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Russian Federation: Constitutional Court ruling - an opportunity to annul criminalisation of “unauthorised” peaceful protest

On 24 January, the Constitutional Court of the Russian Federation will consider prisoner of conscience Ildar Dadin’s complaint questioning the constitutionality of Article 212.1 of the Criminal Code of the Russian Federation.¹ The Article was introduced in July 2014 to criminalise the repeated violation (more than three times within 180 days) of Russia’s unduly restrictive rules governing public assemblies². This “crime” is punishable by up to five years’ imprisonment. Ildar Dadin is the first, and so far only, person convicted under Article 212.1, and is currently serving two-and-a-half year-long sentence.

The hearing by the Constitutional Court offers the opportunity to repeal this legislative provision which enables criminal prosecution and imprisonment of peaceful protesters for exercising their right to freedom of peaceful assembly, to overturn Ildar Dadin’s conviction and enable his release.

The rights to peaceful assembly and expression are protected under international human rights law and guaranteed in the Constitution of the Russian Federation which states: “Citizens of the Russian Federation shall have the right to assemble peacefully, without weapons, hold rallies, meetings and demonstrations, marches and pickets”³. Article 212.1 of the Criminal Code violates these rights in that it allows for criminal prosecution not only for acts of violence and other acts not protected by the freedom of peaceful assembly and expression, but also for the legitimate exercise of this right.

Article 212.1 criminalises repeated administrative violation⁴ of the rules governing public assemblies. Some of these rules are inconsistent with the freedom of peaceful assembly and expression per se and hence non-compliance with them should not be regarded and penalised as an administrative violation in the first instance. For example, the requirement to notify the authorities far in advance of a public assembly and receive their prior approval,⁵ and the imposition of administrative liability for the failure to do so, is inconsistent with international standards on the right to peaceful assembly.⁶ Article 212.1 of the Criminal Code allows criminal

¹ Members of the public may attend the hearing if the space allows. The pre-registration for attending the hearing takes place at the Constitutional Court website (available at <http://www.ksrf.ru/ru/Sessions/VisitTo/Pages/default.aspx>).

² Federal Law No. 54-FZ “On Assemblies, Meetings, Demonstrations, Rallies, and Pickets”, dated 19 June 2004 (as amended and supplemented).

³ See Article 31 of the Constitution of the Russian Federation, available at <http://www.constitution.ru/en/10003000-01.htm>.

⁴ The violations of the rules on public assemblies committed less than four times within 180 days are administrative offenses specified in Article 20.2 of the Administrative Offenses Code.

⁵ For more information on the requirement of prior notification, as well as onerous rules for single-person pickets, additional restrictions on assemblies organized by LGBTI activists, and other ways in which Russian rules contravene the freedom of assembly, please see Amnesty International, *A right, not a crime: Violations of the right to freedom of assembly in Russia*, report, June 2014, available at <https://www.amnesty.org/en/documents/EUR46/028/2014/en/>.

⁶ Please see *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, at the 20th session of the Human Rights Council, Twentieth session, Agenda item 3, distributed on 21 May 2012*, paragraph 28-29, page 9, A/HRC/20/27, available at

prosecution and imprisonment of peaceful protesters for being repeatedly found in breach of these unduly restrictive requirements.

Ildar Dadin is a prisoner of conscience, who has been prosecuted solely in connection with his peaceful street protests. He is the first person in Russia to be sentenced under Article 212.1 of the Criminal Code. Ildar Dadin was criminally prosecuted for participation in four peaceful street actions within 180 days. In December 2015, Ildar Dadin was sentenced to three years' imprisonment, reduced to two-and-a-half years on appeal. In September 2016, Ildar Dadin's lawyers submitted a complaint to the Constitutional Court, arguing that Article 212.1 violates Dadin's constitutional rights.

Amnesty International believes that Ildar Dadin's conviction and imprisonment under Article 212.1 of the Russian Criminal Code violates several of his rights under international human rights law and the Russian Constitution, including the rights to peaceful assembly, freedom of expression, and the right to a fair trial, including protection against double jeopardy.

Amnesty International has repeatedly urged the Russian authorities to release Ildar Dadin immediately and unconditionally and to repeal the legislative provisions that enable prosecution and imprisonment of peaceful protesters for exercising their right to freedom of peaceful assembly.

Article 212.1 contravenes a number of international and regional human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR) to which Russia is a State party.

The right to freedom of peaceful assembly and freedom of expression

- The treaties guarantee the right to freedom of peaceful assembly (Article 11 of ECHR, Article 21 of ICCPR) and freedom of expression (Article 10 of ECHR, Article 19 of ICCPR).
- The European Court of Human Rights, in the cases of *Oya Ataman v. Turkey*, *Bukta and others v. Hungary*, and others has emphasized that, unless demonstrators engage in acts of violence "it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly is not to be deprived of all substance."⁷
- The European Court of Human Rights, in the case of *Yılmaz Yıldız and Others v. Turkey*, ruled that "a peaceful demonstration should not, in principle, be made subject to the threat of a penal sanction."⁸
- In a joint report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association and the UN Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, emphasized that no person should be held criminally, civilly or administratively liable for the mere act of organizing or participating in a peaceful protest.⁹

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf.

⁷ See the judgement in the case of *Oya Ataman v. Turkey*, Paragraph 42 (available at [\), reiterated in *Bukta and others v. Hungary*, Paragraph 37 \(available at \[\\).\]\(http://hudoc.echr.coe.int/eng#{\)](http://hudoc.echr.coe.int/eng#{)

⁸ See the judgement in the case of *Yılmaz Yıldız and Others v. Turkey*, Paragraph 46 (available at [\).](http://hudoc.echr.coe.int/eng#{)

⁹ Please see *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies* (UN Doc. A/HRC/31/66), February 2016, available at <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/31/66&Lang=E>.

- Article 212.1 of the Russian Criminal Code, on the contrary, enables criminal prosecution and imprisonment of peaceful protesters for the violation of excessive restrictions on the rights to peaceful assembly and freedom of expression in Russia.

Ildar Dadin's case illustrates particularly well how Article 212.1 of the Russian Criminal Code contravenes international and regional human rights law. Not only did he act peacefully during the street protests, but he even did not resist while being detained.

The right to be protected against double jeopardy

Article 212.1 also violates the right to be protected against double jeopardy, guaranteed by ICCPR and Protocol No. 7 to the ECHR (Protocol), in particular:

- The treaties provide that no-one shall be liable to be tried or punished again for an offence for which they have already been finally convicted or acquitted (Paragraph 7 Article 14 of ICCPR, Paragraph 1 Article 4 of the Protocol).
- Article 212.1 imposes criminal liability for the cumulative administrative violations, which are already individually punishable.
- The European Court of Human Rights, in the case of *Kasparov and Others v. Russia*¹⁰, has held that administrative sanctions for violation of the rules on public assemblies in Russia were so severe that they "actually constituted a criminal offence for the purpose of the applicability of Article 6". This decision relates to a public gathering in April 2007, when the administrative penalties for violating the rules was considerably less severe than those introduced since.

Ildar Dadin was fined four times for participating in peaceful protests on four occasions, and then imprisoned for those same acts under Article 212.1 of the Criminal Code because of the "repeated violation".

Other fair trial violations

Furthermore, Article 212.1 of the Criminal Code violates the rights of the accused, contained in Article 14 of ICCPR and Article 6 of ECHR:

- The treaties guarantee the principle of presumption of innocence and contain several fair trial guarantees that everyone charged with a criminal offence is entitled to, including the right to defend oneself and the right to legal counsel (Article 14 of ICCPR, Article 6 of ECHR).
- Article 212.1, however, makes proving the relevant "crime" a mere formality. It allows the prosecution and the court, instead of exploring the facts, to use the decisions taken in administrative proceedings, which use a lower standard of proof, as evidence of "crime" against the defendant. The proceedings that lead to such administrative decisions do not offer the same safeguards as those involved in criminal proceedings, including the entitlement to legal aid. Besides, in Ildar Dadin's case, the period of time set in law during which he could appeal the relevant administrative decisions had not expired before his criminal conviction on the basis of these decisions.

¹⁰ For the text of judgement, please see [http://hudoc.echr.coe.int/eng#{"fulltext":\["Kasparov and Others v. Russia"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-126541"\]}](http://hudoc.echr.coe.int/eng#{).

Background

The respect for the rights to freedom of expression, peaceful assembly and association has long been tenuous in Russia. Since May 2012, however, these have come under a sustained assault. Legislative changes have tightened the screws on already restrictive regulations. New and old laws are being more restrictively applied, while the penalties for their violation and the range of those falling within their scope have significantly increased.¹¹

Russian overly restrictive legislation on public assemblies, with minor exceptions (limited numbers of protesters assembling in specially designated, and typically desolate, areas), outlaws any form of collective public protest except when expressly pre-approved by the authorities. Most protest actions in Russia have been either severely restricted or barred and dispersed. While pro-Kremlin rallies (often organised by the authorities) are allowed to take place in prominent locations in big cities, opposition protests have been pushed out of busy streets and central squares. Pro-government groups have been given free rein to organise counter-protests, and in some instances even intimidate and physically attack the protesters. Those who continue to seek to organise public protests face increasingly onerous approval procedures.

The only form of street action that currently does not require a prior notification of authorities is a single-person picket, which is, by definition, not a vehicle for realising one's right to freedom of peaceful assembly. And even this small loophole is further limited, for example by strict rules on distance between the participants and discriminatory legislation prohibiting "propaganda of non-traditional sexual relations among minors". Amnesty International has also documented numerous cases of single-person pickets being interrupted by the authorities on grounds that have no legal basis.¹²

The wave of protest activities in Russia in 2014 prompted by the EuroMaydan events in Ukraine led to legislative initiatives further restricting the right to freedom of peaceful assembly. Introduction of Article 212.1 was part of these initiatives and a shortcut enabling imprisonment of peaceful protesters, and was accompanied by increasing administrative penalties for the violation of public assembly rules.

The punishment for the first formal violation of the rules includes a fine of up to RUB 30,000 (approximately US\$ 508) and up to 10 days' administrative detention, while for the second and third violations, it foresees a fine of up to RUB 300,000 (approximately US\$ 5,000) and up to 30 days' administrative detention. Four violations within 180 days are prosecuted as a criminal offence punishable by a range of penalties, including a fine of up to RUB 1 million (approximately US\$ 17,000) and up to five years' imprisonment. The punishment for repeated violations of the rules governing public assemblies in Russia does not differentiate between peaceful and violent protesters, the kind of actions the participants in these assemblies take, and the consequences of such actions. The fines are hugely disproportionate to the minimum monthly wage, which in Russia is currently RUB 7,500 (approx. US\$ 127).¹³

To date, the Russian authorities have initiated criminal cases under Article 212.1 against several human rights activists, including Ildar Dadin, Vladimir Ionov, Mark Galperin, and Irina Kalmykova¹⁴. Ildar Dadin has become the first person convicted under this criminal provision, and

¹¹ For a review of developments, see Amnesty International, *Freedom under threat: Clampdown on freedoms of expression, assembly and association in Russia*, report, April 2013, available at <http://www.amnesty.org/en/library/info/EUR46/04/2013/en>; Amnesty International, *A right, not a crime: Violations of the right to freedom of assembly in Russia*, report, June 2014, available at <https://www.amnesty.org/en/documents/EUR46/028/2014/en/>; Amnesty International, *A Summary of Amnesty International's Concerns in the Russian Federation*, public statement, October 2016, available at <https://www.amnesty.org/en/documents/eur46/5009/2016/en/>.

¹² For information on obstruction of single-person pickets, please see Amnesty International, *A right, not a crime: Violations of the right to freedom of assembly in Russia*, report, June 2014, available at <https://www.amnesty.org/en/documents/EUR46/028/2014/en/>.

¹³ Please see <http://publication.pravo.gov.ru/Document/View/0001201606020022?index=0&rangeSize=1>.

¹⁴ Vladimir Ionov and Irina Kalmykova have escaped from Russia. The status of criminal case against Mark Galperin is currently unclear. On 16 January 2017, *Nezavisimaya Gazeta* reported his lawyer's statement that the case has "sputtered out" (see http://www.ng.ru/politics/2017-01-16/1_6903_sud.html).

he has challenged the constitutionality of Article 212.1.

If the Constitutional Court finds Article 212.1 unconstitutional, it will no longer be applicable. The Court may also interpret the Article with a view to limiting its scope without declaring the entire article unconstitutional.

Additional information on Ildar Dadin

Ildar Dadin became the first person convicted for “repeated violations of the law on public assemblies” under Article 212.1 of the Criminal Code.¹⁵

Ildar Dadin was detained by police at least four times between 6 August and 5 December 2014 while protesting peacefully in Moscow. He was arrested while holding peaceful street actions that did not cause any harm or danger to others. On every one of these occasions, he was fined for his “offences”.

Immediately following his latest 15-day “administrative detention” for a street action that ended on 30 January 2015,¹⁶ instead of being released he was placed under house arrest pending trial in connection with the newly opened criminal case against him under Article 212.1.

On 7 December 2015, Moscow’s Basmany Court sentenced Ildar Dadin to three years in penal colony, despite prosecutors having requested a two-year sentence. Upon appeal, on 31 March 2016 Moscow City Court reduced his sentence to two-and-a-half years, but upheld his conviction.

In a letter sent to his wife and published on a news website on 1 November 2016, Ildar Dadin described the torture and other ill-treatment he was subjected to, including severe beatings and rape threats, since his arrival at the prison colony in Segezha in Russia’s Karelia region on 10 September 2016.¹⁷

While denying his allegations of torture, on 13 December 2016, the Federal Penitentiary Service reported that Ildar Dadin was being transferred to another penitentiary facility “with a view of ensuring [his] personal safety”.¹⁸ His location remained unknown to his family and lawyers for a month. On 8 January 2017, Ildar Dadin’s wife, Anastasia Zotova, learned that he had been transferred to the penal colony in the Altai region (IK-5). This place is more than 3,500 km away from Moscow and makes visits from his relatives and lawyer extremely costly and burdensome. Ildar Dadin’s transfer to a remote prison colony appears to be intended as a form of harassment in retaliation for his complaints.

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¹⁵ Please see <https://www.amnesty.org/en/latest/news/2015/12/russia-peaceful-activist-sentenced-under-repressive-new-law-must-be-released/>.

¹⁶ Ildar Dadin was arrested on 15 January 2015 when he was holding a picket in support of Charlie Hebdo (a French satirical weekly magazine that suffered an armed attack in January 2015). For details, please see Amnesty International, *Prisoner of conscience writes of torture: Ildar Dadin*, urgent action, November 2016, available at <https://www.amnesty.org/en/documents/eur46/5083/2016/en/>.

¹⁷ Please see Amnesty International, *Prisoner of conscience writes of torture: Ildar Dadin*, urgent action, November 2016, available at <https://www.amnesty.org/en/documents/eur46/5083/2016/en/>.

¹⁸ Please see a copy of the letter from the Federal Penitentiary Service, available at <http://www.president-sovet.ru/presscenter/news/read/3636/>.