



**Written Comments of ARTICLE 19: Global Campaign for Free Expression
Concerning the Review of the Sixth Periodic Report**

of the RUSSIAN FEDERATION

*For the consideration at the 97th Session of the UN Human Rights Committee
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I. Introduction

1. **ARTICLE 19: Global Campaign for Free Expression respectfully submits this alternative report for the consideration of the UN Human Rights Committee (*hereinafter* “the Committee”) at its 97th session in October 2009.** The report is based on and organized according to the list of issues, prepared by the Committee’s Task Force, on the review of the implementation of the obligations of the Government of the Russian Federation (*hereinafter* “the Government”) under the International Covenant on Civil and Political Rights (*hereinafter* “the Covenant”).¹
2. ARTICLE 19 is an independent human rights organization that works around the world to protect and promote the right to freedom of expression and the right to freedom of information. It takes its name from Article 19 of the Universal Declaration of Human Rights. ARTICLE 19 monitors threats to freedom of expression in different regions of the world, as well as national and global trends and develops long-term strategies to address them and advocates for the implementation of the highest standards of freedom of expression, nationally and globally. We produce legal standards which strengthen media, public broadcasting, free expression and access to information, and promote these standards with regional and international inter-governmental organizations. We also produce legal analyses and critiques of national laws, including media laws and draft model laws to assist civil society organizations and governments in developing appropriate national standards of protection. In addition, we advocate for legal and judicial change and undertake litigation in international and domestic courts on behalf of individuals or groups whose rights have been violated. ARTICLE 19 has regional offices in Africa, Asia, Latin America and the Middle East. It has been working in the Russian Federation for over the last 10 years in close cooperation with a number of various local partners. During our engagement in the country, we have implemented projects on freedom of expression and freedom of information, with a specific focus on defamation. We also ran two major projects in the North Caucasus region of the Russian Federation, addressing issues of freedom of expression in that conflict-torn region. Jointly with our Russian partners, we published several reports including *The Cost of Reputation. Defamation Law and Practice in Russia* (November 2007) and *Covering Conflict: Reporting on Conflicts in the North Caucasus in the Russian Media* (May 2008). Currently, ARTICLE 19 is implementing a long-term project in North Caucasus aimed at furthering democratic capacity in the North Caucasus through legal protection of journalists and freedom of expression education.
3. Thus, these written comments are based on the direct experience of ARTICLE 19 and its partners in the Russian Federation in the given period.
4. In this report, ARTICLE 19 does not undertake a comprehensive analysis of the compliance of the Government with the Covenant. Given the expertise and scope of activities of ARTICLE 19 in Russia, the report is restricted to raising concerns about the failure of the Russian Government to fulfil its international obligations to protect **the right to freedom of expression**. Based on our assessment, during the period under review, freedom of expression has steadily deteriorated in the Russian Federation. Particularly alarming trends include the killings of and physical attacks against journalists and media workers, and the absence of subsequent thorough and impartial investigations into them. Public officials, including those at the highest level of the Government, refuse to view the media as an independent critic and often regard it as a subordinate body aimed at furthering political goals. Media outlets who dare to voice independent opinions are silenced. Recent years have also witnessed the suppression of opposition groups and peaceful demonstrations, the imposition of criminal sentences in freedom of expression cases; and attacks on minorities, whether religious, sexual or ethnic: thus further weakening the Russian Federation’s democratic credibility.

¹ See List of Issues to be Taken Up in Conjunction with the Consideration of the Sixth Periodic Report of the Russian Federation, 2 April 2009, CCPR/C/RUS/Q/6, Available on the Internet at <http://www2.ohchr.org/english/bodies/hrc/hrcs97.htm>

5. The report focuses on the most serious violations of the right to freedom of expression as documented by ARTICLE 19 during the reporting period, namely:
- misuse of **extremism legislation** to suppress criticism against the Russian authorities; and the misuse of extremism legislation against ethnic, religious and sexual minorities;
 - violations of the **right to freedom of expression of national, racial, religious and sexual minorities**;
 - the misuse of **incitement to religious hatred legislation** against artists and journalists;
 - the **failure to protect the life and physical integrity of journalists**;
 - the **failure to investigate cases of murders and assaults** concerning journalists;
 - the lack of **media independence**;
 - the **restrictive regulation of the profession of ‘journalism’**;
 - the state interference with the right to freedom of expression of media professionals and media outlets by **the use of defamation**; and
 - the **control of press reporting** on demonstration and emergency situations.
6. The instances described below constitute clear violations of the obligations of the Russian Government under the Covenant. As a State party to the Covenant, the Russian Federation has an obligation to create an environment that encourages pluralism and political debate and to refrain from interfering in the work of the media. It is clear that such a pluralistic, open and diverse environment does not currently exist in Russia: while the media, journalists and opposition groups are silenced, the Russian public is deprived of its right to information and debate on matters of public importance. ARTICLE 19 believes that the present session of the Committee offers an opportunity to highlight some of the most significant issues related to the right to freedom of expression in which the Government has failed to fulfil its commitments under the Covenant. Hence, we welcome the opportunity for the Committee to utilize our report in analyzing the Government’s submissions and in recommending measures required to ensure the compliance with the Covenant in the future.²

II. Question by question discussion

a) **The compliance of counter-terrorism measures with the guarantees of the Covenant**

Comments on question No. 6: information on anti-extremism legislation and on the allegation that the extremism laws are used to target organizations and individuals critical of the Government

7. The Russian Anti-Extremism Law (Federal Law No. 114-FZ of 25 July 2002, the Law on Counteracting Extremist Activities)³ and its implementation in practice are of serious concern to ARTICLE 19. Although the Law was amended in 2007⁴ as well as 2008, its definitions are more often than not unclear or vague, therefore leaving room for arbitrary decisions. Our monitoring of the application of the Law also shows that it has been used in a number of cases to unnecessarily restrict freedom of expression.

- 7.1. ARTICLE 19 is concerned about the lack of a clear definition of “extremist act” in the Anti-Extremism Law, and the wide array of offences, such as “public justification of terrorism”, “mass distribution of knowingly extremist materials”, and “provision of

²Available at <http://www2.ohchr.org/english/bodies/hrc/hrcs97.htm>

³The Anti-Extremism Law was published in *Parlamentskaya Gazeta* No. 142-143 of 30 July 2002, *Rossiiskaya Gazeta* No. 138-139 of July 30, 2002 and *Sobranie Zakonodatelstva Rossiyskoy Federatsii* No. 30 of 29 July 2002, item 3031.

⁴Amendments included replacing “justification of extremism” with “justification of terrorism”, which is narrower in scope but yet unclear; or removing other broad and vaguely defined acts, such as “debasing of national dignity” from the definition of extremism.

information services to extremists.” In July 2006, an amendment to the Anti-Extremism Law added to the categories of extremist activities ‘defamation of public officials’ (“libellous accusations of extremism against public officials”). Such provisions effectively establish self-censorship as they may hold the media back from reporting on issues of public interest out of fear of being to be labelled as engaging in “extremism.”⁵

7.2. As indicated above, the Anti-Extremism Law terms the defamation of public officials as an extremist act⁶. This provision grants public officials higher protection against criticism. The legislation can be used to interpret legitimate criticism of public officials, including media reports of corruption and maladministration, as “extremist activity” that can lead to the closure of media outlets.⁷ This regulation disregards international standards of freedom of expression, according to which restrictions on the right to free expression are only legitimate when they are absolutely “necessary in a democratic society.” Closure of media outlets for defamation of public officials is also a grossly disproportionate response.⁸ The media should be able to report on matters in the public interest including the exposure of wrongdoing by the authorities: this enhances the accountability of public officials through greater scrutiny and information on their actions. Also, public officials should tolerate a *higher degree* of criticism than ordinary citizens.⁹ Defamation laws that grant public figures special protection are “liable to hamper the press in performing its task as purveyor of information and public watchdog”.¹⁰

7.3. Furthermore, ARTICLE 19 submits that the definition of “social group” in relation to incitement of hatred, as well as the introduction in several republics of lists of banned literature and texts for extremist content has allowed for arbitrary decisions to be made by courts at all levels. For example, in September 2009, several texts published by a Tatar community centre had been banned based on linguistic, physiological as well as ‘complex, psycho-linguistic’ court expertises, while civil society organizations objected to the texts being considered extremist.”¹¹

8. According to information received by ARTICLE 19 from local sources, the Anti-Extremism Law has been used arbitrarily to suppress independent voices on a number of occasions. There are many examples of such practice, including the following;

8.1. The Law has been used to interpret legitimate political activities as “extremist”, thereby hindering opposition parties before the 2007 election to the State Duma of the Russian Federation. For example:

- On 10 September 2007, the newspaper *Saratovskiy Reporter* received a warning for distribution of ‘extremist’ material for engineering photographs of President Putin in the uniform of folklore film hero Stirlitz. As this was the newspaper’s second

⁵ Similar criticism of the Law was already expressed by the HR Committee in 2003, in the Concluding observations on Russian Federation, 06/11/2003, CCPR/CO/79/RUS; and by the OSCE Representative on the Freedom of the Media in his Regular Report to the Permanent Council of 14 November 2007 (available at http://www.osce.org/publications/rfm/2008/07/32397_1169_en.pdf).

⁶ Article 1 includes: ‘Public deliberate and untrue accusations of activities by those in government positions of the Russian Federation or subjects of the Russian Federation during the performance of their responsibilities indicated in this law and considered illegal’

⁷ See ARTICLE 19, Statement on Proposed Amendments to the Russian Extremism Law, July 2006; available at <http://www.article19.org/pdfs/press/russia-extremism-law.pdf>.

⁸ See ARTICLE 19, Defining Defamation: Principles on Freedom of Expression and Protection of Reputation, London, July 2000, Principle 4; available at <http://www.article19.org/pdfs/standards/definingdefamation.pdf>.

⁹ See *Lingens v Austria*, Judgment of 8 July 1986, Application No. 9815/82 (European Court of Human Rights), para 45.

¹⁰ *Ibid*, para. 44.

¹¹ See, report of SOVA, centre for analysis and information on nationalism and xenophobia on the assessment of several texts published by the Tatar Public Centre, September 2009, available at <http://xeno.sova-center.ru/89CCE27/89CD1C9/DB45C39>

warning, the local government agency for communication and cultural affairs Rossvyasokhrankultura submitted a court case to close the paper. While the case was eventually dismissed by the prosecutor, a defamation lawsuit against the chief editor of the newspaper by federal parliamentarian Vyacheslav Volodin resulted in a fine of 200,000 RUR, and 180 hours of community service.¹²

- On 19 November 2007, the regional newspaper *Pyshminskie Vesti* was investigated by the prosecution of Sverdlovsk for extremist activities on account of having published a joke about elections, which included a reference to the limited mental capacity of parliamentarians.¹³
- On 30 November 2007, a representative of Union of Rightist Forces in Penza was arrested and accused of distributing extremist material in one of the parties' election publication *Problema Nomer Odin*, quoting a Pensioner's open letter to President Putin. The letter refers to the state's social policy as "genocide."¹⁴ Court decisions in Perm, Omsk and Krasnoyarsk had already cleared the publication of containing extremist content.
- In just two months in 2007, Echo Moskvyy received 15 letters from prosecutors, media regulators, and the Federal Security Service, all warning the station against carrying "extremist statements", including for carrying out interviews with figures critical to the Kremlin Garry Kasparov and Eduard Limonov, leaders of the Other Russia coalition and organizers of the so-called Dissenters' Marches in several major cities.¹⁵

8.2. The Anti-Extremism Law has been used against independent or critical media on several occasions. For instance,

- On 31 August 2008, criminal charges were brought against Nadira Isayeva, editor-in-chief of the *Chernovik* newspaper, under Article 280 - "public appeals to extremist activity, using the mass media," and Article 282 - "incitement to hatred or hostility, as well as degrading human dignity" of the Russian Criminal Code. According to the Russian Prosecutor General, the newspaper was "lionizing terrorists and prompting the reader to conclude that Russia's constitutional order must be overthrown". According to Nadira Isayeva, the conclusions of the experts are ill-grounded and unfair; she stated that 'of course, our position has annoyed [law enforcement]. But it is a position, not extremism'.¹⁶
- On 15 June 2009, the local branch of the media regulation body Rossviazkomnadzor filed a suit with Dagestan's Supreme Court to close the above mentioned newspaper *Chernovik*, following warnings issued to the newspaper in July 2008 and in April 2009 for making allegedly "extremist" statements and for expressing a hostile attitude towards law enforcement authorities. The lawsuit was based on articles that criticised law enforcement actions (see above).¹⁷ Currently, the proceedings are pending. ARTICLE 19 and its local partners believe that the case of *Chernovik* is an outrageous example of the use of vague legal definitions and political machinery to silence active and independent actively critical voices in

¹² See OSCE Representative on the freedom of the media, Cases of media freedom violations during the electoral campaign to the State Duma of the Russian Federation, 2007; available at http://www.osce.org/documents/rfm/2007/12/28666_en.pdf.

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ See Nila Ognianova, *Rewriting the Law to Make Journalism a Crime*, available at <http://www.cpj.org/2008/02/attacks-on-the-press-2007-analysis-rewriting-the-l.php>

¹⁶ http://www.ifex.org/russia/2008/09/02/chernovik_editor_in_chief_charged/

¹⁷ See OSCE Representative on the freedom of the media, Regular Report to the Permanent Council of 2 July 2009, FOM.GAL/3/09/Rev.1; available at http://www.osce.org/documents/rfm/2009/04/38607_en.pdf.

Russia.

- In February 2009, the local office of the Federal Supervising Service in the Sphere of Communications, Information Technology and Mass Communications in the Penza region carried out an unscheduled inspection of the local *Ulitsa Moskovskaya* newspaper to check whether the Anti-Extremism Law was observed. The reason for the inspection was a mere publication of an article *Authorities Lead People to Abyss and Prepare Dictatorship*, that the authorities considered having extremist elements.¹⁸

9. There remain serious concerns about the Anti-Extremism Law in relation to ethnic, religious and sexual minorities; in particular:

9.1. The amendments to the Anti-Extremism Law in July 2007 broadened the definition of extremism to include “hatred or hostility towards any social group” that is punishable with imprisonment for up to five years (the Law does not provide any definition of “social group”). Allegedly, this measure was initiated with the purpose of containing ultra-nationalism. ARTICLE 19 recognizes that politically-motivated violence and incitement to religious and ethnic hatred are certainly a threat to the security of a country and its minorities. However, we note that legitimate prohibitions on incitement to violence had already been covered under provisions on extremism in the Criminal Code - Article 280 para 2 on ‘public calls to commit extremist acts’ and Article 282, prohibiting incitement to hatred on the grounds of ethnic origin, religion, or affiliation to a certain group. Therefore, the provisions in the Anti-Extremism Law are superfluous, and in violation of internationally-recognised principles relating to freedom of expression and national security. International standards limit restrictions to free expression on the grounds of national security to cases in which the expression is intended to incite violence and there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence. This principle has been endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression,¹⁹ as well as by the European Court of Human Rights²⁰ and many national courts.²¹ Criminalising incitement that *might* lead to extremist activity or to the *possibility* of violence, thus constitutes a failure by the Russian Federation to comply with its obligations under international law.

9.2. Alongside the abuses of the Anti-Extremism Law, the research of ARTICLE 19 indicates that the Law has also been used to target minorities. More information about these abuses is mentioned in the subsequent section of the report (on Advocacy of national, racial or religious hatred).

10. ARTICLE 19 submits that these instances are clear violations of Article 19 of the Covenant. The practice strongly indicates that the restrictive provisions of the Anti-Extremism Law have a “chilling effect” on independent voices and the media, which adversely restricts the free flow of information and the public’s right to know. This right is even more significant during election periods, as it is the only route to an informed electoral choice.

b) Prohibition of advocacy of national, racial or religious hatred (Articles 2, 3, 20 and 26)

¹⁸ See Galina Arapova, *Freedom of expression and media situation in Russia: current trends and problems*, presented at the Preparatory meeting with Russian NGOs within the framework of the EU-Russia Human Rights Consultations, 25-26 May 2009, Brussels.

¹⁹ See UN Doc E/CN.4/1996/39, 1996, para. 154. See UN Doc. E/CN.4/1996/53, 1996, Preamble, for a statement on this by the UN Commission on Human Rights

²⁰ See *Karatas v. Turkey*, 8 July 1999, Application No. 23168/94, paras 50-52.

²¹ See, for example, *Athukoral v. AG*, 5 May 1997, SD Nos. 1-15/97 (Supreme Court of Sri Lanka) and *Secretary of State for the Home Department v. Rehman* [2001] UKHL 47 (United Kingdom House of Lords).

Comments on question No. 9: information on reports of harassment and targeting members of specific minorities

11. ARTICLE 19 submits that there is overwhelming evidence that national, racial and religious minorities in Russian Federation suffer from widespread harassment and violence, with little protection in place by the authorities, who simultaneously restrict the freedom of expression of minorities. Anti-extremism and incitement of hatred provisions of the Russian Criminal Code seem to be particularly targeted to restrict the activities of media critical to the federal or local authorities and to silencing oppositional voices within the society in general. At the same time, cases of hate speech where obvious incitement of national and racial enmity took place are treated as 'hooliganism', showing the authorities' reluctance to bring perpetrators to justice.
- 11.1. In July 2008, three journalists of *Chernovik*, an independent newspaper in Dagestan, Timur Mustafayev, Arthur Mamayev and Biyakai Magomedov, were persecuted on charges of incitement to hatred and derogating human dignity (Article 282 Part 1 of the RF Criminal Code) which entails criminal liability in the form of imprisonment for up to 2 years. The prosecution came after the publication of an article on 4 July 2008, entitled "Terrorists Number One", which quoted a separatist leader, Rappani Khalilov. According to the investigator on the case Maksim Mirzabalayev, the article was viewed as a case of incitement to hatred "between representatives of major ethnic groups of the Russian Federation and representatives of the Caucasian nationality". In the same case "law-enforcement bodies" were viewed as a 'social group'. At least 10 more articles of this newspaper were later added to the charges of the prosecution under the same case. Moreover, a separate investigation on another 25 materials was launched and their examination is still under way. The examination is being done by the Expert Criminalist Centre of the City Police Headquarters in Krasnodar. As most of the articles under consideration criticize activities of the police, ARTICLE 19 and its local partners have serious concerns regarding the impartiality of the experts and the investigation. In all the examined materials investigators were able to spot signs of "justification of terrorism".
- 11.2. In April 2006, Memorial, a Moscow-based human rights organisation, was issued an official warning for publishing a Muslim leader's statement questioning the banning of Hizb-ut-Tahrir. Memorial was required to immediately remove the statement from its website.²²
- 11.3. There have also been examples of attacks on other forms of expression of ethnic minorities.²³ In the Mari El Republic, television programmes in the Mari language (belonging to the Finno-Ugric group) have been cut and only few books are published in the Mari language every year. In February 2005, Vladimir Kozlov, editor-in-chief of the international Finno-Ugric newspaper *Kudo+Kudo* and leader of the movement of Mari people in Russia, *Mer Kanash*, was attacked and beaten. An ethnographic film on the tradition of Mari song festivals was banned in the Mari El Republic in 2005; the film does not address any political issues and deals exclusively with cultural matters.
- 11.4. However, in comparison, the cases of attacks on minorities do not meet such scrutiny. For example, in May 2005, Mari artists and musicians were attacked by a group of Russian skinheads after a concert in Yoshkar-Ola. Reportedly, the action was reportedly arranged by a fascist group linked to the (Russian-dominated) presidential administration of the Mari El Republic. Noone was prosecuted. Similarly, on 14 February 2009, two teenagers were attacked and violently beaten in Saint Petersburg by up to 20 people. The attack was accompanied by a series of insults and racial expressions, including "Russia for Russians", "kill the blacks", "kill khachs (offensive and degrading expression

²² *Ibid.*

²³ *Ibid.* See also Information Center on Finno-Ugric Peoples, *Finno-Ugric Minority of Russia Grateful to the European Parliament for Support: The Mari nation expresses its gratitude to the European Parliament and international supporters*; available at <http://www.eki.ee/suri/press/eng/050426.html>.

used for people from Caucasus and Central Asia)". As a result of the attack one of the teenagers received multiple serious injuries and spent several months in a coma. Elena Kiryukhona, an expert of the Centre for Judicial Analysis concluded that the expression "Russia for Russians", even in that context was not aimed at incitement of national or racial hatred. She also concluded that it was not possible to unambiguously establish whether the expressions like "kill the blacks", "kill khachs" constituted hate-speech. Investigators for the prosecution initially filed the case under 'hooliganism' and did not want to include the second teenager, who received minor injuries. In September 2009, after the expert conclusions were made public, and caused uproar, a new investigation was ordered into the attack, which is currently ongoing.²⁴

11.5. There were also attacks on the freedom of expression of sexual minorities. For example, in May 2007, gay rights protesters (including the British human rights activist Peter Thatchell) were arrested at a banned protest in Moscow. They were protesting against the refusal of the Mayor of Moscow to allow a Gay Pride March. The riot police did not intervene when far-right skinheads chanted "death to homosexuals" and beat up several activists. Instead, some demonstrators were arrested and charged with disobeying the police. Since 2006, the Mayor of Moscow, Yuri Luzhkov, imposed a ban on any form of public demonstration by the LGBT community. He further called homosexuals responsible for spreading HIV and considered gay prides "satanic gatherings". Officials in different regions of Russia followed the anti-gay policy of the Moscow city and applications to host public actions by sexual minorities were successively turned down in Tambov and Ryzan. Russian Courts, up to the Supreme Court, always upheld them bans.²⁵

11.6. ARTICLE 19 is also concerned about assaults on artists and art works by extremist religious groups, the lack of protection against such acts and the arbitrary use of legislation prohibiting religious hatred against artists. Artists and curators who use religious symbols in their works have been attacked by groups of Orthodox believers in Russia. The most infamous examples concern the following:

- Oleg Yanushevski is a Russian artist who uses the traditional art form of the icon to frame images of consumer goods, film stars and politicians, in order to represent the absence of spiritual, non-material or meaningful values in contemporary society. While Yanushevski's art has received critical acclaim both in his home country and abroad, it has been labelled as 'blasphemous' by Orthodox religious groups within Russia. In February 2004, some of Yanushevski's 'cosmopolitan icons' exhibited at the SPAS gallery in Saint Petersburg were vandalised by a group of masked men. Following this episode, Yanushevski and his family received numerous threats and he was the target of an aggressive media campaign, and as a result they left Russia.²⁶
- Another artist, Marat Guelman, an owner and director of Guelman's Contemporary Art Gallery, was also attacked by members of one Orthodox group in connection with his *Russia-2* exhibition at the Moscow Biennale in 2005.²⁷
- 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 it necessary to remove an icon of the Virgin Mary created from black caviar.²⁸

²⁴ <http://www.rosbalt.ru/2009/09/09/670379.html> (in Russian)

²⁵ <http://www.gayrussia.ru/en/news/detail.php?ID=14296>

²⁶ See ARTICLE 19, Statement on Oleg Yanushevski, July 2005, <http://www.article19.org/pdfs/press/statementoyanushevsky.pdf>.

²⁷ See Nora FitzGerald, *The rebirth of discontent*, Financial Times, 8 February 2005.

²⁸ See A. Osborn, *Caviar Icon is not to Everyone's Taste*, The Independent, 8 October 2005.

11.7. The Russian authorities did not intervene in any of the aforementioned cases to protect the artists or their art works from assaults and harassment. However, the legislation criminalising religious hatred was used against the director of the Moscow Sakharov Museum Yuri Samodurov, the curator Ludmila Vasilovskaya and an artist/organiser Anna Mikhailchuk for some of the pieces of art at the exhibition *Caution! Religion*, abusing the provision as a tool of censorship. While Mikhailchuk was acquitted of criminal charges, Samodurov and Vasilovskaya were both convicted of incitement to religious and ethnic hatred and were fined 100,000 roubles each, a considerable sum in Russia.²⁹ Yuri Samodurov and Andrei Yerofeev (curator) are currently facing charges for inciting hatred or enmity and denigration of human dignity after they organized a contemporary art exhibition in Moscow in March 2007. In May 2008 the Taganskii District Prosecutor brought charges against both men, stating that the exhibition was "clearly directed towards expressing in a demonstrative and visible way a degrading and insulting attitude towards the Christian religion in general and especially towards the Orthodox faith."³⁰

c) Freedom of opinion, expression, assembly and association (Articles 18, 19, 21, 22 and 25)

Comments on question No. 26: information related to the murder of journalists, or the violent assault or threat of murder directed against them

12. ARTICLE 19 is gravely concerned about a high number of cases in which journalists working in the Russian Federation have been murdered or become victims of physical assaults for covering sensitive subjects that threatened high-ranking governmental officials, businesspeople, and criminal gang members.

12.1. Although it is difficult to establish an exact number of journalists killed in connection with their work, there is overwhelming evidence that this number is extremely high. According to the Committee to Protect Journalists (CPJ), seventeen journalists were murdered from 2000 until September 2009,³¹ whereas Reporters Without Borders estimate 21 journalists have been murdered between March 2000 and July 2007.³² Regardless of the difference, it is clear that the lives of journalists in Russia are at significant risk due to the nature of their work.

12.2. The Committee is already aware of the murders of Anna Politkovskaya and Anastasia Baburova and has questioned the Government about the investigations into their killings. ARTICLE 19 submits that the Government has to date failed to conduct effective, independent and impartial investigation to these and other killings (see below) and bring perpetrators to justice. We also note with a high concern that, in its Responses to the List of Issues outlined by the task force, the Government failed to provide any information about the current state of the above-mentioned murder investigations.³³ The failures to identify and to punish the perpetrators of these crimes create an atmosphere

²⁹ See ARTICLE 19, Art, Religion, and Hatred, Religious Intolerance in Russia and its Effect on Art, December 2005; available at <http://www.article19.org/pdfs/publications/russia-art-religion-and-hatred.pdf>

³⁰ <http://www.amnesty.org/en/news-and-updates/news/organizers-russian-art-exhibition-charged-inciting-hatred-20090427>

³¹ See Committee to Protect Journalist, *Anatomy of Injustice: The Unsolved Killings of Journalists in Russia*, 15 September 2009, available at <http://cpj.org/reports/2009/09/anatomy-injustice-russian-journalist-killings.php>.

³² See Reporters Without Borders, *After Russia awarded 2014 Winter Olympics, authorities should demonstrate a real will to solve murders of journalists*, July 10, 2007; available at <http://www.rsf.org/After-Russia-awarded-2014-Winter.html>.

³³ See Ответы на перечень вопросов, подлежащих обсуждению в связи с рассмотрением второго периодического доклада Российской Федерации, 24 August 2009, CPR/C/RUS/6; available at <http://www2.ohchr.org/english/bodies/hrc/hracs97.htm>.

of impunity and injustice which have a 'chilling effect' on the press freedom in the country.

12.3. ARTICLE 19 would also like to bring to the attention of the Committee several cases of recent killings of journalists. Apart from the murder of Anastasia Baburova in January 2009 in the first 8 months of 2009, four further journalists were murdered, as well as the attorney representing Anna Politkovskaya, Stanislav Markelov (see below).

- On 5 January 2009, **Shafiq Amrakhov**, editor of the online regional news agency *RIA 51* died in a Murmansk hospital on January 5, having slipped into a coma after at least one unidentified assailant shot him in the head several times a week earlier.³⁴
- On 29 April 2009, **Vyacheslav Yaroshenko**, editor-in-chief of Rostov-on-Don newspaper *Corruption and Crime*, was attacked and his head beaten by unidentified assailants when he arrived home from work at night. After spending several days in a coma and undergoing two major brain operations, he was eventually released from hospital. However, his health deteriorated and he died on 30 June 2009.³⁵
- On 15 July 2009, **Nataliya Estemirova**, journalist and member of human rights organization Memorial, who won numerous international awards for her work, was abducted by four unknown men in Grozny, Chechnya. Her body was found near Gazi-Yurt village, in neighboring Ingushetia the same day, she had been shot twice in the head and chest at close range and her corpse had been dumped on the main road.³⁶
- On 11 August 2009, **Abdumalik Ahmedilov**, a deputy chief editor of the *Khakikat* newspaper and chief editor of the *Sogratl* monthly, was shot in Makhachkala, Dagestan, by two unidentified assailants. Akhmedilov was known for being critical of federal forces and local law enforcement.³⁷
- On 19 January 2009, **Stanislav Markelov**, was assassinated in Moscow, after a press conference detailing the early prison release of a Russian colonel convicted of murdering a Chechen girl. Markelov was a well known human rights lawyer who represented the family of 18-year-old Kheda Kungayeva, who was murdered by Yuri Budanov - the first senior officer to be convicted of human rights abuses during the Chechen campaigns. Markelov had announced that he would be challenging Budanov's early release in January 2009. Previously, Markelov had represented Anna Politkovskaya and Mikhail Beketov, the editor of a pro-opposition newspaper who was severely beaten in November 2008 as well as many Chechen civilians who were tortured by Russian law enforcement authorities.³⁸

13. Reports suggest that the physical assaults of journalists, media workers and human rights defenders are similarly high to murder rates. Although there are no official statistics, the Glasnost Defence Fund has independently recorded the number of assaults against journalists

³⁴ <http://cpj.org/2009/01/journalist-dies-in-hospital-after-being-shot.php>

³⁵ See Other Russia, *Russian Journalist Dies After Brutal Attack*, 29 June 2009; available at <http://www.theotherrussia.org/2009/06/29/russian-journalist-dies-after-brutal-attack>.

³⁶ See, for example, ARTICLE 19, *Chechen Human Rights Advocate Murdered*, 15 July 2009; available at www.article19.org/.../russia-chechen-human-rights-advocate-murdered.pdf.

³⁷ See CPJ, *Editor shot and killed in Dagestan*, 11 August 2009; available at <http://cpj.org/2009/08/editor-shot-and-killed-in-dagestan.php>.

³⁸ See Joint Statement by ARTICLE 19, Index on Censorship and English Pen, *Russia: Double Murder Another Blow for Human Rights*; available at <http://www.article19.org/pdfs/press/russia-double-murder-another-blow-for-human-rights.pdf>.

since 1998.³⁹ They state that 463 journalists have been assaulted over the reviewed period from the beginning of 2003 until 1 September 2009. The number of journalists assaulted per year is as follows:

Year	Assaulted Journalists
2003	96
2004	73
2005	63
2007	75
2008	48
2009 (until the end of September)	39

The proportion of these assaults that are related to professional activities is unconfirmed, but ARTICLE19 believes the huge number of victims is a reason for serious concern.

13.1. Some of the worst incidents of physical assaults against journalists recently include:

- On 13 November 2008, **Mikhail Beketov**, editor of the of the independent newspaper *Khimkinskaya Pravda* in the town of Khimki, Moscow region, was found unconscious in his backyard of his house. Beketov suffered from with multiple fractures, a cracked skull, hematomas, a concussion and had to undergo a series of operations, including amputations to part of one leg and the fingers of one hand. Even when hospitalized, Beketov continued to receive anonymous death threats on his cell phone. The editor had heavily criticized the Khimki administration's decision to deforest a vast area to build a freeway connecting Moscow and St. Petersburg. The outcome of the investigation into the attack is unknown.⁴⁰
- On 5 March 2009, **Vadim Rogozhin**, managing director of the independent media holding company Vzgl'yad in Saratov, was brutally attacked and hospitalized in a serious condition, including a fractured skull and multiple head lacerations. The assault took place in front of the elevator of Rogozhin's apartment. Rogozhin was known for his critical reporting. The authorities announced that they have opened investigation into the attack. The outcome of the latter is still unknown.⁴¹

13.2. Other issues of a serious concern are numerous cases of harassment of journalists during the election campaigns for the State Duma in 2007 and in response to reporting on terrorist assaults and human made disasters. These include:

- In November 2007, the television crew of *REN TV* and the chairman of human rights organisation Memorial, Oleg Orlov were kidnapped in the Republic of Ingushetia. The journalists and human rights defender were threatened with execution and brutally beaten by armed men wearing camouflage uniforms and masks.⁴²
- In the wake of the explosion of a Siberian hydroelectric plant in August 2009, Mikhail Afanasyev, blogger and editor for the online magazine *Novy Fokus*, was severely beaten in connection with his criticism of the Russian government's response to the disaster. After the explosion, Afanasyev questioned the official government reports on the number killed in the blast, claiming that the actual number was higher. Afanasyev

³⁹ See the information on the website of the Glasnost Defence Fund at http://www.gdf.ru/attacks_on_journalists.

⁴⁰ See Committee to Protect Journalists, *Attacks on the Press 2008: Russia*; available at <http://www.cpj.org/2009/02/attacks-on-the-press-in-2008-russia.php>.

⁴¹ See Committee to Protect Journalists, *Russian media director hospitalized after brutal attack*, 10 March 2009, available on the Internet at: <http://cpj.org/2009/03/russian-media-director-hospitalized-after-brutal-a.php>

⁴² See above, *supranote* 12.

also accused the authorities of not having done enough to rescue those that might still have been alive in the rubble. As a result of the attack Afanasyev was hospitalised with a broken jaw and head injuries.⁴³

Comments on question No. 24: information on breaches of the law relating to the media – media independence⁴⁴

14. ARTICLE 19 asks the Committee to address in its review the actions of the Government to control the media and the resulting lack of media independence. This results in an environment that is not conducive to the dissemination of a plurality of opinions reflecting Russia's entire political spectrum.
15. The Government control of the media, particularly national television channels, has had severe implications for freedom of expression in the country. Russia's main newspapers and radio and television stations are owned either by the Government or companies with close ties to the Russian authorities.⁴⁵ Under Vladimir Putin's leadership, the privately owned media that started to flourish in the early 1990s, changed their owners or policies, and have increasingly supported federal government policy. The State and State-controlled media have increasingly been used to promote Government views.
16. The Russian Federation does not have public service broadcasting. While it has a wide range of broadcasting media, they do not provide a genuine diversity of opinions and views. Most of the TV and radio channels are over-commercialised and most of them operate exclusively entertainment programmes. Lawsuits against former media tycoons Boris Berezovskiy and Vladimir Gusinskiy have resulted in the Russian television channels with the largest audiences being brought under the control of the authorities (NTV, First Channel and Rossiya) or closed (TV-6). News from unofficial sources – such as Euronews, the BBC or CNN – can only be accessed by subscription to cable television; state television is free. Radio is also largely controlled by the State. Most private stations broadcast music, chat shows, business and cultural news and rarely carry programmes with serious political content. The other private independent radio stations (approximately 1,000 in Russia) devote between three and six

⁴³ See Committee to Protect Journalists, *Online journalist beaten in southern Siberia*, 9 September 2009, Available on the Internet at <http://cpj.org/2009/09/online-journalist-beaten-in-southern-siberia.php>.

⁴⁴ If not noted otherwise, this section is based on several publications of ARTICLE 19, including *Speaking Out for Free Expression: 1987-2007 and Beyond*, 2008, available at <http://www.article19.org/speaking-out/russia>; *Russia: Covering Conflict, Reporting on Conflicts in the North Caucasus in the Russian Media, 2008*; available at <http://www.article19.org/pdfs/publications/russia-conflict-report.pdf>; and *The Cost of Reputation. Defamation Law and Practice in Russia*, 2007, available at <http://www.article19.org/pdfs/publications/russia-defamation-rpt.pdf>.

⁴⁵ Radio station Ekho Moskvy, as well as the newspaper *Izvestiya* (circulation 246,000) have State-run Gazprom as a majority stakeholder newspaper *Rossiyskaya Gazeta* (circulation 374,000) is State-owned; *Argumenty i Faktiy* (2,825,480 – the highest circulation newspaper) is owned by the Russian bank Promsvyazbank; *Kommersant* (86,000) is owned by Alisher Usmanov (a steel tycoon who also runs a subsidiary of Gazprom); *Komsomolskaya Pravda* (747,956) is owned by metal tycoon Vladimir Potanin through Prof-Media); *Trud* (613,000) is owned by Promsvyazbank. A few newspapers escape government control, of which the main ones are *Novaya Gazeta* (138,000), *Moskovsky Komsomolets* (800,000) and business newspaper *Vedomosti* (42,000). Forty-nine per cent of the shares of *Novaya Gazeta*, famous for its independent reporting, were purchased by United Russia MP Aleksandr Lebedev and former Soviet President Mikhail Gorbachev (2007 data from the National Circulation Agency, Russia (Nazionalnaya Tirazhnaya Sluzhba, http://www.pressaudit.ru/j_catalog.php?vid=1). Moreover, in December 2007 Bank Rossiya's co-owner Oleg Rudnov (an ally of President Putin) bought a majority stake of *Komsomolskaya Pravda* (T Adelaja, 'Rossiya Co-Owner Acquires Tabloid KP', *Moscow Times*, 21 December 2007). In the same month, it was also reported by *Kommersant* that 51 per cent of *Izvestiya* was to be sold by Gazprom-Media to Sogaz, Bank Rossiya's insurance unit. Bank Rossiya's majority stakeholder is one of President Putin's closest allies ('Gazprom Seen Selling Izvestia to Rossiya', *The Moscow Times*, 13 December 2007).

minutes an hour to news. Foreign radio stations, like Radio Liberty/Radio Free Europe (RFE/RL), the BBC and Deutsche Welle, have extremely small audiences.⁴⁶

17. The print media enjoys relative freedom and there are a few liberal, independent newspapers, such as *Novaya Gazeta* and *Novye Izvestiya*. However, they enjoy limited circulation, especially in the provinces. Subscription and distribution of print media are under state control. In addition, in the regions, the private media is subject to strong pressure from local officials, and at regional level, print media, dependent on so called information support agreements with the authorities are unable to raise issues linked to corruption or critical of the ruling party.
18. Financial constraints and political corruption make the media dependent on sponsors and turn them into tools in the hands of politicians, oligarchs and clans. Difficult economic conditions are exacerbated by the low purchasing power of the population, who often lack the funds to buy newspapers. Against this background, the State-owned media has many advantages, including subsidies and cheap deals on rent and printing facilities, which give them an unfair advantage and make competition difficult. The very few distributors available are mostly linked to the government.
19. The Internet is the least controlled media in Russia. While there are no legal regulations on Internet activity and no registration requirements for the websites, only a minority of the population has access to the Internet, although the number is growing rapidly. According to a survey by the Public Opinion Foundation published in 2007, only 28 million people, or 25 per cent of the adult population in Russia use the Internet. Despite the relative freedom of the Internet, the Russian government often relies on private Internet companies, such as the prominent New Media Stars, which happily advance the Government's views online. For example, New Media Stars produced a patriotic movie, *War 08.08.08*, successfully distributed online and touted on many Russian blogs, which blames the war in South Ossetia solely on Georgia.⁴⁷ Although there is no reason why groups supporting the Government should not use the Internet to express their views, it is problematic that they do it covertly, and especially with government (or public) funding. While the new digital public sphere is currently more democratic, one should be aware of the fact that they are also heavily polluted by government operators.

Comments on question No. 24: information on measures under Russian law that regulate the profession of "journalist"

20. ARTICLE 19 is concerned about a range of restrictive regulations of the profession of journalists, contained in the Law of the Russian Federation On Mass Media (Law No. 2124-1 of 27 December 1991 and as of 8 December 2003, as Subsequently Amended; *hereinafter* "Mass Media Law"), in particular the use of warnings to close media outlets, accreditation rules to suppress critical voices; as well as the possibility of barring journalists from practicing journalism under the criminal law.
 - 20.1. Article 16 of the Mass Media Law on closure of media outlets is one of the most problematic articles which were introduced in 2006 following the adoption of anti-extremism legislation. A media outlet can be closed after receiving two warnings for alleged extremism issued for prospective or retrospective publications.
 - 20.2. According to Article 48 of the Mass Media Law, accreditation of journalists is carried out by state organs, organisations, and the organs of public association. A journalist may be deprived of his or her accreditation if he or she and the editorial office have released

⁴⁶ O Panfilov, 'Midwife to a Reborn Russian Nationalism', *Index on Censorship*, December 2005, <http://www.indexoncensorship.org/?p=93>.

⁴⁷ Evgeny Morozov, *Texting Toward Utopia: Does the Internet spread democracy?* In the Boston Review, March/April 2009, <http://bostonreview.net/BR34.2/morozov.php>

information which denigrates the honour and dignity of the organization that accredited the journalist and which runs counter to the reality, which fact has been confirmed by the court's decision that has entered into legal force. ARTICLE 19 finds this rule in a clear violation of freedom of expression for a number of reasons. First, it protects the "honour" and "dignity" of public and private bodies, which are not entitled to reputation under international law. Second, laws aimed at the protection of reputation cannot be justified if their purpose or effect is either to protect the reputation of the State, to prevent legitimate criticism of officials or the exposure of official wrongdoing.⁴⁸ Third, while in some cases it may be appropriate to take measures when a journalist violates the law, international human rights law requires that such measures be proportionate to the harm done and the goal pursued. Cancellation of accreditation constitutes an extreme measure, which seriously restricts the journalist's right to freedom of expression, and should only be used as a last resort. There is also strong evidence that the accreditation rules have been used to suppress critical voices in Russia. In April 2006 the Moscow City Duma seized the accreditation card of Alla Tuchkova, a reporter from the Agency of National News in connection with her critical report on voting breaches in the City Duma. The head of the City Duma's press service threatened to revoke Ms Tuchkova's accreditation, should she refuse to deny the content of her report. Ms Tuchkova did not issue the requested denial and the accreditation was indeed revoked.⁴⁹

20.3. Vague and excessive restrictions of the right to freedom of expression of journalists:

Article 51 of the Mass Media Law stipulates that the rights of journalists shall not be used with the purpose of the concealment or falsification of publicly important information, the spread of rumours under the guise of authentic reports or the collection of information in favour of an outside person or organization which is not a mass medium. It shall be forbidden to use the journalist's right to spread information with the aim of discrediting private citizens or particular categories of private citizens exclusively on account of sex, age, race, nationality, language, religion, profession, place of residences and work, or political convictions. For violation of this provision journalists bear criminal, administrative and disciplinary responsibility. ARTICLE 19 highlights that the prohibition of journalists from concealing information deemed to be of public importance implies that the media may have an obligation to publish certain stories. This is an unnecessary restriction with the freedom of expression and violates the principle of editorial independence. Further the prohibition against "discrediting" private individuals on the bases listed in the provision suffers from the problem of vagueness. It further limits the scope of the right of freedom of expression guaranteed under international law according to which the right is applicable not only to unprovocative information and ideas but also to those which "offend, shock, or disturb."⁵⁰

20.4. Barring of journalists from practice: The Russian criminal law makes it possible to strip an individual of the right to practice journalism as part of a conviction for certain crimes, such as the disclosure of state secrets or public calls for extremist activities. This harsh restriction does not meet the test for permitted restrictions on freedom of expression, as it cannot be regarded as "necessary" under Article 19 para 3 of the Covenant; and, therefore, violates international law. It is also of concern that these provisions are applied and convicted journalists are barred from practice. For example, in 2008, Viktor Shmakov, editor-in-chief of the independent newspaper *Provintsialnye Vesti*, and contributing writer Airat Dilmukhametov in the central Republic of Bashkortostan, were

⁴⁸ If not indicated otherwise, the information in this section is based on the report ARTICLE 19, Russia: Continued Violations of the Right to Free Expression, July 2007; available at www.article19.org/pdfs/publications/russia-foe-violations.pdf.

⁴⁹ See OSCE Representative on the freedom of the media, Regular Report to the Permanent Council of 24 October 2006, FOM.GAL/8/06/Rev.1

⁵⁰ See, for example, the decision of the European Court in the case of *Castells v. Spain*, Application No. 11798/85, judgment of 24 April 1992.

both barred from working as journalists for three years following conviction on extremism charges along with a suspended two-year prison term.⁵¹

Comments on question No. 24: information on breaches of the law relating to the media – defamation⁵²

21. ARTICLE 19 maintains that in recent years, defamation has become one of the most serious constraints on freedom of expression in the Russian Federation. However, we note that the situation regarding defamation is a complex. Media outlets' fear of defamation lawsuits severely restrains alternative critical voices. Self-censorship is practised at several levels: by the authors themselves, by editors, and by the owners or founders of media outlets. What little diversity exists involves media outlets publishing only coded or abstract oppositional viewpoints, for example, an article might refer to a problem but not name those who are responsible. The few newspapers that dare to criticise often take significant pre-emptive measures to protect themselves. Some have already registered under a different name, so they can continue operating under an alternative brand if they are closed. For example, *Novaya Gazeta* has registered the name *Novaya Gazeta Plus 7*.
22. Conversely, genuinely defamatory statements are frequently used in the media. There are two main reasons for this. First, journalists' low professional standards and limited legal knowledge often results in content that exposes them to the risk of being sued, even in cases when the story might have been presented without this risk. Second, low wages, particularly in the regions, lead many journalists to take fees from private sources for writing articles. In some cases, journalists are effectively paid to defame by powerful individuals with political and commercial interests. The judicial system currently in place tends not to operate speedily or fairly in these cases, or offer effective remedies that take freedom of expression concerns into account. This means defamation can be abused by powerful individuals, both to hurt their enemies and protect themselves from genuine and fair criticism.
23. Notwithstanding the complexity of the situation, ARTICLE 19 wishes to outline the following concerns in respect of defamation in Russia: the Russian legislation *per se* violates international standards of freedom of expression, and defamation laws are used in an abusive and arbitrary way by the state authorities to suppress criticism and hinder journalists' investigations in the country.

23.1. Criminal defamation: The Russian Criminal Code contains five separate articles dealing with defamation and the protection of reputation and provides for imprisonment for up to four years for this crime.⁵³ These provisions have been frequently applied in the Russian

⁵¹ See Committee to Protect Journalists, *Attacks on the Press 2008: Russia*; available at <http://www.cpj.org/2009/02/attacks-on-the-press-in-2008-russia.php>. and <http://genproc.gov.ru/news/news-8062/?print=1>

⁵² If not noted otherwise, this section is based on the publications of ARTICLE 19 on defamation in the Russian Federation, mainly the Cost of Reputation. Defamation Law and Practice in Russia, see above, *supranote* 44.

⁵³ Articles 129 and 130 deal with liability for libel and insult respectively. Libel is defined as the “deliberate dissemination of false information which denigrates somebody’s honour and dignity or harms his reputation”, while insult is defined as the “denigration of somebody’s honour and dignity expressed in an indecent way.” Article 129 states that libel disseminated by a mass medium and libel accusing a person of committing a particularly serious crime constitute more serious crimes than ordinary libel, and can result in imprisonment for up to three years. Article 297 provides for liability for defamatory statements made to participants during court proceedings, referred to as “contempt of court.” Article 298 provides for liability for libellous statements made about a judge, jury, prosecutor, investigator, police officer or court officer (with some of the harshest penalties in defamation – up to four years’ imprisonment), while Article 319 addresses the issue of liability for insulting a government official “who is performing his duties or in connection with the performance of his duties.” As noted elsewhere in the report, it is a well-established principle of international law that public officials should never receive special protection against criticism, regardless of their rank or status. A

Federation during the reviewed period and there have been cases of journalists who were criminally prosecuted and received prison sentences for defamation. For example,

- In 2005, the radio journalist Nikolai Goshko was given a five-year prison sentence after he broadcasted accusations that three local officials ordered the assassination of the director of an independent radio station in Smolensk.
- During 2005-2006, the opposition weekly *Novye Kolyosa* in Kaliningrad was severely harassed through multiple criminal cases against it (16 in 2006 alone) and other measures, apparently to suppress its criticism of powerful individuals.⁵⁴ One of the cases against the newspaper questioned the Kaliningrad Regional Court's acquittal and release of a person who had previously been sentenced to four years' imprisonment by a lower court. The case was taken by three of the Regional Court's judges, who maintained the article had effectively accused them of accepting bribes.⁵⁵ On 28 April 2009 Igor Rudnikov, the editor-in-chief of *Novye Kolyosa* was charged again, this time with violence against three police officers and slander. This shows an alarming tendency of simultaneous filing of civil and criminal lawsuits for the same incident, and multiple criminal cases against the same media outlet, with the sole aim of intimidation.⁵⁶
- In October 2006, Vladimir Rakhmankov, editor of (the now defunct) Internet magazine *Kursiv*, was found guilty of criminal insult of the President and sentenced to pay 20,250 roubles (EUR 580). His crime was to have published a satirical article on Putin's plans to raise the country's birth rate entitled *Putin as Russia's Phallic Symbol*. In addition to the insult charges, investigators raided *Kursiv's* offices, seized computers, sealed the premises and searched Rakhmankov's flat. The website was then blocked,⁵⁷ while *Kursiv's* Internet Provider discontinued its services, making reference to an unpaid debt that Romakhov denied owing.⁵⁸

Although criminal defamation is a part of the legal system in many countries, ARTICLE 19 notes that it has been increasingly viewed as an unjustifiable limitation on freedom of expression due to its chilling effect. As a result, criminal penalties are today rarely or never applied in most democracies. In recent years, a number of countries have formally decided to abolish their criminal defamation statutes.⁵⁹ We also point out that the imposition of severe criminal penalties for defamation in Russia have been subject to international criticism previously, including by the European Court of Human Rights, that found that even a one-year suspended prison sentence in a defamation case was disproportionate.⁶⁰

23.2. High number of defamation cases against journalists: The number of defamation cases filed against journalists remains very high and has also been criticized by international bodies. There is no conclusive data on the number of defamation lawsuits filed every

prosecution for criminal libel requires proof of malicious intent to denigrate the honour and dignity of the individual in question, as well as knowledge that the information disseminated was false.

⁵⁴ See ARTICLE 19, *The Cost of Reputation: Defamation Law and Practice in Russia*, November 2007, p. 30, available at <http://www.article19.org/pdfs/publications/russia-defamation-rpt.pdf>.

⁵⁵ Committee to Protect Journalists, *Russia: Opposition Weekly Forced to Close Amid Official Harassment*, 23 August 2006 <http://www.cpj.org/protests/06ltrs/europe/russia23aug06pl.html> and *Attacks on the Press in 2006: Europe and Central Asia*, <http://www.cpj.org/attacks06/europe06/rus06.html>.

⁵⁶ <http://www.mmdc.ru/analytics/single/194>

⁵⁷ Committee to Protect Journalists, *Attacks on the Press in 2006, Russia*, <http://www.cpj.org/attacks06/europe06/rus06.html>

⁵⁸ Committee to Protect Journalists, *Russia: Story Satirising Putin's Birth Goal Prompts Government Retaliation*, 24 May 2006, <http://www.ifex.org/en/content/view/full/74588>

⁵⁹ For example, countries such as Bosnia-Herzegovina (2002), Georgia (2004), Ghana (2001), Sri Lanka (2002) and the Ukraine (2001) have already decriminalised defamation and a number of other countries are considering doing so.

⁶⁰ See *Krasulya v. Russia*, Application No. 12365/03, judgement of 22 February 2007.

year. In 2006, the Glasnost Defence Foundation received communications on 299 lawsuits (defamation and other issues) filed against journalists, and 131 cases reviewed by courts. Yet data from the Russian Supreme Court from the early 2000s has referred to nearly 5,000 cases per year, whilst the Parliamentary Assembly in 2005 referred to as many as 8-10,000 cases a year. Some data is available from the courts of individual administrative units of Russia, which point to the conclusion that the real number runs into the thousands.⁶¹

23.3. High awards for damages: Freedom of the media has been eroded not only by the frequency of defamation lawsuits, but also by the financial burden imposed by damage awards. As the defamation legislation does not set limits with respect to damage awards, journalists and media are sued for high compensation. For example, in 2005, a court ordered the newspaper *Kommersant* to pay an exceptionally high compensation of 320.5 million roubles (EUR 8,900,000), although this was later reduced to a still sizable 40.5 million roubles (EUR 1,150,000).⁶² According to the Glasnost Defence Foundation, during 2008, the courts upheld civil defamation claims against journalists in 48 cases for amounts equivalent to approximately 9.5 million roubles (\$261,104); this represented a sharp increase from the 2007 figure of 3.5 million roubles (\$96,196).⁶³ In January 2007, three defamation lawsuits claiming damages totalling 1.7 million roubles (EUR 48,700) were filed against the newspaper *Omskoe Vremya*. The newspaper linked this to a desire to interfere with its work in the run-up to the campaign for elections to the Omsk's Legislative Assembly, and noted the same thing happened during the elections for governor in 2003.

23.4. Special protection for public officials against defamation: Article 319 of the Criminal Code defines a crime of insulting a representative of authorities and provides for higher responsibility for this crime than for ordinary insult. This is in violation of international standards of freedom of expression according to which public officials, compared to ordinary citizens, should endure harsher criticism. We also note that the failure to apply this standard has been the subject of numerous decisions of the European Court in which the Court decided in favor of the applicants.⁶⁴ Research by ARTICLE 19 also shows that state bodies, officials and public figures initiate a large number of lawsuits. For example, in 2007, we estimated the number of such cases to reach 60% of all defamation claims in Russia.⁶⁵ It is even more worrisome that courts routinely take the public status of the claimant into consideration to increase compensation for moral harm.⁶⁶

⁶¹ For example, between 2002 and 2004, 161 defamation cases were heard in Lipetsk *oblast* and 684 in Irkutsk *oblast*; between 2004 and 2006, 158 cases were heard in the Republic of Khakassiya and 137 in Kirov *oblast*; there are 85 such administrative units in Russia).

⁶² The article, *Banking Crisis Takes to the Street* described Alfa Bank's clients queuing up at cash machines and described the financial difficulties experienced by several banks, including Alfa Bank. The bank accused the newspaper of causing unnecessary fears in their clients that led them to withdraw funds from the bank. See Committee to Protect Journalists, *Russia: Court Reduces Financial Penalty against Independent Daily*, <http://www.cpj.org/news/2005/Russia24mar05na.html>.

⁶³ See US State Department, *2008 Human Rights Report: Russia*, 25 February 2009, available on the Internet at <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119101.htm>

⁶⁴ For example, in the case of *Chemodurov v. Russia* (Application No. 72683/01), the governor sued a journalist for characterizing his actions „abnormal”, in the case of *Krasuya v Russia* (Application No. 12365/03), another governor sued journalists for defamation following an article in which he was accused of lobbying the town's legislature to change the appointment procedure of the town mayor, and in the case of *Grinberg v Russia* (Application No. 23472/03), the governor of the Ulyanovsk Region sued a journalist for stating he was “waging war” against the independent media.

⁶⁵ See ARTICLE 19, *The Cost of Reputation: Defamation Law and Practice in Russia*, November 2007. Available on the Internet at <http://www.article19.org/pdfs/publications/russia-defamation-rpt.pdf>, page 36.

⁶⁶ *Ibid.* page 38.

- 23.5. Defamation lawsuits initiated for protection of the reputation of deceased persons: Russian legislation recognises the right of the relatives of a deceased person to bring civil defamation case to court. This goes against the international standards according to which only victims of defamation have a right to sue.⁶⁷ In particular, ARTICLE 19 submits that these provisions puts at risk historians and journalists researching and publishing materials about historical personalities and events. For example, in September 2009 the grandson of Joseph Stalin initiated a libel suit against *Novaya Gazeta*, accusing it of lying in an article which stated Stalin had killed Soviet citizens.⁶⁸

Comments on question No. 28: information on restriction on freedom of expression in the context of peaceful demonstrations, especially prior and during the Duma elections in 2007 and the presidential elections in 2008⁶⁹

24. ARTICLE 19 submits that the rights to freedom of expression and peaceful assembly are of particular significance during electoral campaigns and elections, as it enables the electorate to make informed choices when casting their votes. Moreover, expression of and free access to a wide range of opinions and ideas, including those critical of the authorities, are at the foundation of a democratic society. Journalists play a crucial role in the smooth execution of democratic elections by providing as much information as possible to the public to inform their decision-making

25. Hence, ARTICLE 19 suggests that the Committee addresses reports asserting that work of journalists in Russia has been frequently prevented and obstructed when covering political demonstrations and other public events connected to elections and other high profile governmental meetings. Apart from the use of physical force to suppress dissenting opinions voiced during and through demonstrations, the clearly biased media coverage of the elections has undermined critical and independent expression. While the opposition was denied any significant airtime by most television stations, the overwhelming majority of primetime airtime provides exclusively positive or neutral information about the current political establishment.⁷⁰

25.1. During the so-called “Marches of the Discontented”, organized by an opposition alliance prior to the election in spring 2007 (on 3 March 2007 in St. Petersburg, on 24 March in Nizhny Novgorod, and on 15 April 2007 in Moscow), a number of journalists covering the Marches were detained, and approximately 30 journalists were beaten by the police forces.⁷¹ Former chess champion and Kremlin critic Garry Kasparov, one of the event’s organisers, was among those detained. Instead of taking responsibility for the obstruction of the press freedom, the Russian authorities justified their conduct by referring to the unauthorised nature of the demonstrations.⁷²

25.2. On 24 March 2007, a demonstration by human rights activists and other civil society groups was held in Nizhny Novgorod. The authorities made several attempts to obstruct it, including trying to ban it altogether. The *Kommersant* newspaper, which had been covering plans for the demonstration, received threatening telephone calls demanding that the coverage be discontinued. Those found distributing leaflets for the

⁶⁷ See above, *supranote* 8.

⁶⁸ See Shoun Walker, *Stalin’s Grandson Fighting for the Good Name of Joseph*, Independent of 2 September 2009, available at <http://www.independent.co.uk/news/world/europe/stalins-grandson-fights-for-the-good-name-of-joseph-1780285.html>.

⁶⁹ See above, *supranote* 48.

⁷⁰ See the monitoring results of the Centre for Extremism in Extreme Situations, available at <http://www.memo98.cjes.ru/?p=3&sm2=on&reports=2007101>

⁷¹ OSCE Representative on the Freedom of Media, Special Report Handling of the media during political demonstrations, 21 June 2007, available on the Internet at http://www.osce.org/documents/rfm/2007/06/25176_en.pdf.

⁷² *Ibid*, referring to a press briefing by the Head of Public Relations of the Ministry of Internal Affairs, 21 April 2007.

demonstration were detained, in some cases for several days. Potential participants, such as students, were strongly urged not to attend. Employees reported being threatened with dismissal if they attended.

- 25.3. On 18 May 2007, the day of the EU-Russia summit in Samara, some senior members of the opposition movement Other Russia, including Garry Kasparov, as well as a number of journalists, were detained by security services at Moscow Sheremetyevo Airport. They were about to board a flight to Samara but were prevented from doing so and their passports were confiscated. It was claimed that this was done for further examination of their passports. As a result of this they missed their flight and lost their tickets. The day before, the executive director of the opposition group The United Civil Front, Denis Bilunov, was also detained while on his way to Samara. It was claimed that he was in possession of counterfeit money. He also missed his flight to Samara.
- 25.4. In June 2007, a journalist from newspaper *Kommersant* and two journalists from RENTV were detained whilst trying to interview an organiser of a march that was set to take place during the EU-Russia summit. The Samara offices of the newspaper Novaya Gazeta were also raided and computers seized before the summit, on the pretext of verifying whether their software was licensed. Several foreign journalists were also reportedly prevented from travelling to Samara.
- 25.5. On 24 November 2007, the police repressed the demonstration of opposition movement 'Other Russia' in Moscow and detained its leader Garry Kasparov for five days, for leading an unauthorised demonstration. Others who gave speeches on this occasion, including human rights activists, were reportedly also detained and beaten. On 25 November, nearly 200 people were arrested in St Petersburg for participating in demonstrations and chanting the slogan 'Russia without Putin.' Journalist Nikolay Andruschenko of *New Saint Petersburg* newspaper was reportedly detained for his article 'Why I am joining the March of Dissent?' On the same day, special security forces opened fire on unarmed demonstrators in Nazran, Ingushetia. Demonstrators were wounded and some sixty people were detained. Moreover, early on the morning of the 24th, three Moscow television journalists and Oleg Orlov, an activist from the human rights organisation 'Memorial', were abducted from a hotel in Nazran, beaten and left in a field by unidentified men wearing masks. When the four went to the police to report the attack, they were allegedly held at the station until late afternoon.
- 25.6. Similarly, during December 2008 demonstrations in Vladivostok, journalists working for at least seven Russian and foreign media outlets were detained along with hundreds of demonstrators. Several journalists suffered injuries at the hands of riot police.⁷³

⁷³ *Ibid.*

III. Recommendations

26. In light of the above, ARTICLE 19 urges the Committee to address these shortcomings with the Russian Government and recommends that the Government introduces necessary legislative changes, and adopts comprehensive policies and mechanisms to both prevent future violations and remedy past ones. In particular, we recommend the following.

27. Anti-extremism:

- Immediately amend the Law on Counteracting Extremist Activity to ensure that individuals are not found guilty of extremism unless they intend to incite terrorism and there is a likelihood that violence will occur imminently as a result of the statement. If these conditions are not met in relation to literature, it should not be subjected to bans;
- Ensure that the existing provisions on incitement to extremist activity are implemented in a fair manner, through processes independent of political considerations, and in particular ensure that when using expert opinions these are independent and without bias;
- Repeal the provisions on defamation of public officials in the Law on Counteracting Extremist Activity.

28. Harassment and targeting members of specific minorities

- Take immediate steps to ensure that nobody is detained or harassed for the peaceful expression of ideas;
- Provide protection of artists against attacks by religious groups and ensure that legislation against hatred is applied without discrimination;
- Ensure that everyone in Russia can exercise his/her right to free expression without intimidation or harassment, including the expression of religious, ethnic, and sexual identity;

29. Physical integrity of journalists

- Take effective measures to prevent the killing, disappearances and attacks against journalists and media workers. When such acts do occur, carry out thorough and impartial investigations with a view to bringing the perpetrators to justice;

30. Media regulation

- Take measures to create conditions for media pluralism in the country, including the free expression of opinions and access to information on conflict situations and emergencies, in the North Caucasus.
- Abolish the power given to government bodies to issue warnings to media outlets for 'misuse of media freedom', based on which the courts can be asked to close media outlets;
- Ensure that accreditation cannot be withdrawn for denigrating the honour and dignity of the organization that accredited journalists;
- Abolish the criminal barring of journalists from practicing their profession;

31. Defamation

- Repeal provisions on defamation in the Criminal Code;
- In the interim, the respective provisions of the Criminal Code should be interpreted to limit their chilling effect on freedom of expression. In particular, forms of punishment such as prison sentences, arrests, the suspension of rights or mandatory labour terms should not be applied; and the higher penalties in defamation cases brought by law enforcement and judicial officials, pursuant to Article 278 of the Criminal Code, should not be imposed.
- Amend the provisions on defamation in the civil law and ensure that: *at minimum*, public bodies should not be able to bring civil defamation suits; non-pecuniary remedies are prioritized over financial compensation; and the level of compensation which may be awarded for non-material harm to reputation is subject to a fixed ceiling and this maximum is applied only in the most serious cases
- Ensure that defamation law is only applied in cases involving explicit statements of fact that lower somebody's reputation; statements of opinion should not attract defamation liability.
- Take appropriate measures to train judges on international standards on defamation and make sure that judges take into account the importance of freedom of expression and the potentially chilling effect of the award.

32. Peaceful demonstrations; Elections

- Investigate cases of assault and arbitrary detention of demonstrators, and ensure that people in Russia can enjoy the right to express themselves through peaceful demonstrations;
- Ensure adequate access to the media for the opposition during election campaigns, and balanced coverage of the full spectrum of political views; and take action against those who obstruct their work.