ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

ART, RELIGION AND HATRED

Religious Intolerance in Russia

and its Effects on Art

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1. INTRODUCTION

Russia is currently experiencing an insurgence of extreme nationalism mixed with strong religious traits, characterised by the increasing influence of the Russian Orthodox Church (ROC), considered by many to be an integral part of Russian identity. The assertiveness of the Orthodox Church and a widespread climate of intolerance have led to two problematic developments. Firstly, the Russian authorities have at times abused, and selectively implemented, legal provisions on incitement to religious hatred; and secondly, extremist groups have reacted with violence to ideas expressed by those espousing non-Orthodox views, whilst the authorities have failed to protect victims of such violence effectively.

This report looks at the specific problems that have arisen in the area of artistic expression, and how the latter has been curtailed through the abuse of legal provisions and the State's failure to protect victims of attacks and intimidation. It focuses, in particular, on the cases of Oleg Yanushevski and of the Sakharov Museum.

1.1. Russia's Religious Composition

There is no reliable data on the religious composition of the Russian Federation (Russia). Estimates indicate that, out of a population of 144 million people, slightly more than half consider themselves Russian Orthodox Christians, although the vast majority does not actively participate in religious life. Some 14 to 20 million Muslims constitute the second largest group of believers. Members of various Protestant sects form the third largest group. Probably somewhat less than one million Jews remain in Russia, and there are even fewer numbers of Buddhists, Roman Catholics and other groups, including various pagans believing in pantheistic and nature-based religions.[1] Data from the Russian Ministry of Justice reveals that, on 1 January 2004, there were 21,664 registered religious organisations in Russia — an increase of approximately 5,000 since 1997. The main organisations are ROC (with 11,525 groups), Muslims (3,537) and Pentecostal (1,467), followed by lower numbers of Baptists, Jews, Buddhists, Roman Catholics, Seventh Day Adventist and Jehovah's Witnesses' groups, as well as others.[2] In many cases religious groups were unable to register or re-register and therefore operate without official registration.

A relatively small number of Russians deeply identify with religious faith. In a 2000 opinion poll, 64 per cent of respondents stated that they considered themselves members of a religious faith but only 19 per cent of them regularly visited places of worship.[3] Despite this, many believe that some form of adherence to the ROC is a crucial component of being Russian.[4]

[1] US Department of State, *Russia. International Religious Freedom Report 2004*, 15 September 2004, http://www.state.gov/g/drl/rls/irf/2004/35480.htm.
[2] *Ibid.*
[3] US Department of State, *Russia. International Religious Freedom Report 2003*, 18 December 2003, http://www.state.gov/g/drl/rls/irf/2003/24430.htm.
[4] *Ibid.*

2. INTERNATIONAL STANDARDS AND RUSSIAN LAW ON FREEDOM OF EXPRESSION AND THE INCITEMENT OF RELIGIOUS HATRED

2.1. International Standards

The right to freedom of expression is well established in international law. The two main UN human rights instruments — the Universal Declaration on Human Rights[5] and the International Covenant on Civil and Political Rights (ICCPR)[6] — each protect the right to freedom of expression at Article 19, while the main European human rights treaty — the Convention for the Protection of Human Rights and Fundamental Freedoms[7] (commonly known as the European Convention on Human Rights, or ECHR) — protects freedom of expression at Article 10. Russia has ratified both the ICCPR and the ECHR.[8]

International law on freedom of expression requires that States refrain from interfering with this right unless the interference is necessary in a democratic society to protect a legitimate interest, and is provided by law.[9] International law also requires States to take positive measures to create a climate in which human rights are genuinely protected and freedom of expression can thrive, including the dissemination of different points of view.[10]

At the same time, international law requires States to prohibit the advocacy of any national, racial or religious hatred. Article 20(2) of the ICCPR states:

> Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

However, the States' discretion to outlaw advocacy of hatred under Article 20(2) ICCPR is circumscribed by the requirements of Article 19(3) ICCPR, in particular the requirement that restrictions imposed on freedom of expression be "necessary in a democratic society". In practice, this means that freedom of expression can be limited in the name of prohibiting the incitement of hatred only if there is a close nexus between the expression in question and the risk of harm, and when the risk is imminent.[11] Intent must be shown[12] and the anticipated danger should not be remote or conjectural, while the expression concerned should be intrinsically dangerous to the public interest. Furthermore, the State should ensure that the restriction imposed is the least restrictive means possible for protecting the interest threatened.

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[5] UN General Assembly Resolution 217A(III), adopted 10 December 1948.
[6] UN General Assembly Resolution 2200A(XXI), adopted 16 December 1966, in force 23 March 1976.
[7] Adopted 4 November 1950, in force 3 September 1953.
[8] On 16 October 1973 and 5 May 1998, respectively.
[9] See Article 10(2), ECHR, and Article 19(3), ICCPR.
[10] See, for example, the comments of the European Court of Human Rights in *Informationsverein Lentia v. Austria*, 24 November 1993, Application Nos. 13914/88, 15041/89, 15717/89, 15779/89, 17207/90; and the UN Human Rights Committee's recent General Comment 31, on "The nature of the general legal obligation imposed on States parties" (2004).
[11] E.g. *Surek v. Turkey (No. 1)*, 8 July 1999, Application No. 26682/95 (European Court of Human Rights), para. 62; *Gunduz v. Turkey*, 4 December 2003, Application no. 35071/97 (European Court of Human Rights), para. 51. See also the Human Rights Committee's decision in *Ross v. Canada*, Communication No. 736/1997, para. 11.7.
[12] E.g. *Gunduz v. Turkey*, note 11, para. 22.

Several recommendations and declarations by international bodies confirm these standards. In 2001, the United Nations Special Rapporteur on Freedom of Expression, the Representative on Freedom of the Media of the Organisation for Security and Cooperation in Europe and the Special Rapporteur on Freedom of Expression of the Organisation of American States adopted a Joint Statement setting out a number of conditions which hate speech laws should respect.[13] The Statement provides, *inter alia*:

> – no one should be penalised for the dissemination of hate speech unless it has been shown that they did so with the intention of inciting discrimination, hostility or violence
>
> …
>
> – any imposition of sanctions by courts should be in strict conformity with the principle of proportionality.

In 1997, the Committee of Ministers of the Council of Europe adopted a Recommendation on "Hate Speech", laying down a number of basic principles to be followed by Council of Europe Member States.[14] While affirming the duty of States to take steps to prohibit the advocacy of hatred, including on grounds of religion, the Recommendation warns that "hate speech laws" should not be used to suppress freedom of expression. Principle 3 states that:

> … [t]he governments of the member states should ensure that in the legal framework referred to in Principle 2 interferences with freedom of expression are narrowly circumscribed and applied in a lawful and non-arbitrary manner on the basis of objective criteria.

The Explanatory Memorandum further warns of the need for "legal protection against arbitrary interferences [with freedom of expression] and adequate safeguards against abuse".[15]

In summary, international law calls for a careful balance to be struck between the protection of the right to freedom of expression, on the one hand, and the requirement to prohibit advocacy for hatred on grounds of religion, on the other.

2.2. Russian Law and Practice

In today's Russia, freedom of expression is not respected at the level required by international law. Amongst a range of violations of the right to freedom of expression, over the last year ARTICLE 19 has witnessed the use of legislation prohibiting the incitement of religious hatred to suppress critical and dissenting voices in the arts. At face value, Russian law is in line with international requirements. The Russian Constitution protects the right to freedom of expression (Article 29), freedom of religion (Article 28) and the principle of non-discrimination (Article 19), while Article 13 prohibits the incitement of "religious strife". Article 282 of the Criminal Code criminalises the incitement of hatred on grounds of religion:

> (1) Actions aimed at inciting national, racial or religious hostility, humiliation of national dignity and propaganda of superiority or inferiority of citizens on the basis of their religious, national or racial affiliation, when carried out in public or though the media:

[13] Joint Statement on Racism and the Media, 1 March 2001. Although concerned with the incitement of hatred on racial grounds, the same principles apply to the incitement of hatred on grounds of religion.
[14] Recommendation R(97)20, 30 October 1997.
[15] *Ibid.*, Explanatory Memorandum.

> Are punished through a penalty amounting to 500 to 800 minimum wage units or the convicted offender's salary or other income for a period of five to eight months, or restriction of freedom for a period of up to three years, or deprivation of liberty for a period of two to four years.
>
> (2) The same acts carried out:
>
> a) through violent means or threat of its use;
> b) through the use of one's official position;
> c) by an organised group;
>
> Are punished by deprivation of liberty for a period of three to five years.[16]

2.3. Analysis of Article 282's Application

In practice, however, Article 282 of the Criminal Code has been applied in a discriminatory fashion and has been used to curtail freedom of expression. It is rarely applied in attacks against religious minorities by ultra-nationalist, neo-Nazi and anti-Semitic groups, instances where it could justifiably be used to safeguard democracy. Instead, ARTICLE 19 has witnessed its use against artists, including the Sakharov Museum.[17] This suggests selective implementation of the legislation, contrary to the requirement set out in Council of Europe Recommendation 97(20) that prosecutions be based on "objective criteria".

ARTICLE 19 is also concerned that, in the cases described in this report,[18] there has been little or no connection between the impugned expression and the occurrence of any religious hostility. While the Russian courts are reported to require intent for a criminal prosecution for the incitement of religious hatred to be successful, in practice there is no evidence of any finding of intent in the cases described. Although some artistic expression has been offensive, it has never incited religious strife — whether intended or unintended. It is worth recalling that the right to freedom of expression "is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'."[19] The prosecutions described in this statement have clearly failed to take on board this crucial tenet of human rights law.

2.4. Law on Freedom of Conscience and Religious Associations

Religious diversity is also restricted through the 1997 Law on Freedom of Conscience and Religious Association (the Law on Religion), which indirectly disfavours the lesser established religions. It does not provide for a State religion, but in its Preamble it identifies four 'traditional religions' (Russian Orthodoxy, Judaism, Islam and Buddhism) and

[16] The penalties were made more severe through a vote in the Duma of April 2003. Some believe that this was a direct reaction to the Sakharov Museum case. See Section 3.2 below.
[17] Akinsha, K, "Orthodox Bulldozer", *ARTNews*, May 2004, p.140.
[18] See Section 3.
[19] *Handyside v. United Kingdom*, 7 December 1976, Application No. 5493/72 (European Court of Human Rights), para 49.

acknowledges the "special contribution of Orthodoxy to the history of Russia and to the establishment and development of Russia's spirituality and culture".[20]

Although the Constitution states that all religions are equal, the identification of 'traditional religions' effectively penalises religions that are comparatively new to Russia. Many politicians have also sought to establish closer links with the 'traditional religions', particularly the Moscow Patriarchate, while many public officials tend to equate Russian Orthodoxy with the Russian nation.[21]

The Law on Religion provides for a process of registration that is complex, lengthy and costly. It differentiates between religious 'groups' and 'organisations', the latter being a juridical person with the advantages this status brings. Registration of an 'organisation' is possible only if it has been a 'group' for at least 15 years and counts at least 10 members. In a Constitutional Court ruling of 1999 it was held that the 15 years rule was not to apply to religions that had registered prior to the promulgation of the Law on Religion. This, once again, discriminated against religions new to Russia. At the same time, the Law on Religions envisaged re-registration of groups registered under the more lenient 1990 law by the end of 2000. This was not indicated as a legal requirement, but its compliance provided benefits such as the right to own property, to open a bank account, tax exemptions and the right to establish a place of worship.

Legal obstacles prevented a number of organisations from registering. Through an amendment in 1999, groups that failed to re-register became subject to possible liquidation or deprivation of their judicial status. By May 2002, approximately 980 such organisations had been liquidated.[22] The authorities stated that many such groups were no longer operating, although this is contested by civil society and religious minorities. Reportedly the General Prosecutor encouraged revision of the registration of some new religions groups at the local level.[23]

Legal obstacles to registration caused the banning by a Moscow district court of Jehovah's Witnesses in Moscow in June 2004, on the grounds it constituted a threat to society.[24] Moreover, in 2003, the Law on Religion was used to withdraw the registration of a Buddhist group and the Church of the Last Covenant, as well as to deny the registration of a number of religious communities.[25]

3. ATTACKS ON ARTWORK

3.1. Oleg Yanushevski

In his 'cosmopolitan icons'[26], Oleg Yanushevski uses the traditional art form of the icon to frame images of consumer goods, film stars and politicians, in order to represent the

[20] The law also prohibits incitement to religious hatred.
[21] US Department of State, *Russia. International Religious Freedom Report 2004*, see note 1.
[22] *Ibid.*
[23] *Ibid.*

[24] U.S. Helsinki Commission, "U.S. Helsinki Commission Probes Plight of Religious Groups in Russia", 19 April 2005, http://usinfo.state.gov/xarchives/display.html?p=washfile-english&y=2005&m=April&x=20050419173016lCJsamohT0.1726801&t=dhr/hr-latest.html.

[25] *Ibid.*
[26] Also referred to as 'contemporary icons'.

absence of spiritual, non-material or meaningful values in contemporary society. While his work has received critical acclaim both in his home country and abroad, it has been labelled as 'blasphemous' by Orthodox religious groups within Russia. Yanushevski and his wife suffered fierce harassment, their son was attacked, and the artist's works were vandalised.

The first attack on Yanushevski's work occurred in 2001, when one of his icons was vandalised at the Central Exhibition Hall in Saint Petersburg. Two years later, the possibility of a similar attack was given as one of the reasons for the last-minute cancellation of an exhibition of Yanushevski's work that was to have taken place at the Saint Petersburg Museum of Religion. According to some reports, the Ministry of Culture placed pressure on the museum to cancel the exhibition.[27]

At around 1pm on 21 February 2004, some of Yanushevski's 'cosmopolitan icons' exhibited at the SPAS gallery in Saint Petersburg were vandalised by a group of masked men. Onlookers at the gallery apparently did not intervene, and even gave encouragement. Yanushevski, who should have been at the gallery at the time, was not present as the talk he had been due to give was postponed from 1 to 2pm. Had this not been the case, Yanushevski fears that he would also have been attacked. The vandals were suspected to belong to ultra-Orthodox/nationalist groups.[28] Following this episode, Yanushevski received numerous threats and was the target of an aggressive media campaign, which started in June 2004 with a programme on the State television channel Kultura. The media campaign intensified following an interview that he gave to Radio Liberty,[29] with some journalists claiming that he had staged the attack himself in order to gain publicity.[30] Websites of various right-wing Orthodox organisations including *Pamyat* (Memory) and *Russkoye Natsionalnoe Edinstvo* (RNE, Russian National Unity) also ran editorials praising the perpetrators of the attack.[31]

Despite Yanushevski's request, the police refused to investigate the attack, and instead purportedly pressured the artist into retracting his complaint. Following his attempts to press for an investigation, the city authorities cut short the subsidised lease on his studio.[32] Indeed, Yanushevski reported that he had no option but to pay a bribe to the authorities to retain his studio. The intimidation against him made him fearful to apply again to the police to request protection and an investigation into harassment experienced by himself and his family.

Yanushevski's son Ivan was beaten by three youths at the university where he then studied. They attacked him having first ascertained that he was indeed Yanushevski's son. Furthermore, Yanushevski's health began to deteriorate in February 2004. In addition to the general anxiety caused by the harassment against him and the negative effects on his work and private life, he suffered cardiac spasms. His wife was also subjected to harassment and intimidation at her workplace.

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[27] See Section 5.

[28] In the gallery's guest book, they wrote: "This challenges the entire Orthodox Church and its centuries of culture." Brown, F, "Watch Out, Art!", *Newsweek*, 17 May 2004, p. 38.

[29] Yanushevski, O, Witness Statement of 2 December 2004

[30] Belomlinskaya, Y, 'Pro besstyzhego Yemelyu' ('About a shameless Yemelia'), *Petersburg na Nevskom,* April 2004.

[31] "Otchestvo, 'Pamyat' i Ty" ("The Fatherland, 'Memory' and You"); Russian National Unity website, 5 March 2004.

[32] The studio was burned down after Yanushevski left Russia. There appears to be an ongoing campaign by the Saint Petersburg City authorities to force artists out of subsidised studios, by requesting that they either buy their studios or pay for rent for the next 5 years in advance (which is beyond the means of most artists)..It may, therefore, be very difficult to prove that pressure from the authorities to vacate the studio was a direct result of the attack on the gallery and of Yanushevski's attempts to press for an investigation. (See Nikolai Donskov, "The War of the Easels", *Novaya Gazeta,* 28-30 June 2004; www.IT.Petersburg, 25 June 2004.)

Unable to exhibit his work, and fearful that his family would suffer further attacks, Oleg Yanushevski, his wife and son left to claim asylum in the United Kingdom in November 2004. Asylum status was granted in October of the following year on human rights grounds.

3.2. Misuse of Incitement to Religious Hatred Legislation: the Sakharov Exhibition and Others

Yanushevski's case is, unfortunately, not an isolated one. In recent cases, Article 282 of the Criminal Code has been used to punish artists whose work has been deemed 'blasphemous', effectively transforming the article into a tool of censorship and a means of intimidating artists into avoiding potentially controversial topics in their work. The most prominent of these cases is that involving the prosecution of the organisers of the *Caution, Religion!* exhibition at the **Sakharov Museum** in Moscow in March 2005.

The Sakharov Museum is Russia's only human rights museum, and has been active in criticising the authorities, including their conduct of the Chechen conflict. The exhibition *Caution! Religion* aimed to explore religion's interconnection with politics, commercialism and popular culture in today's society. As in Yanushevski's case, religious themes, as well as iconography, were used to convey these messages. One of the most controversial pieces of art at the exhibition showed Jesus' face on a red Coca Cola logo and next to the words: "This is my blood". The title of the exhibition, *Caution, Religion!* sought to show the "dual nature of its theme: as both a call to a careful, delicate and respectful attitude towards religion, beliefs and believers, and also a warning sign, when it comes to religious fundamentalism and the union of religion and state obscurantism."[33] Yet the exhibition was interpreted in a thoroughly different light: criminal charges for incitement to religious and ethnic hatred were brought against the director of the museum (Yuri Samodurov), the curator of the exhibition (Ludmila Vasilovskaya) and an artist/organiser (Anna Mikhalchuk). The charges were brought after an attack of vandalism very similar to that carried out on Yanushevski's exhibition at the SPAS gallery, and following the interrogation of the organisers and artists. They were a response to strong pressure on the Prosecution by the ROC to instigate criminal proceedings against the organisers.[34] At the same time, in the Duma, MPs vociferously denounced the artists of *Caution! Religion* as blasphemous, whilst applauding the attackers.[35] Another curator, Arutuyn Zulumyan, of Armenian citizenship, and his wife, also an artist, were investigated but fled Moscow before charges could be brought against them.[36] Their whereabouts are unknown.

The investigator sought the expertise of historians at the State Centre of Contemporary Art, who did not find blasphemous elements in the impugned artwork. As a result of this, a complaint was filed against the historians for providing false expertise.[37] The investigator then gathered a second group of experts, including a psychologist and a sociologist, who instead expressed contempt for the form of art exhibited in the Sakharov

[33] Quoted in Gif.Ru, "Sakharov Center Director Yuri Samodurov Sentencing Imminent: Hate Crime Targets Charged with 'Incitement' ", 24 March 2005.
[34] Human Rights Watch, "Russia: Art Conviction Undermines Free Expression", 28 March 2005, http://hrw.org/english/docs/2005/03/28/russia10375.htm. See also Amnesty International, Urgent Action "Russian Federation: Possible Prisoners of Conscience/Legal concern", 23 March 2005, http://web.amnesty.org/library/Index/ENGEUR460072005?open&of=ENG-RUS.
[35] Akinsha, K, see note 17.
[36] Private communication with the Andrei Sakharov Foundation.
[37] The complaint was filed by a member of the Public Committee 'For the Moral Revival of the Motherland'. See below.

Museum.[38] This evidence, comprising approximately 100 pages of expertise, was used at the trial.

While Mikhailchuk was acquitted of criminal charges,[39] on 28 March 2005 Samodurov and Vasilovskaya were both convicted of incitement to religious and ethnic hatred, through actions "carried out in public and with the use of their official positions" (paragraph 2 of Article 282), which add aggravating circumstances to the crime under Russian law. They were fined 100,000 roubles each, a considerable sum in Russia. In the judgement, the court particularly referred to the fact that young people might be negatively affected by the exhibition, pointing to their vulnerability and impressionability. The judgement also stated that the exhibition had "attacked the main values of Russian history and culture" and that it "has a deliberately shocking, provocative nature, since it consciously compares what is sacred and revered with what is ordinary and vulgar".[40] Samodurov and Vasilovskaya appealed, yet on 5 July 2005 the Moscow city appeal court upheld the decision of the lower court. Samodurov's lawyer stated that the case would be taken to the European Court of Human Rights.[41]

The people responsible for the attack on the exhibition were hailed by church officials as "heroes and martyrs",[42] powerful church leader Father Tikhon Shevkunov (reportedly President Vladimir Putin's spiritual adviser) stating that "these artists are rotten, disease-carrying bacteria, and society is using antigens to fight them off."[43] They were also brought in as witnesses for the prosecution during the trial. Ironically, incitement to religious hatred legislation was therefore used to victimise the targets of hate crime, rather than the perpetrators. ROC's influence was also allegedly behind the failure of the Prosecution to bring charges against the assailants, who were members of the congregation of Saint Nikolaj in Pyzhi. Its archpriest, Aleksandr Shargunov, had urged that Russia's last tsar and his family be canonised and, in 1997, established the Public Committee 'For the Moral Revival of the Fatherland'. In addition to calling for the vandalising of 'immoral' billboards, the Committee has complained about an advertisement for Red Devil Energy Drink as, according to Shargunov, it promotes Satanism.[44]

Of the events following the Sakharov Museum's exhibition, Elena Bonner, wife of the late dissident Andrei Sakharov, stated that "the events around the exhibition discredit the Russian Orthodox Church, just as the *fatwa* condemning Salman Rushdie to death discredited Islam".[45]

Other artists and curators have faced attacks on their right to freedom of expression. These have included **Marat Guelman**, whose *Russia-2* exhibition at the Moscow Biennale earlier this year was also attacked by members of one Orthodox group, who called for charges of incitement to religious hatred to be brought against Guelman.[46] Another controversial artist who addresses religious themes in his work is **Avdei Ter-Oganian**. In 1999, he became the first artist to be threatened with prosecution under the law against

[38] Akinsha, K, see note 17.
[39] The Court stated that there was not sufficient evidence to convict her.
[40] Judgement, 28 March 2005, Moscow.
[41] Butorina, E, "Manifestation of Atheism Recognised by Court as Criminal Offence, *Vremia Novostei,* 6 July 2005.
[42] Akinsha, K, see note 17.
[43] Brown, F, see note 28.
[44] *Ibid.*
[45] Quoted in Akinsha, K, *Ibid.*
[46] *Financial Times*, "The rebirth of discontent", 8 February 2005. Guelman was apparently told that in selecting works for the exhibition, he should avoid anything that dealt with Chechnya, Putin or the Orthodox Church.

incitement to religious hatred, and death threats were made against him.[47] Forced to flee abroad, he obtained asylum in the Czech Republic in 2002.[48] An exhibition was held in his absence at the Guelman Gallery, and, expecting violence, the gallery owner asked the local police to guard it. From this came a complaint by a member of the public to the police for failing to stop a 'hooligan action', resulting in charges against the police for ignoring the exhibition organisers' violation of the law.[49] In addition, Saint Petersburg artist **Kirill Miller** and Pskov-based artist **Igor Bystrov** both sustained physical attacks, thought to have been prompted by their outspoken political views,[50] and **Oleg Mavromatti** was forced to seek asylum in Bulgaria.[51]

In a related case, **Nikolai Girenko**, one of Russia's foremost experts on hate crimes and neo-Nazi and ultra-nationalist groups, was murdered in his home in Saint Petersburg on 19 June 2004. Girenko had served as expert witness in a number of cases of incitement to religious and ethnic hatred, including the Sakharov case.[52] He also headed the Minority Rights Commission at the Saint Petersburg Scientific Union and had compiled studies of neo-Nazi and skinhead groups. Many believe the murder was connected to Girenko's campaign to end racism.[53]

Given these precedents, and following a threatening letter from a group of Orthodox believers, in early October 2005 the director of Moscow's Tretyakov gallery deemed wise to remove an icon of the Virgin Mary created from black caviar.[54] The Tretyakov gallery is one of Russia's leading and most influential art galleries.

4. A CLIMATE OF INTOLERANCE

The cases described in this report have to be considered in the context of a widespread climate of intolerance, particularly towards forms of expression — including religious ones — that deviate from the norm. This situation is compounded by the virtual absence of a free media. The media scene is dominated by two nationwide State-controlled television channels (the main source of information for the majority of the public), which primarily represent views reflecting the position of the establishment. There have been no concrete moves towards the creation of a genuinely independent public service broadcaster. Since 2001, the number of media outlets able to provide fair and balanced reporting has declined and there are numerous reports of pressure and intimidation against journalists who do not toe the State line.[55] The absence of dissenting voices in the media has contributed to a widespread climate of intolerance in Russia, which has had an adverse effect on the free flow of information as well as on individuals who choose to espouse unorthodox or radical views.

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[47] Akinsha, K, see note 17; Kovalev, A, "Avdey Ter-Organyan – Artist and Public Enemy", *Flash Art,* Summer 2003.
[48] Akinsha, K, *Ibid*.
[49] *Ibid*
[50] Charap, S, "Assault on Artist Called 'Political' ", *Saint Petersburg Times,* 6 July 2001; *Regnum News,* 25 August 2004.
[51] Kovalev, A, see note 47.
[52] Gif.Ru, "Sakharov Center Director Yuri Samadurov Sentencing Imminent: Hate Crime Targets Charged with 'Incitement' ", 24 March 2005, www.gif.ru.
[53] Amnesty International, *Annual Report 2005*, *Russian Federation*, http://web.amnesty.org/report2005/rus-summary-eng.
[54] Osborn, A, "Caviar Icon is not to Everyone's Taste", *The Independent*, 8 October 2005.
[55] See, for example, OSCE/ODIHR's *Final report on the elections to the State Duma of the Russian Federation, 7 December 2003*, 27 January 2004, http://www.osce.org/documents/odihr/2004/01/1947_en.pdf.

In the absence of a free media, the authorities are able to promulgate ideas of a homogeneous Russian society, which, amongst other things, justifies a strong centralised power and acts as a factor of cohesiveness for the Russian majority. Hence, nationalistic movements have become progressively more extreme, a phenomenon that has been coupled with the steady decline of liberal parties/movements such as Yabloko.[56]

At the same time, there is evidence that the ROC is increasingly assuming the role of ultimate moral arbitrator. As Nikolai Khramov of the Russian Radical Party stated, ROC seems to be "… assum[ing] the position once held by the ideology department of the [former] Central Committee [of the Communist Party.]".[57] The ROC has, for example, advocated the banning of minority faiths and sought to suppress art that does not portray religion in a positive manner.

Yet intolerance is not only limited to the ROC. In April 2004, in (predominantly Muslim) Dagestan, the local authorities, following pressure by the local imams, cancelled a concert by singer Boris Moiseyev, whilst another concert was cancelled in Siberia. This was due to the singer's homosexuality.[58] In the political sphere, Aleksandr Chuev of the Rodina Party attempted to have a law adopted that would criminalise defamation and the dishonouring of traditional religions.[59] Nationalistic parties such as Rodina have apparently gained greater support by embracing and promulgating extreme racial and religious views.[60]

There is discrimination against and distrust of Muslims, who have often been labelled in the media as 'Wahhabi', a term that has come to be equated with 'terrorist', and which has led to an official ban on Wahhabism in Dagestan.[61] This clampdown has extended to the 18th century Muslim publication *The Book of Monotheism*, which was banned in April 2004 by court order, for allegedly promoting fundamentalist Wahhabism.[62]

There is evidence that the ROC is receiving support from the large neo-Fascistic pro-Kremlin youth organisation Moving Together.[63] Moving Together was responsible for the burning of Vladimir Sorokin's novel *Blue Lard* in the centre of Moscow, on the grounds that it was pornographic. The group has also orchestrated attacks against the Church of Scientology and Jehovah's Witnesses.[64]

A rising number of Russian websites carry messages of ethnic, racial and religious hatred. For example, the website of the political party *Pamyat* has urged Orthodox Christians to protect Jesus Christ from 'Yid-degenerates', clearly referring to Jews in a derogatory manner.[65] Moreover, some minor newspapers have carried anti-Semitic, anti-Muslim and xenophobic messages.

On the whole, attacks on members of ethnic minorities, including those by skinhead gangs, are not promptly or thoroughly investigated, or even classified as racially motivated.[66] Racially and ethnically-motivated human rights abuses include arbitrary

[56] The 'Yabloko' Party strives for the establishment of a democratic regime with rule of law and an active civil society. In the Parliamentary elections of 1993, the year it was founded, Yabloko received 7.86 per cent of votes. It then progressively declined until, in the December 2003 elections, it gained only 4.3 per cent of votes, thereby failing to pass the 5 per cent threshold to have representatives in the State Duma.
[57] Branston, J, "Russia: Sakharov Museum Case Focuses Attention on Freedom of Speech", Radio Free Europe/Radio Liberty, 29 March 2005.
[58] *Ibid*, pp. 38-39.
[59] Brown, F, see note 28.
[60] US Department of State, see note 1.
[61] *Ibid.*
[62] Brown, F, See note 28.
[63] *Ibid.*
[64] *Ibid.*
[65] Akinsha, K, see note 17.
[66] Amnesty International, *Documenty, Discrimination on grounds of race in the Russian Federation*, March

detention and ill-treatment; denial of citizenship on grounds of race; and racist attacks on refugees and asylum-seekers. Many attacks are not reported to the police as victims fear further abuses from law-enforcement officials themselves, leading to a general climate of impunity.[67]

There have been, however, some positive developments. The Human Rights Ombudsman, although a weak institution, has a division for complaints over abuses of religious freedom. In addition, the authorities have at times reprimanded local officials for racial discrimination. Yet in many other cases such actions appear to have been encouraged or tolerated by the authorities.

4.1. Anti-Semitism

Anti-Semitism, which is historically endemic in Russia, seems to have recently intensified. Judaism has also become the assumed antithesis of nationhood, so that in many of the cases described above the exponents of radical art have been labelled as 'Jews'. During the trial for the Sakharov case, for example, anti-Semitic slogans abounded, including expressions such as "let's hang the Jews" and "it's time to start the new holocaust".[68] This is despite the fact that only a small minority of those involved in the exhibition were Jewish. Similarly, Yanushevski has been labelled a Jew. His identification with Judaism — despite the fact that the artist is not Jewish by ethnicity[69] or religion — is facilitated by the fact that his surname sounds Jewish, which makes him an even easier target of anti-Semitic hatred.

Attacks against Jews have involved direct incitement of hatred against them, anti-Jewish demonstrations, anti-Semitic graffiti, and the defacement of Jewish graves with fascist signs and slogans.

Only in some cases were those responsible for anti-Semitic attacks prosecuted. For example, on 15 September 2004, the Prosecutor of Kaliningrad region started a criminal case on the incitement to racial hatred for the distribution of leaflets under the title of 'Caution! Zionism!'. The leaflets stated that they had been printed by order of the Chairman of the Kaliningrad autonomous region.[70] Furthermore, the court of the central district of Novosibirsk in December 2004 sentenced the editor-in-chief of the local newspaper *Russian Siberia* to two and a half years' imprisonment for incitement of national hatred. Articles in the newspaper contained expressions lowering the dignity of the Jewish people, as well as calls for violent action. The editor-in-chief was found guilty of the crime for a second time.[71]

2003, http://www.amnesty.org/russia/minorities.html.

[67] Amnesty International, *Annual Report 2003. Russian Federation.*

[68] Zinik, Z, *Index on Censorship*, "Censorship and Self-alienation in Russia", 4 April 2005, http://www.indexonline.org/en/news/articles/2005/2/russia-religious-hate-law-silences-artists.shtml.

[69] In Russia, Jews are considered to be an ethnic group.

[70] Information Agency 'Rosbalt', "In Kaliningrad proceedings are initiated on incitement of national hatred", 15 September 2004.

[71] The first time he had benefited from an amnesty. Federal Agencies for the Print and Mass Communications, "Sentencing on a case of incitement of national hatred in the media", 20 December 2004.

5. THE STATE AND RELIGION

Oleg Yanushevski's exhibition in the Saint Petersburg Museum of Religion was reportedly cancelled with the involvement of the Ministry of Culture.[72] If this is true, it signals the increasing influence of the ROC over the authorities in Russia, which is a supposedly secular State.[73] However, of greater concern is the failure of the State to investigate the attack on Yanushevski's exhibition that took place in February 2004, and threats against him made by various extremist organisations. Yanushevski was also reportedly intimidated and forced to withdraw his appeal to re-open the investigation into his case.

In relation to the above-mentioned exhibition by Ter-Oganian, in February 2003 the State Duma adopted a decree stating that the purpose of the exhibition was to incite religious hatred and offend the ROC and its followers. The degree further stated that the offence warranted action by the prosecution. Only two of the 267 MPs present voted against the measure, one of whom was Sergei Yushenkov of the Liberal Russia party, who warned against the formation of a "totalitarian State led by the Orthodox Church".[74]

Commentators have stated that the authorities are creating in Russia "an art world [that is] a superficial imitation of a Western model … without giving real freedom to curators and artists".[75] The author referred specifically to the Moscow Biennale of January 2005, for which, in his opinion, all innovative and daring ideas were dismissed as too 'intellectual and complex'. The Biennale was then reduced to an insipid media event that cost $2 million, which corresponded to approximately the entire budget set aside for cultural activities for 2005. This meant that the Biennale made impossible the implementation of any other project on research, publications and alternative exhibitions. Similar decisions are perhaps behind the fact that the curriculum of art faculties has been the same for the past 15 years, and that an extremely small number of contemporary art books are published in Russia, effectively paralysing the development of artistic expression.[76]

The relationship between State and religion (particularly the ROC) is becoming stronger. President Putin himself has established openly close relations with the ROC and its leaders.[77] Reportedly some (non transparent) agreements were established between the ROC and some ministries for religious education and spiritual counselling.[78] Meanwhile, the ROC's representatives routinely participate in political events, including election campaigns. The 1992 Law 'On Education', guaranteeing a secular education, and the Law 'On the Status of Military Men', prohibiting religious proselytising in the Russian army, are frequently violated.[79]

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[72] The museum directors revealed to Yanushevski that pressure to cancel the exhibition had also come from the Ministry of Culture, who were reluctant to antagonise the Orthodox Church, which had become increasingly critical of galleries and museums showing what it classed as 'anti-religious' work. Oleg Yanushevski, witness statement of 2 December 2004; Gillian McIver 'Case overview'.
[73] Russia is a secular State pursuant to Article 14 of the Constitution.
[74] Akinsha, K, see note 17. Yushenkov was murdered in Moscow shortly afterwards, although ARTICLE 19 has no evidence demonstrating the link between the murder and his position vis-à-vis the ROC.
[75] Misiano, V, "Imitation Democracies Produce Imitation Art", 1 July 2005.
[76] *Ibid.*
[77] See for example, Gillis, C, "The story of the Russian Orthodox Church and its New Convert, President Putin", EIPS, http://www.ianpaisley.org/article.asp?ArtKey=putin, 2 March 2003.
[78] US Department of State, see note 1.
[79] ACCORD/UNHCR, *Country Report. Russian Federation*. 8th European Country of Origin Information Seminar, Vienna, 28-29 June 2002.

Several MPs elected in the December 2003 parliamentary elections strongly support the ROC, particularly those from the Rodina and People's Party.[80] A parliamentary group 'In Support of Traditional Spiritual and Ethical Values of Russia' was set up in 2004. Its leader, Oleg Yefremov, called for the banning of all but the four 'traditional religions' of Russia.[81] Other MPs have advocated the creation of a formal 'special status' for these 'traditional religions'.

An intense campaign spearheaded by the ROC-backed Public Committee 'For the Moral Revival of the Fatherland mentioned above, which enjoys the support of many members of the Russian Duma, is pressing for even more severe measures to eradicate forms of dissent.

There has also been interference in the right to free expression through peaceful demonstrations. In June 2004, a law was passed placing severe restrictions on demonstrations, meaning that it is now illegal to hold demonstrations in certain public places, such as near presidential residences and court buildings. Some demonstrations were dispersed with violence by law-enforcement officials.[82]

6. CONCLUSIONS

There are now very few alternative voices in Russia. The State has clearly disregarded many of its responsibilities under international law, including compliance with Article 10 of the ECHR. Opportunities to disseminate dissenting points of view through the media are shrinking.

Why have forms of religious extremism and intolerance emerged? Commentators have highlighted a range of reasons, three of which seem particularly relevant. First, following the initial phase of newly-found freedom marked by the collapse of the Soviet Union, Russians woke up to the tough reality of political instability and a harsh transition to a market economy. The resulting insecurities create a climate in which near-fascist self-aggrandisement can thrive.[83] Second, under Communism people were not exposed to messages that shocked and disturbed, but only to those that were carefully filtered through the Soviet system, for the most part puritanical.[84] As a result, any 'radical' form of expression tends to deeply offend the population. Third, information that shocks, for instance violence and pornography in the media, can be perceived as threatening and symbolising the depravity of a society without rules. Russia's fear of social disorder and chaos (partially due to the country's vastness, complicated history, and heterogeneous social fabric, bringing a continuous risk of internal tensions) in many people's mind legitimises the presence of a strong centralised (and quintessentially Russian) power.[85] Uncertainty about the future leads people to embrace the orthodoxy of the past, albeit in a new form.

The situation is aggravated by dire financial conditions and difficulties in day-to-day life, which appear to be contributing to political apathy in the country. Serious human rights abuses (from the gross violations in Chechnya to racial and religious discrimination) do not lead to protests, with the exception of a small minority of committed civil society

[80] The Rodina party also supports the right-wing Orthodox organisation RNE.
[81] US Department of State, see note 1.
[82] Amnesty International, *Annual Report 2005*, *Russian Federation*, see note 53.
[83] See for example, Zinik, Z, Index on Censorship, see note 68.
[84] Brown, F, p.39, see note 28.
[85] Zinik, Z, see note 68.

representatives. Hence extreme nationalistic and religious sentiments can continue to spread largely unhindered.

ARTICLE 19, the Global Campaign for Free Expression, champions freedom of expression and the free flow of information as fundamental human rights that underpin all others. We take our name from Article 19 of the Universal Declaration of Human Rights. It states:

> *Everyone has the right to freedom of opinion and expression; the right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers.*

ARTICLE 19 believes that freedom of expression and of information is not a luxury but a basic human right. It is central to achieving individual freedoms and developing democracy. When people are denied freedom of speech or access to information, they are denied the right to make choices about their lives.

Freedom of expression and access to information are essential for the achievement of equality for women and minorities, in responding to the challenge presented by HIV and AIDS, for the promotion of equitable development, for the fight against corruption and for the protection of children's rights.

ARTICLE 19 works to make freedom of expression a reality all over the world. We undertake authoritative and cutting edge research and monitoring, advocacy, standard-setting and legal analysis, capacity-building and global partnerships. We engage international, regional and State institutions, as well as the private sector, in critical dialogue, and hold them accountable for the implementation of international standards.

ARTICLE 19 works worldwide – in partnership with 52 local organisations in more than thirty countries across Europe, Africa, Asia and Latin America - to lead institutional, cultural and legal change. We carry out advocacy and training programmes in partnership with local NGOs to enable individuals to exercise their social and economic rights. We translate all our publications into local languages whenever possible.

In the absence of a free press, international pressure is crucial to shed light on all forms of human rights violations. ARTICLE 19 monitors threats to freedom of expression in different regions of the world and develops long-term strategies to combat them.

Founded in 1986, ARTICLE 19 was the brainchild of Roderick MacArthur, a US philanthropist and journalist. Its International Board consists of eminent journalists, academics, lawyers and campaigners from all regions of the world. ARTICLE 19 is a registered UK charity (UK Charity No. 327421) based in London with international staff present in Africa, Latin America and Canada. We receive our funding from donors and supporters worldwide who share a commitment to freedom of expression.

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