

I. INTRODUCTION.

1. This amicus brief is jointly submitted by ARTICLE 19: Global Campaign for Free Expression (ARTICLE 19) and the International Justice Clinic at the University of California, Irvine School of Law (the Clinic) (jointly Amici).
2. ARTICLE 19 is an independent human rights organization that works around the world to protect and promote the rights to freedom of expression and information. ARTICLE 19 has produced a number of standard-setting documents and policy briefs based on international and comparative law and best practice on issues concerning the rights to freedom of expression. It also regularly intervenes in domestic and regional human rights court cases, and comments on legislative proposals, as well as existing laws that affect the right to freedom of expression. This work frequently leads to substantial improvements to proposed domestic legislation.
3. The Clinic produces research and conducts advocacy promoting compliance with international human rights law. Since its founding in 2012, under the direction of Professor David Kaye, a former UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Clinic has continuously researched and advocated for freedom of expression and, *inter alia*, intervened in domestic and regional human rights court cases.
4. In this brief, we conclude that
 - Article 20.3.3 of the Russian Federation Code of Administrative Offenses (“Article 20.3.3”) – which prohibits, in summary, any form of criticism of the use of armed forces¹ and execution by state bodies of their powers outside of the territory of the Russian Federation² and imposes sanctions when violated³ – restricts the rights to freedom of expression of journalists, activists, and the general public in Russia protected by Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR); and
 - Article 20.3.3. does not pass the stringent test of legality, legitimacy, and necessity and proportionality under Article 19(3) of the ICCPR.

Therefore, we respectfully urge the Court to declare that Article 20.3.3 is unconstitutional and illegal, in accordance with the international legal rule that people may not be penalized for or restricted from criticizing public institutions.

II. THE SCOPE AND REACH OF ARTICLE 20.3.3

5. The amici understand the following to be the factual background to the Article 20.3.3. On March 4, 2022, the Russian Parliament adopted two federal laws imposing administrative and criminal

¹ Article 20.3.3 of the Russian Federation Code of Administrative Offences.

² *Id.*

³ While Article 20.3.3 is technically considered an Administrative Code, repeated violation of the said prohibitions within one year is a criminal offense under Article 280.3(1) of the Criminal Code, punishable by forced labor up to six months or imprisonment up to three years.

liability for discrediting the use of the Armed Forces of the Russian Federation.⁴ As amended on March 25, 2022, Article 20.3.3 paragraph 1 of the Code of Administrative Offences prohibits “public actions aimed at discrediting the use of the Armed Forces of the Russian Federation in order to protect the interests of the Russian Federation and its citizens, maintaining international peace and security, including public calls to prevent the use of the Armed Forces of the Russian Federation for these purposes, as well as aimed at discrediting execution by state bodies of the Russian Federation of their powers outside the territory of the Russian Federation for the specified purposes.”⁵ When violated, an administrative fine is imposed in the following amounts: 30,000 to 50,000 rubles for citizens, 100,000 to 200,000 rubles for officials, and 300,000 to 500,000 rubles for legal entities.⁶

6. Article 20.3.3., paragraph 2 sets out an additional aggravated offense category. Paragraph 2 states that “if the same action is accompanied by calls to hold unauthorized public events, as well as creating a threat of harm to the life and (or) health of citizens, property, a threat of a mass violation of public order and (or) public safety, or a threat of interfering with the functioning or stopping the functioning of objects life support, transport or social infrastructure, credit organizations, energy, industry or communications facilities.”⁷ When violated, a higher administrative fine is imposed in the following amounts: 50,000 to 100,000 rubles for citizens, 200,000 to 300,000 for officials, and 500,000 to 1,000,000 rubles for legal entities.⁸
7. While Article 20.3.3 is a provision of the Administrative Code, repeated violation of the said prohibitions within one year is a criminal offense under Article 280.3(1) of the Criminal Code, punishable by forced labor up to six months or imprisonment up to three years.⁹

III. SCOPE OF PERMISSIBLE RESTRICTIONS ON THE RIGHT TO FREEDOM OF EXPRESSION

8. The ICCPR, to which the Russian Federation is a party, obligates each of its 172 States parties to respect and ensure a range of fundamental civil and political rights for all those within its territory or subject to its jurisdiction.¹⁰ Under the Russian Constitution, international treaties to which the Russian Federation is a party, as well as recognized principles and standards of international law, are a component part of its legal system and enjoy precedence over domestic legislation.¹¹

⁴ OHCHR, Submissions in Reply to the Call for Inputs on Challenges to Freedom of Opinion and Expression in Times of Conflicts and Disturbances, <https://www.ohchr.org/sites/default/files/documents/issues/expression/cfis/conflict/2022-10-07/submission-disinformation-and-freedom-of-expression-during-armed-conflict-UNGA77-cso-mmdc-et-al.pdf>.

⁵ *Supra* note 1.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, art. 2.

¹¹ Article 15, para. 4 of the Russian Constitution.

9. Article 19(1) of the ICCPR guarantees the rights of everyone to maintain opinions without interference, a guarantee not subject to any restriction whatsoever. Article 19(2) of the ICCPR guarantees the right to freedom of opinion and expression, which includes “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media.”¹² The Human Rights Committee, the expert treaty body that monitors compliance with the ICCPR, notes, “States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression.”¹³ In particular, given the special nature of freedom of expression as “the foundation stone for every free and democratic society”¹⁴ and importance of public debates on matters of public interest¹⁵, the Human Rights Committee has expressed concern regarding laws on “disrespect for authority” and emphasized that “state parties should not prohibit criticism of institutions, such as the army or the administration.”¹⁶

10. As a result of the centrality of freedom of expression to the ICCPR and its promise of public participation and robust democratic debate, Article 19(3) provides a set of strict conditions for the lawfulness of any restrictions on the freedom of expression. A state imposing any limitation on expression therefore must demonstrate that the limitation is provided by law and is necessary to protect a specified legitimate objective. This cumulative three-part test thus involves the following:
 - a. *Legality*. For a restriction on freedom of expression to be “provided by law,” it must be precise, public and transparent, and avoid providing government authorities with unbounded discretion.¹⁷
 - b. *Legitimacy*. Restrictions may only be imposed to protect legitimate aims, which are limited to (a) respect of the rights or reputations of others or (b) the protection of national security or of public order (*ordre public*), or of public health or morals. A State must show in specific and individualized fashion the precise nature of the threat at issue.¹⁸
 - c. *Necessity and Proportionality*. Restrictions must “target a specific objective” and be proportionate to the aim pursued¹⁹ The restrictions must further be “the least intrusive instrument among those which might achieve” the desired result.²⁰

¹² *Supra* note 10.

¹³ Human Rights Committee, General Comment 34: Article 19: Freedom of Opinion and Expression, CCPR/C/GC/34, para. 23, Sept. 12, 2011.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Supra* note 13, para. 35.

¹⁹ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, UN Doc. A/HRC/29/32 (May 22, 2015).

²⁰ *Supra* note 13.

IV. ARTICLE 20.3.3 MANIFESTLY VIOLATES THE RIGHTS TO FREEDOM OF OPINION AND EXPRESSION.

11. Article 20.3.3 prohibits and criminalizes criticism of the Russian Armed Forces, constituting a direct restriction of the right to freedom of expression. An additional implication of the provision is the significant restriction on the right to freedom of peaceful assembly under the ICCPR Article 21, restrictions of which are also to be judged according to the three-part test. The Court is thus required to carefully assess the compatibility of Article 20.3.3 with each prong of the three-part test under ICCPR Article 19(3).

A. DUE TO ITS EXTRAORDINARY VAGUENESS, ARTICLE 20.3.3 DOES NOT MEET THE STANDARDS OF LEGALITY.

12. Article 20.3.3 prohibits and criminalizes anyone who might “discredit” the Russian Armed Forces, a vague term that presumably includes any conduct associated with criticism of the use of armed force. The extraordinary vagueness of the provision offers no safeguard against a purely subjective application of the law. In practice, the application of this article leads to prosecution of various forms of anti-war sentiments, expressed on social media or in other public settings, including through participation in peaceful assemblies. The UN Special Rapporteur of Freedom of Expression has expressed concern for such laws, emphasizing that “States are obliged to ensure that national security laws are crafted and applied in a manner that conforms to the strict requirements of legality, necessity and proportionality...common problems with security laws include a lack of clear definitions of key terms.”²¹ The UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and the UN Special Rapporteur on the Situation of Human Rights Defenders found that another statute implemented by the Russian Federation, Federal Law No. 121-FZ (“Foreign Agents Law”), is vague and overly broad, leading to an infringement of “a number of fundamental human rights.”²² Their finding stated that in order to comply with its obligations under the ICCPR, the Foreign Agents Law’s “measures cannot be based on vague and overly broad terms, which do not comply with the principle of legality.”²³

13. Human rights courts around the world support this view of legality, cementing it as a general principle of law. For instance, in the *Usón Ramirez* case (2009), the Inter-American Court of Human Rights, applying standards similar to Article 19, found that a Venezuelan law criminalizing slander of, offense against, or disparagement of the national Armed Forces did not meet the legality test applied to restrictions on freedom of expression.²⁴ The Court emphasized that “[t]his article is limited to foreseeing the sanction, without taking into account the specific injury of causing discredit, damaging the good reputation or prestige, or causing damage to the

²¹ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan, UN Doc. A/HRC/50/29, para. 56 (April 20, 2022).

²² Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders, Clemente Voule & Mary Lawlor, OL RU 16/2022 (Nov. 30, 2022).

²³ *Id.*

²⁴ *Usón Ramírez v. Venezuela*, para. 38, 2009 Inter-Am. Ct. H.R. (ser. C) No. 207 (Nov. 20, 2009).

detriment of the passive subject.²⁵ A law using such broad terms as these, the Court found, “allows that the subjectivity of the offended party [to] determine the existence of crime, even when the active subject did not have the intent to injure, offend, or disparage the passive subject.”²⁶ This text is particularly forceful when, according to the statements by the expert proposed by the State in the public hearing of this case, “‘there is no legal definition of military honor’ in Venezuela,” like Article 20.3.3 does not define “discredit.”²⁷

14. In a case involving compatibility of sedition, criminal libel, and false news publication laws with human rights standards, the Community Court of Justice of the Economic Community of West African States (ECOWAS) emphasized that “narrowly drawing offenses has been treated as particularly important in the case of free speech because of what is known as ‘chilling effect’ which occurs when a wide or vague speech restricting provision forces self-censorship on speakers even with, because they do not wish to risk being caught on the wrong side of it.”²⁸ The Court described the definition of sedition as “so broad as to be capable of diverse subjective interpretations,” that it “amount[ed] censorship on publication.”²⁹

B. ARTICLE 20.3.3 DOES NOT PURSUE A LEGITIMATE AIM.

15. Article 19(3) of the ICCPR does not provide that protecting the reputation of a government entity constitutes a legitimate interest of the state. Such a position is underscored by the Human Rights Committee, which noted that when it comes to public debate concerning public figures in the political domain and public institutions, the value placed by the ICCPR upon uninhibited expression is particularly high. The Committee outrightly states that State parties should not prohibit criticism of institutions, such as the army or the administration.

1. PROTECTING THE REPUTATION OF A PUBLIC INSTITUTION LIKE THE ARMY IS NOT A LEGITIMATE AIM.

16. The Human Rights Committee has condemned defamation laws that protect public institutions, such as the army, from criticism. During Tunisia’s review session in 2008, the Committee expressed concern over Article 51 of Tunisia’s Press Code, which established prison terms for defaming state institutions like the courts, army, and air force.³⁰ The Committee noted that Article 51 did not comply with Article 19 of the Covenant and recommended that Tunisia bring an end to direct and indirect restrictions on freedom of expression.³¹

²⁵ *Id.* at para. 56.

²⁶ *Id.* at para. 56.

²⁷ *Id.* at para. 51 quoting expert testimony of Ángel Alberto Bellorín given at the Inter-American Court in a public hearing on April 1, 2009.

²⁸ *Federation of African Journalists (FAJ) and others v The Gambia*, ECW/CCJ/JUD/04/18, pg. 41, (ECWCCJ, 13 March 2018).

²⁹ *Id.* at pg. 40.

³⁰ Concluding observations on Tunisia (CCPR/C/TUN/CO/5), para. 91.

³¹ *Id.*

17. International courts also denounce laws that protect public institutions from criticism and as such, typically reject the contention that public institutions enjoy the protection of “the reputation of others,” which Article 19(3) identifies as a legitimate state interest. In similar cases across a multitude of jurisprudence, the European Court of Human Rights has regularly supported the notion that “the limits of permissible criticism are wider with regard to the government than in relation to a private citizen or even a politician.”³²
18. In a recent case filed by a Russian administration against an online news media claiming that an article damaged the reputation of a local government, the European Court of Human Rights carved out the protection of reputation of the local government for the protection of reputation of others, which is a category of legitimate aim, and found the violation of the right to freedom of expression due to lack of legitimacy as well as due to the power imbalance that exists between the public institution and the defendants.³³
19. There is also a global legislative trend of prohibiting government bodies from bringing defamation suits, which further support this view. For example, Australia, South Africa, the United States, and the United Kingdom all recognize that the right to critique of government entities is essential in a democratic society.³⁴ The United Kingdom’s highest court stated that “[i]t is of the highest public importance that a democratically elected governmental body, or indeed any governmental body, should be open to uninhibited public criticism.”³⁵ It is clear that defamation law’s use, much like the usage of Article 20.3.3, to deter criticism of government actors, “such as the army or the administration” is strongly disfavored under international law.
20. It might also be claimed that Article 20.3.3 is necessary to protect a national security concern. However, the government has not demonstrated any national security threat or reason, concrete or specific or otherwise, that justifies enacting Article 20.3.3. A state must objectively show how the expression it wants to restrict causes or definitely risks actual harm to its national security. A state cannot invoke a pretextual or vague claim of national security to restrict freedom of expression.³⁶ Accordingly, the Human Rights Committee rejected finding legitimacy in a case where there was only a speculative national security risk.³⁷ The case involved a political organizer who was arrested for producing and disseminating documents critical of the South Korean government and that called for national reunification of South and North Korea.³⁸ The State argued that his actions

³² *Incal v. Turkey*, appl. no. 22678/93, 09.06.1998 (ECtHR, 1998); *OOO Memo v. Russia*, appl. 2840/10, 15.03.2022 (ECtHR 2022).

³³ *OOO Memo v. Russia*, para. 45.

³⁴ Hilary Young, Public Institutions as Defamation Plaintiffs, 2016 39-1 Dalhousie Law Journal 249, 2016 CanLIIDocs 4136.

³⁵ *Derbyshire County Council v Times Newspapers Ltd*, [1993] AC 534, (HL) (Eng) [Derbyshire].

³⁶ The Human Rights Committee denounced this practice by stating that national security should not be invoked to “suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, for having disseminated such information. Human Rights Committee, General Comment 34: Article 19: Freedom of Opinion and Expression, CCPR/C/GC/34, Sept. 12, 2011.

³⁷ *Kim v. Republic of Korea*, Comm. 574/1994, U.N. Doc. CCPR/C/56/D/574/1994 (HRC 1996).

³⁸ *Id.* at para. 2.1.

supported an anti-State organization.³⁹ The Human Rights Committee found that the State “failed to specify the precise nature of the threat allegedly posed by the author’s exercise of freedom of expression,” and it also did not provide why prosecuting the author was necessary for national security.⁴⁰ Here, the government does not specify the exact national security threat nor how restricting criticism of the armed forces is necessary to address that threat.

21. In addition, international organizations and legal experts have emphasized that states should not outlaw peaceful exercise of the right to freedom of expression on the basis of national security concerns, which implies that the national security interest would rarely serve as a legitimate aim to restrict the freedom of expression and peaceful assembly. The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, which was adopted in 1995 by a group of experts in international law and endorsed by the then UN Special Rapporteur on Freedom of Opinion and Expression, states that “peaceful exercise of the right to freedom of expression shall not be considered a threat to national security or subjected to any restrictions or penalties.”⁴¹
22. Under Article 20.3.3, people have been penalized even for small actions, including single-person protests, such as holding posters that read “No to War” and “Fascism Won’t Do,” and liking an anti-war video on a social networking site.⁴² It is inconceivable that preventing an individual from liking an anti-war video would be necessary under any national security reasons. These examples demonstrate that Russia’s vague national security concerns are an excuse to shield the Russian state from criticism and accountability.

C. ARTICLE 20.3.3 IS AN UNNECESSARY AND DISPROPORTIONATE RESTRICTION ON THE FREEDOM OF EXPRESSION.

23. Even if Article 20.3.3 were to satisfy the legality and legitimacy prongs of Article 19(3)’s three-part test, the cumulative effect on freedom of expression caused by Article 20.3.3 is disproportionate to any aims the legislation might put forward.

1. ARTICLE 20.3.3 HAS RESULTED IN A STRIKING CHILLING EFFECT ON THE EXERCISE OF FREEDOM OF EXPRESSION.

24. The proportionality of an interference depends, in part, upon an assessment of the “nature and severity of the sanctions imposed.”⁴³ Courts have repeatedly affirmed that criminal sanctions for expression on matters of public interest that do not incite violence or hatred are manifestly

³⁹ *Id.* at para. 2.3.

⁴⁰ *Id.* at para. 12.5.

⁴¹ The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, Article 19, Oct. 1, 1995. Available at: <https://www.refworld.org/docid/4653fa1f2.html>.

⁴² *Eight to one. More than 500 “discrediting the armed forces” cases have been dismissed by court or returned to the police*, OVD-Info, <https://en.ovdinfo.org/eight-one-more-500-cases-under-article-2033-administrative-code> (last visited Mar. 22, 2023).

⁴³ *Freitas Rangel v. Portugal*, para. 61.

disproportionate.⁴⁴ Even sanctions that are considered “moderate” or “mild” in nature can be deemed disproportionate if there is a “risk of a chilling effect on the exercise of freedom of expression.”⁴⁵ In one case where a politician sued an NGO for criticizing him, the European Court stated that the “sanction, however mild, may have had a chilling effect...as [the sanction] may have discouraged it from pursuing its statutory aims and criticizing political statements and policies in the future.”⁴⁶ In another case, the European Court found that two individuals engaged in “political” action when they protested outside Hungary’s parliamentary building. The Court overturned their “mild” sanction because targeting actions that “qualify as artistic or political...can have an undesirable chilling effect.”⁴⁷

25. Although the offense under Article 20.3.3 is classified as “administrative” under the Russian legal system, the substance of the charge and the severity of potential penalty are punitive in nature, which leads to the chilling effect on expressing opinion of or disseminating information, in particular in relation to the use of force against Ukraine. Additionally, repeat offenses under Article 20.3.3 can be charged under the criminal law Article 280.3, which imposes a prison sentence of up to three years for discrediting the army, further strengthening the chilling effect. The European Court of Human Rights has condemned the use of criminal sanctions against those that are expressing their opinions on a matter of public interest. In one case brought against Russia, an editor was given a suspended prison sentence of two years and probation of four years after his newspaper published articles that related to the conflict in the Chechen Republic.⁴⁸ The European Court overturned the sanction and noted that it was “not so much the severity of the applicant’s sentence but the very fact that he was criminally convicted that is striking in the present case...the Court considers that both the applicant’s conviction and the severe sanction imposed were capable of producing a chilling effect on the exercise of journalistic freedom of expression.”⁴⁹

2. CRIMINALIZATION OF DISSENT OR CRITICISM IS DISPROPORTIONATE TO ANY LEGITIMATE AIMS.

26. In response to a possible argument that Article 20.3.3 is necessary for national security and to protect the reputation of the army, we submit that the significant assault on freedom of expression under Article 20.3.3 is disproportionate to such aims.
27. For example, in a case involving a defamation claim brought by the Moscow City Council against a newspaper’s editorial board and an NGO representative, the European Court observed that the Moscow City Council is an “executive authority of a federal constituent entity” and that “it should be expected to display a high degree of tolerance to criticism.”⁵⁰ It is also expected that “in

⁴⁴ *Cumpana and Mazare v. Romania*, appl.no. 33348/96, 17.12.2004.

⁴⁵ *Moris v. France*, appl.no. 29369/10, 23.4.2015, para. 127.

⁴⁶ *GRA Stiftung gegen Rassismus und Antisemitismus v. Switzerland*, appl.no. 18597/13, 09.01.2018, para. 78.

⁴⁷ *Tatár and Fáber v. Hungary*, appl.no. 26005/08, 12.6.2012, para. 41.

⁴⁸ *Dmitriyevskiy v. Russia*, appl. no. 42168/06, 03.10.2017, para. 28 and 38.

⁴⁹ *Id.* at para. 117.

⁵⁰ *Case of Margulev v. Russia*, appl. no. 15449/09, 08.10.2019, para. 53.

a democratic system, the actions or omissions of a body vested with executive powers must be subject to the close scrutiny not only of the legislative and judicial authorities but also of the public opinion.”⁵¹ The European Court reaffirmed that public institutions should be expected to display a higher degree of criticism in another case where a local council sued three city councilors and a newspaper’s editor for defamation.⁵²

28. Likewise, in the aforementioned *Usón Ramirez* case, the Inter-American Court of Human Rights addressed a situation where an individual faced severe repercussions for criticizing the Venezuelan Armed Forces.⁵³ Like Article 20.3.3, Venezuela enacted a law that punished anyone who “slanders, offends, or disparages the National Armed Forces.”⁵⁴ The court balanced the value of democratic debate in society and the reputation of the armed forces. The court noted that in democratic societies, state institutions, like the army, are exposed to public scrutiny.⁵⁵ Given the importance of cultivating democratic debate, the court stated that “larger tolerance should face the affirmations and considerations made by citizens when exercising their democratic right.”⁵⁶ As such, the value of public debate in a democratic society outweighed a claim to protect the army’s reputation.
29. International human rights law is also generally skeptical towards restrictions on freedom of expression that are asserted on national security grounds. The Human Rights Committee noted that “extreme care must be taken by States parties to ensure that treason laws and similar provisions relating to national security...are crafted and applied in a manner that conforms to the strict requirements” of necessity and proportionality.⁵⁷ While writing about anti-terrorism laws, six UN experts, including the Special Rapporteur on freedom of expression and the Special Rapporteur on freedom of peaceful assembly, and the Working Group on Arbitrary Detention emphasized that “national security legislation must also not be used to hinder the work and safety of individuals, groups, and organs of society.”⁵⁸
30. For example, when a journalist was prosecuted for denigrating the Turkish armed forces, the European Court found that the journalist was conveying his opinion on a matter of general interest.⁵⁹ Further, “when army officers or generals make public statements on general political topics they are exposing themselves, like politicians or anyone participating in the debate on the

⁵¹ *Id.* at para. 53.

⁵² *Lombardo and Others v. Malta*, appl. no. 7333/06, 24.4.2007, para. 54.

⁵³ *Supra* note 28.

⁵⁴ *Id.* at para. 38.

⁵⁵ *Id.* at para. 83.

⁵⁶ *Id.* at para. 83.

⁵⁷ *Supra* note 13, paras. 30 and 3.

⁵⁸ The other mandate holders who joined the letter are the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on minority issues. Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism et. al, OL CHN 13/2020 (June 20, 2020).

⁵⁹ *Dilipak v. Turkey*, appl. no. 29680/05, 15.9.2015, para. 61.

subjects in questions, to comments in reply which may include criticism and contradictory ideas and opinions.”⁶⁰ In another case, the European Court held that a conviction of an officer for insulting the Greek army violated his freedom of expression.⁶¹ The Court stated that “Article 10 had not been tailored to “stop at the gates of army barracks.”⁶² Further, “laws should not be prescribed for the purpose of frustrating the expression of opinions, even if [criticism is] directed against the army as an institution.”⁶³ These decisions affirm that the army should not be immune from criticism.⁶⁴

31. Notably, courts also find interference on freedom of expression disproportionate to national security concerns on the basis that, in times of “conflict and tension”, the public should have access to different views and perspectives, adding more weight on the restriction of freedom of expression over national security interest. In one case where a shareholder and chief editor of a newspaper were convicted and prosecuted by Turkey for publishing an interview and materials from the Kurdistan Workers’ Party, the European Court found that the two individual’s freedom of expression was violated.⁶⁵ In doing so, the Court acknowledged the sensitive security situation in south-east Turkey⁶⁶ and held that in times of “conflict and tension,” the “right of freedom of expression by media professionals assume special significance.”⁶⁷ Restricting freedom of expression in such circumstances hurts the “public’s right to be informed of a different perspective...irrespective of how unpalatable that perspective may be for them.”⁶⁸

V. ARTICLE 20.3.3 HAS BEEN CAUSING MASS FORCED SILENCE ON THE PUBLIC AND RESTRICTIONS OF CIVIC SPACE.

32. This amicus has shown that Article 20.3.3, on its face, fails to meet even the most basic standards of international human rights law protecting freedom of opinion and expression. As one considers its implementation, the consequences also deserve careful attention. We are particularly concerned that, as designed and through its aggressive and broad enforcement, the law severely

⁶⁰ *Id.* at para. 67

⁶¹ *Case of Grigoriades v. Greece*, appl. no. 24348/94, 25.11.1997.

⁶² *Id.* at para. 45.

⁶³ *Id.* at para. 45.

⁶⁴ There are cases where human rights bodies held that the restriction of freedom of expression outweighs the national security interest. For example, in 2018, the African Commission on Human and People’s Rights found that a human rights activist’s arrest and detention for his speech violated his right to freedom of expression under Article 9 of the African Charter as the value of political debate outweighs national security interests (*Federation of African Journalists (FAJ) and others v. The Gambia*). In 1994, the Human Rights Committee found that a journalist’s freedom of expression was violated after he was arrested, tortured, and detained in deplorable conditions. The Human Rights Committee stated that “it was not necessary to safeguard an alleged vulnerable state of national unity by subjecting the author to arrest, continued detention and treatment in violation of article 7.” In fact, “the legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multi-party democracy, democratic tenets and human rights.” *Mukong v. Cameroon*, Communication No. 458/1991, UN Human Rights Committee (HRC), 21 July 1994.

⁶⁵ *Case of Sürek and Özdemir v. Turkey*, appl nos. 23927/94 and 24277/94, 08.07.1999.

⁶⁶ *Id.* at para. 51.

⁶⁷ *Id.* at para. 63.

⁶⁸ *Id.* at para. 61.

limits the public's ability to engage in political debate and matters that are in the public interest. The law does not define what "discrediting" means, and thus, it casts a wide net of what conduct and expression could be sanctioned. For example, in theory, an individual who may criticize the domestic economic conditions as a result of the war in Ukraine could face an administrative claim because that statement could be construed as discrediting the Russian army.

33. The law also undermines the ability of journalists to report on matters of public interest, such as military operations of the Russian Armed Forces abroad. Journalists cannot fulfill the role of "public watchdogs" and impart reliable and impartial information if they fear they can be penalized under this broad law. As a result, the public is deprived of pluralistic reporting on the use of armed forces and cannot exercise their right to receive information. For example, dissemination of information on civilian casualties in Ukraine would also fall under the scope of Article 20.3.3, under its current interpretation. The silencing of alternative reporting and dissenting views on military operations and other matters related to the armed forces severely curtails civic space and free flow of information. The application of the law also has adverse effects on the exercise of the right to freedom of peaceful assembly protected under international human rights law. Participation in any protests perceived as critical of the use of the Russian armed forces in military operations is subject to prosecution, even in cases where the protest is limited to expressing a general pro-peace sentiment. The sanctions imposed under Article 20.3.3 are harsh and further confirm that the law will have a chilling effect on expression.
34. These mounting concerns about the freedom of expression in Russia led the UN Human Rights Council to express in a September 2022 resolution a deep concern that the set of legislative measures, including Article 20.3.3., has been "increasingly restricting the freedoms of peaceful assembly, association and expression, including the freedom to seek, receive and impart information, both online and offline."⁶⁹

CONCLUSION

35. For the reasons identified above, Article 20.3.3 is not compatible with international law on freedom of expression, as it constitutes an overly broad, ill-defined, and unnecessary restriction on the fundamental right of freedom of expression and opinion protected under Article 19(2)(3) of the Covenant. We respectfully urge the Court to take international human rights courts' precedents into careful consideration when assessing the legal and constitutional validity of Article 20.3.3 to ensure Russia's compliance with its obligations under the ICCPR.

⁶⁹ *Id.*