

“Welcome to North Korea,” Predicting the Effect of Russia’s new Protest Law

Written by Regina Smyth

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REGINA SMYTH, JUL 4 2012

On June 9, 2012 President Putin signed Federal Law 70631-6 «On Amendments to the Code of the Russian Federation on Administrative Violations» that enacted significant amendments to the legal code regulating the organisation and participation in public protest meetings. Labelled draconian by Russian and Western civil rights organizations and the opposition at which it was directed, the law dramatically increased the penalties for organisation of and participation in non-sanctioned meetings and all violations occurring at sanctioned meetings. The new law provoked a serious debate among Russian political observers about its potential effects, focusing on whether or not the strong state response is likely to radicalise the movement or intimidate citizens from participating altogether. This very real policy debate in Russia echoes a long term scholarly debate about the effect of repression on political action.

Despite the quote in the title, the new law is not likely to transform Russia into North Korea, but that it is consistent with Putin regime’s growing reliance on the ad-hoc rule by law to arbitrarily punish its most effective opponents.[1] The most likely effect of the law is to exploit existing divisions within the protest movement that disagree over the efficacy of large scale street protests. While some elements of the movement will continue protesting, others will take advantage of new opportunities to contest regime policies and excesses through the formal structure. These actions will continue to be linked by evidence of state corruption. As such, the movement will ebb and flow with electoral opportunities and state actions that demonstrate the non-democratic and corrupt nature of the regime.

Legal Change as a Response to the Challenge from the Streets

In December 2011, evidence of systematic electoral fraud in parliamentary elections in Russia provoked a series of mass protests beginning in Moscow and spreading to Russia’s regions. The protest organisation, based in Moscow, was organised as a broad social movement that brought together a wide range of groups from communists and nationalists to gay rights activists and democrats. Despite vast policy disagreements and the lack of common leadership, these groups forged a cooperative relationship based on a call for honest elections and honest power and a call for institutional reform toward the goal of free competition.

Despite the diversity within the organisation, the protests continued throughout the spring and consistently managed to attract more support than expected by either officials or the media. By and large, these events were peaceful and the direct state response was fairly professional. The strategy for policing the riots included cordoning off sanctioned protest areas and controlling entry through metal detectors. Rank and file police, often young recruits, lined the cordons every ten feet or so, while MVD and OMON special troops were kept away from the crowd, waiting on streets adjacent to the protest events. Nonetheless, participants’ perceptions of the police were fairly negative. Survey data collected at both pro- and anti-Putin rallies revealed that 82 and 85 percent of respondents in each rally saw the police presence as aggressive.[2]

The sense of danger may well have been justified. At a May 6 march and meeting against the regime, violence erupted as protesters challenged police barricades in an attempt to march toward the Kremlin. While it is impossible

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to mediate between competing claims about the origins of the violence, the events of May 6 clearly influenced public opinion. Based on a national sample, the Levada Center reported that 46% of respondents perceived the police response on May 6 to be excessively brutal.[3] In addition, the violence of May 6 sparked a new level of activity in protest actions as the opposition challenged the letter of the law with creative events: marching without signs or symbols of protest, walking the streets in groups wearing white clothing, and occupying public spaces.

The post-May 6 events underscored that the existing legal framework not only did not deter protest participation, but it also failed to provide significant grounds to prosecute leaders. The police response vacillated between professional and arbitrary, conciliatory and aggressive. In early May, riot police, the OMON, chased opposition groups from square to square, looking ridiculous. During this melee, the same troops arbitrarily entered a café where opposition figures gathered, arresting patrons wearing white ribbons, evoking an outcry about Byelorussian style police tactics.[4] Later in the week, the police allowed an “occupation” style camp to continue until the courts intervened. Throughout the spring, unrest spread beyond Moscow, providing the basis for links between pockets of opposition. More importantly, protest was linked to the electoral process, suggesting that upcoming mayor and gubernatorial elections might prove fertile ground for the spread of street actions.

Polling data showed that society perceived protest as an appropriate mechanism of political participation, but drew a distinction between legal and illegal actions. Our survey revealed that only 19 percent of anti-regime protesters supported the right to unsanctioned protest, while 66 percent of pro-regime activists supported unsanctioned activity. In contrast, our respondents in both camps overwhelmingly supported citizen’s rights to participate in sanctioned protest actions—98 percent of anti-regime respondents and 87 percent of pro-regime activists. National polls showed slightly less support for sanctioned actions. A VTsIOM survey in late May 2012 reported that 60 percent of Russians supported citizens’ right to protest, although few respondents were prepared to participate in such events.[5] The Levada Center reported that 50 percent of the population was sympathetic to the Moscow protests, while a higher percentage affirmed the abstract right to protest.^[6]

It was clear that on every level the state did not know how to respond to the threat of growing social unrest. The old tools of social control—mobilizing friendly protest groups such as Nashi or the Youth Movement of the People’s Front, delegitimizing the protesters in state media, the fig leaf of concessions immediately reneged upon, and using the OMON to intimidate potential unrest—were no longer effective in the face of the post-election protest. The state needed a new tool. Against this backdrop, the amendments to the law on civil violations provided an institutional basis for an ad-hoc rule by law, adding a new coercive tool in the state’s arsenal against the right to free assembly.

Beyond Fines: The Provisions of the New Law

The controversial amendments to the law were formulated just days after the May 6 rally. Its authors, ER deputies Vladimir Pligin and Alexander Sidyakin, rushed it through the party-dominated Committee on Constitutional Legislation. Faced with threats of a parliamentary walkout, ER delayed the first reading of the bill until May 22 in order to allow public discussion. President Putin ordered ER to convene a roundtable that included prominent opposition figures. The meeting proved another fig leaf for the state’s intransigence, as key opposition figures such as Khimki Forest protest organizer, Evgenia Chirikova, walked out to protest the lack of compromise. Likewise, the raft of amendments introduced by opposition deputies Ilya Ponomarev and Dmitry Gudkov were summarily rejected, prompting Gudkov’s analogy to North Korea.

The governing party’s response was to redraft the bill prior to the second reading on May 28, significantly reducing the level of monetary penalties.[7] The definition of “meetings, rallies, demonstrations, processions, and pickets,” although vague, remained sufficiently broad to cover most of the protest actions invented by Moscow’s creative class. The new law took aim at the occupy movement by stipulating that all actions had to be completed by 10:00 pm. Likewise, the bill addressed the legality of strolls and walks by noting that protest actions may take place without pickets or obvious symbols. The legislation headed off the constant presence of a single protester by claiming that while single pickets were permissible, orchestrated events were not, and could be identified by the court. This provision precluded events such as the single white flower protest in which a single protester silently stood outside of the Kremlin dressed in white and holding a white flower for an hour before being replaced by another participant.

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While the increase in the monetary penalties for participation in and organization of non-sanctioned actions have been widely discussed, the amendments went well beyond these provisions. The law also introduced mandatory labour (community service) penalties. In addition, it defined new violations, including 1) obscuring one’s face; 2) carrying any instrument that could be construed as a weapon; or 3) protesting under the influence of alcohol. A wide range of violations also addressed the nuisance cost of protests, introducing sanctions for the obstruction of pedestrians; the need for increased police presence; ruining the grass, and the participation of individuals beyond the number sanctioned by the permit. The law also specified additional fines for refusing to obey police orders. In a particularly ominous provision from the standpoint of rule by law, the statute of limitations for prosecuting a transgression at an event was lengthened to one year.

Perhaps the most pernicious development in the code is that the law takes particular aim at protest organisers. Organisers, even those not directly involved in a particular event, can now be held responsible for violations carried out by participants in the event. This provision marks a very significant change from existing law in which organisers were only responsible for their own actions at sanctioned protests. In addition, activists with a criminal record or who were guilty of two violations within one year of an event could not apply for a protest permit. On June 26, 2012, *Snob* reported that this provision was cited in the Moscow mayor’s office decision to deny a permit to Sergei Udaltsov’s Left Front.[8]

As with the changes implemented between the first and second reading, the final bill included a nod to criticisms of earlier drafts. The final version of the legislation decreed that each region choose a location, similar to Britain’s Hyde Park, in which spontaneous protests would be permitted. The law also omitted penalties for advertising sanctioned events online, but retained penalties against advertising unsanctioned events. This pattern of granting small concessions in the face of repression in order to win over public support has also become a cornerstone of Putin regime’s strategy.

Most of the critique of the law focused on the disproportionality of the sanctions compared to other components of the law and also to the salaries of Russian citizens. The President’s Commission on Human Rights also stressed the “forced labour” component of the new community service rules.[9] Nevertheless, others focused on the ambiguity in the law. Former Minister and opposition leader Alexei Kudrin noted on his blog that the law was vague enough to imperil a bride and groom whose wedding guests get out of hand.[10] Kudrin and others also suggested that such ambiguity could stoke police corruption. A recent case in St. Petersburg in which fans commemorating the anniversary of Michael Jackson’s death were detained and charged under the law suggests that this interpretation is not as frivolous as it appears.

Radicalisation or Intimidation: Movement Strategy and State Repression

There are a number of distinct actions that might emerge in response to the new law: some elements of the protest may radicalise, persecution may expand the scope and size of protests, or state action may stifle participation. Some radicalisation seems inevitable given the structure of the movement. Significant elements of the movement, largely the xenophobic nationalist groups, were already fairly radical from the start, but had moderated their actions over the course of protests. Others were more extreme in their messages, demanding Putin’s departure rather than calling for systemic reform or supporting the jailed members of Pussy Riot. These activists came to the movement equipped with the personal ties and records of past radical action that scholars have shown to enhance radicalism.[11] If they feel themselves to be directly targeted by Putin’s rule by law strategy, they may resort to even more radical responses.^[12]

Radicalism of the general movement or new participants is less likely in the short to medium term. First, there is little appetite for revolutionary action in Russia. Movement leaders are very aware that the uncertainty of social and economic conditions throughout the 1990s continues to shape society’s antipathy toward new revolutionary change. Even prior to the law, the organising committee of the movement had split over the need to end mass protest actions in favour of more targeted strategies. The movement has been most effective in linking street action to manipulation of the formal political system and is gearing up to influence both the policy process and future electoral competition. Among movement leaders, there has been little support for members who sought out arrest as a political tool.

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The adoption of the law illustrates the potential power of the opposition to disrupt the state’s orchestrated policy process. Opposition deputies used Duma regulations to stage an “Italian Strike” or a filibuster, introducing 500 amendments to the law. ER only avoided the challenge by altering the procedures of the Duma: voting on amendments in groups, disallowing some amendments, and decreasing the required time for discussion of each amendment from five minutes to 15 seconds. Moreover, the opposition did not only obstruct the process but challenged the initial draft with reasonable proposals to slightly increase monetary penalties but allow spontaneous organization of meetings.^[13] The proposal, written with the help of the Civic Initiative Committee, directed by former finance minister Alexei Kudrin, demonstrated that the opposition would not just criticize the government but would also offer substantive and concrete alternatives to the state’s programme. Observers concluded that these actions increased participation in the June 12 protest event but did not spark violence.

The state has also been careful to balance outright coercion with indirect action aimed at shaping the goals, timing, and structure of the movement.^[14] Manipulation of the formal legislative system to pass the law illustrates this point. On the face, the majority party, ER, seemed quite open: postponing first reading to allow for public discussion of the law, decreasing penalties between the first and second reading, and involving opposition in staged discussions of the bill. However, these strategies were little more than fig leaves to cover the party’s control over the process. Yet, they are confounding for citizens with limited sources of information and understanding of the political process.

Mr. Putin’s regime is also adroit at framing very mixed signals and incentives in legal procedures. The new protest law coincides with an opening of the formal opportunity structure that allows Russian citizens new possibilities to participate in politics through gubernatorial elections, the election of Senators, and the formation of new political parties.^[15] While these laws are flawed by serious limitations, they present the possibility of competition. Polls suggest that the population is largely satisfied with these laws and the choices that they afford.^[16]

Recent mayoral elections in Omsk and Krasnoyarsk led strong victories for ER candidates without obvious falsification. At the same time, turnout levels in these cities were abysmal: 15 percent in Omsk and 21 percent in Krasnoyarsk—underscoring Russian’s growing scepticism about politics. As David Kissane points out, elections provide voters with the option to choose between more and less radical elites, undermining support for a transformative movement.^[17] In this case, it appears at least some regions will experience a withdrawal from politics that is a de facto blow to the movement.

However, this pattern is not likely hold to be true in all regions, where different conditions may provoke a complex menu of state repression to secure electoral outcomes. The most uncertain point of the analysis is how far the state will go in employing coercive tactics based in a manipulation of law. For instance, it was widely reported that key opposition leaders were searched and interviewed on the day of the June 12 event. Similarly, Duma deputies, Lev and Dmitry Gudkov, father and son who have been involved in protests, were forced to give up their family security business in the face of legal harassment. Alexey Navalny’s Foundation is under investigation for the misuse of funds. Ksenia Sobchak is under investigation for tax fraud. These strategies recall President Putin’s early persecution of Mikhail Khodorkovsky in order to preclude the participation of economic elites in electoral competition. The degree to which the state resorts to these strategies to control the limited choice presented in the new laws may well lead to regional street actions as formal avenues are closed by manipulation.

Response to the New Law

Despite these contradictory signals, the initial response to the law—both opinion and action—has been fairly moderate. Public opinion polls show a range of opinions based on the timing and nature of the sample. The Public Opinion Foundation (FOM) reported that 50 percent of respondents in a national poll agreed with the need to fine organizers of rallies that were either unsanctioned or marred by violations, although 39 percent disagreed with the new law and another 27 percent found the penalties too high. Provisions against masks were supported by 51 percent of the respondents. VTsIOM found even higher support for specific provisions of the law: 68% supported limiting protest to specific sites as well as the ban on face masks, a frequent tactic of nationalist protesters. Society was divided on the more creative forms of protest, 45 percent were against occupations and strolls while 41 percent supported those actions. A poll conducted in Moscow by the Levada Center reported that 67 percent of respondents

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opposed the law and 68 percent felt that the Duma had passed the law because the government feared street protests.[19]

Public opinion data is less clear on the evolving nature of the movement. VTsIOM Director Valery Fyodorov reported that evidence collected at the June 12 protest suggested the radicalisation of the movement despite the peaceful nature of the event.^[20] In contrast, the noted sociologist, Olga Kryshanovskaya, who recently resigned from ER to pursue research on the movement, reported that her data showed little evidence of radicalisation.[21]

Despite these conclusions, it did not take long for activists to challenge the law and test its limits. In Astrakhan, former mayor candidate Oleg Shein, who had waged a successful hunger strike to demand an investigation into vote fraud in his own contest, walked along the embankment with some supporters in order to meet up with a sanctioned meeting sponsored by the LDPR. Shein reported on his own LiveJournal blog that he was fined 20,000 roubles or approximately 600 dollars because some observers in the crowd shouted, “Oleg Shein is our mayor.”[22]

Other activists continued their creative approach to protest. In Ekaterinburg, Rostislav Zhuravlyov wrote a letter to inform the city officials that he would be strolling with friends the following night and requested police escort. To his surprise, he received a call the morning of his action letting him know that the police would meet him at the appointed time. The whole incident, along with the official response, is captured in a video posted to *LiveJournal* that secured 500,000 views as well as a twitter comment by Alexei Navalny.[23] Similarly, the revered human rights activist Lyudmila Alexeyeva requested permission to hold a birthday party in order to ensure the safety of her 200 guests.[24] Such incidents highlight the absurdity of the law, much as the OMON chasing citizens in white clothing through the streets of Moscow did after the May 6 violence.

Movement leaders have continued to build capacity to challenge the state through the courts and in the streets. Upon receiving news of the law’s passage, Ilya Yashin invoked the movement’s motto, “All for One,” and vowed to build a legal fund to help those charged under the new law to pay their fines. A number of activists, including the Left Front and Oleg Shein, plan to appeal their cases through the courts in Russia and at the European Court of Human Rights. A new committee including most members of the original movement announced that the next major protest event is scheduled for July 28 and will be dedicated to those who have been arrested as a result of the May 6 protests.

Conclusions: Slow Awakening and Systemic Evolution

While Russia is not likely to emerge as North Korea, or even Belarus, it is likely that the state will continue to engage in a complex strategy of repression to maintain its position, but it will pursue distinct strategies. Some will continue to participate in street actions, such as that scheduled for July 28. Others will focus on building the capacity to monitor elections, stand new candidates for office, unify opposition parties and present an alternative vision through parliamentary opposition. However, it seems clear that the movement will continue to build infrastructure and strategies, across these segments and will join forces when necessary. This means that legal, peaceful protests are likely to remain an important tool in the opposition’s arsenal for some time as formal channels of participation are blocked by the state.

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[1] Dmitry Gudkov, State Duma deputy representing Fair Russia posted this quote in response to the Committee on Constitutional Legislation’s decision to bar the majority of proposed amendments to the first reading. Available at: <http://dgudkov.livejournal.com/183072.html?page=2#comments>.

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[2] The Laboratory for Political Research of the Higher School of Economics collected these data. The sample includes participants in actions held between February 23 and March 6, 2012.

[3] Maxim Ivanov, Taisia Bekbulatova, “Disagreement and Discord. Pollsters Disagree Over the Russians’ Attitudes about Protests,” *Kommersant*, June 8, 2012.
<http://www.kommersant.ru/doc/1953683>

[4] The analysis of the new law by the Jamestown Foundation reports that it closely resembles the law adopted by Byelorussian President Lukashenka in 2010. See Victor Davidoff, “Russia Passes Draconian Anti-Protest Law after First Filibuster in Duma’s Modern History,” *Eurasia Daily Monitor*, 9, 109(June 8, 2012), available at: [http://www.jamestown.org/single/?no_cache=1&tx_ttnews\[tt_news\]=39480](http://www.jamestown.org/single/?no_cache=1&tx_ttnews[tt_news]=39480).

[5] Russian Public Opinion Research Center (VTsIOM), “Moscow Opposition Rallies in May,” Press Release, May 29, 2012, www.vtsiom.com.

[6] Alexandra Samarina, “The Kremlin at a Crossroads,” *Nezavisimaya Gazeta*, June 20, 2012: http://www.ng.ru/politics/2012-06-20/1_kreml.html

[7] *Rossiskaya Gazeta* published the full law on June 9, 2012: <http://www.rg.ru/dok/#types>.

[8] “Left Front” Barred from Holding a Meeting,” *Snob*, June 26, 2012
<http://www.snob.ru/selected/entry/50279>

[9] Website of the Federal Council on Human Rights, “The Council on Human Rights Found the Law on Meetings Unconstitutional,” <http://www.hro.org/node/14348>

[10] See Kudrin’s statement “The Draft Law on Fines for Meetings Violates the Right to Peaceful Assembly,” June 5, 2012, available on the CIC website: <http://akudrin.ru/news/zakonoproekt-oshtrafakh-za-mitingi-popiraet-svobodu-mirnykh-sobraniy.html>

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[12] This possibility is highlighted by David A. Snow and Remy Cross, “Radicalism within the Context of Social Movements: Processes and Types,” *Journal of Strategic Security*, 4, 4(2011): 115-130. <http://scholarcommons.usf.edu/jss/vol4/iss4/6/>

[13] Maksim Bogatikh, “Anarchy or Order,” *Pravda*, May 30, 2012,
<http://www.pravda.ru/politics/authority/parliament/30-05-2012/1116646-zakonomitingax-0/>

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<http://en.rian.ru/society/20120627/174268605.html>.
- [21] Natalya Korchenkova, “Protest Changes Age and Leaders. VTsIOM Compiles Portrait of 12 June Rally Participants,” *Kommersant*, June 29, 2012. <http://www.kommersant.ru/doc/196859>
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