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STATEMENT

Russia: Freedom of Expression Under Threat in the North Caucasus

The freedom of expression situation in the North Caucasus remains dire. In this report, ARTICLE 19 highlights several factors which combine to create a bleak picture, including a lack of protection for media workers and human rights defenders; increasing harassment and violence against media workers and human rights defenders; a lack of proper investigation into murders and assaults; and the continuing misuse of legislation to suppress criticism and independent voices.

One year ago, on 16 April 2009, the counterterrorist operation regime, which has been in place in Chechnya over the last decade, came to an official end. But hopes that this development would bring about the much needed improvement of the human rights situation were dashed when prominent Chechen human rights defender Natalia Estemirova was kidnapped and murdered in July 2009. Her murder highlighted once again the enormous personal risks taken by human rights defenders and journalists who monitor and report on abuses in this region. The year 2009 has been characterised by a significant deterioration of the security situation in the North Caucasus which not only had a negative effect on freedom of expression, but also drastically reduced the ability of civil society activists and organisations to function independently in the region. Killings and kidnappings of journalists and civil society representatives continued and were characterised by a climate of impunity, creating an atmosphere of fear. At the same time the intimidation and legal harassment of media outlets and individual journalists increased in the North Caucasus during 2009.

In October 2009, the United Nations Human Rights Committee (the HR Committee) expressed concern at the alarming incidence of threats, violent assaults and murders of journalists and human rights defenders in the North Caucasus¹. The HR Committee argued that this has created a climate of fear and had a particularly chilling effect on the media and added that it regrets the lack of effective measures to protect the right to life and security of these persons. Additionally, the HR Committee noted its concern about frequent reports of torture and ill-treatment, enforced disappearance, arbitrary arrest, extrajudicial killing and secret detention in Chechnya and other parts of the North Caucasus, perpetrated by the military and security services, and other state agents. The perpetrators of such violations appear to enjoy widespread impunity due to a systematic lack of effective investigation and prosecution. Additionally, the

¹ See <http://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR.C.RUS.CO.6.pdf>, last visited 19 April 2010.

Commissioner for Human Rights of the Council of Europe - Thomas Hammarberg, emphasised the lack of effective, impartial and expeditious investigations into disappearances and killings, and existing patterns of impunity despite serious efforts to reinforce the rule of law in a report following his visit to the North Caucasus in September 2009². The Commissioner also strongly emphasised the need to promote safe and favourable conditions for the work of human rights organisations and to provide them with protection, in line with international standards.

These concerns echoed similar issues raised by ARTICLE 19 in its shadow report to the HR Committee in October 2009³. During 2009, ARTICLE 19 reported a high number of cases in which journalists and human rights defenders working in the North Caucasus were murdered or became victims of physical assaults for covering sensitive subjects that may have threatened high-ranking governmental officials, businesspeople or criminal gang members. The HR Committee urged the Government of the Russian Federation to take immediate action to provide effective protection to journalists and human rights defenders whose lives and security may be under threat due to their professional activities. The Russian authorities were also urged to ensure effective, independent and impartial investigations (and, when appropriate, prosecutions) into threats, violent assaults and murders of journalists and human rights defenders.

With these developments in mind, ARTICLE 19 argues that the overall trend of deteriorating freedom of expression in the North Caucasus is caused by a combination of: failure to adequately protect journalists, media representatives and human rights defenders from various forms of violence; lack of accountability resulting from failure to investigate the cases of murders and assaults; and the continuing misuse of legislation to suppress criticisms of the authorities and consequent legal harassments of journalists, media representatives and human rights defenders. This report therefore seeks to provide a clearer picture of the 2009 developments, to highlight the cases and the pressing need to address them for the sake of development of a free and democratic society in the North Caucasus, of which freedom of expression remains a fundamental component. The cases detailed below represent striking examples of the high level of lawlessness across the North Caucasus and highlight the failure of the Russian Government to abide by its legally binding commitments to protect human rights and the right to freedom of expression under international human rights law, as stated in the International Covenant on Civil and Political Rights (ICCPR).

Failure to Protect

There has been a marked increase in physical attacks against journalists, media workers and human rights defenders in the Russian Federation in recent years, including assaults, kidnappings and killings. The Glasnost Defence Foundation, for example, reports that at least nine journalists were killed and 59 assaulted in 2009 throughout the Russian Federation⁴. By comparison, the International Federation of Journalists (IFJ) reports that 313 journalists were killed or disappeared in Russia between 1993 and 2009⁵. Similarly, the Committee to Protect Journalists (CPJ) has

² See <https://wcd.coe.int/ViewDoc.jsp?id=1543437&Site=CommDH>, last visited 19 April 2010.

³ See <http://www.article19.org/pdfs/submissions/russia-written-comments-of-article-19-global-campaign-for-free-expression-co.pdf>.

⁴ See <http://www.gdf.ru/graph/item/1/688>, last visited 19 April 2010.

⁵ International Federation of Journalists (2009), *Partial Justice: An investigation into the deaths of Journalists in Russia, 1993-2009*, available at: <http://www.ifj.org/en/pages/ifj-campaign-against->

documented 17 murders of journalists in Russia since 2000⁶. The North Caucasus region is disproportionately affected, a Glasnost Defense Foundation report⁷ found that four out of five journalists killed in 2008 were from the North Caucasus and since 1993 Dagestan has seen the killing of 11 journalists⁸.

In 2009, again, the most alarming incidents took place in the North Caucasus, or affected individuals investigating, reporting and defending the rights of citizens of the North Caucasus. In most cases, there has been little or no interest from the authorities, and there is a general failure to protect the personal safety of individuals at risk.

Throughout 2009, the following cases were reported:

- On 19 January 2009, **Stanislav Markelov**, a well-known human rights lawyer, was assassinated in broad daylight in Moscow. Markelov had represented the family of 18-year-old Kheda Kungayeva, a Chechen woman abducted, assaulted and murdered by Yuri Budanov. Budanov was the first senior Russian army officer to be convicted of human rights abuses and war crimes during the Chechen campaigns and Markelov had intended to challenge Budanov's early release in January 2009. Previously, Markelov had represented Anna Politkovskaya, as well as many Chechen civilians who were tortured by Russian law enforcement authorities. He was shot dead alongside a Russian journalist for *Novaya Gazeta*, **Anastasia Baburova**, who had attempted to come to his aid. Two people have so far been charged with the murder and the case is ongoing.
- On 15 July 2009, **Natalia Estemirova**, a Chechen human rights activist and journalist, who had received international recognition, was abducted by four unknown men in Grozny, Chechnya. Her body was found near Gazi-Yurt village, in neighbouring Ingushetia the same day, with gunshot wounds to the head and chest. Estemirova had worked at the Memorial Human Rights Centre since 2000 on a number of sensitive cases documenting human rights abuses in Chechnya, including forced disappearances and extra-judicial killings. Estemirova's murder caused a public outcry across the world and, although the Russian Government downplayed the significance of her work, Russian President Medvedev expressed outrage and undertook to ensure a thorough investigation. To date, no-one has been charged with Estemirova's murder, despite an anonymous claim circulated in February 2010 that investigators knew who had committed the murder. Following Estemirova's murder, Memorial withdrew its operations from Chechnya because of the unacceptable risks to lives of staff but has since resumed work again upon insistence of the Russian rights defender community.
- On 10 August 2009, **Zarema Sadulayeva**, the head of a Chechen NGO, 'Let's Save the Generation' which provides humanitarian aid and rehabilitation to child victims of the armed conflicts in Chechnya, was taken from her office in Grozny, along with her husband, **Alik Dzhabrailov**. When human rights activists requested the help of law enforcement officials to search for Sadulayeva and her husband on 10 August, they were reportedly told that it was too early to report a disappearance. The next morning, the couple's bodies were found with multiple

[impunity-in-russia](#), last visited 19 April 2010. See also IFJ database listing deaths and disappearances of journalists in Russian at: <http://journalists-in-russia.org/journalists>, last visited 19 April 2010.

⁶ Committee to Protect Journalists (2009), *Anatomy of Injustice: The Unsolved Killings of Journalists in Russia*, available at <http://www.cpj.org/reports/2009/09/anatomy-injustice-russian-journalist-killings.php>, last visited 19 April 2010.

⁷ http://www.gdf.ru/murdered_journalists/list/2008, last visited 28 April 2010.

⁸ http://www.riadagestan.ru/news/2009/12/15/89934/?photo_index=1, last visited 28 April 2010.

gunshot wounds in the boot of their car in one of Grozny's suburbs. A criminal investigation is currently pending.

- On 11 August 2009, **Abdulmalik Akhmedilov**, editor-in-chief of the *Sogratl* newspaper in Dagestan and regular contributor to another Dagestani publication, *Hakikat*, was shot dead in his car. Ahmedinov wrote about human rights violations and the suppression of religious and political dissent in Dagestan. A criminal investigation is currently pending.
- On 25 October 2009, **Maksharip Aushev**, a well-known civil society activist from Ingushetia was killed while travelling in neighbouring Kabardino-Balkaria. Aushev's cousin, who was travelling with him, was seriously injured in the attack and later died of her wounds. Aushev had previously escaped a kidnap attempt on 15 September in Ingushetia, when masked and armed men blocked the road with armored vehicles. Maksharip Aushev was a consistent opponent of kidnappings and extrajudicial executions, and an outspoken critic of former Ingushetian President Murat Zyasikov, whose removal from office he had campaigned actively for. In September 2008, he took over the opposition website www.ingushetiya.ru (later renamed www.ingushetiya.org), following the murder of its owner and former editor, Magomed Yevloev in 2008. After President Zyasikov was replaced in November 2008, Aushev officially announced he would cease his opposition activities but would remain active in human rights. An investigation into this case is pending and no suspects have been identified so far.

Lack of Accountability

Murders and acts of violence against prominent human rights defenders, including lawyers, have further eroded the possibility for a free press to maintain itself, both because those attacks spread fear and because journalists depend on a small number of determined and authoritative individuals for reliable information from dangerous regions, particularly the North Caucasus. ARTICLE 19 notes that the Russian authorities regularly fail to conduct effective, independent and impartial investigations into human rights violations. The failure to identify and punish the perpetrators of these crimes has created an atmosphere of impunity and injustice which have a "chilling effect" on the freedom of expression across the Russian Federation and in the North Caucasus in particular. It is estimated that several hundred Russian journalists have gone abroad because of risks to their personal safety and the severe limits placed on their professional freedom inside Russia, while others have abandoned journalism altogether⁹. This climate of fear and impunity also means that journalists may censor themselves in order to stay safe and that it is more and more difficult to obtain reliable information about human rights abuses from dangerous regions such as the North Caucasus.

In addition to the murders outlined above, there are a number of prominent cases prior to 2009 that are still awaiting adequate and independent investigation. These include:

- The investigation into the murder of **Anna Politkovskaya**, Russia's most famous opposition journalist and a fierce critic of Kremlin power, who was shot dead in Moscow on 7 October 2006, has seen little progress to date. Following a worldwide outcry against her murder, the investigation was directly overseen by the Prosecutor General of the Russian Federation. The trial of three men accused of involvement in the murder ended with acquittal of all three on 19 February

⁹ Council of Europe Committee on Culture, Science and Education (2010), *Respect for Media Freedom*, available at: <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc10/EDOC12102.htm>.

2009 and on 3 September 2009, the Supreme Court of the Russian Federation ruled that the case should be returned to the Investigative Committee of the Office of the Prosecutor General for further investigation. This case is currently pending.

- On 2 March 2010, the North Caucasus Supreme Court replaced the two-year prison sentence for a policeman who fatally shot independent opposition website owner and well known human rights activist, **Magomed Yevloyev** on 31 August 2008, with a two-year “restriction of freedom” term, meaning the perpetrator will be allowed to return to work. The perpetrator, who claimed the killing was an accident, was charged with “homicide through negligence, as a result of inappropriate professional behaviour” by the Karabulak City Court in Ingushetia on 11 December 2009. Subsequently, he was sentenced to two years in a low-security prison. Previous appeals by Yevloyev’s family for the death to be investigated as “murder with premeditation” under Article 105 of the Russian Criminal Code were rejected.
- There are three unsolved murders of journalists working in Dagestan. On 21 March 2008, **Ilyas Shurpayev**, a television reporter for Russia’s Channel One who had reported from Dagestan, was stabbed to death in his Moscow apartment. On the same day, **Gadzhi Abashilov**, head of the Dagestani state radio and television company, was shot dead in his car in Makhachkala. And, on 2 September 2008, **Telman Alishayev**, a TV-Chirkel presenter in Dagestan who was critical of the ultra-conservative *Wahhabi* sect and who had previously reported death threats, was also shot dead in his car. The criminal cases are currently ongoing and no one has been convicted to date.

When such cases of violence go unpunished this not only contributes to the deterioration of freedom of expression, but also encourages further attacks on journalists, media representatives and human rights defenders. A prevailing disrespect for the rule of law plagues the whole region, but this context also offers cover to those who would silence opposition or independent voices.

ARTICLE 19 notes two other particularly worrying developments in 2009:

- On 3 September 2009, hundreds of leaflets written on behalf of previously unheard of “**Relatives of Policemen killed in Dagestan**” were distributed throughout Makhachkala. The leaflets stated that “the relatives” would avenge those responsible for “the terrorist acts and killings of officers of law enforcement authorities and civil citizens” and accused human rights defenders, journalists and civil society representatives of supporting so-called Islamist insurgents and terrorists. The threats were made against 250 individuals; 16 people on the “**execution list**” were identified by name, among them eight journalists. These are the founder of Chernovik newspaper, Gadzhimurad Kamalov, as well as journalists Nadira Isayeva, Artur Mamayev and Timur Mustafayev; Svobodnaya Respublika journalist Zaura Gaziyeva; publicist Zubair Zubairov; Kavkazskiy Uzel correspondent Ahmednabi Ahmednabiyev and Novoye Delo journalist Natalia Krainova. Others included human rights defenders such as Svetlana Isayeva of “Mothers of Dagestan for Human Rights” and Isalmagomed Nabiyev. Subsequently, Dagestani President Mukhu Aliyev reportedly requested law enforcement officers to provide protection to those mentioned in the “execution

list” but this protection has not ever been provided. A criminal case was opened and, as of March 2010, has been passed onto the third official since its opening. No suspects have been identified so far.

- On 20 August 2009, a fire destroyed the offices of “**Mothers of Dagestan for Human Rights**”. This is the largest human rights organisation in Dagestan, the director of which, Svetlana Isayeva, features on the above “execution list”. There were no casualties but Isayeva believed it was an arson attack. An initial police investigation concluded that the fire was caused by a short circuit but a repeat investigation upon Isayeva’s demand recovered evidence confirming arson. No criminal case has been opened so far.

Restrictive use of legislation and harassment of independent press

Journalists, human rights defenders and media representatives continued to be subject to restrictive use of legislation and various forms of harassment throughout 2009. This not only represents a failure to abide by universal principles of freedom of expression but also reinforces the climate of fear and encourages self-censorship. Various forms of harassments, retaliation and restrictive use of legislation have become a tool for suppressing independent and critical voices, essential for a pluralistic society. Particularly in the North Caucasus, where amid intensifying violence the topics of extremism and activities of law enforcement agencies have become a very dangerous ground for media to touch upon.

Throughout 2009, ARTICLE 19 repeatedly voiced concerns¹⁰ about the controversial Law on Counteracting Extremist Activity (Anti-Extremism Law)¹¹ and its implementation in practice. Although the Law was amended in 2007 and again in 2008, its definitions remain unclear and vague, thereby leaving room for sometimes arbitrary decisions. ARTICLE 19’s monitoring of ways in which this Anti-Extremism Law has been enforced shows that it has been used against independent or critical media in the Russian Federation¹². This reinforces the concern that this legislation is a tool to unnecessarily restrict freedom of expression in the North Caucasus. Since 2007, the Ministry of Justice of the Russian Federation has published a list of materials it considers “extremist”¹³. A judicial decision by any court is sufficient for a text or website to be placed this list. However, there are currently no rules defining who can be defined as an “expert” (in terms of evaluating “extremist” threats), and what the framework for such expertise should be. Furthermore, the existing definition of “social group” in relation to incitement of hatred, combined with the introduction of the above mentioned list of “extremist” materials, has allowed courts to make arbitrary decisions at all levels.

Furthermore ARTICLE 19 is concerned about a range of restrictive regulations contained in the Law on Mass Media¹⁴. In particular, Article 16 of the Mass Media

¹⁰ <http://www.article19.org/pdfs/press/russia-government-must-respect-recommendations-of-un-human-rights-committee-.pdf>.

¹¹ Federal Law No. 114-FZ of 25 July 2002, the Law on Counteracting Extremist Activities. The Anti-Extremism Law was published in Parlamentskaya Gazeta No. 142-143 of 30 July 2002, Rossiiskaya Gazeta No. 138-139 of July 30, 2002 and Sobranie Zakonodatelstva Rossiyskoy Federatsii No. 30 of 29 July 2002, item 3031.

¹² See: <http://www.article19.org/pdfs/submissions/russia-written-comments-of-article-19-global-campaign-for-free-expression-co.pdf>.

¹³ See: <http://www.minjust.ru/ru/activity/nko/fedspisok/>, last visited 19 April 2010.

¹⁴ Law on Mass Media (Law No. 2124-1 of 27 December 1991 and as of 8 December 2003, as Subsequently Amended)

Law states that a media outlet can be closed after receiving two warnings for alleged extremism, which can be issued for prospective or retrospective publications.

Throughout 2009, there was a notable increase in the application of this legislation in the North Caucasus and some of the cases are detailed below:

- On 15 June 2009, the Dagestan branch of the Russian Federal Supervision Agency for Information Technologies and Mass Communications filed a suit with Dagestan's Supreme Court to close **Dagestani newspaper Chernovik**. This action followed warnings issued in July 2008 and in April 2009 for making allegedly “extremist” statements and for expressing a hostile attitude towards law enforcement authorities. A criminal case was opened on 31 July 2008 under Article 282 of the Russian Criminal Code which refers to “incitement of national, racial and religious hatred”. The state prosecution claimed the newspaper “publicly justified terrorism” in a series of articles published in 2008 where it used a quote from a deceased guerrilla leader. Editor-in-Chief, Nadira Isayeva, was charged with making public calls to extremism and incitement of hatred. The trial began in January 2010. This award-winning newspaper has often been critical of the actions of the regional police and the Federal Security Services, saying that their alleged lawlessness contributes to the rise of militant Islam in the region. On 15 May 2009, an independent Moscow-based monitoring organisation, Sova, issued a statement saying the newspaper's content did not reflect extremist views¹⁵. Human rights organisations in Russia and independent experts have also expressed a view that there is no evidence that Chernovik incited ethnic hatred through any of its content. The articles are currently being scrutinised a second time by a panel of psychological and linguistic experts. Nadira Isayeva and reporters Magomed Magomedov, Artur Mamayev and Timur Mustafayev, along with their lawyer Biyakai Magomedov, face sentences of up to five years in prison.
- On 14 December 2009, the prosecutor's office in Ingushetia asked the federal court in Nazran to close down several **Internet sites**. The republican prosecutor's office found that the websites www.hunafa.com, www.ingushetiyaru.org, www.ingushetia.ru and www.ingushetiya-ru.livejournal.com had posted statements inciting hostility toward “other social or religious groups”. The prosecutors maintained that, while guaranteeing freedom of thought and expression, the Russian Constitution prohibits the abuse of freedom of expression if other people's rights are affected. With this in mind, the prosecutors have called to restrict access to the above-listed websites and proxy servers.
- Of particular concern is the situation surrounding the **Ingush independent opposition website www.ingushetiyaru.org**, previously known as www.ingushetiya.ru, which was forcibly closed down in 2008 after an expert testimony for the state deemed its contents “extremist”. The website is currently owned by the Ingush opposition leader, Magomed Khazbiyev, who has repeatedly been accused by the authorities of being too critical of the current administration. The website has found itself the target of numerous hacker attacks, making the editing of chat forum comments virtually impossible. Both the website's previous owners were murdered: Magomed Yevloyev in 2008 and Maksharip Aushev in

¹⁵ See <http://xeno.sova-center.ru/89CCE27/89CD1C9/CF52F66>, last visited 19 April 2010.

October 2009 (see above). Another previous editor, Roza Malsagova, fled the country and sought political asylum in Europe in 2008.

Finally, ARTICLE 19 is concerned that the use of defamation laws continues to be abusive and arbitrary across the Russian Federation, in a direct violation of international standards for freedom of expression. The fear of defamation lawsuits severely restrains critical voices and creates a climate of self-censorship among writers, journalists, editors and publishers.

In the North Caucasus, there were appalling examples of the use of defamation to harass independent media and human rights defenders in 2009:

- Civil and criminal defamation charges were brought against **Oleg Orlov, the head of human rights organisation Memorial**, relating to the publication on 15 July 2009 of a statement by Orlov in which he indicated that he believed that Chechnya's President, Ramzan Kadyrov, or his administration, were morally responsible for the murder of Natalia Estemirova. In the civil defamation case against Orlov and Memorial Kadyrov argued that this statement damaged the "honour and dignity" of the President of Chechnya and asked for ten million rubles (approximately 238,932 EUR) in damages. On 6 October 2009, the Tverskoy District Court of Moscow ruled that Orlov was guilty and ordered him to retract the statement, fining Memorial 50,000 rubles (about 1,194 EUR). Additionally Orlov was personally fined 20,000 rubles (about 450 EUR) in damages. Orlov and Memorial appealed against the decision but on 21 January 2010, the ruling was upheld. Orlov and Memorial are currently preparing to lodge an application to the European Court of Human Rights to appeal against this decision. Simultaneously a criminal investigation was initiated for defamation under Article 129.3 of the Russian Criminal Code, for the same statement. On 9 February 2010, Kadyrov publically announced that he would drop his defamation claims – a political move, which did not affect the outcome of the civil defamation trial, which had already been settled in Kadyrov's favour.

Recommendations

ARTICLE 19 recommends that the Government of the Russian Federation introduces and adopts comprehensive policies and mechanisms to both prevent future violations of international law and remedy past ones. In particular, ARTICLE 19 calls on the Russian Government to:

- Take effective measures to prevent attacks against, killing and disappearances of media workers and human rights defenders in the Russian Federation, and in particular in the North Caucasus region.
- End the climate of impunity by carrying out thorough and impartial investigations of murders and assaults of journalists, media representatives and human rights defenders, with a view to bringing the perpetrators of these crimes to justice.
- Immediately amend the Law on Counteracting Extremist Activity to ensure that individuals are not found guilty of extremism unless they specifically intend to incite terrorism and there is an identifiable threat of violence, and that published works should not be banned or censored unless they meet these conditions too.

- Ensure that existing provisions on incitement to extremist activity are implemented in a fair manner, through processes independent of political considerations, and in particular ensure that when using expert opinions these are independent and without bias.
- Clearly outline the definition of “social group” in Article 282 of the Criminal Code ensuring that government and other public officials are excluded.
- Abolish powers given to government bodies to issue warnings to media outlets for “misuse of media freedom”, which can lead to closing of media outlets.
- Repeal provisions on the defamation of public officials in the Law on Counteracting Extremist Activity and ensure that defamation provisions are not used to shield authorities from public scrutiny and criticism.
- Decriminalise defamation or, at a minimum, abolish imprisonment as a penalty for defamation, and ensure that any financial penalty imposed on the defendant is proportionate.
- Take appropriate measures to train judges on international standards on defamation and make sure that judges take into account the importance of freedom of expression and the potentially chilling effect of the award.

FURTHER INFORMATION:

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- ARTICLE 19 is an independent human rights organisation that works around the world to protect and promote the right to freedom of expression. It takes its name from Article 19 of the Universal Declaration of Human Rights, which guarantees free speech.