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## The bill “without a catch”

**Доклад на русском языке: Законопроект «без подвоха».**  
**Как статья 267 УК стала «митинговой»**

After the [protest actions on January 23 and 31, 2021](#) in support of Alexei Navalny, at least 23 people became involved in cases initiated under Article 267 of the Criminal Code on «blocking transport communications». More often, only Article 318 of the Criminal Code on the use of force against a representative of the authorities was used (we [told about it in detail earlier](#)).

The application of Article 267 to the participants of the protests became possible from January 10, 2021 — it was then that the changes in the Criminal Code initiated by the deputy from United Russia [Dmitry Vyatkin](#) began to take effect. In December 2020, during the rapid consideration of the bill in the State Duma, Vyatkin assured that the article would not affect the protesters. In the first months of 2021, more cases of «blocking transport communications» were initiated than in the previous ten years.

# ARTICLE 267 OF THE CRIMINAL CODE UNTIL 2021

Until recently, Article 267 of the Criminal Code provided for punishment only for putting out of commission transport vehicles or communications, or for blocking roads if this led to serious harm to human health or major damage.

The Article was applied in exceptional cases. According to the data of the Judicial Department of the Supreme Court, processed in the framework of [the project Dostoevsky.io](#), from 2009 to 2020, 16 people were convicted under this article. Three more cases were dismissed for reconciliation of the parties. We [found](#) the texts of some of the verdicts.

- In April 2018, the court in Veliky Novgorod was hearing the case of a truck driver carrying a track-laying truck. Passing under the railway tracks, the car's cargo touched and damaged the span of the overpass. The amount of damage caused to Russian Railways was estimated at RUB 4,614,249. According to the text of the verdict, the accused admitted that «the collision with the overpass occurred as a result of violations of traffic rules committed by him, as he confidently expected to pass under the overpass without making sure of the safety of the maneuver». The driver was fined RUB 100,000.
- In 2016, the court in Mordovia was hearing the case of the theft of 38 unlined rail fasteners ZhBR-65, which derailed four cars of a passenger train. The damage was estimated at RUB 4,664,907 and four kopecks. Two of the accused were found guilty of theft (Article 158) and damage to transport communications (Article 267). One of them was sentenced to two years in a high-security penal colony, and the other to two years of probation. Under Article 267, the convicts were given a year and four months and one year of imprisonment, respectively.
- In 2016, in Yakutsk, a case of damage to an airplane was heard: at the airport, it was hit by a car that was approaching in reverse to load luggage. As a result, the skin of the aircraft was damaged, and the ship was «in an unusable condition». The driver of the car was sentenced to one year of probation.

## **ARTICLE 267 OF THE CRIMINAL CODE AFTER THE JANUARY 2021 PROTESTS**

After the protests on January 23 and 31, cases under the first part of Article 267 of the Criminal Code were initiated in at least six regions. Most of the suspects, eleven people, were in Primorsky Krai, where a criminal case was initiated

on the day of the demonstration; nine persons of interest in the Chelyabinsk region; two, presumably, in St. Petersburg; at least one in Moscow. In addition, the media reported similar cases in **Samara** and **Bryansk**. As of May 18, no information was given about the accused in these cases. Chelyabinsk cases are connected to the demonstration on January 31, the rest are connected to the demonstration on January 23.

In Vladivostok, according to the Investigative Committee, unidentified persons from the local Navalny office and its coordinator, Ekaterina Vedernikova (Ostapenko) persuaded residents to block the city's road network via the Internet. Among the accused is Alexey Gasyuk, who allegedly colluded with them, being present at the demonstration on January 23 on Svetlanskaya Street. The charge alleges that Gasyuk was in a mass gathering of people who held hands and obstructed traffic. According to the investigation, Gasyuk prevented the ambulance crew from getting to a seriously ill person, and also by his aggressive behavior created a «real threat to the safety of citizens» and «a real threat of damage to property worth RUB 50,000 <... > located in the store L'Etoile». A similar charge was **brought** against another resident of Vladivostok. The resolution stated that the roles were assigned to «unidentified persons». According to it, they were supposed to provoke the people to go out on the roadway. The lawyer from OVD-Info Polina Sidelnikova, representing Gasyuk, **noted** that on the video recordings provided by the investigators, it is clear that the authorities have blocked the road even before the protesters had gone out to the roadway.

предусмотренного частью 1 статьи 267 УК РФ.

Основанием для возбуждения уголовного дела в соответствии с частью 2 статьи 140 УПК РФ является наличие достаточных данных, указывающих на признаки преступления, предусмотренного частью 1 статьи 267 УК РФ, установленных в ходе проведения проверки вышеуказанных сообщений о преступлении, из которой следует, что:

в точно неустановленное время, но не позднее 14 часов 30 минут 23 января 2021 года неустановленные лица умышленно, путем распространения сообщений в информационно-телекоммуникационной сети «Интернет», организовали на центральной площади города Владивостока сбор граждан, которые с 14 часов 30 минут до 17 часов 20 минут 23 января 2021 года путем выхода на проезжую часть заблокировали движение транспортных средств по улице Светланская от Океанского проспекта до Светланского переулка, по улице Алеутская от улицы 1-я Морская до улицы Семеновская, по улице Семеновская от улицы Алеутская до улицы Ладо, по Океанскому проспекту от улицы Светланская до улицы Семеновская в городе Владивостоке Приморского края, относящимся к объектам транспортной инфраструктуры города Владивостока Приморского края, и воспрепятствовали движению транспортных средств на улично-дорожной сети города Владивостока Приморского края, создав опасность функционирования транспорта, а также угрозу жизни, здоровью и безопасности граждан, выразившуюся в том числе в невозможности своевременного оказания медицинской помощи жителям города Владивостока, осуществившим вызов скорой медицинской помощи в указанный период времени.

Принимая во внимание, что имеются достаточные данные, указывающие на признаки

Vladivostok, the decision to initiate a criminal case under the first part of Article 267 of the Criminal Code is dated January 23, 2021

In Moscow, Gleb Maryasov, a member of the Libertarian Party of Russia and a «Civil Society» activist, was accused of planning, together with «unidentified persons», on January 23 to direct people to the roadway, which led to a threat to their safety. According to the investigation, Maryasov's actions obstructed the movement of three buses, which allegedly could lead to " their damage, especially in the case of ensuing road accidents, that could cause harm to health or death of individuals.» The damage to Mosgortrans was estimated at 1.2 million rubles. Maryasov himself stressed that the parts of the accusation contradict each other: if the buses have stopped moving, they would not have been able to harm people.

Subsequently, the Moscow Metro was added to the list of victims. It estimated the damage from the additional load on the weekend at 1.5 million rubles. The victims are also two bus drivers who, according to the indictment, "really feared for their lives and health, for the lives of passengers <...>, as well as for the property — the bus." Maryasov was detained on the way out of the special detention center after a 30-day administrative arrest on charges of organizing an uncoordinated action (Article 20.2 of the Administrative

Code) for the same events. He noted that according to the Constitution, he cannot be convicted again. As a preventive measure, Maryasova was **banned** from undertaking certain actions: he was forbidden to leave the apartment from 20:00 to 08:00, to use the Internet without the permission of the investigator, to attend rallies and mass events.

Угроза жизни и безопасности граждан, либо угроза уничтожения или повреждения имущества физических и юридических лиц (в том числе ГУП «Московский метрополитен»), выразалась в значительном увеличении пассажиропотока на станциях московского метрополитена в центре города Москвы, что создавало угрозу причинения физического вреда пассажирам, переполненность вестибюлей и платформ, и как следствие, это возможное причинение ущерба имуществу московского метрополитена, а также и здоровью пассажиров и граждан. Участники несогласованной акции осуществляли создание толпы, имея свои цели на блокирование, что приводило к высокой концентрации людей на объектах метрополитена, созданию препятствий к нормальному движению поездов (в частности длительное время посадки и высадки пассажиров в подвижные составы московского метрополитена). Также в результате проходящей несанкционированной массовой акции в поддержку «Алексея Навального», ГУП «Московский метрополитен» был нанесен ущерб (убытки) в размере 1 541 148 рублей. Указанная сумма складывается из оплаты труда

Testimony of the representative of the Moscow Metro Molochnikov D. A. in the indictment in the case of Gleb Maryasov dated April 30, 2021

- The initiation of the case in Chelyabinsk became known the next day after the action on January 31. **According to** Interfax, the protesters took to the roadway of Engels Street, because they could not turn onto Lenin Avenue — the way was blocked by a police cordon. After a traffic jam formed on Engels Street, the police missed the march to Lenin Avenue, Interfax reported.
- On January 23, in St. Petersburg, **according to** the Ministry of Internal Affairs, «a group of people, being on Malaya Morskaya Street<...>, entered the roadway, thereby obstructing the movement of vehicles and forcing drivers to apply emergency braking». «Moving in the crowd, the participants of the protest created a real threat to the life, health, and safety of others». **According to** the «Apology of Protest» due to the «particular complexity» and «a large volume of investigative actions and operational search measures», the investigation was entrusted to an investigative group of 58 people. In the early morning of January 31, before the next major protest, police **began conducting** searches in relation to the case at 33 addresses at the same time. From February to April, the activists and **municipal deputies** in Saint Petersburg were searched. Until mid-April, there was no information about the suspects in this case. On the day of the rally on April 21, a participant of the January rally, Anton Dementiev, **said** that he was searched and then detained and taken for questioning as the accused. The next day, information **appeared** about another possible person involved in the case.

- On the day of the action on January 31 in Samara, more than 20 people were brought to the police departments as witnesses for the case related to the road blocking during the January 23 protests, **according to** the online publication «Znak». In March, the staff of Navalny's local headquarters told the media about **a series of searches and summons for questioning**. An anonymous source of the Interfax news agency reported that the case was opened under Article 267 of the Criminal Code «due to an attempt to block traffic in the city during an uncoordinated action». As of May 18, there was no information about the suspects or the accused in this case.

On the day of the action on April 21, the portal «Bryansk Today», with reference to the regional department of the Ministry of Internal Affairs, **reported** about the case initiated on the eve of the protests on January 23. «The protesters gave in to the appeals of provocateurs and swarmed to the roadway.» «As a result, the movement was blocked on several central streets, " the note says. The publication «Bryansk. NEWS» **described** these events as following: «On January 23, the first rally of supporters of the opposition leader Alexei Navalny took place this year.» It was announced on Lenin Square, but the police closed off the square. The participants of the rally walk, which was not coordinated with the authorities, decided to move to the Mound of Immortality. People tried to walk on the sidewalks, but on the causeway, between the office of Rostelecom and the House of Life, in the middle of a sidewalk a tractor was «forgotten». «Citizens had no choice but to jump down on the roadway to get around it».



A tractor in the way of protesters on January 23 in Bryansk / Source: "Bryansk. NEWS"

## **AMENDMENTS TO ARTICLE 267 OF THE CRIMINAL CODE IN DECEMBER 2020**

In November-December 2020, **several restraining bills** were introduced to the State Duma, which included, among other things, new restrictions on public events.

Among them, there were the amendments to Article 267 of the Criminal Code, which were **submitted** to the State Duma by Dmitry Vyatkin on December 16. The amendments were adopted swiftly, despite **criticism** from the Supreme Court. On December 22, the State Duma adopted the bill in the first reading: it was supported by 296 Members of Duma and 85 voted against it. On the next day, December 23, the law was adopted immediately in the second and in the final, third, reading. It was approved by the Federation Council on December 25 and signed by the President

on December 30. The Article came into effect in a new version as of January 10, 2021.

This is how it became possible to punish for deliberate «obstruction of the movement of vehicles and pedestrians» if this action created a threat to life, health, and safety of citizens, or property damage. The new version of the Article included ambiguous wording, and its effect was significantly expanded:

- interference with the movement of pedestrians was included in the distraction of transport routes;
- it became possible to hold one accountable in the absence of real substantive consequences;
- there was an indefinite concept of «threat».

The first part of Article 267 of the Criminal Code now provides for punishment in the form of a fine from 100 to 300 thousand rubles, up to 240 hours of compulsory work, and up to a year of hard labor or imprisonment. The second and third parts of the article in the new version envisage a more severe punishment for the same actions that resulted in negligent infliction of minor or moderate harm to health.

## **LIABILITY FOR INTERFERENCE WITH TRANSPORT AT ACTIONS BEYOND ARTICLE 267 OF THE CRIMINAL CODE**

Protests are often associated with the blocking of traffic. Road blockage can be a deliberate action to draw attention to a problem or to prevent certain actions, such as preventing the passage of garbage trucks or construction machinery. But it is often caused by the actions of the authorities that block or restrict the movement of protesters. And obstruction

of the pedestrian traffic is also possible if protest participants are staying on the sidewalks.

Even before the amendment of Article 267 of the Criminal Code, alleged interference with the pedestrian and transport traffic during protests became a reason to prosecute their participants. At least **four articles** of the Code of Administrative Offences were used for this purpose:

- on violation of traffic rules that interfered with the transport traffic (Article **12.30 of the Administrative Code**);
- on transport facilities' blockage (Article **20.18 of the Administrative Code**);
- on the simultaneous public gathering including the situations when it intervened with the pedestrian or transport movement (Article **20.2.2 of the Administrative Code**);
- on carrying out non-approved public events that block transport or pedestrian traffic (parts 3 and 6.1 of Article **20.2 of the Administrative Code**).

Articles 20.2 and 20.2.2 of the Administrative Code are the most common «protest» articles. Their use is not necessarily associated with traffic interference, the reason may be, for example, damage to the lawn, violation of sanitary rules, or the «non-approved» status of the event.

Part 6.1, **included** in Article 20.2 of the Administrative Code in 2014, is now **one of the most common charges** following the protest actions. By March 4, the websites of Russian courts published information about more than 3,200 cases under Part 6.1 of this article, which were submitted to the courts since **January 17, 2021** — since the beginning of mass demonstrations in January-February 2021. This article was also **actively applied** in 2020 to the protesters in Khabarovsk who defended the former governor Sergei Furgal. In St.

Petersburg, reports were massively drawn up on the participants of the protests of January-February 2021 using the first part of Article 20.2.2 of the Administrative Code: according to the joint press service of the courts of St. Petersburg on February 24, **more than one and a half thousand such cases were received.**

Articles 12.30 and 20.18 of the Administrative Code are less frequently used against participants of public events and, unlike the other two, do not provide for punishment in the form of administrative arrest.

- Here is a typical case of the application of Article 12.30 of the Administrative Code: in 2018, in the Amur region, a driver of a herd of cows was tried for it, who, according **to the text of the judicial decree**, «allowed one of the cows to enter the roadway with an asphalt surfacing in the presence of other paths, violating paragraph 25.6 of the Traffic Rules, resulting in the creation of an impediment to the traffic flow of a vehicle — a „TOYOTA HIACE REGIUS“».

Nevertheless, the participants of the protests have also been charged with interfering with the traffic flow of transport or pedestrians under these articles.

- Reports under Article 12.30 of the Administrative Code **were drawn up** against two participants of the May 5, 2018 protest in St. Petersburg. In 2010, after blocking the exit from the county house of the Governor of St. Petersburg, Valentina Matviyenko, the reports under this article **were drawn up** against 45 detainees. In 2016, the media **reported** on the use of this article against shareholders who blocked the road to Murino in the Leningrad region in protest against the postponement of the completion dates of the construction of a residential complex.
- In the summer of 2020, under article 20.18 of the Administrative Code, several activists who blocked a haul road in the Kemerovo region in protest against the violations during the construction and exploitation of a road running through the protective zone of a water supply well **were fined**. In 2019, amid a backdrop of the «**garbage protests**», a report under this article **was drawn up** after blocking the road for KAMAZ trucks transporting car tires to an illegal landfill site in the Ruzsky district of the Moscow region, later the court dismissed the case.

Moreover, in addition to article 267 of the Criminal Code, there are known cases of at least **two more criminal** articles being applied in similar circumstances:

- Article 267.1 of the Criminal Code on actions that threaten the safety of the exploitation of vehicles has come into force in 2017 and provides for up to two years of imprisonment;
- Article 213 of the Criminal Code on vandalism provides for a penalty of up to five years in prison for «a major disorderly conduct, expressing a clear disrespect for society». With the participation of a group of individuals or resistance to a representative of the authorities, a sentence of up to seven years in prison is possible.

Cases under these articles were initiated in the wake of the January 23, 2021 protest in Izhevsk.

- Anastasia Ponkina, **suspected** of vandalism motivated by political hostility, according to the investigators, «dragged the gathered citizens along with her to the roadway».
- The Ministry of Internal Affairs also **stated** that «the police officers revealed the fact of a mass entrance of people on the roadways of city streets, committed according to the vandalism motives. As a result of these actions, the traffic was stopped on the streets of Pushkinskaya, Sovetskaya, Kommunarov, Krasnogeroyanskaya, and the safety of people was put at risk». A case was initiated on actions that threaten the safety of the exploitation of vehicles (Article 267.1 of the Criminal Code). A few days later, the participants of the protest **were summoned** for questioning by the Investigative Committee. Information on the suspects connected to this case has not been received, as of May 18.

Apart from administrative and criminal cases, there is a risk of civil lawsuits that may be brought against the alleged organizers.

- After the spontaneous protests underlying the 2019 Moscow City Duma elections, some businesses **demanded** compensation from the alleged organizers. Thus, the court sustained the claims against the opposition and awarded damages of 1.2 million rubles and 657 thousand rubles consequently regarding the protests on July 27 and August 3 in favor of Mosgortrans — the organization pointed out that the protests led to blocking of the capital roads, public transport delays and loss of flights. Three lawsuits of 787 thousand rubles were also filed by the company «M.Taxi Communications», it complained about the losses caused by the delay in taxi traffic and an abnormal decrease in the number of orders due to the actions on July 27, August 3, and August 10. The court left these claims without consideration due to the absence of the plaintiff's representative.

## **WHY DID THEY REVISION ARTICLE 267 OF THE CRIMINAL CODE**

During **the discussion** of the bill in the State Duma, the deputies who opposed the amendments (among them — Oleg Shein, Olga Alimova, Sergey Ivanov, Igor Molyakov, Alexey Kurinny), linked them with the fight against the oppositional protests. It was suggested that the reason to introduce the amendments was the summer mass protests in Belarus and **the demonstrations in Khabarovsk** that had been going on for six months at that time.

«If this law had been implemented, say, a few months ago, how many people, in your opinion, would it be right to initiate criminal proceedings against in the hero-city of Khabarovsk?» — Oleg Shein, a deputy from the Fair Russia faction, asked the authors of the bill.

- Indeed, the claims of creating obstacles to the functioning of transport and pedestrian infrastructure **formed** the basis of many police reports drawn up against detainees in the Khabarovsk territory during the protests in support of the arrested governor Sergei Furgal. The acting governor of the region, Mikhail Degtyarev, at the end of September 2020, demanded «to restore order in Khabarovsk and other localities». «For two months, we have been observing impediments to the participants of the road traffic, road closures, and driver signals <...>. And where there are horns, overlaps, the next stage will be other traffic violations, » — **said** Degtyarev.

The chairman of the State Duma, Vyacheslav Volodin of United Russia, answered Oleg Shein's question: «Colleagues, first of all, this question is wrongly addressed, and secondly — it is beside the point».

Moreover, the deputies have repeatedly requested that the bill's author provide facts confirming the need to introduce the amendments. However, neither during the discussion nor in the explanatory note to the bill, in which the initiators of the amendments usually explain their necessity, Vyatkin could not present these facts. In its **statement regarding the proposed bill**, the Russian Supreme Court stressed out that the initiator had not provided any reasoned justification, nor «any objective data indicating the insufficiency of the existing legal regulation», which is per se a violation of the regulations.

«This bill does not address any hot-button issues as they say when something has happened and we make the draft law, » **commented** the author of the draft Dmitry Vyatkin during the consideration of the amendments in the first reading. «This bill has been developed for quite a long time. Everything is being introduced at once just because the autumn session ends, there are no other reasons for that. We need to do that so that we can continue working on other draft laws. There

is no hidden agenda, believe me. It is a purely legal issue. We are just filling a legal gap, nothing more.»

Even the devastating statement of the Russian Supreme Court, which noted that the «negligent infliction of minor bodily harm does not constitute a criminal offense under the effective legislation» did not prevent from adopting the law. In addition, the Russian Supreme Court recalled that earlier Article 267 of the Russian Criminal Code established criminal liability for causing moderate bodily harm by negligence. In December 2003, the respective actions were **decriminalized** within the framework of the reform on the humanization of the criminal legislation. «Currently, it is being criminalized back only because there have been Khabarovsk protests, Minsk protests, » said Sergei Ivanov, a deputy from the LDPR, at the discussion in the first reading. «These repressive laws are made solely because they are afraid that we, God forbid, will have the same situation as in Belarus.»

«It is clear that all this is aimed either at stopping of those who organize certain actions, gather together, express their opinion, or at having an additional preventive impact on them. But the laws, that you adopted earlier, actually deprived [people — *OVD-Info*] of the right to legally, publicly gather <... > and express their point of view, » concluded the deputy from the Communist Party of the Russian Federation Alexey Kurinny when considering the bill in the final reading.

## **AN ARTICLE THAT HAS NOTHING TO DO WITH THE RALLIES**

In its statement to Vyatkin's bill, the Russian Supreme Court noted that the actions on blocking transport communications indicated in the said bill should entail the administrative liability (Article 20.18 of the Administrative Code) and the need for their criminalization has not been proven.

The author of the bill, in his turn, argued that the administrative and criminal liability will be sufficiently differentiated since the presence of intent is required to initiate a prosecution under criminal law. «Naturally, violations of traffic rules, violations of the rules of construction and installation works, loading and unloading of goods, and so on, and so on, which also led, for example, to the blocking of overpasses, bridges, sidewalks and other communication routes, they will be qualified according to the relevant norms of the Code of Administrative Offenses <...> and they will not entail criminal liability, » Vyatkin said during the discussion of the amendments in the first reading. «Any person who just stood in the middle of the road, made it with intent, as a thinking being, » said Oleg Shein, a deputy from the Just Russia Party. «We even have a biological species called homo sapiens.»

The deputies that opposed the bill also noted the vagueness of the wording and expressed fears that the new edition of this article of the Russian Criminal Code could be easily applied when persecuting the participants of street actions (instead of bringing them to administrative liability).

Как в Госдуме обсуждали ужесточение ст. 267 УК о п...



Vyatkin replied: «Colleagues, for understanding, that is just for the purity of relations. In our country, violations of the procedure for holding public mass events, such as rallies, marches, demonstrations, which led to the closure of communications, roads, and so on, are qualified under clause 6 of Article 20.2. But this is a completely different matter, it is an administrative liability. If we are talking about a deliberate blocking that caused bodily harm,

it is a completely different thing. What do the rallies have to do with it?»

Although the author of the law assured that the amendments to Article 267 of the Criminal Code do not relate to public events and blocking of transport communications, the relevant administrative articles (articles 20.18, 20.2.2 of the Administrative Code and part 3 of Article 20.2) in December 2020 were adjusted with the words «if these actions do not contain a criminal offense».

A month later, the police, warning people against participating in the protest campaign, **began to remind them** of possible criminal liability under Article 267 of the Criminal Code.

Thus, the amendments to article 267 of the Criminal Code not only did not solve the previously existing issue of qualifying the same actions under different articles that significantly differ in the severity of penalties, but aggravated them: the range of articles has become wider, clear boundaries between them are still not made, and the choice of sanctions is left to the law enforcement officer.

- This is not the first time when the issue of blurred boundaries between the administrative and criminal articles has arisen. In April 2020, the issue of distinguishing between new articles on the dissemination of false information became acute: article 207.1 of the Criminal Code on the public dissemination of deliberately false information about circumstances that pose a threat to the life and safety of citizens, and parts 9-11 of Article 13.15 of the Administrative Code on the dissemination of «deliberately false socially significant information under the guise of reliable reports». Three weeks after the new articles came into force, the Supreme Court **published** a «review of court practice» on how these articles shall apply, to correct the shortcomings of the law. As criteria for distinguishing between administrative and criminal responsibility, it suggested taking into account «the goals and motives of the actions performed (for example, to provoke panic among the people, violation of law and order)», the conditions in which they are carried out, and whether they pose a «real public danger».

## **WHAT IS A «THREAT»**

The ground for imposing the criminal liability under the first part of Article 267 of the Criminal Code in the new version, is that the action «does pose a threat to the life, health, and safety of citizens or the threat of destruction or damage to the property of individuals and (or) legal entities». The blurry concept of «threat» has replaced the much more measurable concept of «causing serious harm to human health or causing major damage». From what moment the threat comes, what it is expressed in, how serious and inescapable it shall be — the legislator does not specify. This confusion is compounded by the fact that the legislation distinguishes between the concepts of a «threat to life and health» and a «real threat to life and health», and also mentions «direct threat».

In court documents, the concept of «threat to life and health» is often used for dangerous structures and **devices, collapsing buildings, poorly functioning elevators, violation of fire safety rules**, and since 2020 — also in **numerous cases** for violation of high-alert regime (under Article 20.6.1 of the Administrative Code)

In the context of public events, there are no clear criteria by which we could distinguish a situation that poses a threat to the life and health of citizens from a situation that does not pose such a threat. This entails a lack of a clear mechanism of proof. As a result, law enforcement state authorities can abuse ambiguity, perceiving it as an opportunity to prove nothing at all.

The courts have not yet passed sentences under the first part of Article 267 of the Criminal Code in the new version, but we can turn to the practice on the article with similar constituent elements of the crime. The Constitutional Court in its **ruling** on the complaint of Ildar Dadin, who became the first person convicted under Article 212.1 of the Criminal Code on «repeated» violations of the procedure for holding an action, stated that for criminal liability to occur under this article, a person's actions must entail at least «a threat of harm to the health of citizens, property of individuals or legal entities, the environment, public order». But in subsequent cases, for example, with Konstantin Kotov or Yulia Galyamina, neither the Investigative Committee nor the court considered it necessary to prove the existence of such threat, limiting themselves only to mentioning the presence of harm or the threat of harm.

Thus, to the arsenal of law enforcement agencies, there is another article has been added that allows bringing a person to criminal liability without the need to prove the criminality of its actions.

# **INTERFERENCE WITH THE TRANSPORT INFRASTRUCTURE BY THE STATE AUTHORITIES**

The amendments did not solve the problem of the lack of responsibility for the counteractions of the authorities, which often lead to restrictions on the movement of both transport and protesting people.

During the early 2021 protests, police restricted traffic in various cities.

- On January 31, in the center of Moscow, pedestrian traffic **was restricted** and seven metro stations were closed. On February 2, traffic **was restricted** on the streets near the Moscow City Court building, where the hearing on the case of Alexei Navalny was held.
- The police in Chelyabinsk two days before the protest action held on January 31 **warned** that they will restrict «automobile and pedestrian traffic in places where unauthorized actions may be held» «in connection with the ongoing set of measures to protect order and road safety during unauthorized public events.» Local media **reported** that the police even blocked tram traffic.
- In St. Petersburg, on January 31, the police **blocked** traffic on Nevsky Prospekt and adjacent streets, closed several metro stations, and **changed** the routes of ground public transport. Traffic was also **blocked** on February 6 — the nearest day off after Navalny's trial.
- Metro stations were closed and public transport routes were changed on January 31 in Samara, Novosibirsk, Nizhny Novgorod, Kazan, and Ekaterinburg. In some cases, the authorities referred to the planned unauthorized actions, in others they explained their actions by some breakdowns, and sometimes they did not explain the reason at all. An overview of the restrictions on this day **was published** by the outlet «Mediazona». Local media also **reported on the** restriction of traffic on this day in the center of Khabarovsk.

In none of these cases did the authorities justify the need to block traffic and were not held accountable for the interference with traffic and pedestrians. Although such proposals are already being voiced:

- The deputy from the Communist Party of the Russian Federation Nikolai Kolomeitsev during a speech on May 12 in the State Duma **called** the blocking of markets near Rostov by the employees of the Ministry of Internal Affairs and Rosgvardiya a violation of Article 267 of the Criminal Code.
- After the authorities of Yekaterinburg blocked the city center on the evening of April 21, when protest actions were again **taking place across Russia**, local activist Dmitry Kalinin **appealed** to the regional prosecutor's office with a demand to open a case under part 1 of Article 267 of the Criminal Code in connection with the actions of the city administration.

## **INTERNATIONAL LAW**

«Assemblies are as legitimate uses of public space as commercial activity or the movement of vehicular and pedestrian traffic», the OSCE / ODIHR Guidelines on Freedom of Peaceful Assembly state, **citing** the position of the Special Rapporteur on Freedom of Speech of the Inter-American Commission on Human Rights and the decisions of the European Court of Human Rights.

In general, the ECHR leaves the Council of Europe states with relatively broad limits for the legal assessment of road closures by protesters:

- In 2017, in the case «Annenkov and Others v. the Russian Federation» (complaint No. 31475/10), the ECHR considered the case of residents of Voronezh. They protested against the demolition of the market and the construction of a shopping center on its territory. To prevent the demolition, people organized a permanent watch at the market, which, according to the local district court, blocked access to the market for its employees and blocked the passage to the office building. The ECHR ruling, in this case, states «Any demonstration in a public place can lead to a certain level of destabilization of everyday life, for example, to disruptions in transport. But this fact alone does not justify interference with the right to freedom of assembly, since it is important for public authorities to demonstrate a certain degree of tolerance.» This position is also confirmed in several other decisions of the European Court of Human Rights.

- *Barraco v. France* (complaint No. 31684/05) dealt with the case of truck driver Alain Barraco. On November 25, 2002, he was one of seventeen drivers who participated in a speed reduction rally organized by the United Trade Union Committee. Since 6 a.m., they have been driving at about 10 kilometers per hour along the highway, forming a moving barricade on several road lanes. Later that day, Alain Barraco and two other drivers were arrested for stopping trucks and completely blocking traffic on the highway. The National Court sentenced each of them to three months' probation and a fine of 1,500 euros. The ECHR recognized that any demonstration in a public place can cause certain inconveniences, and considered that in such circumstances a certain tolerance is required from the authorities. However, the Court considered that in this case, the complete blocking of traffic on the motorway went beyond the inconvenience inherent in any demonstration, and noted that the demonstrators were detained only after a series of warnings. According to the Court, Alain Barraco was able to exercise his right to freedom of peaceful assembly for several hours, and the authorities showed the necessary tolerance. Accordingly, there was no violation of article 11, and Barraco's sentence was not disproportionate.
- Disputes about the fair balance between the right to freedom of assembly and freedom of movement have been the subject of consideration by the ECHR on several other complaints.

In the case of *Kudrevicius and Others v. Lithuania*» (Complaint no. 37553/05) The European Court of Justice dealt with a case in which protesting farmers blocked the highway between Vilnius and Klaipeda in Lithuania for two days. As a result, they were brought to criminal responsibility with a penalty of 60 days' arrest. The case has led to a legal dispute within the European Court of Human Rights itself. Initially, the ECHR concluded that the application of criminal

sanctions requires special justification, since in the case of a peaceful rally, in principle, the use of criminal punishment should not be allowed. The Chamber of the European Court of Justice concluded that the Lithuanian authorities applied disproportionate punishment to the protesters and violated Article 11 of the Convention. Later, the Grand Chamber of the ECHR reviewed this decision. The new ruling said that the protesters' deliberate and serious violation of the legitimate activities of others could be considered «reprehensible.» According to the case-law of the ECHR, «reprehensible actions» on the part of specific demonstrators deprive them of the protection provided for in article 11 of the European Convention. Therefore, the appointment of even a criminal penalty is justified. At the same time, the ECHR clarified that «reprehensible actions» do not deprive the entire assembly of legitimacy, if it is peaceful.

On August 15, 2009, Zoltan Kertveieshshi intended to hold a protest in front of the Budapest prison. He sent a notice to the Budapest Police Department in advance and was refused. According to the decision of the police, the demonstration would significantly hinder the passage of transport to shops on nearby streets, to local landfills, and to the prison itself. In the case of Kertvejeschi v. Hungary (complaint no. 7871/10), the ECHR found a violation of article 11 and concluded that «the authorities prohibited the demonstration on the basis of traffic safety considerations only. In doing so, they failed to achieve a fair balance between the rights to freedom of assembly and freedom of movement» (Kertvejessi v. Hungary, complaint no.7871/10, 4 April 2016, para. 29).

The United Nations takes a more unambiguous position.

- Published in 2020, the General Comment on the Right to Peaceful Assembly to the United Nations International Covenant on Civil and Political Rights **states** that assemblies «by their scale or nature <...> can impede, for example, the movement of vehicles or pedestrians or economic activities... These consequences, whether intentional or unintentional, are not grounds for depriving such assemblies of the protection they have.» (paragraph 7). «Simply pushing away or interfering with a car or pedestrian traffic or daily activities is not violence.» (paragraph 15). «An assembly that remains peaceful but creates significant interference, such as long-term blockages, can generally only be dispersed if such interference is serious and prolonged.» (paragraph 85).
- In a 2019 report, the UN Special Rapporteur on Freedom of Peaceful Assembly and Association emphasized that «road blocking should never be criminalized» as «road blockages and prolonged sit-ins in public spaces have become central to social movements and peaceful protests around the world. The roadway, in particular, is a common place for peaceful protests.» This position was also expressed in a report that criticized bills that criminalized blocking roads and obstructing traffic in several US states. The Special Rapporteur called this approach «disproportionate criminalization» and strongly criticized it as potentially deterring peaceful demonstrations.
- In a 2016 report, the Special Rapporteur noted that «assemblies are as legitimate uses of public places as trade or the movement of vehicles and pedestrians. Any use of public space requires some degree of coordination to protect different interests, but there are many legitimate uses for public space. Some disruptions to the normal course of life caused by meetings have to be accepted. Including traffic violations, irritation of businessmen, and even harm to commercial activities, so that this right does not lose its essence.»

Thus, the criminalization of short-term and insignificant obstacles to the movement of pedestrians and vehicles and the practice of applying Article 267 of the Criminal Code is incompatible with the requirements of international law.

## **REQUIRED CHANGES**

To improve the situation, it is necessary to change the laws: to specify the composition of several administrative and criminal articles, to exclude vague concepts and criminal liability for actions without real negative consequences, to eliminate discriminatory attitudes towards participants in public events.

As an urgent measure, even before the legislation changes, it is necessary to adjust the law enforcement practice and restore the rights of the victims.

In addition, the authorities must publicly report if they block sidewalks and roads during public events, as well as justify the measures taken. The actions of the authorities and their influence on the course of actions should be assessed by the court when considering specific cases on the participants and organizers of assemblies.

## **Reform of legislation**

- 1** It is necessary to exclude the possibility of prosecution from Article 267 of the Criminal Code without real negative consequences. That is, to exclude the possibility of prosecution for blocking sidewalks and roads, which only entailed a «threat» to the life, health, safety of citizens, as well as a «threat» of destruction or damage to property.
- 2** To distinguish between the appropriate administrative and criminal liability, taking into account the harm and damage caused.
- 3** To remove unnecessary administrative and criminal structures that duplicate each other: from Articles 267 of the Criminal Code, 20.2 and 20.2.2 of the Administrative Code. It is necessary to exclude responsibility for interfering with the movement of pedestrians and transport, which are already provided for by other articles of the Administrative Code (12.30, 20.18 Administrative Code).
- 4** To record that a public event is a mitigating circumstance and, based on this, adjust the penalties established by law.
- 5** To draw the attention of the responsible committee of the State Duma (Committee on State Construction and Legislation) to the violation of the State Duma regulations, recorded when submitting the bill «On Amending Article 267 of the Criminal Code of the Russian Federation». This violation, namely, the absence of a reasoned justification in the explanatory note, required under paragraph «a» of part 1 of article 105 of the Rules of Procedure of the State Duma, was also indicated in the response of the Supreme Court. To request the committee to take measures to prevent similar violations in the future.

## **Explanations of the Supreme Court**

- 1** To define the border of criminal and administrative liability under Articles 267, 267.1, 213 of the Criminal Code and 12.30, 20.18, 20.2, 20.2.2 of the Administrative Code in cases of traffic interference. At the same time, it is important to exclude the possibility of unpredictable and discriminatory law enforcement, when for the same actions, participants in protest actions may be subjected to a greater punishment than other participants in street and road traffic.
- 2** To define the specific criteria for a «threat» to life, health, safety, or property damage and how to prove it.
- 3** Explain the need and method of proving the role of a specific person in restricting movement committed by a group of persons, including in parts 3 and 6.1 of Article 20.2 of the Administrative Code, to comply with the principle of commensurability of personal actions and subsequent punishment.
- 4** To inform the courts that public events should not be considered aggravating circumstances. But instead, the balance of rights and interests should be taken into account, including the importance of the right to freedom of peaceful assembly and expression.
- 5** When assessing the actions of protesters, the courts should be advised to take into account the measures taken by the authorities, including cases of blocking traffic during public events by police officers.

## **Adjusting the practice of the Ministry of Internal Affairs**

- 1** To stop the discriminatory application of Article 267 of the Criminal Code to participants in public events.
- 2** To inform on cases of traffic restrictions by the police on the actions of 23 and 31 January 2021 and the grounds for these actions.

## **Restoring the victims' rights**

- 1** To terminate criminal cases under Article 267 of the Criminal Code against participants in public events, as well as compensate for damage caused by criminal prosecution.