

Helsinki 2.0 Paving the Way for Russia's Return to Europe

Berlin, 2021



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Policy paper

The developments over the last two years in Belarus and Russia have once again demonstrated the depth of instability in the region and that it is impossible to find a way out of the protracted crisis in the region within the established international security system.

The confrontation between society and the authorities in Belarus, which has actually turned into a war of President Lukashenko with the country's citizens, has been going on for two years now. In this fight, the authorities have used the whole might of their repressive apparatus, physical force, imprisonment and torture.

The situation in Russia is rapidly moving in the same direction. The degree of brutality of the authorities in their battle with the opposition and civil society has already reached a peak where legality and the law have long been forgotten, economic pressure is combined with psychological and coercive pressure, and opportunities for defence are vanishing before our eyes.

The European Human Rights Dialogue team has been monitoring and analysing the situation of human rights violations in the Russian Federation and Belarus this year. The results have shown that the main targets of repression are people and organisations which have tried to exercise their rights and freedoms of assembly, association, speech, conscience and voting rights. The methods of persecution on the one hand are falsification and manipulation of criminal and administrative cases, adoption and implementation of legal regulations that violate both constitutional norms and international obligations of both countries, as well as direct physical and psychological pressure, including torture and inhuman treatment.

An analysis of the degradation of the legal system and law enforcement in fundamental areas in which both countries have a number of international obligations provides a better understanding of how the repression of dissenters and other victims of illegitimate politically motivated persecution goes beyond the "internal affairs" of both countries. The gross violations of these commitments remove both countries from the field of equal partners for member states of the international democratic community. Torture and inhumane treatment, pressure on and persecution of human rights organisations and restrictions on freedom of expression are matters of common concern and a threat to collective security in its human dimension and not an internal affair of a single country.

As of today, neither Belarus nor Russia has any mechanisms in place to represent citizens' interests. And the decision-making system depends on the interests and ambitions of a few specific people holding power.

The events of previous years, as well as numerous incidents this year, have clearly demonstrated that the authorities of both countries regularly provoke and deliberately create crisis situations not only within Belarus and Russia, but also in other countries, including by choosing EU countries as a target. The internationally undeterred dictatorships, where the situation of human rights and civil society has been continuously degrading over the last 20 years, are in fact in a position to regularly blackmail the citizens of the entire European Union and to extort continued cooperation on their terms. Today's crisis situation shows that it is necessary to fundamentally review the strategy of relations with Belarus and Russia and find a new paradigm linking the issue of European security and human rights, which would significantly limit the arbitrariness of the dictatorships in both countries.

At one time the global paradigm of the Helsinki Accords was created precisely in the formation of a system of checks on uncontrolled dictatorships across the European continent, for the sake of maintaining collective security. It was this to a large extent that helped to keep the peace and bring the situation back to the negotiating table in the global confrontation between the conventional East and the West.

Based on our analysis, we propose a list of specific demands that can and should be put forward to Belarus and Russia as a prerequisite for the continuation of any format of equal dialogue and partnership. Without the fulfilment of these requirements, in fact any attempts at interstate dialogue will, in our view, be devalued by the authorities of both countries, and any agreements may be broken by them at any moment. As a result, cooperation with Russia and Belarus in various spheres ranging from economy and the fight against terrorism to culture, science and education may at any moment become a threat to security in Europe and to political, economic and other interests of Western countries.

Modern international institutions, created on the basis of the Helsinki Accords, can only fully help to improve the human rights situation in a country if there is the political will to improve the situation in that country. Unfortunately, without such a will, all the attempts of human rights defenders do not actually change the situation. Belarus is a vivid example of such a country. Despite numerous measures taken by the OSCE member-states, including the Moscow and Vienna Mechanisms, as well as the special procedures of the UN Human Rights Council, we see that the situation in Belarus has continued to continuously deteriorate. Thus, we have to keep in mind that the capacity of international organisations themselves (primarily the UN, the OSCE, but also the Council of Europe) is severely limited. This is partly due to the need for political consensus in many decision-making processes, which can negatively affect the speed of processes and actions. Nevertheless, international organisations not only provide the basic work of experts, observers and opportunities to form an analytical basis for further work, but also provide the opportunity to form «coalitions of consentients» and provide a space for voicing demands and recommendations.

We believe that the main force for change lies at the interstate level, at the level of cooperation with the European Union and at the level of cooperation between business

corporations. By making use of the expertise of international organisations, it is possible to quickly limit the toxic influence of the authorities of Belarus and Russia on European countries and to open the field of negotiations on new conditions, which will link European security and the possibility of dialogue and partnership with the situation of human rights.

It is thus possible to regain the political will to improve the human rights situation in Belarus and Russia. We see three steps to develop and strengthen this path: (1) introducing changes without which further interstate dialogue and any cooperation could become a security threat at any moment; (2) ensuring a sustainable dialogue; (3) further changes that are necessary to support equitable cooperation.

We highlight the first and most necessary steps, which in our view are the conditions for interstate dialogue;



Demands on Russia



Freedom of assembly

Allow for spontaneous events and remove sanctions for informing about uncoordinated actions.

Exclude solitary pickets from the restrictions imposed on mass public events.

Abolish the legal provisions which penalise the dissemination of information on uncoordinated events.

Repeal Article 212.1 of the Criminal Code on criminal prosecution for “repeated” violations of the law on public events and do not apply this article until it has been fully repealed. Immediately terminate criminal prosecution of those subjected to it on the basis of this article.

Abandon the practice of police suppression of peaceful assemblies, the use of police violence against non-violent participants in such actions and their detention.

The media and freedom of expression

Abolish legislation on foreign agents media, refuse to recognise journalists and media outlets as “foreign agents” before they are abolished, and refuse to restrict the rights of those already recognised as “foreign agents.”

All cases of violence against journalists and obstruction of journalists’ professional activities should **be thoroughly investigated**. Ensure that each case can be internationally investigated and monitored.

Abolish legal provisions allowing for the extrajudicial blocking of Internet content. Legislatively ensure that any restriction of access to Internet resources due to the presence of disputed illegal content on their sites should not be of an indefinite nature and should not result in the blocking of the entire resource.

Abolish legal provisions criminalising expression, especially legal provisions on insulting religious feelings and on the so-called “rehabilitation of Nazism,” abolish provisions establishing liability for defamation against individually undefined individuals, and tighten liability for online defamation. These provisions are used by the authorities to harass, intimidate and prosecute independent journalists, human rights defenders, activists and others, including critics of the authorities who expose human rights violations, allegations of corruption and other abuses.

Suspend the law relating to the dissemination of fake news and fundamentally revise it taking into account the recommendations of OSCE experts. The recently adopted (in the context of the Covid-19 pandemic) anti-fake news law provides for administrative and criminal liability with a maximum penalty of five years imprisonment for “publicly disseminating knowingly false information” on a wide range of issues. Its language is vague and allows for broad interpretation and abuse.

Ensure that the following crimes can be openly investigated by international bodies: the murders of Anna Politkovskaya, Boris Nemtsov, Natalia Estemirova and Aleksandr Litvinenko; the attempts on the lives of Yulia and Sergei Skripal, Alexei Navalny, Vladimir Kara-Murza and others.

Unlawful anti-extremism and counter-terrorism

Narrow the legal definition of extremist activity, use violence as a mandatory qualifier of extremist activity (the use of violence, the threat of violence, calls for violence or other explicit support of violence), before suspending the use of overly broad legislation.

Make the six-part test recommended by the Rabat Plan of Action on the prevention of incitement to discrimination, hostility and violence applicable in court decisions on punishment for public utterances.

Conduct an audit of **all persons listed by Russia on international terrorist watch lists,** on the condition that Russia provides full and complete documentation as to the basis for the listing.

Freedom of association

Repeal **all provisions of the foreign agents legislation** as unlawful and discriminatory. Until they are repealed, refuse to enforce them. All lawsuits, fines and prison sentences under this legislation should be reviewed. Affected individuals and organisations should be compensated.

Repeal **all provisions of the undesirable organisation legislation**. Recognition of undesirable foundations having partnership relations with the Russian civil society is in fact destruction of the whole legal space for cooperation between civil society representatives and limitation of cooperation exclusively to the interstate level, which is unacceptable for European partners. All cases of cooperation with undesirable organisations should be reviewed and victims should be compensated.

Torture, cruel, inhuman treatment

As a first and immediate step in the fight against torture, the **separate offence of “torture, cruel, inhuman or degrading treatment or punishment” should be incorporated into the Criminal Code and comply with its international definition**. Legislation should provide robust legal remedies against torture that are effective and easily accessible to all in Russia. Human rights defenders with a specific focus on torture should be included in the work on the draft legislation.

International monitoring of places of detention should be made possible as an essential guarantee of the very basic human right to life.

Fair elections

Ensure that **parliamentary elections guarantee the legitimacy of the legislative body** and thus reliability and predictability in cooperation with the international community.

Resume work on the Electoral Code drafted by the Golos Association with the participation of OSCE election experts, adopt it and hold early federal parliamentary elections applying the code.

Remove unreasonable restrictions on passive voting rights: return the right to be elected to citizens with foreign residence permits, foreign financial assets, those convicted without actual imprisonment, reduce the terms of restrictions on passive voting rights for those who have served their sentences, along with a parallel revision of the law on extremist activities.

Provide opportunities for **public associations to directly send observers.**

Ensure **publicity and transparency in the formation of election commissions at all levels** through an open procedure of nomination of candidates, coverage on the websites of commissions and in the media of the process of approval and endorsement.

Reclassify electoral violations as serious crimes. Make vote-buying a criminal offence only. Reinvestigate all episodes related to allegations of electoral crimes over the past ten years, granting international electoral experts access to the investigation materials.



1. Freedom of assembly

As a state party to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and a state party to the International Covenant on Civil and Political Rights (ICCPR), Russia has assumed a number of obligations in the area of freedom of assembly and association. These are based, inter alia, on the case law of the European Court of Human Rights and on decisions of the UN Human Rights Committee, which are summarized in the OSCE/ODIHR and Venice Commission¹ Guidelines on Freedom of Peaceful Assembly.

Federal Law No. 54-FZ of June 19, 2004 “On Assemblies, Rallies, Demonstrations, Marches and Pickets (hereinafter referred to as the “Law on Assemblies”) regulates the exercise of the right to freedom of assembly in the Russian Federation. Since its adoption it has been amended 13 times (once by the Constitutional Court). Almost all amendments toughened the rules of organizing and holding assemblies, introduced additional restrictions and requirements for organizers and participants.

The first significant change in the law followed the events at Bolotnaya Square on May 6, 2012. The package of amendments introduced a number of additional requirements for organizers: it prohibited persons with a criminal record from acting as organizers, introduced liability for exceeding the declared number, prohibited campaigning before approval by the authorities, and introduced the concept of “specially designated places”. These places were determined by local authorities as priority ones where public events could be held. In practice, the introduction of such places often leads to the inability to obtain approval to held events somewhere else.

In addition to the amendments to Federal Law No. 54-FZ, the amount of fines for violations of the rules of the organization of public events was significantly increased, making these violations the most severely punishable. An additional offence, i.e. “organization of mass simultaneous presence and/or movement of citizens”, was also introduced. This was done in order to limit spontaneous events held without notification.

These amendments were criticized by the Venice Commission,² but its main recommendations have not been taken into account to this day. On the contrary, the

1) OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly. 2nd Revised edition, Warsaw-Strasbourg, 2010. URL: <http://www.osce.org/ru/odihr/83237>

2) European Commission for Democracy through Law (Venice Commission), Opinion on Federal Law No.65-FZ of 8 June 2012 of the Russian Federation, CDL-AD(2013)003 (11 March 2013). URL: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2013\)003-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)003-e)

restrictions have been strengthened by subsequent amendments, both to Federal Law No. 54 and to the corresponding articles of the Code of Administrative Offenses and the Criminal Code of the Russian Federation. These amendments reinforced the tendency to criminalize peaceful protests.

Bans on public events and their consequences

The 2004 law does not provide for direct bans on public events, but only gives the authorities the power to propose a change of time and place. The Constitutional Court³ also confirmed the illegality of direct bans. But the current legislation does not provide for any approval procedures in response to a “proposal” from the authorities. Therefore, the requirement to “coordinate” turns into a de facto requirement to request permission from the authorities to hold the event.

The notification procedure was further undermined by the 2014 amendments. The organization and holding of a mass event without prior notification to the authorities became punishable by administrative arrest for up to 10 days. According to these amendments, any violations of the organization of public events, including failure to timely notify the authorities, could lead to a penalty of administrative detention for up to 15 or 20 days, depending on the consequences⁴.

In 2018, administrative liability for “involving minors” was introduced, punishable with a fine of up to 50 thousand rubles or 15 days of arrest.

On January 10, 2021, additional amendments went into effect that prohibit any foreign or anonymous funding of public events. They oblige the organizer of any public event with more than five hundred participants to provide the authorities with reports on its financial activities. In response to the authorities’ proposal to hold the event at an alternative time and place, the organizer is obliged either to agree or cancel the event. Additional restrictions are introduced in case of pre-event campaigning. These restrictions actually provide additional grounds for arbitrary banning of the previously agreed event⁵. The possibility of “approval” was illusory enough before, and now it has turned into a fiction.

Russia’s hosting of the 2017 Confederations Cup and then the 2018 FIFA World Cup gave the authorities an additional reason to restrict “approvals” for public events. Based

3) Decision of the Constitutional Court No. 484-OP of April 2, 2009 URL: <https://legalacts.ru/doc/opredelenie-konstitutsionnogo-suda-rf-ot-02042009-n-484-o-p-po/>

4) A detailed analysis of restrictions is given in the Follow-up memorandum of the Commissioner for human rights on freedom of assembly in the Russian federation. Strasbourg, 5 September 2017. URL: <https://rm.coe.int/follow-up-memorandum-on-freedom-of-assembly-in-the-russian-federation-/16807517aa>.

5) See Denis Shedov’s report for OVD-Info, “Legislative Restrictions on Freedom of Assembly by the End of 2020. New Obstacles to Assemblies and Single Pickets, New Penalties for Activists and Journalists”. December 30, 2020. URL: <https://ovdinfo.org/reports/zakonodatelnye-ogranicheniya-svobody-sobraniy-pod-konec-2020-goda>

on the Presidential⁶ Decree, “special security measures” were introduced in the regions where sporting events were held. According to them, all kinds of actions “not related to sporting events” were to be held only in those places and at the time determined by local authorities in coordination with the Federal Security Service. Now, at the discretion of the regional authorities, in fact, a special legal regime was introduced for certain territories. The corresponding restrictions on freedom of assembly were introduced not even by the federal law, but by the presidential decree with the subsequent establishment of the grounds for the bans at the regional level.⁷

Under these special conditions single-person pickets, which usually do not require approval⁸, also fell under the ban. Subsequently, during the COVID-19 pandemic, absolute bans on public events were introduced in a number of regions also on the basis of orders adopted at the regional level and with reference to safety and security requirements.

Single-person pickets as a form of expression of opinion are also regulated by Federal Law No. 54-FZ. It classifies them as public events not requiring notification. The widespread of direct bans and various restrictions have increased the popularity of this form of protest⁹. However, changes in the legislation since 2012 have provided courts with the opportunity to classify a series of single-person pickets as a single action, holding its participants liable for holding the event without notification¹⁰. The December 2020 amendments introduced liability as well for people queuing to participate in a single-person picket. In addition, after the commencement of the pandemic single-person pickets in a number of regions (first of all in Moscow and St. Petersburg) fell under anti-COVID restrictions¹¹. It is noteworthy that removal of restrictions on other events, not related to public discussion of socially significant issues, did not result in removal of restrictions on picketing¹², and this indicates that obstruction of freedom of opinion is one of the key goals of restrictive measures.

The actual impossibility of approval led to the fact that a significant number of those wishing to hold a public event and criticize the authorities began to simply ignore the rules

6) Presidential Decree No. 202 of May 9, 2017 “On peculiarities of the application of enhanced security measures during the FIFA World Cup 2018 and the FIFA Confederations Cup 2017 in the Russian Federation” // Rossiyskaya Gazeta, May 11, 2017. URL: <https://rg.ru/2017/05/10/prezident-ukaz202-site-dok.html>

7) Human Rights in the Russian Federation: A Collection of Reports on the Events of the Year (2017) // Moscow Helsinki Group. p. 64. URL: <https://mhg.ru/sites/default/files/inline/files/doklad-mhg-pch-rf-v-2017.pdf>

8) Human Rights in the Russian Federation: A Collection of Reports on the Events of the Year (2018) // Moscow Helsinki Group. p. 115. URL: <https://mhg.ru/sites/default/files/inline/files/mhg-prava-cheloveka-rf-2018.pdf>

9) In particular, many actions in defense of the journalist Ivan Golunov, detained on false charges of drug distribution, took place in this format. The same tactics were used by the activists of the “Perpetual Picket” who sought the release of political prisoners.

10) The Constitutional Court of Russia, in its Ruling of February 14, 2013, found that the new restrictions do not contradict the main law and “are aimed at preventing the abuse of the right not to notify public authorities of a single-person picket” // Decision of the Constitutional Court of Russia of February 14, 2013 N 4-P “On the case of checking the constitutionality of the Federal Law “On Amendments to the RF Code of Administrative Offences and the Federal Law “On meetings, rallies, demonstrations, marches and pickets”

11) See analysis by Roman Kiselev, head of legal programs at the Moscow Helsinki Group, “On the Legality of Banning Single-person Pickets and Assemblies under the Pretext of a Pandemic: From Norms to Common Sense”. URL: <https://mhg.ru/o-zakonnosti-zapreta-odinochnykh-piketov-i-sobraniy-pod-predlogom-pandemii-ot-norm-do-zdravogo-0>

12) See article “In Russia, under the guise of fighting coronavirus, not only rallies but also single-person pickets were banned” // Meduza, July 21, 2021. URL: <https://meduza.io/feature/2021/07/21/v-rossii-pod-vidom-borby-s-koronavirusom-zapretili-ne-tolko-mitingi-no-i-odinochnye-pikety-meduza-vyasnila-kak-eto-proizoshlo>. As an example, we can also use the list of large-scale events attracting tens of thousands of visitors and not cancelled due to the pandemic: see the message on the Official website of the Administration of St. Petersburg about the development of event tourism in 2020. URL: https://www.gov.spb.ru/gov/otrasl/c_tourism/statistic/

of notification, and the percentage of events without notification increased¹³ significantly. This has led to additional tension between protesters and law enforcement. The latter view any such event as illegal, and therefore subject to dispersal, including the use of force, detention of participants and bringing them to justice, regardless of the occurrence of harmful consequences or their real risks¹⁴. Moreover, even persons publicly mentioning on the Internet the planned actions not coordinated with the authorities can be held liable for organizing uncoordinated public actions.

Additional restrictions at the regional level

It is also difficult to challenge the legislative restrictions on freedom of assembly because significant powers have been transferred to the Subjects of the Russian Federation. They regulate the procedure for submitting notifications and their approval. At the level of the Subjects of the Russian Federation it is decided where events may be held and what their size should be. The minimum distance between persons participating in a picket is also regulated.

Some regions actively use these opportunities to impose additional territorial bans. For example, according to an analysis by OVD-Info, 64 Subjects of the Russian Federation prohibit rallies near the buildings of educational institutions, while in Kamchatka and Lipetsk region rallies are prohibited within a hundred meters of children's playgrounds¹⁵. This variety of restrictions on the location of events often makes it impossible to achieve their goals, as they cannot be held in places where their target audience may see or hear anything.

The ECHR judgment in case 57818/09 Lashmankin and Others v. Russia of 29 May 2017 explicitly points to a range of issues with freedom of assembly in Russia, and the Committee of Ministers of the Council of Europe, as part of its monitoring of the implementation of ECHR judgments, assessed the Russian authorities' implementation of the judgment. While noting a number of positive aspects, the Committee of Ministers nevertheless concluded that despite clear and repeated instructions from the European Court and the Committee, no satisfactory legislative reform to bring the legal framework

13) It is worth noting that events initiated or openly supported by the authorities, or mass actions without sociopolitical connotations, as a rule, do not require approval or are approved without any hindrance. Separately, it is worth considering the use of sports and entertainment events and activities as a reason to limit or ban sociopolitical activities.

14) The inadmissibility of such practices was pointed out, in particular, by the Commissioner for Human Rights of the Council of Europe in his commentary "Russian Federation failure to respect human rights while policing peaceful protests" and in the letter sent to the Minister of Internal Affairs of the Russian Federation. See more at: https://www.coe.int/en/web/commissioner/view/-/asset_publisher/ugi3i6qSEkhZ/content/russian-federation-failure-to-respect-human-rights-while-policing-peaceful-protests?_101_INSTANCE_ugi3i6qSEkhZ_languageId=ru_RU

15) See OVD-Info's special project site "Forbidden Territory" (URL: <https://tn.ovdinfo.org>) and OVD-Info's July 15, 2020 report "Bans on rallies near schools, hospitals, temples, and military facilities" (URL: <https://ovdinfo.org/reports/zaprety-na-akcii-u-shkol-bolnic-hramov-i-voennyh-obektov>)

in line with the requirements of Article 11 (of the European Convention on Human Rights) has taken place.¹⁶ One of the key requirements of the Committee of Ministers is the introduction of proper notification rules and limiting the discretion of local authorities in coordinating public events, as well as the legalization of spontaneous assemblies.¹⁷

Mass detentions

With few exceptions, mass public events held without approval are accompanied by mass detentions, most often with the unwarranted use of force against protesters and bystanders.

Official data on the number of detainees is often unavailable or seriously diverges from that compiled by independent observers. Since December 2011, the independent civil initiative “OVD-Info” has been active in Russia. It collects information about the number of detainees and cases of restriction of public protest. From December 4, 2011 to December 31, 2012 in Moscow and several cities near Moscow, “OVD-Info” recorded information about 5169 politically motivated detentions at 228 events (1312 detentions in December 2011 and 3857 in 2012)¹⁸. From January 1 to December 31, 2013, OVD-Info reported on 1,463 detentions during 169 events in Moscow and the Moscow Region. In St. Petersburg and the Leningrad region, during one year 461 detentions at 42 events took place; in Nizhny Novgorod and Voronezh (and their respective regions), 81 and 33 detentions at 19 and 5 events, respectively¹⁹. By comparison, during 2018, at least 1,429 people were detained at 170 events in Moscow and 541 at 79 events in St. Petersburg²⁰, despite stricter regulations, increasing pressure, and substantial penalties, the numbers remained comparable. At the same time, the total number of detainees exceeded 2,700 at a series of events in Moscow alone between July 14 and August 31, 2019 (protests over the non-eligibility of a number of independent candidates for the Moscow parliamentary elections)²¹.

In 2020, OVD-Info received information about 2,435 detentions in 56 regions of Russia.

16) Committee of Ministers Decision of June 9, 2021, par. 10. URL: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a2c0ff

17) In December 2020, a coalition of human rights organizations, including the Moscow Helsinki Group, OVD-Info, the Memorial Human Rights Center, and the Public Verdict Foundation appealed to the leaders of the State Duma factions and then to the authorized state agencies to assist in resolving systemic problems with freedom of assembly at the federal level in the context of the execution of the ECHR ruling on the Lashmankin case and continue to engage with them on this issue. See: Human rights defenders appealed to the Commissioner for Human Rights and the State Duma on the problem of freedom of assembly // Website of the Memorial Human Rights Center, 25.12.2020. URL: https://memohrc.org/ru/news_old/pravozashchitniki-obratilis-k-upolnomochennoy-po-pravam-cheloveka-i-v-gosdumu-po-probleme.

18) The Man From the Police Truck: Political Detentions in Moscow. OVD-Info Annual Report, 2012 // OVD-Info website. URL: <https://reports.ovdinfo.org/2012/report/ru>

19) Hampered Protests: Political Detentions in 2013. OVD-Info Annual Report 2013 // OVD-Info website. URL: <http://reports.ovdinfo.org/2013/>

20) Detentions at Public Rallies // OVD-Info website. URL: <https://data.ovdinfo.org/detentions/>

21) Moscow Helsinki Group review “Sad, Happy, and Controversial in the Field of Human Rights in Russia, 2019”. URL: https://mhg.ru/sites/default/files/inline/files/doklad-mhg-za_2019-god.pdf

At least one third of these detentions were single-person pickets²². During the last wave of mass demonstrations in January-February 2021, according to OVD-Info, more than 11 thousand people²³ were detained in Russia. In its official response to the Office of the UN High Commissioner for Human Rights, the Russian Mission to the UN reports 17,600 detainees²⁴. In Moscow alone, 942 people were placed under administrative arrest for allegedly violating the procedure for holding a public event; this is three times more than in the previous fifteen years²⁵. Similar “anti-records” were set in other cities, such as Ufa or Voronezh²⁶. The inadequate conditions in which many of them were kept both during detention and while serving their arrests, have been appealed to the courts.

The above mentioned facts confirm that the practice of indiscriminate mass detentions, which, according to the UN Human Rights Committee, are unlawful insofar as they are aimed at stopping an assembly rather than preventing specific unlawful acts²⁷, has been perpetuated.

Excessive use of force by law enforcement agencies

A significant problem is the aggressive tactics of the police when policing public events. In the report “Russia on the Way to Freedom of Assembly: Problems and Tools for Change,” OVD-Info experts Natalia Smirnova and Denis Shedov note: “Surrounding protesters, forcing them onto the roadway, creating crushes can provoke fear and isolated instances of retaliatory violence by protesters or bystanders. As a result, the authorities portray the entire protest as ‘not peaceful,’ and the aggressive actions of the police officers themselves are not taken into account when dealing with a specific case of violence against police officers.”²⁸

According to Roman Kiselev, head of legal programs of the Moscow Helsinki Group, Russia has repeatedly stated that it has adopted special guidelines for law enforcement

22) Joint report of human rights organizations for the Committee of Ministers of the Council of Europe “Unresolved problems with freedom of assembly in Russia in 2020” dated June 10, 2021. URL: <https://ovdinfo.org/report/lashmankin-i-drugie-protiv-rossiyskoy-federacii#2>. The official statistics of the Ministry of Internal Affairs, published in the report of the Commissioner for Human Rights in the Russian Federation for 2020, is almost the same, i.e. 2,452 detentions. URL: <https://ombudsmanrf.org/content/doclad2020>.

23) See February 19, 2021 OVD-Info report “Suppression of Peaceful Protests of January-February 2021 in Russia”. URL: <https://ovdinfo.org/reports/winter-2021-supression#4>.

24) Information from the Russian Federation in connection with the joint request of the special procedures of the UN Human Rights Council regarding alleged violations of civil rights of participants of mass unauthorized actions in Moscow and other major Russian cities on 23 and 31 January and 2 February, 2021 / Reference: AL RUS 2/2021 // URL: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=36154>.

25) OVD-Info report of February 19, 2021 “Suppression of peaceful protests of January-February 2021 in Russia”. URL: <https://ovdinfo.org/reports/winter-2021-supression#12>.

26) See the website of the “After the Protest” initiative group for parsing the aftermath of the protests in Voronezh. URL: <http://posleprotesta.org/>.

27) Human Rights Committee. General Comment No. 37 (2020) on the right to peaceful assembly (Article 21). URL: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICaKh7yhsrdB0H115979OVGGb%2BWPA-Xj3%2BhoP51AAHSqSubYW2%2FROAag545hCEpG5u5zQsDpYQPUYSneyb456XRPbWnwZ%2Bpk4wqETaf037bwQ9e-OWaCR>.

28) Report for the Reform project “Russia on the Road to Freedom of Assembly: Problems and Tools for Change. URL: <https://reform.io/contents/uploads/2021/06/ovd-web.pdf>

officers on protecting public order during mass public events, but these guidelines are “for internal use” and are not available to the public, hence, it is not clear whether they are actually aimed at facilitating freedom of assembly and are in line with international standards²⁹.

The proliferation and promotion of such tactics and the disregard for human rights compliant policing standards lead³⁰ to excessive police violence at public events. Violence manifests itself in the indiscriminate and disproportionate use of force. Physical force and “special means” are used in violation of established procedures: the nature and degree of danger of the actions of individuals are not considered, the strength of their resistance is not taken into account, there is no desire to minimize harm and no first aid is provided. The police also violate relevant prohibitions and restrictions: strikes with a baton to the head, neck, collarbone, abdomen areas, etc.³¹

The impunity has been the main issue. The last publicly known episode of criminal prosecution of a police officer for the excessive use of force during public events dates back to³² 2011. Despite the numerous documented episodes of excessive use of force, i.a. blatantly violating the established rules, investigative agencies find no corpus delicti or in principle refuse to initiate criminal proceedings against law enforcement officers. Even in cases, which were widely covered in the media³³, perpetrators were not held criminally liable.

On the contrary, many victims of police violence fear that if they demand an investigation, they may become a defendant in a criminal case and be charged with violence against law enforcement³⁴ officials. The problem of impunity is exacerbated by the difficulty of public identification of perpetrators, as at public events Rosgvardiya officers remain completely anonymous, and police officers cannot be held liable for concealing their badges³⁵, which are already difficult to read. It is common practice for officers to have their faces completely hidden by masks, while the corresponding European standards require that this practice be strictly controlled and used only in exceptional cases³⁶. The Commissioner for Human Rights specifically mentions the need for police officers to be identified at public events in Russia, noting this as an important safeguard against ill-treatment and impunity³⁷ in his letter to the minister of internal affairs (2019).

29) Roman Kiselev. Russia on the Way to Freedom of Assembly. Problems and tools of change // Website of the Reform project. URL: <https://reform.io/blog/2021/06/10/rossiya-na-puti-k-svobode-sobranij/>

30) In particular, UN's Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990), UN Human Rights Guidance on Less-Lethal Weapons in Law Enforcement (2020), and OSCE Guidebook on Democratic Policing (2008)

31) The use of special means during the dispersal of protests is analyzed in particular in the report “Dispersal Techniques” by the Agora Human Rights Group. URL: https://www.agora.legal/fs/a_delo2doc/188_file.pdf

32) On December 26, 2011 Kuibyshev District Court of St. Petersburg sentenced Vadim Boiko to 3.5 years of suspended imprisonment, with probation for 2 years, for strikes on the head during a rally on 31 July 2011 in St. Petersburg. See.: https://ru.wikipedia.org/wiki/%D0%91%D0%BE%D0%B9%D0%BA%D0%BE_%D0%92%D0%B0%D0%B4%D0%B8%D0%BC_%D0%92%D0%B0%D0%B4%D0%B8%D0%BC%D0%BE%D0%B2%D0%B8%D1%87

33) Daria Sosnovskaya case, see article in Kommersant magazine: <https://www.kommersant.ru/doc/4234059> or Margarita Yudina case, see article in Mediazona: <https://zona.media/article/2021/03/25/yudina>

34) Interviews with representatives of human rights organizations such as the Public Verdict Foundation and the Committee Against Torture, which help victims of police violence.

35) The problem of the anonymity of police officers and Rosgvardiya soldiers at public events became the subject of a separate public campaign, Law Enforcement Number. See its website: <https://pravnomer.ru/>

36) See 28th Annual Report of the European Committee for the Prevention of Torture, par. 64 (<https://rm.coe.int/16809420e3>) and 14th General Report of the CPT, par. 3 (<https://rm.coe.int/16806cd08c>)

37) Letter from the Commissioner for Human Rights of the Council of Europe to the Minister of Internal Affairs of the Russian Federation Ref. No.: CommHR/DM/sf 028-2019 of August 2, 2019 URL: <https://rm.coe.int/letter-to-/168096a30b>

Administrative liability of participants of public events

Each wave of mass demonstrations is accompanied by a campaign of judicial repression against its participants. With the toughening of penalties for violations at public events (the 2014 amendment package), the number of administrative arrests under these articles³⁸ has increased dramatically. The application of arrest as a sanction for such violations allowed the police to hold citizens in police stations for up to 48 hours. Combined with inadequate detention³⁹ conditions, harsh, degrading, and sometimes inhumane and cruel treatment⁴⁰, as well as systematic denial of access to defense lawyers⁴¹, this creates additional opportunities for pressure and induces “chilling effect” on the exercise of freedom of assembly.

When much harsher punishments were introduced for repeated “violations”, those who had already been held administratively liable started facing a greater risk. According to Article 20.2 part 8 of the Code of Administrative Offences of the Russian Federation, in case of repeated violations of the procedure for organizing or holding assemblies offenders are subject to a fine from 150,000 to 300,000 rubles⁴², or community service for 40 to 200 hours, or administrative arrest for up to 30 days. Such penalties, in fact, are similar to criminal penalties, but without additional procedural guarantees, stipulated for in the Criminal Procedure Code. The key issue is the imperfection of administrative court proceedings. In this instance they are clearly of a repressive nature, neither the adversarial procedure nor the right to defense are ensured, there is even no written record of the proceedings⁴³.

Criminal liability for participants of public events

The trend toward harsher penalties for participation in public events (regardless of the degree of actual risk or harm to life, health, or property) has been propagated by

38) See data from the Judicial Department’s statistics, in particular those cited in the Moscow Helsinki Group’s 2015 Annual Report “Human Rights in the Russian Federation: A Collection of Reports on Events of the Year (2015)”. URL: <https://mhg.ru/sites/default/files/files/2015-prava-cheloveka-rf-mhg.pdf>

39) OVD-Info report of February 19, 2021 “Suppression of peaceful protests of January-February 2021 in Russia”. URL: <https://ovdinfo.org/reports/winter-2021-suppression#7>

40) OVD-Info report of February 19, 2021 “Suppression of peaceful protests of January-February 2021 in Russia”. URL: <https://ovdinfo.org/reports/winter-2021-suppression#6>

41) The issue is summarized in a review on the website of the Institute for Law and Public Policy (<https://ilpp.ru/legal-practice/krepost>). The “OVD-Info” campaign “Let’s Destroy the Fortress” (<https://krepost.ovdinfo.org/>) also deals with the lack of access to defense lawyers.

42) Also note that the failure to pay the fine on time leads to an additional fine, twice the amount of unpaid fine (thereby tripling the original amount) or administrative detention for up to 15 days, or community service for up to 50 hours

43) For an analysis of the systemic problems of the legislation on administrative liability, see the expert opinion of Sergey Golubok on the draft law “On Amendments to the Code of Administrative Offences of the Russian Federation” for the Public Verdict Foundation of May 31, 2012. URL: http://publicverdict.ru/topics/lib_law/10292.html

Article 212.1 of the Criminal Code, which was introduced in 2014 and immediately used in numerous criminal cases. The first precedent was the conviction of Ildar Dadin, sentenced under this article to 3 years in prison in December 2015. A widespread public outcry led to the overturning of the sentence and closing of the criminal case after 14 months of the sentence had been served. Alas, although the Constitutional Court, where Dadin appealed, asking that Article 212.1 of the Criminal Code of the Russian Federation be declared unconstitutional, indicated that the article could be applied only if the protester's actions caused harm to citizens, public safety or constitutionally protected values, it did not consider it as either inadmissible interference with the freedom of assembly or violation of the principle of *non bis in idem* (the right not to be tried or punished twice for the same offence, i.e. first in the administrative and later criminal procedure).

Currently, the article is still applied, regardless the restrictions introduced by the relevant decision of the Constitutional Court. In particular, in 2019, Konstantin Kotov was sentenced under Article 212.1 of the Criminal Code to four years in prison. After the Constitutional Court ruled on Kotov's appeal, the sentence was reduced to one and a half years, but it was not overturned. In December 2020, university lecturer and municipal deputy Yulia Galiamina was convicted under the same article. In October 2021 environmental activist Vyacheslav Yegorov was sentenced to one year and three months in prison. In all of the above mentioned cases courts did not evaluate the actual harm caused by defendants' actions, but considered cases on formal grounds, i.e. the existence of three protocols in force on administrative offenses related to public events.

The criminal prosecution of protesters has been a steady trend since the aftermath of the May 6, 2012 march and rally. At that time, the initial event was approved, but as a result of subsequent restrictions and actions by the authorities, especially the police, it resulted in physical confrontations. These events became the basis for the initiation of criminal proceedings under Article 212 of the Russian Criminal Code ("Mass Riots"), and also charging a number of protesters under Article 318 of the Russian Criminal Code ("Use of Violence against an Official"). A detailed analysis conducted by the International Expert Commission for evaluation of these events⁴⁴ indicated that all violent incidents were outside of the scope of Article 212 on mass riots, and that during the police operation mostly random bystanders were detained.

The case law of the European Court of Human Rights provides that isolated instances of spontaneous violence committed during a demonstration cannot justify extensive restrictions or dispersals of assemblies and their peaceful participants⁴⁵. But arbitrary attempts to consider predominantly peaceful public events as "mass disorder" have been

44) Website of the International Expert Commission for the evaluation of events on Bolotnaya Square on May 6, 2012 in Moscow. URL: <http://6maycommission.org/>

45) ECHR judgment of 25 July 2017 in case No. 31475/10, Annenkov and Others v. Russia, par. 98 and 124-126. URL: <https://epp.genproc.gov.ru/ru/web/gprf/documents/human-rights?item=50485353>

undertaken nevertheless, in particular in relation to Crimean Tatars demonstrations during the annexation of the Crimean peninsula in 2014 (the “February 26 Case”)⁴⁶ and later during the 2019 protests in Moscow (the “Moscow Case”)⁴⁷ and finally in the same year in Ingushetia following mass demonstrations against the transfer of parts of the republic’s land to neighboring Chechnya⁴⁸.

18 people were convicted in the “Moscow case” on various criminal charges, 11 of whom were sentenced to actual imprisonment (an average of 3.22 years) and 4 were given suspended sentences (an average of 2 years of suspended imprisonment)⁴⁹.

Large-scale criminal proceedings were initiated against protesters in 2021 in response to the mass protests provoked by the detention of Alexei Navalny after his poisoning and return to Russia and the publication of materials about Putin’s palace. OVD-Info registered over 90 criminal cases initiated against protesters as part of the “palace case,” involving a total of 157 people⁵⁰. According to PolitPressing.org project, which collects information about political persecutions in Russia, 183 people were criminally prosecuted in connection with public events in 2021 (v. only 37 people in 2018)⁵¹.

Harassment of journalists and observers

The use of force and detention of journalists, as well as citizen observers, is an important indicator of the disregard of freedom of assembly. Both journalists and citizen observers perform the socially significant function of gathering and disseminating information on the course of mass actions, or they perform the important role of “watchdogs” who record violations and abuses and report on them⁵².

Thus, the Commissioner for Human Rights of the Council of Europe points out that after the July 27, 2019 action, she received information that law enforcement officers used force against and/or detained at least fifteen journalists who were covering the protests that day. Some of them were injured and required medical assistance⁵³.

46) See “OVD-Info” guide to the “February 26” case. URL: <https://ovdinfo.org/story/delo-26-fevralya>

47) See the website of the “Case 212 Detainees” campaign. URL: <https://delo212.ru/about>

48) “The Ingush case: Who is on trial for protesting against changing the border with Chechnya // OVD-Info website. URL: <https://ovdinfo.org/articles/2020/04/15/ingushskoe-delo-kogo-sudyat-za-protesty-protiv-izmeneniya-granicy-s-chechney-gid>

49) Moscow Helsinki Group review “Sad, Happy, and Controversial in the Field of Human Rights in Russia. 2019”. URL: https://mhg.ru/sites/default/files/inline/files/doklad-mhg-za_2019-god.pdf

50) See the website of the OVD-Info campaign on the “Palace Case”. URL: <https://palace.ovdinfo.org/>

51) PolitPressing.org is a website monitoring political repressions in contemporary Russia. URL: <https://politpressing.org/>

52) Despite the fact that observers are not participants in public events, they play a particularly important role in the full enjoyment of freedom of assembly, as the UN Human Rights Committee emphasizes in its General Comment No. 37 on the right to peaceful assembly. They are entitled to protection and cannot be prohibited from observing public events, including monitoring the actions of law enforcement officers, even if the assembly they are observing is declared unlawful or dispersed.

53) Letter from the Commissioner for Human Rights of the Council of Europe to the Minister of Internal Affairs of the Russian Federation Ref. No.: CommHR/DM/sf 028-2019 of August 2, 2019 URL: <https://rm.coe.int/letter-to-/168096a30b>

The Union of Journalists and Media Employees reported that during mass public protests in Khabarovsk in 2020 journalists and bloggers covering the protests were subjected to “arrest carousel tactics”⁵⁴.

According to the Russian Union of Journalists more than 200 violations of journalists’ rights took place during the winter 2021 rallies in 40 regions of Russia. More than 40 journalists were detained and at least one was injured. On January 31 of the same year about 60 journalists were detained and six were “hit by batons”.⁵⁵ OVD-Info knows of more than 150 arrests of journalists covering the protests at the time⁵⁶. Police officers used batons and stun guns against journalists, and some journalists had head injuries.

On January 31 two observers of United Public Observation Group were intentionally detained during the action in Moscow. They were openly monitoring the event and had previously notified the Ministry of Internal Affairs and Rosgvardiya about it. Their role and function were clearly indicated in the notice, and during the rally they were wearing special vests and badges with the words “Observer”. The police could not help knowing that they were detaining observers who were gathering information in an open and legal way. Neither arguments of the defense, nor reference to international obligations and standards, nor the video recording of the moment of arbitrary detention had any effect in the court; the observers were sentenced to 4 days of arrest and have appealed to the ECHR claiming violation of the state’s obligation to assist and protect observers at public events⁵⁷. Similar challenges were faced by public observers from the Committee against Torture in Pyatigorsk, Orenburg and Nizhny Novgorod, and a member of the United Public Monitoring Group in Syktyvkar.⁵⁸

Additional disturbing trends

Recently, a common tactic of cutting off or limiting mobile Internet traffic at assembly⁵⁹ locations have been observed. The authorities have also begun to use facial recognition systems to identify protesters and subsequently prosecute them. Previously, these

54) See the website of the Union of Journalists and Media Employees. “Protesting Khabarovsk is to be cut off from information” of November 19, 2020, with an update of Dec. 5, 2020 URL: https://profjur.org/khabarovsk_journalists/

55) “Injures were not diagnosed in case of Novaya Gazeta journalists who covered the protests” // RIA Novosti, March 10, 2021 URL: <https://ria.ru/20210310/zhurnalisty-1600596161.html>

56) See February 19, 2021 OVD-Info report “Suppression of Peaceful Protests of January-February 2021 in Russia. URL: <https://ovdinfo.org/reports/winter-2021-suppression#1>

57) See Moscow Helsinki Group report: “MHG sent a complaint to the ECHR about the detention of a public observer at the January 31 rally.” URL: <https://mhg.ru/news/mhg-napravila-v-espch-zhalobu-na-zaderzhanie-obshchestvennogo-nablyudatelya-na-akcii-31>

58) See February 15, 2021 statement of the Moscow Helsinki Group Council. “MHG Demands that Authorities Meet Obligations to Facilitate the Work of Public Observers.” URL: <https://mhg.ru/news/mhg-trebuot-ot-vlastey-vypolnyat-obyazatelstva-po-sodeystviyu-rabote-obshchestvennyh>

59) See the appeal of the Agora International Human Rights Group to UN special procedures in connection with the Internet and cell phone shutdown during protests in Russia: “Agora complained to the UN about the Internet and cell phone shutdown during protests in Russia” // Meduza, August 5, 2019 URL: <https://meduza.io/news/2019/08/05/agora-pozhalovalas-v-on-na-otklyuchenie-interneta-i-mobilnoy-svyazi-vo-vremya-protestov-v-rossii>

technologies were introduced to monitor compliance with quarantine restrictions⁶⁰.

Websites that publish information about protests have been blocked by Roskomnadzor, and people spreading calls for participation have been arrested and fined on charges of organizing unapproved events⁶¹. In addition to bans on disseminating information about unapproved public events, a full-scale intimidation campaign has been unleashed against potential participants, including threats to expel them from universities or jobs, police visits to homes, warnings, etc.

RECOMMENDATIONS

Recommendations for improving freedom of assembly in Russia can be divided into two broad areas:

1. legislative improvements;
2. changes in application of legislation.

For the first area, the Moscow Helsinki Group developed a comprehensive draft of amendments based on international standards⁶². The indicated changes largely coincide with the proposals of the experts of OVD-Info described in the report for the Reform⁶³ project.

Recommendations in case of the second area (changes in application of legislation) are as follows:

1. Treating mildly unapproved but peaceful public events. Allow spontaneous events to take place and remove sanctions for disseminating information on unapproved actions.
2. Treating mildly small actions that do not seriously impede traffic and/or pedestrians.
3. Recognize that public events present a legitimate use of urban space and that they should be given priority in case of overlapping sports, cultural and other mass events organized and promoted by the authorities.
4. Introduce clear and transparent approval procedures to be used when declared time and place cannot be confirmed.
5. Exclude single-person pickets from the restrictions imposed on mass public events.
6. Reject the practice of mass and arbitrary detentions. Introduce training for law

60) See the joint report of human rights organizations to the Committee of Ministers of the Council of Europe “Unresolved problems with freedom of assembly in Russia in 2020” of June 10, 2021. URL: <https://ovdinfo.org/report/lashmankin-i-drugie-proti-v-rossiyskoy-federacii#2>.

61) See February 19, 2021 OVD-Info report “Suppression of Peaceful Protests of January-February 2021 in Russia. URL: <https://ovdinfo.org/reports/winter-2021-supression#11>

62) MHG developed a comprehensive draft of amendments to the law on assemblies // Moscow Helsinki Group website, November 1, 2020. URL: <https://mhg.ru/news/mhg-razrabotala-kompleksnyy-proekt-popravok-v-zakon-o-sobraniyah>. A detailed document with specific articles of legislation is available at: https://mhg.ru/sites/default/files/inline/files/popravki-ot_-mhg-v-zakon-o-sobraniyah.pdf

63) Report for the Reform project “Russia on the Road to Freedom of Assembly: Problems and Tools for Change”. URL: <https://reform.io/contents/uploads/2021/06/ovd-web.pdf>. Many recommendations, provided below, repeat or reformulate those contained in the Report.

enforcement officers on human rights compliant policing. Appropriate instructions should be made available to police and Rosgvardiya officers.

7. Introduce the practice of analyzing police tactics after every public event, when force was used.
8. Resort to detention only in exceptional cases to prevent or stop an offense, when other means have failed.
9. Stop censoring banners and posters used during public events.
10. Encourage and facilitate the work of citizen observers.
11. Introduce clearly visible means of identification of police officers and military personnel policing public events.
12. Investigate every case of excessive use of force and prosecute perpetrators.
13. Decriminalize “repeated” violation of the law on public assemblies (Article 212.1 of the Criminal Code), and suspend the application of the abovementioned article until its repealing.

The list could be continued and include the suggestions of human rights organizations, which have detailed proposals on individual points. At the same time, it is difficult not to agree with the experts, the authors of the report for the ReForum64 project, that freedom of peaceful assembly is not an isolated issue and real progress is impossible without changing the broader context. By the context we understand the overall functioning of law enforcement bodies, courts, places of detention, as well as the ability of civil society organizations to participate in an active dialogue with the authorities, to formulate and propose recommendations.

64) Ibid.

2. The media and freedom of speech.

Shrinking space for public debate and professional expertise,
criminal and administrative prosecution for statements,
legislation on historical memory. International obligations of
Russia in the field of freedom of speech, freedom of information
and the Internet

Freedom of expression and freedom of information play a key role in the development of a democratic society and are necessary and basic prerequisites for exercising other human rights.

These freedoms are guaranteed by international and regional treaties. The definition of those freedoms has been defined by the generally recognized standards and decisions of regional international courts and institutions, such as the European Court of Human Rights and the UN Commission on Human Rights. Freedom of expression and freedom of information are fundamental and universal rights, and the wording of these concepts is virtually identical in all international documents.

Key international norms related to the freedom of speech are contained in the following international and regional treaties:

- Universal Declaration of Human⁶⁵ Rights;
- The International Covenant on Civil and Political Rights⁶⁶, adopted as a follow-up to the Universal Declaration. Article 19 of the Covenant contains wording similar to that in the Universal Declaration, but with a more detailed explanation of the concepts of “freedom of speech” and “freedom of information”;
- Final Act of the Conference on Security and Cooperation in Europe⁶⁷, the signing of which marked the creation of the Organization for Security and Cooperation in Europe (OSCE). In that document, the participating States declared that they “will [...] promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent

65) Universal Declaration of Human Rights. Adopted by UN General Assembly Resolution 217 A (III) of December 10, 1948, see the official UN website. URL: <http://www.un.org/ru/universal-declaration-human-rights/>

66) The International Covenant on Civil and Political Rights was adopted by General Assembly Resolution 2200 A (XXI) of 16 December 1966. It entered into force on March 23, 1976. For the full official text see the official UN website. URL: <http://www.un.org/russian/document/convents/pactpol.htm>

67) Final Act of the Conference on Security and Cooperation in Europe. Adopted in Helsinki, Finland, August 1, 1975, 14 I.L.M. 1292. See the official OSCE website. URL: <https://www.osce.org/ru/mc/39505?download=true>

dignity of the human person and are essential to his free and full development”.⁶⁸ The participating States made specific commitments in the field of information, stating their intention to improve the circulation of, access to and exchange of information in order to “facilitate the freer and wider dissemination of information of all kinds, to encourage co-operation in the field of information and the exchange of information with other countries, and to improve the conditions under which journalists from one participating State exercise their profession in another participating State”⁶⁹;

- CIS Convention on Human Rights and Fundamental Freedoms. Article 11 of the Convention guarantees the right to freedom of expression and differs only slightly from Article 19 of the International Covenant on Civil and Political Rights.

Freedom of expression and the free exchange of information, including on the Internet, are guaranteed by various OSCE documents that Russia has agreed to. In addition to the aforementioned Final Act of the Conference on Security and Co-operation in Europe, they also include:

- Concluding Document of the Copenhagen Meeting of the OSCE Conference on the Human Dimension⁷⁰;
- Concluding Document of the 1994 OSCE Budapest Summit⁷¹;
- The OSCE Charter for European Security, adopted during the OSCE Summit in Istanbul⁷².

In particular, paragraph 26 of the OSCE Charter for European Security states: “We [the participating States] reaffirm the importance of independent media and the free flow of information as well as the public’s access to information. We commit ourselves to take all necessary steps to ensure the basic conditions for free and independent media and unimpeded transborder and intra-State flow of information, which we consider to be an essential component of any democratic, free and open society”.⁷³

In the digital age, this fully applies to the Internet, as mentioned in OSCE Permanent Council Decision No. 633, where participating States pledged to “...take steps to ensure that the Internet remains an open and public forum for freedom of opinion and expression, as enshrined in the Universal Declaration of Human Rights”.⁷⁴

Also of importance to the international community are the Joint Declarations of the UN Special Rapporteur on the Right to Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the Organization of American States (OAS)

⁶⁸) Ibid.

⁶⁹) Ibid.

⁷⁰) Copenhagen Meeting of the OSCE Conference on the Human Dimension, June 1990. URL: http://www.osce.org/publications/rfm/2003/10/12253_108_en.pdf

⁷¹) Toward a Genuine Partnership in a New Era. OSCE Summit, Budapest, 1994, paragraphs 36-38. See the website of the Office of the OSCE Representative on Freedom of the Media: http://www.osce.org/publications/rfm/2003/10/12253_108_ru.pdf

⁷²) OSCE Istanbul Summit, 1999. The text of the Charter is available on the official OSCE website. URL: <http://www.osce.org/ru/mc/39573?download=true>

⁷³) Ibid.

⁷⁴) OSCE Decision PC.DEC/633 on Promoting Tolerance and Media Freedom on the Internet, approved by MC.DEC/12/04 at the OSCE Ministerial Council meeting in Sofia, December 7, 2004. URL: <http://www.osce.org/mc/23133>

Special Rapporteur on Freedom of Expression, and the Special Rapporteur on Freedom of Expression and Access to Information in Africa. Recent significant Joint Declarations include the Joint Declaration on Universality and the Right to Freedom of Expression⁷⁵, adopted on May 6, 2014, and the Joint Declaration on Freedom of Expression and ‘Fake News’, Disinformation and Propaganda, adopted on March 3, 2017.

The Russian Federation is a significant member of the international community, a member of the UN and the OSCE, a member of the Council of Europe and a member of the CIS, and in its lawmaking and law enforcement activities must follow its international commitments, including those in the area of freedom of speech.

Freedom of speech and media freedom in Russia are in serious systemic crisis as of the end of 2021. The ability of journalists to exercise their profession and to inform society in a pluralistic way has been rapidly decreasing.

Although Article 29 of the Russian Constitution guarantees freedom of speech and freedom of the press, monitoring of the media environment indicates that the Russian media do not consider themselves free, i.e. due to the adoption of new legislative restrictions. Over the past decade, more than 60 repressive amendments have been introduced into the legislation regulating the work of journalists. The authorities have purposely pursued policies that restrict the right to disseminate information and freedom of expression. Political opposition, civil society, and journalists have been affected the most. New legislative initiatives restricting freedom of expression and freedom on the Internet have been mainly aimed at increasing state control over the free flow of information.

In the 2021 World Press Freedom Index compiled by the Reporters Without Borders, Russia was placed 150th in the global ranking of 180 countries in terms of media freedom. This puts it on a par with Honduras, Congo, Venezuela, and Bangladesh.

According to the Reporters Without Borders, Roskomnadzor, which oversees the media in Russia, is now one of the “biggest enemies of the Internet” in the⁷⁶ world.

Key milestones in the curtailment of free speech and the Internet were as follows:

1. Recriminalization of defamation in 2012 (Art. 128.1 of the Criminal Code), when fines of up to 5 million rubles were introduced. Subsequent amendments to the article of the Criminal Code were introduced in December 2020, introducing the imprisonment penalty. Also, dissemination of defamatory and knowingly false information about an “individually undefined circle of persons” is now also considered defamation, which fundamentally contradicts international standards on defamation and allows punishment for disseminating critical information about a group of persons, without providing any specifics;

75) Joint Declaration on Universality and the Right to Freedom of Expression. Adopted on May 6, 2014. For the text see the official OSCE website. URL: <http://www.osce.org/ru/fom/118301>

76) Elena Gunkel. Russia, Belarus and Ukraine in the press freedom ranking. What was the pandemic's impact? // Deutsche Welle, April 20, 2021. URL: <https://p.dw.com/p/3sF2o>

2. The addition of Article 280.1 to the Criminal Code in 2013, which punishes public calls for actions aimed at violating the territorial integrity of the Russian Federation, in particular non-violent actions, and the tightening of liability under this article in 2014. Despite the partial decriminalization of such calls (since 2020 criminal liability is foreseen only in case of repeated calls), both the article itself and the practice of its application prohibit any public discussion on the territorial integrity of the country, in particular on the issue of the ownership of occupied Crimea;
3. The introduction in 2014 of criminal liability for the “rehabilitation of Nazism,” and, in fact, for historical discussion and expression of opinions on historical issues. After the expansion of the scope of Article 354.1 of the Criminal Code in 2021, criminal penalties are foreseen for public “denial of facts established by the verdict of the International Military Tribunal for the trial and punishment of the major war criminals of the European Axis countries, dissemination of knowingly false information about the activities of the USSR during World War II, about veterans of World War II, dissemination of information expressing clear disrespect for society about the days of military glory and memorable dates of Russia associated with the defense of the Fatherland, desecration of symbols of military glory, insulting the memory of defenders of the Fatherland or degrading the honor and dignity of a veteran of the Great Patriotic War”.⁷⁷
4. Introduction of articles into the Criminal Code on repeated violations of the procedure for organizing or holding a public event (2014) and on conducting activities of an undesirable organization (introduced in 2015, toughened in 2021). As for the application of legislation, public statements that contain information about uncoordinated public events or statements related to organizations that have been declared undesirable become grounds for prosecution (administrative and then criminal);
5. In 2017, Article 205.2 of the Criminal Code was expanded to criminalize “terrorist propaganda”. It means, in particular, “dissemination of materials and (or) information aimed at forming the idea of the permissibility of terrorist activity in a person’s mind”.⁷⁸ Practical application of the article means the actual ban on substantive discussion of the causes and conditions of terrorism, as well as on public disagreement with court decisions declaring associations or specific individuals terrorists;
6. The introduction of extrajudicial blocking of websites, which has led to the indefinite and ungrounded blocking of a number of independent online media outlets, including Grani.ru, Yezhednevnyi Zhurnal (ej.ru), Kasparov.ru. (In June 2019, the European Court of Human Rights ruled in the case of *OOO Flavus and Others v. Russia* ⁷⁹ that the blocking of websites constitutes the violation of Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. However, the public has not got the access to the websites yet);

⁷⁷) Putin signed a law toughening penalties for insulting veterans // Rossiyskaya Gazeta, April 5, 2021 URL: <https://rg.ru/2021/04/05/putin-podpisal-zakony-o-lishenii-svobody-do-5-let-za-oskorblenie-veteranov.html>

⁷⁸) Clarification on the website of the General Prosecutor’s Office of the Russian Federation URL: https://epp.genproc.gov.ru/web/proc_47/activity/legal-education/explain?item=61182130

⁷⁹) Case of *OOO Flavus and Others v. Russia* // HUDOC-EXEC / European Court of Human Rights. URL: <http://hudoc.echr.coe.int/eng?i=001-203178>

7. Legislative activity in the sphere of dissemination and access to information in 2021 decreased in comparison to 2020. However, during this period, draft laws and bylaws with clear destructive potential for freedom of speech were developed. As before, the wording is quite broad and vague, creating a risk of arbitrary application. In April 2021, a law was adopted and approved that establishes fines for media outlets that disseminate materials from “foreign agents” without appropriate labeling. The penalty, according to the amendments introduced into the Code of Administrative Offences, ranged from 2,000 to 50,000 rubles;
8. In June 2021, the State Duma passed a law authorizing the pre-trial blocking of information on the Internet that contains defamatory and untrue information about a crime allegedly committed by an individual. Previously, a citizen, convinced that such information about him had been disseminated, could file a civil suit to protect his honor and business reputation. Both parties - the plaintiff and the defendant - could defend their case in open and adversarial proceedings, presenting arguments and evidence. Now the citizen should file a complaint with the prosecutor’s office; and the prosecutor’s office should verify the truthfulness of the information. If the information about the committed crime is not confirmed, the prosecutor’s office blocks access to the site on Russian territory. As a result, two issues emerge. First, the verification of information does not happen in the courtroom, but in the prosecutor’s office, thus becoming non-transparent. The author of the text or the owner of the site are not able to argue their position effectively and openly. Secondly, the adopted law is likely to have a serious impact on journalists’ investigations, since they often rely on information from confidential sources, which journalists and editors are not allowed to disclose, even if requested by the prosecutor. Obviously, in such cases, the prosecutor’s office will consider the information to be unproven and, therefore, unreliable. One should stress as well the excessive severity of the law: it allows the blocking of an entire resource, and not just of the unproved information;
9. In June 2021, the penalties for disseminating the personal data of law enforcement officers were increased. The Duma deputies decided to introduce stricter penalties after the investigations that had revealed the names of the alleged poisoners of Alexei Navalny;
10. In September 2021, Roskomnadzor approved special labeling for foreign companies violating Russian law on the Internet. On July 1, a law came into force according to which foreign Internet sites, providing services to Russian users, must register with Roskomnadzor, add visitor counters to their sites, as well as register their representative offices in Russia. Companies which fail to comply with these requirements will be required to place a special violator’s notice on their pages;
11. On October 1, 2021, the Federal Security Service published a list of unclassified information, for the collection of which a citizen can be included in the register of individual “foreign agents”. The list is huge and covers practically all information about the military personnel, the army and Roskosmos (with the exception of the

information that has already been made public). As soon as the document was published, it became clear that it poses a threat both to human rights organizations helping military personnel and to military journalism. The fears have been confirmed: the Committee of Soldiers' Mothers has already announced the closure of projects aimed at helping military personnel.

The selective application of legislation, the lack of an independent judiciary, and the absence of the rule of law have made judicial review of cases of media rights violations ineffective. In most cases, an application to the ECHR remains the only hope to restore justice. Under these conditions, journalism as a profession in Russia is under threat and freedom of expression, especially on the Internet, is severely restricted.

The actual status of the media in the country

Despite the fact that there is a large number of media outlets in the Russian Federation, the most influential ones are owned by the state or people closely associated with the state. In particular, all major TV channels are fully or partially owned by the state, or the authorities have the ability to significantly influence editorial policy. These include three federal channels: First Channel (51% state-owned), Russia 1 (part of the All-Russia State Television and Radio Company), and NTV (operated by a global energy company Gazprom, in which the state holds a controlling stake). The state owns two of the three leading news agencies (TASS and Rossiya Segodnya/RIA Novosti); only Interfax is privately owned.

Other types of media, such as radio and print media, do not have a comparable audience reach. The top-rated outlets generally support the government, with the exception of Novaya Gazeta, which maintains an independent editorial policy. Media critical of the authorities regularly report on pressure from the government and are forced to practice self-censorship. The latter is also facilitated by selective and sometimes arbitrary application of legislation by the regulatory authorities and courts.

Harassment of journalists

Previously all disputes with media employees were dealt with in a civil procedure (as a rule, these were lawsuits to protect honor, dignity, and business reputation), but during the last decade journalists have been increasingly facing ungrounded charges under “serious” articles of the Criminal Code of the Russian Federation. Often the initiation of criminal

proceedings is accompanied by arrest, pre-trial detention, falsification of evidence, and violation of the professional and civil rights of the defendants.

For example, in 2019, the trial of Igor Rudnikov, editor-in-chief of the Kaliningrad newspaper *Novye Kolesa*, who was accused of extorting a large sum from the head of the Investigative Committee of the Russian Federation for the Kaliningrad region, took place. The journalist was eventually released from custody in the courtroom, but before that he had to spend more than a year and a half in pre-trial detention⁸⁰. The criminal case against Rudnikov was linked to the anti-corruption publications in *Novye Kolesa*.

The most high-profile case of the period was the criminal case of Ivan Golunov⁸¹, a Meduza reporter, who had drugs planted on him during his detention. Falsified charges were obviously connected with Ivan's professional work. Thanks to public outcry and support from the journalistic community, the charges against him were dropped, and the law enforcement officers involved in the falsification were themselves put on trial.

Unfortunately, the cases of Igor Rudnikov and Ivan Golunov, being a victory for justice, were an exception. Svetlana Prokopyeva, a journalist for Ekho Moskvyy in Pskov, was convicted in 2020 under Article 205.2 of the Criminal Code (public justification of terrorism)⁸². The criminal case was initiated after Svetlana published a review in which she suggested that among others the state policy had also influenced the 2018 terrorist attack at the Arkhangelsk FSB Office. During the investigation and the trial, the journalist's equipment and data carriers were seized, and her bank accounts were blocked.

Since July 2020, former Kommersant journalist Ivan Safronov, accused of treason by the Federal Security Service of Russia (Article 275 of the Criminal Code)⁸³, has been kept in a pre-trial detention center. Despite the public outcry and numerous protests by journalists and the public, Safronov remains in custody. The investigation, taking advantage of the fact that many issues are classified, has not presented any public evidence of Ivan's guilt. He is deprived even of the opportunity to correspondence with his relatives.

There is also pressure on journalists in the regions of Russia. Unfortunately, such cases receive much less publicity. After all, regional journalists are exposed to more danger, as they are persecuted not only by the authorities, but often by criminals as well. In the absence of wide publicity, public support and law enforcement response, journalists are left alone to deal with serious threats to both their professional work and their lives.

In October 2020, the whole world learned about an unprecedented protest against pressure

80) The court released Igor Rudnikov, editor of the Kaliningrad newspaper Novye Kolesa, in the courtroom // Center for the Protection of Media Rights, June 17, 2019 URL: <https://mmdc.ru/news-div/our-news/sud-osvobodil-redaktora-kaliningradskoy-gazety-novye-kolesa-igorva-rudnikova-v-zale-suda/>

81) The case of Ivan Golunov // Wikipedia. URL: https://ru.wikipedia.org/wiki/%D0%94%D0%B5%D0%BB%D0%BE_%D0%98%D0%B2%D0%B0%D0%BD%D0%60_%D0%93%D0%BE%D0%BB%D1%83%D0%BD%D0%BE%D0%B2%D0%B0

82) Court sentenced Svetlana Prokopyeva to a fine of 500,000 rubles // Center for Protection of Media Rights, July 6, 2020. URL: <https://mmdc.ru/news-div/sud-prigovoriye-svetlanu-prokopevu-k-shtrafu-v-razmere-500-tsyt-ruble/>

83) Saffronov, Ivan Ivanovich // Wikipedia. URL: <https://ru.wikipedia.org/wiki/%D0%A1%D1%84%D1%80%D0%B E%D0%BD%D0%BE%D0%B2,%D0%98%D0%B2%D0%B0%D0%BD%D0%98%D0%B2%D0%B0%D0%BD%D0%BE%D0%B2%D0%B8%D1%87%D0%BC%D0%BB%D0%B0%D0%B4%D1%88%D0%B8%D0%B9%D0%A3%D0%B3%D0%BE%D0%BB%D0%BE%D0%B2%D0%BD%D0%BF%D0%B5%D0%B4%D0%B5%D0%BB%D0%BE>

on journalists, when Koza Press editor-in-chief Irina Slavina set herself on fire outside the police headquarters in Nizhny Novgorod. The journalist had been systematically subjected to pressure from law enforcement (searches, interrogations, trials) and unknown people (threats, property damage). However, Investigative Committee's checks had not confirmed any law violations by police officers. This fact was also noted in the Reporters Without Borders report⁸⁴.

In February 2021 Natalia Zubkova, editor-in-chief of the Kiselevsk News portal, was forced to leave Kiselevsk. (Kemerovo region)⁸⁵. She made the decision after numerous threats from unknown assailants, police interrogations, and actual assault. In addition, other members of the editorial staff were also pressured by the authorities. These incidents remained uninvestigated at the time of writing this document.

Since June 2019, Abdulmumin Gadzhiev, divisional editor of the Dagestan newspaper Chernovik, has been in pre-trial detention, accused of financing terrorism⁸⁶. The investigation has not yet presented any public evidence of Gadzhiev's guilt, and his colleagues are confident that the criminal case is related to his professional work.

Law enforcement officers regularly violate the professional rights of journalists working during unsanctioned public events. Neither identifying insignia (vest, badge with the inscription "Press") nor documents required by law (press card, editorial assignment) prevent detentions. According to the Union of Journalists and Mass Media Workers, at the protests of January 23, 2021 in Russian cities 49 media representatives were detained and some of them were beaten. During the protests on January 31, 2021 more than 80 journalists were detained at protests, according to OVD-Info. Abusive actions of police and Rosgvardiya against journalists in such cases almost always go unpunished.

In Khabarovsk, 12 journalists from independent media outlets were prosecuted and fined for participating in unapproved events during the 2020-2021 protests.

Harassment of journalists: arrests and searches

Pressure on journalists in 2021 manifested itself in numerous arrests, detentions, and searches. The searches were characterized by procedural violations: they were often conducted without court orders, and journalists were not given access to their lawyers.

84) A Year Without Irina Slavina // Kommersant, October 2, 2021. <https://www.kommersant.ru/doc/5016587>

85) A journalist from Kuzbass had to leave her town. She had been attacked the day before // TV2, February 28, 2021 <https://tv2.today/News/Zhurnalistske-iz-kuzbassa-prishlos-pokinut-svoy-gorod-nakanune-na-nee-napali>

86) The case of Abdulmumin Gadzhiev // Wikipedia. URL: https://ru.wikipedia.org/wiki/%D0%94%D0%B5%D0%BB%D0%BE_%D0%90%D0%B1%D0%B4%D1%83%D0%BB%D0%BC%D1%83%D0%BC%D0%B8%D0%BD%D0%B0_%D0%93%D0%B0%D0%B4%D0%B6%D0%B8%D0%B5%D0%B2%D0%B0

The formal reasons for searches often seemed far-fetched.

It is important to note that during searches of media workers, law enforcement officers gain access to sources of information that journalists use in their professional work. This violates the professional secrecy of journalists, which is protected by Russian legislation and the European Convention on Human Rights. However, despite attempts to appeal against such searches, courts have not ruled them illegal yet.

In April 2021, FSB officers searched the apartment of Roman Anin, editor-in-chief of Vazhnye Istorii, for seven hours. After the search ended, the journalist was taken to the Investigative Committee for overnight interrogation. The formal grounds were the investigation of a criminal case on privacy violation due to a journalistic investigation of the former wife of Rosneft head Igor Sechin, the article about which was published in 2016. However, according to Vasily Grishak (Anin's defense lawyer), investigators were particularly interested in documents in English, bank cards, and photos of Roman made when he studied in the United States. Gadgets, computers and data carriers were seized. The lawyer of the Center for Protection of Media Rights, Tumas Misakian, appealed against the searches in courts and is preparing a complaint to the ECHR for violation of Article 10 of the European Convention.⁸⁷

In June 2021, Lenta.ru journalist Anastasia Zavyalova was detained and beaten by police in Moscow. She was filming police officers leading an underage girl into a police van. After that, by decision of Basmanny Court, the journalist was fined a thousand rubles under the administrative article for disorderly conduct⁸⁸.

On June 11, 2021 Sota journalist Nika Samusik was detained. The dormitory where she lives was searched. Samusik is a suspect in the hooliganism case (Article 213 of the Criminal Code), which was initiated in connection with Pavel Krysevich's performance on Red Square (he shot himself in the head with noise cartridges as part of an action in support of political prisoners). Samusik was present at the action as a journalist and covered the events. The journalist and her defense lawyer appealed against the search, but the Moscow City Court ruled it legal⁸⁹.

On 29 June 2021 searches were conducted in the apartments of Roman Badanin, editor-in-chief of Project, Mikhail Rubin, his deputy, and Maria Zholobova, a reporter. Officially they were conducted as part of the investigation of criminal case under Article 128.1 of the Criminal Code "Defamation". The reason for the case was the 2017 film "Piterskie. Father and Son", which was released on the TV channel "Dozhd". The film was about St. Petersburg businessman Ilya Traber. The film was made by Maria Zholobova and Roman

87) FSB came to search the chief editor of Vazhnye istorii // Center for Protection of Media Rights, April 12, 2021 URL: <https://mmdc.ru/news-div/digest/fsb-prishla-s-obyskom-k-glavredu-vazhnyh-istorij/>

88) Lenta.ru journalist beaten in a police van was fined a thousand rubles under the article on disorderly conduct // Center for Protection of Media Rights, July 19, 2021. URL: <https://mmdc.ru/news-div/digest/izbituyu-v-avtozake-zhurnalistku-lenty-ru-oshtrafovali-na-tysyachu-rublej-po-state-o-melkom-huliganstve/>

89) The Moscow City Court ruled the search of Sota journalist's dormitory legal // Center for Protection of Media Rights, August 2, 2021. <https://mmdc.ru/news-div/digest/mosgorsud-priznal-zakonnyy-obysk-v-obshchezhitii-u-zhurnalistki-sota/>

Badanin, who were journalists of the Dozhd TV channel at the time. Mikhail Rubin did not participate in the making of the film.

During the searches, the investigators did not show the court order and journalists were not allowed to see their lawyers for a long time. In addition, as it turned out later, the statute of limitations⁹⁰ on the criminal case, in relation to which the searches took place, had run out.

At the beginning of October 2021 the Investigative Committee completed the investigation of the criminal case against the editors of the student newspaper Doxa Armen Aramyan, Natalya Tyshkevich, Alla Gutnikova and Vladimir Metelkin. They were charged under article 151.2 of the Criminal Code (“Involving a minor in acts endangering the life of a minor”). The charges are connected with the protest actions at the beginning of the year, about which the publication reported. The suspects have been under house arrest since the beginning of the criminal case. They have not pled⁹¹ guilty.

In early October 2021 Cheremushkinsky Court of Moscow fined Roman Dobrokhotoy, editor-in-chief of The Insider, with 156 thousand rubles for defamation after the complaint by a Dutch journalist Max van der Werff and ordered him to print a retraction. The criminal case was initiated after Dobrokhotoy had published information that van der Werff had allegedly collaborated with the Russian GRU. As part of the investigation into the case, Dobrokhotoy’s apartment was also searched. The editor-in-chief of The Insider is currently residing outside of Russia⁹².

Attack on creativity and comedians

An analysis of prosecutions for the dissemination of information by non-journalists reveals two trends. The first is the massive claims against social media users for posts and reposts about the winter protests. The police, prosecutors, and Roskomnadzor seem to have set the goal of removing from the Russian segment of social networks any content reminiscent of the protest rallies at the beginning of the year. The authors of the posts and the administrators of the social networks were accused of calling for uncoordinated public events. The most popular social networks, the messenger Telegram, and dozens of users were fined for disseminating such content.

The second trend, although only a few cases have taken place so far, seems to be much more

90) Searches of Project journalists are conducted over the statute of limitations, - lawyer Tumas Misakyan // Center for Protection of Media Rights, June 29, 2021 <https://mmdc.ru/news-div/obyski-u-zhurnalistov-izdaniya-proekt-provodyat-za-srokami-davnosti-privlecheniya-k-otvetstvennosti-advokat-tumas-misakyan/>

91) IC completed the investigation into the case of the editors of the student publication Doxa // Center for Defense of Media Rights, October 13, 2021 URL: <https://mmdc.ru/news-div/digest/sk-zavershil-rassledovanie-dela-redaktorov-studencheskogo-izdaniya-doxa/>

92) The court fined with 156,000 rubles the chief editor of The Insider due to the suit of a Dutch journalist // Center for Protection of Media Rights, October 6, 2021. URL: <https://mmdc.ru/news-div/digest/sud-vzyskal-s-glavreda-the-insider-156-tys-rublej-po-isku-niderlandskogo-zhurnalista/>

dangerous. We are talking about harsh penalties for humorous content. While some jokes may indeed be controversial, the subsequent penalties seem excessively harsh and unreasonable.

The most striking example is the arrest of the blogger Yuri Khovansky on charges of justifying terrorism (for a line in a song in which he, according to investigators, justified the terrorist attack during the musical “Nord-Ost” in Moscow in 2002). Khovansky was arrested in June; at the time of writing this document, the court had extended his arrest until January 2022⁹³.

In the summer, an administrative offense report was drawn up against the comedian Idrak Mirzalizade for making a joke about Russians (“for humiliating a group of people distinguished by their ethnicity and propaganda of their inferiority”). In August, Idrak was arrested for 10 days, after which the Russian Ministry of Interior banned him from entering the country for life. The ban has now been overturned by the court as unfounded⁹⁴.

“Rubber” laws and improper application of legislation

The legislation regulating the dissemination of information continues to tighten. Particularly notable changes took place in late 2020 and early 2021, which was obviously connected to the elections to the Russian State Duma in September 2021.

First of all, the so-called “foreign agents” legislation has become stricter. Today, Russian legislation foresees three types of “foreign agents”: NGOs as “foreign agents”, foreign media outlets that perform the functions of “foreign agents” (which include both organizations and individuals), and individual “foreign agents”. All of them, apart from additional obligations, are subjected to discrimination in the sphere of information dissemination. Any information disseminated on their behalf should be accompanied by a statement informing that they are registered as “foreign agents”. The media outlets must publish the same statements when citing, and in most cases even just mentioning “foreign agents”. Failure to comply with the legislation on foreign agents entails not only heavy administrative fines, but also criminal liability, including imprisonment.

Amendments that were drafted and adopted in 2019-2020 have introduced administrative and criminal liability for disinformation, or so-called “fakes”, i.e. “dissemination of knowingly unreliable socially significant information under the guise of reliable information” (Article 13.15 par. 9 of the Code of Administrative Offences and Article 207.1 of the Criminal Code).

93) St. Petersburg court extends arrest of blogger Khovansky for two more months // Interfax, November 3, 2021 URL: <https://interfax.ru/russia/801256>

94) Shit and National Security. How and why comedian Idrak Mirzalizade was banned from entering Russia for life // Mediazona, August 30, 2021. URL: <https://zona.media/article/2021/08/30/idrak>

During the COVID-19 pandemic, hundreds of citizens whose social media and messenger posts about the coronavirus situation were found to be untrue were fined for disseminating “fakes”, including journalists, bloggers, students and even medical doctors.

For example, in March 2021 activist Artem Vazhenkov⁹⁵ from the Tver region was fined twice for disseminating “fake” videos. The videos, posted on the social network “VKontakte,” described unsanitary conditions and poor quality of medical services in local healthcare centers. In fact, the “fake news law” is used to exercise pressure on those who criticize the actions of the authorities or employees of state institutions.

The fight against “fakes” has also affected journalism: there is an inconsistency between the “fake news law” and the Law on Mass Media as well as the right of the press to cover socially significant issues. In 2020-2021 the editorial board of Novaya Gazeta was forced by the General Prosecutor’s Office to remove several investigative articles from its website. One of them, written by Elena Milashina, described the coronavirus situation in Chechnya⁹⁶. In all cases, the same approach was used: the editors under the threat of being blocked received a demand to remove the publication, as an investigation by the General Prosecutor’s Office allegedly had found that it contained some unreliable information. The editors were not told what information was inaccurate or how it had been verified. The editorial office had no possibility to defend its position. In such a situation, the lack of transparency in the actions of the prosecutor’s office creates great room for abuse.

Another harmful aspect of the “fake news law” manifested itself very clearly in the administrative case brought against Radio Liberty journalist Tatyana Voltskaya⁹⁷ in 2020. The latter, exercising her right to keep her source of information secret, refused to give the police the name of the physician, which she had quoted in her publication. The journalist was then accused of spreading “fake news” (she had no other sources to confirm the physician’s information). In practice, the application of the “fake news law” forces journalists not to use any sources other than official ones. In other words, the new law has effectively become an instrument of censorship.

In 2020, Nizhny Novgorod journalist Alexander Pichugin⁹⁸ was prosecuted for his publication on Telegram. The court did not take into account the fact that his text was satirical in nature and was aimed at promoting sanitation. The results of the linguistic expertise, which showed the absence of a fact message in the text of the publication, were also not taken into account.

95) In Tver, the court recognized video messages of infected people as fake news // Center for the Protection of Media Rights, March 24, 2021 URL: <https://mmdc.ru/news-div/our-news/v-tveri-sud-priznal-videoobrashheniya-inficzirovannyh-lyudej-fejk-nyus/>

96) «Novaya Gazeta removed an article about a virus in Chechnya at the request of the prosecutor’s office // RBC, April 15, 2020. URL: <https://www.rbc.ru/society/15/04/2020/5e9748b49a7947736e23b31f>

97) Court fined journalist Tatyana Voltskaya 30 thousand rubles under article about fake news // Center for the Protection of Media Rights, December 15, 2020. URL: <https://mmdc.ru/news-div/sud-oshtrafoval-zhurnalistku-tatyanu-voltskuyu-na-30-tys-rublej-po-state-o-fejk-nyus/>

98) Court fines Nizhny Novgorod journalist charged under fake news article 300,000 rubles // Center for the Protection of Media Rights, November 11, 2020. URL: <https://mmdc.ru/news-div/sud-oshtrafoval-nizhegorodskogo-zhurnalista-obvinennogo-po-state-o-fejk-nyus-na-300-tys-rublej/>

The law on “disrespect of the authorities,” adopted in 2019 (new amendments to Article 20.1 of the Code of Administrative Offenses), became an instrument of persecution. It has been actively used against Internet users with an active civic stance. In fact, the law is used to punish any criticism of the authorities. For example, in 2020, Yekaterinburg political scientist Fyodor Krasheninnikov was twice prosecuted for criticizing the authorities (first time he was fined, and the second time he was placed under administrative arrest).⁹⁹

The new wording of the Criminal Code’s article “on defamation”, which introduces the concept of “an indefinite circle of persons” as the injured party, is cause for great concern. The wording directly contradicts international law and the traditional legal understanding of the term “defamation”. Whereas previously it was obvious that only a specific person can be defamed, the wording “an indefinite circle of persons” would allow the article to be applied unjustifiably broadly.

Unfair trials

Most prosecutions pertaining to written or spoken words are characterized by a lack of fair justice. As a rule, courts do not examine such cases in an objective and independent manner, but rather confirm the prosecutor’s opinion without taking into consideration the arguments of the defendant and his lawyers. A most striking example is the February 2021 trial of Alexei Navalny charged with defaming veteran Ignat Artemenko¹⁰⁰. Almost all independent lawyers pointed out that the defendant’s statement did not constitute an offense under Article 128.1 of the Criminal Code (slander). At the same time, the evaluative nature of the politician’s statement was also confirmed by linguistic experts. The ambiguity of the experts’ assessments did not prevent the court from confirming the charges and finding Alexei Navalny guilty.

Very often, the “linguistic expertise” carried out by the prosecution becomes the only or main basis for a conviction in court. Such expert opinions are biased, methodically incorrect, and often clearly “tailor-made” for the prosecution. However, the courts do not question them, do not analyze the objections of the defense and the opinion of independent linguistic experts. This was the case with expert examinations in the cases of Svetlana Prokopyeva from Pskov, activist Nadezhda Belova¹⁰¹ from Voronezh (also convicted for public justification of terrorism), journalist Alexander Pichugin from Nizhny Novgorod, political scientist Fedor Krasheninnikov from the Urals, etc.

99) Fyodor Krasheninnikov arrested for seven days for disrespect of the authorities // Kommersant, July 23, 2020. URL: <https://www.kommersant.ru/doc/4426488>

100) Court fined Navalny 850,000 roubles in defamation case against veteran // RBC, February 20, 2020. URL: <https://www.rbc.ru/politics/20/02/2021/602623639a794714d2da1d55>

101) Voronezh activist Nadezhda Belova was sentenced to a fine of 400 thousand rubles // OVD-Info, December 4, 2020. URL: <https://ovdinfo.org/express-news/2020/12/04/voronezhskuyu-aktivistku-nadezhdu-belovu-prigovorili-k-shtrafu-v-400-tysyach>

New grounds for blocking information on the Internet

There have been clearly negative trends in the development of the situation with the blocking of Internet resources. Two issues need to be highlighted here. First, new grounds for blocking information have been added to legislation. At the end of 2020-2021, it became possible to block Internet resources in response to censoring actions against Russians (in response to the blocking of some Russian accounts on Twitter, Facebook and YouTube). The Central Election Commission was given the right to initiate blocking for violating the rules of campaigning on the Internet. At the time of writing this document, a draft law authorizing pre-trial blocking for unverified accusations of criminal activities was discussed in the State Duma.

The practice of adding media outlets to the register of organizers of information dissemination (ORI) under the threat of blocking and fines has emerged. The requirements of the Federal Law “On Information, Information Technologies and Information Protection” prescribe that the owners of websites added to the ORI register must install equipment on their servers that would provide a direct link to the Russian secret services. Initially, the authorities claimed that only social networks and messengers would be included in the ORI register. However, the application of the law due to the vagueness of the definition “organizer of information dissemination” followed an unpredictable path. Media sites, including regional ones, are now also included in the ORI register. For some of them it may mean closure, since the cost of the equipment, which the law requires the editorial board to install, runs into the millions of rubles. For example, the editorial board of the Panorama website from the Rostov region faced that challenge in 2020-2021. Since there is no logic in including individual media outlets in the register, one may conclude that the ORI register has been used as a mechanism for putting pressure on independent media outlets.

The number of reasons for pre-trial blocking has been growing steadily. In these cases, the owners of Internet resources cannot appeal the decision in court. The second issue related to blocking is unlawful application of the law. For example, Roskomnadzor considers as calls for unauthorized rallies virtually any messages related to this topic. For example, in February 2021, Sergei Smirnov, editor-in-chief of Mediazona, was sentenced to 15 days of administrative arrest for retweeting messages about a rally in support of Navalny. Any mention of potential suicide methods is treated as a violation (even if the information is aimed at combating suicide, e.g. the Islamic website Alif TV was blocked in such a way)¹⁰². Any reference in the media to drugs containing psychoactive substances, or discussion on the legalization of light drugs aimed at saving lives of heavy drug users can

¹⁰²) The court ruled that the blocking of Alif TV for publishing information about suicides was legal // Center for Protection of Media Rights, September 3, 2020. URL: <https://mmdc.ru/news-div/sud-priznal-zakonnymi-blokirovki-izdaniya-alif-tv-iz-za-publikaczii-informaczii-o-samoubijstvah/>

be interpreted as “propaganda” of illegal drugs. Satirical texts (for example, the satirical article in *Krasnaya Burda* about how to give a bribe)¹⁰³, journalistic investigations (for example, the *Umnaya Rossiya* article about the black market in fake driver’s licenses)¹⁰⁴ are interpreted by prosecutors and courts as criminal propaganda. We need to reiterate that in the majority of cases the courts do not analyze the disputed texts, nor do they attempt to evaluate objectively whether they constitute an offence or not. As a rule, judges side with government agencies (the prosecutor’s office, Roskomnadzor) and confirm their charges in court decisions.

Forbidden topics

As a result of pressure from law enforcement agencies and unlawful court decisions, “forbidden topics” have emerged in Russia, i.e. important social issues requiring discussion that have been abandoned by most journalists due to the risk of prosecution. The topics have already been mentioned in one way or another, so here we will only describe them briefly.

1. Discussion on the causes of terrorism and extremism. Criminal prosecution of Pskov journalist Svetlana Prokopyeva and Voronezh activist Nadezhda Belova has demonstrated that the FSB, prosecutors and courts consider any such discussion as public justification of terrorism. It is worth noting that in early 2021 a draft law was submitted to the Duma, which prohibits the “rationale of extremism”. Its adoption would make not only public discussion, but also academic research on the topic impossible.
2. The topic of suicide, which is socially significant due to the unfavorable statistics in Russia. The serious discussion and analysis of the issue have practically disappeared from the media discourse due to the repressions by Roskomnadzor.
3. There is also almost no coverage of various issues pertaining to drug addiction, e.g. of prescription and/or non-prescription drug abuse, substitution therapy etc., as all of them are considered a violation of Art. 4 of the Federal Law “On the Mass Media”.
4. Prosecution for “fakes” has made it dangerous to report and discuss any socially significant events and issues as anything that does not come from an official source can be considered a fake.

¹⁰³) In Yekaterinburg, the court will re-examine the case of banning the short satirical story about bribes // Center for the Protection of Media Rights, September 12, 2019 URL: <https://mmdc.ru/news-div/our-news/v-sverdlovske-sud-napravil-na-novoe-rassmotrenie-delo-o-zaprete-k-rasprostraneniyu-shutochnogo-mater/>

¹⁰⁴) A court in the Moscow Region banned an article about the sale of driver’s licenses // Center for the Protection of Media Rights, July 2, 2020. URL: <https://mmdc.ru/news-div/sud-v-podmoskove-priznal-zapreshhennoj-publikacziyu-o-prodazhe-voditelskih-udostoverenij/>

Combating “foreign influence” in the media

In 2019, liability was introduced for distributing foreign periodicals in Russia without special permission.

There are cases when journalists are prosecuted for cooperation with foreign media. For example, in the Kemerovo region in 2020-2021, journalist Roman Yanchenko, who filmed the video for the Polish TV channel “Belsat”¹⁰⁵, was held liable twice. The police and the court believe that Russian citizen Yanchenko, as a foreign correspondent, must have accreditation with the Russian Ministry of Foreign Affairs, without which he cannot work as a journalist in Russia. The Russian authorities do not accept the status of a freelancer as a basis for professional work as a journalist. It is noteworthy that Yanchenko was charged under Article 19.20 of the Code of Administrative Offences, i.e. carrying out non-profit activities without a special permit (license). At the same time, as we know, journalistic activities in Russia are not licensed and do not require a permit.

Undesirable and foreign agents

Currently, recognition of publishers of independent media as “undesirable organizations” and inclusion of editorial boards and journalists in the register of “foreign agents” is the most controversial practice of state pressure on the media. Since 2016, numerous amendments have been introduced to counteract “foreign influence” in the media. For example, the notion of a “foreign media outlet performing the functions of a foreign agent” was introduced, and the Ministry of Justice of the Russian Federation considers as such even individuals (e.g., journalists of Radio Liberty, investigative journalists of Project Media, IStories, and Open Media, regional coordinators of the “Golos” movement, the employees of Team 29, as well as lawyers, i.a. Galina Arapova, leading lawyer of the Center for the Protection of Media Rights, and lawyer Ivan Pavlov, have already been included into the relevant register).

The actions of the Ministry of Justice, which has been updating the list of “foreign agents” regularly, met with strong response from society and the media. Active criticism of the legislation on “foreign agents” may have brought some results: in October, some State Duma deputies and even the Russian President spoke out in favor of amending the existing law. However, its application has already brought sad results.

¹⁰⁵) Kemerovo journalist again prosecuted for lack of accreditation with the Russian Ministry of Foreign Affairs // Center for the Protection of Media Rights, March 4, 2021 URL: <https://mmdc.ru/news-div/zhurnalista-iz-kuzbassa-vnov-privlekli-k-otvetstvennosti-za-otsutstvie-akkreditacii-pri-mid-rf/>

In 2021, over 70 independent media outlets, journalists, and activists, including Meduza, VTimes, The Insider, Dozhd, Vazhnye Istorii, Mediazona, Bellingcat, Rosbalt, Republic, and others, were added to the list of “foreign agent media”. VTimes was closed as a result of its inclusion into the register.

In 2021, the General Prosecutor’s Office added to the list Project Media.Inc., the publisher of Project.media (investigative journalism project was forced to shut down, the site was blocked by Roskomnadzor). MBH-Media and Open Media were also forced to shut down after the authorities recognized them as affiliated with the “undesirable organization” Open Russia. The websites of these media outlets were also blocked by Roskomnadzor. The human rights organization Team 29 ceased its activities because it was on the list of “undesirable organizations,” and its head, lawyer Ivan Pavlov, left Russia after a criminal case was initiated against him.

The actions of the authorities sparked protest among journalists and the public. In August, a number of media outlets issued an open appeal to the country’s leadership, demanding that the campaign against the independent press be stopped and that the foreign agents legislation be repealed. The appeal was signed by Meduza, 7x7, Republic, The Village, Novaya Gazeta, Dozhd, and many others.

A petition against the “foreign agents” law was posted online at Change.org, signed by over 200,000 people, as well as more than 150 media outlets and NGOs at the time of writing this document¹⁰⁶.

On October 12, a television marathon in favor of repealing the “foreign agents” law was held on the Dozhd’ website and YouTube channel called “Agents of the People”. Public figures, musicians, and journalists took part in it. The marathon lasted more than six hours¹⁰⁷.

However, despite the authorities’ statements about the need to revise the infamous law, repressive actions continue. Thus, on the day of the “Agents of the People” marathon, it became known that the first administrative report for violating the law on “foreign agents” was drawn up against an individual, i.e. Stepan Petrov, a journalist from Yakutsk and the head of the public organization Yakutia - Our Opinion.

Roskomnadzor has already issued more than 780 administrative offence reports against Radio Liberty (RFE/RL), which refuses to comply with content labeling provisions, and Andrei Sharoi, head of RFE/RL Russian service. The total amount of fines exceeded \$3 million.

The Dozhd TV channel and the Ekho Moskvyy radio station were also fined for violating the “foreign agents” law.

¹⁰⁶) Petition «We Demand the Abolition of the Foreign Agents Laws on» // Change.org. URL: <https://www.change.org/p/rocyc-дaрcтвeннaя-дyмa-мы-тpeбyeм-oтмeны-зaкoнoв-oб-иностранцах>

¹⁰⁷) Agents of the People. Marathon for the abolition of «foreign agents» laws // Dozhd TV channel / YouTube. URL: <https://youtu.be/NBBDLYodsvM>

State censorship instruments

Roskomnadzor, the prosecutor's office, and several other state agencies have been actively exerting pressure on independent Russian journalism by such means as fines, pre-trial blocking of media sites, as well as blocking threats, which are actively used by various agencies.

At the end of April, the Ural newspaper *It's my city* was forced to take down the news about the connection between Vyacheslav Volodin, the speaker of the State Duma, and a surrogacy clinic. This was demanded by the State Duma. Media outlets *Podyem* and *Open Media* received the same demand from the parliament¹⁰⁸.

In May, the Basmanny Court of Moscow fined *Novaya Gazeta* and its editor-in-chief Dmitry Muratov for disseminating "fake" information. The suit was filed by Roskomnadzor at the request of the General Prosecutor's Office. The reason was the article by journalist Tatyana Yurasova describing how provocateurs were trained at a sanatorium near Moscow to disrupt opposition rallies. The information in the article was found to be inaccurate, the media outlet was fined 200 thousand rubles and Dmitry Muratov was fined 60 thousand rubles¹⁰⁹. It is not the first time when *Novaya Gazeta* investigations are recognized as fakes by the General Prosecutor's Office. For example, in 2020, the media outlet and its head were fined for publishing a story by Elena Milashina about a coronavirus epidemic in Chechnya. Accordingly, the media outlet had to take down all the materials deemed inaccurate.

In July, the Siberian publication *Taiga.info* had to remove from its website the news about domestic violence and police inaction. The editorial board complied with the request of Roskomnadzor, which found a violation in the text of the news, namely the indication of the method of suicide: the main character of the article had threatened to jump off the balcony. The news was written, as *Taiga.info* noted, on the basis of the official press release of the local department of the Investigative Committee¹¹⁰.

For two months (from July to early September 2021), at the request of bailiffs, *Readovka* website was on the list of blocked resources of Roskomnadzor. The reason for the access restriction was a lawsuit filed by Dmitry Sablin, a State Duma deputy from the United Russia party. The lawsuit was related to the publication about the deputy's allegedly undeclared yacht. The blocking of the entire *Readovka* website was used as an interim measure, although it was obviously excessive: the lawsuit dealt with only one publication¹¹¹.

¹⁰⁸) The State Duma demanded *Uralskaya Gazeta* to take down the news about Volodin's ties to surrogacy // Center for the Protection of Media Rights, April 28, 2021 URL: <https://mmdc.ru/news-div/digest/uralskoe-izdanie-po-trebovaniyu-gosdumy-udalilo-novost-o-svyazyah-spikera-palaty-volodina-s-surrogatnym-materinstvom/>

¹⁰⁹) «*Novaya Gazeta* and its editor-in-chief were fined 260,000 rubles for an article on fakes // Center for the Protection of Media Rights, May 20, 2021 URL: <https://mmdc.ru/news-div/digest/novuyu-gazetu-i-ee-glavreda-oshtrafovali-na-260-tys-rublej-po-state-o-fejkah/>

¹¹⁰) *Taiga.info* removed news about domestic violence and police inaction at the request of Roskomnadzor // Center for the Protection of Media Rights, July 27, 2021 URL: <https://mmdc.ru/news-div/digest/tajga-info-udalila-novost-o-domashnem-nasilii-i-bezdejstvii-policzii-po-trebovaniyu-roskomnadzora/>

¹¹¹) Roskomnadzor removed *Readovka* website from the register of banned sites // Center for the Protection of Media Rights, September 3, 2021 URL: <https://mmdc.ru/news-div/digest/roskomnadzor-udalil-sajt-readovka-iz-reestra-zapreshennyh/>

In September 2021, media outlets Znak.com, Taiga.info and NGS24 were told to take down articles about food shortages in Taymyr. It should be noted that the source of the information was a deputy of the Taymyr District Council from the Liberal Democratic Party of Russia. In its notice, Roskomnadzor referred to the General Prosecutor 's Office, which had defined the information as “fake”¹¹².)

In October 2021, the editors of Ekho Moskvyy received a notice from Roskomnadzor requesting the removal of Alexander Nevzorov's video from the site. The agency believed that the journalist's statement incited hatred toward the social group of “Christian priests”. Nevzorov's video discussed the issue of violent treatment of children by clergymen¹¹³.

It is evident that in all of the examples (the list is not exhausted by the above mentioned cases), claims are made against the publications of independent media outlets describing relevant, socially significant issues.

Legislation on historical memory

A separate issue is apparently biased lawmaking related to the topic of World War II/ Great patriotic War and the fight against Nazism. On the one hand, the desire to oppose attempts to rehabilitate Nazism should be supported by a civilized society. On the other hand, the legislative amendments adopted this year appear redundant, duplicating existing restrictions, unreasonable, vague and affecting areas in which the legislator or law enforcement should hardly interfere. Some of the amendments seem to be politically motivated.

Thus, after the infamous trial of Alexey Navalny for “defamation of a veteran”, a group of State Duma deputies, headed by Irina Yarovaya, proposed amendments to Article 354.1 of the Criminal Code “Rehabilitation of Nazism”. The amendments, introducing penalties for disrespect to symbols and commemorative dates of Russia, veterans of the Great Patriotic War, were adopted as soon as possible. However, there is a number of doubts about the text of the amendments: it is unclear what “insult to memory” and “symbols of military glory” mean, it is not explained who the law refers to as “defenders of the Fatherland,” whether the article protects the honor and dignity of currently living veterans of the Great Patriotic War or all veterans. It is bewildering why disrespect for dates, symbols and personalities, even if expressed in an insulting manner, is a priori considered to be the rehabilitation of Nazism (see the title of the Criminal Code article). There have

112) Roskomnadzor demanded that Znak.com remove the news about food shortages in Taymyr // Center for the Protection of Media Rights, September 27, 2021 URL: <https://mmdc.ru/news-div/digest/roskomnadzor-potreboval-ot-znak-com-udalit-novost-o-deficite-edy-na-tajmyre/>

113) Roskomnadzor demanded that Ekho Moskvyy take down Nevzorov's video in which he discusses the sexual abuse of children by priests // Center for the Protection of Media Rights, 21 October 2021 URL: <https://mmdc.ru/news-div/digest/roskomnadzor-potreboval-ot-cha-moskvyy-udalit-s-sajta-video-nevzorova-v-kotorom-on-rassuzhdaet-o-seksualnom-nasilii-svyashhennikov-nad-detmi/>

been no rulings yet based on the new amendments, but lawyers are concerned that the wording will be interpreted as broadly as possible, and citizens could be prosecuted for distributing satirical or humorous content, literary or other works of art.

However, the new law have already brought some results. In July, Alexander Bastrykin, head of the Investigative Committee of the Russian Federation, ordered to check whether the Sovremennik Theater had not insulted veterans of the Great Patriotic War¹¹⁴. In October, in connection with the same accusation, investigators came to the art gallery “Svinoye Rylo.”¹¹⁵ And the popular performer Morgenstern had to apologize for quite innocently questioning whether so much money should be spent on the annual Victory¹¹⁶ Day celebration. The result is obvious: free discussion of the Great Patriotic War in art and society has been stifled.

In June 2021 members of the State Duma introduced administrative liability for displaying images of Nazi war criminals. The fine will not be imposed only if the image is shown for the purpose of creating a negative attitude toward the ideology of Nazism. The “effectiveness” of the law has been demonstrated when dozens of social network users had to pay fines for innocuous memes and caricatures of Adolf Hitler.

On July 1, 2021, Vladimir Putin signed a law prohibiting public denial of the decisive role of the USSR and the Soviet people in the victory over Nazi Germany. The law also prohibits public equating of the goals and actions of the Soviet leadership with the goals and actions of the leadership of Nazi Germany and its allies. The law is an initiative of the President of Russia, but it is not clear why such issues should be decided by the authorities, rather than historians and their research. Moreover, it is obvious that the introduction of such restrictions will harm not only public discussion on historical issues, but also academic research.

Journalistic solidarity

However, it is remarkable that pressure on journalists, violations of their rights, and persecution in the form of court cases have led to a backlash: since 2019, media workers have been expressing solidarity with persecuted colleagues more frequently and actively.

For the first time, such “guild” support became evident in the Ivan Golunov case. Journalists from various publications, from federal to regional, came out in support of a colleague arrested on false charges. This, as we know, had its effect.

¹¹⁴) Bastrykin instructed to check Sovremennik’s productions for alleged insults to veterans // Center for the Protection of Media Rights, July 30, 2021 URL: <https://mmdc.ru/news-div/digest/bastrykin-poruchil-proverit-postanovki-sovremennika-na-oskorblenie-veteranov/>

¹¹⁵) The Investigative Committee came to the «Svinoye Rylo» gallery. Nikolay Kopeikin heard the «tricky» question // Center for the Protection of Media Rights, October 27, 2021. URL: <https://mmdc.ru/news-div/digest/sledstvennyj-komit-et-prishel-v-galereyu-svinoye-rylo-nikolaj-kopeikin-uslyshal-hitryj-vopros/>

¹¹⁶) Morgenstern apologized for his words about Victory Day // Center for the Protection of Media Rights, October 26, 2021 URL: <https://mmdc.ru/news-div/digest/morgenshtern-izvinilsya-za-slova-pro-den-pobedy/>

Numerous actions of support took place after the arrest of Ivan Safronov. Colleagues participated in single-person pickets in support of Svetlana Prokopyeva, Ilya Azar, Abdulmumin Gadzhiev. Although these actions had not impacted the fate of the journalists, they nevertheless have attracted public attention to the cases.

RECOMMENDATIONS

Based on the analysis of legislation and practice in the area of information dissemination, the professional activities of journalists and the media, and the exercise by citizens of the fundamental right to freedom of expression, the following actions are necessary in order to rectify the situation:

1. Evidently, none of the recommendations made by a group of Russian human rights organizations in 2018 as part of the Universal Periodic Review (UPR) have been implemented by the Russian authorities yet¹¹⁷. Their implementation should be ensured.
2. The issue of decriminalization of defamation has been raised repeatedly at the national and international level. However, criminal liability has only toughened (due to the introduction of jail penalties). In addition, the latest amendments of December 2020 blurred the legal wording. Once again, it is important to stress that criminal liability for defamation should be abolished, considering the existence of alternative remedies ensuring the right to restore good name, honor, dignity and reputation (in the Civil Code) and the right to reply (in the RF Law “On the Media”).
3. The aggressive and toxic practice of recognizing journalists and media outlets as “foreign agents” should be abandoned, regardless of the nationality of the individual or the place of registration of the media outlet. This contradicts international standards, the principle of pluralism of the press, and the principle of freedom of expression. Being in agreement with the evaluation of the “foreign agents” legislation by the Venice Commission (which found serious violations of fundamental human rights, including freedom of association and expression, the right to privacy, the right to participate in the management of state affairs, and the right not to be discriminated), we recommend to reform the “foreign agents” legislation extensively and, ideally, repeal all the laws pertaining to the issue. Issues of political lobbyism should be regulated differently, so as not to form the basis for discrimination against civil society and free press and not to limit the right to public debate on issues of public importance.
4. All cases of violence against journalists and all cases of obstruction of their professional activities must be thoroughly investigated.

¹¹⁷) Joint submission to the Universal Periodic Review of the Russian Federation under UN proceedings by ARTICLE 19, Mass Media Defense Centre, OVD-Info, PEN International, Roskomsvoboda, and the SOVA Center for consideration at the 30th Session of the Working Group in May 2018 URL: <https://www.article19.org/wp-content/uploads/2017/10/Russia-3rd-UPR-Updated-Submission-090418-FINAL.pdf>

5. The right of every citizen and the professional right of journalists to freedom of access to information, the right to freedom of expression, including critical opinions about socially significant processes, policies, and the activities of the government and government officials, must not be restricted.
6. Any restriction of access to Internet resources due to the presence of controversial illegal content on their sites should not be of an indefinite nature and should not lead to the blocking of the entire resource. Court's rulings on the basis of Art. 15.1 and 15.3 of the law "On Information, Information Technology and Information Security" must be brought in line with Russia's international obligations. The extrajudicial blocking procedure under Article 15.3 of the said law should be replaced with judicial blocking with preliminary verification of the legal grounds for restricting access to information. Any blocking of websites must be pointed, based on a judicial decision of an independent court, take into account Russia's international obligations in the field of information and freedom of speech. There should be an effective mechanism of judicial appeal against such blocking.
7. Russia must guarantee the right of internet users to publish and access information online anonymously and ensure that any restrictions to online anonymity are only permissible on the basis of a court decision and in full compliance with paragraph 3 of Article 19 of the ICCPR and paragraph 2 of Article 10 of the European Convention. It is therefore recommended that:
 - Reform the SORM system so that the intelligence services cannot have direct access to the communication data of Internet users without a court decision;
 - Cancel the restrictions introduced by the "Yarovaya Package", which oblige Internet providers and mobile operators to store the full content of online communications of all users of cellular and Internet services for six months, to introduce mandatory cryptographic protection of correspondence and telephone conversations;
 - Refrain from requiring messaging services (messaging services such as Telegram, WhatsApp, Viber, etc.) to provide intelligence services with decryption keys for users' communication traffic with the purpose of accessing their private messages;
 - Repeal the provisions of Federal Laws No. 241-FZ and No. 276-FZ, which prohibit anonymity of users of Internet messaging applications and prohibit virtual private networks and Internet anonymizers to provide access to websites banned in Russia.
8. Guarantee media freedom and pluralism by refraining from stigmatizing independent media with labels such as "foreign agent," "undesirable organization," and amend legislation to ensure its compliance with Russia's international obligations, including Article 19 of the ICCPR and Article 10 of the European Convention, which guarantee that everyone has the right to freedom of expression; this right includes freedom to seek, receive and impart information and ideas through any media and regardless of frontiers.

9. Repeal the provisions of Federal Law No. 239-FZ that restrict media pluralism by setting the maximum share of foreign investment and ownership in the media market at 20%, and prohibit foreign nationals and people with dual citizenship from being founders and editors-in-chief of media outlets.
10. Repeal Articles 212.1, 284.1, 280.1, 354.1 of the Criminal Code of the Russian Federation¹¹⁸.
11. Narrow down the corpus delicti of Article 205.2 of the Criminal Code of the Russian Federation and limit its application to direct appeals to terrorist activity.

¹¹⁸) Political repressions and political prisoners in Russia in 2018-2019 // Memorial Human Rights Center, 2020. See pages 114-153. URL: https://memohrc.org/sites/all/themes/memo/templates/pdf.php?pdf=/sites/default/files/doklad_2018-2019_0.pdf

3. Freedom of association

Key international norms on freedom of association are contained in Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Article 22 of the International Covenant on Civil and Political Rights (ICCPR), and Article 8 of the International Covenant on Economic, Social and Cultural Rights. Among key documents there are also some of the documents of the Council of Europe, in particular the Fundamental Principles on the Status of Non-Governmental Organizations in Europe, adopted in 2003 by decision of the Committee of Ministers of the Council of Europe¹¹⁹, and Recommendation CM/Rec(2007)14 of the Committee of Ministers to Member States on the Legal Status of Non-Governmental Organizations in Europe, 2007¹²⁰. Also worth mentioning are the Guidelines on Freedom of Association jointly drafted by the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE/ODIHR) and the Venice Commission¹²¹. International standards in this area also include detailed rights and guarantees of trade union activity, in particular ILO Conventions No. 87 and No. 98. This review, however, focuses not on the rights of non-governmental organizations, but on the obstacles to their establishment and operation.

Russian legislation pertaining to free associations is regularly updated and amended, becoming more and more complicated, confusing and contradictory. For example, the Federal Law “On non-profit organizations” of 1996 was amended 96 times, with 61 amendments having been made in the last 10 years. At the same time it does not cover all types of non-profit organizations. Some aspects are regulated by special laws, e.g. the Law “On Civil Society Associations” from 1995, which has been amended 26 times (13 amendments in the last 10 years), or “On Charitable Activity and Volunteering” from 1995, which has been amended 13 times.

The non-profit sector includes bar and notary chambers, non-governmental educational organizations and trade unions, as well as state corporations, professional sports clubs and even parishes of the Russian Orthodox Church, plus organizations established by the government. All of them have budgets and capacities many times greater than those of the civil society organizations that first come to mind when someone mentions the non-profit sector.

¹¹⁹) Decision of the Committee of Ministers of the Council of Europe of 16 April 2003 on «Fundamental Principles on the Status of Non-Governmental Organizations in Europe» URL: http://www.lawtrend.org/wp-content/uploads/2014/03/SA_2R_85-1461.pdf

¹²⁰) Recommendation CM/Rec(2007)14 adopted by the Committee of Ministers of the Council of Europe to member states on the legal status of non-governmental organizations in Europe, 10 October 2007. URL: <https://rm.coe.int/16802ec26f>

¹²¹) OSCE/ODIHR and Venice Commission Guidelines on Freedom of Association, 2016. URL: <https://www.osce.org/files/f/documents/3/3/160961.pdf>

Uniform interpretation of this patchwork of different laws and norms is practically impossible both by non-profit organizations and by territorial departments of the Ministry of Justice, whose functions since 2008 include registration and supervision over the activities of non-profit organizations. Such regulations do not at all meet the criteria of quality legislation, which should be aimed at creating favorable conditions for the realization of the right to freedom of association. On the contrary, it distorts the role of the state, which instead of facilitating and promoting, imposes control, restrictions and applies punishment.

The change that have been most heavily criticized in recent years is the introduction of the definition of a “non-profit organization performing the functions of a foreign agent”. The status restricts the activities of the organizations labeled as such. The vague and unclear wording, repressive and selective enforcement, stigmatization and defamatory effect that the very phrase “foreign agent” has in the Russian language characterized this legislation from the very beginning. Its purpose is obviously not transparency and accountability, but to limit critical speech and create additional barriers to independent and uncontrolled civil activities.

Demands and recommendations to repeal or amend “foreign agents” legislation have been made at various times by the UN¹²² High Commissioner for Human Rights, the UN Special Rapporteurs on Freedom of Assembly and Association, Human Rights Defenders and Freedom of Expression¹²³, the UN Committee Against Torture¹²⁴, the Committee on the Rights of the Child¹²⁵, the UN Committee on the Elimination of Racial Discrimination¹²⁶, the Council of Europe Commissioner for Human Rights¹²⁷, the Council of Europe Parliamentary Assembly¹²⁸, the Conference of International Non-Governmental Organizations¹²⁹, the Parliamentary Assembly of the Council of Europe¹³⁰, OSCE/

122) UN: Russia's law on «foreign agents» should be amended // Information Telegraph Agency of Russia (ITAR-TASS). URL: <https://tass.ru/mezhdunarodnaya-panorama/3360030>

123) Russia: Deteriorating conditions for nongovernmental organizations and human rights defenders are unacceptable // Website of the Office of the High Commissioner for Human Rights. URL: <https://newsarchive.ohchr.org/RU/NewsEvents/Pages/DisplayNews.aspx?NewsID=13323&LangID=R>

124) Concluding Observations on the Fifth Periodic Report of the Russian Federation, adopted by the Committee Against Torture at its forty-ninth session // University of Minnesota Human Rights Library. URL: http://hrlibrary.umn.edu/russian/cat/Russia_2012.html

125) Concluding observations on the combined fourth and fifth periodic reports of the Russian Federation. URL: https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/RUS/CRC_C_RUS_CO_4-5_16305_E.pdf

126) Russia: Deteriorating conditions for nongovernmental organizations and human rights defenders are unacceptable // Website of the Office of the High Commissioner for Human Rights. URL: <https://newsarchive.ohchr.org/RU/NewsEvents/Pages/DisplayNews.aspx?NewsID=13323&LangID=R>

127) See documents on the website of the Commissioner for Human Rights: Written Interventions of the Council of Europe Commissioner for Human Rights as a third party (<https://rm.coe.int/-3-36-9988-13-48-/16807457c1>), Opinion of the Commissioner for Human Rights. Legislation and practice in the Russian Federation on non-commercial organizations in light of Council of Europe standards (http://monitoring.mhg.ru/sites/default/files/files/commhr201315_ru.pdf), Opinion of the Commissioner for Human Rights. Legislation and practice in the Russian Federation on non-commercial organizations in light of Council of Europe standards: an update (http://monitoring.mhg.ru/sites/default/files/files/commhr201517_ru.pdf)

128) Resolution on the honouring of obligations and commitments by the Russian Federation of October 2, 2012 // Parliamentary Assembly of the Council of Europe. URL: [http://www.coe.int/T/r/Parliamentary_Assembly/\[Russian_documents\]/\[2012\]/\[Oct2012\]/Res1896_rus.asp](http://www.coe.int/T/r/Parliamentary_Assembly/[Russian_documents]/[2012]/[Oct2012]/Res1896_rus.asp)

129) Opinion on the Law on Amendments to Legislative Acts of the Russian Federation Regarding the Regulation of the Activities of Nonprofit Organizations Performing the Functions of a Foreign Agent // Expert Council on NGO Law. URL: http://monitoring.mhg.ru/sites/default/files/files/oing_conf_exp_2013_1_opinion_ngo.pdf

130) The 24th Annual Session of the OSCE Parliamentary Assembly // Internet Archive. URL: <https://web.archive.org/web/20150708070133/http://www.oscepa.org/meetings/annual-sessions/2015-annual-session-helsinki>

ODIHR¹³¹, Venice Commission¹³², Advisory Committee on the Framework Convention for the Protection of National Minorities¹³³, International Commission of Jurists¹³⁴.

This review is being written at a time of a new round of repressive application of legislation, when the prosecutor's office has filed lawsuits to close Russia's leading human rights organizations the International Memorial Society and the Memorial Human Rights Center. According to the prosecutor's office, the organizations had violated the "foreign agents" law.

At the same time, pressure on non-profit organizations is not a new phenomenon. Below we describe some of the trends that have emerged during the last ten years.

Complicated registration process

It is more difficult to register a non-profit organization than a commercial organization. The period for reviewing registration documents in case of civil society organizations is 28 calendar days in comparison with 14 working days in case of other organizations. The period for registration of a limited liability company cannot exceed 3 business days (par. 3 of Article 13 of Federal Law No. 129-FZ). If you register a non-profit organization with the help of an intermediary, registration services will cost 2-3 times as much as registration services in case of other organizations. Such information is available after a simple search on the Internet.

However, the Moscow Helsinki Group's monitoring reports on freedom of association record a variety of refusals to register. Sometimes minimal inaccuracies in the documents or complaints about the content of the charter or the goals set by an association become sufficient grounds for refusal.

The activities of unregistered organizations are allowed, although since December 2020 the Ministry of Justice keeps "a register of civil society associations, which function without acquiring the rights of a legal entity, receive funds and (or) other property from foreign sources and participate in political activities". As of November 2021, three associations were included into the register: Golos, OVD-Info, and the Russian LGBT Network.

131) ODIHR Director expresses concern over amendments to legislation on 'foreign agents' in Russian Federation. <https://www.osce.org/odihr/445240>

132) Opinion on Federal Law n. 121-fz on non-commercial organisations ("law on foreign agents"), on Federal Laws n. 18-fz and n. 147-fz and on Federal Law n. 190-fz on making amendments to the criminal code ("law on treason") of the Russian Federation // EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION). URL: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)025-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)025-e)

133) Fourth Opinion on the Russian Federation, February 20, 2018 // Advisory Committee on the Framework Convention for the Protection of National Minorities. URL: <https://rm.coe.int/4th-advisory-committee-opinion-on-the-russian-federation-russian-langu/1680908b0d>

134) Russian Federation: Report on the Constitutional Court Proceedings and Judgment on the "Foreign Agent" Amendments to the NGO Law (Foreign Agents Law). International Commission of Jurists. URL: <https://www.icj.org/wp-content/uploads/2014/09/RUSSIA-FOREIGN-AGENTS-RUSSIAN-elec.pdf>

At the same time, in 2018 the Ministry of Justice of the Russian Federation announced the preparation of the federal draft law “On Amendments to the Federal Law ‘On Public Associations’ in light of establishing a notification procedure for the activities of civil society associations that are not legal entities”¹³⁵.

No such draft law has been introduced so far, although from time to time opinions are expressed that unregistered associations should be regulated¹³⁶.

Inspections by various agencies

In 2013, shortly after the “foreign agents” law came into force, a wave of mass inspections swept across non-profit organizations. Organizations that receive foreign funding were targeted.

According to official data of the prosecutor’s office, about a thousand inspections were conducted. The portal ClosedSociety.org¹³⁷ collected data on 311 of them. It turned out that 13 agencies were involved in the inspections: the Federal Security Service, the Ministry of Interior, Center “E”, Rospotrebnadzor, Fire Supervision Services, Roskomnadzor, Federal Tax Service, Ministry of Justice, Federal Migration Service, Rosfinnadzor etc. In some cases, the inspectors asked for electronic correspondence and personal data on employees, and could ask for hundreds of documents within a day¹³⁸. Human rights organizations received the most attention (94 out of 311 non-profit organizations). The most affected by the inspections were non-profit organizations dealing with LGBT issues and electoral rights¹³⁹. The ClosedSociety.org team recorded 109 sanctions against 99 non-profit organizations: a number of organizations were fined and two were suspended¹⁴⁰. The Prosecutor’s Office itself confirmed about 300 “acts of the prosecutor’s response “. One out of every four non-profit organizations was subjected to sanctions related to the “foreign agents register “¹⁴¹ as a result of inspections.

The 2013 inspections were an attempt to exorcise pressure. The authorities began to treat independent civil society organizations as a threat, as something that needs to be strictly supervised. When legal grounds used to pressure and control turned to be insufficient,

135) Draft law «On amendments to the Federal Law «On Public Associations» in light of establishing a notification procedure for the activities of public associations that are not legal entities» // Federal Portal of Regulatory Acts. URL: <https://regulation.gov.ru/projects#npa=87256>

136) Lawyers for Civil Society. Analytical review of the draft laws aimed at regulating the activities of public associations that are not legal entities. URL: <http://lawcs.ru/nekommercheskoe-zakonodatelstvo/novosti-stati-issledovaniya/izmeneniya-zakonodatelstva/06-2019.pdf>

137) The ClosedSociety.org portal is a joint initiative of the Memorial Human Rights Center, the Human Rights Defenders Rapid Response Center, and the Youth Human Rights Movement. URL: <https://web.archive.org/web/20161116134504/http://closedociety.org/analytics/>

138) Human Rights in the Russian Federation: A Report on Events of the Year (2013) // Moscow Helsinki Group, 2014. URL: <https://www.mhg.ru/sites/default/files/files/2013-prava-cheloveka-v-rf.pdf>

139) Foreign Agents Law: Results of the First Year of Inspections // ClosedSociety.org. URL: <https://web.archive.org/web/20161116134504/http://closedociety.org/analytics/>

140) Ibid.

141) Ibid.

new legal restrictions were introduced. Such an approach provokes further escalation and, in fact, criminalizes independent civic activity.

In 2015, the powers of the prosecutor's office to conduct inspections in non-profit organizations were reviewed by the Constitutional Court of the Russian Federation. The Constitutional Court highlighted the need to define the length of prosecutor's inspections and to introduce the mandatory notification about the inspection and its results. Inspectors cannot demand from non-profit organizations documents that they are not obliged to have, as well as publicly available information or information that the state agencies already have. The Constitutional Court ruled that guarantees stipulated in the law "On Protection of Rights of Legal Entities and Individual Entrepreneurs in the Exercise of State Control (supervision) and Municipal Control" should also apply to non-profit organizations.¹⁴² At the same time, the Order of the General Prosecutor's Office of the Russian Federation No. 265 of May 28, 2015, adopted in view of this ruling, has not significantly improved the situation of the audited organizations.

At the same time, the list of grounds for unscheduled inspections of non-profit organizations by the Ministry of Justice of Russia was expanded. Among other things, the following reason was added: "issuance of an order (instruction) of the head of the authorized body or its territorial body, issued in accordance with the order of the President of the Russian Federation or the Government of the Russian Federation or on the basis of a prosecutor's request to conduct an unscheduled inspection as part of oversight of the organization's compliance with laws as a result of information and requests received by the prosecutor's office"¹⁴³.

As noted in the Moscow Helsinki Group report "Monitoring the Application of New Legislation in the Russian Federation - 2015", since the adoption of the provision on "foreign agents" the position of the Ministry of Justice has changed dramatically: from the initial mild criticism of legal uncertainty, narrow interpretation of "political activity" and restrained attitude towards inspections¹⁴⁴ to becoming a full-fledged repressive oversight body, aiming primarily at identifying violations and punishing for them. In recent years, this punitive function has been most evident in case of the penalties for not labeling materials from "foreign agents. Such inspections do not require any significant effort, and fines can significantly restrict or make it impossible for non-profit organizations to operate

142) Decision of the Constitutional Court of the Russian Federation of February 17, 2015 N 2-P «on the case of checking the constitutionality of the provisions of paragraph 1 of Article 6, paragraph 2 of Article 21 and paragraph 1 of Article 22 of the Federal Law «On the Procuracy of the Russian Federation» in connection with complaints from Inter-regional Association of Human Rights Organizations «Agora», the interregional public organization Human Rights Center Memorial, International Historical Educational Charitable and Human Rights Society Memorial, the regional public charity organization helping refugees and displaced persons Civic Assistance, the autonomous non-commercial organization of legal, informational and expert services Zabaikal Human Rights Center, Regional Public Foundation «International Standard» in the Republic of Bashkortostan and Gannushkina S.A. // Rossiyskaya Gazeta. URL: <https://rg.ru/2015/03/02/ksrf-dok.html>

143) Monitoring the Application of New Legislation in the Russian Federation // Moscow Helsinki Group, 2015. URL: <https://mhg.ru/sites/default/files/files/monitoring-zakonodatelstvo-08-2015.pdf>

144) The refusal to include the Chuvash human rights organization «Shield and Sword» and then the Association «AGORA» in the register after the test application to the Ministry of Justice; the initial unwillingness to recognize human rights and HIV prevention activities as "political". During the 2013 inspections, the Ministry of Justice employees were most often engaged by the prosecutor's office as experts, and did not initiated inspections themselves, etc. For more details see: Pavel Chikov. Regulation of activities of foreign organizations and non-profit organizations performing functions of a foreign agent // Monitoring the application of new legislation in the Russian Federation / Moscow Helsinki Group, 2015. URL: <https://mhg.ru/sites/default/files/files/monitoring-zakonodatelstvo-08-2015.pdf>

at all. At the same time, ignoring these requirements can lead to criminal prosecution or dissolution of organizations (see “Criminal Prosecution in Connection with the NGO Law” and “Sanctions and Dissolution of Organizations” below).

Restrictions on activities imposed by the “foreign agents” legislation

The provisions of the “foreign agents” legislation restrict legitimate civil activities of associations of citizens when a non-profit organization a) receives foreign funding and b) is engaged in “political activities”. According to many experts and human rights activists the meaning of “political activities” should be clearly defined in order to minimize the harmful impact of these legal provisions.

It is no coincidence that even government representatives at the initial stages criticized the low quality of the law. For example, in July 2013 General Prosecutor Yuri Chaika stated: “I must admit that during inspections there were difficulties with classifying non-profit organizations as foreign agents, primarily due to the absence of a generally recognized concept of political activity, even application of legal requirements and established case-law”.¹⁴⁵

The Constitutional Court has also analyzed this topic: in its Ruling on the case No. 10-P, dated April 8, 2014, on checking the constitutionality of legislation on foreign agents, the CC tried to determine which activities cannot be considered political: “activities in the fields of science, culture, art, healthcare, prevention and public healthcare, social support and welfare, protection of motherhood and childhood, social support for the disabled, promotion of healthy lifestyles, physical culture and sports, protection of flora and fauna, charitable activities, as well as support of charity and volunteerism do not, by virtue of the Article 2.6.3 of Federal Law “On Non-Profit Organizations,” do not constitute political activities, involvement in which is one of the prerequisites for recognizing that a non-profit organization performs the functions of a foreign agent. Accordingly, whatever the sources of financial and other material assets of non-profit organizations may be, if the purposes of their activities do not go beyond the above areas, they cannot be considered organizations performing the functions of a foreign agent”.¹⁴⁶ However, this attempt to limit the “rubber norm” has been virtually unnoticed: organizations engaged in exactly

¹⁴⁵) Speech of the General Prosecutor of the Russian Federation Yuri Chaika at the meeting of the Federation Council of the Federal Assembly of the Russian Federation // Website of the General Prosecutor’s Office of the Russian Federation, July 12, 2013. URL: <https://epp.genproc.gov.ru/ru/web/gprf/mass-media/interviews-and-presentations?item=50490735>

¹⁴⁶) Decision of the Constitutional Court of the Russian Federation «on the case of checking the constitutionality of the provisions of paragraph 6 of Article 2, paragraph 7 of Article 32 of the Federal Law «On Non-Profit Organizations, part 6 of Article 29 of the Federal Law «On Public Associations», and part 1 of article 19.34 of the Administrative Offences Code of the Russian Federation in connection with complaints of the Commissioner for Human Rights in the Russian Federation, Foundation «Kostroma Center for Support of Public Initiatives», citizens L.G. Kuzmina, S.M. Smirnskiy and V. P. Yukechev of April 8, 2014, N 10-P // Rossiyskaya Gazeta. URL: <https://rg.ru/2014/04/18/ks-dok.html>

the types of activities as the ones listed by the CC have repeatedly fallen into the category of “foreign agents”. Thus, political activities include, among others, election observation, public appeals to state and local authorities, dissemination, including via the Internet, of assessments of decisions made by state agencies, conducting and publicizing public opinion polls, holding roundtable discussions, publishing brochures, and preparing and sending human rights reports to interstate bodies, including the initiation of cases at the European Court of Human Rights¹⁴⁷. As a result of attempts to define the notion of political activity, currently it covers virtually any public activity.

In the same Decision of April 8, 2014, the Constitutional Court noted that the law does not impose any restrictions on non-profit organizations labeled as “foreign agents”, neither in terms of funding sources nor in terms of types of activities. This statement has been repeatedly quoted by the state officials and state-owned media outlets.

At the same time, specific restrictions, in addition to a negatively perceived label and additional reporting, has been gradually expanding. “Foreign agents” have been consistently banned from:

- observing elections and referendums;
- nominating candidates to public monitoring commissions;
- conducting anti-corruption evaluation of draft laws;
- providing “socially useful services”. Such organizations cannot obtain the status of a “socially oriented non-profit organization” and, consequently, their access to state funding is significantly limited¹⁴⁸.

In addition to the requirement to label materials and documents, including letters to state agencies, this status entails additional, rather burdensome reporting and auditing. For example, the reporting forms in force since August 2018 oblige non-profit organizations to report not only on funds received from foreign sources, but also on funding from abroad by Russian donor organizations. According to a 2015 study conducted by the association Lawyers for Civil Society, as a result of being included in the register, the organization’s annual expenses increased by an average of 273 thousand rubles¹⁴⁹.

The first version of the law introduced self-registration in case of “political activity” and “foreign funding”. At the same time, administrative liability was introduced for failure to register as a “foreign agent”. When non-profit organizations began to refuse to register en masse, attempts to coerce ensued. The first court decision was issued against the Anti-Discrimination Center Memorial (St. Petersburg). At first, the prosecutor’s office attempted to fine the organization and its director under Article 19.34 of the Code of Administrative Offences of the Russian Federation, but the court discovered numerous

¹⁴⁷) See, for example, Dmitry Kolbasin. How they will make you a «foreign agent» // Slon.ru, 16.05.2013. URL: https://monitoring.mhg.ru/sites/default/files/files/kolbasin_16-05-2013.pdf

¹⁴⁸) See Meduza Cards. Soon the Ministry of Justice will be able to ban a «foreign agent» non-profit organization from doing anything at all, under threat of closure. Like, anything at all? URL: <https://meduza.io/cards/skoro-minyust-smozhet-zapretit-nko-inostrannomu-agentu-lyubuyu-deyatelnost-pod-ugrozoy-zakrytiya-voobsche-lyubuyu>

¹⁴⁹) What does the «foreign agent» status cost a non-profit organization? Lawyers calculated the costs // Agency of Social Information, November 26, 2015. URL: <https://www.asi.org.ru/news/2015/11/26/107822/>

mistakes and returned the case to the prosecutor's office. Then the prosecutor's office filed a civil suit against the organization "in defense of an indefinite circle of persons". In its decision of December 12, 2013, the court recognized Memorial as an organization performing the functions of a foreign agent due to the fact that it shapes public opinion and thus participates in political activities¹⁵⁰. As a result, one of the leading organizations that had been engaged in anti-discrimination activities in the country decided to liquidate itself¹⁵¹. Nevertheless, no applications for inclusion in the register followed, and already in 2014 the authorities gave the Russian Ministry of Justice the power to include non-profit organizations in the "foreign agents" register without any application and oblige them to fulfill additional requirements on reporting and their activities.

In 2013, 11 leading Russian non-profits, including Memorial, Golos, the Moscow Helsinki Group, Civic Assistance, and Ecodefense, filed an application with the European Court of Human Rights against interference in their activities due to the "foreign agents"¹⁵² legislation. As of 2017, the ECHR had registered at least 48 applications filed by 61 organizations in connection with these restrictive provisions. The European Court consolidated them into one case and in March 2017 communicated them to the Russian government, asking questions about the quality of the law¹⁵³. The fact that Russian legislation on nonprofit organizations does not comply with European human rights standards was also stated by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, in the form of a third party intervention at the European Court of Human Rights¹⁵⁴. However, the application to the ECHR is still pending.

The consequences of the application of the "foreign agents" legislation include self-liquidation, self-censorship, refusal of foreign funding, reduction of programs and termination of activities in certain areas, refusal of official structures to cooperate with non-profits, termination of service agreements with commercial organizations, and, importantly, damaged reputation. Numerous restrictions on activities and additional burdens in the form of labeling and reporting clearly testify about the discriminatory nature of this law.

150) Human Rights in the Russian Federation: Collection of Reports on the Events of 2015 // Moscow Helsinki Group, 2016. URL: <https://www.mhg.ru/sites/default/files/files/2015-prava-cheloveka-rf-mhg.pdf>

151) ADC Memorial self-liquidates // Memorial Human Rights Center, April 14, 2014. URL: <https://memohrc.org/ru/monitorings/adc-memorial-samolikvidiruetsya>

152) 11 Russian non-profits complained to the ECHR about the law on foreign agents // Vedomosti Business Journal, February 6, 2013. URL: https://www.vedomosti.ru/politics/articles/2013/02/06/11_rossijskih_nko_pozhalovalis_v_espch_na_zakon_ob

153) ECHR communicated the applications of 61 non-profit organizations recognized as foreign agents // Pravo.ru, March 29, 2017. URL: <https://pravo.ru/news/view/139387/>

154) See Commentary by the Commissioner for Human Rights of the Council of Europe to the ECHR. «The Russian Federation's Law on Foreign Agents does not comply with human rights» // Commissioner for Human Rights of the Council of Europe. URL: https://www.coe.int/ru/web/commissioner/view/-/asset_publisher/ugj3i6qSEkhZ/content/the-russian-federation-s-law-on-foreign-agents-contravenes-human-rights

Stages of introducing the “foreign agents” legislation

The following stages in the introduction of “foreign agents” legislation and regulations can be identified:

- May - December 2012: introduction, discussion, adoption and entry into force of the law, adoption of bylaws by the Ministry of Justice;
- March - June 2013: large-scale inspections at non-profit organizations by the prosecutor’s office;
- Summer 2013 - spring 2014: mass disobedience of non-profit organizations. The first wave of trials;
- May - June 2014: introduction of the procedure for compulsory inclusion in the register;
- Summer 2014 - spring 2015: mass inclusion of non-profits in the register, fines. The second wave of trials;
- May 2015: adoption of the law on undesirable organizations;
- Summer-fall 2015: inclusion of the first foreign and international organizations into the “undesirable” list;
- November 2017: adoption of the law on media outlets as foreign agents;
- December 2017: inclusion of the first foreign media outlets in the register of media outlets performing the functions of a “foreign agent”;
- December 2019: adoption of amendments to the Law “On Mass Media”: a physical person can also be recognized as a “foreign agent” media outlet
- December 2020: for the first time, the register of media outlets performing the functions of foreign agents includes individuals: human rights activist Lev Ponomarev, journalists Lyudmila Savitskaya (Radio Liberty, MBH Media) and Sergey Markelov (Radio Liberty, 7x7), Pskovskaya Gubernia editor-in-chief Denis Kamalyagin, and child rights activist Darya Apakhonchich. A physical person can be recognized as a “foreign agent”. The Ministry of Justice is given the task of keeping records of unregistered public associations performing the functions of a “foreign agent”;
- April 2021: “foreign agents” non-profits are obliged to inform the Ministry of Justice about all planned programs and events. The Ministry of Justice from that moment on can impose a partial or complete ban on any project, and if the ban is ignored, it can sue for liquidation;
- Summer 2021: the Ministry of Justice approves the procedure for keeping records of unregistered public associations that perform the functions of a “foreign agent. The organization “Golos” becomes the first to be included in the register. Prosecution for organizing and participating in the work of undesirable organizations is simplified.

Registration data as of November 16, 2021¹⁵⁵:

1. Register of non-profits performing the functions of foreign agents: 75 organizations (a total of 219 since the adoption of the law).
2. Register of foreign media outlets performing the functions of foreign agents: 95 (62 of them are physical persons).
3. Register of unregistered public associations performing the functions of foreign agents: 3 associations.
4. List of foreign and international non-governmental organizations whose activities are recognized as undesirable on the territory of the Russian Federation: 49.

Other repressive legislation affecting non-profits

Legislation on undesirable organizations is also aimed at limiting foreign funding of activities of non-profit organizations. Such funding is criminalized. According to Pavel Livadny, Deputy Director of the Federal Financial Monitoring Service, active funding of foreign agents is one of the main markers that determine the undesirability of foreign organizations¹⁵⁶. The recognition of an organization as “undesirable” takes place extrajudicially and imposes an absolute ban on its activities in Russia, blocking the money transfers of these organizations, as well as introducing administrative and criminal liability for interaction with them. Dissemination of informational materials of “undesirable organizations” is also prohibited, including in the media and the Internet. The ban also applies to projects financed¹⁵⁷ by such an organization.

The so-called anti-extremist legislation deserves special mention. It allows courts to liquidate or ban the activities of organizations found to be engaged in extremist activity. For organizing the activities of an extremist organization (Part 1, Article 282.2 of the Criminal Code), the penalty is a fine of 300,000 to 500,000 rubles, or community service for up to five years, or imprisonment from two to eight years. Separately, inducing, recruiting or otherwise involving a person into the activities of an extremist association is punishable by a fine of 100,000 and 300,000 rubles, or 2 to 6 years in prison. Participation in the activities of such an organization (understood quite broadly, i.e. holding talks, recruiting new participants, direct participation in events, etc.) is punishable either by a fine of up to 300 thousand rubles or imprisonment for up to 4 years. The list of extremist organizations, along with religious

¹⁵⁵) For the summary of all organizations and individuals included in the «List of foreign and international non-governmental organizations whose activities have been recognized as undesirable in the Russian Federation» please see the website of the project «Inoteka» by OVD-Info. URL: <https://ovdinfo.org/inoteka>

¹⁵⁶) Vinokurov A., Bratersky A. The Federation Council will prepare a «patriotic stop-list» by July 8 // Gazeta.Ru, July 3, 2015. URL: http://www.gazeta.ru/politics/2015/07/03_a_6865529.shtml

¹⁵⁷) The Law on «undesirable non-profits» will exclude any organizations that are not acceptable to the authorities: legal analysis // Article20.org, May 17, 2015. URL: <http://www.article20.org/ru/news/zakon-o-nezhelatelnykh-npo-isklyuchit-vozmozhnost-raboty-lyu>

associations of varying degrees of radicalism, nationalist groups and associations of soccer fans, includes non-profit organizations “The Anti-Corruption Foundation” and the “Citizens’ Rights Protection Foundation” as well as the public movement “Navalny Headquarters” that were recognized as extremist organizations by a decision of the Moscow city court of June 9, 2021¹⁵⁸. Employees of the organizations created by Alexey Navalny and a huge number of his active supporters are at risk of criminal prosecution. The vague wording allows for prosecution for a wide variety of forms of cooperation and support. Punishments are carried out both to eliminate specific political opponents and simply to intimidate and create a “chilling effect”. The decision to recognize organizations affiliated with Alexei Navalny as extremist should be viewed in the context of the criminal prosecution of Navalny. It bears all the hallmarks of politically motivated and aimed at suppressing the political opposition. It is possible that this harassment model can be applied to other public associations and non-profit organizations.

Criminal prosecution in connection with laws on non-profits

The risks of criminal prosecution are not only related to participation in the activities of organizations deemed “extremist” or “undesirable”. In accordance with Article 330.1 of the Criminal Code of the Russian Federation, even willful evasion of the obligation to submit the documents required for the inclusion of non-profit organizations performing the functions of a foreign agent in the corresponding register constitutes a crime¹⁵⁹.

In June 2016, for the first time a criminal case under this article was brought against Valentina Cherevatenko, chairman of the union “Women of the Don”. It was alleged that Cherevatenko, “with a criminal intent” to avoid legal consequences registered the Women of the Don Foundation back in 2013. Cherevatenko believes that the persecution intensified after the launch of the “Civic Minsk” project. This is a project of civil control over the implementation of the Minsk agreements, aimed at resolving the armed conflict in eastern Ukraine¹⁶⁰. On June 19, 2017, the case against Valentina Cherevatenko was dismissed by the prosecutor’s office due to the absence of corpus delicti¹⁶¹ in her actions.

“The Southern Human Rights Center” failed to pay an administrative fine of 300 thousand rubles for failing to register as a “foreign agent”. As a result, in June 2021 chairman of

158) The List of Public Associations and Religious Organizations, in Relation to Which a Final Court Decision was Taken About Liquidation or Prohibition of Activity on Grounds Provided by Federal Law No. 114-FZ of 25.07.2002 «On Counteracting Extremist Activity» // Ministry of Justice of the Russian Federation. URL: <https://minjust.gov.ru/ru/documents/7822/>

159) See S. Golubok. Criminal Code of Russia as a patchwork. Commentary on the new article 330.1 // Law.ru, October 31, 2016. URL: https://zakon.ru/blog/2016/10/31/ugolovnyj_kodeks_rossii_kak_loskutnoe_odevalo_kommentarij_k_novoj_state_3301

160) Vera Chelischeva. The first criminal case against «foreign agents» // Novaya Gazeta, July 6, 2016. URL: <https://novayagazeta.ru/articles/2016/07/06/69176-pervoe-ugolovnoe-delo-v-otnoshenii-inostrannyh-agentov>

161) Case: Valentina Ivanovna Cherevatenko // Website of the Memorial Human Rights Center. URL: <https://memohrc.org/ru/special-projects/delo-cherevatenko-valentina-ivanovna>

the organization Semyon Simonov, a human rights activist from Sochi, was sentenced to 250 hours of community service under Article 315.2 (“Failure to comply with a court verdict, court decision or other judicial act”). He was released from punishment due to the expiration of the statute of¹⁶² limitations.

Employees of Alexei Navalny’s Anti-Corruption Foundation were also targeted by criminal prosecution. On August 3, 2019, the Investigative Committee initiated a criminal case against the Foundation accusing its employees of money laundering in the amount exceeding one billion rubles. As part of the investigation, all assets of the Foundation, assets of many of its employees, affiliates and even some of their relatives were frozen. Navalny’s headquarters across the country and the Anti-Corruption Foundation itself were repeatedly searched and equipment was confiscated, making it impossible to continue operations.¹⁶³

A series of criminal cases followed after the recognition as “undesirable” in Russia of the Open Russia public networking movement initiated by Mikhail Khodorkovsky. In October 2020 Yana Antonova was sentenced to 240 hours of community service under Article 284.1 of the Criminal Code (“Activities of an undesirable organization”) in Krasnodar Krai. In February 2021 in Rostov-on-Don, former member of Open Russia Anastasia Shevchenko, who had been under house arrest since January 2019¹⁶⁴, was given a four-year suspended sentence. Criminal cases under this article were opened in Nizhny Novgorod and Chuvashia. Andrei Pivovarov, former director of Open Russia, has been in the Krasnodar detention center since June 8, 2021; he was transferred there from St¹⁶⁵. Petersburg. On May 27, the Open Russia council was forced to announce its liquidation in order to protect its allies from prosecution¹⁶⁶. Eight people faced criminal charges as a result of their participation in the activities of Open Russia.

Imposition of sanctions and liquidation of organizations

The first cases of liquidation for violating the legislation on foreign agents took place in 2016, when the Association for the Protection of Voters’ Rights “Golos” and the Interregional Association of Human Rights Public Associations “Agora” were liquidated. They were leading human rights organizations in their fields.

¹⁶²) Simonov Semyon Leonidovich // Website of the Memorial Human Rights Center. URL: <https://memohrc.org/ru/defendants/simonov-semyon-leonidovich>

¹⁶³) Moscow Helsinki Group review «Sad, Happy, and Controversial in the Field of Human Rights in Russia. 2019». URL: https://mhg.ru/sites/default/files/inline/files/doklad-mhg-za_2019-god.pdf

¹⁶⁴) Former member of Open Russia Anastasia Shevchenko sentenced to 4 years on probation // OVD-Info. URL: <https://ovdinfo.org/express-news/2021/02/18/byvshego-chlena-otkrytoy-rossii-anastasiyu-shevchenko-prigovorili-k-4-godam>

¹⁶⁵) In Krasnodar, Andrei Pivovarov, former director of Open Russia, was given a preventive measure // OVD-Info. URL: <https://ovdinfo.org/express-news/2021/06/02/v-krasnodare-byvshemu-direktoru-otkrytoy-rossii-andreyu-pivovarovu-izbrali>

¹⁶⁶) Matvey Pukhov. «The Law is Being Passed Clearly Because of Us. Why Open Russia is being liquidated» // «OVD-info». URL: <https://ovdinfo.org/articles/2021/05/28/zakon-prinimaetsya-chetko-pod-nas-pochemu-likvidiruyut-organizaciyu-otkrytaya>

On November 1, 2019, the Supreme Court of the Russian Federation ruled to liquidate the all-Russian movement “For Human Rights”. The movement was one of the oldest (officially registered in 1997) and most influential in the field of human rights. The Movement united organizations that had been operating in Russia since the early 1990s. The Ministry of Justice referred to minor discrepancies, which the movement was not allowed to correct. The Ministry also referred to the organization’s violation of the law on “foreign agents,” pointing out that the organization had been repeatedly held administratively liable for not labeling their publications as a “foreign agent”.

In November of the same year, at the request of the Russian Ministry of Justice, the Moscow City Court liquidated the Center for Assistance to the Indigenous Peoples of the North, the oldest association in the country protecting the rights of indigenous minorities. The grounds were the outdated provisions in its charter and outdated legal address, although the Center presented the documents necessary to correct these discrepancies¹⁶⁷ during the court hearing.

In March 2020, the Council of the Teips of the Ingush People in Ingushetia was liquidated, despite the fact that the organization had eliminated most of the “violations” found by the Ministry of Justice and was ready to eliminate the rest. The grounds were outdated provisions in the charter, an outdated legal address, a number of other minor discrepancies, and an image of the republic’s coat of arms differing from the official one, on which the officials identified a “solar sign” resembling a swastika.¹⁶⁸

Separately, the huge wave of administrative reports in case of other human rights organizations is worth mentioning. In particular, International Memorial and the Memorial Human Rights Center together were found guilty in 22 administrative cases under Article 19.34 Part 2 of the Code of Administrative Offences of the Russian Federation (“Publication by a non-profit organization performing the functions of a foreign agent of materials without labeling them as the materials that have been published by a non-profit organization performing the functions of a foreign agent”) and were fined a total of over six million rubles¹⁶⁹. These numerous administrative reports subsequently became one of the grounds for lawsuits to liquidate both organizations.

¹⁶⁷) The North has been left unprotected // Kommersant, November 7, 2019 URL: <https://www.kommersant.ru/doc/4149900>

¹⁶⁸) Moscow Helsinki Group review «Sad, Happy, and Controversial in the Field of Human Rights in Russia. 2019.» URL: https://mhg.ru/sites/default/files/inline/files/doklad-mhg-za_2019-god.pdf

¹⁶⁹) Ibid.

RECOMMENDATIONS

Recommendations can be divided into several large areas:

- 1) Countering the negative effects of restrictive legislation on non-profits in Russia: supporting associations that face harassment, legal and political assessment of restrictions, appeals to stop harassment in individual cases, etc.;
- 2) Demanding the repeal of discriminatory and unlawful legislation and a substantial revision of application of legislation;
- 3) Strengthening the very possibility to exercise the right to freedom of association, in particular in its cross-border aspect. Preventing obstruction of human rights activities: strengthening existing standards and institutions.

The first two concern primarily Russia, while the third one is addressed to intergovernmental organizations.

As regards the first area, the key issue is the attempt by the authorities to liquidate leading human rights organizations the International Memorial and the Memorial Human Rights Center. The case encompasses all negative aspects of the law: most important civil society organizations being liquidated on formal grounds for minor infractions of the law, which is almost impossible to follow and the application of which is deliberately selective and vague. As a result, not only the rights of organization members are violated, but also the rights of those whom these organizations protect, including in international and national courts. The initiator of the liquidation is the Prosecutor's Office, which also represents the state at the European Court of Human Rights, essentially acting there as a procedural opponent of the organizations, the activity of which it wants to terminate. The withdrawal of the liquidation suit and the termination of the proceedings should be the first demand.

As regards legislative changes in this area, the Russian authorities and some expert institutions, in particular the Presidential Council for Civil Society and Human Rights, have repeatedly stated that the "foreign agents" legislation needs to be amended. For example, there is a need to introduce the definition of "political activity," to narrow the scope of application of the law, or to introduce other ways to appeal. Despite this, all attempts either result in minor corrections or exacerbate its application. The discriminatory nature of the legislation stays unchanged.

We are convinced that the first and foremost recommendation is to repeal all provisions of the "foreign agents" legislation due to their unlawful and discriminatory nature. The same applies to the provisions of the law on undesirable organizations. These laws cannot be improved. Until they are repealed, we should insist that they not be applied to organizations that advocate and promote human rights, to the media that carry out the socially significant function of collecting and disseminating information, and in particular to individuals whose professional life these laws restrict and with whose private life they excessively interfere.

As authorities refer to foreign experience, in particular by drawing parallels with the US Foreign Agents Registration Act, it is worth pointing out that the latter applies to political lobbying in the interests of foreign principals, while the “political activities” imputed to Russian organizations are primarily related to the promotion of universal human values, without direct connection to the funding and representation of the interests of a particular foreign state or institution. Drawing such parallels is manipulation. If the authorities were really interested in limiting political influence funded by interested third parties, including foreign ones, they would have adopted a law on political lobbyism, which has been delayed for many years.

When discussing the issue with the authorities, it is also important to stress that violations of the legislation and minor reporting discrepancies or inability to follow all the instructions of inspection agencies cannot be grounds for liquidating organizations or bringing the persons involved to criminal liability. The criminal cases already having been initiated under these articles should be closed.

The Ministry of Justice should fulfill its key function, i.e. helping citizens in exercising their right to freedom of association, rather than undertake supervisory or punitive actions aimed at identifying violations and punishing them severely. The registration procedure for non-profit organizations and their legal regulation should be significantly simplified, any inspections should be clearly regulated, and interference in the activities of non-profits at the time of inspections should be minimized.

A collective application of Russian non-profits about violations of the right to freedom of association in the European Court of Human Rights should be considered as soon as possible. After all, it describes massive and gross violations affecting the interests of a large number of people as well as the existence of a systematic policy of unjustified and excessive interference with the fundamental right to freedom of association. Council of Europe member states should consider sending their legal opinions to the European Court and request intervention as a third party, as the Commissioner for Human Rights has already done.

The Council of Europe, the OSCE, and the UN should consider further promoting and strengthening standards for freedom of association. Advancement should include the right to seek, receive and use financial and other resources, including from the international community¹⁷⁰, as well as strengthening institutions to protect this right. Thus, recommendations at the Council of Europe, OSCE, and UN level are as follows:

1. Support the establishment of a permanent OSCE/ODIHR panel of experts on freedom of association, similar to the panel on freedom of peaceful assembly.
2. Support the work of Russian-speaking staff of the Office of the UN High Commissioner for Human Rights to facilitate UN thematic procedures that review appeals in Russian

¹⁷⁰) See General Principles: Protection Civic Space and the Right to Access Resources, developed by A Community of Democracies project and the UN Special Rapporteur on Freedoms of Peaceful Assembly and Association, 2014. URL: <https://community-democracies.org/app/uploads/2018/06/Annex-1-General-principles.pdf>

and formulate additional recommendations to Russian authorities and other countries in the region.

3. Initiate amendments to the Fundamental Principles on the Status of Non-Governmental Organizations in Europe (adopted by the Committee of Ministers of the Council of Europe), which describe legal opportunities for financing activities aimed at promoting the fundamental values of the Council of Europe.
4. Find ways to strengthen the reprisal mechanism within the office of the Secretary General of the Council of Europe. The mechanism should be aimed at protecting those organizations and persons who are prosecuted for their interaction with the institutions of the Council of Europe.
5. To join as third parties to the European Court of Human Rights' applications about the liquidation of human rights organizations. Such organizations are an essential tool in the overall system of human rights protection and the rule of law in Europe. Consider the possibility of an inter-state application in connection with the violations.
6. Formulate and promote clearly and unambiguously at the level of all these organizations standards that emphasize that pressure on and persecution of human rights organizations is a matter of common concern and a threat to collective security relating to the human dimension, and not an internal affair of a country.
7. In consultation with human rights organizations, develop and initiate a comprehensive program to support freedom of association, including cross-border activities, and a program to support non-state human rights activities in Europe.

4. Unlawful anti-extremism and counter-terrorism

1. Analysis of Russia's compliance with its international obligations

A brief overview of key international OSCE commitments

Russia participates in the development and endorsement of human rights and democracy commitments within the OSCE. These commitments are at the core of the OSCE's work. Participating States have agreed to implement them on an entirely voluntary basis.

The individual rights and corresponding commitments presented below have been affirmed in documents developed as a result of meetings of the participating States and OSCE conferences, the first of which took place in 1975, and have subsequently been incorporated into the body of OSCE commitments.

The right to freedom of thought, conscience and religion

In 1990, at the Conference on the Human Dimension in Copenhagen, the OSCE participating States adopted a Document which affirmed that everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change one's religion or belief and freedom to manifest one's religion or belief, either alone or in community with others, in public or in private, through worship, teaching, practice and observance. The exercise of these rights may be subject only to such restrictions as are prescribed by law and are consistent with international standards.

Freedom of Association and the Right to Peaceful Assembly

In the same Document, participating States noted that they respect the right of individuals

and groups to establish, in full freedom, their own political parties or other political organizations; everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards; the right of association will be guaranteed.

Right of Association/Non-Governmental Organizations

At the 1991 Conference on the Human Dimension of the CSCE in Moscow, the participating States affirmed that they would recognize as NGOs those organizations which declare themselves as such, according to existing national procedures, and would facilitate the ability of such organizations to conduct their national activities freely on their territories.

Freedom of Expression, Free Media and Access to Information

At the 1994 Conference on the Human Dimension in Budapest, participating States reaffirmed that freedom of expression is a basic human right and a fundamental element of a democratic society.

Promoting transparency, fighting corruption

In 1999, the Istanbul Summit adopted the Charter for European Security, in which participating States pledged to step up their efforts to combat corruption and its underlying conditions, and to promote a positive framework for good government practices and public integrity. As part of its work to promote the rule of law, the OSCE will work with NGOs that are committed to a strong public and business consensus against corrupt practices.

Fighting terrorism

In 2001, the Bucharest Ministerial Council Declaration and the Bucharest Plan of Action for Combating Terrorism, under which participating States strongly condemned all acts of terrorism and reaffirmed that the fight against terrorism is not a war against religions or peoples, reaffirming the commitment to protect human rights and fundamental freedoms.

Free Elections

The 2010 Astana Summit adopted a commemorative declaration in which participating States reaffirmed that they value the important role of civil society and free media in helping to ensure respect for human rights, fundamental freedoms, democracy, including free and fair elections, and the rule of law.

National legislation not in compliance with international obligations

On June 29, 2013, amendments into Article 148 of the Criminal Code (“Violation of the Right to Freedom of Conscience and Religion”) were introduced, which established criminal liability for “insulting the feelings of believers,” namely for “public actions expressing clear disrespect for society and committed in order to insult the religious feelings of believers,” including actions “committed in places specially designated for religious services, other religious rites and ceremonies”. There is legal uncertainty whether the terms “religious feelings” and “believers” shall apply to atheistic views and atheists in order to avoid discrimination against the latter. According to the experts of the “Sanation of Law” project, the norm does not meet the requirements of certainty, clarity and unambiguity. The wording “blatant disrespect for society” and “insult to religious feelings” (simply on the grounds that there are people claiming that their religious feelings have been insulted) is vague and evaluative in nature. On their basis, it is impossible to understand what kind of behavior will later turn out to be unlawful and, moreover, criminal.

This article of the Criminal Code actually contradicts the norms of Article 14, asserting the secular nature of the Russian state, and Articles 28 and 29 of the Russian Constitution, which enshrine the freedom of conscience and speech.

On November 2, 2013, Article 205.5 of the Russian Criminal Code (“Organization of the activities of a terrorist organization and participation in the activities of such an organization”) was introduced, which does not require proving the involvement of the accused in the commission of specific violent crimes of a terrorist nature: the mere fact of participation in the activities of an organization banned by a court due to its terrorist activities is sufficient. In 2014-2016, penalties under Art. 205.5 were increased: from 15 to 20 years in prison or life imprisonment for the organizers, and from 10 to 20 years for members.

On December 28, 2013, Article 280.1 of the Criminal Code (“Public calls for actions aimed at violating the territorial integrity of the Russian Federation”) was introduced. The way the article was applied, in particular in the cases of those who were recognized as political prisoners by Memorial, shows that currently there is no issue with socially dangerous calls posing threat to the territorial integrity of the Russian Federation, and the main purpose of the article is to facilitate political repressions that infringe on human rights and freedoms.

On July 6, 2016, two federal laws came into force (the so-called anti-terrorist “Yarovaya Package”), which significantly toughened the legislation and introduced the legal

framework legitimizing the state interference in the private “online” life of citizens. Into the Criminal Code of the Russian Federation three new *corpus delicti* were introduced: “Failure to report a crime,” “Incitement, recruitment or other involvement in the organization of mass disorder,” and “Act of international terrorism.” Penalties for “extremist” crimes were also increased. The law imposed restrictions on the activities of religious organizations and established rules for missionary activities.

On December 29, 2017 the wording of Art. 205.2 of the Criminal Code of the Russian Federation (“Public calls for terrorist activities, public justification of terrorism”) was changed to include “propaganda of terrorism,” which is understood as “activities to disseminate materials and (or) information aimed at shaping terrorist mindset, forming belief in attractiveness or permissibility of terrorist activities”. The notion of “terrorist ideology” is not defined either in the law on combating terrorism, or in any other official documents.

In May 2020, a new version of the Counter-Extremism Strategy until 2025 was approved. According to the document, manifestations of extremism should also include “destructive activities” of NGOs, including “the use of technologies and the so-called color revolutions scenarios”; in addition, the “informational and psychological influence” of foreign intelligence services, aimed at destroying traditional values, should be watched closely.

On April 5, 2021 the Federal Law “On Education” introduced the notion of “awareness-raising activities”, i.e. dissemination of knowledge and practical experiences outside of educational programs. The format, conditions, and methods of their implementation should be defined by the government, what dramatically increases the state’s power in the field of education and, in fact, any type of communication. Similar to restrictions on teaching activities, the law introduces a ban on awareness-raising activities inciting discord and promoting superiority based on any group characteristics, “including through providing false information about the historical, national, religious and cultural traditions of peoples, as well as for inciting actions contrary to the Constitution of the Russian Federation”.

On June 4, 2021, a law was signed prohibiting people involved with extremist or terrorist organizations and their supporters, e.g. those who donated money, from running for public office. As a result, opposition candidates were not allowed to run for various public offices because of their ties to Alexei Navalny and the Anti-Corruption Foundation, which had been included in the list of extremist organizations.

Practices violating international obligations and national legislation. Use of violence

Abuse of anti-extremist law against religious groups

On February 14, 2003 the Supreme Court recognized Hizb ut-Tahrir as a terrorist organization and banned its activities. The decision does not contain any information on Hizb ut-Tahrir's terrorist activities, as defined by the Russian Criminal Code and the Federal Law "On Combating Terrorism" of 3 July 1998, which is an obvious ground for declaring the decision unfounded. This decision resulted in harsh sentences for involvement in Hizb ut-Tahrir's activities, up to 24 years in prison, for hundreds of people, who had nothing to do with violence. According to the Memorial Human Rights Center, as of October 29, 2021 at least 331 persons were being prosecuted, of whom 243 were recognized as political prisoners.

The scope of persecution of the Jehovah's Witnesses religious movement has been expanding since the Supreme Court of the Russian Federation declared the organization extremist on July 20, 2017. According to the Memorial Human Rights Center, as of October 29, 2021, at least 539 Jehovah's Witnesses were being prosecuted. In total, at least 569 witnesses have been prosecuted. On October 28, 2021, the Plenum of the Russian Supreme Court issued recommendations, stating that if a court decided to liquidate or ban the activities of a religious organization, the holding of worship services or religious rites and ceremonies by its members does not in itself constitute a crime, unless they contain signs of extremism. Russian courts by referencing this recommendation can avoid at least the most absurd sentences for continuing religious practices that directly violate the constitutional right to freedom of religion.

Other restrictions limiting the right to freedom of conscience

According to the Sova Center's annual monitoring report, the most common forms of discrimination against religious minorities are as follows:

1. Persecutions for "illegal" missionary work. As part of the "Yarovaya Package" amendments,

from 2016 to the present, believers have been prosecuted under Article 5.26 of the Code of Administrative Offences of the Russian Federation (“Violation of the Legislation on Freedom of Conscience, Freedom of Religion and Religious Associations”). Prior to 2020, mostly Protestant churches and members of new religious movements had been persecuted. Since 2020, believers of “traditional religions” have been prosecuted as well, with Muslims outnumbering Protestants in the first half of the year. This is an integral part of official attempts to exert pressure on religious minorities, as mostly those Muslims organizations were harassed in Crimea, which refused to recognize the jurisdiction of the pro-Russian Spiritual Administration of Muslims;

2. Interference of law enforcement agencies in the activities of religious organizations and disruption of services by means of searching the premises, checking documents, taking believers to the police station, etc;
3. Expulsion of foreign clergymen and missionaries from the country. Some of them were found guilty under part 2 of Article 18.8 of the Code of Administrative Offences of the Russian Federation (“Violation by a foreign national of the regime of stay in the Russian Federation arising from the difference between the declared and actual purposes of entry”) and deported;
4. Pressure on spiritual educational institutions, primarily but not exclusively Protestant ones. Educational institutions are subjected to numerous inspections by various agencies, as a result of which the authorities revoke or suspend licenses for educational activities;
5. Muslims are occasionally subjected to police pressure. For example, in 2019 in Moscow the police detained 27 Muslims who were performing namaz at the door of the Trade Fair Complex. Some of the detainees were held administratively liable for violating the rules of entry into the Russian Federation, while the rest were charged with violating the established procedure for holding a meeting, rally, demonstration, march or picketing.

Abuse of the opposition

During the pre-election period (before the 2021 Duma elections), huge large-scale anti-extremist activities were aimed at the neutralization of Alexei Navalny and his supporters. The authorities used every conceivable tool (including the ones that are unacceptable in a democratic society) to prevent opposition members from participating in elections. In 2021 criminal cases were initiated against Navalny and his supporters under part 2 of Article 239 of the Criminal Code, part 1 of the Article 282.3 (“Collection of funds intended to support the activities of an extremist organization”), and part 1 and 2 of Article 282.1 (“Establishment and membership in an extremist organization”).

In June 2021, a court declared the Anti-Corruption Foundation, the Citizens’ Rights

Protection Foundation (both previously recognized as foreign agents), and the public movement Navalny Headquarters extremist organizations.

In the run-up to the election, election commissions and courts banned candidates who were in one way or another affiliated with the activities of Alexei Navalny's organizations, based on a law that prohibits persons "involved" in the activities of organizations deemed extremist and terrorist from running for office. In total, at least 35 people in different regions of Russia were prohibited from running for office. Roskomnadzor blocked access to 49 websites associated with Navalny's organizations in late July.

2. General conclusions about the situation

During the first 11 years of its existence the law "On Combating Extremist Activity" (adopted in 2002) mainly unlawfully targeted groups involved in xenophobic violence and religious groups (Hizb ut-Tahrir). Political and civic activists who neither used violence nor called for it were persecuted to a lesser extent. The year 2012 saw a new trend: the high-profile trial of Pussy Riot happened to be at the junction of religious conflicts and political activism. As a result, a new version of Article 148 was added to the Criminal Code ("on insulting the feelings of believers").

In 2013-2014, Internet regulation became one of the priorities of the policies aimed at strengthening control. The Ukrainian events of 2014 gave new impetus to the abuse of anti-extremist legislation. As the issue of "countering extremism" began to overlap with the protection of Russia's foreign policy interests, the role of the FSB in anti-extremist activities increased noticeably. The result was a rapid increase in the number of convictions for "extremist" statements on the Internet, mainly under Article 282 of the Criminal Code. As a result, according to the Sova Center, the share of "Internet propagandists" among all those convicted for statements exceeded 80 percent in 2014, and has not fallen below this level in subsequent years.

In 2016, there was an increase in repressions against the Hizb ut-Tahrir party, which is recognized as a terrorist party in Russia, although it does not practice violence or carry out terrorist activities. The number of criminal cases involving Hizb ut-Tahrir doubled, and prison sentences for the convicted reached 22 years.

In 2017, the fight against criticism of Russia's actions in connection with the Ukrainian conflict gradually began to recede into the background, giving way to the fight against the opposition. Hence the numerous claims by law enforcement officials against supporters of Alexei Navalny, as well as independent local activists.

Also in 2017, the Jehovah's Witnesses organization in Russia and all their local communities were banned. This led to mass criminal prosecutions, which has been continuing to this day. Time will show how the recommendations of the Supreme Court of Russia of October 28, 2021 on separating the concepts of religion and extremism will be applied.

In 2018, under pressure from public opinion, Article 282 of the Criminal Code on incitement to hatred was partially decriminalized, and "administrative prejudice" was introduced. The innovations have led to a significant decrease in criminal convictions, due to the fact that people have been held liable under the Code of Administrative Offences.

The ECHR continued to rule on applications lodged by Russian citizens. The decisions highlight the inconsistency of anti-extremist legislation and its application with Russia's obligations under the European Convention, which guarantees fundamental human rights, i.a. the right to freedom of expression, freedom of conscience, and freedom of association.

In June 2021, the President signed a law that prohibits people "involved" in an extremist or terrorist organization from running for office.

In the run-up to the parliamentary elections, the legislative process was entirely aimed at tightening existing regulations and introducing harsh new ones. The Russian authorities found a way to legally exclude opposition members from running for office. Apparently, at this stage, the authorities considered the suppression of independent public activities and the creation of a climate of fear to be the best way to maintain control over the country.

Current anti-extremist legislation, due to its vague wording, provides ample grounds for persecuting political opponents or other groups, as well as random people. At the same time, anti-extremist legislation violates basic rights such as freedom of speech, freedom of assembly, or freedom of conscience.

3. A list of the most necessary and important changes required to improve the situation

RECOMMENDATIONS:

1) Narrow the legal definition of extremist activity enshrined in Art. 1 of Federal Law No. 114-FZ of 25 July 2002 ("On Combating Extremist Activity"), since Art. 280 of the Criminal Code defines calling for extremist activities as a punishable deed. A number of

constructions used in the definition (for example, “inciting social hatred,” “assertion of religious superiority,” etc.) cannot be interpreted unilaterally^{171,172}.

The use of violence, the threat of violence, calls for violence, or other explicit support of violence should be mandatory characteristics of extremist activity;

2) Decriminalize part 1 and part 2 of Article 148 of the Criminal Code (“Violation of the right to freedom of conscience and religion”), given the fact that both criminal and administrative liability are foreseen for hooliganism. Although Part 1 and Part 2 of Article 148 of the Criminal Code are not applied widely, there is the legal uncertainty of the notions “religious feelings” and “believers” regarding their extension to atheistic views and atheists in order to avoid discrimination against the latter;

3) Decriminalize Article 280.1 of the Criminal Code of the Russian Federation, since there is currently no issue with socially dangerous calls to violate the territorial integrity of the Russian Federation;

4) Introduce the statute of limitations in case of the Criminal Code and Code of Administrative Offences articles referring to public statements. It should be calculated from the moment of the publication on the Internet or the last active actions of the accused to draw attention to such a publication (“self-reposting”, “pinning the post”, etc.);

5) Change the jurisdiction of cases under Article 280 of the Criminal Code of the Russian Federation, transferring them to the Investigative Committee of the Russian Federation. Currently, the investigation under these articles is carried out by the FSB of Russia, which also performs operational activities;

6) Due to the fact that the Federal List of Extremist Materials has failed to meet the expectations and, on the contrary, has become very extensive and, thus, of little use to law-abiding citizens, consideration should be given to abolishing the list. For this purpose Article 13 of Federal Law No. 114-FZ of July 25, 2002 (“On Counteracting Extremist Activity”) and several other articles referring to extremist materials should be abolished, and Article 20.29 of the CAO RF should be repealed. Currently, virtually any document from the list can be found on the Internet, and law enforcement agencies struggle to add in time new copies of old publications to the list;

7) Amend Federal Law No. 114-FZ of 25 July 2002 (“On Counteracting Extremist Activities”) and procedural legislation. Amendments should make it impossible to recognize organizations as extremist in closed court hearings, as well as in the absence of a representative of the organization or their proper notification;

8) It seems appropriate to differentiate persons included by Rosfinmonitoring in the list of organizations and individuals allegedly involved in extremist activities or terrorism. Currently, people financing terrorism and those posting various statements on the Internet face similar financial restrictions, in contradiction with the principle of “liability

171) Recommendations of the HRC to improve the legislation on countering extremism and its application // Human Rights Council. URL: http://president-sovet.ru/presscenter/news/rekomendatsii_spch_po_sovershenstvovaniyu_zakonodatelstva_o_protivodeystvii_ekstremizmu_i_praktiki_e/

172) Alexander Verkhovsky. Brief on anti-extremism in the field of religion for the joint meeting of commissions of presidential councils on October 16, 2019 // Website of the Sovia Information and Analytical Center, October 16, 2019 URL: <https://www.sovia-center.ru/misuse/publications/2019/10/d41585/>

differentiation”. For this purpose par. 2.1-2.5 of the Article 6 of Federal Law No. 115-FZ of 6 August 2001 “On Counteracting the Legalization (Laundering) of Proceeds from Crime and Terrorist Financing” should be amended.

Recommendations for improving judicial and law enforcement practice:

1) There is a widespread public opinion that the increasing number of extremism-related cases can be explained by the desire of law enforcement agencies to improve reporting rates. Reporting can hardly be considered as the main reason for the growth of the number of criminal cases, nevertheless we suggest to divide all extremist crimes into three categories: membership in extremist communities and organizations; extremist statements; other hate-induced crimes. Such division would prevent the increase in indicators at the expense of the prosecution of minor offenses on the Internet;

2) The Supreme Court should provide clarifications explaining how to apply the norms of Part 2 of Article 14 of the Criminal Code on infractions in cases pertaining to public statements. In particular, when considering cases pertaining to public statements on the Internet, in accordance with Russia’s international legal obligations, courts should apply a six-part threshold test recommended by the Rabat Plan of Action on the prohibition of hate speech, and impose only those sanctions that are proportional to the actual gravity of the incriminated actions¹⁷³.

Relevant clarifications can be given by the Supreme Court as an addition to the previously issued ruling of the Plenum of the Supreme Court of the Russian Federation “On judicial practice in criminal cases involving crimes of extremist orientation”. It is equally important that such explanations were brought to the attention not only of the judicial community, but also of law enforcement officials;

3) The widespread use of forensic expertise by experts in humanities area (linguistic, psychological, political science, sociological, etc.) during the investigation and consideration of criminal cases pertaining to extremist statements raises concerns. Drawbacks of such practice are manifold and substantial. The involvement of professional linguists to analyze the simplest phrases is unjustified, since potentially unlawful statements are addressed not to experts, but to a wide range of people, so the investigation and the court in most cases do not need the assistance of an expert to clarify the meaning of the statements.

¹⁷³) Political repressions and political prisoners in Russia in 2018-2019 // Memorial Human Rights Center website, April 17, 2020. URL: <https://memohrc.org/ru/reports/politicheskie-repressii-i-politzaklyuchyonnye-v-rossii-v-2018-2019-godah>

5. International Obligations to Prevent Torture and Ill-treatment

The Russian Federation is a party to major international and regional human rights treaties that contain obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment. First of all, these are the International Covenant on Civil and Political Rights (1966), the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), the European Convention for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment (1987), the Convention for the Protection of Human Rights and Fundamental Freedoms, also the European Convention on Human Rights (European Convention, 1950).

In addition, provisions related to the prohibition of torture and cruel treatment are contained in the UN Convention on the Rights of the Child (1989) and the UN Convention on the Rights of Persons with Disabilities (2006), which Russia has also ratified.

It is important to note that Russia has recognized that complaints to the UN Committee against Torture may be made either individually (Art. 22 of the Convention) or by another state (Art. 21 of the Convention). In addition, Russia ratified the First Optional Protocol to the International Covenant on Civil and Political Rights. By doing so, it has recognized the right to submit individual complaints that allege a violation of the Covenant to the UN Human Rights Committee.

However, Russia has not signed and therefore has not ratified the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2002). The protocol establishes a system of regular visits to places of detention by international and national bodies.

Also, OSCE Ministerial Council Decision No. 7/20 on “Prevention and Eradication of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”¹⁷⁴ (adopted on December 4, 2021 in Tirana) has not been signed or ratified. This decision requires that

¹⁷⁴) List of UN member states that have signed and ratified the Convention // The United Nations Treaty Collection. URL: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4&clang=en

participating States fully implement their obligations under the International Convention for the Protection of All Persons from Enforced Disappearance, if applicable.¹⁷⁵

Compliance of Russian legislation with international obligations

International and regional human rights bodies have repeatedly pointed out that torture as an independent crime is still not criminalized. In particular, the Concluding Observations of the UN Committee against Torture from August 28, 2018 stated: “In the light of its previous recommendation (see CAT/C/RUS/CO/5, par. 7), the Committee regrets that the State party has not yet criminalized torture as an independent crime in the Criminal Code and that the definition of torture in the annotation to article 117 of the Code does not contain all the elements set out in article 1 of the Convention. The Committee is concerned at the information provided by the delegation that acts of torture or ill-treatment by public officials are usually prosecuted under article 286, abuse of authority, which does not reflect the grave nature of the crime of torture and does not allow the Committee to monitor the State party’s prosecution of cases of torture (arts. 1 and 2). The Committee once again urges the State party to criminalize torture as an independent crime. The State party should also ensure that its definition of torture fully conforms to article 1 of the Convention, that the penalties for torture in its laws reflect the grave nature of the crime, as set out in the Committee’s general comment No. 2 (2007) on implementation of article 2, and that perpetrators are not charged solely with other crimes which carry lower maximum penalties and are subject to statutes of limitation”.¹⁷⁶

Since the issuance of the Concluding Observations there have been active discussions in Russia about the criminalization of torture, the main initiators of the discussions on the part of the authorities being Tatyana Moskalkova, Commissioner for Human Rights in the Russian Federation and Lyudmila Narusova, member of the Federation Council of the Federal Assembly of the Russian Federation. According to the information currently available to the public, the Office of the Commissioner for Human Rights in the Russian Federation together with the Federation Council are preparing a draft law criminalizing torture. “In a civilized state with its national dignity, these situations (torture) should be completely eliminated. In this regard, together with members of the Federation Council we are currently preparing a draft law on introducing an independent crime of torture with appropriate penalties. I very much hope that the legislators will support us,” the news agency TASS quoted Tatyana Moskalkova¹⁷⁷.

¹⁷⁵) See Decision No. 7/20 Prevention and eradication of torture and other cruel, inhuman or degrading treatment or punishment.) URL: <https://www.osce.org/ministerial-councils/479762>

¹⁷⁶) See paragraphs 8-9 in Concluding Observations on the Sixth Periodic Report of the Russian Federation: Committee against Torture. URL: <https://digitallibrary.un.org/record/1643812>

¹⁷⁷) FC and ombudsman’s office prepare draft law on punishing the torture of prisoners // TASS News Agency, October 14, 2021 URL: <https://tass.ru/obschestvo/12662485>

It is also important to note that Decision 7/20 on the Prevention and Eradication of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment declares an approach that focuses on supporting victims of torture and places a strong emphasis on providing rehabilitation: “Ensure that appropriate rehabilitation services are promptly available without discrimination to all victims and take effective measures for ensuring a safe and enabling environment for accessing and providing rehabilitation services to victims of torture”.¹⁷⁸ In Russia, there are no regulations and obligations to provide victims of torture with rehabilitation services. Such services are provided only by non-profit organizations. This is described in more detail in the report “Prohibition of Torture” (section “Rehabilitation Programs”)¹⁷⁹. The report was prepared by the Public Verdict Foundation in 2017, the situation has not changed since then.

Rehabilitation comes down to the fact that the victim of unlawful actions of officials can receive compensation, as well as an official apology from the authorities in case of unlawful criminal prosecution.

For a long time there was no procedure for apologizing, although the obligation was enshrined in the Law on Police. As a result of a campaign waged by human rights organizations, such a procedure was adopted on August 15, 2012 (Order of the Ministry of the Interior of the Russian Federation No. 795, Moscow, August 15, 2012, On the Procedure for Apologizing to a Citizen whose Rights and Freedoms have been Violated by a Police Officer¹⁸⁰). The requirement of an apology from the prosecutor for unlawful prosecution has existed for a long time, but the apology has been given very reluctantly. Usually, in order to receive an apology from the prosecutor, the victim has to be proactive and undertake independent actions.

Compensation implies a separate procedure for its recovery and the injured party needs to submit a civil suit. It is up to him to write a statement of claim, to submit a civil suit, to present his claim to the court, and to prove the damage. The Russian law does not foresee any automatic payments. (In Kazakhstan, for example, when applying for compensation the victim is guaranteed to receive the predetermined amounts, i.e. about 100 euro from each convicted person). In Russia, rehabilitation with compensation of damages includes two steps: first the criminal procedure, and after its completion new, civil procedure. This is a very complicated and exhausting procedure for a torture survivor, which requires him or her to take independent legal actions.

In 2021 draft law No. 1091122-7 “On Introducing Amendments to Articles 1070 and 1100 in Part Two of the Civil Code of the Russian Federation (on clarification of rules for compensation for damages caused by law enforcement agencies and judicial authorities)”

¹⁷⁸) See par. 17, Decision No.7/20 Prevention and eradication of torture and other cruel, inhuman or degrading treatment or punishment. URL: <https://www.osce.org/files/f/documents/3/d/473199.pdf>

¹⁷⁹) Report «Prohibition of Torture» // Website of the Public Verdict Foundation. URL: <https://police-barometer.ru/report-torture>

¹⁸⁰) Order of the Ministry of Interior of the Russian Federation of August 15, 2012 No. 795, Moscow «On the procedure for apologizing to a citizen whose rights and freedoms have been violated by a police officer» // Rossiyskaya Gazeta, September 5, 2012. URL: <https://rg.ru/2012/09/05/poriadok-dok.html>

was passed by the State Duma in the first reading. The law specifies a mechanism for obtaining compensation for unlawful detention for 48 hours in administrative procedure. The second reading of the law was planned for the autumn session of Parliament in 2021¹⁸¹.

Since 2011, there have been a number of changes in Russian legislation. Some amendments have been introduced in order to bring legislation in line with international human rights standards, while others, on the contrary, contradict international norms.

Thus in early 2011 as part of the law enforcement reform Federal Law No. 3-FZ of February 7, 2011 “On Police”¹⁸² was adopted. Among the provisions relating to human rights guarantees is Article 5 “Observance and respect for human and civil rights and freedoms,” part 3 of which deserves special attention: “A police officer shall not resort to torture, violence or other cruel or degrading treatment. A police officer is obliged to stop actions that intentionally cause pain, physical or moral suffering to a citizen. In addition, the law introduces obligatory apology from the police if the rights and freedoms of citizens or the rights of organizations have been violated (Part 3, Article 9, “Public Trust and Support by Citizens”). The law regulates the use of force, means of restraint, and firearms. A police officer shall strive to minimize any damage during their use, must provide first aid and take measures to provide medical care to a citizen who has been injured as a result of the use of force, means of restraint or weapons (articles 19-23 “Use of Firearms”). Unfortunately, its application over the ensuing ten and a half years have demonstrated that police officers regularly fail to comply with these provisions and are often not held liable for such failures (see below).

On January 10, 2012, the European Court of Human Rights issued a Pilot judgment in case *Ananyev and Others v. Russia*.¹⁸³ The judgment states that there are no effective remedies for inhuman and degrading conditions in remand centers in Russia, and that the right not to be subjected to inhuman and degrading treatment is violated. The pilot procedure is applied in cases that demonstrate the presence of a structural problem in the state. Usually it means that there are many similar pending applications, the Court in its judgment may describe the characteristics of the structural problem and suggest to the State the measures to solve it (for example, reform and the introduction of effective remedies). In this case, the Court ruled that the Russian authorities should introduce a timetable for the introduction of effective remedies that can ensure the prevention of violations and the payment of monetary compensation to prisoners who complain about inhuman conditions of detention¹⁸⁴. The implementation process is monitored by the Committee of Ministers of the Council of Europe. On 6 June 2019, in its most recent Decision, the Committee

181) Draft law No. 1091122-7 On Introducing Amendments to Articles 1070 and 1100 in Part Two of the Civil Code of the Russian Federation (on clarification of rules for compensation for damages caused by law enforcement agencies and judicial authorities) // Legislative Support System / State Duma of the Federal Assembly of the Russian Federation. URL: https://sozd.duma.gov.ru/bill/1091122-7#bh_histras

182) Federal Law «On Police» of February 7, 2011 No. 3-FZ (last version) // KonsultantPlus. URL: http://www.consultant.ru/document/cons_doc_LAW_110165/

183) ECHR judgment of January 10, 2012 *Ananyev and Others v. Russia* // GARANT.ru portal. URL: <http://base.garant.ru/70214844/>

184) Review of the ECHR judgment in case *Ananyev and Others v. Russia* // Public Verdict Foundation, February 21, 2012. URL: <http://publicverdict.org/topics/eurocourt/10050.html>

of Ministers ¹⁸⁵noted some progress regarding conditions in places of detention, as well as regarding measures aimed at reducing overcrowding in places of detention, especially in pre-trial detention facilities. On 27 December 2019, Federal Law No. 494-FZ¹⁸⁶ was adopted, amending the Administrative Procedural Code, namely creating in Russia a national compensatory mechanism for inadequate conditions of detention in correctional facilities (Administrative Procedural Code of RF, Art. 227.1. Special procedure for filing and considering claims for awarding compensation for violation of conditions of pre-trial detention, detention in a correctional facility). The application of the new mechanism has just started, it is difficult to assess its efficiency yet.

On April 18, 2012, after repeated statements by human¹⁸⁷ rights defenders, a special unit to investigate crimes committed by law enforcement¹⁸⁸ officers was created within the structure of the Investigative Committee of Russia. This measure could be regarded as a step towards ensuring international standards of effective investigation of torture and ill-treatment, in particular the standard of independence of the investigation. However, despite high expectations, the hopes have not been realized: the special unit has not become an effective body to investigate cases of torture. Human rights activists know only about several investigations conducted by the special unit. These were either much-publicized cases (for example, tortures in the Yaroslavl colonies) or tortures resulting in the victim's death. The main issues were caused by the insufficient number of staff, underfunding, and the lack of a procedure for informing about the possibility to apply to the Special Unit, as well as the lack of a procedure for transferring complaints and cases from district investigators. For more see the Memorandum to the Committee of Ministers of the Council of Europe under Rule 9(2) of the Rules of the Committee of Ministers¹⁸⁹ and the Shadow Report of the Russian human rights organization "Committee against Torture" submitted to the UN¹⁹⁰ Committee against Torture in 2018.

In March 2013, Federal Law No. 23-FZ amended the CPC of the Russian Federation, in particular Art. 144 "Procedure for considering a crime report". As a result, investigator's powers, when verifying a torture report, have been extended. However, "while powers of investigators have been increased, victims' rights haven't increased, even in cases of torture. At the stage of verification the claimant does not have the status of a victim, hence, he cannot enjoy all the rights of victims pursuant to legislation. Nevertheless, the investigator can appoint examinations at the stage of verification. At the moment,

185) «H46-23 Ananyev and Others and Kalashnikov group v. Russian Federation (Application No. 42525/07)» // HUDOC-EXEC. URL: [http://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2019\)1348/H46-23E](http://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2019)1348/H46-23E)

186) Federal Law «On Amendments to Certain Legislative Acts of the Russian Federation» of 27.12.2019 N 494-FZ (latest edition) // ConsultantPlus. URL: http://www.consultant.ru/document/cons_doc_LAW_341771/

187) Proposals for a special unit in the Investigative Committee to investigate crimes committed by law enforcement officers // Public Verdict Foundation, April 3, 2012. URL: <http://publicverdict.org/topics/library/10137.html>

188) The Investigative Committee created a unit that will specialize in the investigation of crimes committed by law enforcement officers // Investigative Committee News, April 18, 2021 URL: <https://sledcom.ru/news/item/515509/>

189) Communication from an NGO (Public Verdict Foundation) in the Mikeyev group of cases against Russian Federation (Application No. 77617/01) - Rule 9.2 of the Rules of the Committee of Ministers // HUDOC-EXEC. URL: [http://hudoc.exec.coe.int/eng?i=DH-DD\(2013\)885E;](http://hudoc.exec.coe.int/eng?i=DH-DD(2013)885E;)

190) See paragraphs 65-73 in «Shadow report prepared by interregional public organization «Committee Against Torture» on compliance by the Russian Federation with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2012-2018. URL: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fCSS%2fRUS%2f31614&Lang=en

examinations are appointed without notifying the victims. Victims are deprived of the opportunity to request to read the decision on the examination, to ask experts various questions, to be informed about the results of the examination, to request another examination etc. In fact, the new regulation of the verification stage has not increased the protection of victims, but has limited their access to the investigation.¹⁹¹

In 2015, the Rosgvardiya was created, into which all the special units of the Ministry of Interior and the Internal Troops of the Ministry of Interior were transferred. In fact, all anti-riot police units (OMON, SOBR, etc.) were gathered in the Rosgvardiya. The Ministry of Interior, having lost its special combat units, quickly created quasi-OMON units (in particular, the Second Operational Regiment, which was subsequently used for violent dispersals of protests). In the legislation regulating the professional standards of the Rosgvardiya, there is no ban on using “special means” on those body parts, which are forbidden in police legislation (see Article 22 of the Federal Law No. 3-FZ “On Police” from February 7, 2011). For example, the Law on Police prohibits strikes in the head with a rubber baton, but the Rosgvardiya has no such ban (see Article 20 of Federal Law No. 226-FZ from July 3, 2016 (version from July 1, 2021) “On the National Guard Troops of the Russian Federation”).

On December 30, 2015 Federal Law No. 437-FZ (“On Amendments to the Criminal Procedural Code of the Russian Federation”) was adopted. It introduces the right of a suspect to make one phone call in Russian in the presence of an inquirer, investigator, in order to notify close relatives, relatives or close persons about his detention and location. The inquirer and investigator shall fulfill the obligation to notify about the detention within 12 hours.

The situation with the infliction of disciplinary punishment in penal colonies in the form of placement in penalty isolation wards has been getting worse. Since September 5, 2016, prison rules allow a prisoner to be held in a penalty isolation ward for an unlimited period of time. The penalty can be extended even if minor formal violations of prison rules are detected. This is evidenced by the Explanation No. 02-50873 of 5 September 2016 issued by the Acting Head of the Federal Penitentiary Service Anatoly Rudy: “Judicial practice has demonstrated that in most cases the court confirms the legality of extended detention in locked facilities if new violations of the procedure for serving the sentence have been committed during this period [...]. Instructions No. 13-2777-01 of February 16, 2012 and No. 13-23960-01 of December 20, 2012, ... [stipulating that] the prohibition of continuous (without leaving the cell for less than a day) detention [...] shall be revoked. Clearly, the possibility of extending the time in the penalty isolation ward indefinitely means tightening the sentence given by the court in extrajudicial way¹⁹².

191) For more information, see the report «Prohibition of Torture» by the Public Verdict Foundation. URL: <https://police-barometer.ru/report-torture>

192) What is SHIZO (penalty isolation ward), why is it important in the context of respect for human rights and counteracting tortures // Public Verdict Foundation. URL: <https://yardelo.org/что-такое-шизо-почему-это-важный-вопрос/>

On March 18, 2019, the order of the Federal Penitentiary Service of Russia No. 203 “On amendments to the Regulations on the procedure for visiting penitentiary institutions by members of public monitoring commissions, approved by the order of the Federal Penitentiary Service of Russia from November 28, 2008 No. 652”¹⁹³ was issued. Many provisions of the Order are related to the amendments made on July 19, 2018¹⁹⁴ to Federal Law of 10 June 2008 No. 76-FZ (“On public human rights monitoring in places of detention and on assistance to persons in places of detention”), in particular to Article 16 of the Law, defining the powers of members of PMCs:

- Immediate termination of the conversation between a PMC member and a suspect or defendant, if unrelated to ensuring the rights of suspects and defendants or in case of a violation of the Internal Regulations of Penal Detention Facilities (that is, the staff decides whether the conversation is related to human rights violations or not);
- Members of the PMC may film, photograph and make video recordings using technical devices registered as assets of the penitentiary institution. If there are no registered technical devices in the penitentiary institution or if they are broken, film, photo and video shooting is carried out using the technical devices of the PMC members;
- Film, photo and video shooting of a suspect, accused or convicted person shall be made upon their written consent. The consent can be withdrawn;
- Materials obtained in the course of film, photo and video shooting are reviewed by the management of the penitentiary institution together with the members of the commission. Materials indicating a violation of prisoners’ rights are copied onto the data carrier presented by the commission members and handed over to them on the basis of a drawn up report (i.e., the prison administration decides whether the material confirms the violation or not). The administration of the penitentiary institution ensures storing of film, photo and video footage made during the visit of the PMC members for a period of two years from the date of the visit.

On May 13, 2020 the Government of the Russian Federation submitted to the State Duma draft law No. 955,380-7 “On Amendments to the Federal Law ‘On Police’”¹⁹⁵. The draft law does not contain a single provision that narrows the powers of the police or establishes additional guarantees of the rights of citizens. Many of the provisions extending police rights are formulated in such a way as to allow broad interpretation and create preconditions for violating the rights of citizens. In particular, it gives police powers to “inspect accident scenes, locations, premises, vehicles, objects, documents and other items in connection with lodged applications and reports of incidents within the

¹⁹³) Order of the Federal Penitentiary Service of Russia from 18.03.2019 No. 203 «On amendments to the Regulations on the procedure for visiting penitentiary institutions by members of public monitoring commissions, approved by the order of the Federal Penitentiary Service of Russia from November 28, 2008 No. 652» // ConsultantPlus. URL: http://www.consultant.ru/document/Cons_doc_LAW_322147/

¹⁹⁴) Federal Law «On Amendments to Article 18.1 of the Federal Law «On the detention of persons suspected or accused of committing a crime» and the Federal Law « On public human rights monitoring in places of detention and on assistance to persons in places of detention » of 19.07.2018 N 203-FZ (last version) // ConsultantPlus. URL: http://www.consultant.ru/document/Cons_doc_LAW_302851/

¹⁹⁵) Draft Law No. 955380-7 On Amendments to the Federal Law «On Police» (aimed at strengthening the guarantees of protection of the rights of citizens and clarifying the powers of the police) // Legislative Support System / State Duma of the Federal Assembly of the Russian Federation. URL: <https://sozd.duma.gov.ru/bill/955380-7>

competence of the police”. The text does not clarify what an “incident” is, and how the inspection will be regulated, police powers during the inspection are not defined, citizens’ rights pertaining to the inspection are also undefined. In addition, changes are proposed to allow the inspection (in fact, a non-procedural inspection) of citizens, the things in their possession, the inspection of vehicles and transported cargo when the area is cordoned off (blocked). In December 2020, the law was passed in its first reading and provoked a storm of public discussion and criticism. For about a year no further steps to adopt the law were undertaken. However, on October 13, 2021, the State Duma appointed a committee (the State Duma Committee on Security and Combatting Corruption), and probably the work on the law will be continued. For more information on the proposed amendments to the Law “On Police”, please, see the review “Comments on the draft amendments to the Law “On Police”¹⁹⁶.

Application of legislation prohibiting torture, ill-treatment and ensuring relevant conditions of detention in places of detention

Despite the above-mentioned problems with the legislation regulating the prohibition of torture and ensuring relevant conditions in places of detention, the main challenge has been the application of legislation.

Human rights organizations and lawyers annually receive hundreds of reports about torture and ill-treatment in police stations, penal colonies, and pre-trial detention facilities. The situation in places of detention is of particular concern. Prisoners are vulnerable and defenseless against the staff actions, are regularly subjected to torture and illegal violence, are often held in inadequate conditions, and lack access to adequate medical care. Work on such violations is particularly challenging because the penitentiary system has essentially monopolized the ability to collect and store evidence of what goes on inside the penal colonies, and prisoners and their lawyers have limited ability to collect evidence independently. The publication by Novaya Gazeta, together with the Public Verdict Foundation, in July 2018 of video footage of the torture of Yevgeny Makarov in Yaroslavl colony IK-1 caused a wide public outcry and forced the authorities to respond. On the same day, the first criminal case was initiated, with 14 people facing charges. Then, after the publication of new videos, other cases of tortures in Yaroslavl

¹⁹⁶) Comments on the draft amendments to the Law «On Police» // Public Verdict Foundation. URL: <https://police-barometer.ru/zakon-o-police>

colonies were included into the first case. Human rights activists wrote and submitted to the authorities a package of urgent measures aimed at counteracting tortures in Russian colonies¹⁹⁷. In the second half of 2018, a wave of inspections by both the prosecutor's office and the Federal Penitentiary Service swept across the country, accompanied by dozens of statements by top officials about the need to reform the penitentiary system. The Federal Penitentiary Service developed measures aimed at improving the system of video surveillance in places of detention, requesting for this purpose 16 billion rubles¹⁹⁸, later information appeared that there was no such amount in the budget of the Russian Federation. Throughout 2019-2021, trials were held and nine rulings were made in cases of torture in Yaroslavl colonies. Twenty-four people employed in penal colonies were found guilty. However, there has been no systemic change. In early October 2021 Gulagu.net started publishing videos of tortures in colonies from several regions. At the moment we know about 7 new criminal cases, but there have been no information confirming the detentions, trials or remedies, etc. arising from those cases. There are again officials' statements, but the measures they propose look more like an imitation of reforms.¹⁹⁹

Paragraph 14 of Decision 7/20 commits OSCE participating States to "ensure that all allegations of torture or other cruel, inhuman or degrading treatment or punishment, as well as wherever there are reasonable grounds to believe that such an act has been committed, are investigated promptly, effectively, thoroughly, and impartially by competent and independent national authorities and ensure that complainants and witnesses are protected against ill-treatment and intimidation as a consequence of their complaint or evidence given".²⁰⁰

Human rights organizations working with cases of torture and ill-treatment, in fact, have repeatedly pointed to a range of problems:

- When complaints on tortures are lodged, the investigating authorities systematically refuse to initiate criminal proceedings. One of the main reasons is the system of departmental evaluations, hence, there is an actual ban on the initiation of criminal proceedings if there is no solid evidence and no guarantees of conviction²⁰¹. Human rights defenders constantly appeal these denials, but months and sometimes years pass before a criminal case is initiated. During this time, important evidence gets irretrievably lost. For more information, please, see the shadow report of the human rights organization Committee against Torture to the UN Committee against Torture²⁰² and the Communication of the Public Verdict Foundation to the Committee of Ministers of the Council of Europe;²⁰³

197) How to combat tortures in Russian prisons // Public Verdict Foundation. URL: <https://police-barometer.ru/reform-tortures>

198) FSIN estimated the cost of video surveillance in prisons at 16 billion rubles // RBC, September 19, 2018. URL: <https://www.rbc.ru/politics/19/09/2018/5ba239649a7947b5fc8683a2>

199) Olga Bobrova «So it was America who told them: «Torture, rape, videotape everything!» Lawyer Irina Biryukova on the True Beneficiary of Torture in Russian Colonies» // Novaya Gazeta, October 26, 2021. <https://novayagazeta.ru/articles/2021/10/26/to-est-eto-amerika-skazala-im-pytaite-nasiluite-zapisyvajte-vse-na-video>

200) Decision No. 7/20 Prevention and eradication of torture and other cruel, inhuman or degrading treatment or punishment. URL: <https://www.osce.org/ministerial-councils/479762>

201) The «Prohibition of Torture» Report by the Public Verdict Foundation. URL: <https://police-barometer.ru/report-torture>

202) Shadow report prepared by interregional public organization «Committee Against Torture» on compliance by the Russian Federation with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2012-2018. URL: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fCSS%2fRUS%2f31614&Lang=en

203) Communication from an NGO (Public Verdict Foundation) in the Mikeyev group of cases against Russian Federation (Application No. 77617/01) - Rule 9.2 of the Rules of the Committee of Ministers. URL: [http://hudoc.exec.coe.int/eng/?i=DH-DD\(2013\)885E](http://hudoc.exec.coe.int/eng/?i=DH-DD(2013)885E)

- often, even when criminal cases are initiated, main investigative actions are carried out without due thoroughness and timeliness. The report “Prohibition of torture” indicates that “investigators do not perform even the most obvious actions. In particular, in cases of complaints on torture in police stations video-surveillance recordings are not obtained in a timely manner, and if they are missing no proper investigation or search for witnesses follow.”²⁰⁴ In addition, some case files get blatantly falsified, when false evidence is planted: as a result, the investigation slows down and sometimes it becomes impossible to bring the perpetrators of torture²⁰⁵ to justice;
- the institutional conflict of interest in the investigation of torture cases has not been resolved. Despite the creation of a special unit within the Investigative Committee to investigate crimes committed by law enforcement officers, the vast majority of allegations of torture are checked and investigated by district investigators, who also investigate other crimes, regularly cooperating with police²⁰⁶ officers;
- having filed the complaints, victims of torture and ill-treatment, as well as witnesses are subjected to all kinds of threats, intimidation and even physical violence. They are prosecuted under Article 306 of the Criminal Code “intended false accusation”²⁰⁷, they are subjected to disciplinary sanctions, physical violence, and sometimes their property is destroyed²⁰⁸. For more information, please, see the Shadow Report to the UN Committee against Torture, prepared by the Coalition of Russian Human Rights Organizations²⁰⁹;
- When cases of torture and ill-treatment come to trial and law enforcement officers are found guilty, the imposed penalties are often limited to suspended sentences or fines²¹⁰.

The Committee of Ministers of the Council of Europe has been closely monitoring the implementation of ECHR judgments in the Mikheyev group of cases, which includes 173 cases. The ECHR has already issued judgments in these cases, most of which confirm not only violations of the prohibition of torture, but also to the lack of effective remedies. In its most recent Decision of 3-5 December 2019²¹¹, the Committee of Ministers “overall, recalled the long-standing nature of this problem which was raised for the first time in 2006 (in the *Mikheyev* judgment); regretted the lack of sufficient progress despite the measures taken and called on the authorities to intensify their efforts with a view to ensuring compliance with the Convention in this area, possibly taking advantage of the Council of Europe’s cooperation programs.”

²⁰⁴ The «Prohibition of Torture» Report by the Public Verdict Foundation. URL: <https://police-barometer.ru/report-torture>

²⁰⁵ The sentence for the investigator from the Investigative Committee of the Irkutsk region who falsified evidence in the case of police torture came into legal force // Facebook post of the Public Verdict Foundation. URL: https://m.facebook.com/fondov/posts/4181831345245097?_rdar

²⁰⁶ Communication from a NGO (Public Verdict Foundation) to the Committee of Ministers of the Council of Europe under Rule 9.2 of the Rules of the Committee of Ministers. URL: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680968194

²⁰⁷ The case of Salima Mukhamedyanova // The Public Verdict Foundation. URL: <https://www.myverdict.org/courtcases/delo-salimyi-mukhamedyanovoy/>

²⁰⁸ Witnesses who testified in the Usolya-Sibirsky police torture case had their houses burned down // Telegram channel «reportVerdict», April 19, 2021 URL: <https://t.me/publicverdict/2028>

²⁰⁹ Russian NGO Shadow Report on the Observance of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Russian Federation for the period from 2012 to 2018. URL: https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/RUS/INT_CAT_CSS_RUS_31612_E.pdf

²¹⁰ The «Prohibition of Torture» Report by the Public Verdict Foundation. URL: <https://police-barometer.ru/report-torture>

²¹¹ See paragraph 14 in H46-26 Mikheyev group v. Russian Federation (Application No. 77617/01)». URL: [http://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2019\)1362/H46-26E](http://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2019)1362/H46-26E)

Paragraph 15 of Decision 7/20 obliges OSCE participating States to “ensure that those who encourage, instigate, order, tolerate, acquiesce in, consent to or perpetrate acts of torture or other cruel, inhuman or degrading treatment or punishment are held responsible, brought to justice and punished in a manner commensurate with the severity of the offence, including the officials in charge of any place of detention or other place in which persons are deprived of their liberty where the prohibited act is found to have been committed.”²¹² However, reality of cases of torture and ill-treatment is such that, with very few exceptions, those in charge of colonies, police stations and other law enforcement agencies have not been held responsible. For example, in the infamous criminal case of torture against Yevgeny Makarov in the Yaroslavl colony IK-1, the colony’s governor and his deputy had to face charges. However, despite the testimonies of other defendants, who claimed that the management knew about the torture and, moreover, that the torture was recorded on a video recorder in order to report it to the management later, the court acquitted the head of the colony and his deputy, recognizing their right to seek damages for malicious prosecution.²¹³

Despite some progress in ensuring relevant conditions of detention, including separation of the living area from the sanitary area in cells, repairs to a number of facilities, and the implementation of measures aimed at reducing the number of prisoners, there are still many challenges. For more information, please, see the Communication of the Public Verdict Foundation, sent to the Committee of Ministers of the Council of Europe that have monitored the implementation of the Ananyev and Others v. Russia pilot judgement and the Kalashnikov group of cases.²¹⁴

The use of unwarranted and disproportionate violence by law enforcement officers during the dispersal of peaceful public rallies and subsequent detention of their participants has become an established practice. Dozens of videos of such detentions are freely available on the internet. Human rights organizations have been trying to initiate criminal proceedings for years, but so far there has been not a single case or investigation of illegal violence by law enforcement officers after brutal detentions. Moreover, the official position is that the use of violence was legitimate²¹⁵. The Public Verdict Foundation’s activities led to the first judgment against Russia in the European Court when the ECHR found that the use of force in Bolotnaya Square violated Article 3 of the Convention (tortures), see the case of Turana Varzhabetian, a Moscow pensioner who was hit in the head with a baton during the crackdown. Overall, this is the first judgment against Russia that assessed the proportionality of the force used during the crackdown.

212) Decision No. 7/20 Prevention and eradication of torture and other cruel, inhuman or degrading treatment or punishment. URL: <https://www.osce.org/ministerial-councils/479762>

213) Court acquits management of Yaroslavl colony where inmates were tortured // Yaroslavl Delo Telegram Channel, November 19, 2020. URL: <https://t.me/yardelo/3257>

214) The execution of the European Court of Human Rights pilot judgment on the case of Ananyev and others vs. Russian Federation (applications nos.42525/07 and 60800/08) and the judgments in the Kalashnikov group of cases Communication of the Russian NGO Public Verdict Foundation. URL: [http://hudoc.exec.coe.int/eng?i=DH-DD\(2017\)668E](http://hudoc.exec.coe.int/eng?i=DH-DD(2017)668E)

215) Kremlin denied claim of mass repressions in Russia // Interfax, February 4, 2021 URL: <https://www.interfax.ru/russia/749384>

CONCLUSIONS AND RECOMMENDATIONS

The above analysis allows to state that torture and other cruel, inhuman or degrading treatment or punishment continue to pose a challenge in contemporary Russia and that there is a need for official systemic measures aimed at improving the situation.

There is a clear need to classify torture as an independent crime and to include the definition of torture in the Russian Criminal Code. The definition must be consistent with the International Convention against Torture. This would not only demonstrate the state's serious attitude towards the issue of tortures, but would also allow for keeping official statistics, bringing to justice and punishing those responsible for torture and ill-treatment in a manner commensurate with the severity of committed crimes.

There is a need for reform that would actually eliminate all tortures. The measures should be undertaken to prevent torture, investigate it, and punish its perpetrators. Russian law enforcement agencies and prisons should work in a way that ensures the prohibition of torture. Prosecution should ensure that perpetrators are held responsible and are brought to justice. The reform should affect all agencies involved in the process, namely, the Ministry of Internal Affairs, the Rosgvardiya, the Federal Security Service, the Federal Penitentiary Service, the General Prosecutor's Office, the Investigative Committee, and the Ministry of Health.

Human rights organizations have prepared dozens of reports and reviews on the topic over the past decade, each of which contains a list of required measures. In particular, for more information on proposed measures, please, see the Urgent Action Package developed by the Coalition of Russian Human Rights Organizations, Lawyers, Experts and Media "Without Torture"²¹⁶, the Shadow Report of the Russian Human Rights Organization "Committee against Torture" to the UN²¹⁷ Committee against Torture, the Shadow Report of the Coalition of Russian Human Rights NGOs to the UN²¹⁸ Committee against Torture.

²¹⁶) The «Prohibition of Torture» Report by the Public Verdict Foundation. URL: <https://police-barometer.ru/report-torture>

²¹⁷) Shadow report prepared by interregional public organization «Committee Against Torture» on compliance by the Russian Federation with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2012-2018. URL: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fCSS%2fRUS%2f31614&Lang=en

²¹⁸) See p. 392-413 of the Russian NGO Shadow Report on the Observance of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Russian Federation for the period from 2012 to 2018. URL: <https://police-barometer.ru/cat-report-2018>

6. Elections, shrinking policy space

OSCE participating States regularly reaffirm their commitment to the principles of democratic governance based on the will of the people. The most detailed commitments of the participating states are listed in the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen, June 29, 1990). In this document, states commit themselves to:

- Hold free elections, at reasonable intervals;
- Guarantee universal and equal suffrage to adult citizens;
- Ensure the secrecy of casted votes and that the official results are made public;
- Respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination;
- Ensure freedom of assembly in connection with the establishment of political parties or other political organizations;
- Guarantee the principle of equality of parties before the law and the authorities;
- Ensure that political campaigning is conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution;
- Ensure a real pluralism of opinion in the media;
- Ensure that the winning candidates are duly installed in office.

In addition, the participating States welcome the presence of foreign and domestic observers because it can enhance the credibility of the electoral process. However, in the Istanbul Document (Istanbul, 19 November 1999) the participating States also undertook to invite observers to their elections from other participating States, the ODIHR, the OSCE Parliamentary Assembly and appropriate institutions and organizations that wish to observe the elections. They also agreed to follow up promptly the ODIHR's election assessment and recommendations.

These rather general provisions correspond to the much more detailed recommendations of the European Commission for Democracy through Law of the Council of Europe (Venice

Commission). In particular, such recommendations are contained in the Code of Good Practice in Electoral Matters and in the recommendations on various topics pertaining to elections. It should be emphasized that, although the documents of the Venice Commission are recommendatory in nature, the Constitutional Court of Russia regularly refers to the norms contained in them to justify its legal position (see, for example, Constitutional Court Decision No. 11-P of April 15, 2014). Thus, the Constitutional Court recognizes the fundamental meaning of these documents for the Russian legal system.

In these documents, the basic principles that must be observed include universal suffrage (and, as a consequence, the requirements for voter lists), the absence of compulsion to vote, the secrecy of the vote, and the observance of equality of votes. There is a separate, rather voluminous list of norms concerning the voting procedure. It includes a traditional set of requirements for voting: protection from falsification, transparency of vote counting, openness and publicity of commissions' activities, punishment for any violation of voting legislation. Among other things, the principles of so-called "remote voting" are introduced. It must be reliable, fail-safe, technically stable, open to independent verification, and easily accessible to voting participants. Electronic voting must comply with Recommendation Rec(2004)11 of the Committee of Ministers of the Council of Europe on Legal, Operational and Technical Standards for E-Voting, which contains a list of 49 requirements.

The Venice Commission also defines the prerequisites for the realization of these principles. First of all, the Code states that free expression of will is impossible without respect for human rights and, in particular, freedom of expression and freedom of the press, freedom of domestic movement, as well as freedom of assembly and association, for political purposes.

Voting principles must be supported by procedural guarantees. Such guarantees in the Code include: the organization of voting by an impartial body; observation; the existence of an effective system of appeal; and the existence of rules for financing the campaign on the issue put to a vote.

Violations of these principles occur both at the level of legislation and at the level of application of legislation. The problem is the instability of the legislation, which makes it possible to manipulate the rules of elections in the interests of those groups that hold the power. Many important amendments happened to be adopted less than a year before new elections. For example, between the 2016 State Duma elections and the 2021 elections, relevant federal laws were amended 19 times, of which 12 times significant changes were made. Seven of them were adopted in the last year, and the most important amendments, prohibiting those involved in the activities of banned organizations from running for office, were introduced two weeks before the start of the campaign²¹⁹.

²¹⁹) Legal peculiarities of the elections of deputies to the State Duma of the Russian Federation on September 19, 2021 // Website of the «Golos» public movement. URL: <https://www.golosinfo.org/articles/145285>

National legislation and its application that do not comply with international obligations

1. limiting universal suffrage

Federal Law No 102-FZ of May 7, 2013 (“On Amending Certain Legislative Acts of the Russian Federation in Connection with the Adoption of the Federal Law ‘On Prohibiting Certain Categories of People from Opening and Holding Accounts (Deposits), Holding Cash and Valuables in Foreign Banks Located Outside of the Russian Federation, and Owning and/or Using Foreign Financial Instruments’) obligated federal, regional and local election candidates to close their accounts in foreign banks, and to do so prior their registration as a candidate, when they were still unsure whether they would be allowed to participate, let alone, be able to win.

Federal law No. 153-FZ of May 23, 2020 (“On Amending Certain Legislative Acts of the Russian Federation”) deprived those sentenced to imprisonment for committing crimes provided for by fifty articles of the Criminal Code (crimes of medium severity) of the passive suffrage for the period of five years after the date when the criminal record is removed or expunged. In addition, among the corpus delicti listed in the new paragraph of the law, there is a number of explicitly political crimes, which provide grounds for convicting opposition members for protest actions (participation in rallies, calls to “extremist” actions, dissemination of false information of public significance). A little earlier, citizens with a second citizenship or a foreign residence permit were deprived of the right to be elected.

As a result, by the beginning of the 2021 State Duma election campaign, about 9 million Russian citizens (2/3 of which are holders of a second citizenship or a foreign residence permit) were deprived of suffrage. In addition, there are those who have foreign financial instruments, accounts in foreign banks or shares in the ownership of foreign companies²²⁰.

The next blow to the suffrage was dealt by Federal Law No. 157-FZ of June 4, 2021 (“On Amending Article 4 of the Federal Law ‘On Basic Guarantees of Electoral Rights and the Right to Participate in Referendums of the Citizens of the Russian Federation’ and Article 4 of the Federal Law ‘On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation’”). It was adopted hastily, in record time, and came into force right before the start of the election campaign. This law deprives of suffrage

²²⁰) «The New Deprived: why Russian citizens are being deprived of the right to be elected during the 2021 elections en masse.// Website of the Public Movement Golos, June 22, 2021 URL: <https://www.golosinfo.org/articles/145272>

those involved in the activities of a civil society organization or religious association or other organization, in relation to which a court decision to liquidate or ban its activities due to its recognition as an extremist or terrorist organization has taken legal effect. Five days after the law was passed, on June 9, the organizations of Alexei Navalny's supporters were declared extremist by the court.

The law is a legal faux pas as it acts retroactively by punishing acts which, at the time of their commission, had not been criminalized. In addition, the wording of some acts is rather vague, creating thus greater opportunities for arbitrary treatment of opposition-minded citizens. The election campaign has demonstrated how easily and arbitrarily citizens may be deprived of their most important political right.

In addition to the direct ban on participation in elections, supporters of politician Alexei Navalny faced the de facto impossibility to register a political party. Since 2012, they have made at least nine attempts to register a party to participate in the elections, but these attempts have failed.

In fact, a significant number of Russian citizens have been deprived of the opportunity to have their representatives in elections on discriminatory grounds, i.e. because of their political views.

A de facto restriction of active suffrage was the legal norm prohibiting "foreign agents" from participating in election campaigns in any capacity. Thus, Federal Law No. 355-FZ of November 24, 2014 ("On Amendments to Certain Legislative Acts of the Russian Federation on the issue of financial reporting by political parties, electoral associations, candidates in elections to state and local governments") introduced such ban for Russian non-profit organizations performing the functions of a foreign agent. The same organizations are prohibited from donating to political parties. The parties are prohibited to make deals with foreign and international organizations, as well as non-commercial organizations, performing the functions of a foreign agent.

Federal Law No. 91-FZ of April 20, 2021 ("On Amendments to Certain Legislative Acts of the Russian Federation") extended these bans to unregistered public associations performing the functions of a foreign agent, foreign media outlets performing the functions of a foreign agent and Russian legal entities, information about which is included in the register of foreign media outlets performing the functions of a foreign agent. If a candidate is a natural person performing the functions of a foreign agent or is affiliated with a person performing the functions of a foreign agent, relevant information should be specified in all official documents and campaign materials.

2. Restrictions on the freedom of political debate during election campaigns

The conditions for political campaigning, canvassing, and informing citizens also do not meet the requirements to ensure real pluralism of opinion. There is a significant imbalance in the coverage of party activities in the largest and most influential media outlets. For example, on federal TV channels the disparity between the parties is of fantastic proportions: during the 2021 campaign the number of mentions of United Russia was equal to the sum total of mentions of other parties, while its closest competitor the Communist Party of the Russian Federation was behind by almost 4.5 times. The situation with the amount of airtime allocated to the parties was similar. The analysis of the tone of statements also showed a biased attitude of the TV channels to the parties and, first of all, to the CPRF²²¹.

In fact, the federal TV channels, controlled by the state, while remaining the main media outlet for large groups of voters, deliberately distorted the information about the elections, preventing, thus, citizens from making an opinion and expressing their will freely. The imbalance in the regional media is even greater.

In addition, there are coercion to vote, obstruction of campaigning for opposition candidates, illegal campaigning by officials (not only on the websites of the relevant organizations or social networks, but also offline).

During the election campaign the pressure inflicted by the authorities on independent observers and journalists intensified. As a result, the movement for the protection of voters' rights "Golos", its individual activists, a number of media outlets, and individual journalists were recognized as foreign agents. Information resources were blocked; the investigative publication Project was recognized as an "undesirable organization". All this was accompanied by a state campaign to create and disseminate lies in order to discredit civic observation. Central TV channels and other major media outlets, members of public councils and electoral commissions were involved in the campaign. They disseminated staged videos and other fakes obtained extracted from anonymous telegram channels without any verification.

At the same time, in recent years another, freer information space has shaped in the Russian communications field, based on social networks and independent media.

However, although the Internet remains the freest information space, there have been

²²¹) Campaigning and administrative mobilization of voters for the elections on the single day of voting on September 19, 2021 // Website of the public movement «Golos», September 13, 2021 URL: <https://www.golosinfo.org/articles/145472>.

attempts to control it. Federal Law No. 43-FZ of March 9, 2021 (“On Amending Certain Legislative Acts of the Russian Federation”) gave election commissions the right to submit to Roskomnadzor a request for extrajudicial blocking of campaign materials produced and (or) distributed in violation of the law.

First of all, the resources of Alexei Navalny’s supporters, who called to vote for the opposition candidates, were blocked. The IT giants Apple and Google, as well as Telegram were forced to respond to these demands, and not only removed the relevant applications from their online stores, but also began blocking messages in accounts, even blocking certain google-documents.

As a result, a large group of voters was deprived of the opportunity to participate directly in the election campaign because their representatives were not allowed to participate in the elections. And state agencies, with the assistance of Western Internet companies, did much to weaken the voice of this group.

Ensuring free discussion became even more difficult during the All-Russian vote to amend the Russian Constitution. The Law on Amendments to the Constitution of the Russian Federation of March 14, 2020, No. 1-FKZ introduced a number of fundamental changes to the Russian Constitution; among the key ones is nullifying the number of presidential terms served by the current president. The law also stipulated that most procedural aspects of the referendum shall be regulated not by federal legislation, but by bylaws of the Central Election Commission of the Russian Federation. As a result, campaigning on the issue to be put to a vote was not regulated in any way. Thus, the authorities were not restricted in campaigning for the adoption of the amendments, while the initiative groups of citizens who were against the amendments faced serious opposition.

3. Forced voting

Forcing voters to vote is one of the problems of Russian elections, which has not been solved for years. The scale of coercion was well demonstrated by the All-Russian Center for the Study of Public Opinion, which on September 8, 2021 published the results of a pre-election poll among workers of industrial enterprises (according to Rosstat, about 19 million people are employed in the industrial sector): 48% of employees confirmed that they had experienced some kind of illegal influence from their employers, going beyond labor relations²²².

The introduction of three-day and remote electronic voting created additional opportunities

²²²) Free Choice, or On Being Forced to Vote in the 2021 Elections // Website of the All-Russian Public Opinion Research Center, September 8, 2021. URL: https://wciom.ru/analytical-reviews/analiticheskii-obzor/svobodnyi-vybor-ili-o-prinuzhdenii-k-golosovaniju-na-vyborakh-2021?fbclid=IwAR1Q8-SadFd7oT4E3SMOjXItuGJjR-VNygsac8OWa_42SBjyG2diSzmNbUw

for coercion. Three-day voting allowed employers to control employee participation in the election. This was evidenced by the huge lines that commissions were unable to handle in the early morning hours of Friday, September 17, 2021. People were standing in lines in many constituencies across the country. E-voting in the face of coercion and lack of trust in the system also provided grounds for influencing the choice of employer-dependent voters. Many people feared that their superiors at work would be able to see how they had voted²²³.

4. Violation of the principle of openness and publicity in the activities of election commissions. Falsifications

Over the course of a decade there has been a gradual restriction of the public's ability to obtain information about the work of election commissions. After the association of independent observers "Golos" was declared a "foreign agent" and "foreign-agents" were banned from participating in the election campaign, a number of other laws were adopted, making the observation process more difficult.

Federal Law No. 66-FZ of March 9, 2016 ("On Amending Certain Legislative Acts of the Russian Federation on Elections and Referendums and Other Legislative Acts of the Russian Federation") established that only those journalists may be present at a polling station on the day of elections who have signed an employment or paid civil contract at least two months before the start of the election campaign.

Federal Law No. 267-FZ of July 31, 2020 ("On Amending Certain Legislative Acts of the Russian Federation") tied observation to the place of residence, i.e. the right to be an observer in regional and municipal elections is granted only to those who have the active right to vote on the territory of the relevant subject of the Russian Federation.

In 2021, violations of the rights of observers, members of commissions, representatives of mass media and even the candidates themselves commenced at the polling stations. On September 19, 2021 from 00:00 till 20:00 (GMT+3) the civil observers of "Golos" movement received 329 reports of violation of observers' rights. During the three days of voting 882 such reports were received from 54 regions²²⁴. Apart from the fact that the

223) See the articles on the website of the public movement «Golos»: «Express review of civic observation on the first day of voting on September 17, 2021». (URL: <https://www.golosinfo.org/articles/145487>), «Express review of civic observation on the second day of voting on September 18, 2021» (URL: <https://www.golosinfo.org/articles/145489>), ««Golos»: The introduction of internet voting is premature, harmful and dangerous» (URL: <https://www.golosinfo.org/articles/145649>)

224) Statement on the results of the observation of the elections on the single voting day of September 19, 2021 // Website of the public movement «Golos», September 20, 2021. URL: <https://www.golosinfo.org/articles/145498>

election commissions refused to follow the procedures, in some regions cases of forceful resistance were registered, some of them could be classified as criminal activities. For example, in Kazan a group of unidentified people entered a polling station and did not let anyone in until the commission announced the results of the election. The police not only did not counteract such cases, but rather covered them up²²⁵.

The principle of openness and publicity of the activities of election commissions is one of the key principles ensuring public trust in the results of elections. Unfortunately, the Central Election Commission of Russia deviates farther and farther from this principle, despite the claimed increase in the “transparency” of elections. Thus, on the eve of the single day of voting on September 19, 2021, the Central Election Commission encoded the results of past and present elections in the public version of the State Automated System “Elections” (izbirkom.ru). Now, data from protocols cannot be copied: letters are displayed instead of numbers in the copied text. There is a new restriction: one user can get access to not more than 30 protocols of district election commissions. All this complicates the analysis of official results. Another way of hiding socially significant information was the ban on video broadcasting from polling stations.

Separately, it should be noted that the development of the federal system of remote electronic voting took place in a non-transparent way, and the system itself is a “black box”, as even members of the election commission cannot be sure that the vote count is correct. It should be noted that there were anomalies during the remote e-voting in Moscow leading to a strong public distrust to official results.

Online voting and the three-day voting, introduced under the pretext of an epidemic, greatly complicate civic observation. The first one cannot be observed at all (although more than 2 million people voted online, i.e. 4-5% of the official turnout)²²⁶. The observation of a multiday voting is also challenging, as it requires a huge number of observers at almost 100 thousand polling stations, working for 3 days, by the way, at night the ballot papers and other documentation of the election commissions are left unattended. In most cases, it was virtually impossible²²⁷ to monitor the safety of the votes during the night.

Voting outside the voting room or “at home” is also a traditional problem of Russian elections. At one stage, the Russian Central Election Commission began to consciously fight this method. But in 2021 the problem worsened again: while in 2016 3.5 million voters voted “at home,” in 2021 8.1 million voted “at home”²²⁸.

Falsifications remain a challenge. In terms of the number of alleged violations, the 2021 elections reached the level of the past decade, surpassing the 2012 presidential elections,

225) Ibid.

226) «Golos»: Introduction of Internet voting is premature, harmful and dangerous // Website of the public movement «Golos», November 11, 2021 URL: <https://www.golosinfo.org/articles/145649>

227) Express review of civic observation on the second day of voting on September 18, 2021 // Golos Public Movement Website, September 19, 2021 URL: <https://www.golosinfo.org/articles/145489>

228) Stanislav Andreychuk. How to steal an election // RIDDLE, September 29, 2021 URL: <https://www.ridl.io/ru/kak-ukrast-vybory/>

and only giving way to the 2011 parliamentary elections²²⁹. Experts on electoral statistics say that about 14 million votes²³⁰ look suspicious.

The reaction of the election commissions is indicative. The CEC of Russia, which had already significantly limited video surveillance in 2021, after the first reports of stuffing, forbade making recordings from screens. And in some regions, the regional election commissions instructed the subordinate commissions to file complaints against citizens claiming that someone had already voted instead of them.

Law enforcement agencies do not investigate the violations systematically, and the courts demonstrate moderate approach to such offences. Between 2015 and September 2020, the Golos movement got to know about only 13 criminal cases related to early voting in elections at various levels. Twenty people were prosecuted, 12 of whom were held criminally liable, and in case of eight people criminal charges were dismissed. No de-facto imprisonment followed: six people were sentenced to imprisonment on probation for eight months to two years; fines varying from 100 to 140 thousand rubles were ruled in four cases (only once someone was fined 1 million rubles). In one case defendant was sentenced to one year of community service on probation. Analysis of the severity of penalties for electoral crimes during the period of early voting demonstrates that the courts apply only mild penalties (one fourths of the foreseen amount). Accordingly, the analysis of electoral crimes by the degree of public harm in comparison to penalties stipulated in the legislation has shown that courts hand down unduly lenient sentences, even milder than the stipulated ones²³¹.

The attitude of the Russian authorities to OSCE/ODIHR observers deserves special mention. In 2021, due to unreasonable demands of Russian authorities to reduce the size of the official mission, the OSCE/ODIHR was forced to cancel observation in Russia. However, the Russian state agencies have been unwilling to listen to the conclusions and recommendations of the OSCE/ODIHR for many years.

Six final reports have been compiled by the OSCE/ODIHR on Russian election observation (from 2003 to 2018) that contain 139 recommendations. Of these, as of the end of 2018, 17 recommendations (12.2%) had been fully implemented, 48 (34.5%) had been partially implemented, and 74 (53.2%) had not been implemented. Since then, there has also been no noticeable progress. A number of recommendations have been repeated in all OSCE ODIHR reports, which demonstrates the clear position of the organization and the desire to see some progress. The situation with the use of administrative resources and freedom of the media remains the most challenging, while the easiest issues to resolve seem to be related to technological equipment of election commissions²³².

229) Map of election violations. URL: <https://www.kartanarusheniy.org/>

230) See articles: «How to Steal Elections» (URL: <https://www.ridl.io/ru/kak-ukrast-vybory/>), «Reconstructing the 2021 State Duma Elections with Machine Learning» (URL: <https://habr.com/ru/post/588989/>), a Facebook post by Sergey Shpilkin about the 2021 State Duma elections. (URL: <https://www.facebook.com/sergey.shpilkin/posts/4398836840204918>)

231) Fines less than bribes: how they punish violations at early voting // Website of the public movement «Golos», September 11, 2020. URL: <https://www.golosinfo.org/articles/144690>

232) In one year, Russia has made no progress in implementing the OSCE/ODIHR recommendations // Website of the public movement «Golos», November 22, 2018 URL: <https://www.golosinfo.org/articles/143039>

Thus, in recent years the protection of electoral rights has significantly deteriorated, both at the level of legislation and its application. This seems to be the authorities' conscious policy. Only the dissemination of information on the Internet has actually improved, although not thanks to, but in spite of the actions of the authorities. All other improvements are limited to minor technical solutions or better equipment of election commissions (perhaps the only significant improvement is the possibility of remote voting, which makes it easier for voters who are far away from their polling station to vote. But even this mechanism is often used to control the voting).

RECOMMENDATIONS

1. The OSCE/ODIHR should publish, on a regular basis, an analysis of the implementation by participating States of recommendations issued as a result of election observation missions.
2. A mechanism should be established for interaction between civil society and the IT companies that own social networks, messengers, or search engines. The purpose of such a mechanism should be to discuss tools that would counteract authorities' attempts to limit the freedom of political discourse. Possibly, a "jury" could be established, comprised inter alia of civil society representatives from participating States, that could provide assistance in resolving disputes related to the blocking of particular accounts or posts.
3. Remove unreasonable restrictions on passive suffrage: reinstate the right to be elected in case of citizens with foreign residency permits, with foreign financial assets, convicted but not actually imprisoned, reduce the time period during which those who have served their sentences do not have passive suffrage, and revise the provisions of anti-extremist legislation.
4. Simplify electoral legislation, codify and clarify ambiguous provisions (especially regarding candidate registration, campaigning, and media coverage) for easier understanding by ordinary citizens.
5. Take steps to prevent the abuse of administrative resources, which should ensure fair election campaigns.
6. Bring back real non-partisan civic election observation, that is allow civil society organizations to send their observers.
7. Introduce additional measures ensuring full impartiality and independence of election commissions. The measures should be aimed at balancing the number of representatives of political parties in election commissions.
8. Create an independent oversight body to monitor and ensure free, impartial, and fair access to state-controlled media.

9. Refrain from attempts to unreasonably regulate the dissemination of information and freedom of expression on the Internet.
10. Transfer electoral crimes (Article 141 of the Criminal Code “Impeding the exercise of electoral rights or the work of election commissions”, Article 142 of the Criminal Code “Falsification of electoral documents”, Article 142.1 of the Criminal Code “Falsification of the voting results”, Article 142.2 of the Criminal Code “Illegal issue and receipt of a ballot”) to the category of serious crimes. Article 5.16 of the CAO RF (bribery of voters) should be excluded from the CAO RF, recognizing bribery of voters as a criminal offense.

