Administrative responsibility in the context of the organisation of public assemblies is set out in Article 20, Section 2 of the Code of Administrative Offences. The following offences are regulated by this provision:

- 1) violation of procedures for organisation of a rally, meeting, demonstration, march or picket;*
- 2) violation of procedures for conducting a rally, meeting, demonstration, march or picket; and;*
- 3) arranging or holding an unauthorized rally, meeting, demonstration, march or picket in the direct vicinity of a nuclear plant or facility for the storage of nuclear material or radioactive substances.*

The Assemblies Act provided for fines of 1,000 – 2,000 roubles for violations of the procedures for organizing or conducting a rally. Only in case of an offence committed in the vicinity of a nuclear site did the Act foresee punishment in the form of administrative detention up to 15 days. These provisions did not, as such, create any specific burden on the freedom of assembly. However, the Code of Administrative Offences stipulates another offence, which was regularly applied in this context, i.e. failure to follow a lawful order or demand of a law enforcement officer (Article 19, para. 3 of the Code of Administrative Offences). In case of refusal to disperse or to follow other orders by law enforcement officers, organizers and participants in an assembly could face penalties of up to 15 days of administrative detention. Furthermore,

under Article 27, para. 1 of the Code of Administrative Offences, persons participating in public events may be detained for up to 48 hours if this is necessary to prevent an administrative offence, determine the person's identification, compile a crime report or to ensure that other procedures related to the imposition of administrative penalties are properly followed. This provision was the subject of an analysis by the Russian Constitutional Court, which found it to be compliant with the Constitution.

In general, one cannot argue that a provision imposing legal responsibility for failure to obey the law is contrary to human rights' standards. However, any forms of detention should be used only as an exception. Regular use of administrative detention creates a chilling effect on the freedom of assembly. A mere protest against decisions by the police regarding issues such as the suspension or termination of an event may result in application of this provision. Therefore, use of this provision was subject of critical comments by various international institutions and also by the Commissioner for Human Rights.<sup>23</sup>

It should be underlined that lack of a proper system of judicial review of decisions concerning assemblies has a negative impact on fair trial guarantees in case of administrative offences. When domestic courts assess whether there was a violation of the Code of Administrative Offences, they do not consider if participants in the demonstration knowingly violated the law or if the authorities' decision to block the assembly (or to change the venue) was justified and compliant with standards. When administrative penalties are issued there is usually no decision on the legality of the assembly, which is normally made only much later. Therefore, in the absence of a final court judgement on the legality of an administrative decision the courts dealing with administrative offences adjudicate cases on the basis of the assumption that the administrative decision was legal.<sup>24</sup>

### 3.6. «Peaceful Assembly»

Article 21 of the ICCPR (and Article 11 ECHR) recognizes only a right to peaceful assembly. Where an assembly is peaceful, the authorities have a positive obligation to protect and facilitate it – even if it is

<sup>23</sup> See the letter by Thomas Hammarberg, the Council of Europe Commissioner for Human Rights on ensuring the right to freedom of assembly in the Russian Federation of 21 July 2011; see also the response by the Russian Federation of 20 September 2011.

<sup>24</sup> Dissenting opinion of judges Vaji and Kovler in *Berladir and others v. Russia*.

technically unlawful (Platform 'Arzte fuer das Leben' vs Austria 1988; Bukta vs Hungary 2007).

«Peaceful» has been held to exclude assemblies where the organizers and participants «have violent intentions» (G v Federal Republic of Germany 1989). However, in Christians Against Racism and Fascism v UK 1980, the report of the European Commission on Human Rights stated that:

*«...the right to freedom of peaceful assembly is secured to everyone who has the intention of organising a peaceful demonstration ... The possibility ... of extremists with violent intentions, not members of the organising association joining the demonstration cannot as such take away that right. Even if there is a real risk of a public procession resulting in disorder by developments outside the control of those organising it, such procession does not for this reason alone fall outside of the scope of Article 11».*

Similarly, it was noted by the European Court of Human Rights in **Ziliberg v Moldova** (2004) that

*«an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour».*<sup>25</sup>

Thus, «[i]t is not necessary to restrict those freedoms in any way unless the person in question has committed a reprehensible act when exercising his rights» (**Ezelin v France**, 1991). These rulings have particular significance for the interpretation of Article 212 of the Criminal Code of the Russian Federation: participation in, or organisation of, a mass riot.

In this regard, we are particularly concerned that the participants of the May 6, 2012 rally have been charged with organisation of, participation in or inciting «mass riots», and also by the fact that it is still unclear what precisely the courts regard as mass riots, what factors the courts take into consideration when deciding whether an individual participated in or organized such a riot, and what considerations influence their sentences.

<sup>25</sup> See also Gasparyan v. Armenia (No.1) (2009), para.43; Galstyan v. Armenia (2008), para.115; Ashughyan v. Armenia (2008), para.90; and Cetinkaya v. Turkey (2006, in French only).

## IV.

# Defining «Mass Riots»

This section of the Report will analyse certain norms of the Criminal Code of the Russian Federation and will respond to the following questions:

- a) how to interpret these norms;
- b) requirements that evidence must meet in order to merit a conviction.

The «Conclusions» section of this report discusses whether the existing evidence is sufficient to qualify the May 6, 2012 events as «mass riots».

The term «mass riots» is often used interchangeably with the term «mass disorders;»<sup>26</sup> however, «mass riots» is altogether distinct from other elements referred to in Article 212.<sup>27</sup> In order to determine the applicability of Article 212, «mass riots» must therefore be defined separately.

Article 212 offences are among the most serious public order offences under the Criminal Code. Their grave nature is underscored by the fact that the code provides for sentences of up to 10 years for organising «mass riots», or 8 years for participation in the same. Article 212 can be contrasted, for example, with «hooliganism» (under Article 213 of the Code)<sup>28</sup> or «vandalism» (under Article 214)<sup>29</sup>.

The term «mass» in Article 212 appears to emphasize that an offence's severity depends on the sheer number of people involved. Offences relating to «mass riots» derive their gravity from the fact that the persons involved act together in substantial numbers and use this «weight of numbers» to achieve their purpose.<sup>30</sup>

<sup>26</sup> It is noteworthy that an alternative translation of Article 212 – that which is relied upon in the application to the European Court of Human Rights by several of those who remain in pre-trial detention (Akimenkov and 6 other applicants v Russia, Application no. 2613/13) – frames the offences therein as organising, participating in or inciting “mass disorders.” Under this translation, the occurrence of a “riot” is but one of the “accompanying” elements that must also be present if Article 212 is to be engaged. Similarly, the investigation commission on the causes and consequences of the events that took place in Chisinau in 2009 used the term ‘mass disorder’ rather than ‘mass riot’.

<sup>27</sup> Namely, “violence, pogroms, arson, property destruction, the use of firearms, explosives or explosive devices, and armed resistance to a public official».

<sup>28</sup> “Hooliganism” carries a maximum custodial sentence of up to two years, or up to five years if committed by a group of persons, or up to eight years in cases where weapons are used.

<sup>29</sup> The maximum sentence for “vandalism” is arrest for a term of up to three months.

<sup>30</sup> For example, Thornton et al, *The Law of Public Order and Protest* (OUP: 2010) at 1.09, citing the UK Law Commission Report, *Offences Relating to Public Order*, Law Com. 123, 24 October 1983, Cmnd. 9510).

*The threshold for engaging Article 212 must therefore involve violent conduct on the part of a substantial number of individuals acting together.*

The term «mass» might also be interpreted as describing a multitude of disorderly incidents (**rather than merely the substantial number of people involved**). The use of the plural term «riots» suggests such a reading. However, the phrase «mass riots» is not synonymous with public events at which some disorder, violence or riotous behaviour occurs. As the European Court of Human Rights has emphasized,

*«an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour».*<sup>31</sup>

In the absence of sustained and continuous violent conduct involving the same individuals, incidents that occur over the course of several hours should not be considered «mass riots» under Article 212 but should instead be treated as separate incidents.

In addition to the number of people involved and the sustained nature of the conduct, one must also consider the degree of violence necessary to meet the threshold of «mass riots». Article 212 exists at the top end of the spectrum of «seriousness». As such, there is a need to differentiate between acts that fall under the scope of Article 212 and those which are covered by Article 318 (use of violence against a public official).<sup>32</sup>

*Evidence – where it exists – of individual participation in an Article 318 offence should not, by extension, also be used again under Article 212. If there is credible evidence of violent acts that do not pose a threat to the lives of public officials (under Article 318), this evidence in and of itself does not warrant the charge of participation in «mass riots».*

Furthermore, given that there is an entire spectrum of non-peaceful behaviour – only those acts which clearly endanger public safety should fall under the designation of «mass riots».<sup>33</sup> The Supreme Court of the Russian Federation has stated that

<sup>31</sup> Ziliberberg v. Moldova (2004, admissibility).

<sup>32</sup> Article 318 can be contrasted with the more serious offence in Article 317 of the Code – Imperilling the Life of a Law Enforcement Officer (which carries a custodial sentence of between 12-20 years, or even capital punishment or life imprisonment). It can also be contrasted with the accompanying element in Article 212 of ‘armed resistance to a public official’.

<sup>33</sup> Supreme Court of Russian Federation, Case no. 80-005-35cn, 22 December 2005.

*«mass riots are considered...a crime that disturbs public safety and may cause serious consequences in the political, economic, or ecological spheres, in internal affairs, or paralyse the work of governmental bodies».*

Therefore, in order to meet the threshold of «mass riots», an act must be sufficiently violent that a person of reasonable firmness would fear for his/her safety.

*In summary, the definition of «mass riots» must include a substantial number of people acting together, committing sustained and continuous violent action to such a degree that a person of reasonable firmness would fear for his/her safety.*

#### 4.1. The presence of accompanying elements

As noted above, Article 212 is not applicable unless the threshold test for «mass riots» is satisfied. Equally, Article 212 is not applicable unless «mass riots» are also accompanied by the elements listed: violence, pogroms, arson, property destruction, the use of firearms, explosives or explosive devices, and armed resistance to a public official. While these elements are extrinsic to the definition of «mass riots», they directly relate to the application of Article 212 and, therefore, how to apply its provisions.<sup>34</sup>

It is worth emphasizing that these elements underscore that fact that Article 212 encompasses only serious violence – for example, the destruction of property (not merely property damage), or the use of armed resistance to government officers (not merely passive resistance).

While it is not immediately clear from the text of the Criminal Code whether the elements are to be regarded as alternative bases for the offences under Article 212 (one or more of which must be present to found a charge under Article 212) or as comprehensive bases (all of

<sup>34</sup> In contrast, and only to the extent that the text of the Akimenkov application to the Strasbourg court is authoritative on this matter, Mr Kavkazskiy's case suggests that an individual was charged with organising or participating in "mass disorders" even where none of the additional elements was present.

<sup>35</sup> It is noteworthy – though unlikely to be an accurate interpretation – that the charges as described in the Akimenkov application suggest that these accompanying elements were counted merely as aggravating factors (rather than being integral to the offences under Article 212(1) and (2)): The alleged participation in mass riots of four of the applicants was stated as being 'aggravated by' one or more of the elements listed in Article 212 – Mr Akimenkov ("aggravated by violence, arson and destruction of property") Mr Barabanov and Mr Belousov ("aggravated by violence"), and Mr Savelov ("aggravated by violence, arson, destruction of property, use of firearms, explosives and explosive devices").

which must be present), the pattern of charges following the May 6 events – including those described in the Vladimir Akimenkov case – suggest that only one or more of these elements need be proven (in addition to the existence of «mass riots»<sup>35</sup>).

## 4.2. Evidentiary Issues:

The courts must ensure that for each individual charged, there is compelling and demonstrable evidence of conduct, which justifies the charge of «participation in», «organisation of» or «incitement to» «mass riots». Such questions are highly fact-sensitive.

### «Reasonable Suspicion» and the Nature of Evidence relied Upon

Given the gravity of the offences outlined above – particularly those under Article 212 – a high evidentiary threshold must be overcome before an individual can either be **«reasonably suspected»** of having committed an offence under Article 212, or indeed be found guilty of such an offence. In any case, the evidence relied upon must be clearly linked to the individual in question.

The requirement in Article 5(1) ECHR that there be «reasonable suspicion» to justify pre-trial detention demands that the suspicion be based on reasonable grounds. This «forms an essential part of the safeguard against arbitrary arrest and detention». The fact that a suspicion is held in good faith is insufficient. The words «reasonable suspicion» mean **«the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence»**.<sup>36</sup>

In this light, it is apparent that the formal notice of charges brought under Article 212 in the Bolotnaya case does not itself comply with requirements in domestic law under Article 171.2.4 of Criminal Procedure Code (CPC).<sup>37</sup> According to Article 171.2.4 of CPC, the motives, form of guilt and modus operandi, as well as size and type of damage, must be clearly described in the formal notice of charge. The notice does not, however, contain any such individualized description of actions, which qualify under Article 212.

Furthermore, given the significance of the facts at issue for determining the outcome cases that are prosecuted, charges should not be based solely on the testimony of law enforcement officers (or indeed,

<sup>35</sup> See, for example, Fox, Campbell and Hartley v. the United Kingdom (judgment of 30 August 1990, Series A no. 182) pp. 16-17, at para. 32.

<sup>37</sup> For an English translation, see: <http://legislationline.org/documents/section/criminal-codes/country/7>



other undisclosed sources).<sup>38</sup> In such circumstances, the European Court of Human Rights has emphasized that it is vital that a tribunal exhausts every reasonable avenue in determining the facts and corroborating such testimony.<sup>39</sup> This must include careful examination of evidence taken from any victims or witnesses (other than the arresting police officers). In the absence of such detail, the arrest and detention of individuals for even the most «reprehensible» of conduct cannot have credibility, and detention on this basis gives rise to serious human rights concerns.<sup>40</sup>

Of-course, what will be regarded as relevant in evidentiary terms will differ depending on whether the individual is charged with organising, participating in, or inciting «mass riots». These three offences are briefly examined in turn below:

### **Organising «Mass Riots»**

The political motivations of those who organized the March of Millions are irrelevant to the question of whether an individual organized «mass riots». Furthermore, negative inferences must not be drawn from the fact that organizers of the March met with other opposition leaders or indeed, with politicians from other countries. To presume that such meetings were part of a criminal conspiracy without presenting incontrovertible evidence of such is to eviscerate the right to participation in political life.

#### *In summary:*

*– A person who has an organizational role in relation to an «assembly» at which some violence occurs must not be assumed, on that basis, to have organized «mass riots»;*

<sup>38</sup> As, for example, relied upon by the prosecution in the cases of Mr. Kavkazskiy (regarding his alleged participation in “mass disorder”) and Mr Barabanov (regarding his alleged connections with football fans and groups of anarchists). See, *Акимонов и Другие v Россия* (Application no. 2613/13).

<sup>39</sup> See, for example, *Каспаров v Россия* (Application no. 21613/07, judgment of 3 October 2013) at para.64: “Presented with two irreconcilable statements, the Justice of the Peace decided to base the judgment exclusively on the version put forward by the police because they had been a ‘party with no vested interest.’ However, the Court considers that, given the significance of the disputed facts for the outcome of the case and the role of the police officer who arrested the applicant and drew up the report, it was indispensable for the Justice of the Peace to exhaust every reasonable possibility of finding out exactly when and where the first applicant had been arrested.”

<sup>40</sup> *Ashughyan v. Armenia*, 2008 paras.99-101. It is noteworthy that in relation to protests in the aftermath of the April 2009 elections in Moldova (when 200 persons were arrested and detained, inter alia, on charges of large-scale disorder) the government accepted there had been a violation of the right to liberty under Article 5 ECHR. On this basis, a friendly settlement was reached between the government and the applicants, and the applications were struck out. See, Application no. 29837/09 by Radu Popa against Moldova, lodged on 8 June 2009; Application no. 24163/09 by Sergiu Mocanu against Moldova, lodged on 11 May 2009; Application no.19828/09 by Stati and Marinescu against Moldova, lodged on 16 April 2009. See also, Applications nos. 43546/05 and 844/05 by Boris Hmelevschi and Vladimir Moscalev against Moldova lodged on 1 and 8 December 2005.

– *Unless there is compelling and demonstrable evidence that an individual intentionally sought to organize serious violence (meeting the threshold described above), it cannot be said that that person «organized mass riots»;*

– *As emphasized above, the fact that video footage suggests people only began to resist physically in response to police aggression undermines the suggestion that any violence was pre-planned.*

### **Participating in «Mass Riots»**

It is well-established in the jurisprudence of the European Court of Human Rights that «[i]t is not necessary to restrict [a person's] freedoms in any way unless the person in question has committed a reprehensible act when exercising his rights».<sup>41</sup>

*In summary:*

– *A person who participates in an assembly – whether lawful or unlawful – cannot be assumed, on that basis alone, to have participated in «mass riots».*

– *Unless there is compelling and demonstrable evidence of the individual actually using serious violence, it cannot be said that that person «participated in mass riots». In other words, as stated earlier in the report, an individual should only be punished for his or her own actions and should not be held liable for the actions of other members of a group or crowd.*

### **Incitement to «Mass Riots»**

The term «incitement» means intentionally advocating, appealing to or encouraging others to engage in particular (unlawful) actions. Critically, however, the same distinction emphasized above is also relevant here – the evidence must show that the incitement was to the particular offences specified in Article 212(3): «active insubordination» – (not merely passive insubordination); «mass riots» (satisfying the threshold described above); or violence against other persons. It is insufficient merely to show that an individual encouraged others to take part in an unlawful assembly (or indeed, a peaceful sit-down protest).

Furthermore, the words used must themselves be unequivocal in calling for the unlawful act specified, taking into consideration the particular circumstances. In this light, a call to «push here» while indicating the police line (as in the case of Maria Baronova) should not be construed as «incitement to use violence against government repre-

<sup>41</sup> See, *Ezelin v France* (Application no. 11800/85, judgment of 26 April 1991).

sentatives» unless there is evidence of a specific intention to incite such violence. Giving a direction to «push here» cannot be regarded as an unequivocal call to use violence in circumstances where demonstrators, seeking to defend themselves, were being confined to an inadequate space and were fearful that further police advances would lead to potentially serious injuries.

This argument is reinforced by the fact that this report questions the very legitimacy and proportionality of the restrictions imposed on the use of Bolotnaya Square (and so the actions of the police potentially exceeded their lawful authority).

## V.

## Legal Regulation of Policing

Existing international standards for policing assume the observance of certain principles, rules and regulations that are described in international documents, including in the Guidebook on Democratic Policing (OSCE, 2008)<sup>42</sup>, Guidelines on Freedom of Peaceful Assembly (2nd edition, OSCE, 2011), Code of Conduct for Law Enforcement Officials (UN, 1979), Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UN, 1990), and the European Code of Police Ethics (Council of Europe, 2011).

Special police task forces usually act during mass assemblies in order to restore order and tranquillity. These forces serve to re-establish public order and safety and/or disperse an assembly or other mass events.

The main attributes of these units are:

- special equipment,
- special training,
- a high level of physical conditioning, and
- actions based on a given order.

The use of special measures is also based on several principles:

- **Advisability** – the choice to use force or special measure (foreseen by the law) should be based on the conditions of the event in question and should have a concrete aim.

- **Warning** – the police must call demonstrators to lawful behaviour and then warn them about the use of certain measures if the call yields no results. (This principle is not obligatory when urgent actions are needed to protect the lives and health of people.).

- **Necessity** – only those measures necessary to eliminate danger should be used. If the danger has passed (the demonstrators obeyed police order), use of special measures is not allowed.

- **Minimization of consequences** – special measures should be used in such a way as to minimize possible harm, not causing physical damage or provoking aggravation.

<sup>42</sup> OSCE Guidebook on Democratic Policing <http://www.osce.org/spmu/23804>

– **Rendering of assistance** – if a person is injured as a result police action, the officer is obliged to provide necessary help, including medical assistance if needed.

We have stated the main principles of policing during peaceful assemblies in order to demonstrate that the basis for our further analysis of police actions during the events on Bolotnaya Square is built upon clear, internationally developed criteria and is therefore objective.

# VI. Analysis of 6th May 2012 Events

## 6.1. General Context

The March of Millions in Moscow on May 6, 2012 was planned as a major demonstration to protest the recent Presidential election and the forthcoming inauguration of President Putin. The assembly planned for Bolotnaya Square was in many ways the climax of a series of protests that had begun in late 2011 in response to the perceived flaws in the 2011 Russian legislative elections. The two largest events in this cycle of protests took place on Moscow's Bolotnaya Square on December 4, 2011 and February 4, 2012 when tens of thousands of people mobilised in to voice their demands for free and fair elections as well as for a wider range of issues, including greater transparency, openness and accountability of the political system. Many other smaller protests took place in Moscow and other cities across Russia throughout the winter and spring of 2011-12. In most cases, the authorities tolerated the gatherings with limited interventions or formal restrictions.

The May 6 march and rally was thus part of a sequence of events that mobilised key groups of citizens to protest the perceived lack of democracy in Russia. However, the assembly on May 6 was different in so far as the authorities took a much harder line towards the protest than they had towards the two earlier events held on Bolotnaya Square in December and February. During the May march and rally, there was a significant mobilisation of police forces, the authorities placed constraints on access to Bolotnaya Square, and violence broke out before the majority of demonstrators could reach the rally point. The violence resulted in the detention of numerous protestors as well as injuries to both demonstrators and police officers. As a result of the disorder, authorities charged 27 participants with various offences, including incitement to riot, participation in mass disorder, violence against public officials and disobeying lawful orders of the police.

The following section sets out the chronology of the main events as they unfolded in the vicinity of Bolotnaya Square in Moscow on May 6, 2012. The information presented here is drawn from a mixture of first-hand accounts, media coverage, statements released by the authorities and video footage of the events. It does not purport to be a complete account of all activities that took place that day, but rather focuses on the attempts by those participating in the «March of Millions» event to reach the rally site in Bolotnaya Square and the interactions between police and participants that resulted in numerous acts of violence, the use of force and the detention of a large number of people, some of whom were subsequently charged with criminal offences.

## 6.2. Preparations

On April 23, 2012, an official notification was submitted about a planned rally and meeting of an estimated 5000 participants on May 6, 2012 called the «March of Millions». The reason for the assembly was to protest the Presidential elections and forthcoming inauguration of Vladimir Putin as President on May 7, 2012. The notification for the March of Millions was submitted in compliance with the law as set out in the Federal Law on Rallies, Meetings, Demonstrations, Marches and Picketing (No. 54-FZ of June 19, 2004), which requires notification to be given between 10 and 15 days in advance of a planned assembly.

The March of Millions notification included a plan for the march to take place along Tverskaya Street from Triumfalnaya Square to Manezhnaya Square, where a rally would be held. However, a Moscow government representative informed event organizers that this route was unavailable due to a planned dress rehearsal for the Victory Day Parade. Various alternative locations were suggested for the assembly before the Moscow Department of Regional Security announced on May 4 that the event would follow a similar route as a previous rally on February 4, 2012. Participants were to assemble at Kaluzhskaya Square, set off at **4:00pm** along Bolshaya Yakimanka and Bolshaya Polyanka for a rally in Bolotnaya Square, and disperse at **7:30pm**. The official notification of approval was issued on May 4, 2012 – just two days before the beginning of the event.

That same day, the Moscow Department of the Russian Ministry of Interior published a plan on its website indicating that all of Bolotnaya Square, including the public gardens, would be given over to the rally, while the Bolshoy Kamenny Bridge would be closed to vehicles but would remain open to pedestrians. This was the same procedure au-

thorities adopted for the two previous rallies on Bolotnaya Square on December 10, 2011 and February 4, 2012.

see the pictures 1,2

On the evening of May 5, police cordoned off the public gardens at Bolotnaya Square. According to Colonel Yuri Zdorenko, who was responsible for security at the location, this was done «in order to prevent the participants from setting up a camp and from other legal acts». Authorities received information the protestors might attempt to establish a protest camp at the site, causing them to decide that the rally should be confined to only the Bolotnaya waterfront area – a much smaller area than had been originally allocated for the assembly.

#### **A document dated May 5 outlined the police's intentions:**

*«It was planned to fence off the public garden of the Bolotnaya Square with metal marries and to leave only the traffic area of the Bolotnaya waterfront to the participants of the rally...the solution concerning the scheme and the plan of public order and security provisions...were not agreed on by the organizers, [and] the participants of the event and general public were not informed of these documents since they are for internal use».*

The police did not, however, inform the organizers of the changes they had decided upon, and they only became aware of the police-imposed changes to the event when they arrived at the site on the afternoon of May 6.

The City Council did not send out a written announcement that a special representative from the city authorities would be present at the event, nor did the chairman of the Moscow local department of the Ministry of Internal Affairs, Vladimir Kolokoltsev, issue any special orders on sending a special representative of the Ministry to the event.

The police also took steps to limit the number of people who might attend the assembly, particularly among those traveling from locations outside Moscow. There were numerous reports of law enforcement authorities attempting to thwart those heading to the event. In some places, police detained buses and cars containing activists and confiscated their passports. Authorities held some activists for a day or more at police stations and evacuated some railway stations. There is evidence of police interventions designed to deter attendance at the Bolotnaya Square event in Astrakhan, St. Petersburg, Ryazan, Samara, Smolensk, Tver, Ufa, Volgograd and Voronezh.



The organizers requested 12 hours to set up a stage and sound equipment for the rally; however, on the morning of May 6, the authorities only allocated six hours of advance access. Furthermore, at **1:30pm**, the police did not allow vehicles with stage equipment onto the site until they had been searched. The searches revealed a small number of tents, and authorities detained a number of people as a result. The police finally allowed the truck with the stage equipment onto Bolotnaya Square at **2:50pm**, just 70 minutes before the march was due to begin.

### 6.3. Police Preparations

We chose to describe police preparations for the event separately since, according to certain sources, they prepared to disperse the peaceful assembly from the very beginning, even though there were no signs of violence on the part of demonstrators at the start of the event.

According to both official and unofficial data, there were more than 12,800 MIA officials in the centre of Moscow on May 5, 2012, including 8,094 around the Bolotnaya area. The number includes 5,334 police officers, including the OMON, 100 road police officers, 2,400 officers from the internal troops (military units #3641 and 3500) and 200 Ministry of Interior cadets. In addition, significant forces were brought in from the Moscow suburbs (Sofrino and Balashiha), St. Petersburg, Ivanovo, the Mari-El republic, Chelyabinsk and even as far away as Yakutsk. Authorities deployed a significant amount of equipment, including flushing machines, which were used as barriers on Bolshoy Kamenny and Bolshoy Moskvoretsky bridges as well as on the lanes heading to Bolshaya Yakimanka Street.

The «Plan for Enforcement of Public Order and Safety in Moscow on May 6, 2012» provides this key information and highlights that police intervention was focused on preventing possible riots rather than helping demonstrators realize their right to freedom of assembly.<sup>43</sup>

This document highlights the emphasis on a preventative search for potential «troublemakers» among the demonstrators, as authorities established a special patrol group for this purpose. This group included representatives from the anti-extremism department, the criminal investigation department and the department on economic crimes. Their task is described as:

<sup>43</sup> See Appendix 2. Information on police preparation for the event: technical and staffing arrangements, strategic and tactical action plans

«Place yourselves within the crowd of demonstrators to identify organizers and instigators who have the aim of provoking mass riots and other grave offences, especially terrorist attacks, to take measures to define and accuse them... If detention on the spot is not possible, escort them and establish their identity for subsequent arrest and prosecution. Organize work closely with the Federal Security Service».

Furthermore, the authorities established a group of 350 officials to detain demonstrators on the way to Bolotnaya Square. Their task was to form 35 groups of 10 people «in order to remove hidden organizers of and active participants in unlawful actions from the crowd... One of the groups should include officials who have training in martial arts. This group should focus on arresting and escorting organizers of unlawful actions as well as leaders of oppositional organisations and movements, who are usually surrounded by citizens acting as guards and may actively resist the police».

This plan instructed police officers to detain not only those demonstrators who performed violent acts but all participants deemed guilty of «unlawful» action, even if those actions were peaceful. These instructions do not comply with the international standards which state, «In the event of unlawful but non-violent assemblies, law enforcements officials must avoid the use of force or, where this is not possible, limit its use to a minimum».<sup>44</sup>

The list of impact munition that was allowed on Bolotnaya included helmets, body armour, shields, gas masks, batons (PR-73), handcuffs, aerosol and flash bang grenades, multi-element bang grenades, gas grenade launchers and tubeless pistols with gas and rubber bullets as well as propelling cartridges. Most of these munitions are needed only during special operations to stop mass rioting. Apart from the batons and shields, none of the other munitions was used and stayed in police trucks; however, the fact that authorities allowed and planned for the use of such munition is indicative of the aims of the police's preparations.<sup>45</sup>

The decision of the police authorities to place their own restrictions on the rally without discussing these plans with event organizers does not comply with best international practices on policing assemblies. These best practices underline the importance of dialogue and efficient cooperation between organizers and police in order to uphold public order and ensure that events run peacefully. Even if there were con-

<sup>44</sup> OSCE Guidebook on Democratic Policing, para 65.

<sup>45</sup> Yulia Poluhina, 6th May 2012. Secret training: OMON was prepared to oppose storm of Kremlin// «Noaya gazeta», #48, 2013, < <http://www.novayagazeta.ru/inquests/57999.html> >

cerns that some participants planned to set up tents on the Square, the decision to limit the allocated space for the rally without prior notification influenced the course of events.

Notwithstanding the fact that the event was agreed upon in advance with the authorities, the actions of administrative officials and the police did not comply with the principle of presumption in favour of holding assemblies, meaning the positive obligation of the authorities to sustain the realization of citizens' right to freedom of assembly.

Even though the event was agreed upon just two days in advance, the authorities altered the plan for its organization without notifying event organizers or participants.

The international requirement that police undertake maximum efforts to provide efficient cooperation with event organizers was not observed. Not all technical aspects of event preparation were agreed upon. For example, there was no special contact centre nor designated contact person appointed to sustain cooperation with the organizers.

#### 6.4. At the Assembly Point

People who planned to participate in the march began gathering at Kaluzhskaya Square around **3pm**. Authorities required all participants to undergo a search and pass through metal detectors before making their way to the assembly point. Police conducted searches specifically to find tents, and due to the small number of detectors, it took up to two hours for participants to gain access to Kaluzhskaya Square. By the time the first people reached the rally point on Bolotnaya Square, others were still passing through the metal detectors at Kaluzhskaya Square. At **4:00pm** on May 6, the Ministry of Interior published information on its website that some 8,000 people had passed through the metal detectors – 3,000 more participants than had been expected.

Those at the front of the March of Millions, including the Left Front, Anarchists and Solidarity Movement began the walk to Bolotnaya Square at around **4:20pm** (although some groups had already set off in advance of the official head of the march). The participants were a diverse group, including many elderly citizens and children along with many carrying flags and banners. Along Bolshaya Yakimanka Street, a riot police squad in full protective gear walked alongside the marchers, while another group of riot police followed behind the last of them. In effect, the police completely surrounded the march.

## 6.5. Arrival at Bolotnaya Square

As the march approached Bolotnaya Square, demonstrators found that a police cordon blocked off the greater part of the square, leaving only a narrow stretch along the waterfront for the rally. The police established a triple cordon of officers on Bolshoy Kammeny Bridge, which prevented any movement in the direction of the Kremlin. The first cordon was positioned close to the junction of Maly Kamenny Bridge and the Bolotnaya waterfront. Students from the Police College and officers of the Patrol Guard Service (without any protective equipment) made up this line. Behind them were two rows of OMON (special police forces), a line of voluntary citizen patrol («druzhinniki»), and another cordon of OMON. A number of water cannons were visible between the second and third cordons.

see picture 3, photos 1-2

The police cordons, which blocked off movement in the direction of the Kremlin, created a bottleneck that slowed the march's progress to such an extent that it came to a virtual stop as demonstrators attempted to cross the bridge. Moreover, just beyond Luzhkov Bridge, the marchers had to go through a second set of metal detectors, where progress was very slow since there were only 14 detectors.

## 6.6. The Sit-Down Protest

By **5:15pm**, the majority of the march was immobile. A number of leaders, including Sergey Udaltsov, Alexey Navalny and Ilya Yashin, encouraged demonstrators to sit down on the road in front of the «Udarnik» cinema facing the police cordon to protest the inability of the march to continue and to demand that they be given access to the originally allocated space for the rally on Bolotnaya Square. An estimated 50-200 people joined the sit-down protest. The leaders stressed the need to maintain a peaceful protest and appealed to demonstrators to remain calm. Participants chanted, «We will not go away» and «Police together with the people». The leaders attempted to address the crowds using loudspeakers, but those behind the sit-down protest could not hear or see events as they transpired. The sit-down protest did not completely block the road, but it did restrict the movement of those approaching the police lines and the bottleneck caused by the police cordon. As a result, the crowd grew denser as more demonstrators arrived from Bolshaya Yakimanka street.

see photo 3

At **5:32pm**, Sergey Udaltsov announced that there were only 12 hours left before Putin's inauguration and suggested the sit-down protest continue until a number of demands were met, including one hour on live television on federal channels for the opposition, a cancellation of the Putin's inauguration, and the holding of new presidential and parliamentary elections.

At **5:42pm**, the Moscow Chief Interior Department issued a statement:

*«The organizers of the rally and other participants refuse to proceed to the agreed place of the rally (to Bolotnaya Square). They stopped on the roadway near the «Udarnik» theatre. Some of them sat on the ground and thus blocked the movement of the column. Despite repeated warnings on the part of the police to proceed to the place of the rally, they won't move thereby creating a real threat of a jam and trauma for participants. An inquiry commission is working on the spot to document their actions related to appeals to mass public disorder with a view to further consider the issue of instituting criminal proceedings».*

Some demonstrators appeared to become frustrated with standing and waiting and began to walk away. Some tried to pass through the police cordon to leave the area, but the police refused to let them through. Instead, they were directed to go back through the crowd to Bolshaya Polyanka Street, even though this was practically impossible.

see photo 4

The police used loud speakers to inform demonstrators of the rally location. They asked participants to pass directly to Bolotnaya Square and not stop at the bridge, despite the fact that the major part of the square was closed to demonstrators. They announced that all actions on the bridge could be considered illegal. However, given the poor quality of the sound equipment, only those nearest the police could hear this information; the majority of protesters did not hear the police instructions.

The positioning of the police cordon at the end of Maly Kammeny Bridge served to create a significant bottleneck that effectively brought the march to an almost complete standstill. As we will discuss below, the police made little attempt to coordinate their actions with event organizers and prominent figures or find ways to reduce the build-up of demonstrators in a confined space.

As tensions grew, the crowd came to an effective standstill, and the police demonstrated a serious lack of negotiation skills. Instead of using mediation or dialogue to reduce tensions, the police instead resorted to threats and pressure. The police could have tried to relieve pressure on the crowd and allowed protesters to reach the rally site by repositioning their officers and moving the front line.

## 6.7. Attempts to Communicate with the Police

From the moment difficulties first arose for demonstrators attempting to cross Maly Kammeny Bridge, demonstrators made repeated attempts to negotiate with the police over moving their cordons to allow protesters onto Bolotnaya Square.

Dmitry Oreshkin, a member of the Presidential Human Rights Council, and Member of Parliament Gennady Gudkov tried to talk to police authorities around **5:30pm**, but there was no response. Shortly after participants broke through the police cordon at **6:20pm**, a group of human rights activists spoke to Colonel Birukov, head of the Moscow Interior Department's press centre. At **7:00pm**, MP Ilya Ponomarev tried to stop violence during the clashes on the embankment by speaking to the authorities, but he did not get a positive response.

Many of those involved in organising the event stated that they tried to engage with police throughout the day to ensure the event took place in a peaceful manner.

*Nadezhda Mityushkina: «I tried unsuccessfully to find the responsible people in the Ministry of Internal Affairs in order to solve organizational problems. I knew whom to contact in case we needed help when issues arose...Only at **6:00-6:30pm** did a police officer approach me. I knew from previous demonstrations that he was a senior officer responsible for communication with event organizers. I knew him as «San Sanych» (Alexander), and he told me that the authorities had suspended the demonstration. As one of the rally organizers, he told me to announce that the event was over from the stage, which I did following our conversation».*

*Igor Bakirov: «A police officer in a colonel's uniform contacted me only once, and I showed him the documents verifying my credentials as an event organizer. Later clashes with the police erupted, I couldn't find anyone with whom to communicate and cooperate».*

*Sergey Davidis: «I personally did not meet nor have time to get into contact with the authorities regarding the fences set up around the perimeter of the rally. I assumed some other organizers had already spoken to the authorities regarding this issue or were speaking with them at that time. There was no one to contact and nothing to talk about. I only saw OMON officers who behaved aggressively and were not predisposed to get into a conversation».*

Some of the protesters also spoke to police and attempted to separate the combating parties and to stop the violence.

International best practices highlight the importance of police maintaining communications with assembly organizers in order to adequately deal with any problems that might arise during an event. In this case, organizers and other prominent participants tried to engage in dialogue with the police, but the authorities were not interested.

There was a lack of effective coordination between the responsible police officials and the organizers of the assembly, which resulted in the inability to respond quickly or effectively to the deteriorating protest environment.

## 6.8. At the Stage Area

From around **5:30pm**, announcements from the stage informed people that the speakers were unable to get to the rally point and had begun a sit-down protest. Speakers made repeated appeals to participants to return to the Udarnik cinema area to join protesters there. Some participants did try to move back along the waterfront, but the police would not allow them to go back through the metal detectors. As tension mounted, some of the metal detectors were knocked over, and police allowed demonstrators to move back to the Udarnik.

After a few minutes, the police again imposed a cordon across the waterfront at the Luzhkov Bridge, and no one was allowed into or out of the rally area. This divided the crowd on the Bolotnaya waterfront into several sections, each one blocked by the police on three sides and by the Obvodnoy Channel on the fourth. Some people did manage to get through the police lines, but the police then blocked the embankment with more cordons – one by the metal detectors and another across the end of the Luzhkov Bridge. Those trapped between the police lines were not allowed to exit either towards the Maly Moskvoretsky Bridge or the Udarnik cinema.

## 6.9. The Police Cordon is Broken

Between **5:38** and **5:50pm**, a large number of OMON officers in full protective gear began to move forward from behind vehicles blocking the Bolshoy Kamenny Bridge, while a number of police vehicles used to hold arrested citizens were driven towards the Udarnik cinema.

At **5:55pm**, as people tried to move through the narrow gap between the police cordon and the waterfront to reach Bolotnaya Square, the police line moved two steps forward, further pressing the crowd. This in turn generated a counter response from the crowd, and protesters began pushing back. In several places, the police cordon broke, and a few dozen people found themselves in the empty space behind the first police line. It is impossible to determine whether the breakthrough was the result of conscious action by sections of the crowd or if the police cordon simply broke due to the pressure from such a large number of people.

Some of those who made it past the police lines were young men, but there were also many elderly citizens and others who did not resemble street fighters. Those who found themselves behind the police cordon did not act in an aggressive manner but appeared to move towards the entrance to the Bolotnaya Gardens, the supposed rally point.

see photo 5

Different demonstrators reacted very differently to the breaking of the police line. Some tried to move away, others called for people to break through the cordon, while some tried to restrain the crowd from pressing those who were still taking part in the sit-down protest. As pressure and tension grew, the sit-down protesters stood up rather than risk being trampled. There was a high degree of confusion, and people were not clear on what was happening.

The numbers of people trying to get onto the Bolotnaya waterfront increased the compression of the crowd and the police cordon. There is little indication that demonstrators were engaged in acts of deliberate violence towards the authorities at this stage. Rather, the crowd had limited room to move, and the pressure increased further as others began to move towards the sit-down protestors from the stage area. When the police moved forward, this created further pressure, and people began to push back, causing the police lines to give way.



## 6.10. The Molotov Cocktail

Just after the breakthrough at approximately at 6:00pm, a single Molotov cocktail was thrown from the crowd. It landed behind the police ranks and ignited the trousers of Valentin Yastrubinskiy, a 74 year old demonstrator who had passed through the cordon. The police used their fire extinguishers to put out the fire. This was the only such incident recorded during the day, but it was noted in many police reports and prosecution files in the plural, i.e. «throwing Molotov cocktails». As a result, authorities considered the incident an act of arson, one of the essential elements of a «riot».

see photo 6

## 6.11. Agent Provocateurs?

The throwing of a Molotov cocktail, even if only one, indicates that there were people in the crowd who were willing to use violence against the police. As tensions escalated at the bottleneck near the Udarnik cinema, eyewitnesses suggest that some demonstrators instigated acts of violence towards the police and called on protesters to break through to Manezhnaya Square. Many witness statements and media stories claimed that there were representatives of pro-Kremlin youth movements in the protest who tried to encourage demonstrators to act aggressively.

Those detained and arrested appear to have been mainly peaceful demonstrators, and it is thus important to analyse who was responsible for the initial acts of violence and aggression. Were they agents-provocateurs or rally participants?

## 6.12. The First Detentions

Soon after the cordons were broken, the authorities began to detain those who remained behind the police lines, taking them to special holding areas. The police also arrested some protesters at the front of the crowd who had not tried to break through the cordon. The police cordon was fully restored after about four minutes. A number of those currently facing trial were detained at this phase of the police operation.

**Detention of Artem Savelov:** Savelov, who does not belong to any movement or party, was at the front of the crowd facing the police cor-

don when the police line broke. Like many others, he moved behind the police lines. Video footage showed him looking around, tying his shoe and walking in the square. He was detained at **6:03pm**.

see photo 7

**Detention of Vladimir Akimenkov:** Vladimir Akimenkov is an activist of the «Left Front» party. Authorities detained him at 6:05pm and accused him of throwing a «long object» at a police officer and of involvement in rioting. Akimenkov came to the demonstration in a shirt and tie. He suffers from very poor vision and was detained before any violence had started. He has been in jail since June 10, 2012.

A minute or so after the police cordon broke, another gap appeared. This allowed some protesters behind police lines to return to the main body of the march, including Boris Nemtsov and Alexey Navalny. Shortly after, a newly arrived second rank of riot police squeezed others back into the crowd.

A number of those who were among the first to be detained appear to have done nothing wrong, apart from being in the wrong place when the police cordon was breached. There does not appear to have been any systematic attempt to attack the police line at this time. The cordon appears to have been breached simply due to the heightened pressure of the crowd in a contained physical space.

At about **6:05pm**, the authorities deployed additional police to help restore the cordon near the Udarnik cinema and to detain those who had broken through police lines. Those demonstrators who were at the front of the police cordon were either pushed towards the waterfront or in the direction of the Maly Kamenny Bridge. The police used their batons to move the demonstrators and arrested a number of people even though they had not taken part in the breakthrough of the police cordon.

*In a live commentary a correspondent of MinaevLive stated that: «Now the OMON are taking action. They force their way into the crowd and split up into groups of five. They snatch one protestor out, three grab the demonstrator and two beat off those defending the demonstrator. I don't see any basic principle for the detention. I cannot understand why they pick particular people. The situation has calmed down, but now they come and snatch people from the crowd».*

Bystanders state that the police first used batons at **6pm**. Rather than attempt to allow people to move along to the rally site, the police chose to use their batons to try to force people back. There does not ap-

pear to have been any justification for the use of force at this time, and its use only seems to have increased tensions between the police and march participants.

International best practices suggest that even though the police possess the power to intervene, disperse an unlawful assembly or use force, this does not mean that such powers should be exercised. Overly heavy-handed or zealous efforts to assert order are likely to cause considerable damage to the relationship between the police and society. The police action as described above clearly does not meet these standards.

International best practices also recommend that the authorities should give protesters sufficient time to comprehend police warnings and instructions in order to respond appropriately. Law enforcement officials did not respect these standards. Furthermore, such warnings and instructions must be brought to the attention of all protesters, if possible, and not simply to those closest to the authorities.

### 6.13. At the Stage Area

At 6:10pm, Sergey Udaltsov, Alexey Navalny and Boris Nemtsov managed to walk from the Udarnik cinema to the stage at the waterfront followed by a large number of people. A police cordon blocked access to the stage, but they were allowed through. As they tried to start the rally, the police intervened.

*According to one of the organizers, Nadezhda Mityushkina, «Some police officers came up to me and said that the rally was over. I tried to negotiate with them, but it was no use. Then I climbed the stage and announced the end of the rally. The police cut off both the music and the microphones».*

Udaltsov announced at **6:23pm** from the stage through a megaphone that the police had cut the electricity and called for «ongoing protest action». OMON officers then detained Sergey Udaltsov on stage and shortly afterwards detained Boris Nemtsov and Alexey Navalny as well. By **6:50pm**, the organizers began to disassemble the stage.

The police chose to cut off the sound equipment at the very moment some of the key figures in the assembly had reached the rally site. This action meant the rally site could no longer serve as a focal point for demonstrators, causing participants to attempt to move away from the rally location. A lack of sound equipment also prevented organizers

from informing demonstrators about the situation and from advising them on what to do. All of this contributed to a sense of confusion and uncertainty among march participants.

### 6.14. Tension and Violence

In the two hours between **6pm** and **8pm**, the demonstration was marked by two distinct types of activity. For much of the time, demonstrators and the police stood face to face without much happening. These moments were interspersed with periods when the police advanced and the crowd moved back. There does not appear to have been any clear reason for the police decision to advance other than to divide the crowd up into smaller sections. More than anything, the police advances served to raise tensions and provoke some members of the crowd to push back. There is little evidence that demonstrators initiated the violence. Rather, they appear to have become aggressive only in response to the authorities' advances.

During these interchanges some protesters threw objects at the police, and the police used their batons freely. The crowd threw plastic bottles, shoes and umbrellas – items brought for routine purposes, not with the intent of being used as weapons. As a result of police interventions, the authorities arrested a number of demonstrators despite there being little evidence from video material that those detained were actively involved in acts of violence. Rather, they were easy targets for the police.

Five of those subsequently charged were involved in incidents during the first major police effort to divide the crowd.

**Detention of Stepan Zimin:** Between **6:16pm** and **6:20pm**, the authorities detained Stepan Zimin when a police charge divided the crowd at exactly the spot where he was standing. He tried to move away but was detained by the police. He was accused of repeatedly throwing stones at the police.

**Alexandra Dukhanina:** At **6:17pm**, the demonstrators moved back, and a space was created around the police dealing with those who had been detained. Video footage shows Alexandra Dukhanina moving forward and throwing something in the direction of the police.

**Sergei Krivov:** During an early police advance, one demonstrator was knocked to the ground. A crowd gathered around her, while a woman in a light blouse filmed the incident. A police officer pushed the woman, and she dropped her camera. Sergei Krivov is seen exchanging slight pushes with the police officer before they move off in different directions.

**Elena Kohtareva:** At the same time, Elena Kohtareva can be seen standing in the front row of demonstrators and throwing what appears to be a plastic bottle towards the police.

**Alexey Polihovich:** As the riot police tried to arrest demonstrators, others in the crowd tried to prevent them being taken away by the police. Alexey Polihovich is seen holding on to a man in a green shirt while a policeman hits him on the head with his baton. Polihovich moved off to the side and can be seen holding his head.

## 6.15. Resistance

Resistance to police actions increased as events developed. Initially people did not react to the police, but once police officers began to grab demonstrators from the crowd, others began to resist. Some participants, mainly young men wearing black hoods and masks, threw objects at the police. Other demonstrators tried to prevent the police from detaining people in the crowd by pulling participants back from the OMON and forming a human chain. Video footage suggests that participants only began to resist physically in response to police aggression.

In some cases, particularly near the waterside, protesters resisted more actively by punching or hitting police officers. Others threw a variety of objects, including broken asphalt, bottles and sticks. Some also appear to have brought some kind of chemical spray, which may have caused the facial burns some police officers subsequently reported.

## 6.16. Preventing Demonstrators from Leaving

After the initial outburst of violence, some protesters tried to move away from the Bolotnaya waterfront area. In particular, those with children, women, the disabled, and the elderly attempted to leave the protest. However, eyewitnesses reported numerous cases in which police officers prevented demonstrators from leaving and only allowed people to leave after long and heated discussions. It is not clear why the authorities prevented demonstrators from leaving the site, as this would have helped reduce congestion in the waterfront area.

At around **6:20pm**, the police announced that the rally was cancelled and asked protesters to disperse. Police used a loudspeaker to state, **«Dear citizens, we earnestly ask you not to disturb public order! Otherwise, in accordance with the law, we will have to use force! Please, leave here, and do not stop. Go to the metro»**. Although the

police used a loudspeaker, the announcement was not loud enough to reach the majority of the crowd. It is likely that only those nearest to the loudspeakers could have heard the call to disperse.

There was confusion over police demands because at the same time the police gave orders for the crowd to disperse, Colonel Birukov, head of the Moscow Chief Police Department's press service, told a group of human rights defenders (including Vladimir Lukin, Dmitri Oreshkin, Victor Davydov and Nikolai Svanidze) that demonstrators could continue to Bolotnaya Square to take part in the rally.

### 6.17. Incident with the Barriers

After the riot police's first advance, demonstrators used metal barriers installed near the waterfront to protect themselves from further police raids. Some participants moved the barriers to act as a buffer between the protesters and the police, limiting police ability to advance into the crowd. In response, the police used their batons to force demonstrators to release the barriers, which they then removed.

see photo 8

There is video evidence of flares thrown between demonstrators and police, although it is not clear who initiated this action. Police used a fire extinguisher to put out a flare on at least one occasion, but eyewitnesses saw police officers pick up flares and throw them into the crowd on at least two other occasions, which is an example of unnecessary aggression and provocation by the police.

**Sergei Krivov, Incident 2:** According to the investigation, Sergei Krivov grabbed a baton from a police officer at **6:22pm** while standing at the barriers. When the officer tried to take it back, Krivov allegedly punched the officer on the hand. However, video evidence suggests that Krivov did not take the baton from the officer but merely grabbed it from another demonstrator and passed it back into the crowd. Video footage does not show any contact between Krivov and the police officer.

After police removed the barriers, they moved into the crowd and detained protesters who got in their way. Protesters began to move back towards the waterfront and Maly Kamenny Bridge. Video footage shows some people throwing chunks of asphalt at the police.

**Alexandra Dukhanina, Incident 2:** At **6:26pm**, Alexandra Dukhanina ran forward and allegedly threw pieces of asphalt at the police.

**Sergei Krivov Incident 3:** Around the same time, according to the formal investigation, Sergei Krivov was recorded pulling a detained person from the police.

After demonstrators broke through the police cordon, the police struggled initially to restore their lines. Once they were able to accomplish this, they appeared to adopt an aggressive approach to crowd management. Rather than seek to contain the large number of demonstrators and facilitate their access to the rally site, they instead chose to split the crowd into smaller groups and detain those who resisted or failed to move away quickly enough. This in turn led to an increase in resistance from the largely peaceful crowd, which was countered by an increasing use of force by the police. International best practices would have argued for a more calculated police response that sought to maintain their lines while using minimal force to encourage protesters to move to another location.

## 6.18. At the Waterfront

Initially, only a small number of demonstrators threw objects at the police, while the majority of people detained did not offer any resistance. As police interventions increased, so too did the scale of active resistance. After this, most violent clashes occurred near the waterfront.

By **6:30pm**, the crowd at the corner of Maly Kamenny Bridge and the waterfront was cut in two. Those on Maly Kamenny Bridge were pushed in the direction of Bolshaya Polyanka Street, while those on the waterfront were cut off from both Bolshoy and Maly Kamenny bridges.

**Incident involving Mikhail Kosenko (since convicted):** There is footage of Mikhail Kosenko during one of the police advances at **6:30pm** standing in the front row of demonstrators along the waterfront near the location of police clashes with Makism Luzyanin (also convicted) and an unknown person in a grey hoodie and light shirt. The authorities accused Kosenko of involvement in rioting and of assaulting a police officer and taking his ammunition. This is not seen in video footage.

**Sergei Krivov, Incident 4:** At **6:36pm**, a group of officers advanced into the crowd to try to grab demonstrators. According to the investigation, Sergei Krivov held the hands of one policeman behind his back, thereby preventing him from detaining anyone. In response, another police officer knocked Krivov to the ground and beat him first with his fist and then with his baton.

**Incident involving Ilya Guschin and Tyrana Varzhabetyan:** Ilya Guschin is accused of grabbing a policeman at **6:45pm** and holding his

helmet and bulletproof vest in order to prevent the officer from detaining protesters in the crowd. At the same time, an elderly lady, Turana Varzhabetyan, tried to protect a man police were beating. The police officer hit her, and she collapsed. Emergency services then evacuated her and diagnosed her with trauma and a concussion. The authorities did not record her injuries as having resulted from the use of force by the police.

Between **6:51** and **6:54pm**, as the OMON officers continued their attempts to detain participants, a number of unidentified young protesters ran into the space between the demonstrators and police, throwing pieces of asphalt and other objects at the police. Rather than pursue those who had thrown objects at them, the police chose to detain some demonstrators standing nearby.

**Detention of Denis Luckevich:** At **6:51pm**, Denis Luckevich was at the front of the crowd observing events. None of the video evidence suggests that he was involved in any acts of violence or physical resistance. Police made several attempts to detain him, but he managed to escape each time, although they were able to grab his shirt. Without his shirt, he was very visible in the crowd. When the police eventually detained him, they beat him, and he fell to the ground.

**Detention of Alexey Polihovich:** Alexey Polihovich is accused of participating in a mass riot. This accusation is based on the fact that at **6:52pm**, he tried to help a protestor get away from authorities. Early in 2013, Vladimir Putin said in an interview that it was unfair to keep people in prison if they had not used violence against the police. Shortly after this interview aired, an OMON officer reported that Polihovich hit him on the hand during the May 6 events.

**Beating of Alexey Gaskarov:** At **6:52pm**, a group of OMON officers grabbed Alexey Gaskarov from the crowd and knocked him to the ground. One of officers kicked him in the face, inflicting serious injury. This took place in full view of surrounding demonstrators who reacted angrily. In the uproar, Gaskarov was able to creep away, and the police appeared to lose interest in him.

**Yaroslav Belousov:** At **6:54pm**, the police advanced towards the waterfront parapet, provoking a range of responses. Yaroslav Belousov picked up a lemon from the ground and threw it at the police. The authorities accused him of throwing «a yellow object of round form, such as a billiard ball», which injured an OMON officer.

**Nikolay Kavkazskiy Incident:** At **6:54pm**, several young people ran between the police and the demonstrators and threw pieces of asphalt, sticks and flagpoles. The police used their batons in an attempt to prevent the demonstrators from disappearing into the crowd. This in turn provoked an aggressive response on the part of other demonstra-



tors, who attacked several isolated OMON officers. The police line retreated, and Kavkazskiy ran after the other demonstrators. One officer hit Kavkazskiy several times with his baton, and someone from within the crowd sprayed something at both the police and Kavkazskiy. Video evidence suggests that Kavkazskiy tried to escape from both the gas and police baton while protecting himself with his hands, but official documentation interpreted this action as an attempt by Kavkazskiy to hit a police officer.

**Egor Lazarev:** At 6:54pm, as police moved away from the demonstrators, one OMON officer hit Egor Lazarev on the jaw. Lazarev had been standing calmly in the crowd. As Lazarev collapsed, nearby demonstrators shouted, «He has been killed!»

## 6.19. Clearing the Waterfront

Around 6:54pm, the police cordon that acted as a barrier along the waterfront near the Luzhkov Bridge was removed, and demonstrators were able to move freely along the Bolotnaya waterfront. Approximately 15 minutes later, some 200 police officers in protective equipment who had formed a cordon at the Luzhkov Bridge began pushing protesters in the direction of Lavrushinsky Lane, which runs from Bolotnaya Square to the Tretyakovskaya metro station. At the same time, police began to push people back along the Bolotnaya waterfront from the Luzhkov Bridge towards the Udarnik cinema. Those who remained on the waterfront linked arms in passive resistance. The police pushed forward, divided the crowd and began to detain demonstrators.

see photo 9

**Beating of Vladimir Zakharov:** At 7:34pm, a police baton hit Vladimir Zakharov over the head. A police officer also beat journalist Evgeniy Shipilov, who collapsed as a result. The police took Shipilov away towards the Udarnik cinema.

**Detention of Yaroslav Belousov:** At 7:38pm, Yaroslav Belousov was part of the chain of demonstrators at the waterfront who remained on the square. OMON officers grabbed him and carried him away by his arms and legs. He fell to the ground several times.

**Detention of Mikhail Kosenko:** During another police attempt to disperse demonstrators, authorities detained Mikhail Kosenko.

At about 7:47pm, Vladimir Putin's press secretary, Dmitry Peskov, stated on a live broadcast on the Dozhd channel,

«From my point of view, the police acted gently. I would have preferred tougher actions».

Around this time, authorities created a corridor to allow demonstrators to leave the Bolotnaya area.

## 6.20. Dispersing the Remaining Demonstrators

At **19:53** a group of OMON officers appeared from the bushes of Bolotnaya Gardens and divided those demonstrators that remained on the square. Those on one side were able to move towards Maly Kamenny Bridge, while those on the other remain totally blocked between police lines.

**Detention of Andrey Barabanov (Case of 12):** At **19:55** a group of OMON officers began to use their batons to disperse the remaining demonstrators. As the route to the Moskvorecky Bridge was blocked by the police the demonstrators had no exit and there was a confrontation between the demonstrators and the police. Andrey Barabanov was detained at this point. He resisted and was hit at least once in the kidney area. As the police carried him to the police vehicle he fell down several times.

**Incident involving Leonid Kovyazin (Case of 12) and Dmitry Rukavishnikov (defendant):** At **20:01** some of those still on the waterfront began to overturn the toilet cabins, possibly to protect themselves from the advancing OMON officers. However, this had little impact. Leonid Kovyazin and Dmitry Rukavishnikov have been charged with participation in mass rioting for their involvement in this activity.

At **20:08** the last groups of people slowly left the waterfront along a corridor formed by the policemen. The police also began to move people away from the Kadashevskaya waterfront on the other side of the Obvondoy Channel. Some people were detained, while others were pushed along Bolshaya Polyanka Street in the direction of the Lavrushinsky Lane.

Between **21:00** and **22:00** around two thousand demonstrators moved along Bolshaya Ordynka Street chanting slogans. They were joined by activists from the Left Front and Solidarity movements and were followed by OMON. The demonstrators left Bolshaya Ordynka and went along Pyatnickaya Street walking along the road in the opposite direction to the traffic. Passing drivers honked their horns in support of the demonstrators and the OMON officers began to detain people and actively disperse the column.

The police were particularly aggressive to people in the Lavrushinsky Lane, Bolshaya Ordynka Street and Pyatnitskaya Street area between 21.30 and 21.45, which were crowded with people peacefully leaving the demonstration area. The police detained some people in the street and others in cafés, for no particular reason. Others were pushed into metro stations.

The police made a concerted effort from around 20.00 to 22.00 to clear people away from the Bolotnaya waterfront and adjacent areas, perhaps to ensure that there was no possibility of anyone establishing a camp protest on the site. There does not appear to be much evidence of violence among those in the area and the police could have utilized less aggressive tactics to encourage people to move away. There are indications that the police action served to provoke resistance from among those still in the Bolotnaya area and which in turn was met by an escalation in the use of force and detentions by the police.

## 6.21. Detentions

The authorities detained a large number of protesters after the May 6 demonstration. Reports claimed that police arrested 200 people just 20 minutes after the police cordon broke. According to the Moscow Internal Affairs Department, the authorities detained a total of 656 demonstrators. In many cases, video evidence suggests that the detentions were unjustified, as the police did not only detain those who were involved in acts of aggression but often grabbed peaceful demonstrators who happened to be close to the OMON. Most reports describe those involved in the violence as young men in black goodies and/or masks; however, few of those detained meet this description.

The police often acted aggressively while detaining people. Physical force was applied with no regard for the age or gender of participants. Authorities injured some protesters in the process of detention, and others loss consciousness. Regardless, OMON officers carried or dragged protesters to prison trucks rather than to locations where they could have received emergency medical aid.

The methods the police used in detaining rally participants raise two key issues related to liability and the use of force. It appears that the police arrested a number of demonstrators who were not involved in the violence but happened to be nearby when the police advanced into the crowd. The European Court of Human Rights has argued that people should only be detained or punished for their own actions and

should not be held liable for the actions of other members of a group or crowd.

Video evidence from the event also suggests that police used disproportionate force on a number of occasions, including an indiscriminate use of batons, use of force against peaceful civilians and use of force when an individual was lying on the group or already detained. While defensive use of force may have been appropriate in some circumstances, police action went beyond this level in many cases. International best practices require that there should be an investigation of police use of force, and officers must be held accountable, especially in cases when civilians were injured.

## 6.22. Injuries to Demonstrators

In the Bolotnaya criminal cases 55 people have been identified as victims, all of them police officers. Officially, there was only one civilian victim: 74-year-old Valentin Yastrubinskiy, who was injured by a Molotov cocktail. However, live media coverage of the event noted numerous demonstrators who were injured as well as detained protesters who were bloodied or bleeding.

Leaked broadcasts of radio conversations by paramedics reveal that a number of protesters suffered from head wounds. One doctor declares, «During my shift, there were 25 calls, and among those 13 patients were hospitalized». As there was only one reference to an injured police officer, it can be assumed that most of those hospitalized were demonstrators injured on Bolotnaya Square.

The «Public Verdict» Foundation collected information that indicates 65 people received medical assistance during the rally, but only three of those patients were police officers. At least 16 people suffered head injuries; however, since those detained could only go to the hospital following their release, the total number of injured must be larger than this.

Most of those injured did not lodge official complaints against the police and have refused to bear witness in court. In those cases where participants did file claims of illegal use of police force, the authorities rejected these claims out of hand, refuted them after some form of inquiry or never responded. There have been no criminal cases relating to the use of force on civilians apart from one in the regional court of Saratov, which found a protester to be the subject to the use of force during his detention. The court ordered that this protester be paid compensation in the amount of 20,000 rubles.

**Those who received injuries at the hands of the police include:**

**Aleksey Aniskin** – suffered a head wound and concussion and was hospitalized for 10 days. He submitted an application to the Internal Security Directorate and received a formal reply stating that he had not been detained.

**Alexander Eliseev** – beaten with batons; he submitted a complaint on May 29, 2012. He received a refusal to initiate criminal proceedings.

**Aleksey Gaskarov** – an anti-fascist activist, who received three stitches for a head wound following a beating by an officer of the Special Police Unit (OMON). On May 28, 2012, Aleksey Gaskarov sent an application concerning the illegal use of police force and attached a video of the incident. The authorities have not sent an official response. On April 28, 2013, the authorities detained Gaskarov and accused him of participation in mass riots and using force against the police.

**Nadir Fattiahedtinov** – badly beaten on the arms, stomach and liver area. His application for instigation of a criminal case was declined.

**Vadim Kantor** – correspondent for the Moscow News, punched in the head. He decided against submitting a complaint against the police.

**Egor Lazarev** – eco-activist, punched by an OMON officer. He was first thought to have died but only lost consciousness. The authorities rejected his application for the initiation of a criminal case.

**Denis Lutskevich** – beaten with batons. A medical and legal investigation determined that he suffered personal injury. The authorities arrested Lutskevich and accused him of participation in a mass riot and use of force against the police. The criminal investigator refused to open a criminal case on his behalf.

see photo 10

**Lubov Novoselskaya** – caught by a police advance and fell, resulting in a contused haematoma of the left thigh. Authorities rejected her application for a criminal case.

**Evgeny Pajitnov** – had his hand broken while being detained in a side street off Lavrushinsky. His application to the Internal Security Department of the Police was redirected to the Investigation Committee, who responded that it was not possible to identify the guilty party.

**Evgeny Shipilov** – correspondent for Gazeta.Ru, beaten with batons until he lost consciousness. He intended to send an application to the Investigation Committee but changed his mind.

**Turane Varjabetian** – beaten, received medical assistance for a concussion. She submitted an application but has not received an official response.

**Alexander Cheparukhin** – beaten by an officer of Special Police Force while going to the metro away from the rally at the corner of Bolshoy and Maly Tolmachevsky Streets. He decided against submitting a complaint against the police.

**Viktor Zaharov** – received a baton wound to the head and was taken to the hospital. He wrote complaints to the Investigative Committee and to the General Prosecutor's Office. In April 2013, the authorities sent a 25 page official response, which did not make clear what decision they would take regarding his claim.

At least 15 other people who submitted formal complaints against the police have had their claims rejected or have not received a response. Those in more official positions received a similar response when they requested investigations into the excessive use of police force.

In May 2012, Ilia Ponomarev and 20 other parliamentary deputies sent a request to the Moscow prosecutor's office concerning the use of force against protesters on Bolotnaya Square. They identified specific cases, and attached photo or video materials to each. In each case, the regulatory agency found no grounds for opening a criminal case against the police officers involved.

Lev Ponomarev, the executive director of the social movement «For Human Rights», requested that O.N. Kostina, chairman of the Ministry of Internal Affairs' Moscow Public Council, examine the use of illegal force by police officers against four citizens. He has yet to receive a response.

The focus of the state authorities since May 6, 2012 has been on prosecuting citizens for participation in the march and rally and the use of force against police officers. In contrast, there has been virtually no investigation into the use of force by police officers against the demonstrators, nor any consideration of the legality and proportionality of any use of police force. There is evidence that a number of demonstrators suffered serious head wounds and injuries to other parts of the body. All complaints about police activities on May 6, 2012 should be investigated by the authorities.

## VII.

# Particular Conclusions on Police Actions during the Preparation for and Holding of the Events

1. The actions of the authorities during negotiations over the event do not fully comply with the principle of presumption in favour of holding assemblies, that is the authorities' obligation to facilitate the exercise of the right to peaceful assembly and to promote the holding assemblies in places preferred by the organizers.

a. The event was agreed upon just two days before it was to take place, and the authorities change the plan for its implementation without notifying organizers or participants.

b. The designated location for the event, contrary to the agreed plan, was not large enough for all the participants, while the routes to the location were limited or blocked. All of this endangered the participants' safety and provoked conflicts. Police efforts to regulate a peaceful assembly were aimed at cordoning off demonstrators in order to prevent their ability to move freely.

c. The authorities sent a special police unit that was equipped for the use of force to the rally;

d. There is some indication that the police had prepared to terminate or disperse the peaceful assembly from the very beginning, even though there were no signs of violence from the demonstrators at the start of the event;

e. According to the «Plan for Enforcement of Public Order and Safety in Moscow on May 6, 2012», police officials were instructed to detain not only those demonstrators who performed violent acts but all participants committing «unlawful» actions, even if they happened to be peaceful.

f. The police did not inform the demonstrators about their action and plans.

2. The authorities placed the responsibility for dealing with more demonstrators than agreed upon on the organizers, which does not comply with existing international standards. A larger number of dem-

onstrators, even if the action was planned to be small, may not be considered to violate the law so long as the assembly remains peaceful.

3. The police did not fulfil requirements set by international standards that they effectively cooperate with rally organizers. The police did not inform the participants about their objectives nor their plan of action. They did not discuss with nor agree with the organizers upon technical aspects of the preparation for and holding of the event.

4. The authorities did not appoint officials to be responsible for cooperation with event organizers and participants. They did not provide citizens with information about designated contact persons.

5. The authorities did not assist the organizers with technical arrangements for the event and in certain cases created obstacles for its organization.

6. The authorities did not prove the need for «preventive interference» nor did they prove the existence of apparent and inevitable threats of violence that could be used as a basis for police officials to stop, inspect, and/or detain demonstrators who were on their way to the rally (use of metal detectors, etc.).

7. The authorities did not prove that a complete cordon was necessary for sustaining public order and safety. The cordon prevented participants from leaving the allocated territory, was not a proportionate measure given the peaceful nature of the assembly, and could have led to violations of individual rights to liberty and freedom of movement.

8. Police tactics did not comply with international standards on containment, which should only be used in exceptional cases. Containing demonstrators in a limited space (also known as «kettling») and other similar measures are problematic because they do not distinguish between those who participate in the event and those who do not or between peaceful and non-peaceful participants. Building a complete cordon that prevents people from leaving a certain area is a violation of individual rights to liberty and freedom of movement.

9. As participants made their way to the rally, the police demonstrated a lack of mediation and «soft power» skills, which are vital for reducing violence and minimizing conflict. Instead of mediation and negotiation, police pressured participants and threatened to terminate the event and detain demonstrators. Later on, the event was forcibly dispersed.

10. The police did not use evasive tactics to solve the situation. For example, they could have moved the police chain around the participants in order to lower the pressure on the crowd and let demonstrators reach the event location.

11. International standards maintain that the police must allow



time for participants to react to their orders. These orders should be given to all demonstrators in a peaceful manner.

**12.** Given the situation, police tactics of breaking up the crowd by pushing peaceful demonstrators away from the event location and herding people towards the waterfront parapet were not proportional. These actions do not comply with international standards concerning the use of force by police officials.

**13.** According to international standards, if events become violent, participants lose the legal guarantee of protection and support. Such events may be terminated with the use of special measures. However, the use of violence by individual demonstrators or by a small group of participants, including speeches inciting violence, does not automatically qualify an event as non-peaceful. The event should be dispersed only if there is an apparent threat of violent action and when police officials have used all reasonable measures to protect participants from possible harm (including, for example, the suppression of aggressive participants who threaten to use violence). According to international standards, the event should not be dispersed if only a small group of demonstrators commit acts of violence. Concrete measures against such a group should be used instead. Similarly, in the case of agents-provocateurs during a peaceful event, the police should take measures to suppress them instead of terminating or dispersing the whole event. None of these international standards were observed, and no specific measures were taken to suppress and detain any agents-provocateurs.

**14.** When dispersing the event, the majority of instances when the police used special equipment were not proportional measures given the peaceful nature of the event. These actions violated international standards regarding the use of force (for example, police used batons to hit vital organs) and the necessity of providing help to injured participants.

**15.** As made clear in the video materials analyzed by the Commission, the police provoked most of the violent actions. In many situations, the use of force was not proportional and escalated tensions between the police and demonstrators. This led to an increase in resistance by peaceful participants, and an intensifying of pressure on the crowd by the police who then detained a number of demonstrators.

**16.** The police tactics during the termination of the event did not comply with the principle of proportionality, as there was no apparent threat of the violent actions or existence of mass riots to justify such harsh measures. Violent actions towards peaceful demonstrators were even used outside of the rally place, in particular on Lavrushinsky lane, Kadashevskaya waterfront, and Pyatnitskaya street.

## VIII.

# Further reaction of the state bodies

Criminal investigations relating to accusations of rioting and of resistance to police officers in the area of Bolotnaya Square were launched at 9:00pm on May 6. According to the Investigation Committee of the Russian Federation, the cases were launched under Part 3 of Article 212 of the Criminal Code (calls for rioting) and Part 1 of Article 318 of the Criminal Code (violence against public officers). Later, the Investigation Committee launched a criminal case on the May 6 events under Article 212.1, 212.2, 212.3 (mass disorder), 318.1, and 318.2 (violence against a public officer).

All those detained on May 6, including future defendants in the Bolotnaya case, were accused of violating articles 19.3 (disobedience of the lawful order of a policeman) and 20.2 (breaking of the established order for organising public rallies) of the Russian Federation's Code of Administrative Offences.

27 participants in the events are defendants in criminal trials, and 16 have been held in custody. The authorities rapidly dealt with three people: Maxim Luzyanin, sentenced to 4.5 years in prison; Konstantin Lebedev, sentenced to 2.5 years in prison, and Mikhail Kosenko, sentenced to compulsory treatment in a psychiatric hospital.

In addition to these 27 defendants of the so-called «Bolotnaya case» (five of whom were pardoned in December), there is publicly available information on dozens of cases in more than 10 Russian regions where the police have started investigations against participants and supporters of the Bolotnaya march. Moreover, the authorities launched investigative actions against involved civil society groups (Golos, For Human Rights, the Builders' Union, and the Defending the Hope movement), political movements (Left Front, The Other Russia, Solidarity, PARNAS, Russian Social Democrats, Reformation, and Peoples' Alliance). These investigative measures included interrogations, searches of private residences and office premises, seizure of information and materials (including personal computers), and the bringing charges against activists or members of their families. The authorities also used administrative

pressure to prevent civil society activism and participation in public events of any kind. The majority of these actions were undertaken despite being in violation of existing regulations of the Russian Federation's Criminal Proceedings Code.

A detailed description of these actions will be present in the next version of this Report.

## IX.

## Conclusion

**9.1. General conclusions**

The chronological overview of the May 6 events on Bolotnaya square and its vicinity presented here demonstrates that violence and violations of public order were mainly caused by the actions of the authorities, mainly the police, both before and during the events. Organizers had notified the authorities about their plans to hold the event in accordance with all the procedures of the Assemblies Act and met with the authorities to negotiate proposed changes to those plans. But the police decided to impose their own restrictions and limit the space for the rally to a small territory around the Bolotnaya waterfront instead of allowing demonstrators to occupy the whole territory of Bolotnaya Square.

On the day of the event, large numbers of police officers were mobilised, both in the streets near Bolotnaya Square and along the demonstrators' routes to the square. It is very important that the positioning of the police cordon at the end of Maly Kamenny Bridge resulted in a bottleneck and serious traffic-jam, limiting demonstrators' access to the Bolotnaya waterfront. This jam became the main trigger of the tension, when many people were gathered on the bridge and unable to move either forward or back.

The traffic jam also became the site of the primary physical clash between police and the demonstrators. Police decided not to build any physical barriers to the demonstrators' movements and thus as soon as movement was no longer possible it increased the pressure on the police cordons. Finally the police had to let people in and some of demonstrators wound up behind the police lines. Instead of interpreting this «breakthrough» as the result of massive pressure on the large crowd, the police treated it as an act of aggression and reacted aggressively in their turn. Some of the demonstrators who had broken through the police cordon were detained and others became the targets of police violence.

When the police had rebuilt their lines they performed a series of aggressive forward movements to split up the crowd and detain the

demonstrators. This, in its turn, provoked two main reactions: some people resisted passively, joining hands to prevent the police from detaining the, while others (who were fewer) responded aggressively and used violence against the police. Some threw various types of projectiles, while others beat police officers. These clashes set the tone for the rest of the afternoon and the evening, when the police used various types of force to split up and disperse the crowd.

During the day there were several attempts by the organizers to negotiate and establish dialogue with the police and political figures, but they did not succeed. Organizers terminated the event in response to police demand, though if the event had been allowed to continue it might have lowered tension and the whole situation could have developed in a totally different manner.

During the next few hours, between **6:00pm** and **9:30pm**, there were sporadic clashes between the police and demonstrators. Many people were detained and later accused, notwithstanding the fact that evidence collected from the media and other sources proved that many of those detained did not participate actively in the violence. Many people were mainly detained for being in the wrong place at the wrong time while many of those using violence towards the police were able to hide in the crowd while police officials often detained other people at random.

There are multiple video records that prove the police abused people who were not resisting, including women, elderly people and demonstrators who were trying to leave. There is still no indication that any police officials have been prosecuted for their actions during the events.

It is obvious that there are serious questions regarding the detentions, arrests and accusations levied against people in connection with the events of May 6 on Bolotnaya. There are also serious questions regarding the authorities' intentions, the transparency and responsibility of official bodies, the police's tactics and their real aims. The Commission had issued a series of letters to different official bodies regarding different aspects of the administration and policing of the March. We were hoping that the authorities' responses to these questions would allow us to clear up certain issues. So far, however, the authorities have not answered the following questions.

## 9.2. Major questions to the police and other authorities

– Why did the police change their initial plan of action, which had been agreed upon by the city administration and the event organizers? Why did they not allow demonstrators to enter the larger part of Bolotnaya Square?

– Why did the police constantly refuse to participate in a dialogue with the organizers and other actors in order to lower tensions?

– Why didn't the police take any preventive measures to diminish the traffic-jam near the Udarnik cinema and allow people to access the meeting place?

– Why weren't some of the demonstrators allowed to leave when the tension increased and violence became widespread?

– Why didn't the police try to lower the tensions on the Bolotnaya waterfront instead of engaging in large-scale detentions and attacks on the crowd?

– Why weren't the police equipped with shields to protect themselves, strengthen their lines and direct the flow of demonstrators if needed?

– Did the police determine the number of demonstrators who were injured during the events of May 6?

– How many police officers were accused of abuse of power during the events? Were sanctions levied against any of them?

## 9.3. Did the events of May 6 Meet the Threshold of «Mass riots» or Other Elements of Article 212?

The following factors, as described earlier in this report, indicate that the events of May 6 should not, as a whole, have been classified as meeting the definitional threshold of «mass riots»:

– The police cordon at the end of the Maly Kammeny Bridge served to create a significant bottleneck near the Udarnik cinema, which – in combination with the failure of the police to seek, through dialogue, ways of accommodating the large numbers of participants – resulted in people being tightly confined in an inadequate space, unable to move either forwards or backwards, thereby heightening tensions.

– These problems were exacerbated by the use of metal detectors, the fact that some individuals appear to have been prevented from leaving the area by the police, and confusion about when precisely, and under what authority, the assembly was terminated.

– These factors contributed to a number of individuals ending up behind police lines when the police cordon was breached at approximately **5:55pm**. As has been noted, it is not possible to determine whether the breakthrough was deliberate or if the police cordon broke simply due to the pressure of numbers. However, those who found themselves behind the police cordon did not act in an aggressive manner.

– Video material provides little evidence that the demonstrators initiated violence between **6pm** and **8pm**. In general, the demonstrators appear to have pushed back against police lines primarily in response to police advances.

– Apart from a single Molotov cocktail, the projectiles that were thrown from the crowd seem to have been limited to items that were brought for routine purposes – such as plastic bottles, shoes and umbrellas – rather than items that had might have been brought with the intention that they would be used as weapons. While throwing such projectiles at the police can undoubtedly cause injury, where only a small number of individuals are involved in such activities (as the video evidence suggests) it is difficult to see how this could meet the threshold of «mass riots».

– The single episode when pieces of asphalt were thrown at the police is not sufficient for the whole event to be considered to have met the threshold of «mass riots».

– Shouting abuse at the police, or even later overturning portable toilet cabins (at approximately **8pm**), should not be regarded as violent conduct at the upper end of the scale, capable of meeting the threshold of «mass disorder».

From the evidence reviewed, it is also unclear whether any of the incidents observed would meet the threshold required to fall within the accompanying elements of Article 212(1). The policing operation seems to have randomly identified some individuals for arrest. However, as has been emphasized, it is imperative that compelling and demonstrable evidence be presented to show that the particular individuals detained were themselves involved in acts of violence, pogroms, arson, the destruction of property, the use of firearms, explosives or explosive devices, or armed resistance to a public official. In particular:

– The throwing of a single Molotov cocktail at approximately **6pm** – while undoubtedly a serious incident – should not be regarded as sufficient to substantiate the finding of arson, less still the occurrence of «mass riots». In this regard, further investigations are imperative in order to identify those culpable of encouraging such aggression against the police.

– As noted above, the nature of the other projectiles thrown at the police lines were not such that they could be described as «armed resistance» against public officials.

– While the overturning of the toilet cabins might be regarded as damaging property, only in a small number of cases (and only where there is compelling evidence of the involvement of particular individuals) could it be regarded as property destruction capable of supporting a charge of participation in «mass riots».

The prosecutions arising from the events of May 6 provide an opportunity for the courts to authoritatively interpret the offences alleged under Article 212 of the Criminal Code. Any such interpretation must comply with the principle of legal certainty, and afford adequate protection of the rights to liberty, freedom of movement, and peaceful assembly (amongst others).

On the basis of the evidence reviewed, the events of May 6 should not, as a whole, be classified as meeting the definitional threshold of «mass riots».

Any prosecutions must be rigorously supported by compelling and demonstrable evidence of particular individuals' involvement in the specific offences charged (not on the basis of their mere presence at the scene of the demonstration).



# X.

## Appendixes

1. Appeal by journalists and public observers to Russian and international human rights organizations about the assessment of events of 6th May 2012 on Bolotnaya square in Moscow.
2. Memorandum on establishment of International Expert Commission for Evaluation of Events on Bolotnaya Square, Moscow on May 6, 2012.
3. Composition of the International Experts Commission
4. Declaration of support to the Commission by major Russian human rights NGOs.
5. Questions addressed by the Commission to authorities and other stakeholders regarding the 6may 2012 events.
6. Changes introduced to the Assemblies Act after Bolotnaya Square events

### Appendix 1.

#### **Appeal of the journalists and public observers to Russian and international human rights organizations about the evaluation of events on May 6, 2012 on Bolotnaya Square in Moscow**

We are the journalists and public observers who have witnessed events on Bolotnaya Square in Moscow on May 6, 2012. Now we are observing the series of arrests and detentions of people who took part in these events. They are facing different charges: participation in the riots, incitement for riots, violence to the authorities' representatives, and the last three detainees are charged with the organizing mass riots. The harsh preventive punishment was selected – the taking these people into custody. Currently, defendants in the case are 21 people. About thousand of people were questioned as witnesses.

Our own observations, many media messages and reports of human rights organizations indicate that the possible causes of violence on Bolotnaya Square were actions of both protesters and police. Today, however, the investigating authorities accuse only the rally participants. As far as we know, no policeman are suspected of excess of power, ille-

gal use of violence and violation of the law - even though we personally witnessed such scenes, and they have been repeatedly documented.

Immediately after the events on Bolotnaya Square, the Ministry of Interior reported that as a result of the protesters' actions 26 police officers were injured, some of them were hospitalized - though no confirmation of this information has been provided. The authorities are not reported on the citizens affected by the actions of the police.

In the Public Chamber of the Russian Federation the hearing devoted to the practice of Art. 212 of the Criminal Code (article on the riots) was held. All persons involved in the case of the events that occurred on May 6, are charged under two articles - Article 318 of the Criminal Code (use of violence against a representative of authorities), as well as Article 212 of the Criminal Code, that's why there was a question of the adequacy of this article in the case. All lawyers and human rights activists who participated in the hearing agree that at the current moment the Article 212 of the Criminal Code does not have legal certainty and can be used to restrict the rights and freedoms of citizens. Ombudsman Vladimir Lukin has officially reported that as a result of his analysis of the events of May 6 that the riots didn't take place.

We have serious doubts about the objectivity and comprehensiveness of the investigation, interest of the government agencies to recover the actual course of events and to bring to justice those who are guilty. This fact is evidenced by statements of the officials made before the end of the investigation and court decisions. In particular, the Press-secretary of the President Putin D.Peskov called protesters as «provocateurs» and police reaction as too «soft», and the Chairman of the Investigative Committee A.Bastrykin compared the protesters with «militants».

In August, September, and October hearings took place, in result of which 15 out of 21 defendants in the case were kept under arrest. According to lawyers, there are numerous violations in the process: the rights of the detainee aren't respected, the staff of the investigative committee interfere with the lawyer's work, and the court doesn't take into account the results of expert examinations.

The basis for the last 3 detentions were the material of the film «Anatomy of Protest-2» released by the Russian federal TV channel NTV. The authenticity of the facts presented in the film raises serious doubts not only among experts, but among any attentive viewers. In the previous film «Anatomy of Protest» it was claimed that all the protesters in Russia receive money from foreign countries. The main message of the film «Anatomy of Protest-2» is the fact that the opposition is preparing new riots using the money of a foreign state. The main document is the video recording dated June, the authenticity of which has

not been proved. This video recording was the basis for arraignment for three activists in preparation for organizing riots.

According to the report, the last detainee Leonid Razvozhaev was kidnapped in Ukraine after he had applied for status as a political refugee. Then he was forced to Russia. In his words, after several days of torture he signed all the required confession. Including that at the meeting shown in the film «Anatomy of Protest-2», he and his companions discussed with Georgian politician financing of the riots that occurred on May 6.

At least the fact that it is not possible from the point of view of the Russian calendar, in which May precedes June, tells that the criminal case against the last three defendants comprises a plurality of fraud.

All these facts strongly suggest that the results of investigations and sentences to people involved in the case will be dictated not by the law, but by political will, and for this political will Russian authorities are ready to violate all international rules of law.

We think that in these conditions, the formation of the International Expert Commission of experts on freedom of assembly and police response measures could contribute to objective and impartial evaluation of the events. The Committee on the base of official data and material of public and state investigation would give a legal assessment of the actions of protesters and police, impartial assessment of the legitimacy and proportionality of the use of force at the meeting on 6 May and the subsequent administrative and criminal prosecution of its members. Such an assessment, based on international standards, could be an alternative to current state investigation.

We ask you to use the expert experience of your organization and contacts for the formation of such a commission of experts in the nearest future.

We also ask you to refer to the international intergovernmental organizations (Council of Europe, OSCE, UN, etc.) in order to draw their attention to the situation around this case, to make it the subject of the relevant structures, to send observers to the trials and support the work of the expert committee.

*Signatures of journalists and public observers  
(altogether 9 signatures)*

## Appendix 2.

### **Memorandum on establishment of International Expert Commission for Evaluation of Events on Bolotnaya Square, Moscow on May 6, 2012**

1. In response to appeals by Russian journalists and human rights defenders a number of leading international human rights organizations announce the creation of the International Expert Commission for Evaluation of Events on Bolotnaya Square in Moscow on May 6, 2012 («the Commission»).

2. The main aim of the Commission is to analyse the events of May 6 2012 in Moscow and evaluate the responses by the relevant authorities in terms of their compatibility with international standards on freedom of assembly and international standards of policing.

3. The objectives of the Commission:

- To outline the chronology of the events of May 6 2012,
- To assess the compatibility of the relevant legal framework (including the concept of mass riots) with international human rights standards,
- To review the measures taken by the police and the authorities in preparation, during and after the assembly, and consider whether they were justified, necessary and proportional,
- To review any legal cases resulting from the events of May 6 (focusing in particular on the so-called »Bolotnaya case«).

4. The Commission will base its work on the following materials:

- evidence from the official investigation, any reports and statements made by relevant authorities, and any other official information available on the case,
- information from public investigations and observations, gathered by human rights defenders, journalists and others,
- reports by observers and journalists, witness testimonies and video materials.

5. The founding organizations of the Commission are the following:

Amnesty International

Article19

European Association of Lawyers for Democracy and Human Rights

International Civil Initiative for OSCE (ICI OSCE)

International Platform «Civil Solidarity»

International Protection Center

Human Rights Watch

Each founding organization will nominate a representative as a contact person to oversee the mandate, which the Commission follows, and

facilitate communication between the Commission and international intergovernmental organizations (the United Nations, the Organization for Security and Cooperation in Europe, Council of Europe etc.), and other relevant institutions.

6. The Commission consists of leading experts on issues of peaceful assemblies and policing measures:

Adam Bodnar (Poland),  
Michael Hamilton (United Kingdom),  
Neil Jarman (United Kingdom),  
Oleg Martynenko (Ukraine),  
Sergei Ostaf (Moldova),  
Yevgeniy Zhovtis (Kazakhstan).

7. The Commission may involve in its work other experts on either a permanent or a temporary basis. The decision to include other experts in the Commission will be taken by the current members with the agreement of the representatives of the founding organizations.

8. The Commission will base its work on universal norms and standards regulating assemblies as well as measures to protect public order during assemblies, provided by the following international documents: European Convention on Human Rights, including its interpretation in the decisions of the European Court of Human Rights; International Covenant on Civil and Political Rights, including its interpretation in the opinions of the Human Rights Committee; OSCE ODIHR and Venice Commission Guidelines on Freedom of Peaceful Assemblies.

9. The founding organizations of the Commission have established the Secretariat, to provide constant technical assistance to the work of the Commission. The address of the Secretariat is [secretariat@6maycommission.org](mailto:secretariat@6maycommission.org)

10. Being a founding organization of the Commission is not an endorsement of the Commission's findings. Each founding organization reserves the right to its own views and opinions about the Commission's findings and will make use of the Commission's findings only in ways that are appropriate for the founding organization.

### Appendix 3.

#### **Declaration to support the International Expert Commission of evaluation of May 6 2012 events**

We, undersigned Russian human rights organizations welcome the establishment of the International Expert Commission for evaluation of events that took place on Bolotnaya square in Moscow on May 6 2012

(hereafter named as Commission) and we are ready to provide any necessary help and assistance to its work.

We recognize high public importance of these events as well as the need to attract the public attention to the administrative and criminal cases that were open after.

We welcome the attempts of different groups within Russia who are collecting the evidences and perform their own investigation of what has happened and we think that the international evaluation and research based on recognized international norms and standards of human rights and policing measures will be an important addition to this national work.

We think that the Commission's work will become a crucial element for evaluation of the Russian legislation and law-enforcement practice to compliance to the international standards of freedom of peaceful assemblies and policing measures.

We are ready to support the Commission with the following:

- search and presentation of the documents, video-records, analytics and any other materials that will be needed for experts' work,
- consulting on issues of law-enforcement practice of the national legislation on freedom of peaceful assemblies, maintaining of the public order and use of force, rights of detainees, guarantees of administrative and criminal proceedings etc.,
- communication between the Commission and Russian authorities, NGOs and other relevant stakeholders,
- informational support in spreading the materials, reports, statements, appeals etc.
- other possible support on Russian and international level.

Signing this declaration does not mean the full agreement with the Commission's results of work. Undersigned NGOs keep the right to their own position about the conclusions by the Commission and will use them for their own purposes.

- Citizens' Watch (Saint-Petersburg);
- Civic Assistance Committee (Moscow);
- Human Rights Institute (Moscow);
- Interregional Committee Against Torture (Nizhny Novgorod);
- Komi Human Rights Commission «Memorial» (Syktyvkar);
- Moscow Helsinki Group;
- Youth Human Rights Movement;
- Public Verdict Foundation (Moscow);
- Centre for Democracy Development and Human Rights (Moscow);
- Lawyers for Constitutional Freedoms and Rights (Moscow);
- Human Rights Centre «Memorial» (Moscow)

## Appendix 4.

### **Composition of the International Expert Commission for evaluation of events on Bolotnaya square on May 6, 2012, Moscow**

#### **Adam BODNAR**

Adam BODNAR (Poland) is an associate professor (adiunkt) in the Human Rights Chair, Faculty of Law and Administration at the University of Warsaw, a senior expert within FRANET network at EU Fundamental Rights Agency, vice-president of the Board at Helsinki Foundation for Human Rights, Warsaw, Poland. He is also the Director of Observatory for Freedom of Media in Poland. Adam Bodnar is an author of several scholar publications and commentaries published in the Polish press. He is mostly interested in protection of fundamental rights, jurisprudence of the European Court of Human Rights and European Court of Justice, EU citizenship, and role of NGOs in pursuing public interest and freedom of speech.

#### **Michael HAMILTON**

Michael HAMILTON (United Kingdom) – PHD, associate professor of law, secretary to the OSCE/ODIHR Panel of Experts on Freedom of Assembly, a lecturer in human rights law at the Transitional Justice Institute, University of Ulster. His research has focused on the legal regulation and mediation of public protest, particularly parade disputes in Northern Ireland

#### **Neil JARMAN**

Neil JARMAN (United Kingdom) – chairperson of the OSCE ODIHR Panel of Experts on Freedom of Assembly, head to the group of authors of OSCE ODIHR and Venice Commission Guidelines on freedom of peaceful assembly, Director of the Institute for Conflict Research in Belfast, Northern Ireland, UK. His academic interest is primarily in peace building activity and conflict mitigation, with specific focus on public assemblies and their policing, and community-based responses to violence and public disorder. He was a Specialist Adviser with the Northern Ireland Affairs Committee for the inquiry into hate crimes in Northern Ireland.

He is the author of numerous publications on issues such as policing public order, human rights and conflict resolution, and combating hate crime.

**Yevgeniy A. ZHOVTIS**

Yevgeniy A. ZHOVTIS (Kazakhstan) - Defense Lawyer, Member of the Working Group on Human Dimension Under the Ministry of Foreign Affairs of the Republic of Kazakhstan. His primary interest is in civil liberties sphere. Yevgeniy is a member of OSCE/ODIHR Panel of Experts of Freedom of Assembly.

**Oleg MARTYNENKO**

Oleg MARTYNENKO (Ukraine)- Doctor Degree in Law, expert in the field of crime prevention among police officers, of the provision of human rights in law-enforcement bodies and of the determination of hate crimes. National trainer of UNDP on the domestic violence prevention. Secretary of the Advisory Council to the Ombudsman, member of the Public Council to the Ministry of Interior of Ukraine. For a long time worked in the penitentiary system and internal affairs bodies of Ukraine. Oleg had participated in the peacekeeping missions in Kosovo and Bosnia-Herzegovina. In the period of 2008-2010, he was the head of the Ministry of Interior of Ukraine Department of monitoring of human rights observance. Took part in international projects on the implementation of national prevention mechanisms against torture, establishment of mechanisms for public expertise and civilian inquiries of human rights violations, prevention of ethnic profiling in the Ukrainian police activity.

**Serghei OSTAF**

Serghei OSTAF (Moldova) is the member of Panel of Experts on Freedom of Assembly at OSCE/ODIHR, the Director of the Resource Center for Human Rights (CReDO), a non-profit organization that develops the capacity of civil society organizations to advocate for democratic changes and that is engaged in the promotion of democratic policies in Moldova.

Ostaf has been involved in human rights advocacy work in Moldova and advocacy with the Council of Europe, UN human rights bodies, and the ODIHR. His current interests include lobbying for the adoption of democratic public policies by the government, consulting on effective implementation of such policies through the use of legal and institutional mechanisms. He teaches master-level courses in public policy, policy-process analysis, and democratic policy implementation.



## Appendix 5.

### **Questions addressed by the Commission to authorities and other stakeholders regarding the 6may 2012 events**

#### Questions to the organizers

1. What was the immediate response by the authorities to the application for the assembly?
2. What concerns (eg public order, traffic) were raised by the authorities in the course of the negotiations?
3. Were there any alternatives that were indicated as being acceptable by applicants?
4. Was there any opportunity to challenge the time-frames or other arrangements suggested by the authorities?
5. Was there a written agreement as to the route, placement, security measures and other organizational details of the assembly, coming out of the negotiation with the authorities?
6. What preparatory work was carried out with the organizers of a peaceful assembly on the part of the municipal bodies? Were there any changes in a timely manner specified in the location of police forces and security measures (metal detectors, traffic blocs, additional video surveillance)?
7. Have the organizers of a peaceful meeting developed a general strategy of action, safety measures in case of provocation or accident cases, the procedure for notifying the local authorities in case of change the situation, the instructions to participants of a peaceful assembly?
8. What the problems had the organizers and why during a peaceful meeting in the control of the number of participants, their behavior and replacements?
9. Had been a clear procedure for interaction between the peaceful action organizers and police and emergency services (a list of responsible persons, communication channels, time and respond manner)?
10. What were the peaceful action organizers needs to ensure the safety of citizens and which resources have been proposed to the organizers by the municipal authorities?
11. Are you aware of any participants (from Moscow and the regions) who were prevented to come and take part in the rally?

#### Questions to the municipal authority

1. Was there a written agreement as to the route, placement, security measures and other organizational details of the assembly, coming out of the negotiation with the organizers?

2. What were the reasons for proposing alternatives to the initially requested route of the assembly?

3. What preparatory work was carried out with the organizers of a peaceful assembly on the part of the municipal bodies? Were there any changes in a timely manner specified in the location of police forces and security measures (metal detectors, traffic blocs, additional video surveillance)?

4. What additional security measures have been taken by municipal authorities in the form of the free access to the place of peaceful assembly of ambulance and medical services; introduction of additional public transport schedule for the transportation of protesters from the site of the demonstration; mobile point of sale of basic necessities and medicines; mobile light-boxes to provide the emergency information and instructions of possible routes?

5. Were there any additional briefings with medical establishments' staff, emergency services before of the peaceful protest, and what was the content of the instructions

6. What other city authorities were involved (eg requisitioning of water tankers)?

7. When was the decision to close off Bolotnaya square taken? on what grounds? Who has taken that decision?

8. Were the organizers notified of those changes? And if not then why?

9. Were the representatives of municipal authorities as provided by the law present during the assembly? How many? What were their specific tasks and what were they doing during the assembly?

#### Questions to the police authorities

1. Has there been a preliminary reconnaissance capabilities of the police on the eve of the mass action? Whether during the reconnaissance had been provided the mobility maneuver of police cordons in order to avoid unnecessary crowding protesters, threatening their health and the normal process of the action? (Base - requirements pp. 27, 28.7, 42, 111, 113 Part III. «Control of forces and means of Patrol police» Patrol Police Code)?

2. If such actions had been provided, why they were not implemented in a timely manner and has there been an internal investigation of the manner? If these maneuvers were not provided, how the police helped to avoid unnecessary crowding protesters, their disorientation in this situation?

3. Were the citizens provided with most comfortable movement routes in the current situation in accordance with paragraph 5 of Arti-

cle 16 of the Law «On Police»? If so, how it had been conducted and how many citizens got the information?

**4.** Was there any intelligence about tents about to be set up in the place of assembly?

**5.** What searches have been carried out at the entrance points to the assemble? What was confiscated during the searches?

**6.** What are the legal grounds for security measures taken (metal detectors)? For what type of assemblies are they usually used? Was the security plan involving those measures agreed upon beforehand with the organizers?

**7.** Based on what arguments and by whose decision it was decided to give priority to the physical contact of the police, as opposed to the active use of non-lethal means of influence-water cannons and tear gas – to avoid a direct clash with the protesters by the police? What other less intrusive options were considered as possible?

**8.** How many relatives or close persons of victims, inflicting bodily injuries as a result of the use of physical force or special means, were notified by police in accordance with paragraph 5 of Article 19 of the Law «On Police»?

**9.** Was the analysis carried out by the police after the mass action? What was the overall assessment of the actions, made by police? What conclusions have been made concerning the police officers who committed unprofessional actions in the protection of public order and arrest of the protesters? (Base - p. 28.6, 28.8, 130, 139.3 hours III. «Control of forces and means of Patrol police» Patrol Police Code).

**10.** Why did the riot police not have shields, and do they usually use them during mass protest of similar kind?

**11.** What was the legal authority/basis for order regarding intensiveness of metal detector searches?

**12.** What different police units were deployed (including plain-clothed officers)

**13.** What was the total size of the police deployment?

**14.** What instructions/orders were given to the police both in advance, and as the events unfolded, both in relation to the facilitation of peaceful assembly, and with regards to arrests and the use of force?

**15.** What other less intrusive options (if any) were considered by the police before intervening, and what evidence exists for these options having been considered?

**16.** What individual responses have followed from the complaints against the police action?

**17.** Have the authorities initiated any investigations into the use of force by the police? If so, when will the conclusions of such investigations be known

**18.** What (video) evidence has been retained? What video surveillance did the police obtained on a day and what was done with it?

**19.** What specific injuries did the police suffer, and is there medical evidence of this?

**20.** How many police officers were injured and what is the nature of their injuries?

**21.** Were there plain-clothed police in the crowd?

**22.** Video-materials showed that a number of protesters received injuries. Have there been any investigations on police use of force and any police officer been disciplined?

**23.** How many protesters were detained on a day? And what were the main charges for those detained? (we need the exact number of detainees, charges that they got and sentences that people got)?

**24.** Why did they close the stage and cut off the electricity supply? Who had taken the decision to stop the meeting? (liaison officer vs the big boss)

**25.** When exactly did the demonstration stop? When (at what exact point) did you regard the demonstration as unlawful?

**26.** Was there anything different in the police conduct during this specific assembly in comparison to previous similar assemblies?

#### Questions to public observers

**1.** Have the authorities requested the testimony of observers, present at the Bolotnaya Square on May 6? If so, to what extent and how they were used?

**2.** Have public observers initiated an examination of their observations by state authorities and what was the result of such examination?

**3.** How many public observers were there? Which organizations did they represent?

**4.** Are there any reports on what was witnessed on may 6? Whom had they been given to? If not, why didn't they produce the report? If yes, is it a public document?

**5.** Were there any obstacles from police and from the authorities on the spot to the work of public observers?

#### Questions for Ombudsman's office?

**1.** How many representatives of the Ombudsman were present at the assembly?

**2.** Have the authorities requested the testimony of the Ombudsman and his representatives, present at the Bolotnaya Square on May 6? If so, to what extent and how they were used?

3. Have the Ombudsman initiated an examination of his observations by state authorities and what was the result of such examination?
4. Are there any reports on what was witnessed on may 6? Whom had they been given to? If not, why didn't they produce the report? If yes, is it a public document?
5. Were there any obstacles from police and from the authorities on the spot to the work of Ombdusman and his representatives?

#### Questions for the Investigation Committee

1. What are the guarantees for an objective and impartial selection of the task-force for the case (Investigative group)? Is there any evidence of such selection in the open (public) sources?
2. How to ensure the availability of civilian control over the overall progress of the work of the Investigation Committee?
3. Whether the materials on recovering of compensation for the protesters are considering during the investigation, regardless of protesters' status (witness, suspect or accused)?
4. Were representatives of investigative committee present on the square at the day?
5. What are the grounds for qualifying the events as mass riots?
6. Was there any investigation into the complaints launched against the police? If no, why?
7. What was the legal authority/basis for searches of homes/offices of witnesses?

## Appendix 6.

### **Changes introduced to the Assemblies Act after Bolotnaya Square events**

Following the Bolotnaya Square events the government decided to introduce significant changes to the Assemblies Act and to further restrict the freedom of assembly.

The Assemblies Act has been amended by the Federal Law No. 65-FZ of 8 June 2012. Please note that already at that time the Assemblies Act was subject of huge criticism by the international community as non-complying with international standards (see analysis above). However, June 2012 amendments made situation even worse and failed to address any previous recommendations by such bodies as the Venice Commission. Those amendments were subject of examination by the Russian Constitutional Court, which gave judgment on 14 February 2013, but which did not result in fact in major improvements of standards.

Below are the most important changes brought by the June 2012 amendments to the Assemblies Act:

1. Prohibition of organization of assemblies by persons who were previously convicted of certain crimes (Art. 5.2.1.1 of the Assemblies Act). The list of crimes is extensive and includes also previous violations of the Assemblies Act. Therefore, the whole category of people is in fact excluded from a possibility to organize meetings, demonstrations etc. The time of exclusion lasts pending the execution of a sentence against a given individual. The Russian Constitutional Court found this provision as being in compliance with the Constitution. However, it was severely criticized by the Venice Commission (opinion of 11 March 2013).

2. The June 2012 Amendments introduce responsibility of the organizer in a situation where the number of participants exceeds the previous projections of the organizer and where it may constitute a threat to public order. Specifically, according to para. 4.71 of Article 5 of the Assembly Act the organizer has «to take measures to prevent the number of participants announced in the notice from being exceeded, where exceeding that number creates a threat to public order and/or public safety, the safety of participants or other persons or risks to damage the property».<sup>46</sup> It is contrary to principle of proportionality and very essence of the freedom of assembly to create such restrictions on organizers of public assemblies.

3. The law introduced prohibition to wear masks during demonstrations. Such prohibitions exist in some jurisdictions, in some others they are subject of questioning (e.g. Poland)<sup>47</sup>. Wearing masks should be in general allowed, when it serves freedom of expression purposes.<sup>48</sup> However, June 2012 Amendments introduced a blanket ban on any use of masks. In this regard such regulation cannot stand proportionality test and is contrary to human rights standards.

4. The June 2012 Amendments extended a ban on organization of assemblies during the night. Currently it is between 10 p.m. and 7 a.m. Previously, the night «started» at 11 p.m. The previous regulation was criticized for this. The new one worsens the standard.

5. There is also a prohibition to make campaigning or promotion of the event organized before getting agreement with the respondent authority as regards place and time of the demonstration or meeting.

<sup>46</sup> Translation according to the Venice Commission opinion of 11 March 2013.

<sup>47</sup> See judgment of the Polish Constitutional Court of 10 July 2004 (Kp 1/04).

<sup>48</sup> According to para. 98 of the OSCE / ODIHR Guidelines on the Freedom of Assembly „wearing of a mask for expressive purposes at a peaceful assembly should not be prohibited, so long as the mask or costume is not worn for the purpose of preventing the identification of a person whose conduct creates probable cause for arrest and so long as the mask does not create a clear and present danger of imminent unlawful conduct.”

This provision makes it much more difficult for organizers to organize an assembly. Second, it increases powers of administrative authorities. Already now the system of notifications resembles a concession system of permits for organization of assemblies. The Constitutional Court interpreted this provision as giving power to organizers to inform the public about the event prior to the agreement with authorities. However, according to the Venice Commission it does not meet standards, as it is difficult to distinguish between «information» and «promotion» or «campaigning».<sup>49</sup>

6. The June 2012 Amendments also introduce a principle that assemblies should be in principle organized in «specially designated places», which should be indicated by authorities. Under human rights' standards, there exists a practice of indicating such places by authorities, but only as a mean to facilitate freedom of assemblies. For example, the local authorities may indicate specific «hyde parks», where assemblies may be organized without almost any constraints (or notifications) whatsoever. However, the purpose of the June 2012 Amendments is completely different. According to Article 12 Section 3 of the Assemblies Act, the demonstration may be refused, when a chosen venue is prohibited under the law. At the same time, authorities have broad powers to determine which venues are prohibited. Such restrictions on the freedom of organizer to choose the location of an event are contrary to standards. «Specially designated places» become a rule for authorities and not the exception.

7. June 2012 Amendments have also increased the financial penalties concerning non-compliance with the rules on organization of assemblies. The new penalties are extra-orbitant and fail to meet human rights standards. The maximum penalties for citizens for violation of different rules concerning assemblies were increased from 5.000 RUB to 300.000 RUB, for officials – from 50.000 RUB to 600.000 RUB. The law originally provided for minimum sanctions. However, this provision was quashed by the Russian Constitutional Court. Still, the sanctions are extremely high and may produce chilling effect on freedom of assembly. Furthermore, the June 2012 Amendments created a new type of sanction, which is community work. It may be ordained up to certain amount of hours or even days of unpaid work. Finally, the new offence was created, which is «organisation of a mass simultaneous presence and/or movement of citizens in public places resulting in a breach of public order». This provision might be especially applicable with re-

<sup>49</sup> See para. 34-37 of the opinion of the Venice Commission of 11 March 2013.

spect to any spontaneous assemblies or simply protests without prior authorization. It will give a safe excuse for authorities to intervene and to penalize participants of such events.

The increase in financial sanctions, new community work sanction as well as creation of new offense were severely criticized by the Venice Commission as being severe and in need of reform.<sup>50</sup>

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<sup>50</sup> Opinion of the Venice Commission of 11 March 2013, CDL-AD(2013)03, available at [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)003-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)003-e).