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Persecution for expression of opinion in Russia: submission to the Committee of Ministers of the Council of Europe

Rule 9.2 submission on the implementation of general measures in the cases of Bryan and others v. Russia, Chirikov and Nekrasov v. Russia, and Verzilov and others v. Russia prepared by the NGOs Memorial Human Rights Defence Centre and OVD-Info

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INTRODUCTION

This submission is prepared in accordance with Rule 9.2 of the Rules of the Committee of Ministers by the Russian NGOs Memorial Human Rights Defence Centre and OVD-Info. The submission addresses the implementation of general measures in several cases concerning the application of Article 10 of the Convention. The submission

examines the current situation with the implementation of the cases and provides recommendations concerning the implementation of general measures in these judgments.

I. MAIN FINDINGS OF THE ECTHR

Bryan and others v. Russia (2023)

The case concerns a protest in 2013 by thirty Greenpeace activists at the Russian offshore oil-drilling platform Prirazlomnaya. Following climbing the platform by two activists, who approached it by dinghies from a vessel called the Arctic Sunrise under the flag of the Netherlands, the Russian coastguard had towed the vessel to the port of Murmansk and arrested the activists on charges of piracy. The charges had later been reclassified to hooliganism, and the proceedings against them discontinued under an amnesty.

The ECtHR found that the detention of activists had been unrecorded and arbitrary, among other grounds, due to the inconsistent position of the state's bodies in relation to the status of the platform and to the charges brought against the applicants, and the element of bad faith of the authorities in the application of the national legislation (violation of Article 5). The Court also found that this violation had amounted to an interference with their freedom to express their opinion on a matter of significant environmental interest which had not been prescribed by national law (violation of Article 10).

Chirikov and Nekrasov v. Russia (2022)

On 20 December 2016, at the anniversary of the Soviet security service — All-Russian Extraordinary Commission (Cheka) — the applicants, political activists, made an installation «A new Chekist». They attached a wooden

cross to the base of the bust of Cheka's first director F. Dzerzhinsky in Krasnodar. Shortly thereafter, one of the applicants published a photo of the installation with an explanatory satirical post on his Facebook page. It drew the public's attention to the increased role of the Russian security service in the protection of what that agency considered to be traditional spiritual values of Russian society. Later that day, the incident was reported to the police. By the time a police officer arrived to inspect the monument, the installation had already been removed. The police officer noted that the monument was not damaged.

The domestic court found that the applicants had breached public order by damaging (defacing) the monument. The applicants' lawyers were not given an opportunity to be present at the court hearings. The domestic court did not examine whether the applicants' installation had been an expression of their opinion. The applicants were convicted of minor hooliganism. They received fifteen days of administrative detention, the maximum punishment for that offence.

The ECtHR found the punishment of the applicants disproportionate and not necessary in a democratic society in violation of Article 10. It noted that through the installation of the cross on the monument, the applicants sought to raise a discussion concerning the policy of the Russian security service, that is to say, to express their opinion on a matter of public interest, which is in principle entitled to heightened protection. The monument was connected to a historical figure known for leading a security service in the early years of the Soviet Union. The applicants' act was peaceful, and nothing suggests that it was likely to cause public disturbance. It is important that no physical damage was caused to the monument and that no expenses were incurred on account of the removal of the cross. Although the installation affected the visual appearance of the sculpture,

the visual impairment was not long-lasting, as the cross remained in place only for several hours.

The above considerations were not taken into account by the domestic courts, which failed to assess whether the applicants' installation had constituted an expression of their views, or to adduce «relevant or sufficient reasons» capable of justifying the applicants' conviction, not to say the imposition of the most severe punishment of administrative detention. The latter was disproportionate to the alleged damage and had a strong «chilling effect» on the freedom of expression.

Those shortcomings were aggravated by the absence of the applicants' lawyers during the trials. The undue curtailment of the procedural guarantees prevented the defence from raising their arguments effectively and eventually had an adversarial effect on the thoroughness of the examination of the case by the domestic courts.

Verzilov and others v. Russia (2023)

The case concerns a violent attack by Cossacks, carrying out State service for maintaining public order, on members of a feminist punk band, Pussy Riot, during an artistic performance in Sochi during the 2014 Olympic Winter Games and a lack of effective investigation (violation of Article 3 in substantive and procedural parts). The ECtHR held that the State had also been responsible for preventing the applicants from carrying out their performance in Sochi (violation of Article 10).

The ECtHR noted that there were clear indications of political and religious motives for the attack which were left without any assessment and reaction by authorities. There was also a direct connection between the Cossacks' actions and their duties in carrying out State service for maintaining public order. The State failed to discharge its duty not to interfere unlawfully and disproportionately with the right to freedom

of expression and to take reasonable and appropriate measures to enable the exercise of that right to proceed peacefully. The State was responsible for regulating Cossacks' activities appropriately and for their training and supervision in order to shield individuals adequately from ill-treatment, in particular when exercising freedom of expression.

II. THE CURRENT SITUATION WITH THE IMPLEMENTATION OF THE CASES

All three indicated cases concern the exercise of the right to freedom of expression in the form of performances and protest actions. The applicants who participated in these public events were subjected to criminal prosecution or physical attacks. These cases illustrate the general practice of the Russian Federation of suppression of dissenting voices in the country. This practice has been developing for many years, but the situation has deteriorated significantly since the start of the full-scale invasion of Ukraine. Russian authorities use common legislation and new repressive laws adopted after the start of the invasion to punish the protesters and create a chilling effect to prevent the expression of unwanted opinions.

We argue that the Russian Federation has failed to implement the aforementioned judgments as the problems addressed by the ECtHR still persist in Russia. We will demonstrate that the Russian authorities continue to violate freedom of expression and prosecute people on political grounds using the example of the suppression of anti-war performances and environmental protests.

Persecution for anti-war performances

Anti-war performances are an important tool utilised by those protesting the war in Ukraine to raise awareness on the issue

and make their voices heard by the public. The anti-war performances described below were peaceful in nature, did not cause significant public disturbance, and related to a crucial matter of public discourse — the ongoing war waged against Ukraine. As the Court stated in the case of *Chirikov and Nekrasov v. Russia*, such matters of public interest are in principle entitled to heightened protection against state interference (see para. 9). In spite of that, Russian authorities continued its practice of persecuting the authors of said performances. Instead of adequately assessing the proportionality of the interferences into the defendants' freedom of expression as required by the Court's jurisprudence, the authorities subjected them to detentions, ill-treatment, and severe punishments. It would be insufficient to state that such measures had a chilling effect on the freedom of expression in Russia; rather, we argue that this was done in a deliberate attempt to completely shut down the discussions around the war.

a. legislation prohibiting anti-war performances

After the start of the full-scale invasion of Ukraine in 2022, Russian authorities have been making considerable efforts to silence anti-war expressions by criminalising them and enforcing various articles of the Code on Administrative Offences (hereinafter — CAO) and the Criminal Code (hereinafter — CC). The authorities prosecute those who voiced dissenting opinions about the war, including through performances. Authors of such performances are mainly prosecuted under Article 20.3.3 of CAO or 280.3 of CC — both articles have been enacted in 2022 to suppress anti-war expressions and prohibit «public actions aimed at discrediting ... the performance of tasks assigned to <...> Armed Forces of the Russian Federation or the national guard troops of the Russian Federation...» (with the application of the law varying depending on the gravity and recurrence of the 'offence'). However, other articles unrelated to the war in Ukraine are also used to suppress anti-war actions, for

instance, Article 213 of CC («hooliganism»), Article 214 of CC («vandalism»), Article 354.1 of CC («rehabilitation of Nazism»), Article 329 of CC («desecration of the State Emblem of the Russian Federation or the State Flag of the Russian Federation»), Article 20.3 of CAO («propaganda or public display of Nazi symbols, symbols of extremist organisations, or other prohibited symbols»), and others.

b. statistics

According to OVD-Info, Russian authorities have initiated criminal prosecution against at least 132 authors of anti-war performances since 2022. The most frequent are the following criminal charges:

- Article 214 (vandalism) — 84 cases;
- Article 280.3 (discrediting the military) — 18 cases;
- Article 354.1 (rehabilitation of Nazism) — 12 cases;
- Article 329 (desecration of state symbols) — 9 cases;
- Article 213 (hooliganism) — 5 cases.

c. cases of anti-war performances

For instance, in May 2022, a criminal case of vandalism was opened against Igor Pokusin, a local activist from Khakassia. According to the investigation, he had painted over a pro-military banner with yellow and blue paint, and put an anti-war inscription on the facade of the Khakass National Museum of Local Lore, where a light screen with the letter Z (symbolising the Russian invasion of Ukraine) had appeared earlier. His act was qualified as «vandalism motivated by political hatred», and he was sentenced to six months of «restriction of liberty». The next day, he was detained again on the charges of «preparation for state treason» for allegedly trying to join the Ukrainian army (Article 275 of CC). His wife reported that during the apprehension, he was blindfolded, taken to a forest and threatened with torture. On 19 January

2024, Mr Pokusin was sentenced to eight years and one month in prison. On 14 June 2024, it became known that he had **died**.

In another example, a similar action prompted a criminal case under a different charge. In October 2022, a criminal case on «discrediting the Armed Forces» (Article 280.3 of CC) was opened against **Ivan Churinov** for pouring red paint on banners with portraits of Russian soldiers participating in the war with Ukraine.

Criminal cases under the same article were opened for the following actions:

- laying flowers and anti-war posters at the monument of Taras Shevchenko on 24 February 2022 (case of **Alipat Sultanbegova**, pre-trial investigation stage);
- tearing off stickers with the St George's ribbon making the letter Z and the inscription «We do not abandon our own» from the door of the United State Archive of the Orenburg Region (**Konstantin Pchelintsev**, sentenced to a fine of 100,000 RUB (1369 EUR) on 13 January 2023);
- showing two anti-war posters (reading «No to shameful war» and «For the ruins of Mariupol, we piled Ukraine with corpses?») (**Andrey Sorochkin**, sentenced to a fine of 200,000 RUB (3333 EUR) on 20 September 2022).

Another case that demonstrates that the same actions can be viewed as different violations of Russian law is the case of Stepan Sitnik. According to the investigation, in April 2022, he painted over graffiti in the shape of the letter Z with the inscription «We do not abandon our own» and the St George's ribbon. A **criminal case** was then opened against him on the charges of «rehabilitation of Nazism» (Article 354.1 of CC). In September 2024, he was sentenced to a fine of 1,200,000 RUB (12,225 EUR).

Notably, in December 2023, Moscow's Tverskoy district court sentenced poet Artem Kamardin to seven years of imprisonment; another defendant, Yegor Shtovba, was sentenced to 5.5 years of imprisonment. They were tried for reading anti-war poems at the «Mayakovsky Readings», a performance during which young poets gather on Triumfalnaya Square in Moscow and read their poems. After the performance, Mr Kamardin's apartment was **raided**, his roommates were beaten up and threatened with rape, and the defendant himself was raped with a dumbbell. The poets were found guilty of calling for activities against state security (part 3 of Article 280.4 of the CC) and incitement to hatred or hostility (paragraph 'c' of part 2 of Article 282 of the CC).

The cases of Igor Pokusin and Artem Kamardin illustrate a much larger trend: instead of protecting the authors of peaceful anti-war performances against ill-treatment by law enforcement as stipulated by the ECtHR in the case of *Verzilov and Others v. Russia*, app. no. 25276/15 (para. 92), Russian authorities allow for complete impunity in such cases. This, in turn, has an additional negative effect on the freedom of expression in Russia, since the public will evaluate the potential risk of ill-treatment as something that accompanies a person's exercise of their right to peacefully express their dissent.

The aforementioned data illustrates how in criminal and administrative cases involving anti-war performances, Russian authorities consistently fail to recognise that defendants are exercising their fundamental right to freedom of expression. Instead of acknowledging the legitimacy of dissent, Russian authorities open criminal cases that are often politically motivated, aiming to suppress opposition and stifle public debate. The charges brought against individuals for voicing anti-war sentiments are frequently disproportionate, with harsh punishments that far exceed the nature of the alleged offence. At the same time, the

authorities fail to provide adequate protection from ill-treatment by law enforcement during the apprehension and detention of anti-war protestors. This pattern of criminalisation and impunity reflects a broader effort by the state to silence criticism and maintain control over public discourse, particularly in times of political and social unrest.

Persecution of environmental activists

Bryan and others v. Russia case concerned the criminal prosecution of Greenpeace activists for their environmental protest in 2013. Since then, the situation has not improved as the Russian authorities have continued to suppress environmental protests and persecute activists. The authorities initiate administrative and criminal cases against environmental activists for their protests and other similar actions. When considering such cases, the national courts fail to assess the necessity and proportionality of the interference with freedom of expression.

For example, in 2024, in Bashkortostan, several major protests took place in response to the prosecution of Fail Alsynov, an activist who was fighting for environmental rights in the region. Four years earlier, in August 2020, protests broke out at Kushtau hill against the development of a limestone deposit, **accompanied** by police violence and arrests. Ultimately, the protests led to the subsequent suspension of all work and the closure of the project. Fail Alsynov was one of the activists in support of Kushtau hill. In 2023, he also joined the residents of Ishmurzino village in Bashkortostan opposing plans by gold miners to begin developing deposits near their village. He was speaking in Bashkir language at the public assembly of the village, where the residents demanded that the Bashkortostan authorities not issue licences for exploration and development of mineral resources without the consent

of people's assemblies. As a result, the head of Bashkortostan filed a complaint against Alsynov with the prosecutor's office.

On 12 October 2023, Fail Alsynov was arrested on charges of inciting hatred (part 1 article 282 of the Criminal Code) against people of Armenian, Caucasian and Central Asian nationalities as the authorities interpreted as a slur the expression «kara halyk» in Bashkir language, which he used in his speech. On 17 January 2024, he was sentenced to 4 years in prison.

The prosecution of Fail Alsynov has led to several mass protests in Baymak (15 and 17 January) and Ufa (19 January) in his support. According to the protesters, the attendance reached about 10 thousand people. Authorities brutally dispersed the rallies. Riot police used batons against the crowd, which responded by throwing snowballs, gloves and hats. There were reports of authorities using chemical irritants, smoke and stun grenades.

According to OVD-Info, 81 protesters have currently been prosecuted with criminal offences, facing several years in prison. Moreover, at least 395 administrative cases were brought against protesters. Two protesters died.

The persecution of Fail Alsynov and protesters in his support in Bashkortostan is not the only example of pressure on environmental activists. Such environmental protests and campaigns most often take place in the regions of Russia. Driven by the economic benefits of industrial projects, authorities seek to suppress such public events and punish activists for their activities. They fail to take into account the freedoms of expression of the activists, as well as to assess the proportionality of the punishment as is evident from Fail Alsynov's case. Therefore, Russian authorities fail to implement the general measures in *Bryan and others v. Russia* case.

III. RECOMMENDATIONS

We kindly ask the Committee of Ministers to recognize that Russian authorities have failed to implement the general measures in these cases and to indicate to the Russian authorities the following measures of implementation:

- put an end to the practice of suppressing dissent, including statements critical of government policies and specific decisions of government bodies, as well as statements concerning environmental issues;
- repeal articles of the Criminal Code that are contrary to freedom of speech and put an end to the practice of using other articles of the Criminal Code for prosecution on political grounds;
- end the prosecution and release all those who have been prosecuted for the legitimate expression of opinion; grant an amnesty for all individuals convicted under the articles of the Criminal Code which contradict the freedom of expression;
- ensure that any person who exercises their right to freedom of expression is not subjected to physical or mental violence by state agents or other individuals and groups authorised to perform public functions. Ensure that those responsible for the violence are held accountable;
- end the practice of using hate speech by state officials against opposition activists, inciting violence against them;
- ensure that national courts and law enforcement authorities always assess the necessity and proportionality of interference with freedom of expression;
- end the practice of criminalising formal violations during public events that do not result in actual damage to safety, property or rights of others. Ensure that punishment for formal violations under the CAO is not excessive;
- conduct training on issues of restricting freedom of expression for judges and law enforcement officials with the involvement of independent experts and NGO.