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Russian Federation: Prisoner of conscience Konstantin Kotov should be immediately and unconditionally released

On 2 March 2020, the Second Court of Cassation in Moscow will review the case of human rights defender Konstantin Kotov, who has been sentenced to four years' imprisonment for "repeated violation of rules governing public events" under Article 212.1 of the Criminal Code. On 27 January, Russia's Constitutional Court ordered a review of the conviction and sentence of Konstantin Kotov noting that criminal punishment for the respective violations should be proportionate to the actual damage or public danger caused by an offence. Furthermore, it obliged courts to check if the person has criminal intent to commit such violations.

Under Article 212.1, organization or participation in protests held in violation of procedures established under Russian law is a criminal offence if committed more than three times within a period of up to 180 days, punishable by up to five years' imprisonment. The language of the Article makes no distinction between peaceful and violent protests. Russian legislation governing assemblies is unduly restrictive, and attempts to exercise one's right to freedom of peaceful assembly, including a mere attendance of an "unauthorized" public protest, constitutes a punishable offence. None of the three individuals who have been convicted under this Article so far, including Konstantin Kotov, have taken part, or been implicated in any way whatsoever, in any violent acts.

The right to freedom of peaceful assembly is guaranteed by multiple international agreements that Russia is a part of, including the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as by Russia's Constitution. Russian authorities have an obligation to respect, protect and fulfil this right.

The content of Article 212.1 and its use against Konstantin Kotov are incompatible with these obligations. Nobody should face prosecution merely for exercising their right to freedom of peaceful assembly. Konstantin Kotov is a prisoner of conscience. Charges against him must be dropped, and he must be released immediately and unconditionally.

BACKGROUND

Konstantin Kotov was convicted of participation in several “unsanctioned” protest rallies and sentenced to four years in prison on 5 September 2019, by Tverskoy District Court in Moscow, in a swift politically motivated trial which, unusually for Russia, took less than a day to complete. All of these protests were peaceful and most of them were in protest against the politically motivated prosecution of other activists. Konstantin Kotov has never committed, called for, or condoned any violence. During his trial, the judge refused to consider whether Konstantin Kotov’s actions constituted or amounted to any serious harm to others and declined to hear the testimony of most defense witnesses or watch available video footage of the purported “crime”. On 14 October 2019, Moscow City Court upheld Konstantin Kotov’s conviction and sentence.

On 27 January 2020, the Constitutional Court of Russia ruled that Konstantin Kotov’s case should be reconsidered because his conviction and sentencing were in violation of the Constitution, but it did not find the Article 212.1 itself unconstitutional. The prosecutor subsequently requested that Konstantin Kotov’s conviction remains in place, but the sentence be reduced to one year’s imprisonment.

Article 212.1 was introduced under new legislation passed in the Criminal Code of the Russian Federation in 2014, at the time when much of Russian legislation was amended to further restrict fundamental rights and freedoms, including the right to freedom of peaceful assembly.

Konstantin Kotov is the third person who has been tried and convicted under Article 212.1, alongside Ildar Dadin and Andrey Borovikov. For detailed analysis of this piece of legislation, please see “Russian Federation: Constitutional Court ruling - an opportunity to annul criminalisation of “unauthorised” peaceful protest”.¹

¹ Amnesty International, public statement, 23 January 2017, AI Index: EUR 46/5542/2017, available at <https://www.amnesty.org/en/documents/eur46/5542/2017/en/>