

Kieron John BRYAN and others

– v –

Russia

JOINT SUBMISSIONS BY THE INTERVENERS

Introduction

1. The Third Party Interveners (the “Interveners”)¹ believe that this case raises issues of considerable public importance with respect to the application of the right to freedom of expression, as protected by Article 10 of the European Convention on Human Rights (the Convention), to journalists gathering news and holding law enforcement authorities to account at protests and demonstrations. The Interveners are also of the view that the case raises an important question of whether, and if so to what extent, journalists can be held responsible for the actions of those they are observing at protests and demonstrations. Finally, the Interveners believe that the case is significant because it is emblematic of the harassment of environmental activists and journalists reporting on environmental issues in Russia, including under the legislation on “hooliganism”.
2. *Summary of submissions:* By this intervention, the Interveners draw on their expertise as organizations working with journalists, media and human rights defenders, including in Russia, to make the following submissions to the Court:
 - i. The present case should be considered in the context of the overall situation in Russia and the harassment and restrictions on the media and journalists covering environmental issues;
 - ii. The safeguards provided to journalists under Article 10 of the Convention should be applied in such a way that it reflects the wide range of actors that perform a journalistic function, and should not be confined to individuals who have a contract with a media outlet and/or who are accredited as a journalist in a particular jurisdiction;
 - iii. The imposition of a penalty or sanction against a journalist for observing and collecting information at a protest or demonstration must be subject to the strictest scrutiny, and will rarely be justified under Article 10 of the Convention;
 - iv. The arrest and detention of a journalist while they are performing their “public watchdog” role will significantly deter journalists from carrying out their journalistic work and will severely interfere with the right guaranteed by Article 10 of the Convention, regardless of whether that journalist was eventually convicted.
1. **The case should be considered in the context of the situation of journalists covering environmental issues in Russia**
3. The Interveners believe that the present case is emblematic of the situation of journalists covering environmental issues in Russia. There is substantial evidence to show that environmental journalists and human rights defenders are subject to frequent physical and legal threats and harassment, including under the legislation on “hooliganism.” The situation is likely to deteriorate following the recent proposal to expand the scope of so called “Foreign Agents Laws”² to foreign media outlets.³ Since the adoption of that law, at least fourteen environmental organizations have stopped operating.⁴ International reports, including those gathered by the institutions of the Council of Europe, show that in 2017 alone at least seven journalists were severely injured or harassed by Russian authorities following their investigations into environmental issues. Including;

- On 8 March 2017, Thomas Nilsen, editor of Independent Barents Observer (Norway), who had extensively covered oil drilling in the Arctic,⁵ was refused entry to Russia despite being in possession of valid travel documents and accreditation to report in the country.⁶
 - On 28 March 2017, two Radio Free Europe/Radio Liberty journalists were physically attacked and robbed in Kropotkin (Southern Russia), where they arrived to shoot a video reportage of the “tractor March protest” organised by local farmers against the seizure of their land by big agricultural companies. One of them (Kostyanov) was left with broken ribs. They had previously received two visits at their hotel by the police for undisclosed reasons. The march did not eventually happen because the authorities had pre-emptively started to detain its participants.⁷
 - On 26 April 2017, investigative journalist Galina Sidorova⁸ and environmental blogger Ilya Varlamov⁹ were attacked by unknown assailants in two separate incidents that occurred, respectively, in Yoshkar-Ola (central Russia) and Stavropol airport (Southern Russia). Ms Sidorova was running a workshop with local reporters on behalf of the Community of Investigative Journalism, an NGO directed by environmentalist Grigory Pasko which teaches investigative techniques to reporters. Mr Pasko was himself attacked while running a workshop in 2016,¹⁰ and has a long history of suffering harassment at the hands of the Russian authorities due to his prior reporting on the dumping of nuclear waste.¹¹ Mr Varlamov reported that his attack was witnessed by police officers who failed to take any action.¹²
 - On 7 July 2017, Aleksandr Batmanov, a presenter with NGO TV, was detained by the police on allegedly “trumped up” suspicion that he committed theft against a grocery store. It is alleged that his detention is linked to an investigation into corruption surrounding the construction of the Volgograd-Arena stadium and a report on the distribution of government grants to local NGOs.¹³
 - On 21 December 2017, Vyacheslav Prudnikov, a journalist with Caucasian Knot, was shot with a weapon during a meeting with a local official. His reports prior to the incident focused on miners’ protests against alleged mismanagement by municipal authorities.¹⁴
 - On 28 December 2017, a group of four leading Russian environmentalists were severely injured following their investigation into reportedly illegal logging and construction in South Russia carried out by a private company allegedly affiliated with high-ranking government officials. The assailants also searched through the activists’ car, and seized their cameras, tablets, IDs and valuables. One of the journalists (Mr Rudomakha) was consequently diagnosed with traumatic brain injury, multiple facial fractures, brain contusion, and chemical eye burn.¹⁵
4. The Interveners further submit that the Russian authorities have previously misused the provisions on “hooliganism” in the Criminal Code¹⁶ to silence opponents and human rights defenders; the application of these provisions have been widely criticised as being deployed as part of a crackdown on dissent in Russia.¹⁷ Most prominently, they were used to impose a two-year sentence on members of the Russian group Pussy Riot for performing inside Moscow’s Cathedral of Christ the Saviour in 2012 in protest against the Orthodox Church leaders’ support for Putin during his election campaign.¹⁸

II. The safeguards provided to “journalists” should apply to the wide range of actors performing a journalistic function

5. It has been recognised that the case law of this Court confers upon journalists “*certain increased protections under Article 10 of the Convention.*”¹⁹ This Court has repeatedly emphasised the essential function the press fulfils in a democratic society. They discharge this function by ensuring the public are informed, educated and aware of events of public interest or that should be open to public scrutiny.²⁰ It has also been consistently recognised by this Court that not only does the press have the task of imparting information and ideas of public interest, the public also has a right to receive such information

and ideas.²¹ This Court has stated that measures that are capable of discouraging the participation of the press in public debate on matters of public concern must be subject to “careful scrutiny.”²²

6. The protection that is afforded to the press under Article 10 of the Convention should not just be confined to individuals who have received official accreditation as a “journalist” or who have a contract with a media outlet. The protection should be extended to the wide range of actors who perform a journalistic function in collecting and disseminating information of public concern or interest.
7. There is no uniform definition of “journalism” or what constitutes a “journalist” under international law. Nonetheless, this Court has observed that a wide range of actors perform the “public watchdog” role that freedom of the press seeks to protect. For instance, in *Magyar Helsinki Bizottság v. Hungary*, the Grand Chamber of this Court noted that whether and to what extent the denial of access to information constitutes an interference with a person’s right to receive information will depend on the “public watchdog” role performed by that person.²³ The Grand Chamber went on to observe that “*given the important role played by the Internet in enhancing the public’s access to news and facilitating the dissemination of information, the function of bloggers and popular users of the social media may be also assimilated to that of ‘public watchdogs’ in so far as the protection afforded by Article 10 is concerned.*”²⁴ This reflects the earlier jurisprudence of the Court, in which it was observed that “*the function of the press includes the creation of forums for public debate. However, the realisation of this function is not limited to the media or professional journalists.*”²⁵ Consistent with this approach, the Committee of Ministers of the Council of Europe has observed that the essential role of “*widely disseminating information, ideas, analysis and opinions, acting as public watchdogs and providing forums for public debate*” is increasingly also carried out by “*other media and non-media actors, from multinational corporations to non-governmental organisations and individuals.*”²⁶
8. In light of the above, limiting the full protections that are afforded to the press under Article 10 of the Convention to individuals who are accredited as “journalists” or those who have a contract with a media outlet fails to properly recognise and adequately protect the wide range of actors who perform the important “public watchdog” function of the press. Furthermore, limiting these protections to individuals who have been accredited as “journalists” extends the purpose of systems of accreditation beyond those that are compatible with the right to freedom of expression under international law.
9. The UN Human Rights Committee, in *General Comment No. 34*, has stated that “[j]ournalism is a function shared by a wide range of actors [...] and general State systems of registration or licensing of journalists are incompatible with [Article 19(3) ICCPR]. Limited accreditation schemes are permissible only where necessary to provide journalists with privileged access to certain places and/or events.”²⁷ These limited purposes for which accreditation schemes can be used under international law has also been recognised by the international special mandate holders on the right to freedom of expression in their 2003 Joint Declaration on Freedom of Expression.²⁸
10. Privileged access may be required in circumstances where journalists are attempting to gain access to specific venues with limited space, such as courtrooms or parliamentary precincts, or where they are attempting to enter areas that have been closed off by the authorities for legitimate security reasons.²⁹ No such privileged access is required in order to cover events that are occurring in open and public spaces, as would be the case with many protests or demonstrations. This has been recognised by the OSCE Representative on Freedom of the Media in his 2007 Special Report in which she stated that “[t]here is no need for special accreditation to cover demonstrations except under circumstances where resources, such as time and space at certain events, are limited.”³⁰
11. It is also incompatible with the right to freedom of expression under international law for a journalist’s accreditation, or lack thereof, to be relied on by the domestic courts to determine the level of protection to be given to that journalist when covering an event of public interest. Firstly, such use of a system of accreditation would not be for the limited purpose of ensuring a journalist has privileged

access to a location. Secondly, its use in such a way cannot be justified with reference to the fact that it helps determine the identity of individuals who can legitimately rely on the protections afforded to the press under the right to freedom of expression. The Inter-American Court of Human Rights, in *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, considered a system in Costa Rica requiring the compulsory membership of an individual to an association of journalists before they could practice journalism. The Inter-American Court of Human Rights, when determining whether such a system was necessary, observed that “*the establishment of a law that protects the freedom and independence of anyone who practices journalism is perfectly conceivable without the necessity of restricting that practice only to a limited group of the community.*”³¹ It follows from this that it is not necessary to utilise accreditation systems to determine whether an individual should benefit from the protections afforded to the press under the right to freedom of expression.

12. A similar line of reasoning was used by this Court in *Braun v. Poland*.³² This case concerned a civil action that was brought against the applicant, who was a historian, film director and author of press articles, by an individual claiming that the applicant had violated his personal rights on a radio show. In its judgment, the Polish Supreme Court reiterated that under Polish law a journalist’s actions would not be considered illegal if they were made in the public interest and the duty to act with due diligence was fulfilled. However, according to the Supreme Court, the applicant could not rely on such a defence because “*his statement had been of a private nature and [he] could not be considered to be a journalist with a socially necessary duty to inform.*”³³ In short, the applicant could not rely on a protection otherwise afforded to members of the press because he was not deemed to be a journalist by the domestic courts. The Court found that the requirement that the applicant fulfil a standard more demanding than that of due diligence only on the ground that the domestic law had not considered him a “journalist” was unjustified under Article 10 of the Convention. In this regard, the Court noted that “*the Convention offers a protection to all participants in debates on matters of legitimate public concern.*”³⁴

III. Penalty or sanctions against journalists for covering protests must be subject to the strictest scrutiny

13. The Interveners submit that, given the vital role performed by the media in collecting and disseminating information about events of public concern, this Court must apply the strictest scrutiny to measures adopted against individuals performing this “public watchdog” function during protests or demonstrations.

a) The role of gathering information during public protests or demonstrations must be given strong protection under Article 10 of the Convention

14. In order for the press to perform its “public watchdog” role, it must not only be free to impart information and ideas of public interest, but it must also be free to *gather, collect and assess* such information and ideas. In this context, this Court has consistently recognised that “*the gathering of information is an essential preparatory step in journalism and an inherent, protected part of press freedom.*”³⁵
15. Similarly, the General Assembly of the United Nations, as early as 1946, recognised that “*freedom of information implies the right to gather, transmit and publish news [...]. It requires as a basic discipline the moral obligation to seek the facts.*”³⁶ The need to protect newsgathering in order to protect press freedom is reflected in the UN the Special Rapporteur’s definition of journalism. In his report to the UN Human Rights Council in 2012, he noted that individuals carrying out a journalistic function “*observe and describe events, document and analyse events, statements, policies, and any propositions that can affect society, with the purpose of systematizing such information and gathering of facts and analyses to inform sectors of society or society as a whole*”.³⁷ The fundamental importance of newsgathering to the exercise of the right to freedom of expression has also been recognised in the jurisprudence of a number of courts around the world, including in the United Kingdom,³⁸ Canada,³⁹ South Africa,⁴⁰ Colombia⁴¹ and Japan.⁴² Therefore, any measure that interferes with the newsgathering activities of

individuals carrying out a “public watchdog” role will inevitably interfere with the right to freedom of expression under Article 10 of the Convention.

16. The fact that the measure imposed against an individual who wishes to carry out newsgathering activities has also been imposed against a wider group of individuals who are not carrying out such activities will be irrelevant to this assessment of whether there has been an interference with the right to freedom of expression. This was recognised by this Court in *Gsell v. Switzerland*, a case that concerned a journalist who was stopped by police and asked to return home on his way to Davos, where he wanted to cover the World Economic Forum. In its judgment, the Court noted that *“the legal measure in question was not directed specifically at the applicant in his capacity as a journalist, but he had been a victim of a ban imposed generally by the Cantons Police on all those who wanted to travel to Davos. Nonetheless, taking everything into account, according to the Court, the measure is an ‘interference’ in the exercise of his freedom of expression, because he wanted to travel to Davos in order to write an article on a particular subject.”*⁴³
17. The function performed by journalists in collecting and gathering information is particularly valuable in relation to events such as protests or demonstrations, even more so in circumstances where the authorities adopt measures in response to such events. This Court has recognised that a vital element of the exercise of journalistic functions is the ability to obtain first-hand and direct knowledge based on personal experience of events and the context in which the authorities handle such events.⁴⁴ This Court has also highlighted that the “public watchdog” role of the media in covering protests *“assumes particular importance in [...] contexts [where] their presence is a guarantee that the authorities can be held to account for their conduct.”*⁴⁵
18. The UN General Assembly, in a 2014 resolution, recalled *“the importance of documenting human rights violations and abuses committed in the context of peaceful protests, and the role that can be played by [...] journalists and other media workers, Internet users and human rights defenders, in this regard.”*⁴⁶ The Venice Commission Guidelines on Freedom of Peaceful Assembly also highlight that *“the right to observe public assemblies is part of the more general right to receive information (a corollary of the right to freedom of expression). In this regard, the safeguards guaranteed to the media are particularly important.”*⁴⁷ The Guidelines also recognise that *“media reports and footage [...] provide an important element of public accountability both for organisers of events and law enforcement officials. As such, the media must be given full access by the authorities to all forms of public assembly and to the policing operations mounted to facilitate them.”*⁴⁸
19. At regional level, the Inter-American Court of Human Rights, in *Velez Restrepo and Family v. Colombia*,⁴⁹ affirmed the importance of press presence and reporting of protests. The Inter-American Court of Human Rights noted that the media’s presence at protests enables those who receive information about the protest to *“observe and verify whether, during the demonstration, the members of the armed forces were performing their duties correctly, with an appropriate use of force.”* The judgment also set out the State’s positive obligations to protect journalists covering protests.⁵⁰ In December 2017, the Inter-American Commission of Human Rights stated that States have a *“duty to ensure that journalists and media workers reporting on public demonstrations are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession.”*⁵¹
20. It is therefore of vital importance that the media’s attendance and ability to gather information at events, such as demonstrations or protests, are given strong protection under the right to freedom of expression under Article 10 of the Convention. This has been implicitly recognised by the Parliamentary Assembly of the Council of Europe in *Resolution 2116 (2016)*, which calls on Member States to *“fully respect the right to freedom of expression of journalists covering [] protests”*.⁵² This protection is particularly crucial where an event is occurring in remote or inaccessible locations, where the response of the authorities may be undocumented or may not be subject to public scrutiny.⁵³

b) The Court should attach particular weight to whether national authorities and courts adequately assessed whether an individual's actions at a protest or demonstration related to their "public watchdog" function

21. In *Pentikäinen v. Finland*, this Court stated that "any attempt to remove journalists from the scene of demonstrations must [...] be subject to strict scrutiny."⁵⁴ In the more recent judgment of *Butkevich v. Russia*, this Court observed that "the same 'strict scrutiny' approach is applicable to related ensuing measures such as prosecution for an alleged offence in relation to a demonstration."⁵⁵ Therefore, any measure imposed on an individual in relation to their carrying out of a journalistic function at the scene of a demonstration or protest must be subject to "strict scrutiny."

22. When applying this "strict scrutiny" to the arrest and prosecution of journalists in the context of protests, this Court should be satisfied that (i) the arrest and detention was in compliance with Article 5(1) of the Convention, (ii) that there were relevant and sufficient reasons demonstrating the necessity to arrest and prosecute the journalist in order to achieve a legitimate aim, and (iii) the domestic authorities and courts took into account the "public watchdog" role performed by the individual journalist. In cases where journalists have been arrested, detained and convicted with a number of co-defendants who were not carrying out a journalistic function, the authorities must still take into account these three factors in relation to the journalists specifically.

23. In relation to the first factor, the arrest and detention must be effected on the basis of either (i) reasonable suspicion that the individual had committed an offence under domestic law, or (ii) it being reasonably considered necessary to prevent the individual committing an offence or fleeing after having done so. It is incumbent on the authorities to demonstrate that the arrest and detention was made pursuant to one of these bases. If this burden of proof has not been discharged, then the arrest and detention will be unlawful and in violation of Article 5(1) of the Convention. It would follow that, in these circumstances, the arrest and detention of the individual carrying out journalistic functions at the protest will also amount to a violation of Article 10 of the Convention because such an interference will not have been "prescribed by law."⁵⁶

24. Secondly, the Court must consider whether measures adopted are "relevant" to the achievement of a legitimate aim under Article 10(2) of the Convention. This provides an important safeguard against measures, such as arrest and detention, being imposed arbitrarily against journalists.⁵⁷ Measures adopted in the context of protests are usually justified by the State with reference to a threat to public order. This Court has stated that, in cases where public order is relied on by the Government to justify a measure against a journalist, it will pay attention to whether the measure was based on a reasonable assessment of the facts.⁵⁸ In circumstances where the presence of a journalist at a protest does not pose any threat to personal safety or public order, i.e. where they are acting as passive bystanders who are simply doing their work and observing events, measures such as the arrest and detention that are imposed against the journalist will not be based on a reasonable assessment of the facts.⁵⁹

25. In this regard, the Interveners note that some Member States have adopted practices whereby the authorities must consider whether the activities carried out by a journalist at a protest actually pose a threat to public order before they may be arrested and prosecuted for their presence at such an event. For example, in England and Wales, when exercising their powers of preventative arrest in relation to breach of the peace, the police must demonstrate that the threat was "coming from the person who is to be arrested."⁶⁰ In relation to the conduct of journalists, the Dutch *Leidraad over de positie van de pers bij politieoptreden of 1980* makes it clear that police will refrain from taking a journalist into detention during a protest if the journalist "refrains from acts which are not deemed to relate to performing his job" and can identify himself as a journalist.⁶¹ In January 2018, the Danish District Court acquitted a journalist for disobeying a police order to leave a motorway on which three hundred refugees were traveling from Germany to Denmark during the refugee crisis in September 2015. In its decision, the

Danish District Court held that the presence of the journalists was not a source of threat to the safety of the police or the ability of the police to do their work.⁶²

26. Finally, this Court should have regard to whether the domestic authorities and courts took into account the “public watchdog” role performed by an individual when determining whether a measure imposed against them was necessary in a democratic society. The case of *Butkevich v. Russia* is particularly instructive in this regard. This case concerned the arrest, detention and conviction of a journalist who had attended a protest with the intention of collecting information and photographic material relating to the event and of imparting them to the public. In light of these factors, the Court determined that he could rely on the protection afforded to the press under Article 10 of the Convention.⁶³ In this connection, the Court criticised the authorities and courts for not adequately assessing “whether [the applicant’s] alleged actions were excusable or otherwise mitigated, given his argument that he had been acting as a journalist.”⁶⁴ It can be inferred from this that in circumstances where journalists, or other individuals carrying out a “public watchdog” role, are arrested, detained and/or convicted due to their presence at a protest or demonstration, the domestic authorities are obliged to consider the important role carried out by such individuals when determining whether such measures are necessary and proportionate.

27. The importance of an adequate assessment by the authorities of the journalistic function performed by an individual at protests has been underlined by the OSCE Representative on Freedom of the Media in his 2007 Report, in which he highlighted that “[s]enior officials responsible for police conduct have a duty to ensure that officers are adequately trained about the role and function of journalists and particularly their role during a demonstration. In the event of an over-reaction from the police, the issue of police behavior vis-à-vis journalists should be dealt with separately, regardless of whether the demonstration was sanctioned or not.”⁶⁵

IV. Chilling effect of sanctions on journalists performing “public watchdog” role

28. These submissions are made against the backdrop of an increase in the use or threat of criminal sanctions against journalists engaged in newsgathering or reporting on protests and demonstrations within the territory of the Council of Europe.⁶⁶ As noted above, this Court has consistently recognised that the most careful scrutiny is called for when measures or sanctions are capable of discouraging the participation of the press in debates over matters of legitimate public concern.⁶⁷ In the case of *Cumpănă and Mazăre v. Romania*, the Court emphasised that “the imposition of a prison sentence for a press offence will be compatible with journalists’ freedom of expression as guaranteed by Article 10 of the Convention only in exceptional circumstances, notably where other fundamental rights have been seriously impaired, as, for example, in the case of hate speech or incitement to violence.”⁶⁸ In *Sener v. Turkey* it stressed that “[c]ontracting States cannot, with reference to the protection of territorial integrity or national security or the prevention of crime or disorder, restrict the right of the public to be informed of them by bringing the weight of the criminal law to bear on the media.”⁶⁹

29. Fear and insecurity arising from a threatened or potential criminal prosecution can have a “chilling effect” on journalists. This “chilling effect” presents an interference not only with a journalist’s right to freedom of expression, but also with the right of that journalist’s potential readership to freely receive the information that would otherwise have been published.

30. Further, as recognised by this Court in a recent decision, measures that had a “chilling effect” on the applicant journalists in that case had the potential to have a more general negative effect on other journalists.⁷⁰ As the Court noted in a different context, a law that gives rise to uncertainty as to the possibility of sanctions being imposed can entail “a chilling effect on freedom of expression and self-censorship.”⁷¹ It is also the case that other measures resulting in detention or the imposition of fines, whether administrative or regulatory, can also have a “chilling effect.”⁷²

31. The Committee of Ministers has, through its recommendations, emphasised the effect of sanctions on journalists doing their job, noting that *“[a] chilling effect on freedom of expression arises when an interference with this right causes fear, leading to self-censorship and ultimately the impoverishment of public debate, which is to the detriment of society as a whole. Accordingly, State authorities should avoid taking measures or imposing sanctions that have the effect of discouraging participation in public debate”*. It went on to say that State authorities are obliged to *“guarantee the substantive liberty of everyone within its jurisdiction and to that end must ensure that journalists and other media actors are not subjected to arbitrary arrest, unlawful detention or enforced disappearance.”*⁷³
32. Other international human rights institutions have reached similar conclusions. For example, the Special Rapporteur on the situation of human rights defenders has described the monitoring role of journalists at protests and demonstrations as *“essential,”* and noted that restrictions on press freedoms and impunity for violations *“can foster a climate of intimidation ... that can have a chilling effect on their work.”*⁷⁴ In their 2015 Joint Declaration on Freedom of Expression and Responses to Conflict Situations the four special mandates noted that *“individuals who expose wrongdoing, serious maladministration, a breach of human rights, humanitarian law violations or other threats to the overall public interest, for example in terms of safety or the environment, should be protected against legal, administrative or employment-related sanction, even if they have otherwise acted in breach of a binding rule or contract, as long as at the time of the disclosure they had reasonable grounds to believe that the information disclosed was substantially true and exposed wrongdoing or the other threats noted above”*.⁷⁵
33. To similar effect, the OSCE recognises that it is good practice for the police not to detain, arrest or use violence against media that perform their role covering all aspects of the political process, as well as protests and other events in public places.⁷⁶ They have emphasised that even short-term detention of members of the media presents a form of harassment and intimidation and a very real and serious risk to freedom of expression and the rights of the media and the wider public.⁷⁷
34. Exceptions to the right to freedom of expression must be construed strictly and the need for restrictions must be convincingly established. Such restrictions must be necessary and proportionate. The Interveners submit that criminal penalties in freedom of expression cases are rarely proportionate. In speech-related offences, they are also often not necessary as they are not the least restrictive effective remedy to secure the legitimate aim sought. The criminalisation of a particular activity implies a clear State interest in controlling the activity and imparts a certain social stigma to it. The threat of a criminal record, a penal sentence or even a suspended sentence, all impose an onerous and unnecessary burden on journalists for trying to do their job. Even where these measures are not applied, the problem of “chilling effect” remains, since the severe nature of these sanctions means that they cast a long shadow. In any consideration of a case where a sanction is imposed on a journalist covering protests or demonstrations, the starting position should be that such sanctions are not necessary in a democratic society.

ARTICLE 19 MEDIA LEGAL DEFENCE INITIATIVE

¹ The Interveners submit these written comments pursuant to leave granted by the President of the Third Section under Rule 44 §3 of the Rules of the Court as set out in the letter dated 20 March 2018 from the Section Registrar, Mr. Stephen Phillips.

² In July 2012, the Russian government amended the Law on Non-commercial Organizations (NGOs) to require that any NGO that receives international funding and also engages in broadly defined “political activities” be labelled a “foreign agent” and submit to stringent reporting and disclosure requirements. Until March 2018, the Russian Ministry of Justice has designated 158 groups as “foreign agents.” See, e.g., Human Rights Watch, *Russia: Government vs. Rights Groups, The Battle Chronicle*, 6 March 2018, available from: <https://bit.ly/1JEFiu7>.

³ See, e.g., Amnesty International, *Russia: Kremlin tightens stranglehold on foreign media with more repressive legislation*, 15 November 2017, available at: <https://bit.ly/2zFmAZv>.

⁴ Human Rights Watch, *Leading Environmentalists Violently Attacked in Russia*, 12 January 2018, available at: <https://bit.ly/2CUswv7>.

- 5 The Guardian, *Russian intelligence accused of silencing Norwegian newspaper editor*, 6 October 2015, available at: <https://bit.ly/2cAP2I5>.
- 6 The Council of Europe, Platform to promote the protection of journalism and safety of journalists (the Platform), *Norwegian Journalist Denied Entry to Russia*, 13 March 2017, available at: <https://bit.ly/2ItDF8A>.
- 7 The Union of Journalists in Finland, *Journalists assaulted covering Krasnodar Kray farmer's protest*, 10 April 2017, available at: <https://bit.ly/2GCtLBj>.
- 8 The Council of Europe Platform, *Attack on Investigative Journalism Workshop*, 28 April 2017, available at: <https://bit.ly/2Gy4NqL>.
- 9 The Council of Europe Platform, *Russia: Blogger Ilya Varlamov Attacked at Stavropol Airport*, 27 April 2017, available at: <https://bit.ly/2GC9mMw>.
- 10 The Council of Europe Platform, *Russian Investigative Journalist and Activist Grigory Pasko Attacked*, 28 September 2016, available at: <https://bit.ly/2q5I1gz>.
- 11 See, e.g., the Committee to Protect Journalists (CPJ), *Russian investigative journalist Grigory Pasko assaulted in Siberia*, 27 September 2017, available at: <https://bit.ly/2d4xr5c>.
- 12 CPJ, *An investigative journalist and a blogger attacked in Russia*, 27 April 2017, available at: <https://bit.ly/2qmuu0M>.
- 13 The Council of Europe Platform, *NGO TV Presenter Detained and Allegedly Mistreated*, 7 August 2017, available at: <https://bit.ly/2EkryYY>.
- 14 The Council of Europe Platform, *Journalist Shot in Southern Russia*, 31 December 2017, available at: <https://bit.ly/2GUQMTm>.
- 15 See, e.g., Human Rights Watch, *Russia: 'Year of Ecology' a Sham*, 21 November 2017, available at: <https://bit.ly/2hQGGYS>.
- 16 Article 213 of the the Russian Criminal Code.
- 17 Amnesty International, *Russia escalating attacks on free expression a year on from Pussy Riot protest*, available at: <https://bit.ly/2HeOazS>.
- 18 European Court of Human Rights (ECtHR), *Alekshina and others v. Russia*, App. No. 38004/12. For the criticism of the application of the provisions on "hooliganism," see, e.g., PEN International, *Spotlight on the UPR - Russian Federation*, April 2013, available at: <https://bit.ly/2ItQcc6>.
- 19 Committee of Ministers of the Council of Europe, *Declaration of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors*, Adopted by the Committee of Ministers on 30 April 2014 at the 1198th meeting of the Ministers' Deputies, par. 6.
- 20 ECtHR, *Bladet Tromsø and Stensaas v. Norway*, App. No. 21980/93, par. 59.
- 21 ECtHR, *The Sunday Times v. the UK (no. 1)*, App. No. 6538/74, para 65.
- 22 ECtHR, *Társaság a Szabadságjogokért v. Hungary*, App. No. 37374/05, par. 26.
- 23 ECtHR, *Magyar Helsinki Bizottság v. Hungary*, App. No. 18030/11, par. 164 to 168.
- 24 *Id.*, par. 168.
- 25 ECtHR, *Társaság a Szabadságjogokért v. Hungary*, App. No. 37374/05, par. 27.
- 26 Committee of Ministers of the Council of Europe, *Recommendation CM/Rec(2018)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership*, adopted by the Committee of Ministers on 7 March 2018 at the 1309th meeting of the Ministers' Deputies, par. 3.
- 27 UN Human Rights Committee (HRC), *General comment no. 34, Article 19, Freedoms of opinion and expression*, UNDoc. CCPR/C/GC/34, par. 44.
- 28 UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, *Joint Declaration 2003 on the Regulation of the Media and on the Restrictions on Journalists*, 18 December 2003, available at: <https://bit.ly/2lvJPoW>, p. 2.
- 29 See, OSCE Representative on Freedom of the Media, *Special Report: "Accreditation of Journalists in the OSCE area"* (October 2006), p. 1.
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51 Inter-American Commission of Human Rights, *IACHR Expresses Concern over Police Actions in Protests and Attacks on Journalists in Argentina* (December 2017), available at: <https://bit.ly/2qgcvlv>.

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53 See, e.g., ECtHR, *Stoll v. Switzerland*, App. No. 69698/01, par. 110. ("[p]ress freedom assumes even greater importance in [...] circumstances in which State activities and decisions escape democratic or judicial scrutiny on account of their confidential or secret nature.")

54 ECtHR, *Pentikäinen v. Finland*, *op.cit.*, par. 89.

55 ECtHR, *Butkevich v. Russia*, *op.cit.*, par. 130.

56 *Id.*, par. 127.

57 This Court has stated that minimum procedural safeguards must be in place in order to ensure protection from arbitrary and unwarranted interference with the right to freedom of expression. See, ECtHR, *Társaság a Szabadságjogokért v. Hungary*, App. No. 37374/05, par. 27. See also ECtHR, *Youth Initiative for Human Rights v. Serbia*, App. No. 48135/06; ECtHR, *Kenedi v. Hungary*, App. No. 31475/05.

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67 ECtHR, *Bladet Tromsø and Stensaas v. Norway*, App. No. 21980/93, par. 64.

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72 ECtHR, *Dupuis and Others v. France*, App. No. 1914/02.

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75 UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression, and African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information, *Joint Declaration on Freedom of Expression and Responses to Conflict Situations*, available at: <https://bit.ly/2GRKXqo>, par. 5b.

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77 *Id.*