

How to wrestle an official to the ground, or strategic lawsuits: experience of American and Russian litigants with lawsuits of public importance. «How one strategic case begets another»

Court cases pertaining to the protections of individual rights and freedoms pose personal and financial risks for lawyers. Upon careful consideration, personal risks become a valid concern; as such risks result in new challenges and new trials. Thus the campaign for abolishing the law that restricts the protection for the right to freedom of assembly in Russia became the starting point for the advocacy for the citizen's right to a fair trial, particularly, right to an equitable and adversarial judicial process. The emergence of a strategically significant case from a socially significant case is a fairly common phenomenon. In this chapter, the author shall provide such an example.

The Attack on the Freedom of Assembly

On May 6th, 2012, an event took place that will still be talked about for decades--the mass, public protest in Bolotnaya Square, known as "Occupy Abay", which ended with a clash between protesters and police. As a result of the protests, the government responded by tightening federal legislation that regulates the procedure for holding gatherings, rallies, demonstrations, marches and picketing. The Duma quickly adopted the amendments, which had already been approved by the Federation Council, and placed in front of the President of the Russian Federation. Starting on June 8, 2012, a new reality awaited us that included thousands in fines and/or incarceration for violating the procedure for holding gatherings. The organizers now bore the responsibility for any excesses that occurred during these public events and many other restrictions.

Similar bills that make it more difficult to hold rallies have also been adopted at a regional level. For example, the Legislative Assembly of St. Petersburg adopted a law that prohibits rallies within the vicinity of Nevsky Prospekt, St. Isaac's Square, or Palace Square. Under the ban, protests cannot take place within 50 metres of buildings occupied by public officials

Enactment of law

Prominent human rights organisations, like the Moscow Helsinki Group and Agora, began to oppose the change in legislation at federal level. However, similar activity at regional level has long been

absent from the daily affairs of the Russian Federation.

Since the introduction of the regional legislation, human and civil rights activists in St. Petersburg have tried their best to prevent the law from being passed. This included organising protests on the city streets and a petition against tightening the law that collected 7,823 signatures. As a result, public hearings were organised by the authorities, which has been the first opportunity for the lawyers to get to work.

Alexander Peredruk, a participant in the international group Youth Human Rights Movement (YHRM) and a lawyer for the human rights organisation “Military Mothers St. Petersburg”, presented a statement on the concept of the proposed law, in which he criticised the deputies’ initiative with regards to the constitutionality of the law and the legal positions of the European Court of Human Rights.

As a result of public efforts, the law was significantly loosened. The areas in which there was a complete ban on holding meetings and rallies were reduced, although the city centre remains a “protest-free” zone.

In March 2013, the law was enacted by the Legislative Assembly of St. Petersburg.

The Path to the Constitutional Court of the Russian Federation and the European Court of Human Rights

The limitations on the right of freedom of assembly appeared to lack a legal foundation, and above all, human rights activists were troubled by the ban on holding public events in the centre of Saint Petersburg -- on the main boulevard and squares of the city, where the overwhelming majority of the government is located. Thus the police directed all protests to the outskirts of the city, from where the authorities could hardly hear the position of the protesters.

However, the domestic law of the Russian Federation effectively did not allow for the law to be contested in court. Moreover, such a case could not be sent to the European Court of Human Rights, and human rights activists abandoned hopes for success in national courts after the Constitutional Court’s decree regarding this federal law.

It was for exactly this reason that human rights activists decided to compel the authorities in Saint Petersburg to ban a demonstration in the centre of the city. They filed an application to hold a rally in support of the freedom of assembly, which would be attended by several thousand people. Upon receiving the denial of their request, they contested it in court. The activists, however, understood that the court in Saint Petersburg was unlikely to give priority to international law and the precedents set by the European Court of Human Rights, as opposed to local legislation. Therefore, it was decided to

use alternative jurisdiction, based on the place of registration of the plaintiff, which civil legislative procedure allows for. Thus, the case regarding the prohibition of demonstrations in defence of the freedom of assembly in the “northern capital” of the country came to be heard in the Pervomaysky district court of the city of Murmansk.

Hopes for impartial judgment in Murmansk faded quickly. The court considered the statement of Alexander Peredruk, the plaintiff, in his absence, having failed to summon him properly. Meanwhile, a lawyer from the Saint Petersburg Committee for Issues of Rule of Law, Order, and Security was flown to the Arctic Circle. He was notified and summoned. As a result, the court ruled for the government, ignoring arguments that there was no reason to prevent a peaceful demonstration. The administration of the city of Saint Petersburg did not even attempt to create conditions in which a rally could be possible, such as, for example, designating a different location for the event. Subsequently, all national courts, including the Supreme Court of the Russian Federation, allowed the decision to remain in force. In December, a human rights activist filed a complaint with the European Court of Human Rights, putting before the court the question of the violation of his rights, guaranteed by Article 11 of the European Convention on Human Rights.

Already in February of 2014, Alexander Peredruk had appealed to the Constitutional Court of the Russian Federation with a request to declare the regional law on meetings and demonstrations unconstitutional. The court, however, declined to review this request. In the opinion of the constitutional judges, in the centre of Saint Petersburg, a Hero City, large protests are banned, as they may entail a violation of the rights of third parties. Furthermore, they stated that the existence of a “Hyde Park” protest site in the city is enough for the realization of the right to freedom of assembly. The judges in the case were not disturbed by the application of the law in the applicant’s case, by which the authorities banned conducting protests; nor by relying on regional law and not attempting to assess the proportionality and necessity of such restrictions of the plaintiff’s right to freedom of assembly.

Human rights activist pays three times

After Alexander Peredruk’s case was accepted by the Constitutional Court of the Russian Federation, the local authorities in St. Petersburg decided to punish him. The Committee for the Rule of Law, Order and Security of the Government of St. Petersburg issued the plaintiff a fine of more than 30.000 roubles to cover legal fees- a sum equivalent to the cost of travel and accommodation for representatives of the local authorities for a hearing in Murmansk. The matter had also been sent to the Pervomaysky district court in Murmansk, where the defendant’s representative failed to appear. It may have been a signal to human rights activists that it is not worth fighting the authorities, and should you decide to, then do it where it’s more convenient for them, and that it was pointless to take your case to European or Constitutional Courts.

The activist asked the Constitutional Court to reject the fine altogether. Even though the courts of general jurisdiction reduced the fine to 15.000 roubles, they all still took the side of city authorities in

the lawsuit. Therefore the original case, which was about defending the freedom of assembly, turned into something completely different.

Alexander Peredruk doesn't agree that authorities may fine citizens attempting to influence government decisions through the courts by exercising their lawful rights. He went through all levels of general jurisdiction to show the established judicial practice of applying the law. He then turned to the Constitutional Court to appeal against the relevant provisions of civil procedural law. He justified this step by saying that exacting fines to pay for the expenditures of taking part in a hearing examining the lawfulness of forbidding demonstrations is, in itself, a violation of the right to fair judicial investigation or of the right to access legal representation. The attorney pointed out that it is necessary to differentiate between civil disputes and cases connected to the impugment of the actions (or the lack thereof) of state organs. They also cited the de facto inequality between citizens and the apparatus of the state in the judicial process, and further argued that the opportunity to exact fines through the judiciary would undermine the right to judicial protection and would have a negative effect. For many, the financial risks would be too high and they would simply not file any case against the state. However, there was an even simpler argument: as a responsible citizen, a Russian lawyer would have paid the state twice already, first through their taxes, and second, in paying a fee to the state when they file a case in court. Levying a fine for legal fees is a third payment for government services. Levying a fine in this situation is neither reasonable nor necessary.

On the national level, however, positive results could not be obtained: the Constitutional Court dismissed the complaint, and its decision did not contain any answers to the difficult questions posed by the human rights defender before the Court. Understanding that the reasons were more political than legal, Alexander Peredruk decided once again to try the European court. The lawyer's position on principle was that it should not be permissible to create mechanisms that will allow the state to obstruct citizens seeking justice in disputes over protecting fundamental human rights and freedoms or in relevant cases of public significance. On the contrary, it is important to protect applicants in conditions wherein their complaints are not obviously unfounded.

Today all of Peredruk's complaints have been filed and await review.

On 15 September 2015, the Code of Administrative Proceedings came into effect in Russia. In contrast to the previously effective legislation, it directly authorized the authorities to exact legal costs from citizens who appealed the decisions of government institutions in the courts.

It is currently impossible to predict the Strasbourg court's ruling on Alexander Peredruk's complaints. To strengthen one's position before the ECHR, it is important to show other examples of exacting legal costs and to carry out other processes through the Russian courts for filing with the ECHR. If the European courts side with the claimant, they will intentionally lend support to the national legal mechanism of "immunity" from the levying of claimants for the use of government court costs in matters relating to the protection of fundamental human rights and freedoms.

This chapter shows how important it is to see in the individual challenges for a human rights defender the significant problem of access to justice and thereby to the realization of the right to freedom of

assembly. It is no less important to consider the available resources, determine what is insufficient, and create a campaign to strategically challenge the exaction of court costs in cases where the other side is a state institution. The campaign described in this chapter is capable of leading to an all-Russian and even all-European precedent on the prohibition of exaction of court expenses from citizens and public organisations that have entered into a dispute with the authorities.

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