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Russia's Strident Stifling of Free Speech

2012-2018



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Foreword

The document you are about to read deserves the utmost attention. Some might think it is too bulky and contains too many unnecessary legal details. Others may believe that too much attention is paid to trifles and to the context in which the events took place. In other words, it is a long and burdensome document about what is happening in Russia today, a country not so well known across the world.

This is exactly why this document must be read. Ought to be read.

Each event described here raises questions, bewilderment, embarrassment, and sometimes other, even stronger feelings. Some are not new and have already provoked discussions, acute reactions by human rights activists and a considerable public response. Many were the subject of statements and activities by PEN Moscow and its main project known as the Free Word Association, as well as St Petersburg PEN and PEN International.

However, when all the facts – both those that have become the themes of loud public actions and publications and those known only to a small group of people – are brought together, impressions change. Displayed in a row they give rise to more than a strong feeling. While reading this text, you understand that this is not a chain of random events, but the very logic of today's life in Russia. This document provides a horrifying picture of the relationship between the state and civil society, the state and the individual, the state and the artist.

These kind of relationships raise serious concerns, they are dangerous not only for those artists who dare to speak out about the imperfections of modern life, they also threaten our future, they throw our country far back into the past. This is why, in recent years, Russian authors, journalists, translators, theatre and cinema figures have joined forces and are – in solidarity – defending the basic values of free expression, defending the value of culture, defending the dignity of both the artist and our audience; who also need to hear the truth, however bitter this might be.

The truth, undoubtedly, will prevail.

Lyudmila Ulitskaya, writer

Russia's Strident Stifling of Free Speech



Executive summary

Laws passed since Vladimir Putin's return to the presidency in May 2012 have dramatically strengthened the Russian authorities' control over the flow of information online and offline. Much of this crackdown has been fuelled by Russia's foreign policy, in particular its role in the conflict in neighbouring Ukraine and its armed intervention in Syria.

Vaguely worded legislation provides the Russian authorities with the tools to restrict access to or censor information and to carry out surveillance. Some laws have reduced the space for public debate on issues deemed threatening by the authorities; others have undermined the privacy and security of internet users. While restrictive laws have particularly targeted political opposition and civil society, they affect all Russians. Several people have been prosecuted and convicted for online expression, particularly regarding Russian activity in Ukraine.

The Russian authorities control the media landscape, with most media outlets owned by the state or their close affiliates. Independent journalists face huge pressure – legal, physical and economic – to not contradict the official line or provide coverage of critical viewpoints. At least 14 journalists were arrested during mass anti-corruption protests on 26 March 2017. While they faced administrative charges, another journalist Zhalaudi Geriev has remained in prison in Chechnya since being sentenced to three years' imprisonment on unfounded charges of drug possession in September 2016. The Russian authorities have failed to respond to violence against journalists, including murders, physical attacks and threats, creating a climate of impunity that encourages further attacks. At least 58 journalists have been murdered since 1992, though estimates by Russian groups place the figures much higher. Following Russia's 'annexation' of Crimea in March 2014, the Russian authorities and the de facto Crimean authorities have pursued a crackdown on independent media, opposition politicians and activists. Crimean Tatars have been particularly targeted.

The Russian authorities have imprisoned several people on politically motivated charges. Prominent Ukrainian writer and filmmaker Oleg Sentsov – a vocal opponent to Russia's 'annexation' of Crimea – was arrested in

Crimea in May 2014 and transferred to Russia in violation of international humanitarian law. He was sentenced to 20 years in prison in August 2015 on spurious terrorism charges after a grossly unfair trial by a Russian military court, marred by allegations of torture.

The steady squeeze on independent nongovernmental organisations (NGOs) continues. Existing legislation including the 2012 'Foreign Agents' law places onerous restrictions on NGOs receiving funds from abroad, while the 2015 law on 'Undesirable Organisations', which allows any foreign or international NGO to be banned from operating in Russia, further adversely impacts the operating environment. In an alarming development, parliament's lower house adopted a law in July 2018 that would extend the status of 'foreign agent' to media, individual journalists and other writers.

Artistic freedom and literature are also under threat. Libraries have been targeted for holding 'extremist materials'. On 5 June 2017, Natalia Sharina, former director of the state-run Library of Ukrainian Literature in Moscow, was found guilty of both 'incitement of hatred' towards Russian people and 'embezzlement', and was handed-down a suspended four-year sentence for holding 'extremist literature'. She was arrested in October 2015 after investigators found banned works by Ukrainian nationalist Dmitry Korchinsky in the library she headed. She denied that the works belonged to the collection and claimed they had been planted. Although Russia has a thriving theatre scene, theatre directors are liable to prosecutions. Kirill Serebrennikov, one of Russia's most prominent directors who has espoused views critical of the Russian authorities, was placed under house arrest on 23 August 2017 on allegations of fraud regarding the use of state funds, which he denies.

Russia's Constitution enshrines the rights to freedom of expression and privacy and prohibits censorship. Russia is also a party to several international treaties and as such has obligations to respect, protect and fulfil the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds. Under international law the exercise of the right to freedom

of expression may be subject to certain restrictions but only when provided by law, when addressing specified permissible purposes and when demonstrably necessary and proportionate for that purpose.

PEN International, PEN Moscow and St Petersburg PEN call on the Russian authorities to immediately end their crackdown on freedom of expression and attacks on the free press and to create an environment in which free public debate can thrive. The very first steps towards this must include:

- Repealing or amending laws stifling free expression in Russia and reviewing anti-extremism legislation so that it does not unnecessarily or disproportionately curtail the right to freedom of expression.
- Ceasing politically motivated prosecutions of internet users and journalists and immediately and unconditionally releasing those currently imprisoned on such charges.
- Ending the practice of censorship in literature, theatre and cinema, and creating an environment in which the artistic expression of dissenting views can prosper.

For detailed recommendations see Chapter 5.

Methodology

This report is based on *Violations of and state restrictions on the freedom of speech, the freedom of publication, and the freedom of artistic creativity*, a report published on 16 May 2017 by the Free Word Association – now registered as PEN Moscow – with the support of PEN International.

The report is based on desk research during 2017 and 2018 by PEN Moscow and PEN International, trial observations by PEN Moscow and interviews conducted in Russian by PEN Moscow with lawyers, journalists, artists, human rights activists, staff of nongovernmental organisation and family members. It further draws from PEN International's ongoing monitoring of freedom of expression in Russia, including legal analysis, news releases and other public outputs.

PEN International, PEN Moscow and St Petersburg PEN extend their thanks to the individuals and organisations who consented to provide information for this report. In particular the Centre for the Protection of Media Rights; the 'Support of persons prosecuted for political reasons under criminal procedure and protection of civic activists' programme of the Memorial Human Rights Centre; the Monitoring Service of the Glasnost Defence Foundation; OVD-Info; Irina Balakhonova, publisher; Pavel Rudnev, theatre critic; Andrey Plakhov, film critic and Olga Gromova, former chief editor of *Biblioteka v shkole*.

Unless specified otherwise, the names of those interviewed have been withheld at their request.

Glossary and abbreviations

ECHR
European Convention on Human Rights

ECtHR
European Court of Human Rights

ISP
Internet service provider. An organisation that provides internet services.

ICCPR
International Covenant on Civil and Political Rights

LGBTI
Lesbian, gay, bisexual, transgender and intersex people

NGO
Non-governmental organisation

Roskomnadzor
The Russian government agency tasked with overseeing online content and mass media. Created in 2008, its full name is the Federal Service for Supervision in the Sphere of Telecom, Information Technologies and Mass Communications.

Vkontakte
A popular Russian social media site.

VPN
Virtual Private Network. A network technology that creates a secure connection, enabling users to send and receive data across shared or public networks as if they were directly connected to the private network.

1 A Deteriorating Climate: Repressive Laws

Since 2012, the Russian authorities have adopted an array of repressive laws that severely restrict the rights to freedom of expression, opinion and information. Legislation has served to provide the authorities with the tools to restrict access to information, to carry out surveillance and to censor information. Some laws have reduced the space for public debate on issues deemed threatening by the authorities, while others have undermined the privacy and security of internet users. Free expression online has been almost totally shutdown. This chapter provides an overview of these laws.

2012 Creation of a blacklist registry

Since 2012, the Russian authorities have gained expanded powers to block websites without a court order. The legal authority to block websites is derived from amendments¹ to the 2006 Federal Law No. 149-FZ 'on Information, IT Technologies and Protection of Information'. Article 15 established a 'blacklist' administered by Roskomnadzor, the government agency tasked with overseeing online content and mass media. Websites added to the list are prohibited and all internet service providers (ISPs) based in Russia are obliged to immediately block access to them. Roskomnadzor is empowered to block websites at the request of multiple government agencies without judicial oversight.

The government agencies mandated to authorise blocking, and the permitted grounds for blocking, have been incrementally expanded while the law has been increasingly applied to ban political dissent. Though the lack of transparency impedes tracking of the number of affected websites, Roskomsvoboda estimates that as of July 2018 over 100,000 sites and more than 4 million pages have been blocked.²

2013 'Gay Propaganda' ban

Federal Law No. 135-FZ, also known as the 'gay propaganda' ban, was introduced in July 2013 with the stated aim of protecting children through the prohibition of 'propaganda of non-traditional sexual relations'. It enables censorship of materials about lesbian, gay, bisexual, transgender and intersex (LGBTI) issues.

The law is in clear violation of international human rights law. In the recent case of *Bayev and Others v. Russia*, the European Court of Human Rights (ECtHR) ruled that the 'gay propaganda' ban violates Article 10 (freedom of expression) and Article 14 (prohibition of discrimination) of the European Convention on Human Rights (ECHR), to which Russia is a party. In its judgement, the Court found that the law reinforces stigma, encourages homophobia and discriminates against an at risk minority, harming children in the process.³ In 2015, the UN Human Rights Committee similarly concluded that the law 'exacerbates the negative stereotypes against LGBT individuals and represents a disproportionate restriction of their rights under the Covenant' and called on the Russian authorities to repeal it.⁴ In 2018, the Committee condemned the law as 'ambiguous, disproportionate and discriminatory'.⁵

Criminalisation of offending religious feelings

In June 2013, Russia's Criminal Code was amended⁶ to criminalise 'a public action expressing clear disrespect for society and committed in order to insult the religious feelings of believers'. Parts 1 and 2 of Article 148 parts do not provide a definition of 'religious feelings' or what would be considered to be offensive to such feelings. Sanctions range from heavy fines to three years' imprisonment. Between June 2013 and March 2018, the article has been applied at least 17 times, securing at least 15 convictions ranging from fines to suspended jail sentences.⁷

In Barnaul, Siberia, 23-year-old **Maria Motuznaya** faces up to six years in prison on charges of 'incitement of hatred or enmity' and 'insulting religious feelings' under Articles 282 and 148 of the Criminal Code.⁸ The charges against her derive from internet memes she republished on her personal VKontakte page, a Russian social media site, which she subsequently deleted. In a series of tweets in July 2018, she said that police searched her flat on 8 May 2018 and that she felt pressured into signing a 'confession'.⁹ Some of the images are offensive but by themselves do not appear to constitute incitement to hatred. Her trial began on 6 August 2018.

Also in Barnaul, Siberia, 19-year-old student **Daniil Markin** faces up to five years in prison under Article 282 of the Criminal Code for a series of images satirising Christianity, which he published on his VKontakte page between December 2013 and January 2017.¹⁰ A trial hearing had yet to be set at the time of writing.

'Lugovoi Law'

Adopted in December 2013 the 'Lugovoi Law',¹¹ named after the parliamentarian who proposed it, mandates the Russian authorities to block online sources that disseminate calls for mass riots, extremist activities or participation in unsanctioned mass public events. The General Prosecutor or his or her deputies can ask Roskomnadzor to block access to media containing such content without the need for a court order. Once Roskomnadzor receives the request, it notifies the ISP who then must block access and has 24 hours to notify the website's owners, who must at once remove the offending content. Website owners can seek judicial appeal.

Federal Law No. 327-FZ amending the 'Lugovoi Law' entered into force in November 2017 and gives the General Prosecutor or his or her Deputies the right to block access to any online resource of a foreign or international NGO labelled 'undesirable' as well as 'information providing methods to access' all types of resources mentioned in

¹ Laws, codes and regulations of the Russian Federation available in Russian at: <http://legalacts.ru/doc/FZ-ob-informacii-informacionnyh-tehnologijah-i-o-zawite-informacii/>

² Roskomsvoboda, Register of Prohibited Sites, available at: <https://reestr.rublacklist.net/>

³ ECtHR, *Bayev and Others v. Russia*, 20 June 2017.

⁴ UN Human Rights Committee, Concluding observations on the seventh periodic report of the Russian Federation, CCPR/C/RUS/CO/7 (2015), para. 10.

⁵ UN Human Rights Committee, Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning Communication No. 2318/2013, CCPR/C/123/D/2318/2013 (2018), para 7.9.

⁶ Federal Law No. 136-FZ of 29 June 2013 'On Amendments to Article 148 of the Criminal Code of the Russian Federation and separate legislative acts of the Russian Federation against Offending Religious Feelings of Citizens'.

⁷ SOVA Center, Illegal application of anti-extremist legislation in Russia in 2017, 6 March 2018, available at: www.sova-center.ru/misuse/publications/2018/03/d38945/

⁸ Euronews, Russian woman faces 6 years in jail for reposting memes, 3 August 2018, available at: <http://www.euronews.com/2018/08/03/russian-woman-faces-6-years-in-jail-for-reposting-memes>

⁹ Twitter posts available at: <https://twitter.com/La72La/status/1021679649477328896>

¹⁰ Radio Free Europe / Radio Liberty, 'Jon Snow As Jesus' Image Could Land Russian Student In Prison, 26 July 2018, available at: <https://www.rferl.org/a/game-of-thrones-russian-student-prison-jon-snow-jesus-image/29392780.html>

¹¹ Federal Law No. 398-FZ of 28 December 2013 'On Amendments to the Federal Law on Information, Information Technologies and Protection of Information'.

the 'Lugovoi Law'. Although the meaning of the phrase 'information providing methods to access' is not entirely clear, it implies hyperlinks to these resources. Websites with announcements of unapproved rallies could be blocked, even if these announcements are out of date, as well as the publication of instructions on how to bypass blocks or – in the broadest interpretation – any description of how to access 'undesirable' materials.¹²

Separatist Calls

Separatism was already prohibited under Article 280 of the Criminal Code. Article 280.1, introduced in December 2013, criminalises 'public calls for the implementation of actions aimed at violation of the territorial integrity of the Russian Federation' online and in the media, providing for up to five years imprisonment.¹³

The Russian authorities are actively using these provisions to restrict free expression, particularly online. Convictions for 'extremist' expression online have steadily increased since 2010. In 2017, about 95% of convictions were for online expression. Several people have been prosecuted and convicted simply for expressing dissent, particularly regarding Russian activity in Ukraine. Sentences imposed vary from prison terms, suspended sentences, fines, correctional labour and compulsory medical treatment.¹⁴

In April 2016, the Supreme Court of Crimea banned the Mejlis, a Crimean Tatar elected representative body, on the grounds that it was an 'extremist organisation'. The Russian Supreme Court upheld the decision in September 2016.¹⁵ Members of the Mejlis have been subject to violence, assault and threats and many are now in exile.¹⁶

In Abakan, capital of the Republic of Khakassia, **Lydia Bainova** is facing up to five years in prison under Article 280.2 of the Criminal Code in relation to a post she published on her VKontakte page.¹⁷ Lydia Bainova is the granddaughter of Khakassian poet Moisey Bainov and publishes books in Khakas. Her post dealt with the discrimination she says she and her family are suffering as ethnic Khakas and included the words *'At such moments one wants to make a revolution and a coup! Give us back power, land to our people! We will*

win our land back. The post did not include any specific action plan or calls to violence. She subsequently deleted it, but in May 2018 investigators launched a case against her, confiscating her computer and other equipment. She said that she felt pressured into signing a pre-written 'confession' after being threatened with maximum penalty. The case was ongoing at the time of writing. Speaking to the press, Lydia Bainova said: **'Before, I did not think about it, but now I can understand: in Russia, there is absolutely no freedom of speech. As in the days of Stalin's repression, when those who disagreed were shot.'**¹⁸

2014

'Bloggers' Law'

In May 2014, Russia's parliament adopted the so-called 'Bloggers' Law' as part of a broader counter-terrorism legislative package.¹⁹ The law required Russian bloggers with more than 3000 unique visitors per day to register with Roskomnadzor. 'Blogger' was defined broadly, bringing many social media users within the scope of the law. Once registered, they assumed practically the same legal obligations as mass media outlets without corresponding protections or privileges. Bloggers now took responsibility for verifying the accuracy of information and complying with restrictions on support of electoral candidates. They could also be held liable for comments posted by third parties on their website or social media page, and had to provide their real surname, initials and contact details on their website or page. The maintenance of the bloggers' register stopped in August 2017, due to the enabling provisions being cancelled in a legal amendment.²⁰

Law concerning the rehabilitation of nazism

Introduced in May 2014,²¹ Article 354.1 of the Criminal Code prohibits the 'rehabilitation of Nazism' and provides for up to five years' imprisonment. It also criminalises the 'dissemination of false information about activities of the Soviet Union during the Second World War' and 'desecration of symbols of military glory'. Experts have

criticised the law as vague and overly broad, with the potential for negative impact on journalists, activists, archivists, museum curators and historians.²²

Restrictions on foreign investment and media ownership

The Russian authorities have sought to limit foreign ownership of media outlets and to stigmatise foreign media operating in Russia with the term 'foreign agent'.²³ Two sets of amendments to the Mass Media Law²⁴ adopted in 2014 and 2015 reduced the percentage for permissible foreign participation in the registered capital of any print media, online media, television or radio broadcaster from 50% to 20%. All media outlets, broadcasters and publishers must also report all funding originating from broadly defined 'international sources' to Roskomnadzor.

In November 2017, Federal Law No. 327-FZ amending the 'Lugovoi Law' further allowed the Russian authorities to label as 'foreign agents' media outlets that are both registered abroad and foreign-funded, and imposed restrictive reporting requirements.²⁵

2015

Data storage law

Federal Law No. 242-FZ²⁶, which entered into force in September 2015, requires the personal data of Russian citizens to be stored on database servers located within Russia. Implicating international companies, who face blocking for non-compliance, the legislation is intended to enable Russian security services access to sensitive data on Russian internet users including activists, political opposition and journalists.

2016

Laws regulating news aggregators

Federal Law No. 208-FZ²⁷, adopted in June 2016 and entered into force in January 2017, further restricts access to online content. It requires owners of news aggregators,

including search engines, with more than one million daily users, to be accountable for the truthfulness of 'publicly important' information before its dissemination. If the authorities dispute the veracity of information of 'public importance', the news report has to be removed within 24 hours. News aggregators must store all information pertaining to news, including source and duration of dissemination, for six months and they must enable Roskomnadzor to access the stored data. In addition, search engines that potentially advertise products and services for Russian audiences in Russian, as well as in the state languages of the various republics of the Russian federation, may only be owned by Russian companies or citizens.

Non-compliance attracts large fines. Private companies are likely to be overly vigorous, resulting in the censorship of even lawful content, with almost no avenues for redress. There is already evidence that aggregators are excluding information from websites not registered as media organisations, including civil society websites.²⁸

Counter-terrorism laws

In July 2016, Vladimir Putin signed into law two federal laws known as the 'Yarovaya Package', named after the parliamentarian who, together with another parliamentarian, Victor Ozerov, introduced them, amending the Federal Counter-Terrorism Act, the Criminal Code and the Code of Criminal Procedure, which ostensibly aimed to introduce 'additional measures to combat terrorism and ensure public security'.²⁹ The amendments increase the penalties for 'public justification of terrorism' online and a wide range of other crimes linked to terrorism and extremism. They criminalise the 'failure to report' of many offences concerned, extending the application to persons as young as 14.³⁰ They are broadly framed and allow arbitrary application, severely undermining the rights to freedom of expression, privacy and freedom of religion or belief.

The 'Yarovaya Package' compels communications providers and internet operators to store information about users' communications activities from 20 July 2016, and to store all content of communications from

¹² SOVA Center, Misuse of Anti-Extremism in November 2017, 15 December 2017, available at: <https://www.sova-center.ru/en/misuse/news-releases/2017/12/d38496/>

¹³ Federal Law No. 474-FZ of 21 July 2014 'On the Introduction of Changes to Article 280-1 of the Criminal Code of the Russian Federation'.

¹⁴ SOVA Center, Countering or Imitation: The state against the promotion of hate and the political activity of nationalists in Russia in 2017, 19 March 2018, available at: www.sova-center.ru/en/xenophobia/reports-analyses/2018/03/d39029/

¹⁵ Human Rights Watch, Crimean Tatar Elected Body Banned in Russia, 29 September 2016, available at: <https://www.hrw.org/news/2016/09/29/crimean-tatar-elected-body-banned-russia>

¹⁶ Radio Liberty Europe, Crimean Tatar Leaders 'Freed,' Fly To Turkey, 26 October 2017, available at: <https://www.rferl.org/a/ukraine-crimea-tatar-leaders-chiyo-z-umerov-released/28815211.html>

¹⁷ The Russian Reader, 24 July 2018, Is Lydia Bainova an "Extremist"?, 24 July 2018, available at: <https://therussianreader.com/2018/07/24/lydia-bainova-extremism-khakassia/>

¹⁸ Interview with Sibir-Realii, 29 July 2018, available in Russian at: www.sibreal.org/a/29391730.html

¹⁹ Federal Law No. FZ-97 of 5 May 2014 'On Amendments to the Federal Law 'On Information, Information Technologies and Protection of Information' and Separate Legislative Acts of Russian Federation concerning Information Exchange with the Use of Information-Telecommunication Networks'.

²⁰ Law No. 276-FZ of 29 July 2017 'On Amendments to the Federal Law on Information, Information Technologies and Information Protection'.

²¹ Federal Law No. 128-FZ of 5 May 2014 'On Amendments to Separate Legislative Acts of the Russian Federation'.

²² Human Rights Watch, Online and On All Fronts. Russia's Assault on Freedom of Expression, July 2017, available at: www.hrw.org/sites/default/files/report_pdf/russiafoe0717_web_2.pdf

²³ Federal Law No. 121-FZ of 20 July 2012 'On the Introduction of Amendments to Various Legislative Acts of The Russian Federation With Regard to Regulating the Activities of Non-Commercial Organisations Fulfilling the Functions of Foreign Agents', commonly known as the 'Foreign Agents Law', requires all Russian NGOs receiving foreign funding and engaged in 'political activities' to register as 'foreign agents', a term understood to mean 'traitor' or 'spy'.

²⁴ Federal Law No. 305-FZ of 14 October 2014 and Federal Law No. 464-FZ of 30 December 2015.

²⁵ Organization for Security and Co-operation in Europe (OSCE), Registration of media as 'foreign agents' not acceptable says OSCE media freedom representative, 16 November 2017, available at: <https://www.osce.org/fom/357111>

²⁶ Federal Law No. 242-FZ of 21 July 2014 'On Amendments to Certain Legislative Acts of the Russian Federation for Clarification of Personal Data Processing in Information and Telecommunication Networks'

²⁷ Federal Law No. 208-FZ of 23 June 2016 'On Amendments to the Federal Law 'On Information, Information Technologies and Data Protection' and the Code of Administrative Offences'.

²⁸ Joint submission to the Universal Periodic Review of the Russian Federation by ARTICLE 19, Mass Media Defence Centre, OVD-Info, PEN International, Roskomsvoboda, and the Sova Centre, For consideration at the 30th Session of the Working Group in May 2018, 9 October 2017, available at: <http://pen-international.org/app/uploads/Russia-UPR-Submission-Oct-2017.pdf>

²⁹ Federal Law No. 374 of 6 July 2016 'Amending the Federal Counter-Terrorism Act and Certain Legislative Acts of the Russian Federation Regarding the Establishment of Additional Measures to Counter Terrorism and Ensure Public Safety' and Federal Law No. 375 of 6 July 2016 'Amending the Criminal Code of the Russian Federation and the Code of Criminal Procedure of the Russian Federation with Regard to the Establishment of Additional Measures to Counter Terrorism and Ensure Public Safety'.

³⁰ Article 205.2 of the Criminal Code carries up to seven years imprisonment for publicly calling for or justifying terrorism online. Article 205.6 of the Criminal Code introduces a fine of up to 100,000 roubles (approximately US\$1,600) or imprisonment of up to one year for failing to report certain offences, including calling for or justifying terrorism; and extends the application to persons as young as 14. Article 212 part 1.1 of the Criminal Code criminalises the 'convincing, recruiting or engaging' of a person into 'mass disorder' and punishes it by up to 10 years' imprisonment.

1 July 2018. Information must be stored for least six months, and made accessible to the security services without a court order. Operators are required to disclose means to decrypt encrypted data at security services' request, and only use encryption methods approved by the government, effectively imposing mandatory cryptographic backdoors, with penalties of up to one million roubles (approximately US\$16,000) in case of non-compliance. Moreover the data must be stored on Russian territory. This affects the communications of both people in Russia and abroad, violating their right to privacy and creating a further chilling effect on freedom of expression and access to information.

Changes in electoral legislation related to the work of the media

Changes in relation to electoral legislation and regulations have served to restrict the rights of citizens to access information during election campaigns. Among other limitations, only accredited reporters can now be present on the premises of an election commission as independent observers and can monitor the vote count. At the same time, requirements for obtaining such accreditation have become more stringent: only those who have worked in the media under an employment or civil contract for at least two months can qualify. Furthermore, an accredited media representative may only photograph or record video on voting premises if they have previously notified the chairman, deputy chairman or secretary of the relevant election commission. Non-accredited journalists are allowed at polling stations only for preliminary meetings of district election commissions.³¹

2017

Laws banning virtual private networks (vpns) and controlling messaging apps

In July 2017, President Putin signed two new laws that further undermine online privacy and restrict users' right to anonymous expression. Federal Law No. 241-FZ³², which entered into force in January 2018, bans anonymity for users of online messaging applications, requiring 'online messaging applications' to identify users by their mobile phone numbers. Federal Law No. 276-FZ³³, which entered into force in November 2017, bans VPNs and internet anonymisers from providing access to websites banned in Russia, and enables Roskomnadzor to block any site explaining how to use these services.

31 Federal Law No. 66-FZ of 9 March 2016 'On Amendments to Certain Legislative Acts of the Russian Federation on Elections and Referenda and Other Legislative Acts of the Russian Federation'; Resolution of the Central Election Commission of the Russian Federation on 11 June 2016, No. 18 / 134-7 'On the Procedure for the accreditation of representatives of mass media for attendance at voting places and in determining the results of voting, and determining the results of elections and referendums held on September 18, 2016'.

32 Federal Law No. 241-FZ of 29 July 2017 'On the introduction of amendments to Articles 10.1 and 15.4 of the Federal Law on Information, Information Technologies and the Defence of Information'.

33 Law No. 276-FZ of 29 July 2017 'On Amendments to the Federal Law on Information, Information Technologies and Information Protection'.

34 OSCE, Broadening of 'foreign agents' status for media in Russia detrimental to freedom of expression online, says OSCE Representative, 26 January 2018, available at: <https://www.osce.org/fom/368161>

35 Joint oral statement, UN Human Rights Council: The actions of the Russian Federation are jeopardising online freedoms everywhere, 28 June 2018, available at: <http://pen-international.org/news/un-human-rights-council-the-actions-of-the-russian-federation-are-jeopardising-online-freedoms-everywhere>

36 OSCE, New amendment to Criminal Code poses threat to freedom of media in Russia, says OSCE Representative Désir, 15 May 2018, available at: www.osce.org/representative-on-freedom-of-media/381190

2018

Broadening of 'foreign agents' status for media

In an alarming development the State Duma, parliament's lower house, approved in its first reading in January 2018 law that extends the status of 'foreign agent' to anyone who publishes information online and receives any kind of financial or other assets from abroad. Media outlets labelled 'foreign agents' will need to first establish Russian legal entities before being allowed to disseminate information in Russia. The law also allows for blocking of access to entire web platforms without a prior court order if they are used for disseminating information by or originating from foreign agents without the relevant notification.³⁴ At the time of writing, parliament's upper house had yet to vote on the legislation.

Proposed legislation on social media regulation and information leading to 'international sanctions'

In April 2018, parliament adopted in its first reading a draft law on social media regulation. The draft law requires social media companies to remove information that violates Russian law within 24 hours or face huge fines of up to 50 million roubles (approximately US\$800,000). In addition, social media companies would be required to establish representation in Russia and identify their users by their telephone numbers, effectively preventing online anonymity as all phone numbers are registered with passport owners in Russia.³⁵

In May 2018, parliament approved in its first reading proposed amendments to the Criminal Code that would criminalise 'the provision of recommendations and transfer of information that has lead or might have led to the introduction' of international sanctions, providing for up to three years' imprisonment. Article 284.2 of the Criminal Code risks being applied to the media even when reporting on issues of public interest and have a negative impact on the work of journalists.³⁶

Both draft laws were awaiting further readings in parliament at the time of writing.

2 Media Freedom Under Threat

'What am I guilty of? I have merely reported what I witnessed, nothing but the truth.'

Anna Politkovskaya, shot in the lobby of her apartment block in Moscow on 7 October 2006.

Media freedom in Russia continues to deteriorate. The Russian authorities control the media landscape. Journalists and bloggers face restrictions and prosecutions as well as physical attacks and intimidation, often with impunity.

Media ownership and pressure on independent news outlets

Most media outlets in Russia are owned by the state or their close affiliates.³⁷ A few independent media outlets remain, broadcasting online or publishing to minority audiences. Others have moved abroad, or been forced to close or change ownership and/or editorial position.

Independent regional broadcaster TV2 ceased broadcasting on terrestrial channels in January 2015, after Roskomnadzor terminated its license to broadcast on cable channels. A month before, the state-run regional broadcasting centre cancelled its contract with the channel, preventing satellite transmission. The channel continues to broadcast online.³⁸

In June 2017, RBC, a media outlet known for investigative reporting into corruption by Putin's close associates, was sold to energy oligarch Grigory Berezkin, who owns the Russian edition of the free newspaper Metro and the pro-Kremlin tabloid Komsomolskaya Pravda. This followed state pressure throughout 2016, including police raids and fraud probes, an excessive civil lawsuit from a state-owned company for 'reputational damage' and, in May 2016, the firing of three of RBC's top editors allegedly due to state pressure.³⁹

37 Freedom House, Freedom of the Press 2017, available at <https://freedomhouse.org/report/freedom-press/2017/russia>

38 Freedom House, Freedom of the Press 2016, available at: <https://freedomhouse.org/report/freedom-press/2016/russia>

39 Human Rights Watch, Online and On All Fronts. Russia's Assault on Freedom of Expression, July 2017, available at: www.hrw.org/sites/default/files/report_pdf/russiafoe0717_web_2.pdf

Safety of journalists

'We will persecute you for tarnishing the honour of the Chechen nation, this nasty thing that you said. There are gays among Chechen people? We will persecute you until the last person at Novaya Gazeta dies.'

Investigative journalist Elena Milashina, describing the threats she received for exposing abuses in Chechnya.⁴⁰

On 1 April 2017, leading independent Russian newspaper *Novaya Gazeta* reported that over 100 men perceived to be gay had been abducted, held in secret detention, tortured and otherwise ill-treated by local militia and security forces in Chechnya. At least three men had been killed, according to the article. Instead of investigating these allegations, the Chechen authorities categorically dismissed *Novaya Gazeta's* investigation and even appeared to condone acts of violence.⁴¹ On 3 April, some 15,000 people gathered in Chechnya's capital Grozny to protest against the article. Adam Shakhidov, advisor of Chechnya's leader Ramzan Kadyrov, addressed the crowd and called *Novaya Gazeta* and its staff 'the enemies of our faith and homeland'. A resolution adopted at the meeting 'promise[d] that those behind it [would] face reprisals, whoever they are and wherever they are.' A recording of his speech was widely circulated on Chechen television and social media. On 14 April, *Novaya Gazeta* published a statement saying that it feared for the safety of its staff. Its website went down as a result of a suspected cyber-attack and an envelope containing an unidentified white powder was sent to its offices. Elena Milashina, the investigative journalist who first broke the story, announced that she would leave Russia. She had good reasons to take these threats seriously. Her colleague Anna Politkovskaya had been shot dead eleven years earlier.

The Russian authorities have failed to respond to violence against journalists, including murders, physical attacks and threats, creating a climate of impunity that encourages further attacks. Since 1992, at least 58 journalists have been murdered, with total or partial impunity in 33 of those cases according to the Committee to Protect Journalists.⁴² Russian groups place the figure much higher. The Glasnost Defense Foundation recorded 220 victims from 1993 to 2018 by including those killed on mission, in aircraft crashes and road accidents⁴³. Russian journalists consider all those who have been killed, who have disappeared or who have died under unclear circumstances and whose death could be linked to their professional activities, to be victims. It allows them to preserve the memory of the dead and to request investigations, which did not take place in the vast majority of cases. The Russian authorities and law enforcement agencies often refuse to launch an investigation, claiming the tragedy to be the result of domestic violence, accidents or suicides.

Although five men have been sentenced for the 2006 murder of investigative journalist and PEN member Anna Politkovskaya, those who ordered her killing have never been brought to justice.⁴⁴ On 17 July 2018, the ECtHR ruled that the Russian authorities had 'failed to take adequate investigatory steps to find the person or persons who had commissioned the murder'. It found Russia in violation of Article 2 (right to life) of the ECHR and ordered it to pay 20,000 euros in compensation.⁴⁵

Nikolai Andrushchenko, co-founder of independent newspaper *Novy Peterburg*, died on 19 April 2017 following a fatal beating thought to be linked to his journalistic work. Though a criminal probe was launched, the police have not informed his colleagues of investigative progress. The authorities had not put adequate protection measures in place, despite Nikolai Andrushchenko suffering multiple attacks prior to his death.⁴⁶ On 15 April 2018, Maksim Borodin, investigative correspondent for the independent news website *Novy Den*, died after falling from the balcony of his fifth-floor apartment. The Russian authorities treated his death as a suicide despite calls for a full investigation. His reporting on local corruption, prisons and the involvement of Russian private military contractors in Syria had gained national attention in the weeks prior to his death.⁴⁷

Attacks against journalists continue. On 12 April 2018 Dmitry Polyinin, editor of *Oblastnaya Gazeta* newspaper and a journalist, was brutally beaten with metal bars by unknown assailants near his home in Yekaterinburg.⁴⁸ He sustained multiple injuries, including concussion and a broken rib, and was hospitalised. *Oblastnaya Gazeta* covers a wide range of issues of public interest. No arrest had been made at the time of writing. Speaking to the press, Dmitry Polyinin said:

'The case was passed to the municipal department of internal affairs, from the district, but in practice no one has presented any positive results on the case. Many cross examinations have been conducted, my work colleagues, neighbours, everyone they could interrogate has been questioned. But they haven't yet established who the attackers are; or if they have, they haven't told us.'⁴⁹

Criminal prosecutions of journalists and bloggers

Criminal prosecutions of critical journalists and bloggers are rife. At least 47 cases were recorded in 2016 – 19 of them involving bloggers⁵⁰ – often alleging libel. Although the law does not provide prison terms for violations, it provides harsh financial penalties. Under Article 128.1 of the Criminal Code, libel/slander is punished either with a fine of up to five million roubles (approximately US\$80,000) or in terms of the wages or other income of the convicted for up to three years, or through compulsory work of up to 480 hours.

In total in 2015, the Interregional Association of Human Rights Organizations AGORA⁵¹ recorded 202 cases of criminal prosecution of bloggers and 18 cases of deprivation of liberty. In 2017, they recorded 411 and 48 cases respectively

A chilling effect is exerted on freedom of expression even when charges are dropped or cases lost. In one such case, Prima Media, a media holding based on Sakhalin Island, faced two years of legal harassment after a senator brought libel charges against them. Although the case was eventually dropped, their offices were raided, and equipment and data seized.⁵²

Some journalists have also been imprisoned on politically motivated charges.



Zhalaudi Geriev. Photo from his personal Facebook page

The case of Zhalaudi Geriev

'Zhalaudi Geriev, our correspondent from Chechnya, is currently serving a sentence in Chernokozovo [prison] on fabricated charges. He is serving for his honest professional work.'

Grigory Shvetsov, chief editor of *Caucasian Knot*.⁵³

Zhalaudi Geriev, a journalist working for online news site *Caucasian Knot*, is currently serving a three-year prison sentence on trumped-up drug possession charges.⁵⁴ Founded in 2001 by the human rights centre Memorial, the independent media portal *Caucasian Knot* is well known for its reporting on human rights abuses in the Caucasus, including Chechnya.

Speaking to the Shali District Court of Chechnya in July 2016, Zhalaudi Geriev explained that three men abducted him on 16 April 2016 as he was on his way to Chechnya's capital Grozny, from where he had planned to go to Moscow to attend a seminar⁵⁵. He said the men hit him on the head and forcibly dragged him into a car, where they took away his two phones and backpack, which contained his passport, laptop and other personal belongings.

40 Washington Post, She broke the story of Chechnya's anti-gay purge. Now, she says she has to flee Russia, 15 April 2017, available at: www.washingtonpost.com/news/worldviews/wp/2017/04/15/she-broke-the-story-of-chechnyas-anti-gay-purge-now-she-says-she-has-to-flee-russia/?noredirect=on&utm_term=.1242676760ba

41 PEN International, Take action to protect journalists who exposed abuses in Chechnya, 3 May 2017, available at: <http://pen-international.org/news/take-action-to-protect-journalists-who-exposed-abuses-in-chechnya>

42 Committee to Protect Journalists, Journalists killed in Russia since 1992, available at: <https://cpj.org/europe/russia/>

43 Glasnost Defense Foundation, available in Russian at: http://www.gdf.ru/murdered_journalists

44 PEN international, Justice for Anna Politkovskaya, 11 November 2016, available at: <http://pen-international.org/news/justice-for-anna-politkovskaya>

45 ECtHR, *Case of Mazepa and others v. Russia*, 17 July 2018.

46 Nikolai Andrushchenko, Committee to Protect Journalists, available at: <https://cpj.org/killed/2017/nikolai-andrushchenko.php>

47 Committee to Protect Journalists, CPJ calls for investigation into death of Russian journalist Maksim Borodin, 16 April 2018, available at: <https://cpj.org/2018/04/cpj-calls-for-investigation-into-death-of-russian-.php>

48 Committee to Protect Journalists, Local editor beaten in Yekaterinburg, Russia, 23 April 2018, available at: <https://cpj.org/2018/04/local-editor-beat-en-in-yekaterinburg-russia.php>

49 Znak, Interview with Dmitry Polyinin, 15 May 2018, available in Russian at: https://www.znak.com/2018-05-15/glavred_oblastnoy_gazety_dmitriy_polyinin_delo_o_napadenii_na_menya_pytayutsya_zamyat

50 Defence of Glasnost Foundation report, 10 January 2017, available in Russian at: www.zaprava.ru/fond-zashchity-glasnosti-soobshhilo-o-napadeniyax-na-zhurnalistov-i-ix-presledovanii-v-2016-godu/

51 International Agora, Freedom of the Internet 2017: Creeping Criminalization, available in Russian at: https://meduza.io/static/0001/Agora_Internet_Freedom_2017_RU.pdf

52 See Joint submission to the Universal Periodic Review of the Russian Federation by ARTICLE 19, Mass Media Defence Centre, OVD-Info, PEN International, Roskomsvoboda, and the Sova Centre, For consideration at the 30th Session of the Working Group in May 2018, 9 October 2017, available at: <http://pen-international.org/app/uploads/Russia-UPR-Submission-Oct-2017.pdf>

53 Grigory Shvetsov for 'The Journalist' magazine, No. 12, 21 December 2017, interview available in Russian at: <https://jrnst.ru/kavkaz-uzel>

54 ARTICLE 19, Russia: Journalist imprisoned in Chechnya must be released, 9 September 2016, available at: www.article19.org/resources/russia-journalist-imprisoned-in-chechnya-must-be-released/

55 *Caucasian Knot*, Geriev: testified under duress, 5 September 2016, available in Russian at: <http://www.kavkaz-uzel.eu/articles/288756/>

Zhalaudi Geriev said his abductors took him to a forest near the village of Tsotsin-Yurt, where they questioned him about his work and whether he intended to travel to Syria. After 30 to 40 minutes, another man arrived by car, pulled a plastic bag over Zhalaudi Geriev's head, took it off only when he began to suffocate and drove off with Geriev's backpack.

Zhalaudi Geriev said he was taken to a cemetery on the outskirts of the town of Kurchaloi. He told the court that he had drugs planted on him before his abductors took him into custody and forced him to sign a confession, stating the drugs belonged to him. He was held in pre-trial detention until his conviction.

Zhalaudi Geriev's family initially refused to go public about his ordeal, fearing for his life and hoping for his release, based on informal assurances of some members of the Chechen security forces. Once the case moved to trial, they further feared that any publicity would negatively affect his sentence.

Following a trial in which little evidence beyond his retracted confession was introduced, the Shali District Court found Zhalaudi Geriev guilty of 'possession of banned substances in large quantities' under Article 228 of the Criminal Code and sentenced him to three years in prison on 5 September 2016.⁵⁶ The Supreme Court of Chechnya upheld his sentence on appeal on 28 December 2016.

PEN International, PEN Moscow and St Petersburg PEN believe the charges against Zhalaudi Geriev to be connected to his reporting on corruption and other abuses by the Chechen authorities and call for his immediate and unconditional release.

Detention of journalists covering contentious events

Independent journalists face huge pressure – legal, physical and economic – to not contradict the official line or provide coverage of critical viewpoints.

Since 2012, legislation on public assemblies has been repeatedly amended, severely restricting individuals' ability to peacefully protest and significantly increasing the administrative and criminal penalties for participation in unsanctioned protests. Demonstrations or gatherings deemed 'non-compliant' have been harshly repressed – with mass detentions of peaceful protesters and other repercussions, including excessive force by police, arbitrary arrests, ill-treatment, administrative detention and even prison sentences.⁵⁷

The Russian authorities put pressure on journalists covering public assembly in order to limit the information publically available about protests. On 5 May 2018, police and pro-government groups obstructed the legitimate work of journalists covering protests against the presidential inauguration of Vladimir Putin, including by the use of excessive force and arbitrary arrests.⁵⁸ At least 14 journalists were arrested during mass anti-corruption protests on 26 March 2017.⁵⁹

In September 2016, reporters Elena Kostyuchenko of *Novaya Gazeta* and Diana Khachatryan of *Takiye dela*, an online portal, were detained in Beslan North Ossetia while covering events commemorating the 2004 attack on the city's school in which 334 people died, including 186 children. Six relatives of those killed in the assaults were arrested as they took off their jackets to reveal T-shirts bearing the words 'Putin is the executioner of Beslan'. Elena Kostyuchenko wrote about the incident:

*'They [the women] later explained that they had deliberately stood in different corners of the hall so that this statement, "Putin is the executioner of Beslan", would be perceived as a personal one, as the words of each of them. And the siloviki [military officers] simply drove them into one corner, like cattle. And lined up in front of them. Sometimes they really squeezed the women together in a tight place, then they stepped aside as the women started screaming... and then the siloviki lined up before them, and, I was most struck by this, they spoke to them over the shoulder, in an undertone: "you are filthy," "you disgrace the republic," "you are venal dirt..." It was terrible.'*⁶⁰

During their time in the town, the reporters said they were doused in green paint, beaten up and had some of their materials stolen. Elena Kostyuchenko spent a week in hospital with concussion after being hit in the head.⁶¹ According to her, the police never investigated these attacks.

Hacking

Email and messaging accounts of journalists and activists are also at risk of hacking. Agora Human Rights Group documented attempts in February and April 2016 to intercept text messages containing authorisation codes for the Telegram accounts – a popular internet messaging service – of several activists.⁶² Some have accused Russia's intelligence agency of being behind the attempted breach.⁶³

In October 2016, Google warned dozens of activists and journalists that hackers had tried to access their accounts. Independent analysts concluded that the Fancy Bear cyber espionage collective, which has alleged links with the Russian military intelligence services, were behind the attempts.⁶⁴

Blocking of electronic media

On several occasions, Roskomnadzor has blocked access to opposition media or internet outlets that regularly publish content critical of the authorities.

On 13 March 2014 the General Prosecutor issued blocking orders for three major opposition websites, Grani.ru and Ej.ru – online newspapers – and Kasparov.ru – the website of opposition politician Garry Kasparov – alleging that the sites contained 'calls for mass disorder, extremist activities, participation in unauthorised mass gatherings' (Article 15.3 as amended by Law No. 398-FZ). The blocking orders related to their coverage of mass protests in Moscow's Bolotnaya Square in May 2012 and criticism of Russian actions in Crimea. Although the defendants appealed the order, even agreeing to take down content, the websites remain blocked. The case was sent to the ECtHR in August 2017.⁶⁵

In January 2015, Deti-404, an online support and advice community for LGBTI youth, was blocked on the grounds that it 'promoted homosexuality' among minors. A week later, the community's social media accounts were blocked for allegedly 'promoting suicide' due to a post about suicidal feelings by a community member.⁶⁶

In September 2015, Roskomnadzor included the group 'Children-404. LGBT teenagers' into the list of banned websites and ordered Vkontakte to delete the page within three working days. Several other LGBTI support groups were also blocked.

In July 2016, Roskomnadzor blocked four websites calling for a boycott of upcoming parliamentary elections on the request of the General Prosecutor who termed such calls 'protest actions in violation of the established laws'. The UN Human Rights Committee previously found boycott calls to constitute protected speech;⁶⁷ nonetheless, two sites were blocked entirely until such calls were removed.⁶⁸

When blocking most of these websites, Roskomnadzor applied an IP address rather than a specific URL, thus restricting access to other websites with the same IP.

Pressure on social media and online messaging apps

In November 2016, the Russian authorities blocked access to LinkedIn, a professional networking service that had six million users in Russia, after a Moscow district court found the company in violation of the Data Storage Law. In April 2018, a Moscow district court granted Roskomnadzor its request to block access to Telegram on the grounds that the company had not complied with a 2017 order to provide decryption keys to the Russian Federal Security Service, which the company states it cannot do due to Telegram's use of end-to-end encryption.⁶⁹ The ban resulted in extensive violations of freedom of expression and access to information, including mass collateral website blocking.

Instant messaging channels have become an important means of disseminating ideas and opinions. For Russian users, encrypted apps and similar services that seek to

56 Human Rights Watch, Russia: Journalist Punished for Chechnya Reporting, 6 September 2016, available at: www.hrw.org/news/2016/09/06/russia-journalist-punished-chechnya-reporting

57 Joint submission to the Universal Periodic Review of the Russian Federation by ARTICLE 19, Mass Media Defence Centre, OVD-Info, PEN International, Roskomsvoboda, and the Sova Centre, For consideration at the 30th Session of the Working Group in May 2018, 9 October 2017, available at: <http://pen-international.org/app/uploads/Russia-UPR-Submission-Oct-2017.pdf>.

58 Amnesty International, Russian Federation: Reprisals against journalists who cover protests, 6 June 2018, available at: www.amnesty.org/download/Documents/EUR4685352018ENGLISH.pdf

59 Reporters Without Borders, At least 14 reporters arbitrarily arrested during Russian protests, 29 March 2017, available at: <https://rsf.org/en/news/least-14-reporters-arbitrarily-arrested-during-russian-protests>

60 Znak, 'Everything that happens to us is a consequence of how we defined ourselves after Beslan', 27 January 2018, available in Russian at: www.znak.com/2017-01-27/beslana_zhurnalists_elena_kostyuchenko_o_materyah_beslana_i_standartizacii_skorbi_gosudarstvom

61 The Guardian, The murder that killed free media in Russia, 5 October 2016, available at: www.theguardian.com/world/2016/oct/05/ten-years-putin-press-kremlin-grip-russia-media-tightens

62 Agora Human Rights Group, Russia. Internet Freedom 2016: On a War Footing, February 2017, available at: http://en.agora.legal/fs/a_delo2doc/13_file_AGORA_Report_2017_Internet_EN.pdf

63 The Moscow Times, Russian investigators ordered to find out how hackers cracked an activist's Telegram account, 10 May 2017, available at: <https://themoscowtimes.com/news/russian-investigators-ordered-to-find-out-how-hackers-cracked-an-activists-telegram-account-57954>.

64 IBTimes.com, Russian activists and journalists receive Google warnings over nation-state hacking attempts, 12 October 2016, available at: www.ibtimes.co.uk/russian-activists-journalists-receive-google-warnings-over-nation-state-hacking-attempts-1586036.

65 Application no. 12468/15 OOO FLAVUS against Russia and 4 other applications, available at: [https://hudoc.echr.coe.int/eng#{"item-id":\["001-177236"\]}](https://hudoc.echr.coe.int/eng#{)

66 Meduza, LGBT community blacklisted on charges of propagating suicide and homosexuality, February 2015, available at: <https://meduza.io/en/news/2015/02/02/lgbt-community-blacklisted-on-charges-of-propagating-suicide-and-homosexuality>

67 UN Human Rights Committee, Communication No. 927/2000, Svetik v. Belarus, Views adopted on 8 July 2004, U.N. Doc. CCPR/C/81/D/927/2000 (2004).

68 ARTICLE 19, Digital Rights in Russia: An Analysis of the deterioration to Freedom of Expression Online, 2017, available at: https://www.article19.org/data/files/medialibrary/38696/case_studies_R02_A5_WEB.pdf

69 Joint statement, Russia: Telegram block leads to widespread assault on freedom of expression online, 30 April 2018, available at: <http://pen-international.org/news/russia-telegram-block-leads-to-widespread-assault-on-freedom-of-expression-online>

provide secure communications are crucial for users' safety and right to privacy. They provide an important source of information on critical issues of politics, economics and social life, free of undue government interference. For media outlets and journalists based in and outside Russia, they serve not only as a messaging platform for secure communication with sources but also as a publishing venue. Attempts by the Russian authorities to pressure social media and online messaging apps have serious implications for people's freedom of expression and right to privacy online in Russia and worldwide.

Media freedom in occupied Crimea

Since the occupation and 'annexation' of Crimea by Russia in March 2014 in violation of international human rights law, freedom of expression in the peninsula has deteriorated significantly.⁷⁰ Journalists and bloggers critical of the occupation and 'annexation' have faced prosecution and prison sentences, while harassment of independent media, opposition politicians and activists has intensified.⁷¹

The *de facto* authorities requested all media outlets to re-register under Russian law by 1 April 2015. Of the over 3,000 media outlets registered in Crimea before the 'annexation', only 250 outlets remain. Of those, 231 are re-registered Ukrainian media and 19 are Russian media that have subsequently started working in the peninsula. Only one Crimean Tatar newspaper is allowed in circulation. Ukrainian channels that previously broadcast in Crimea have been blocked, although experts believe that some 46% of households in Crimea have access to Ukrainian channels via satellite. According to the Ministry of Information Policy of Ukraine in 2016, some 60 Ukrainian and Crimean Tatar online media sites had been blocked in Crimea.⁷²

The case of Oleg Sentsov

'If we're supposed to become the nails in the coffin of a tyrant, I'd like to become one of those nails. Just know that this particular one will not bend.'

Oleg Sentsov writing from prison, August 2016.⁷³

The Russian authorities are using anti-extremism legislation to stifle dissent. Much of this crackdown has been fuelled by Russia's role in the conflict in neighbouring Ukraine.

Ukrainian writer and filmmaker Oleg Sentsov⁷⁴ took part in the EuroMaidan demonstrations that toppled former Ukrainian President Viktor Yanukovich in February 2014. He helped deliver food to Ukrainian soldiers following Russia's occupation and 'annexation' of Crimea in March 2014. He said he was arrested by the Russian security services at his apartment in Crimea on 10 May 2014. He reported being subjected to a brutal three-hour ordeal involving beatings, suffocation and threats of sexual assault.

His arrest was officially recorded on 11 May 2014 on the grounds of 'suspicion of plotting terrorist acts' and membership of a terrorist group – the Ukrainian right-wing group Pravyi Sektor, Right Sector. He was taken to Russia on 23 May 2014 where he spent over a year in pre-trial detention. He was eventually charged with the establishment of a terrorist group, politically motivated arson and conspiring to blow up a statue of Lenin, all of which he denied.

Following a trial widely condemned outside of Russia, in which a key prosecution witness retracted his statement, saying it had been extracted under torture, Oleg Sentsov was found guilty and sentenced to 20 years in prison by the military court of Rostov-on-Don on 20 August 2015.



Oleg Sentsov looks out from a defendants' cage during a hearing at a military court in the city of Rostov-on-Don on 21 July 2015. Photo: Sergei Venyavsky/AFP/Getty Images

Addressing the Court, Oleg Sentsov said:

*'When they put a bag on your head, beat you up a bit, and half an hour later, you're ready to go back on all your beliefs, implicate yourself in whatever they ask, implicate others, just to stop them beating you. I don't know what your beliefs can possibly be worth if you are not ready to suffer or die for them.'*⁷⁵

Oleg Sentsov's sentence was upheld on appeal on 24 November 2015. In October 2016, the Russian authorities denied a request for extradition to Ukraine on the grounds that he had become a Russian citizen following Russia's occupation and 'annexation' of Crimea.

Oleg Sentsov began a hunger strike on 14 May 2018 to urge the Russian authorities to release all Ukrainian nationals currently imprisoned in Russia on politically motivated grounds. He was taken to intensive care on 15 June 2018. His heart and kidney problems considerably worsened and he was put on a glucose drip. He was reportedly in a critical condition at the time of writing. He told his family that he had been denied access to letters and had been kept in 'an information vacuum'. He was still held in the 'Polar Bear' penal colony of Labytnangi, in Siberia, thousands of kilometres away from his home in Crimea, making messages of support all the more crucial.⁷⁶

PEN International, PEN Moscow and St Petersburg PEN denounce serious flaws in judicial proceedings against Oleg Sentsov, including his lengthy pre-trial detention, the failure to investigate his allegations of torture as well as the fact that he was tried by a Russian military court and is now being held in Russia. PEN International draws particular attention to the fact that under international law, Crimea constitutes occupied territory and as the occupying power, Russia is obliged not to transfer civilian prisoners out of the territory. Trying civilians in military courts also violates international human rights norms.

PEN International, PEN Moscow and St Petersburg PEN urge the Russian authorities to release Oleg Sentsov immediately. They further call on the Russian authorities to respect his human rights, including the prohibition of torture and inhuman or degrading treatment as it pertains to hunger strike, and his right to medical attention.

⁷⁰ PEN International, Freedom of Expression in Post-Euromaidan Ukraine: External Aggression and Internal Challenges, September 2017, available here: <http://pen-international.org/app/uploads/archive/2017/09/PEN-International-Ukraine-Report.pdf>

⁷¹ UN High Commissioner for Human Rights, Press briefing notes on Crimean Tatars, 17 May 2016, available at: www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19970&LangID=E

⁷² PEN International, Freedom of Expression in Post-Euromaidan Ukraine: External Aggression and Internal Challenges, September 2017, available here: <http://pen-international.org/app/uploads/archive/2017/09/PEN-International-Ukraine-Report.pdf>

⁷³ The Guardian, Letter from Ukrainian film-maker Oleg Sentsov smuggled out of prison, 12 September 2016, available at: www.theguardian.com/world/2016/sep/12/oleg-sentsov-jailed-ukrainian-film-maker-letter-siberian-prison-putin

⁷⁴ PEN International publishes short stories by Oleg Sentsov, 26 June 2018, available at: <http://pen-international.org/news/pen-international-publishes-short-stories-by-oleg-sentsov>

⁷⁵ The Guardian, Ukrainian film-maker tells Russian court he will 'suffer or die' for his beliefs, 19 August 2015, available at: www.theguardian.com/world/2015/aug/19/ukrainian-filmmaker-oleg-sentsov-russian-court-suffer-or-die-for-his-beliefs

⁷⁶ PEN International, Russia: Oleg Sentsov in critical condition, 9 August 2018, available at: <http://pen-international.org/news/russia-oleg-sentsov-in-critical-condition>

3 Tightening the Noose of Artistic Freedom and Literature



Natalia Sharina awaiting her verdict, 5 June 2017. Photo: Marina Vishnevskaya

Artistic freedom and literature in Russia are under threat. Libraries have been targeted for holding 'extremist materials'. Young people's access to literature is being unduly constrained under the guise of protecting them against harmful material. Although Russia has a thriving theatre scene, theatre directors are liable to prosecutions.

Libraries targeted for holding 'extremist materials'

Federal Law No. 114-FZ of 25 July 2002 'On Combating Extremist Activities' mandates the Federal Bureau for State Registration to maintain a list of 'extremist materials' – encompassing both written and audio-visual materials – based on court decisions, whose circulation is prohibited under threat of administrative sanctions. As of April 2018, the list contained about 4,400 materials,⁷⁷ many of which respected think tank the SOVA Center has termed 'harmless' and 'banned inappropriately'.

The law does not provide a clear definition of the concept of mass distribution of extremist materials or clear criteria for the designation 'extremist'. A wide range of materials has been added, including books, brochures, magazines, newspapers as well as individual articles, websites, videos, posters and slogans. The range of authors is equally wide and includes political and religious figures, commentators and journalists.

Libraries have become hostages to the inconsistencies in the requirements of the legislative and executive authorities. All libraries are obliged to monitor updates to the list and regularly check their holdings, keeping thorough records. The Prosecutor's Office regularly conducts inspections of libraries in this regard. Hundreds of libraries are targeted with sanctions for lack of compliance, with their number rising yearly. Whereas in the past the sanctions were mainly warnings and disciplinary measures, librarians are now also receiving prison sentences and fines.

The case of Natalia Sharina

*'The criminal case against Natalia Sharina started at the time of an anti-Ukraine campaign that has been spreading through state-owned media and statements by prominent Russian officials since spring 2014. One of the consequences of this campaign has been the rise of criminal proceedings against citizens who publicly express their position on what is happening in Ukraine, a position different from the official line, or who are in any way connected to Ukraine. In our opinion, the case of Natalia Sharina should be seen in the light of this campaign against Ukraine.'*⁷⁸

Memorial human rights centre

Natalia Sharina,⁷⁹ former director of the state-run Library of Ukrainian Literature in Moscow, was detained on 28 October 2015 after a former employee, who was dismissed in 2010, lodged a complaint against her. Investigators searched her house and took her to the library where, after several hours of extensive search, they found banned works by Ukrainian nationalist Dmitry Korchinsky. Natalia Sharina denied that these belonged to the library and claimed they had been planted. She was held in police custody for two days, during which time she was denied access to emergency medical care and suffered a spinal compression fracture, a condition that affects her to this day. She was charged under Article 282 of the Russian Criminal Code – 'Incitement of Hatred or Enmity' – which carries up to five years in prison, and placed under house arrest on 30 October 2015.

On 5 April 2016 Natalia Sharina was charged with 'embezzlement on a particularly large scale' under Article 160 of the Russian Criminal Code, which carries up to 10 years in prison, after being accused of misappropriating library monetary funds to pay for her legal defence in a previous attempt to prosecute her, although all the sums paid by the library to the lawyers had been sanctioned by the Moscow Department of Culture. In 2011, Natalia Sharina had also been charged with distributing extremist literature under Article 282 of the Russian Criminal Code but the case was dropped.

Natalia Sharina spent 19 months under house arrest, throughout the investigation and trial, which had a serious impact on her health. She was denied access to the telephone and the internet, could only communicate with her lawyer and close relatives and was not allowed to take walks outside her house for an entire year.

Natalia Sharina's trial opened on 2 November 2016. On 5 June 2017, the Moscow Meshchanskiy District Court found her guilty of 'incitement of hatred and hostility' in connection with 'keeping extremist literature' and 'embezzlement' and handed-down a four-year suspended sentence. The time she spent under house arrest was counted as part of her sentence.

On 20 April 2018, the press service of the Moscow City Court announced that the verdict had been upheld on appeal, even though it had yet to be announced in court. Natalia Sharina's lawyers immediately appealed to the Presidium of the Moscow City Court.

PEN International, PEN Moscow and St Petersburg PEN believe that the case against Natalia Sharina is politically motivated and call for her sentence and conviction to be quashed.

⁷⁷ SOVA Centre, Racism and Xenophobia in May 2018, 7 June 2018, available at: <https://www.sova-center.ru/en/xenophobia/news-releases/2018/06/d39509/>

⁷⁸ Statement available in Russian at: <https://memohrc.org/ru/news/memorial-schitaet-direktora-moskovskoy-biblioteki-ukrainskoy-literatury-natalyu-sharinu>

⁷⁹ PEN International, Russia: Conviction of librarian must be quashed, 7 July 2018, available at: <https://pen-international.org/news/russia-conviction-of-librarian-must-be-quashed>

The library of Ukrainian Literature has now been closed down. In March 2018, all its employees were dismissed. The collection was reportedly destroyed or transferred to the Moscow Library of Foreign Literature and the building assigned to the Sport Department of Moscow.

Restricting young people's access to literature

Federal Law No. 436-FZ of 29 December 2010 'On the Protection of Children from Information Harmful to Their Health' focuses predominantly on content rating, requiring 'informational products', including mass media, printed materials and audio-visual materials, to be labelled. The law introduced a mandatory warning rating (with categories 0+, 6+, 12+, 16+ and 18+) based on the perceived harmful nature of content, defined per age group, that 'may elicit fear, horror, or panic in children' or depicts violence, unlawful activities, substance abuse, or self-harm.

The definitions appear to be, at least in part, guided by ideology. For instance, the fairy tale *The Sleeper and the Spindle* by Neil Gaiman has a 10+ rating in the United States of America for moderate violence in the form of pricking with a spindle, whereas in Russia it has an 18+ rating because one of the illustrations depicts a non-sexual kiss between two people of the same gender.

According to Russian human rights groups, the state uses the law as a 'Damocles sword' to serve as a warning to those involved in publishing, sharing and selling books. Eight years since its adoption, the evaluation system remains half-baked. It is unclear whether publishers have the right to evaluate books independently or whether designated and registered experts must be involved. In which case, who accredits those experts, and on which basis?

The law is problematic for a number of other reasons. First, the ratings are perceived by many as an advisory rating, as such labels had been placed on children's books in Russia for decades. However, a 0+ rating does not mean that a book is intended, or suitable, for toddlers, but rather that it does not contain any of the themes deemed 'harmful' for that age group and up. Besides the fact that ratings appear to be – at least in part – ideologically determined, a further issue is that the emotional age of a child does not necessarily correspond to their actual age and that literature is an area of individual choice. Some parents may be intimidated by the age rating of certain books and, afraid of causing harm to their child, unduly restrict access.

According to Russian human rights groups, the law also encourages denunciation, leading to raids on children's libraries, removal of books and penalisation of librarians.⁸⁰ Its implementation has created a burden on librarians, who spend time, effort and on occasion their own funds to commission expert assessments of 'accused' books in order to prove that the works do not contain 'harmful' content. In other cases, librarians prefer to take no chances and simply remove contentious books from the shelves to avoid controversy.

The Russian Association of Libraries has appealed to the Russian authorities,⁸¹ pointing out the law's incompatibility with the Federal Librarianship Act,⁸² which states that censorship restricting the right of library users to freely access collections is not allowed; that libraries have the right to independently determine the content and specific forms of their activities; and that policy should be based on the principle of creating conditions for universal access to information and cultural values, collected and provided for use by libraries.

Books have also been withdrawn from shops in response to a simple letter from the former Child Ombudsperson Pavel Astakhov. Encyclopaedias of sexual development, deemed by the Child Ombudsperson to be responsible for an increase in the number of adolescents acquiring sexually transmitted diseases, were pulled from the shelves in September 2012. The media picked up the story and amplified the message. Although the books were later 'rehabilitated' pursuant to a court decision, an official refutation on the part of the Ombudsperson never followed.⁸³

The creation of 'official' Russian history

In 2009, a Commission to Counter Attempts to Falsify History to the Detriment of Russia's Interests⁸⁴ was created, despite the fact that no laws define the official history of Russia or what would constitute the falsification of history to the detriment of Russia's interest. Nevertheless, human rights groups in Russia argue that the mere existence of this Commission has given rise to the perception among some local regulatory authorities and private citizens that there is a need to control attempted falsification of history, leading to publishers and libraries having to justify themselves.

For instance, the Prosecutor's Office and the Ministry of Education demanded that Viktor Suvorov's controversial books on Soviet military history be withdrawn from the libraries of several high schools in Moscow between 2016 and 2017.⁸⁵ In another example, an inspection at a school

in the Moscow region took place in 2013 after Eugene Yelchin's award-winning story *Breaking Stalin's Nose* was discussed with students. The inspection, formally related to controlling banned 'extremist materials', was initiated following a denunciation by an 'alert citizen' who had no connection with the school. The head of the school and the librarian had to write numerous memoranda to prove, with the help of an expert assessment, that the book is in fact a work of art that does not contain prohibited statements. Although no charges were brought, the school's reputation within the community has reportedly been tarnished.⁸⁶

Historian and human rights activist **Yuri Dmitriev** was arrested on 13 December 2016 and charged with making pornographic images of his foster daughter under Article 242.2 of the Criminal Code (use of a minor for the production of pornographic materials or objects) and possessing an illegal firearm.⁸⁷ Yuri Dmitriev denied the charges, saying that the purpose of the photographs was to monitor the health of his weakly child. He spent more than a year in pre-trial detention. On 5 April 2018, the Petrozavodsk City Court in northwest Russia cleared him of the child pornography charges but sentenced him to two years and six months of probation (three months after deducting time spent in custody) and community service for possessing an illegal firearm.⁸⁸ On 14 June 2018, the Karelian Supreme Court overturned his acquittal in what human rights groups in Russia are calling another trumped-up case.⁸⁹ He remains in pre-trial custody at the time of writing and underwent enforced psychiatric testing.

Yuri Dmitriev devoted his life to locating the execution sites of Stalin's Purges and identifying its victims. As head of the Karelian branch of the human rights centre Memorial, he played an important role in the discovery and investigation of the killing fields of Sandarmokh and Krasny Bor and their transformation into memorial complexes. Although local authorities attended memorial events at the beginning, attitudes are changing, with the Russian authorities glorifying the Soviet past after Vladimir Putin stated in 2017 that the 'excessive demonisation of Stalin is one of the ways to attack the Soviet Union'.⁹⁰ The Russian authorities have repeatedly targeted Memorial, which has been labelled a 'foreign agent' since 2014.⁹¹

Theatre under threat

'We should not and we will not support everything (...) we are oriented toward supporting the traditional values of our society'

Vladimir Aristarkhov, First Deputy Minister of Culture, speaking in April 2015.⁹²

The Russian authorities' view on art in society mean that radical modern plays and other works deemed to undermine so-called 'traditional values' no longer receive state funding. Since theatrical productions are rarely economically viable, especially not outside Russia's major cities, many artists in Russia argue that the policy is contributing to the thinning of the cultural offering available in the country.⁹³ Theatre directors are also liable to prosecutions.

80 OVD-Info, Libraries have to get rid of books. How and why it happens, 31 May 2017, available in Russian at: <https://ovdinfo.org/articles/2017/05/31/biblioteki-vynuzhdeny-izbavlyatsya-ot-knig-kak-i-pochemu-eto-proishodit>.

81 Letter from the Russian Association of Libraries, 1 September 2013, available in Russian at: http://www.rba.ru/content/activities/address/doc/09_01_2013_2.php and reply by Rozkomnador, available in Russian at: <http://www.rba.ru/content/activities/address/1.pdf>

82 Federal Law on Librarianship. First edition 23 November 1994; last amended 3 July 2016.

83 Komsomolskaya Pravda, Encyclopaedias of sexual development to be withdrawn from sale, 17 September 2012, available in Russian at: www.kp.ru/daily/25950.5/2893699/

84 Created by Decree No. 549 of the President of the Russian Federation of 15 May 2009.

85 Interview with PEN Moscow. Source confidential, on file with authors.

86 Interview with PEN Moscow. Source confidential, on file with authors.

87 PEN International 2017 Caselist, available at: http://pen-international.org/app/uploads/PEN-CaseList_2017-FULL-v2-1UP.pdf

88 New York Times, Russian Historian Who Exposed Soviet Crimes Is Cleared in Pornography Case, 5 April 2018, available at: www.nytimes.com/2018/04/05/world/europe/russia-soviet-stalin-historian.html

89 Meduza, 15 June 2018, Russian officials have overturned the acquittal of a human rights activist. Prosecutors are seeking new testimony from his 12-year-old daughter, available at: <https://meduza.io/en/feature/2018/06/15/russian-officials-have-overturned-the-acquittal-of-a-human-rights-activist-prosecutors-are-seeking-new-testimony-from-his-12-year-old-daughter>

90 The New York Times, Gulag Historian Ordered to Undergo Psychiatric Testing in Russia, 11 January 2018, available at: www.nytimes.com/2018/01/11/world/europe/russia-historian-psychiatric-testing.html

91 European Parliament resolution on Russia, the case of Ouyub Titiev and the Human Rights Centre Memorial (2018/2560(RSP) adopted on 8 February 2018, available at: www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B8-2018-0102&language=EN

92 Interfax, Ministry of Culture to support art with traditional values, 1 April 2018, available in Russian at: <http://www.interfax.ru/culture/433618>.

93 Carnegie Moscow Centre, Setting the Boundaries: Russia's New Cultural State Policy, 21 September 2017, available at: <https://carnegie.ru/commentary/73182>



Kirill Serebrennikov. Photo: Ira Polyarnaya/The Gogol Centre

The 'Theatre case'

'I am told by everyone to "stay strong" and I am forever grateful to everyone for the support. I am grateful for the faith in my honesty and decency, in my total innocence. But here is what I have to say: you too should "stay strong". I am already in the grinder, I know how soulless, meaningless, mean and ignorantly merciless it is. I am a free man and will do whatever it takes so that I will not be reduced to dust. I will fight for the truth. It is important that you do not let yourself be scared either, do not show cowardice in art and in life, and do not behave in such a way so that you feel ashamed when [this year] is over. So to all of you - stay strong!'

Kirill Serebrennikov speaking at his court session on 16 August 2018.⁹⁴

Kirill Serebrennikov, one of Russia's most prominent theatre directors, was placed under house arrest on 23 August 2017 on allegations of fraud regarding the use of state funds, which he denies. The Russian authorities accuse him of embezzling 133 million roubles (approximately US\$2 million) awarded from 2011 to 2014 to the Seventh Studio theatre company for a project known as Platform, which aimed to make contemporary dance, music and theatre popular.

Investigators claimed that a part of this project, a production of Shakespeare's play *A Midsummer Night's Dream* was never staged. Kirill Serebrennikov denies the accusation, claiming that the play has been performed several times. He faces up to ten years in prison under Article 159.4 of the Criminal Code if convicted.⁹⁵ Kirill Serebrennikov is the artistic director of the Gogol Center, a progressive, experimental theatre known for contemporary productions that often deal with political or sexual themes. He has also espoused views critical of the Russian authorities, which – as many believe – have made him a target of repression.⁹⁶

On 23 May 2017, Kirill Serebrennikov's apartment and the Gogol Center were raided by the police on suspicion of embezzlement. By that time the Seventh Studio and Platform project had already been closed, but Yuri Itin (executive director) and Aleksei Malobrodsky (general producer at the initial stage of the project)

were arrested in May and June 2017 and placed under house arrest and pre-trial detention, respectively. Aleksei Malobrodsky was released from custody on 14 May 2018 after suffering acute cardiac problems. He signed a document compelling him to remain in Moscow. Ekaterina Voronova who was general producer after Malobrodsky left in 2012, was arrested in absentia. Investigators claim that the director, producers and the theatre's accountants falsified data at the behest of Kirill Serebrennikov. Sophia Apfelbaum, former Culture Ministry official in charge of the project on the Ministry's side and current director of the Russian Academic Youth Theatre, was subsequently placed under house arrest in November 2017. The defendants deny any wrongdoing. The theatre's accountant, who was also detained, testified against them as part of a pre-trial deal.

At the time of writing, Kirill Serebrennikov is to remain under house arrest until 19 October 2018. He is forbidden to correspond or make phone calls without the investigators' permission. Speaking to the Basmany Court in Moscow on 19 April 2018, he said:

'I am an art director, I do not deal with finances, contracts, purchases, reports, accounting. I make theatrical events, I invent them, rehearse and release them. (...) For eight months I've been living behind a looking-glass. My theatre, the Gogol Center, has just returned from a tour in Berlin, where we showed two performances with great success. My movie 'Summer', which we were finishing, when we met with you in this courtroom for the first time, Your Honor, has been invited to the main competition of the festival in Cannes. We have a lot of new and interesting work ahead of us with Gogol Center. But all this, absolutely unreasonably, happens in my absence.'⁹⁷

Although the spending of funding allocated for theatre productions is a notoriously murky process, many artists and intellectuals in Russia have expressed doubts about the grounds for the prosecution, and claim instead it is politically motivated, framing it in light of the authorities' kerbing of dissenting voices.⁹⁸

According to prominent theatre critic Pavel Rudnev⁹⁹:

'The future of Russian theatre directly depends on how soon and how fairly [the case] will be resolved. The longer the process lasts, the stronger the feeling that the entire theatrical system is on trial, and the overall question is whether our society and state need theatre at all and what kind of theatre is in demand. The future of theatre will be perfect

if its neck does not get broken, which today is a real possibility. Not only in Moscow, but also across Russia, the process has been observed since the end of the 2000s. Theatre has made a huge breakthrough to reality, it is studying reality, local culture, local communities, talking about the problems that the country is facing today. Theatre, better than television, newspapers and even cinema, knows what life the country is living here and now.'

PEN International, PEN Moscow and St Petersburg PEN call on the Russian authorities to release Kirill Serebrennikov from house arrest and ensure that all defendants in the case have access to a prompt and fair trial.

94 Kirill Serebrennikov's speech is available in Russian at the following link: <https://www.svoboda.org/a/29438983.html>

95 BBC news, Russian theatre director Serebrennikov charged in fraud case, 22 August 2017, available at: www.bbc.co.uk/news/world-europe-41010528

96 PEN America, Kirill Serebrennikov, available at: <https://pen.org/advocacy-case/kirill-serebrennikov/>

97 'Basmany' justice and theatrical community: glimpses of conflict, by Olga Varshaver, 28 April 2018, available in Russian at the following link: <http://newreviewworld.com/basmannoe-pravosudie-i-teatralnoe-soobshchestvo-epizodi-protivostoyaniya/>

98 Ibid.

99 Available in Russian at: <http://www.teatral-online.ru/news/22107/>

Film censorship

'The one thing I see as pointless is giving the Ministry of Culture's money to people who not only criticize but smear the elected authorities.'¹⁰⁰

Vladimir Medinsky, Minister of Culture, speaking in December 2014.

State funding of films is severely restricted. Russia's Ministry of Culture encourages productions 'fighting crime, terror and extremism' while those that criticise the authorities are barred from funding, leading to self-censorship and conformity. According to renowned film critic Andrey Plakhov:

'Censorship in cinematography begins at the earliest of stages, even before there is a script. It takes the form of "thematic planning". This includes "creative motivation", "constructive activity", "combating crime, terrorism and extremism" etc. Far more important is the list of things that should not be on screen: criticism of the "lawfully elected authority of the country" at the top. Now the Ministry of Culture carefully ensures that no scenario involving critical social issues receives state funds. The consequence of this policy is the strengthening of self-censorship and conformity in the minds of filmmakers, especially young ones.'

Although the scenario for the film *Dear Hans, Dear Peter* by Aleksandr Mindadze earned high praise from an expert council set up to advise on financing cinema productions, the Ministry of Culture presented it for discussion to two other advisory councils, who ended up demanding that the meaning of the film be altered substantially.¹⁰¹

The law on insulting religious feelings has also been used against filmmakers. In November 2016 Natalia Poklonskaya, a member of parliament, contacted the Prosecutor General's Office demanding a review of *Matilda*, a movie directed by Aleksey Uchitel about ballet dancer Matilda Kshesinskaya and her relationship with Tsar Nicolas II. Natalia Poklonskaya deemed the film to be 'a threat to national security' and said it offended the feelings of believers who honour Nicolas II, canonised by the Orthodox Church in 2000. In September 2017, Orthodox Christian extremists attempted to set fire to a cinema in Ekaterinburg that was screening the film and set alight two cars outside the Moscow offices of a lawyer for the film's director.¹⁰²

On 3 August 2018, Vladimir Putin signed amendments to the Federal Law 'On State Support to the Cinematography of the Russian Federation' regulating the work of film festivals.¹⁰³ Many fear these amendments will force independent film festivals in Russia to close.

Cinemas with the commercial rights to screen a film were previously exempt from obtaining an additional screening license from the Ministry of Culture if they wished to show a film at a festival. The exemption will now be granted only to festivals that, amongst other things, have a professional jury, do not last more than 10 days, screen films that are no more than two-years old and are included in a government-approved register of festivals. Festival organisers in Russia have warned that these new restrictions would force smaller companies that do not have the means to pay for a jury out of business. According to Andrey Plakhov:

'If this law is adopted, it will have a terrible impact on Russian culture, public education programs and independent screenings. In fact, what this amounts to is unjustified curtailment of educational and cultural activities and indirect censorship, both for the films themselves and for film festivals. This contradicts the text and spirit of the Constitution of the Russian Federation and does not serve the interests of a free civil society.'

4 Russia's International Human Rights Obligations

Freedom of expression is a right in itself and a component of other rights – including the right to information and freedom of assembly – and is protected in international and regional human rights law and standards. Russia is a party to the ICCPR and the ECHR¹⁰⁴ and has obligations to respect, protect and fulfil the rights set out in these treaties.

The right to freedom of expression is set out in Article 19 of the ICCPR, which states that:

'Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.'

The UN Human Rights Committee, the body of independent experts created under the ICCPR to monitor state parties' compliance with their treaty obligations, has specifically stressed that states must 'guarantee the right to freedom of expression, including the right to seek, receive and impart information and ideas of all kinds regardless of frontiers'.¹⁰⁵ It includes, among other things, 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse'. Importantly, the scope of the right also embraces 'expression that may be regarded as deeply offensive'.¹⁰⁶ The Committee has also underlined the importance of 'a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion', and affirmed 'the right of the public to receive media output'.¹⁰⁷

¹⁰⁰ The Moscow Times, Culture Minister: no money for 'Russia-smearing' films, 10 December 2014, available at: <https://themoscowtimes.com/news/culture-minister-no-money-for-russia-smearing-films-42163>

¹⁰¹ RIA Novosti, Ministry of Culture rejected Mindadze project due to history mismatch, August 2013, available in Russian at <https://ria.ru/culture/20130814/956263279.html>.

¹⁰² BBC News, Rage at tsar film suspected in Russia car blaze, 11 September 2017, available at: <https://www.bbc.co.uk/news/world-europe-41225387>

¹⁰³ Federal Law No. 335-FZ of 3 August 2018 'On Amendments to the Federal Law on State Support for the Cinematography of the Russian Federation'.

¹⁰⁴ Russia ratified the ICCPR in 1973 and the ECHR in 1998.

¹⁰⁵ UN Human Rights Committee. General Comment 34, Article 19: Freedoms of opinion and expression, CCPR/C/ GC/34, (2011), para.11.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid, para. 13.

Article 19 (3) of the ICCPR allows certain restrictions on the exercise of the right to freedom of expression but only if such restrictions are provided for by law and necessary and proportionate for respect of the rights or reputations of others, or for the protection of national security or of public order, health or morals.

Article 10 of the ECHR protects freedom of expression in similar terms. Restrictions on the exercise of the right can only be imposed when prescribed by law and when 'necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.' In any borderline case, the freedom of the individual must be favourably balanced against a state's claim of overriding interest.¹⁰⁸

It is important to note that the ECHR applies both offline and online, entailing among other things that measures taken by state authorities or private-sector actors to block or otherwise restrict access to internet platforms or information and communication technologies tools must comply with the usual conditions of Article 10 of the ECHR regarding legality, legitimacy and proportionality of restrictions.¹⁰⁹

Although Article 10 of the ECHR does not explicitly mention freedom of the press, the ECtHR has developed a body of principles and rules granting the press a special status in the enjoyment of the right to freedom of expression in light of its role as 'public watchdog'.¹¹⁰

Freedom of expression is also protected under domestic Russian law. Article 29 of the Constitution states that:

'Everyone shall be guaranteed freedom of thought and speech. Propaganda or agitation, which arouses social, racial, national or religious hatred and hostility shall be prohibited. Propaganda of social, racial, national, religious or linguistic supremacy shall also be prohibited. Nobody shall be forced to express his thoughts and convictions or to deny them. Everyone shall have the right freely to seek, receive, transmit, produce and disseminate information by any legal means. The list of types of information, which constitute State secrets, shall be determined by federal law. The freedom of the mass media shall be guaranteed. Censorship shall be prohibited.'¹¹¹

Article 23 further enshrines the right to privacy:

'Everyone shall have the right to privacy of correspondence, of telephone conversations and of postal, telegraph and other communications. This right may be limited only on the basis of a court order.'

Yet as outlined above, the Russian authorities have flouted their international and domestic human rights obligations by adopting vaguely worded laws that do not conform with the requirements for permissible restrictions on the right to freedom of expression, and that have been actively applied to restrict free expression.

5 Conclusions and Recommendations

Laws passed since Vladimir Putin's return to the presidency in May 2012 have dramatically increased the Russian authorities' control over the flow of information, online and offline.

As documented in this report, the Russian authorities have enacted a series of restrictive laws and pursued policies that gravely violate the right to freedom of expression, particularly targeting political opposition and civil society, and further threaten artistic freedoms.

PEN International, PEN Moscow and St Petersburg PEN call on the Russian authorities to immediately end their crackdown on freedom of expression and attacks on the free press and create an environment in which free public debate can thrive.

In particular, PEN International, PEN Moscow and St Petersburg PEN call on the Russian authorities to:

Repeal or amend laws stifling free expression in Russia.

- Amend vague and overly broad anti-extremism and anti-terrorism legislation, in particular vaguely-termed provisions such as 'extremist activity' and 'calls aimed at violating the territorial integrity of the Russian Federation'.
- Repeal Article 148 parts 1 and 2 of the Criminal Code on 'insulting religious feelings'.
- Decriminalise defamation by repealing Articles 128.1, 298.1 and 319 of the Criminal Code.
- Guarantee internet users' right to publish and browse anonymously and ensure that any restrictions to online anonymity are subject to a court order and fully comply with Article 19(3) of the ICCPR.
- Ensure the free flow of information and reform legislation to prevent arbitrary and/or politically motivated blocking of websites.
- Repeal Federal Law No. 135-FZ, also known as the 'gay propaganda' law.
- Ensure that NGOs can exercise their rights to freedom of expression and association by repealing the Law on 'Undesirable Organisations'.
- Cease politically motivated prosecutions of internet users, including those supposedly 'justified' on the grounds of preventing extremism, separatism and offending religious believers, and those administrating anonymising services. Immediately and unconditionally release those currently imprisoned on such charges.

¹⁰⁸ ECtHR, *The Sunday Times v. United Kingdom*, 18 May 1977.

¹⁰⁹ Council of Europe Recommendation CM/Rec(2016)5 of the Committee of Ministers to member States on Internet freedom.

¹¹⁰ ECtHR, *Lingens v. Austria*, 8 July 1986.

¹¹¹ English translation by the Ministry of Foreign Affairs of the Russian Federation, available at: http://www.mid.ru/en/foreign_policy/official_documents/-/asset_publisher/CptlCk6BZ29/content/id/571508

Refrain from stigmatising independent media outlets.

- Repeal Federal No. Law 239-FZ restricting foreign ownership of media outlets to 20%.
- Repeal the ‘Foreign Agents Law’ (including the 2017 amendments extending this law to foreign media outlets) and refrain from adopting new legislation that is not in line with Russia’s human rights obligations under domestic and international law.

Prevent and protect against threats and violence against journalists, media workers, human rights defenders and activists, and end impunity for such crimes.

- Ensure impartial, prompt, thorough, independent and effective investigations into all alleged crimes and hold those responsible to account.
- Publicly, unequivocally and systematically condemn all violence and attacks against all journalists and other media workers, as well as against activists.
- Dedicate the resources necessary to investigate and prosecute attacks.
- End the cycle of impunity that emboldens perpetrators of violence against journalists.

Immediately and unconditionally release all journalists held on politically-motivated charges as a result of their work. Refrain from further politically motivated prosecutions.

Ensure protection of the rights to freedom of expression, freedom of peaceful assembly and association is applied during all protests.

- Refrain from detaining individuals for peacefully protesting.
- Ensure that journalists are free to collect and disseminate information without obstruction and fear of reprisals.
- Amend protest-related legislation to bring it in line with international standards.

Specifically in relation to the conflict in Ukraine:

- Cease all actions that target activists, political opposition, journalists and others detained for criticising the Russian ‘annexation’ of Crimea or expressing support for Crimean Tatars. Immediately release those detained and ensure that all disappearances of activists and others are effectively investigated.
- Reverse measures to close media outlets operating in Crimea since the annexation, and ensure that journalists can operate freely on the peninsula, even when expressing views critical of the authorities.

End practices of censorship in literature, theatre and cinema, and create an environment in which the artistic expression of dissenting views can prosper.

A journalist and a filmmaker languish behind bars on trumped-up charges. A librarian is convicted of holding 'extremist' literature. A theatre director critical of the authorities is held under house arrest for more than a year. Dozens of people are prosecuted for online comments regarding Russian activity in Ukraine.

Since 2012, the Russian authorities have dramatically strengthened their control over the flow of information, online and offline. This report shows how Russia's array of repressive laws severely restricts the rights to freedom of expression, opinion and information. It describes the deterioration of media freedom, through the Russian authorities' control of the media landscape and the immense pressure faced by independent journalists to not contradict the official line or provide coverage of critical viewpoints. It analyses the prosecution and conviction of several people on politically motivated grounds. It further shows how artistic freedom and literature are under threat.

Russia's Constitution enshrines the rights to freedom of expression and privacy and prohibits censorship. Russia is also a party to several international treaties and as such has obligations to respect, protect and fulfil the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds.

PEN International, PEN Moscow and St Petersburg PEN call on the Russian authorities to immediately end their crackdown on freedom of expression and attacks on the free press and to create an environment in which free public debate can thrive.

<http://www.pen-international.org/>

