



DEFENDING FREEDOM
OF EXPRESSION AND INFORMATION

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The Russian Federation: Journalists under attack

Overcoming a 'policy of impunity' and preventing crimes against freedom of expression

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Executive Summary

For journalists, the Russian Federation remains one of the most deadly countries in the world. This report examines the dangers faced by journalists across the Russian Federation, which hamper them in the free and effective pursuit of their professional duties.

In particular, the report focuses on the high level of impunity for crimes against journalists, ranging from threats and attacks to murder, and the consequences not only for the journalistic community but for Russian society as a whole. The creation of a climate of fear, the widespread practice of self-censorship and restrictions on the flow of information together stunt the development of an informed and engaged public that is able to exercise its human rights (including the rights to freedom of expression and to information) as well as participate actively in the establishment of genuine democratic governance.

As its framework the report has taken the 2012 Joint Declaration on Crimes against Freedom of Expression (hereafter the Joint Declaration). One of the few international standards to adequately outline the importance of journalists' safety and security, the Joint Declaration places the onus of responsibility for protecting journalists on the State. How Russian Federation matches up to the Joint Declaration is considered from an international perspective by Dunja Mijatović, OSCE Representative on Freedom of the Media (who was one of the four co-signatories to the Joint Declaration) and from within the country by Nadia Azhgikhina, Secretary of the Russian Union of Journalists.

ARTICLE 19's report compares the Joint Declaration as an international standard with the reality of how crimes against journalists are dealt in the Russian Federation. Journalists have regularly been the victims of work-related attacks and killings since 2000. They have also been the target of threats, arbitrary arrests, criminal prosecution and imprisonment. They have been harassed and their equipment and property has been confiscated and/or damaged. While there have been arrests and prosecutions in some of the cases we examine, not one has been fully solved; none of the instigators and only a few of the apparent perpetrators have been brought to justice.

ARTICLE 19 also focuses its attention on the North Caucasus, which in recent years has become the deadliest region for journalists in the Russian Federation, with the highest number of murders concentrated in a single republic, Dagestan.

This report examines the cases of ten journalists who have been threatened, attacked and, in some cases, murdered over the past six years because of their investigative work and publications: **Anna Politkovskaya, Mikhail Afanasyev, Akhmednabi Akhmednabiyev, Hadjimurad Kamalov, Natalia Estemirova, Mikhail Beketov, Elena Milashina, Magomed Yevloyev, Maksharip Aushev and Kazbek Gekkiyev.** One of these journalists was killed while in police custody, another died as a result of injuries sustained during an attack, a third may have been murdered simply because he was the face of official news in the region. Together their cases are emblematic of the way in which the Russian authorities at every level have reacted to these serious "crimes against freedom of expression".

Setting these ten different cases against the principles and standards set by the Joint Declaration, this report points to major gaps in the protection of the right to freedom of expression, and to opportunities for improving the protection of journalists in the Russian Federation. In addition, the report examines and compares international and national legal standards with regards to the safety and security of journalists.

The foreword of this report is written by Lydia Cacho, an ARTICLE 19 board member and investigative journalist, whose own work has made her the target of significant harassment and violence in her native Mexico. The experience of working with endangered journalists in Mexico led ARTICLE 19 to develop its Global Protection Programme, which currently provides safety and security training for journalists around the world, including Russia, as one of its key activities.

The report contains a number of recommendations: to the authorities of the Russian Federation, to the international community, and to other key stakeholders, such as civil society organisations and media groups. While these recommendations largely reflect the principles of the Joint Declaration, they also take into account the specificities of the cases examined as part of this report. We hope that renewed efforts to investigate these cases will end the current vicious cycle of impunity by bringing the perpetrators and instigators of these “crimes against freedom of expression” to justice.

Recommendations

ARTICLE 19 recommends the Russian Federation to incorporate in full the principles outlined in the **Joint Declaration** so as to ensure the safety and security of journalists, and reduce the likelihood of crimes against freedom of expression being perpetrated in the future.

ARTICLE 19's recommendations

To the Russian authorities: to adopt all necessary political and legal measures to protect journalists and to defend the right to freedom of expression. More specifically the Russian authorities should:

- publicly condemn attacks, deaths and disappearances without prejudice, and refrain from any negative propaganda about the journalist in question;
- put in place appropriate and acceptable protection mechanisms for journalists under threat;
- Establish an independent body responsible for investigating crimes against freedom of expression, which is not linked to regional or federal authorities;
- design and implement an effective policy to promote and protect journalists, enabling them to work in a free and safe environment;
- Ensure that any threats, attacks or other forms of violence against journalists, including murder, are considered in the first instance as likely to be connected to the execution of their professional duties, and therefore crimes against freedom of expression, unless otherwise established;
- train their public officials, especially those working in law enforcement, on how to offer an effective and rapid response when a journalist is threatened, including emergency measures (safe houses, etc.) to protect him or her from even greater harm;
- Make public information regarding investigations into crimes against freedom of expression, including those against journalists, in a transparent and timely fashion;
- Take into consideration and properly review information provided as a result of investigations carried out by others, whether it be the victims' colleagues or other interested parties;
- Remove statutes of limitations on crimes against freedom of expression.

To the Federal Investigative Committee:

In the case of Anna Politkovskaya's murder:

- Renew and focus efforts to investigate who instigated the murder of Politkovskaya, in an independent, speedy and effective manner;
- Ensure future trials are conducted in a proper and timely manner, taking into consideration the victim's rights and interests, i.e. those of Politkovskaya's family, as prescribed by Article 6 of the Code of Criminal Procedure.

In the case of Mikhail Afanasyev:

- Officially classify the 2009 attack against Afanasyev as a crime against freedom of expression, which should be subject to either unlimited or extended statutes of limitations (beyond the current two years);
- Renew the investigation into the 2009 attack against Afanasyev in an independent, speedy and effective manner, with the aim to bring the perpetrators and instigators to justice;
- Refrain from legal threats, including through the use of criminal defamation charges.

In the case of Akhmednabi Akhmednabiyev's murder:

- Ensure the investigation into the murder and previous attempted murder of Akhmednabiyev is carried out in an independent, speedy and effective manner.

In the case of Natalia Estemirova's murder:

- Renew efforts to investigate Estemirova's murder by:
 - Establishing an independent committee to review the investigation to date and focus on finding the instigators and perpetrators of Estemirova's murder and bring them to justice;
 - Taking into account the evidence presented by Novaya Gazeta, Memorial and International Federation for Human Rights (FIDH) in their independent investigation published in 2011;
 - Publicly providing clear evidence for the current official version of events. In particular demonstrating Alkhazur Bashayev's involvement in Estemirova's murder.

In the case of Mikhail Beketov:

- Renew the investigation into the 2008 attack against Mikhail Beketov, fulfilling the promise made in January 2012 by Prime Minister Putin that he would talk to Alexander Bastrykin, the head of the Investigative Committee, to ensure that those involved in the attack on the editor would be found and charged.

In the case of Elena Milashina:

- Initiate a judicial review of the conviction of the alleged suspects in the attack, taking fully into consideration testimony by Elena Milashina and other witnesses;
- Refrain from legal threats, including accusations that Elena Milashina made the attack up to increase her profile.

In the case of Hadjimurad Kamalov's, Magomed Yevloyev's, Maksharip Aushev's and Kazbek Gekkiyev's murders:

- Renew efforts to investigate these murders by:
 - Acknowledging these murders as a crime against freedom of expression, prioritising them as such and redoubling efforts to apprehend the instigators behind them.

To the inter-governmental organisations and the international community:

- Prioritise the protection of journalists as part of their human rights concerns in their respective negotiations and discussions with the Russian Federation;
- Assist the Russian Federation to comply with its international human rights obligations under international law, including following up on the implementation of relevant decisions and judgments of international human rights bodies such as the European Court of Human Rights and the United Nations Human Rights Committee.

To civil society and media organisations:

- Continue to monitor the situation with regard to the protection of journalists and the right to freedom of expression in the Russian Federation, in particular combining their efforts in support of investigations into attacks and ill treatment of journalists and raising their concerns not only at the national level, but also at bilateral, regional and international levels, and using new technology;
- Consolidate documentation, for example through a central website/portal, enabling the provision of information at the national and international levels to the general public, which should be further engaged and encouraged to take part in demonstrations or campaigns aimed at combating and eliminating impunity;
- For media organisations—provide adequate safety and self-protection guidance to their employees, giving them security equipment as necessary, and offering training to both their permanent and freelance employees.

Foreword

*“In the dark times
Will there also be singing?
Yes, there will also be singing
About the dark times”*
Bertolt Brecht

In an interview three days after the assassination of our renowned colleague Anna Politkovskaya, the President of Russia Vladimir Putin stated that the journalist and activist's political influence was minimal. With an air of disdain, he went on to say that Anna, whose work had been internationally acclaimed, was better known in the *small* circle of Human Rights than in Russia's mass media. With statements like these, the President displayed his systematic, overt contempt for Human Rights and journalism. What he forgot to say, of course, was that Politkovskaya's name had been banned from Russian state-controlled media on the orders of his own Cabinet. Controlled by clientelism through extraordinary advertising payments, threats or simply deals of political expediency, certain media were clearly prepared to sell out their principles in this vast, complex country.

Before her death, Anna had become a symbolic figure in peace journalism. Her work as a reporter and investigator led her almost naturally to intervene as a mediator in the negotiations to rescue people taken hostage by Chechen separatists in Moscow. This never affected her outspokenness or journalistic edge though. Her detractors – like those of many others around the world – stood firm in their convictions that journalists had to be objective and not get involved in any way whatsoever in Human Rights activism. Editor Mikhail Beketov's case was not that different; through his journalism, he had been fighting for several causes, including the environment. His newspaper had become a champion of transparency, particularly in relation to government spending and the defence of protected areas. After multiple threats, an assassination attempt and a final brutal attack, his death in 2013 left behind a trail of impunity that was very similar to that of Anna's assassination.

Like those of other colleagues around the world, the deaths of Russian journalists – including Natalya Estemirova, also renowned for her professionalism as a reporter and a Human Rights activist – have become a kind of warning to other Russian journalists. Their deaths follow very specific patterns: threats, assassination attempts and ultimately death caused by a paid assassin that the State is seemingly unable to track down and bring to justice in a transparent way.

When a journalist dies in Russia, twenty or so others keep quiet and look away to avoid running the risk of having their lives put in danger because of a job well done. Censorship is born of terror, fear breeds silence, and silence engenders impunity. Therefore, any violent act committed against a journalist is an attack on society as a whole and on all of its freedoms.

Journalists are killed with the intention of taking good journalism to the grave. They are threatened with the intention of sowing terror and obliterating the major efforts being made to build a post-modern

journalism whose mission is renewed from a Human Rights perspective; a tenacious journalism that becomes an opposing force rooted in ethics, transparency and justice.

All journalists threatened and persecuted in Russia share one thing in common: they are an important factor in the moral reconstruction of a Russia that refuses to shake off the mafioso practices of an all-powerful State, of rulers who oppose transparency, who see the right to freedom of expression as an affront to their corrupting customs.

This report helps us understand how the same patterns of violence against journalists in many countries across the globe are repeated over and over again: from Mexico to Venezuela, Cuba and Russia, and from Indonesia to Brazil and Colombia. In our hands, we have a document that will help us understand the global emergency that we are facing: the need to share best practices in defence of better journalism.

This is an undeniably dangerous profession. Prepared to risk their lives so that society can decide on its future, journalists are promoting the exercise of full, effective citizenship, because good post-modern journalism has become a pedagogical instrument that melds Human Rights and freedom of expression for all.

Our colleagues in Russia, who have died or are under threat for telling the truth, are genuine citizens who fulfil their intellectual obligations by paying homage to their countries through truth and criticism.

They are the focus of attention and solidarity, and the world follows them, admires them and listens to them.

Lydia Cacho

Mexican journalist and Board Member of ARTICLE 19
Cancún, Mexico, November 2013.

Introduction

Journalism remains a dangerous profession throughout the Russian Federation, particularly in the regions far from Moscow, central government and international attention. Across the country those exercising their right to freedom of expression, including journalists, media workers and civic activists, are subjected to numerous forms of intimidation and violence.

These include killings, death-threats, disappearances, abductions, arbitrary arrests, prosecutions and imprisonments, harassment, intimidation, and confiscation of and damage to equipment and property. Those who investigate and write about human rights abuses, organised crime, corruption, and other serious forms of unlawful behaviour are frequently threatened and they risk violent attacks if they persist. The perpetrators and instigators of such forms of intimidation include State and non-State actors. They are not brought to justice because a large number of threats are not reported and few of the non-fatal assaults receive more than cursory investigation.

This high degree of impunity for those using violence against journalists increases the level of insecurity and fear within the journalistic community and civil society. This contributes to an overall chilling effect and serves to reinforce self-censorship among the media and civil society. The situation is worsened by the Russian Federation's punitive legislative regime, which offers many opportunities to opponents of a free media to muffle or silence critical voices.

This report highlights the situation faced by journalists across the Russian Federation as they try to carry out their professional duties and viewing their predicament through the lens of the [Joint Declaration on Crimes against Freedom of Expression](#)¹, demonstrates the Russian Federation's obligations to prevent and prohibit violence against journalists and ensure their protection. To date the Joint Declaration is regarded as one of the most specific and standard-setting documents dealing with the protection of those exercising their right to freedom of expression, including journalists, media workers and human rights defenders.

The cases examined in this report (in order of appearance) are as follows:

- **Anna Politkovskaya**, journalist and investigative reporter with *Novaya Gazeta* newspaper, murdered in October 2006 in Moscow.
- **Mikhail Afanasyev**, journalist and founder of *Novy Focus*, an online newspaper, threatened, attacked and prosecuted many times since 2004, based in the south Siberian Republic of Khakassia.
- **Akhmednabi Akhmednabiyev**, deputy editor and political commentator for independent weekly newspaper *Novoye Delo*, and regular contributor to independent regional news website *Kavkazsky uzel*, murdered in July 2013, in Makhachkala, Dagestan.
- **Khadjimurad Kamalov**, journalist and editor-in-chief of *Chernovik* newspaper, murdered December 2011 in Makhachkala, Dagestan.

- **Natalia Estemirova**, human rights defender and correspondent for *Novaya Gazeta* newspaper, murdered in July 2009 in Ingushetia after being kidnapped from Chechnya.
- **Mikhail Beketov**, editor-in-chief of *Khimki Pravda* newspaper; victim of a murder attempt in 2008, died from related injuries in April 2013 in Khimki (Moscow Region).
- **Elena Milashina**, correspondent for *Novaya Gazeta* newspaper, attacked and robbed together with human rights defender Ella Karamyants on the evening of 4 April 2012, in Balashikha (Moscow Region).
- **Magomed Yevloyev**, founder of the website *Ingushetia.ru*, shot and killed in August 2008 while in police custody in Nazran, in the Republic of Ingushetia.
- **Maksharip Aushev**, a businessman and known civil society activist from Ingushetia, who took over *Ingushetia.ru* (later renamed *Ingushetia.org*) after Yevloyev's murder; shot and killed in October 2009, in the Republic of Kabardino-Balkaria.
- **Kazbek Gekkiyev**, a television news presenter for a regional branch of the All-Russia State Television and Radio Company (VGTRK); shot dead in December 2012, in Nalchik, the capital of Kabardino-Balkaria.

Concern about the frequency and extent of violent attacks against journalists, media workers, and human rights defenders in the Russian Federation is largely attributed within the country to the continuing failure of the State to make an adequate response to such incidents. This is known in international human rights law as “impunity”.

The United Nations offers the following definition:

Impunity arises from a failure by States to meet their obligations to investigate violations; to take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished; to provide victims with effective remedies and to ensure that they receive reparation for the injuries suffered; to ensure the inalienable right to know the truth about violations; and to take other necessary steps to prevent a recurrence of violations².

Attacks against journalists silence more than the immediate victim(s). The impact of threats and violence is often felt more widely. As the then Council of Europe Commissioner for Human Rights Thomas Hammarberg noted in 2011, “Impunity creates more impunity. If murders, assaults and psychological violence against journalists prevail, media cannot be free, information cannot be pluralistic and democracy cannot function”³.

This has been echoed by OSCE Representative on Freedom of the Media, Dunja Mijatović: ‘violence against journalists [...] remains a special category of crime, as it is a direct attack on society and democracy itself’⁴.

As it stands the only legal standard protecting journalists currently included in Russian criminal law is Article 144⁵ of the Criminal Code, of which part three was added on 7 December 2011. However it is rare when an investigation into an attack is opened under this article and since its introduction no one has been prosecuted or sentenced for violating part three of Article 144.

Article 144. Obstruction of the Lawful Professional Activity of Journalists:

1. Obstruction of the lawful professional activity of journalists by compelling them to give out information or to refuse to give out it – Shall be punishable with a fine in the amount of up to 80 thousand roubles, or in the amount of the wage or salary, or any other income of the convicted person for a period of up to six months, or by compulsory works for a term of up to 360 hours, or by corrective labour for a term of up to one year.

2. The same act committed by a person through his official position, shall be punishable with a fine in an amount of 100 thousand to 300 thousand roubles or in the amount of a wage/salary or any other income of the convicted person for a period of one year to two years, or by obligatory labour for a term of up to four hundred and eighty hours, or by corrective labour for a term of up to two years, or by compulsory labour for a term of up to two years, or by deprivation of liberty for a term of up to two years with deprivation of the right to hold specified offices or to engage in specified activities for a term of up to three years or without such.

3. The deeds provided for by Parts One or Two of this article accompanied by violence with respect to a journalist, or close relatives thereof, or by damage or destruction of their property, as well as by a threat of using such violence, – shall be punishable by compulsory labour for a term up to five years or by deprivation of liberty for a term of up to six years with deprivation of the right to

By focusing on the ten cases mentioned above and setting them against the principles and standards laid down by the Joint Declaration, this report highlights major gaps and opportunities for improving the protection of the right to freedom of expression and, specifically, for improving the protection of journalists in the Russian Federation.

Methodology

ARTICLE 19 decided to use the Joint Declaration on Crimes against Freedom of Expression, adopted on 25 June 2012 in Vilnius, as a framework for this report. This declaration by four rapporteurs on freedom of expression for four major international and regional organisations⁶ offers a crucial link with the situation on the ground. It demonstrates the shortfalls of the Russian Federation in meeting its international obligations and commitments to protect journalists, and suggests key recommendations based on established international standards.

Using the **Joint Declaration** as a structure for the report, and comparing it with the case studies and the current Russian legislative framework, this report aims to highlight the gap between the situation on the ground and how the Russian Federation attempts to present itself as one of the global leaders of the international community respecting its international human rights obligations.

Overall the report aims to:

- 1) Build local and international support for defence and promotion of freedom of expression in Russia.
- 2) Provide an up-to-date and detailed account (in English and in Russian) of cases of violence against journalists in Russia, with the aim of ensuring continued pressure for the judicial investigations into these cases to deliver justice and for the perpetrators and instigators of these crimes to be brought to justice.
- 3) Highlight the deficiencies of the criminal justice system within the Russian Federation in ensuring protection and ensuring accountability for crimes committed against journalists.
- 4) Create within Russia a greater awareness of the country's commitments and obligations to prevent and prohibit crimes against freedom of expression, including those against journalists, whom it also has a duty to protect.
- 5) Provide targeted recommendations to the Russian authorities, media and civil society, as well as international organisations, members of the international community and other stakeholders to ensure the safety and security of journalists, media workers and human rights defenders working in Russia.

Chapter 1. Is the Russian Federation living up to the standards of the 2012 Joint Declaration on Crimes against Freedom of Expression?

“Despite pledges at the highest level, too many cases of killings of journalists remain unsolved, which has an enormous chilling effect on the media community”

Dunja Mijatović, OSCE Representative of the Media, 2013⁷

What is the 2012 Joint Declaration on Crimes against Freedom of Expression?

On 25 June 2012, four rapporteurs on freedom of expression, together representing the most important international and regional institutions – **Frank LaRue**, United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, **Dunja Mijatović**, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, **Catalina Botero Marino**, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression, and **Faith Pansy Tlakula**, the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, adopted a Joint Declaration on Crimes against Freedom of Expression⁸.

The preamble to the Declaration reads:

- *Emphasising, once again, the fundamental importance of freedom of expression both in its own right and as an essential tool for the defence of all other rights, as a core element of democracy and for advancing development goals;*
- *Expressing our abhorrence over the unacceptable rate of incidents of violence and other crimes against freedom of expression, including killings, death-threats, disappearances, abductions, hostage takings, arbitrary arrests, prosecutions and imprisonments, torture and inhuman and degrading treatment, harassment, intimidation, deportation, and confiscation of and damage to equipment and property;*
- *Noting that violence and other crimes against those exercising their right to freedom of expression, including journalists, other media actors and human rights defenders, have a chilling effect on the free flow of information and ideas in society (‘censorship by killing’), and thus represent attacks not only on the victims but on freedom of expression itself, and on the right of everyone to seek and receive information and ideas;*
- *Concerned about the particular challenges and danger faced by women exercising their right to freedom of expression, and denouncing gender specific crimes of intimidation including sexual assaults, aggression and threats;*
- *Mindful of the important contribution to society made by those who investigate into and report on human rights abuses, organised crime, corruption, and other serious forms of illegal behaviour, including journalists, media actors and human rights defenders, and of the fact that*

the nature of their professions makes them susceptible to criminal retribution, and that they may, as a result, be in need of protection;

- *Condemning the prevailing state of impunity for crimes against freedom of expression and the apparent lack of political will in some countries to address these violations, with the result that an unacceptable number of these crimes are never prosecuted, which emboldens the perpetrators and instigators and substantially increases the incidence of these crimes;*
- *Noting that independent, speedy and effective investigations into and prosecutions of crimes against freedom of expression are essential to addressing impunity and ensuring the respect for the rule of law;*
- *Stressing the fact that crimes against freedom of expression, if committed by State authorities, represent a particularly serious breach of the right to freedom of expression and the right to information, but that States also have an obligation to take both preventive and reactive measures in situations where non-state actors commit crimes against freedom of expression, as part of States' obligation to protect and promote human rights;*
- *Aware of a number of root causes that contribute to crimes against freedom of expression, such as high prevailing rates of corruption and/or organised crime, the presence of armed conflict and lack of respect for the rule of law, as well as the particular vulnerability of some of those who investigate and report on these problems;*

There are few international mechanisms for promoting freedom of expression and protecting journalists. The Joint Declaration is of direct relevance to the Russian Federation as a member-State of the United Nations (UN) and a participating State in the Organisation for Security and Co-operation in Europe (OSCE), through their respective special mandates on freedom of expression.

The Russian Federation has faced significant criticism from international institutions, including the UN, OSCE and the Council of Europe (CoE), for being one of the countries where impunity for crimes against free expression remain.

In his June 2010 report Frank La Rue, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, singled out the Russian Federation (along with Philippines, Somalia, Iraq, Pakistan and Mexico) as one of the most dangerous countries in the world for journalists and said it should “adopt the measures necessary to guarantee the protection of journalists”⁹.

On the fifth anniversary of Anna Politkovskaya's death in 2011, the then CoE Human Rights Commissioner, Thomas Hammarberg, referred to an “atmosphere of impunity” in Russia, which has had “very negative effects on people, including journalists, of course, because people are afraid that they may be apprehended, kidnapped, or killed if they are too active as human rights defenders or journalists”¹⁰.

On the tenth anniversary of the unexplained death in 2003 of Yury Shchekochikhin, a veteran investigator of corruption as a journalist and Duma deputy, Dunja Mijatović, the OSCE Representative on Freedom of the Media, stated she has closely followed the work of the Investigative Committee of the Russian Federation, a federal agency tasked with investigating serious crimes. Acknowledging the

progress the Committee had made, especially in the case of Anna Politkovskaya, she commented that much more remained to be done in order to put an end to impunity. Despite pledges at the highest level, too many killings of journalists remain unsolved, she said, which has an enormous chilling effect on the media community¹¹.

Almost a year and a half has passed since the adoption of the Joint Declaration. Attacks against journalists in the Russian Federation continue, with the latest murder in July 2013. Dunja Mijatović, one of the Joint Declaration co-signatories, as well as, Nadezhda Azhgikhina Secretary of the Russian Union of Journalists, provide insight from an international and local perspective into how the country matches up to the Joint Declaration's principles.

ARTICLE 19 Interview

with Dunja Mijatović, OSCE Representative on Freedom of the Media

ARTICLE 19 (A19): Is Russia living up to the standards of the 2012 Joint Declaration on Crimes against Freedom of Expression?

Dunja Mijatović (D.M): The 2012 Joint Declaration on Crimes against Freedom of Expression addresses the issue of crimes against free expression and focuses on universal solutions to this modern plague. It encourages all governments and other stakeholders to help counter the killings of journalists, as well as the physical attacks and psychological threats they systematically face. It addresses impunity and violence against journalists as direct threats to democracies, and these problems still exist throughout the OSCE region, including Russia. Looking at the whole OSCE region, media freedom is deteriorating and what is missing is political will. Words need to be backed with action.

A19: What are the threats facing journalists across Russia preventing them from freely and effectively carrying out their duties?

D.M: Violence against journalists and the circle of impunity still have an enormous chilling effect on journalistic activities in Russia, in many cases it leads to self-censorship.

Some recent legislative amendments could also lead to restrictions, including the ban on the promotion among minors of “non-traditional sexual behaviour” as well as of speech harming the religious feelings of believers through media. The re-criminalization of defamation in 2012 was a step back and the state-controlled media infrastructure remains an obstacle for the further development of free media.

For all these reasons I welcomed the creation of the Public Service Broadcaster and I hope that it will be the guarantor for balanced and independent reporting without any political and economic interference.

A19: How can journalists' safety be improved, both on an individual practical level and on a governmental level?

D.M: The number one priority should be given to breaking the cycle of impunity in work-related violence against journalists and bringing those responsible for attacks on media professionals to justice.

Violence against journalists equals violence against society and democracy – it should be met with harsh condemnation and prosecution

of the perpetrators. There can be no improvement without an overhaul of the very apparatus of prosecution and law enforcement, starting from the very top of the government pyramid.

Journalism is a peaceful profession of paramount importance for a democratic society and governments are responsible not only to physically protect reporters in danger, but also to establish a climate of prohibition on any attacks on the free press.

In Russia such a climate does not yet exist. At the same time, it is encouraging to see that authorities at the top of government are beginning to take a proactive role in solving murder cases against journalists. The guilty verdict and subsequent sentencing of perpetrators of the 2009 assassination of *Novaya Gazeta* journalist Anastasia Baburova and swift investigation of the murder of Kazbek Gekkiyev are signs of certain progress, but much more needs to be done. The

perpetrators should be brought to justice and the authorities must take pre-emptive measures to ensure that journalists can carry out their duties without fear of retribution.

I do hope that the perpetrators and masterminds of the murders of Anna Politkovskaya, Paul Klebnikov and Yury Shchekochikhin – to name only a few of those journalists who paid the ultimate price for their investigative reporting – will soon be identified and prosecuted. I also hope that the investigations into the attacks on Mikhail Beketov and Oleg Kashin will eventually bear fruit.

There is no true press freedom as long as journalists have to fear for their lives while performing their work. The OSCE commitments oblige all participating States to provide safety to journalists, and I will do my best to pursue this goal with the mandate I was given and with all the professional tools I have at my disposal.

Opinion Piece

by Nadezhda Azhgikhina, Secretary of the Russian Union of Journalists

Journalists in Russia face diverse and multiple challenges, including intimidations, attacks, unfair dismissal, complaints from courts for moral damages and defamation, sudden office inspections, confiscation of equipment and all possible forms of censorship, from direct control of the media owner (state institutions or businesses) to self-censorship which is well spread. All these forms of violence against journalists and media rights are presented in the [Russia – Conflicts in the Media](#) data base Conflicts in the Media, which in the future could become a vivid tool of public control on journalists' rights and implementation of the law.

Russian media law has changed since Vilnius [when the Joint Declaration was adopted in June 2012] defamation was re-criminalized despite the protests of journalists and civil society. At the same time, those articles in the Criminal Code that are devoted to protection of journalists do not work properly, so implementation of already existing legislation is not effective. One more difficult problem is corruption in the media community, lack of solidarity in protection of ethical standards and protection of journalists' rights. Low legal and social status in society and low salaries of most of media workers as well as lack of economic independence in many media

sectors is also a challenge. Killings of journalists take place in Russia now only in the North Caucasus, but attacks are still wide spread, and the general public is still not enough aware of journalism as a public good.

One could say that after Vilnius, on the one hand the general situation has not changed much, despite all the professional discussions, international gatherings and calls to end impunity. On another hand, the journalist community is slowly but nevertheless moving towards building real solidarity and a closer cooperation with international organizations in raising awareness of solidarity as the only way to improve the media field. Recent projects and synergy of media lawyers, journalists and activists have been really fruitful and shows the way for the future- education, joint efforts and campaigns.

Another important new trend is in fact that some regional authorities have started developing programmes on safety and support of journalists in danger, or the families of those killed. In some regions dialogue between journalists and law enforcement has also started. It should be developed.

What should be done? First - education, education and again education and professional training in legal issues, safety issues and ethical issues, mid-career trainings, projects for youth and media education for all players in the media field including policy makers and state officials. Development of education and raising awareness in ethical and quality standards in new media and combating hate speech, are also important.

Cooperation and more pro-active activities between international and Russian organisations are crucial. Data base filling and expanding of monitoring is also important. It is key to develop and support dialogue between the journalist community, state officials (including law enforcement), general public and civil society - dialogue on the most burning issues, and promotion of the message that journalism is providing public good for society as a whole, including all citizens, and the country, and that a democratic society needs free and high quality and responsible press most of all.



Chapter 2. Journalists under Attack in the Russian Federation: the Joint Declaration on Crimes against Freedom of Expression in Theory and in Practice

“We cannot talk about protection of journalists as long as those cases that happen today of violence against journalists’ remain uninvestigated with no punishment to those that are responsible. It gives a message that it is acceptable to harass or to make violence against journalists and every case that remains in impunity, is not one more but many more that will occur”¹²

- Frank La Rue, UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, April 2013.

The Russian Federation is a country where those that dare to speak out, dissent and challenge the status quo – whether that be at a local, regional or national level – have often faced reprisal as a result. At the forefront of this are journalists who over the last twenty years have documented the country’s uncertain and unstable transition from its Soviet past to its present state.

Along the way the country has faced a multitude of different conflicts: political conflicts, including the disintegration of the Soviet Union and the emergence of a new political elite with factions wrangling for power that culminated in the October 1993 putsch and have been ongoing since the Yeltsin era; economic conflicts, including those resulting from the transition from a state run economy to a capitalist system and the effects of privatisation of state assets; and military conflicts, including the two Chechen armed conflicts (1994–1995; 1999–2009) and the 2008 war with Georgia¹³.

Media coverage of these issues and associated topics – including, but not limited to, pervasive levels of corruption; criminality in governing bodies; human rights abuses, particularly by armed forces and armed opposition groups; criticism of the authorities’ handling of terrorist attacks, such as the Moscow Theatre Siege (2002) and Beslan hostage crisis (2004); the destruction of places of environmental importance, notably Khimki Forest; and more recently the mass anti-government protests (2011–2) and subsequent legal crackdown on civil society – have courted the disdain of those in power.

Despite being enshrined in the 1993 Russian Constitution the right to freedom of expression in the Russian Federation has been under constant attack. The last decade, whilst President Vladimir Putin has been in power, has been marked by an increasingly shrinking space for independent and critical journalism. At the start of 2013, Reporters without Borders’ 2013 World Press Freedom Index ranked the Russian Federation 148 out of 179 countries¹⁴, in terms of press freedom, a fall of six places from the previous year.

Since the return of Vladimir Putin to the Presidency in May 2012 a whole raft of legislation suppressing the rights to freedom of expression, assembly and association was adopted. This includes repressive legislation on demonstrations, blasphemy, non-commercial organisations and treason adopted in response to a rise in civil society actions and protests criticising the Russian authorities¹⁵.

Those outlets, whether in print or online, that have continued to strive to provide their readers with impartial, informed and critical reporting have faced and continue to face a number of obstacles – from restrictions on publishing houses; expensive criminal defamation suits; declining advertising revenue; often resulting in forced self-censorship.

Nevertheless, it is the individual journalists themselves that face the most risks, who suffer from violence, death-threats, disappearances, abductions, hostage takings, arbitrary arrests, prosecutions and imprisonments, harassment, intimidation, deportation, and confiscation of, and damage to, equipment and property. Some, sadly, pay the ultimate price for their profession – with their lives.

Even though it is problematic to establish the exact number of journalists killed in the Russian Federation because of their professional activities, there is overwhelming evidence that this number is high. No official figure is available, as the Russian government does not publish relevant statistics and non-governmental organisations¹⁶ use varying indicators and information systems to log and monitor developments. By November 2013, the database held by the Committee to Protect Journalists (an NGO promoting press freedom worldwide) states that at least 56 journalists died in work-related killings or in combat situations in the Russian Federation since 1992¹⁷. In figures relating solely to murder and manslaughter, that include not just journalists, editors, photographers and cameramen but also other media workers and directors of media enterprises the Glasnost Defence Foundation and Centre for Journalism in Extreme Situations list over 180 deaths since 1993, but in only 26 of these cases was the link with professional journalistic activities as a motive confirmed¹⁸. It is clear that the lives of journalists in the Russian Federation are at major risk due to the nature of their work. None of the instigators of these fatal attacks and relatively few of the perpetrators has been brought to justice.

No matter the difference in these estimates, it is clear that the lives of journalists in the Russian Federation are at major risk due to the nature of their work. None of the instigators of these fatal attacks and relatively few of the perpetrators has been brought to justice.

While the instigators of such attacks come from a variety of backgrounds with various intentions, as numerous as the issues that the journalists are writing about, it is ultimately the impunity with which these threats, attacks and murders are carried out that has resulted in a chilling environment for freedom of expression. The Joint Declaration makes clear that it is the State's role to prevent and counter act such impunity. Yet so far the Russian Federation has failed to adequately address the impunity for violence, threats, attacks and murders against journalists.

Each aspect – the threat of an action, such as harassment, attack or murder, being a carried out; the action itself; as well as the impunity for the action – has a negative effect on the ability of

journalists to continue their work and must be addressed for the environment to improve and for freedom of expression to be safeguarded.

The **Joint Declaration against Freedom of Expression** addresses these aspects through six key elements:

1. General Principles of the Joint Declaration
2. Obligations to Prevent and Prohibit
3. Obligations to Protect
4. Independent, Speedy and Effective Investigations
5. Redress for Victims
6. Role of other stakeholders

This chapter will look at each of these elements in comparing and contrasting the Joint Declaration's principles in theory to how cases of crimes against freedom of expression are dealt with in Russian in practice. This will be demonstrated in this chapter through the use of seven case studies – while not exhaustive, the cases chosen are emblematic in that they illustrate the way the Russian authorities have reacted to threats, attacks and murders.

Joint Declaration: (1) General Principles

The General Principles of the Joint Declaration underline the fact that crimes against freedom of expression are “particularly serious inasmuch as they represent a direct attack on all fundamental rights”. They differ from ordinary crimes because they do not only affect the immediate victim(s). Therefore, they must also be dealt with differently. The response of the State to such attacks on freedom of expression is crucial. State officials should send a clear message that such acts will be not be tolerated. Failure to do so emboldens those who organise and perpetrate such acts: it encourages them in the belief that they can continue to act with impunity, thereby further undermining the right to freedom of expression.

A HIGH-PROFILE MURDER

Probably the best known case, both nationally and internationally, of a murdered Russian journalist, is that of **Anna Politkovskaya**. A special correspondent of the newspaper *Novaya Gazeta*, Politkovskaya was shot dead on 7 October 2006. She was a sharp critic of the Russian authorities and covered issues such as torture, official corruption, and human rights abuses in the North Caucasus. Despite her extensive reporting she was never interviewed on state-controlled national television, the medium by which most Russians get their news¹⁹. On the evening of Politkovskaya's murder this ban on mentioning her name was lifted and her murder was reported on nationwide TV.

Neither the Russian government nor President Putin, who was celebrating his birthday that day, made any immediate response. It was only three days after the murder, during a visit to Germany, that President Putin commented on the journalist's death. Denying any knowledge or involvement of the Russian authorities the Russian President suggested that the killing had been orchestrated to cause a wave of anti-Russian sentiment abroad. He stated that “...perhaps because Ms Politkovskaya held very radical views she did not have a serious influence on the political mood in our country... in my

opinion murdering such a person certainly does much greater damage from the authorities' point of view, authorities that she strongly criticized, than her publications ever did"²⁰. This dismissive suggestion was contradicted a few weeks later in an opinion poll indicating that Politkovskaya was widely known through her newspaper articles and contributions on radio²¹.

President Putin instructed Russian prosecutors to exclude politicians and other government officials as potential suspects. "For current authorities in general and Chechen authorities in particular, Politkovskaya's murder did more damage than her articles," President Putin said. "I cannot imagine that anybody currently in office could come to the idea of organizing such a brutal crime"²².

Such a response by the Russian President implied that Politkovskaya's death seemed of little or no importance to the state and, if anything, rather a matter of irritation. It took several days before President Putin publically condemned the murder and made a commitment to ensure a proper investigation of her death. This slow and uncertain reaction, by the President and other Russian officials, is contrary to the recommendation of the very first General Principle of the Joint Declaration:

- a. *State officials should unequivocally condemn attacks committed in reprisal for the exercise of freedom of expression and should refrain from making statements that are likely to increase the vulnerability of those who are targeted for exercising their right to freedom of expression.*

Such clear and prompt condemnation is an important indication that the authorities are taking a case seriously, and are treating it as a crime against freedom of expression. It sends a signal to those responsible that they will be held to account, giving greater hope for justice.

Spotlight On: Anna Politkovskaya

An experienced and professionally trained journalist, Anna Politkovskaya became internationally celebrated after she moved to the independent Moscow newspaper *Novaya Gazeta* in 1999 and began covering the second conflict in Chechnya (1999–2005). A prolific reporter, she fearlessly exposed the human costs of the renewed fighting for all concerned and became increasingly involved in wider activities related to the Chechen conflict²³.

In 2002, she flew back to Moscow from an award ceremony in the USA in an attempt to mediate and free hostages at the Dubrovka theatre siege by Chechen separatists in Moscow. It was after this that she was no longer mentioned on nationwide TV channels. She reported on topics that others avoided and broke the main taboo of all by condemning President Putin.

Threats/Harassment: During the last seven years of her life Politkovskaya was constantly threatened. On occasion she spent time abroad to avoid this intimidation; for a while she was provided with police protection in

Moscow; she always returned to the Russian Federation and disliked the degree of supervision involved in any protection provided. In 2004, on a flight to Rostov Politkovskaya was poisoned, as she attempted to travel to Beslan in North Ossetia to free

schoolchildren and others who were held hostage there.

Death: Politkovskaya was killed on 7 October 2006, inside her apartment block in Moscow. A gunman, waiting in the stairwell entrance, followed her into the lift and fired four times from a gun fitted with a silencer, killing her immediately and leaving a gun next to the body. CCTV cameras near the building captured images of a slender man of average height, clad in dark clothing, his face obscured by a baseball cap.

Investigation: In the seven years since Politkovskaya's murder, there have been two trials of those involved in organising her murder. Nearly a year after her death, on 27 August 2007, Russian Prosecutor General Yuri Chaika told a Moscow news conference that ten suspects were in custody in connection with the crime²⁴. Authorities issued an arrest warrant for an eleventh person two days later. Chaika said the suspects included current and former police and Federal Security Service (FSB) officers, along with members of a Chechen-led criminal gang that "specializes in contract killings": many of them have since appeared in court. At the same time Chaika echoed President Putin's remarks of a year earlier, and suggested the murder plot had been hatched overseas "to destabilize the situation in the Russian Federation, discredit the authorities, and change the constitutional system"^{25 26 27}.

Trials: The first trial was open to the public and media and ran from November 2008 to February 2009 when the jury acquitted all the suspects: the brothers Ibragim and Dzhabrail Makhmudov (accused of spying on Politkovskaya) and a former Moscow police officer from the organised crime unit Sergei

Khadjirkurbanov²⁸. Another Makhmudov brother, Rustam, who had been identified as the gunman, was then at large. After the verdict the Politkovskaya family lawyers Anna Stavitskaya and Karinna Moskalenko criticised the poor preparation of the case by the prosecution and, calling for a re-trial, demanded that this time both perpetrators and instigators should be identified and prosecuted together²⁹. (Under the present Criminal Code Murder has a 15-year statute of limitations.)

In 2012 Dmitry Pavlyuchenkov, a witness at the first trial, was prosecuted as a major participant in organising the murder. As head of Surveillance for the Moscow city police, the lieutenant-colonel ordered his subordinates to shadow Politkovskaya to determine her schedule and usual travel routes³⁰.

Pavlyuchenkov, as a serving law-enforcement officer, was tried before a panel of judges at hearings often held in camera. He pleaded guilty and, after entering into a plea bargain, was sentenced to 11 years in strict regime penal colony. Pavlyuchenkov stated that he had received 150,000 dollars to organise the surveillance of Politkovskaya but did not disclose who ordered and funded the killing. The person caught on video surveillance cameras at the entrance to the building where Politkovskaya lived, looked like Rustam Makhmudov, he told the court, but he could not be certain³¹.

Family and colleagues were dismayed by the ruling³². Lawyers for Politkovskaya's family appealed and subsequently requested for the plea bargain to be annulled³³. The family believes that investigators failed to uncover the actual role that Pavlyuchenkov played in the murder and they demanded his retrial,

but the request was denied by the authorities³⁴.

Following the verdict against Pavlyuchenkov, investigators repeated the “foreign provocation” version of the murder, suggesting that exiled tycoon Boris Berezovsky and Chechen envoy Akhmed Zakayev ordered the killing; an assertion dismissed by Politkovskaya’s representatives as unfounded and politically motivated. Sergey Sokolov, the deputy editor of *Novaya Gazeta*, stated the Pavlyuchenkov did everything to prevent the apprehension of the true key culprits³⁵ while defense lawyer for the Makhmudov brothers Murad Musayev was similarly disparaging about the conduct of the trial. On 24 July, in a blog for the website of the popular Russian radio station *Ekho Moskvy*,³⁶ Musayev wrote that Pavlyuchenkov was convicted in a speedy trial, without an independent judicial investigation, and his role in Politkovskaya’s murder was significantly downplayed. In late 2012 prosecutors made public claims that the Chechen criminal boss and uncle of the Makhmudov brothers Lom–Ali Gaitukayev had

served as the main organizer and liaison between the masterminds and Pavlyuchenkov³⁷, a suggestion made several years earlier by *Novaya Gazeta*. (He was already serving a sentence for another offence.) The two Makhmudovs were again detained, and now joined by their brother Rustam, and former police officer Khadzhikurbanov. Trial proceedings against these suspects started on 24 July 2013.

Current status: Initially this third trial was boycotted by Politkovskaya’s children Vera and Ilya³⁸. This time, they and their lawyers stated, they had not been properly consulted over the selection of the jury and the organisation of the trial proceedings, thereby violating their legal rights as victims³⁹. In theory the Russian criminal justice system should prioritise the victim’s rights and interests, as prescribed by Article 6 of the Code of Criminal Procedure⁴⁰. After the current trial had been postponed six times the entire jury was dismissed on 14 November 2013 with the selection of a new jury planned for 14 January 2014⁴¹.

Recognising the wider impact that crimes against freedom of expression have on society, the General Principles go on to spell out the legal and practical implications. The murder of such a journalist deprives people whose fundamental rights are being violated of a voice. Therefore:

- b. States should reflect in their legal systems and practical arrangements, as outlined below, the fact that crimes against freedom of expression are particularly serious inasmuch as they represent a direct attack on all fundamental rights.*
- c. The above implies, in particular, that States should:*
 - i. put in place special measures of protection for individuals who are likely to be targeted for what they say where this is a recurring problem;*
 - ii. ensure that crimes against freedom of expression are subject to independent, speedy and effective investigations and prosecutions; and*
 - iii. ensure that victims of crimes against freedom of expression have access to appropriate remedies.*

Anna Politkovskaya persistently spoke out on issues of public importance in the face of severe pressure and spent much of her later life subject to threats and harassment. She could clearly be identified as someone at risk as a result of her work. If special protection measures of the kind the Joint Declaration says “States should put in place” had been provided, Politkovskaya’s murder might have been prevented.

By stating at the outset that neither the federal nor Chechen authorities could have been involved in the murder, President Putin cast a shadow over the official investigation, impeding its independence. Nevertheless, two trials, in 2008–9 and 2012, revealed much about the organisation of the killing and the identities of those involved, providing information confirmed by *Novaya Gazeta*’s own investigation into the murder of its correspondent. The pressure of publicity, national and international, ensured that the prosecution advanced further than in other comparable cases in Russia.

Yet even after police lieutenant colonel Dmitry Pavlyuchenkov was convicted in 2012, on charges of helping to organise the murder (for which he was paid 150,000 dollars), those who ordered and funded Politkovskaya’s killing were not identified and charged. Contrary to the demands of the Politkovskaya family lawyer after the first unsuccessful trial, the alleged instigators were not added as accused in the latest trial which opened in July 2013. (*See Spotlight On: Anna Politkovskaya, p. 22*).

‘ROUTINE’ HARASSMENT

The difficulty with which such a high-profile case has reached its present unsatisfactory state is an indication of the dangers faced by journalists working elsewhere in the Russian Federation. With partial justice at best (the conviction of perpetrators) for murdered journalists, the ever-present menace of violent reprisals is an effective form of intimidation and is frequently used, in the form of threats or targeted assaults, as one of a range of measures to discourage independent voices.

Nevertheless there remain journalists who, despite continuous attacks, including on their life, see it as their public duty to continue to speak out. One such journalist is **Mikhail Afanasyev**, based in Abakan, capital of the south Siberian Republic of Khakassia. The constant harassment to which Afanasyev has been subjected over the past ten years illustrates what goes on outside Moscow and a few other major Russian cities.

Afanasyev first came to national prominence at the age of 26 when he exposed the hunting of rare species of animal in wildlife reserves by local officials in December 2004⁴². After being awarded the first Sakharov Prize for “Journalism as an Act of Conscience”⁴³ the same year, Afanasyev used the prize money set up the *Novy Focus*, an internet newspaper, of which he remains chief editor. This put him beyond the reach of conventional censorship or the risk of dismissal but he has regularly been the target of threats, physical assault, and criminal prosecution.

In August 2009, Afanasyev was charged with criminal defamation and taken to court over his reporting of the disaster at the Sayano–Shushensk hydro–electric power station, but acquitted. These criminal charges were publicly supported by the Minister of Emergency Sergei Shoigu, a further example of

undue influence by a State official on a judicial investigation. Soon after Afanasyev's acquittal he was the victim of a targeted attack near his home, during which he was beaten unconscious but not robbed by unidentified assailants. The police classified the attack as "assault" (Article 116), the least serious form of physical attack, and the statute of limitations for the offence expired in 2011 without anyone being identified or charged.

LEGAL BIAS

Like so many similar assaults on journalists, the indications are that the 2009 attack on Afanasyev was a "crime against freedom of expression". However, it was not treated as such by local law enforcement agencies. Meanwhile, the frequency with which the prosecutor's office has been prepared to bring criminal charges (usually of defamation) against Afanasyev and his newspaper on behalf of local officials – and, most recently, a police colonel – demonstrates a bias in the application of the law against independent media outlets and journalists that may be found throughout Russia.

General Principle (b) of the Joint Declaration says that States should reflect the gravity of the crimes against freedom of expression "*in their legal systems*". The police do not keep separate statistics of crimes against journalists nor is there training to deal with these distinctive offences. Article 144 of the Russian Federation's Criminal Code (in force since 1997) provides for the prosecution of those who "obstruct journalists in the performance of their professional activities". In 2011 this was strengthened by adding harsher penalties for those who use violence against journalists. Russian journalists have frequently requested that this law be invoked in their defence: in 2012 Afanasyev asked, unsuccessfully, that a police officer who broke his camera be charged under Article 144. Regrettably, this law has rarely been applied.

Defamation was largely decriminalised as an offence in 2011⁴⁴, but it was re-introduced fully in the Russian Criminal Code in 2012, despite international condemnation, including from the OSCE⁴⁵, and Afanasyev was one of the first journalists to be charged with the restored offence in December 2012 (*See Spotlight On: Mikhail Afanasyev p. 27*). Its re-introduction should be seen as a serious setback for freedom of expression in the Russian Federation.

In the cases of **Anna Politkovskaya** and **Mikhail Afanasyev** there are serious failings in the current Russian approach to dealing with crimes against freedom of expression, particularly in the three areas the Joint Declaration identifies as ones States should pay particular attention – 1) establishing special protection measures; 2) conducting independent, speedy and effective investigations and prosecutions; and 3) providing redress for victims. The next sections will explore these areas in more detail.

WARTIME REPORTING

The final point in the Joint Declaration's General Principles specifically covers armed conflict. While there are no active armed conflicts at present in Russia, in its relatively short post-Soviet history, it has experienced several armed conflicts, including two protracted internal armed conflicts in Chechnya, as well as a war with Georgia. During these military actions, media workers have been on the front

line covering the stories and some lost their lives as a result. In these instances, the Joint Declaration states:

- a. *In situations of armed conflict, States should respect the standards set out in Article 79 of Protocol I additional to the Geneva Conventions, 1977, which provides that **journalists are entitled to the same protections as civilians, provided they take no action adversely affecting their status.***

This means that journalists, whether working during war or peace time, should be protected and the murders of journalists should be independently, speedily and effectively investigated. There are only two cases where investigations were held and led to a verdict: the 1995 shooting of reporter Natalya Alyakina-Mroszek by a Russian soldier who was convicted in 1996 and then amnestied⁴⁶; and the deaths of cameramen Ramzan Mezhidov and Shamil Gigayev in 1999 which formed part of case brought to the European Court of Human Rights, resulting in 2005 in a verdict of official failure to respect the rights of civilians in wartime and to conduct an effective investigation into their deaths⁴⁷.

Spotlight On: Mikhail Afanasyev

Mikhail Afanasyev writes about social and environmental issues as Chief Editor of *Novy Focus* – an online newspaper. In August 2009, Afanasyev attracted national attention in his coverage of the disaster at the Sayano-Shushensk hydroelectric dam, which resulted in the deaths of over 70 workers. Working with colleagues, one of whom was a local deputy, Afanasyev publicly questioned the official response and spoke on the behalf of victims' relatives to suggest that those trapped in the dam could have been saved and that the official death toll was too low⁴⁸. Local authorities of the Republic of Khakassia pressed charges against Afanasyev for his reports on the incident claiming that they were 'inaccurate'. Sergey Shoygu, long-standing Minister of Emergency Situations, who led the rescue operation, stated that those who spread panic after the disaster should be found guilty⁴⁹.

As part of the investigation, Afanasyev's computer and mobile phone were confiscated. After growing international criticism the charges were dropped and on 26 August 2009 the case was closed. Nevertheless, Shoygu stated that he was 'not asking for the blood' of Afanasyev but still pressed for the editor to apologise.

Attack: Two weeks after the court cleared him of criminal defamation over his reporting of the Sayano-Shushensk disaster Afanasyev was attacked and beaten unconscious around 3pm on 9 September 2009, near his home. He saw two unknown young men approaching and heard one ask the other, "You're sure that's him?" before they began to beat him with wooden rods, trying especially to hit him over the head. On regaining consciousness Afanasyev reported the attack to the police who qualified it under

Article 116 of the Criminal Code as "common assault"⁵⁰.

Investigation: No one was apprehended or charged with the 2009 assault and although the police said they had identified suspects, the authorities failed to launch an independent, speedy and effective investigation. The statute of limitations (two years) for this crime has since expired, so no one could be convicted

even if the attackers were identified and found.

Threats/Harassment: This was not the first time that Afanasyev has been the target of such intimidation and violence. In April 2005 he was threatened with assault if he did not stop publishing articles about officials hunting protected species⁵¹. In June the same year while investigating the use of narcotics in Khakassia he was warned to stop writing on the subject or prohibited substances would be found in his pockets⁵². Afanasyev was also attacked again, in June 2007, by an individual who claimed to be a police officer⁵³.

On 21 December 2012, a criminal case under the reinstated Article 128.1.3 (‘Defamation’) and Article 319 (‘Insult to a government official’) of the Criminal Code was opened against Afanasyev in response to a complaint by Abakan deputy police chief Aleksandr Zlotnikov about an article entitled “You Are a Liar, Col. Zlotnikov!”⁵⁴ Afanasyev’s article was written as a response to an appeal by the

family of a young man imprisoned by police on suspicion of murder. The editor came to the local police station to shoot a TV report but was arrested on orders from the police chief, Colonel A. Zlotnikov, on charges of disobeying an officer of the law⁵⁵.

After interrogating Afanasyev on 21 December 2012, police examined his house, car and office, taking his personal and office computers, memory sticks and CDs⁵⁶. Zlotnikov accused Afanasyev of a “provocation” – of “pushing two pregnant women under the wheels of a police vehicle transporting a detainee”. Two women, who were later summoned in court, denied this version of events and Afanasyev was found not guilty of the “provocation” by the administrative court of Abakan⁵⁷. Despite this decision the trial went ahead⁵⁸, and even though it was clear that Zlotnikov had lied, Afanasyev was still placed under administrative arrest for three days. Only on 6 September 2013 did a justice of the peace in Abakan find Afanasyev not guilty⁵⁹

Joint Declaration: (2) Obligations to Prevent and Prohibit and (3) Obligations to Protect

The cases of Anna Politkovskaya, Mikhail Afanasyev and many other journalists who are the victims of targeted assaults and work-related killings reveal that they have often been the subject of previous threats and harassment. A timely and effective intervention at this stage is an essential part of any strategy to curb crimes against freedom of expression and tackle the climate of impunity. In terms of prevention the Joint Declaration says that:

- a. States have an obligation to take measures to prevent crimes against freedom of expression in countries where there is a risk of these occurring and in specific situations where the authorities know or should have known of the existence of a real and immediate risk of such crimes, and not only in cases where those at risk request State protection.***
- b. These obligations include the following legal measures:*
 - i. the category of crimes against freedom of expression should be recognised in the criminal law, either explicitly or as an aggravated circumstance leading to heavier penalties for such crimes, taking into account their serious nature; and*

- ii. *crimes against freedom of expression, and the crime of obstructing justice in relation to those crimes, should be subject to either unlimited or extended statutes of limitations (i.e. the time beyond which prosecutions are barred).*

Threats against journalists take many forms in Russia. The use of anonymous text messages and emails is common. When threats and harassment are reported to the authorities, little action is taken – of more than 200 threats against journalists recorded by monitors over the past ten years only ten were the subject of criminal investigation⁶⁰.

The most dramatic example of recent years illustrates this official failure to take measures to prevent and prohibit violence against journalists. In September 2009 a death threat was made against sixteen individuals in a leaflet circulated in Makhachkala, the capital of Dagestan. It was purportedly written by the relatives of murdered policemen, accusing those named as supporters of so-called Islamist insurgents and terrorists⁶¹ (*for further details see “The 2009 “Death List” – ‘Who will be next?’ p. 44*). Two of the journalists on that list, **Khadjimurad Kamalov** and **Akhmednabi Akhmednabiyev** have since been murdered, in December 2011 and July 2013, respectively. Pro-active measures were not taken by law enforcement agencies to protect either Kamalov or Akhmednabiyev, who were both at serious risk.

Coming after the assassination of Kamalov, the murder of Akhmednabiyev was a stark demonstration of the incapacity or reluctance of the authorities to act in response to such threats. Deputy Editor of the independent weekly newspaper *Novoye Delo* and a regular contributor to the news website *Kavkazsky uzel* (*see Spotlight On: Akhmednabi Akhmednabiyev p. 45*), Akhmednabiev was killed on 9 July 2013 at 7.30am outside his house in Semender, a suburb of Makhachkala⁶². Akhmednabiyev was frequently threatened and only six months earlier on 11 January 2013 survived a previous assassination attempt in exactly the same circumstances. Appeals to the police and, on one occasion, to the Federal Security Services (FSB) to identify and prosecute those threatening him met with no success and the local prosecutor’s office did not classify the January 2013 attack as an attempted work-related assassination but as a case of property damage. Only following his death were the two attacks linked in the current murder investigation and connected to his journalistic work.

The Joint Declaration reminds States of the obligation to protect through the provision of protection mechanisms, including:

- a. *States should ensure that effective and concrete protection is made available on an urgent basis to individuals likely to be targeted for exercising their right to freedom of expression.*
- b. *Specialised protection programmes, based on local needs and challenges, should be put in place where there is an ongoing and serious risk of crimes against freedom of expression. These specialised programmes should include a range of protection measures, which should be tailored to the individual circumstances of the person at risk, including his or her gender, need or desire to continue to pursue the same professional activities, and social and economic circumstances.*
- c. *States should maintain detailed and disaggregated statistics on crimes against freedom of expression and the prosecution of these crimes, among other things to facilitate better planning of prevention initiatives.*

Such protection mechanisms would help clearly identify those under threat and ensure that protection could be provided for them, as appropriate. As the Joint Declaration indicates, specialised protection programmes need to be based on local needs and challenges.

Within the Russian Federation the republics of the North Caucasus are a region of particular concern, and form the focus of Chapter 3 (p.41). The recent murders of Kamalov and Akhmednabiyev demonstrate the importance of the existence and use of protection mechanisms. While elsewhere it may be problematic to clearly identify individuals at risk, the inclusion of both journalists' on the September 2009 "death list" and the assassination of Kamalov two years later could not have made the danger more apparent.

Khadjimurad Kamalov⁶³ the founder of *Chernovik* newspaper was murdered on 15 December 2011, as he left the paper's offices in Makhachkala. He and the newspaper had been subject to threats and attacks since its inception in 1995. (See *Spotlight On: Khadjimurad Kamalov and Chernovik*, p.46). There were several theories regarding the instigators behind Kamalov's murder. As a leading journalist and prominent public figure, he had made a number of powerful enemies. Most experts are convinced he was killed because of his, and the paper's, track record in chronicling corruption, the rigging of elections, and the extrajudicial killings perpetrated by Dagestan's law enforcement agencies in the name of combating the Islamic insurgency⁶⁴.

Elsewhere in the Russian Federation threats do not usually have such rapid and fatal consequences. If an attack follows a "warning" it is more often in the form of a beating than an attempted assassination. However, the indifference of the Russian police who, rather than the Investigative Committee, are responsible for dealing with such crimes, serves as an extension of the impunity enjoyed by those who organise and commit such acts of intimidation. A "threat to kill or cause serious bodily harm" (Article 119) currently carries a statute of limitations of only two years. In April 2011, journalist Nadezhda Popova attempted to report telephone threats and an attack to the police in Moscow, only to have her request dismissed by the station chief: "No one's killed you! What are you complaining about?"⁶⁵

What the Joint Declaration says States should do with regards to the obligations to 'prevent and prohibit'.

Legal measures:

- ii. the category of crimes against freedom of expression should be recognised in the criminal law, either explicitly or as an aggravated circumstance leading to heavier penalties for such crimes, taking into account their serious nature; and*
- iii. crimes against freedom of expression, and the crime of obstructing justice in relation to those crimes, should be subject to either unlimited or extended statutes of limitations (i.e. the time beyond which prosecutions are barred).*

Non-legal measures:

- i. appropriate training on crimes against freedom of expression, including gender specific crimes, should be provided to relevant law enforcement officials, including the police and prosecutors, as well, where necessary, to military personnel;*

- ii. *operation manuals and guidelines should be developed and implemented for law enforcement officials when dealing with crimes against freedom of expression;*
- iii. *training supported by the State should be available for individuals who may be at risk of becoming victims of crimes against freedom of expression and this issue should be covered in university courses on journalism and communications;*
- iv. *systems to ensure effective access to information about the circumstances, investigation and prosecution of crimes against freedom of expression, including media access to the courts, should be put in place, subject to appropriate guarantees of confidentiality; and*
- v. *consideration should be given to putting in place general measures of protection*

Joint Declaration: (4) Independent, Speedy and Effective Investigations

“When a crime against freedom of expression takes place, States should launch an independent, speedy and effective investigation, with a view to bringing to trial, before impartial and independent tribunals, both perpetrators and instigators of these crimes.”

– Joint Declaration

One or more of the requirements for an independent, speedy and effective investigation are absent from the Russian cases examined here. Those involved as perpetrators in the killings of Anna Politkovskaya and Magomed Yevloyev (whose case is covered in Chapter 3, see p.47), for instance, were rapidly brought to trial. However the investigators’ evidence did not convince the jury in first case, while pressure on the court in Ingushetia prevented a more probing examination of exactly how and why Yevloyev had died.

During President Medvedev’s term of office (2008–2012) he twice made public statements denouncing the killing of a journalist and promising that the culprits would be found, thereby issuing the condemnation that the Joint Declaration suggests is an essential first step in tackling crimes against freedom of expression. The subsequent investigation of these two murders followed very different paths.

The first murder was the shooting of lawyer Stanislav Markelov and journalist Anastasia Baburova in Moscow in January 2009. This was followed by a speedy and effective investigation and the conviction of the two murderers in April 2011⁶⁶. The second killing was that of journalist and human rights activist **Natalia Estemirova** in July 2009. On this occasion President Medvedev publicly stated that it seemed certain the killing was related to the work she did⁶⁷. This was a significant and positive statement, recognising her case as a crime against freedom of expression. After such words by President Medvedev it was harder for Russian law enforcement agencies to dismiss her death as the result of a personal dispute or a purely criminal act, explanations commonly offered by the Russian police for violence against journalists.

Estemirova was kidnapped in Grozny on 15 July 2009 and found murdered, later that day, in Ingushetia⁶⁸. The abduction and killing were professionally executed, and no effort was made to conceal

her body (unlike the numerous disappearances of others whom Estemirova had sought to locate as part of her human rights activities). Despite the prompt statement from President Medvedev and the involvement at the national level of Russia's law-enforcement agencies the perpetrators and instigators of her murder have not been arrested or put on trial. (*See Spotlight On: Natalia Estemirova, p.42*)

The difficulties of conducting a murder investigation in the North Caucasus are well known: until the trial of Magomed Yevloyev's killer in December 2009 this was (and largely remains) a part of the Russian Federation where total impunity for the killing of journalists remains the norm⁶⁹ (*for more on this region, see Chapter 3, p.41*). However, Estemirova's colleagues believe that the investigators have deliberately excluded some of the most promising leads⁷⁰.

The current version of events maintains that her abduction and killing was carried out by Alkhazur Bashayev, a member of an illegal armed group, as well as other as yet undisclosed individuals. However, a joint investigation by two human rights NGOs, Memorial and the International Federation of Human Rights (FIDH) and *Novaya Gazeta* in 2011 had already discovered serious flaws in this theory, and disclosed evidence which shows a deliberate fabrication and cover-up of events⁷¹.

Such inconsistencies within the investigation are extremely damning of the authorities ability and willingness to properly investigate crimes against freedom of expression in an independent, speedy and effective manner. It puts a question mark over the independence of such investigations, especially when in Estemirova's case those whom she had previously criticised were directly involved in investigating her murder.

The Joint Declaration states that investigations in crimes against freedom of expression should:

a. Independent

- i. The investigation should be carried out by a body that is independent from those implicated in the events. This implies both formal hierarchical and institutional independence, and practical arrangements to secure independence.*
- ii. When there are credible allegations of involvement of State agents, the investigation should be carried out by an authority outside of the jurisdiction or sphere of influence of those authorities, and the investigators should be able to explore all allegations fully.*
- iii. An effective system should be put in place for receiving and processing complaints regarding investigations by law enforcement officials of crimes against freedom of expression, which is sufficiently independent of those officials and their employers, and which operates in a transparent manner.*
- iv. Where the seriousness of the situation warrants it, in particular in cases of frequent and recurrent crimes against freedom of expression, consideration should be given to establishing specialised and dedicated investigative units - with sufficient resources and appropriate training to operate efficiently and effectively - to investigate crimes against freedom of expression.*

b. Speedy

- i. The authorities should make all reasonable efforts to expedite investigations, including by acting as soon as an official complaint or reliable evidence of an attack against freedom of expression becomes available.*

c. Effective

- i. Sufficient resources and training should be allocated to ensure that investigations into crimes against freedom of expression are thorough, rigorous and effective and that all aspects of such crimes are explored properly.*
- ii. Investigations should lead to the identification and prosecution of all of those responsible for crimes against freedom of expression, including direct perpetrators and instigators, as well as those who conspire to commit, aid and abet, or cover up such crimes.*
- iii. Where there is some evidence that a crime which has been committed may be a crime against freedom of expression, the investigation should be conducted with the presumption that it is such a crime until proven otherwise, and relevant lines of enquiry related to the victim's expressive activities have been exhausted.*
- iv. Law enforcement bodies should take all reasonable steps to secure relevant evidence and all witnesses should be questioned with a view to ascertaining the truth.*

Joint Declaration: (5) Redress for Victims

As well as ensuring that crimes against journalists are properly investigated, it is important to provide the victims with the appropriate course of redress. The Joint Declaration states:

- i. Where crimes against freedom of expression are committed, the victims should be able to pursue appropriate civil remedies, regardless of whether or not a criminal act has been established.*
- ii. Where a conviction is entered for a crime against freedom of expression, a system should be in place to ensure that an adequate remedy is provided to the victims, without the need for them to pursue independent legal action. Such remedies should be proportionate to the gravity of the violations, and should include financial compensation, and a range of measures to rehabilitate the victims and to facilitate the return of victims to their homes in conditions of safety and/or to reinstate them in their work if they so desire.*

The killing of journalists in Russia has often attracted considerable attention, at home and abroad, and therefore put pressure on the authorities to be seen to be taking action. The much more frequent non-fatal assaults against journalists receive a fraction of the publicity and are rarely the subject of serious investigation. In severity these attacks may range from a roughing up to warn journalists against covering a particular story to violent assaults which can leave the victim with permanent injuries. One problem, often deliberately exploited in organising such attacks, is that of distinguishing such targeted and work-related assaults from ordinary street crime. A second issue is that responsibility for investigation of all but the most serious incidents lies with the police.

One attack, which did gain significant attention, was that on **Mikhail Beketov**, Editor-in-Chief of the *Khimki Pravda* newspaper, who was brutally beaten outside his house on the night of 12–13 November 2008. The attack left him ‘severely brain damaged’ and unable to speak. Due to the severity of the fractures and frostbite (Beketov was not found until almost 8am the following morning) doctors had

to amputate one of his legs and several of his fingers⁷². To date his attackers have not been found and those who hired them remain unidentified⁷³. Beketov eventually died of complications arising from his injuries on 8 April 2013. Among other pressure he faced following this attempted murder was the resumption in autumn 2010 of a prosecution for criminal defamation.

Spotlight On: Mikhail Beketov

Mikhail Beketov was a businessman before he set up the newspaper *Khimki Pravda* in a north-western suburb of Moscow and became its chief editor.

Threats/Harassment: Beketov first drew wider attention, and earned the particular wrath of the local mayor, ex-Afghan War officer Strelchenko, when he publicised the local outcry over the moving of a war memorial and the remains of the World War Two servicemen buried there. Beketov started receiving threats and in May 2007, following his call for the mayor to resign, and his car was set on fire⁷⁴. Previously obstruction and intimidation had resulted in the threatening of the newspaper's distributors and the periodic disappearance of *Khimki Pravda* from local kiosks. When Beketov claimed that the local authorities were responsible for the burning of his car, the threats became personal. The police did nothing to investigate the incident. Instead, the mayor persuaded the local prosecutor's office to charge the editor in December 2007 with criminal defamation⁷⁵ for suggesting that he might be connected in any way.

Undeterred, Beketov joined the growing campaign by local citizens and ecologists against the construction of a new fast highway linking Moscow and St Petersburg. The project had the support of the European Bank for Reconstruction and Development but threatened to destroy the Khimki forest. Beketov also raised suspicions that local officials were financially benefiting from the project. Beketov

carried on campaigning, even after receiving multiple threats⁷⁶. He and his newspaper were silenced by the attack on 12 November 2008⁷⁷.

Investigation: As the worst of a series of attacks on newspaper editors in the Moscow Region in 2008 and 2009, the Beketov assault gained a great deal of media attention, within the Russian Federation and abroad. However, there was little apparent progress with the investigation thereafter. At first the investigation was in the hands of the local police while Beketov, in a coma, remained in the local hospital. Reports of threats from unidentified persons to "finish the job" led to the editor's removal to the Sklifosovsky hospital in central Moscow. Faced by mounting public outrage and the reluctance of the local police to consider anything but a purely criminal assault or an attempt to compromise the local authorities, the investigation was moved first to the Moscow Region police authority and then, when the offence was reclassified on 26 November 2008 from intent to do "grievous bodily harm" (Article 111 of the Criminal Code) to "Attempted murder" (Article 105 of the Criminal Code), it was finally transferred finally out of police hands altogether into those of the Investigative Committee⁷⁸. A warrant was even issued for a

potential suspect in the attack, a former police officer.

An indication of mayor Strelchenko's confidence that he and his entourage were not being seriously considered as suspects was the resumption in autumn 2010 of the 2007 defamation proceedings against Beketov. For his part Beketov was determined to fight the charges and clear his name even though the statute of limitations for the offence had expired. The Russian Union of Journalists began a "name and shame" campaign against Strelchenko, soliciting one rouble donations to pay the 30,000 rouble (700 Euros) fine to the "evidently impoverished" mayor. On 10 November 2010, Beketov was found guilty by the Khimki magistrates' court and fined 5,000 roubles (116 Euros). On appeal the Khimki town court acquitted him and on 1 March 2011 he was finally cleared of these charges⁷⁹.

This acquittal marked a victory for Beketov, however, it did not provide him redress for the physical attack against him and the lack of progress by investigators prevented the possibility of that being afforded. Presenting

Beketov with a government prize in January 2012 the then Prime Minister Putin made a public promise that he would talk to Alexander Bastrykin, the head of the Investigative Committee, to ensure that those involved in the attack on the editor would be found and charged⁸⁰. Beketov, according to Prime Minister Putin, was "a bright individual -- courageous, manly and not indifferent ... He saw his calling in serving society, defending fairness and the rights and interests of people, and he firmly followed his professional and moral principles"⁸¹.

Current status: Neither before nor since Beketov's death in April 2013, due to complications arising from his injuries, has any further progress apparently been made in the investigation into his attack⁸². Beketov's lawyer, Stalina Gurevich, commented that the investigator assigned to the case had made no attempt to contact her – until after Beketov had died⁸³. Given all of Prime Minister Putin's words, and the severity of Beketov's injuries, that ultimately killed him, the State failed to provide Beketov with any redress.

Joint Declaration: (6) Role of other Stakeholders

Aside from the State, the Joint Declaration recognises the role that other stakeholders should play in ensuring that crimes against freedom of expression are prevented and journalists protected. The Joint Declaration includes others stakeholders as 1) inter-governmental organisations; 2) state and non-state donors; 3) media organisations; and 4) relevant civil society organisations.

What the Joint Declaration says:

Inter-governmental organisations

- i. Inter-governmental organisations should continue to prioritise the fight against impunity for crimes against freedom of expression and use available review mechanisms to monitor whether States are complying with their international obligations in this area.*

State and non-State donors

- ii. *State and non-State donors should be encouraged to fund projects which aim to prevent and combat crimes against freedom of expression.*

Media organisations

- iii. *Media organisations should be encouraged to provide adequate safety, risk awareness and self-protection training and guidance to both permanent and freelance employees, along with security equipment where necessary.*

Civil Society organisations

- iv. *Relevant civil society organisations and media should be encouraged, as appropriate, to continue to monitor and report on crimes against freedom of expression, to coordinate global campaigns on crimes against freedom of expression, and to consolidate documentation, for example through a central website/portal.*

A case which international organisations, including ARTICLE 19, have monitored, calling for an independent, speedy and effective investigation, is the April 2012 attack on *Novaya Gazeta* journalist **Elena Milashina**. Milashina and her friend Ella Karamyants were attacked by two unknown men in Balashikha (Moscow Region) as they returned home. Their assailants kicked the journalist to the ground and started hitting her over the head; then they took money from Milashina's bag and Karamyants' laptop. Despite receiving international attention, the investigation into the attack and subsequent trial of the alleged suspects was anything but effective, as the prosecution did not respond to Milashina's firm view that the wrong people were being tried.

Spotlight On: Elena Milashina

Elena Milashina has worked for *Novaya Gazeta* for the past decade, carrying out investigations into drug-trafficking, counter-terrorism operations, kidnappings as well as the murder of journalists, including those of her colleagues Anna Politkovskaya and Natalia Estemirova. After the murder of Politkovskaya in 2006, Milashina continued to cover human rights violations committed in North Caucasus for *Novaya Gazeta*, working together with Estemirova⁸⁴. She appeared as a major witness about Politkovskaya's work at the 2008-2009 murder trial. After Estemirova was killed Milashina worked to investigate her murder, producing a report together with Memorial and FIDH in 2011.

On 8 March 2013, International Women's Day, Milashina was awarded the US Secretary of State's International Women of Courage Award⁸⁵.

Threats/ harassment: In February 2006, Milashina escaped an assassination attempt in Beslan, North Ossetia.⁸⁶ In late December 2006 *Novaya Gazeta* appealed to the Prosecutor General's Office to investigate the threats being made against Milashina after she

expressed a negative view of the investigation into the Beslan siege in several of her articles. (Similar threats were then received by Marina Litvinovich of the Pravdabeslana.ru website.)⁸⁷ No formal investigation was opened.

Attack: On the night of the attack on 5 April 2012, Milashina and Karamyants were saved from anything worse happening by the intervention of three young women. Police responded to Milashina's call after two hours had passed⁸⁸. The incident was classified as "Robbery" (Article 161 of the Criminal Code) and two drug addicts were later found and tried, despite protests from Milashina and Karamyants, that these were not the men that attacked them.

Investigation: Immediately after the attack, Milashina rang the Moscow police emergency telephone number. After twenty minutes, by this point feeling quite unwell, she gave up waiting for the police to reply and she returned home. It later turned out that because Balashikha is formally in the Moscow Region, it has a different emergency number. It took further hour and a half before the Moscow Region police responded.

At 2am Milashina and Karamyants went out and found the police interviewing the three eyewitnesses in a police van, which they refused to open. Infuriated by the treatment they received, they refused to go for emergency treatment⁸⁹. The next morning the head of public relations at the Ministry of Internal Affairs rang the newspaper and the deputy head of police for the Balashikha district contacted Milashina requesting her to go to hospital to be examined and make statements to the police⁹⁰. She had a concussion, 14 severe bruises and metal shards in the skin of her head, and one broken tooth. The attackers she now recalled had singled her out, and beaten her much more thoroughly than her friend. Either this was an attack "out of the blue" or, Milashina feared, it might have some relation

to a particular drugs story she was investigating⁹¹.

Trial: Within ten days the police claimed to have detained two suspects⁹². In September 2012 the Moscow Region police announced that its investigation into the attack was complete (the case had been removed from local police investigators to the regional level on 11 April 2012). At this point Milashina objected and asserted that the police had the wrong men and were pinning the crime on drug addicts who already had previous convictions. There were numerous discrepancies in the account offered by the investigation. The men in question had an alibi for that time and they also looked nothing like the detailed description provided Karamyants. Milashina expressed the suspicion that those who identified the two men as the perpetrators had been pressured into doing so⁹³.

By September 2012, Milashina was convinced that the attack was related to her work: "I have firm suspicions as to which of my articles they wanted to punish me for, in this way. And perhaps not just to punish me, but luckily Ella was with me. And I knew perfectly well that if I was right the criminals will never be found". The following month, listing the types of obstruction put in the way of the investigation by the investigator himself, the president of the Glasnost Defence Foundation Alexei Simonov, wrote on Milashina's behalf to Alexander Bastrykin, head of the Investigative Committee, to demand his intervention⁹⁴.

A reply was received a few weeks later, saying that Simonov's letter had been forwarded to the Investigative Committee for the Moscow Region for further investigation⁹⁵.

In August 2013, however, the trial of those same suspects opened in Balashikha. The accused had written confessions but, as a colleague of Milashina wrote, when they saw that Milashina was concerned not to put them behind bars but those men who had really

attacked her, they withdrew their statements in court⁹⁶.

Current status: An appeal filed by Milashina is due to be heard on 12 December 2013, however the journalist does not believe the original verdict will be overturned.

ARTICLE 19 interview with Elena Milashina, Investigative Journalist, *Novaya Gazeta*

ARTICLE 19: Russia is often called the most dangerous region in the world for journalists, what is your perspective of the current situation for journalists in the country?

Elena Milashina (E.M): It is prominently a bad situation in Russia for journalists, for bloggers and for those who criticize the regime, like human rights defenders. Because they do it publicly, using the media or the internet, they are not completely safe as a result of the impunity policy that the Russian government has created since 2000.

A19: Do you think the current government is enabling people who wish to silence journalists, by providing this environment?

E.M.: We have legislation that protects journalists very well in Russia – for example, if an officer or somebody from the authorities does not let journalists do their professional work they can be charged and sentenced for many years, because this article in our Criminal Code (Article 144) was strengthened during Medvedev’s presidency. However, this article is never used. There are many cases of policemen who beat journalists during their professional duty covering protests – we have more than 100 cases and none of those cases went to trial. I think it’s a purposeful

policy – and people who are accused of crimes against journalists are not brought to trial – again it’s a policy of impunity by the government.

A19: How much impact do you think this policy of impunity for crimes against journalists - from threats to attacks to murders- has on the journalistic community?

E.M: The effect is that journalists, especially on TV, are totally controlled and people cannot say anything. Because it’s under censorship – not self-censorship, but official censorship – though we do not have it like in Soviet Union, when we had official censorship [in all the media] and every story we wrote had to first go to a special person. Now they say it does not exist, but it exists and everyone knows it.

For official print media it is the same thing, a lot of people are afraid to talk or write on controversial issues, they still do of course, but not a lot.

A19: Do you think the situation has changed since the murders of Anna Politkovskaya and Natalia Estemirova?

E.M: In Chechnya, it has changed completely and for the worst. Natalia Estemirova was the last person, who held on her shoulders the last signs of freedom of speech in Chechnya. While she was alive people were not afraid to talk to human rights defenders, to journalists

– people had hope that if people talked to them, they could save their loved ones. When Natasha was alive human rights defenders were active enough and willing to talk loudly about the problems in Chechnya. After she was killed, everything was broken and Chechnya became completely silenced.

A19: Shortly after Anna Politkovskaya's death, Putin said that she was not important in Russia, that she had no influence.

E.M: It was a huge mistake. They thought so, but it happens that Anna Politkovskaya is probably the most well-known Russian journalist. Yes the world knows Putin, but probably the world knows him as not really a good person and the world knows Anna Politkovskaya and she remains, many years after her death, as a symbol of an honest, great Russia. A much more powerful symbol than Putin himself.

A19: Investigations into crimes against journalists perpetually appear to be ineffective and slow, why do you think this is?

E.M: We had some reforms in our Investigative Committee, and General Prosecution Office, but they are paralysed because they are not professional enough to investigate effectively. The second reason is corruption, it is not easy for the Investigative Committee to investigate these crimes because there is another interest. The other thing is that those kind of crimes are not a priority for the Investigative Committee.

A19: Why do you think there is a reluctance to link the crime with the journalist's profession?

E.M: In a few cases they accept immediately that it has something to do with their professional work. But for attacks on journalists, not murders, sometimes outside in

the street, it is always easy for them to pretend that it was a robbery but not a professional thing – because for a professional thing – it would create so much more work for investigators which is why they prefer to do this.

A19: This is what happened in your case? At the same time they quickly apprehended two men?

E.M: From the beginning, they did not want to examine [that the attack was connected to my work].The day after the attack, I wrote a blog about the way the police behaved following the attack and it became a big scandal. Which is why they worked on a result, to get anyone. They took two drug addicts and they said to them, you say that you did it, or you will have drugs [in your pockets] and go to jail for a longer term than in the first case. They did not have any choice.

The investigation was awful because it was so fake and it was so funny because, when they made it public, they still were following this line which becomes ridiculous. The trial was the same. I was the only one who needed a fair trial and a fair investigation and this situation was ridiculous. On 12 December 2013 we have an appeal, but I think that they will not change the first verdict.

A19: So the case is closed, and they are not looking for anyone else?

E.M: No, they never were from the beginning, which was strange to me. If they had worked a little harder I could have believed it was a robbery – it was strange for a robbery, but things happen. But after the investigator followed this stupid version, I was convinced that [it was because of my work].

A19: Did the attack have an impact on how you view your own work?

E.M: When I come home late in the evening, I'm a little bit afraid, but I still continue to work. And a lot of other people do the same in Russia. I do not know of people who got scared and stopped their work after these kinds of situations with their colleagues or themselves in Russia.

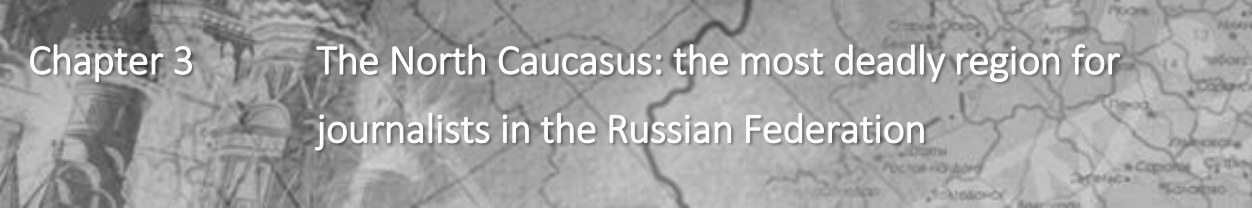
A19: Do you think there is enough solidarity in Russia for journalists?

E.M: In my newspaper – yes. There is solidarity amongst my colleagues and human rights defenders. Not always in every case, but there is. For example, when Anna Politkovskaya was murdered, we had little solidarity and we felt for a while that we are alone in Russia, until the world showed us that she was even more influential than Putin. Later when Oleg Kashin was attacked, solidarity became more powerful and more colleagues began to support the principle that

we are all colleagues and we have to work together.

A19: What would you like to see the government do to better protect journalists?

E.M: To investigate. It's not that hard. In many cases we manage ourselves to bring them evidence, witnesses – for example, in Anna Politkovskaya's case we brought them the names of the murderers; in Natalia Estemirova's case we can help them, we have always been helping. Make these kinds of crimes a priority – show that if you do not agree with a person, you should go to court and sue him, but if you want to kill him or attack him you will be sent to prison. That would be a great signal.



Chapter 3 The North Caucasus: the most deadly region for journalists in the Russian Federation

“Information worth dying for”

*Banner of Chernovik newspaper,
Renamed in memory of founder Khadijmurad Kamalov⁹⁷*

A particular region of concern, often referred to as one of the most deadly in the world for journalists, is the North Caucasus⁹⁸. After the collapse of the Soviet Union, and the independence of Georgia, Armenia and Azerbaijan to the south, the seven republics (from the Black Sea in the west to the Caspian Sea in the east) of Adygea, Karachaevo–Cherkessia, Kabardino–Balkaria, North Ossetia, Ingushetia, Chechnya and Dagestan were transformed into a border region.

Chechnya is arguably the most known of these republics in large part as a result of the two prolonged armed conflicts linked to a call for independence in November 1991. These conflicts, which took place between 1994–1996 and 1999–2009 caused huge loss of life and became synonymous with widespread human rights abuses on both sides – the Russian military and the separatist armed groups.

The fallout from the Chechen conflicts, repressive political regimes and continued armed insurgency have all contributed to a worsening situation for freedom of expression in the North Caucasus. Political development has been fractious over the last twenty years, with both ethnic and religious tensions. Along with Russians, Ukrainians, Azerbaijani and Armenians, there are also many smaller groups with their own language and cultures living across the North Caucasus– such as the Avars, Kabardins, Adyghes, Dargin, Kumyk, Lezgin, and Laks. A largely Muslim region, there have been also ongoing disputes between Sufi and Sunni sects, with some groups advocating for the introduction of Sharia law.

According to International Crisis Group, the growth of fundamentalism in the region, notably Salafism, has largely been influenced by how the government and its security forces have treated conservative Muslim communities, the historical role of religion and ethnicity, ties to the Chechnya conflict and local religious leaders’ teachings.⁹⁹ The effect has created a very different picture from republic to republic, each of which has its own specificities and difficulties.

This chapter will focus on four of the most violent North Caucasus republics, which have also been the most deadly for journalists in recent years – Chechnya; Dagestan; Ingushetia and Kabardino–Balkaria. Within this frame, it is a sad reality that journalists attempting to report on the violence get caught up in it themselves. Rather than being perceived as simply carrying out their professional duty,

journalists are often seen as traitors by one side or the other and several of those who feature in this report have been accused of being extremists themselves.

Chechnya

The first journalist to be killed in post-Soviet Russia, Dmitry Krikoryants, was murdered in the Chechen capital Grozny in April 1993 because of his investigation into the corrupt dealings of the Dudayev regime¹⁰⁰. This was more than a year before the existence of Chechnya became widely known outside Russia. Then local and foreign journalists began reporting on Moscow's military intervention there from December 1994 to August 1996 to prevent Chechnya seceding from the Russian Federation.

The names of 40 Russian, Chechen, American, British and German reporters, photographers and cameramen who died or disappeared during the two conflicts in Chechnya have been recorded by Russia's media monitors¹⁰¹. Fewer died or disappeared during the second conflict, which officially ended in 2009 due mainly to the greater control over their movements exercised by the federal forces. Independent or at war with the federal authorities, Chechnya was a danger zone for journalists. In the three years between the two conflicts no less than 22 media workers were kidnapped there (and later released)¹⁰².

Despite the 'official' end to the Chechen conflict in April 2009 and withdrawal of the majority of Russian Federal Forces from the republic, violence is still a recurring factor in Chechnya as with its neighbouring republics. After a series of murders (among them that of Natalia Estemirova in 2009) the defence of human rights in Chechnya could only be safely performed during periodic visits by those based outside the republic. *Novaya Gazeta*, the paper both Politkovskaya and Estemirova wrote for, had been vigorous in its efforts to cover the conflicts. Its journalists as well as others based in the region continue to be targeted for their coverage of human rights in Chechnya and the North Caucasus more widely. However, since Estemirova's death in July 2009, there have not been further killings of journalists – unlike in Dagestan, which has proved to be an especially deadly republic.

Spotlight On: Natalia Estemirova

Natalia Estemirova moved to Chechnya in the late 1980s and remained there throughout the political instability, before 1994 and after 1996, and the two armed conflicts with the authorities in Moscow (1994–1996, 1999–2009). Estemirova first worked as a schoolteacher but the increasingly lawless situation led her to form bonds with those who were trying to defend human rights in the small North Caucasian republic, and to use television and other media to document and describe the situation there. During the first conflict (1994–1996) this meant the rights activists grouped around Memorial; during the second conflict, when independent journalists and outside rights activists were largely prevented from gaining access to Chechnya, this meant a few individuals like Anna Politkovskaya and the locally-run offices of Memorial which she now headed in Chechnya.

Estemirova's work stretched over more than a decade, documenting the many murders and disappearances of people in the North Caucasus. She revealed the work of the "*Eskadrony smerti*" or death squads and collected evidence proving these squads were the work of the state security services¹⁰³. Her friendship with Anna Politkovskaya was widely known and the two women worked together on many occasions to document the Chechen conflict and human rights abuses. After Politkovskaya's death, Estemirova continued to work undaunted.

Murder: Estemirova was kidnapped on 15 July 2009 near her home in Grozny, the capital of Chechnya and later found murdered that that day in Ingushetia, near the village of Gazi-Yurt with two gunshot wounds to the head.¹⁰⁴ When she was kidnapped in the middle of a busy street during morning rush hour, Estemirova shouted out her name and that she was being kidnapped, begging onlookers to call and report this to Memorial¹⁰⁵. Nevertheless, according to journalist Fatima Tlisova, "No one helped her; no one reported. People were too scared. They didn't want to be known as witnesses¹⁰⁶."

Previous threats: In the course of her work she aroused the hostility both of the Chechen authorities and the Russian Federal Forces. Like Anna Politkovskaya before her and Khadjimurad Kamalov two years later it was, perhaps, a wonder that an attempt was not made to silence her before. Natalia Estemirova documented hundreds of cases of abuse in Chechnya. Increasingly, as control of Chechnya passed into local hands, her work for Memorial concentrated on human rights violations by government-backed militias¹⁰⁷.

Investigation: In an extraordinary effort to support the official investigation, the Russian NGO Memorial, the International Federation of Human Rights (FIDH) and *Novaya Gazeta* engaged in their own investigation. They found¹⁰⁸ discrepancies in the evidence taken

from the car purportedly used in the kidnapping, a failure to collect DNA samples from a broader range of suspects in Chechnya, and unwillingness to look into a possible role by the Kurchaloi district police. The Kurchaloi district police had been implicated in an extrajudicial execution Estemirova had exposed in the weeks before her murder¹⁰⁹.

Current Status: The current official version¹¹⁰ of the investigation maintains that the abduction and killing of Natalia Estemirova was carried out by Alkhazur Bashaev, a member of an illegal armed group, as well as other as yet undisclosed individuals. This assertion confirmed the well-founded fear, expressed earlier by the head of Memorial, Oleg Orlov, that investigators were keen to attribute the murder to armed militants, and preferably those who had already been killed by the authorities¹¹¹ (as in the case of journalist Telman Alishayev shot in 2008 in Dagestan¹¹²). In 2011 the investigation by Memorial, FIDH and *Novaya Gazeta* concluded that the authorities had no credible basis to maintain that Alkhazur Bashaev was involved in the kidnapping and murder of Natalia Estemirova. On the contrary, the material in the case file which makes up the "evidence" gives reason to suspect a deliberate fabrication of evidence with the aim of creating a case against Bashaev.¹¹³

Dagestan

Since 2008 eleven journalists have been killed in Dagestan, all but two in the capital Makhachkala¹¹⁴. **Akhmednabi Akhmednabiyev** (*see p. 45*) and **Khadjimurad Kamalov** (*see p.46*), the two most recently slain journalists, were both named in a ‘death list’ circulated in the republic in 2009.

The 2009 “Death List” – ‘Who will be next?’

On 3 September 2009, hundreds of leaflets were distributed in the Dagestani capital Makhachkala written on behalf of a previously unheard-of group calling themselves “Relatives of Policemen killed in Dagestan”. The leaflets stated that “the relatives” would avenge those responsible for “the terrorist acts and killings of officers of law enforcement authorities and civilians” and accused human rights defenders, journalists and civil society representatives of supporting so-called Islamist insurgents and terrorists¹¹⁵.

While threats were made against 250 individuals, 16 people were named on a specific “execution list” including eight journalists. Aside from Akhmednabiyev and Kamalov these also included journalists from *Chernovik* newspaper (founded by Kamalov) **Nadira Isayeva**, **Artur Mamayev** and **Timur Mustafayev**; *Svobodnaya Respublika* journalist **Zaura Gaziyeva**; publicist **Zubair Zubairov**; and a second journalist from *Novoye Delo* **Natalia Krainova**.

The then Dagestani President, Mukhu Aliyev, supposedly requested law enforcement officers to provide protection to those mentioned in the list, but it was reportedly never provided¹¹⁶. When commenting on the “death list,” in 2009 Kamalov told the media that he thought the security services were behind it¹¹⁷.

Despite a criminal investigation being opened¹¹⁸ little progress has been made to catch those behind the leaflets, with no suspects publicly identified. This lack of action by the state authorities against such serious threats is of grave concern and would certainly support Kamalov’s belief that it was in fact the Dagestani authorities themselves behind the list. Even if not, it is clear to the perpetrators that they will not be held responsible for such acts of intimidation.

The effect of such impunity is clear – both Kamalov and Akhmednabiyev continued to receive threats after the 2009 death list.

Spotlight On: Akhmednabi Akhmednabiyev

Akhmednabi Akhmednabiyev trained as a doctor and qualified as a cardiologist. He continued to practice in his native village of Karata but was drawn by the mounting instability of Dagestan to become a journalist. During the past ten years he was Deputy Editor of the independent weekly newspaper *Novoye delo* and a regular contributor to the news website *Kavkazsky uzel*, covering human rights violations and in particular, cases of alleged torture and abduction by the police of those whom they claimed were Islamic militants. He also wrote about local politics of Dagestan, especially about the situation in the western Akhvakh district where he came from.

Death: Akhmednabiyev was killed on 9 July 2013 at 7.30am near his house in Semender, a suburb of Makhachkala.¹¹⁹ The journalist had left the courtyard of his home and got into his car when a gunman shot the journalist from a passing vehicle and fled the scene, according to eyewitnesses. Akhmednabiyev died instantly. The journalist had survived a previous assassination attempt, which had been made in the same circumstances and location six months earlier on 11 January 2013.

Investigation: Crucially the local prosecutor's office did not classify the January 2013 attack as an attempted assassination but as a case of property damage, thereby leaving the investigation to the police¹²⁰ rather than the North Caucasus Federal District's Investigative Committee. Akhmednabiyev's lawyer, Abdurashid Sheikhov, contested this response and in April the Supreme Court of Dagestan ordered regional prosecutors to reconsider. After the journalist's murder, the earlier attack in January 2013 was included within the same investigation. It was now agreed that the two attacks on Akhmednabiyev were connected to his journalistic work. The Federal and Dagestani Public Chambers, set up in 2004 to ensure a dialogue between citizens and government

to discuss issues of public interest, promptly condemned the killing of Akhmednabiyev and called 'on law enforcement officials to analyse and follow every case in which journalist was threatened'.¹²¹ However, following cases is not enough – there is a clear need to provide protection to those under threat and for the crime to be classified correctly, taking into consideration the professional activities of the person attacked or threatened. On the day he died, more than 170 journalists who carried Akhmednabiyev's body in procession through Makhachkala carried placards with the rhetorical question "Who will be next?"¹²².

Threats/harassment: In May 2012, Akhmednabiyev publicised a threatening text message and wrote to Andrei Konin, the head of the FSB in Dagestan, asking him to investigate and find the culprits. He received the threat immediately after he had covered a rally in Makhachkala about the murder of five inhabitants of Kizlyar two months earlier¹²³.

Current Status: While the Federal Investigative Committee is understood to have taken the investigation into Akhmednabiyev's murder under special control, there has been little new information.

Spotlight On: Khadjimurad Kamalov and *Chernovik*

Khadjimurad Kamalov,¹²⁴ the founder of newspaper *Chernovik* in Dagestan, was murdered on 15 December 2011 as he left the offices of the *Chernovik* newspaper in Makhachkala around midnight. He was met by a hail of gunfire (up to fourteen shots were fired). The gunman fled the crime scene by car¹²⁵.

Kamalov trained as a water engineer and then gained a legal education as well. After he founded the independent weekly *Chernovik* in 2003, it rapidly became one of the most popular newspapers in Dagestan¹²⁶. His murder was widely seen as an attack aimed not only at the victim himself but at the media outlet he had created and continued to guide and inspire.

From the beginning *Chernovik* tackled issues such as corruption and abuse head on. Kamalov himself began to play an increasingly prominent role – leading demonstrations and intervening with the government, at both local and republican levels, when situations in the region descended into violence. The last publication prior to Kamalov's murder was on the apparent machinations during the 4 December 2011 local elections in the village of Gunib and identified by name several influential politicians who may have contributed to the defeat of a competent and incorrupt candidate¹²⁷.

Investigation: There were several theories regarding the instigators behind Kamalov's murder because as both a journalist and as a public figure, he had garnered several enemies. Ruslan Kurbanov of the Russian Academy of Sciences' Oriental Institute suggested Kamalov may have been targeted by one of the new generation of particularly vicious organized-crime groups that surfaced in Dagestan in the mid-2000s¹²⁸. But most experts are convinced he was killed because of his, and the paper's, track record in chronicling corruption, the rigging of elections, and the extrajudicial killings perpetrated by Dagestan's law enforcement agencies in the name of combating the Islamic insurgency¹²⁹.

Others dismissed the possibility that ethnic rivalries or personal vendettas played any role in Kamalov's death. It seemed equally unlikely that insurgents were responsible.

His murder was clearly understood by journalists at *Chernovik* as an attempt “to scare the staff”¹³⁰. Equally investigators did not rule out the victim's journalistic activities being the motive for the killing¹³¹. The manner in which Kamalov was shot was also telling as “the shooting was committed by a single masked gunman who fired 14 shots, only six of which hit the victim, including the final one in the head -- the hallmark of a contract killing”¹³². Despite recent claims that the perpetrator has been identified¹³³ the investigation appears to have made little progress in a republic where the only attempt to put the killers of a prominent media figure on trial collapsed in 2010 without a conviction¹³⁴.

Threats/harassment: Before, and after, the murder of Kamalov in December 2011, the paper and its staff have also faced other forms of harassment:

- In August 2013, DDoS attacks have been made on the *Chernovik* website¹³⁵.
- The paper's correspondent in Derbent, Dagestan's second city, was repeatedly threatened and assaulted before an attempt was made to abduct him¹³⁶ in 2012¹³⁷.
- In November 2011, *Chernovik*'s former Editor-in-Chief, Nadira Isayeva, was forced to leave Dagestan after a smear campaign¹³⁸. An alleged recording of her making a sexually explicit phone call was circulated online by anonymous perpetrators. The smear was "devastating for Isayeva, herself a conservative Muslim, and a sign of the immense pressure on *Chernovik* reporters"¹³⁹. Isayeva has spoken about her belief that the smear campaign was initiated by local security officials¹⁴⁰.
- On 31 July 2008 five of *Chernovik*'s journalists, including Isayeva, were charged with extremism and incitement to hatred against a social group (in this case, the police). The extremism charge related to publication of the words of a deceased militant. In accordance with the Criminal Code it was investigated by the FSB and carried a potential prison sentence of five years imprisonment (and a 3-year ban on practising journalism). Kamalov was not himself charged but following a police search at the *Chernovik* offices his apartment was among the many searched

in late August. Kamalov described this as an "act of reprisal by Adilgirei Magomedtagirov, the Dagestan minister for internal affairs". The case was finally resolved in favour of the *Chernovik* journalists, who were cleared of both charges on 19 May 2011¹⁴¹.

- Between 2006 onwards, at least 2 of the newspapers photographers were arrested¹⁴² and beaten¹⁴³. This level of harassment continued after Kamalov's murder.
- In September 2005 no printer in Dagestan would agree to print the latest edition of *Chernovik*¹⁴⁴, distributors tore up their contract with the newspaper¹⁴⁵, and 6,000 copies of the new weekly were confiscated by the prosecutor's office¹⁴⁶.

Current status: While the current investigation into Kamalov's death seems to be making little headway, the newspaper continues to appear, under the editorship of his younger brother Magdi, and in memory of its founder *Chernovik* has changed its masthead. Formerly the title was followed by the explanatory quotation from US media publisher Graham that "A newspaper is the first draft of history". Today the subheading is briefer and sterner: "Information worth dying for"¹⁴⁷.

Ingushetia

Although Ingushetia broke away from Chechnya in 1991 it has not been able to avoid the lawlessness and bloodshed in its larger neighbour. A key moment in its downward spiral was the murder of **Magomed Yevloyev**, founder of the website *Ingushetia.ru*, in the Ingush capital of Nazran in 2008. Yevloyev, a former prosecutor and businessman, started the website in 2001 and it became one of the most popular news sources in the North Caucasus. It made particular use of social media to provide exclusive visual content¹⁴⁸. *Inghuestia.ru* conducted investigative reports into local government corruption, as well as covering on terrorist attacks and public actions.

Once the site started to report on the kidnappings, murders, and terrorism in Ingushetia as well as the second armed conflict in Chechnya, Yevloyev and his family became the targets of serious threats from the Ingush authorities¹⁴⁹.

In the months prior to his death, Yevloyev organised a public campaign showing that more than 70 percent of the votes cast during the 2008 Russian presidential election in Ingushetia were fraudulent¹⁵⁰ and called for Ingush President Murat Zyazikov's resignation¹⁵¹. As a result, the Ingush authorities filed a number of lawsuits against the site in which it was accused of extremism. In June 2008, the site was ordered to close on the authority of a district court in Moscow. Undeterred, Yevloyev and his colleagues continued to publish articles on the website arguing that Russian law had no jurisdiction because the server for *Ingushetia.ru* was based in the United States. The site was blocked completely by the authorities on 12 August 2008¹⁵².

On 31 August 2008, after returning to Ingushetia on a flight from Moscow, Yevloyev was arrested by representatives of the Ministry of Internal Affairs in relation to a criminal case concerning an explosion¹⁵³. He received bullet wounds to the temple while being driven from the airport to Nazran. Yevloyev was taken to hospital, but later died of his injuries during surgery. Earlier that month, *Ingushetia.ru*'s Editor-in-Chief, Roza Malsagova, faced with a politically motivated criminal case on charges of incitement of ethnic hatred and distribution of extremist materials, fled the Russian Federation for Western Europe¹⁵⁴.

A criminal investigation into Yevloyev's murder was opened in September 2008. On 11 December 2009, Ibragim Yevloyev (no relation), a former chief bodyguard of the Ingush Minister of Internal Affairs, was convicted for 'incidental infliction of death' as a result of 'inappropriate professional behaviour'¹⁵⁵. He was sentenced to two years' imprisonment and a ban on working in law enforcement agencies on the basis that the death was considered accidental. This is something that the journalist's family have continued to dispute. On 2 March 2010, the Supreme Court of Ingushetia reduced Ibragim Yevloyev's sentence to "supervised residence" and lifted the ban, after which he received a promotion. In August 2010, he himself was killed¹⁵⁶.

While still on the plane, Yevloyev had texted his colleague Magomed Khazbiyev, informing him that Ingush President Zyazikov was also on the flight, and it is thought the pair had gotten into an argument while on board¹⁵⁷. In October 2008, one month after Yevloyev's death, Russian President Dmitry Medvedev removed President Zyazikov from power. While this was thought to be a visible move in response to the case¹⁵⁸, it did little to further establish what exactly happened. Local human rights organisations believed he was intentionally assassinated in order to suppress dissent in the region¹⁵⁹.

The following year **Maksharip Aushev**, a businessman and known civil society activist from Ingushetia, who had taken over *Ingushetia.ru* (later renamed *Ingushetia.org*) after Yevloyev's murder, was also murdered. On 25 October 2009, Aushev was travelling by car along a highway in Kabardino-Balkaria when he was shot at from a passing car and killed¹⁶⁰.

Aushev had previously escaped a kidnap attempt on 15 September 2009 in Ingushetia, when masked and armed men blocked the road with armoured vehicles. Aushev had, like Yevloyev, been an

outspoken critic of former Ingush President Zyazikov, whose removal from office he had campaigned actively for¹⁶¹. Despite the Russian Federation's Prosecutor General, Yuri Chaika, stating that he would personally oversee the investigation¹⁶², no suspects were identified in Aushev's murder. In February 2011 the investigation was halted by the main investigative department for the North Caucasus Federal District. Friends, colleagues and Aushev's lawyer Musa Pliyev all expressed their dissatisfaction, comparing the unsatisfactory outcome to that in the Yevloyev case¹⁶³.

Karbadino–Balkaria

For almost a year after Khadjimurad Kamalov's 2011 murder there were no killings of journalists in the North Caucasus. Then **Kazbek Gekkiyev**, a television news presenter, was shot dead on 5 December 2012, as he returned home from work with a friend around 9pm in Nalchik, the capital of Karbadino–Balkaria. Two unidentified men asked Gekkiyev his name and if he was a television presenter before they shot him in the head three times and fled the scene by car. The journalists' friend was left unharmed.

Gekkiyev worked for a regional branch of the All–Russia State Television and Radio Company (VGTRK), covering social issues. In 2011 several journalists had quit VGTRK as a result of receiving threats against their lives¹⁶⁴. *Novaya Gazeta* reported, that Islamist separatist fighters in the region had published online threats against journalists working for state owned media, accusing them of "one-sided coverage of events"¹⁶⁵.

Speaking shortly after Gekkiyev's murder the Director–General of the UN Educational, Scientific and Cultural Organization (UNESCO) Irina Bokova, said "[his] murder must not go unpunished...the rights to freedom of expression, and the right of journalists to carry out their professional duties without fearing for their lives, are fundamental conditions for everyone to live in informed and peaceful societies"¹⁶⁶.

"I am encouraged by the rapid reaction of the Russian authorities, who pledged immediately that the crime would be investigated," she added. "Bringing the perpetrators to justice will send a clear sign to those who commit such acts that attempting to silence the media is not an option."

The Federal Investigative Committee announced that it was looking into Gekkiyev's journalism as a motive for his murder. Vladimir Markin, the committee's spokesman stated that the murder was a "threat to other journalists speaking about results of the fight against the bandit underground in the republic"¹⁶⁷. President Putin also ordered investigators to bring Gekkiyev's killers to justice¹⁶⁸.

On 29 January 2013 the website of the Russian Federation Ministry of Internal Affairs announced that Zeitun Boziev, the principal suspect in the murder, had been killed in a shoot–out with police¹⁶⁹.

The North Caucasus and the Joint Declaration

The Joint Declaration refers to the “obligations of the State”. In the volatile conditions of the North Caucasus it must be asked which State is being referred to, the federal authorities or those in charge of each republic?

After 2004, elections of regional governors and presidents of republics within the Federation were abolished. Thereafter, the federal authorities themselves appointed and removed such officials, granting them a certain latitude.

Three concerns have been used to justify this policy towards the North Caucasus since the break-up of the Soviet Union. One, its location as a border region on to the now independent Georgia, Armenia and Azerbaijani; two, the population are predominantly Muslim (though Islamic militancy was a factor in the second Chechnya conflict, it was not during the first conflict); and three, unlike elsewhere in the Russian Federation (Tatarstan, for example) the indigenous populations greatly outnumber the small presence of ethnic Russians. This situation has led to periodic fears in Moscow of a loss of control, or that particular republics might attempt to secede, unite or do both.

The lack of stability and high number of murdered journalists in the region, has resulted in a creation of a climate of fear which has had a direct impact on the media and in turn a chilling effect on the right to freedom of expression. The fact that the North Caucasus is the one part of the Russian Federation where total impunity for the killing of journalists remains the norm¹⁷⁰, needs to be urgently and effectively addressed.

Without efforts to protect and strengthen the right to freedom of expression, there is little hope for the situation in these republics to improve. The media can play an important role in conflict resolution but with citizens denied access to information the authorities, often subject to corruption or criminal activity, cannot be effectively held to account.

Chapter 4 International Standards on Freedom of Expression and Protection of Journalists and Media Workers

“The State guarantees a journalist in connection with their professional activities, the protection of his/her honour, dignity, health, life and property as a person who performs a public duty”

- Article 49 of the Russian Federation’s Law on Mass Media¹⁷¹

This section outlines international and regional standards on protection of journalists and media and on combating impunity. A number of rights are at stake pertaining to the protection of journalists and media workers: right to life, right to personal liberty and integrity, freedom from torture, freedom of expression and the right to an effective remedy. International human rights law instruments guarantee all these rights and impose “positive” and “negative” obligations on states to uphold them.

In this report ARTICLE 19 focuses primarily on freedom of expression standards as the issue of the safety of journalists and media workers and combating impunity is a fundamental prerequisite for achieving freedom of expression and democracy. It also suggests actions that should be taken by the Russian authorities to bring their own practices and legislation in line with these standards.

International Legal Framework

As a member of the UN, Council of Europe and the OSCE, and as a signatory to major international and regional human rights treaties the Russian Federation has binding obligations under international law to respect the right to freedom of expression.

Overview of international standards

There is no specific international convention or specific legal instruments providing exclusive protection to journalists and media workers. However, following international standards provide overall protection:

- **The Universal Declaration of Human Rights (UDHR)**¹⁷² guarantees the right to life, liberty and security of person (Article 3), the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 5) or arbitrary arrest (Article 9), and the right to an effective remedy for violations of one’s rights (Article 8).
- **The International Covenant on Civil & Political Rights (ICCPR)**¹⁷³ guarantees the right to effective remedy (Article 3), the right to life (Article 6), protection from torture or cruel, inhuman or degrading treatment or punishment (Article 7), right to liberty and security of the person (Article 9), and freedom of expression (Article 19).
- **The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**¹⁷⁴ and **the International Convention for the Protection of All Persons from Enforced Disappearance**¹⁷⁵

further specify states obligations to refrain from deliberately interfering with the right to life of journalists.

The Human Rights Committee provided further guidelines on obligations enshrined in the ICCPR:

- In the **General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant**,¹⁷⁶ the Human Rights Committee specified that States must adopt legislative, judicial, administrative and other appropriate measures to prevent, promptly investigate, punish, and redress the harm caused by detrimental acts of State agents as well as of private persons. Failure to bring the perpetrators to justice is singled out as a separate violation of Article 2.
- In the **General Comment No. 6: The Right to Life (Article 6)**,¹⁷⁷ the Human Rights Committee stressed that states should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces, and that the law must strictly control and limit the circumstances in which a person may be deprived of his life by [State] authorities. The Comment further stated that States parties should also take specific and effective measures to prevent the disappearance of individuals, and to establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons in circumstances which may involve a violation of the right to life.
- In the **General Comment No. 34 – Article 19**, the Human Rights Committee stated that states “should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression” and that attacks on persons because of exercising her right to freedom of expression, including arbitrary arrest, torture, threats to life and killing, are never compatible with Article 19 of the ICCPR.¹⁷⁸ It also noted that “journalists are frequently subjected to such threats, intimidation and attacks because of their activities. So too are persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports...All such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress.” The HRC also emphasized that this obligation also “requires States parties to ensure that persons are protected from any acts by private persons or entities that would impair the enjoyment of the freedoms of opinion and expression.”
- In *Njaru v. Cameroon*,¹⁷⁹ the Human Rights Committee found that the State had violated Article 9 (right to security of the person) by failing to take measures against police brutality and death threats intended to deter and punish a journalist for the publication of articles denouncing corruption and violence of the security forces; it stressed that the victim’s persecution was a restriction of the freedom of expression incompatible with Article 19.3, and that an effective remedy presupposed the prompt prosecution and conviction of those responsible, as well as full compensation. In fulfilling their obligations to refrain from deliberately interfering with the right to life of journalists.
- The Human Rights Committee also expressed concerns about violence against journalists in several of its **concluding observations**. It also referred to the killings/murders of journalists in the Russian Federation (in 2003¹⁸⁰ and 2009¹⁸¹) and requested the Russian Government to provide information on prosecutions for the murder of journalists¹⁸².

Overview of European standards

The **European Court of Human Rights** has extensively addressed the issues of violence against journalists in its case law on Article 2 (right to life), and Article 10 (freedom of expression) under the European Convention on Human Rights to which the Russian Federation is a party¹⁸³.

In addition, the **2007 Resolution of the Parliamentary Assembly** of the Council of Europe stated that an obligation of the states to “investigate any murders of journalists as well as acts of severe physical violence and death threats against them ... stems from the individual journalists’ rights under the Convention as well as from the necessity for any democracy to have functioning media free from intimidation and political threats”¹⁸⁴.

The **2010 Recommendation of the Parliamentary Assembly** recommends that the Committee of Ministers,¹⁸⁵ *inter alia*, assist member states in training their judges, law enforcement authorities and police in respecting media freedom, in particular as regards protection of journalists and media against violent threats and gives its full support to ensure that the high number of murders of critical journalists are investigated and brought to justice.

In 2012, the **Council of Europe's Commissioner for Human Rights**, Nils Mužniks, stated that: Governments and politicians need to signal very strongly that such attacks are unacceptable and will not go unpunished. They need to initiate prompt, thorough and transparent investigations and bring perpetrators to justice, where punishments should reflect the seriousness of this crime.¹⁸⁶

In 1994, the participating States of the Conference on Security and Co-operation (now the Organisation for Security and Cooperation in Europe - OSCE), which range from North America to Central Asia, “condemn[ed] all attacks on and harassment of journalists and will endeavour to hold those directly responsible for such attacks and harassment accountable.”¹⁸⁷

In 1997, OSCE established the mandate of Representative on Freedom of the Media to provide early warnings on violations of freedom of expression and to advocate full compliance with OSCE principles and commitments regarding freedom of expression and the media, including protection of journalists. In 2011, it issued the OSCE Safety of Journalists Guidebook, which sets out good practices for addressing the safety of journalists.

Duty to prevent attacks

States are under not only a so-called ‘negative obligation’ to refrain from violating human rights but also a ‘positive obligation’ to ensure enjoyment of these rights. Article 2 of the ICCPR, for example, requires States to “adopt such legislative or other measures as may be necessary to give effect to the rights recognised by the Covenant.”

Several international bodies and courts have confirmed that this entails a duty to offer sufficient protection from violent attacks to citizens in general, and media workers in particular. These include:

- The **2012 UN Resolution on Safety of Journalists**¹⁸⁸ *inter alia*, acknowledges the special role of journalists as providers of information in the public interest and recognises that journalists’ role

as public watchdogs puts them in a precarious situation and at increased risk of legal and physical intimidation, harassment and violence. The Resolution condemns impunity and details a range of positive measures that states should adopt to ensure a safe environment for journalists.

- The **2000 Joint Declaration** of the UN Special Rapporteur on Freedom of expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression¹⁸⁹ stated: “*States are under an obligation to take adequate measures to end the climate of impunity and such measures should include devoting sufficient resources and attention to preventing attacks on journalists and others exercising their right to freedom of expression, investigating such attacks when they do occur, bringing those responsible to justice and compensating victims.*”
- **The 2010 Joint Declaration of Special Rapporteurs**¹⁹⁰ (including the UN, OSCE and OAS Special Rapporteurs on Freedom of Expression and the African Commission on Human and Peoples’ Rights) recognized that “impunity generates more violence” and expressed concerns about, inter alia, “*a failure to allocate sufficient attention and resources to preventing such attacks; ” “the lack of recognition that special measures are needed to address these attacks, which represent not only an attack on the victim but also an attack on everyone’s right to receive information and ideas,” and “the absence of measures of protection for journalists who have been displaced by such attacks.*”
- The **2012 Joint declaration on Crimes against Freedom of Expression**¹⁹¹ of four Special Rapporteurs called on governments to create a new category of ‘crime against free expression’ in response to the increasing number of attacks against journalists, media workers, bloggers, human rights defenders and others targeted for exercising their right to freedom of expression. This category of crime would warrant higher penalties, on the ground that crimes against those exercising their freedom of expression undermines the right to know of all, and affect societies as a whole. The 2012 Joint Declaration identified steps that the states must adopt in order to prevent these crimes, including to “put in place special measures of protection for individuals who are likely to be targeted for what they say where this is a recurring problem.”
- The UN Special Rapporteurs raised concerns on violence against journalists in their **annual reports** in which they urged governments to take all necessary measures to protect journalists from attacks. These included 2002,¹⁹² 2004,¹⁹³ 2010¹⁹⁴ and 2012¹⁹⁵ reports of **the UN Special Rapporteur on Freedom of Expression**, the 2011 report of **the UN Special Rapporteur on the situation of Human Rights Defenders**¹⁹⁶ and the **2012 report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions**¹⁹⁷.

An important question is exactly how far the duty to protect reaches. On the one hand, the protection should at least markedly reduce the risk of violence occurring; on the other hand, it should not go so far as to impose an extreme burden on the State or provide an excuse for constantly shadowing a journalist. The duty to protect should not be such as to place an “an impossible or disproportionate burden on the authorities.” Not every claimed threat would automatically give rise to a right to protection. The deciding factor should be whether “the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party”¹⁹⁸. Importantly, in its jurisprudence, the European Court of Human Rights has also clarified:

- **Violation of the right to life in cases when the victims have not been deprived of life:** the issue of protection of the right to life (Article 2 of the European Convention) can arise even although no actual death has occurred and the victim is still alive. The Court specifically accepted that a violation of the right to life can be claimed also by those who have received death threats and those who have been victims of attempts to kill¹⁹⁹, whether by state or non-state actors.
- **Substantive obligations under the right to life when victims call upon the authorities to provide protection:** obligation to protect the life (under Article 2) may require the State to take steps to safeguard the lives of those within its jurisdiction. A number of cases, including well-known cases related to the murder of Georgy Gongadze (Ukraine)²⁰⁰ Hrant Dink (Turkey)²⁰¹ highlight the state's positive obligation to take preventive measures to protect a certain individual or individuals may arise where the authorities know or ought to have known of the existence of a "real and immediate risk to life of an identified individual or individuals from the criminal acts of third parties."

Duty to investigate attacks

If the authorities have been unable to prevent an attack against a media worker, they are obliged to investigate its circumstances and prosecute those responsible. The purpose of such an investigation should be, in the words of the HRC, to enable victims "to discover the truth about the acts committed, to learn who are the authors thereof and to obtain suitable compensation"²⁰².

Most of above mentions standards, when recognizing the importance of preventing attacks, also stress the importance of independent, effective and speedy investigation into the acts of violence. For example:

- The **Human Rights Council's 2009 Resolution on "Freedom of opinion and expression"**²⁰³ raised concerns on increasing attacks on journalists and called on all states to: "*[T]o investigate effectively threats and acts of violence, including terrorist acts, against journalists, including in situations of armed conflict, and to bring to justice those responsible in order to combat impunity.*"
- The **2012 Joint Declaration on Crimes against Freedom of Expression** specifies what steps States should take to launch an independent, speedy and effective investigation, with a view to bringing to trial, before impartial and independent tribunals, both perpetrators and instigators of the crimes against freedom of expression²⁰⁴.

Further, the **European Court of Human Rights** In its jurisprudence further clarified the obligation of the states to investigate the violence against journalists and media workers. In particular, the Court 's jurisprudence has established that the obligation to protect the right to life requires, inter alia, that there should be an effective investigation when individuals have been killed, whether by state agents or private persons, and in all cases of suspicious death. States are obliged to undertake a prompt, expeditious, thorough, diligent and comprehensive investigations into the deaths, threats to life and ill-treatment in which the victim's relations may participate, carried out by a body independent of the persons implicated in the events, and in a manner guaranteeing sufficient public scrutiny. To enable an effective investigation the authorities should set in place a number of safeguards:

- The investigation must be carried out by a body independent from those implicated in the events
- The investigation must be prompt, and the investigating authorities must make efforts to expedite the investigation
- Investigation must be thorough and rigorous, and capable of imputing responsibility for violation
- There must be sufficient public scrutiny of the investigation and the victim or next-to-kin must always be afforded effective access to the procedure.

Duty to ensure that the victim obtains “holistic reparations” for the violations suffered

The right to remedy for abuses of human rights is a recognised principle in international law. Similar to its jurisprudence on the nature and requirements of an effective investigation into violations suffered, the **European Court of Human Rights (ECtHR)** has produced extensive case law²⁰⁵ on the question of effective remedies. According to the ECtHR “rigorous scrutiny” of an arguable claim is required because of the irreversible nature of the harm that might occur²⁰⁶. The remedy must be effective in practice as in law. It must take the form of a guarantee, and not a mere statement of intent or a practical arrangement,²⁰⁷ and it must have automatic suspensive effect²⁰⁸.

Moreover in *Eckle v. Germany*, in terms of the maintaining the victims status, the ECtHR stated that the states must ensure that a) the national authorities have acknowledged a violation of the Convention; b) the applicant received satisfaction with regard to the past damage suffered as a result of the violation; and c) the applicant has been treated in such a way that there are sufficient grounds to allow an assessment of the extent in which the violation was taken into account by the authorities.

Protection of journalists in armed conflicts

Beyond the obligations set above, there are special obligations for states for protection of journalists in situations of conflict. Article 79 of the **Additional Protocol I to the Geneva Conventions** regarding the protection of journalists engaged in dangerous professional missions in areas of armed conflict sets out specific protections for journalists in conflict zones, requiring that journalists be treated as civilians and protected under the Convention²⁰⁹.

The **UN Security Council Resolution 1738**, issued in 2006, specifically addressed the concern of the Council to threats to journalists noting that they were “[d]eeply concerned at the frequency of acts of violence in many parts of the world against journalists, media professionals and associated personnel in armed conflict, in particular deliberate attacks in violation of international humanitarian law”²¹⁰.

UNESCO Plan of Action

UNESCO has been at the forefront of promoting the safety of journalists. In 2007, UNESCO supported the development of the Medellín Declaration²¹¹ which calls on member states to fully adopt and enforce measures combating impunity. In 2011, UNESCO coordinated a UN Interagency Meeting on “Safety of Journalist and the Issue of Impunity” which created a plan of action on fighting impunity to coordinate international bodies’ efforts on fighting impunity²¹².

The objective of the Plan is to create a free and safe environment for journalists and media professionals in both conflict and non-conflict situations, and to combat impunity for attacks on journalists. Its measures include the establishment of an inter-agency mechanism to strengthen the contribution of each UN actor to the issue of safety of journalists and enhance coherence on this issue, as well as cooperation with UN Member States, to develop legislation and other mechanisms for safeguarding journalists, establishing partnerships, awareness-raising and fostering initiatives²¹³.

Domestic legal framework

According to Article 15 of the Constitution of the Russian Federation²¹⁴ international treaties have prevalence over national legislation. In national legislation the protection of journalists is provided by the following laws:

- **The Constitution** guarantees in Article 29 (1) that everyone shall be guaranteed the freedom of ideas and speech, as well as freedom of the media.
- **The Criminal Code**²¹⁵ makes it a criminal offence to obstruct the lawful professional activity of journalists. Article 144, paragraph 3, stipulates that such an act, accompanied by violence or threat of violence is punishable by compulsory labour for a term up to five years or by deprivation of liberty for a term of up to six years with deprivation of the right to hold specified offices or to engage in specified activities for a term of up to three years. The obstruction of the lawful professional activities of a journalist should be understood as forcing them to disseminate false information or to conceal correct information or the destruction of information he/she collected as a journalist, as well as forcing them to cease being a journalist.
- **The Law on Mass Media**²¹⁶ outlaws any censorship of mass media and the creation of any State institution with this purpose. Founders of media outlets do not have the right to interfere with the editorial policies of the media and the editorial board operates on the basis of professional independence. Further, Article 47 stipulates the rights of a journalist, including not to be put under pressure from their editor in deciding how to sign the publication, with their name or as a pseudonym. It gives a journalist the right to refuse to sign an article if as the result of editorial decisions a text has substantially changed, contradicting the conviction of the journalist. In addition, Article 49 states that a journalist has the right to disseminate information about the private life of a person, when he/she acts in the public interest. Equally the State guarantees journalists in connection with their professional activities, the protection of their honour, dignity, health, life and property as persons who are performing a public duty. According to Article 50 a public interest override is also applicable when a journalist films in secret and distributes this film.
- **The Civil Code**²¹⁷ includes a similar public interest override as part of Article 152, which stipulates that when using images of individuals or collecting, storing, disseminating and using information about the private dissemination and use of information about the private life of an individual, this is allowed when done in the public interest.
- **The Federal Law “On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum in the Russian Federation”**²¹⁸ guarantees that a journalist who reports on elections or referendums cannot be dismissed or moved to another position without their consent during and for a year following the respective election or referendum having taken place.


Despite the guarantees provided in Russian legislation, in particular through Article 144 of the Criminal Code and Article 49 of the Law on Mass Media as mentioned above, these particular provisions have

rarely been used as part of criminal investigations into attacks and violence against journalists as mentioned above. The “Media Conflicts in Russia since 2004” database records 16 occasions when the Investigative Committee investigated threats or violence against journalists under Article 144. Three investigations led to convictions (Olga Kiry, 2006²¹⁹; Stanislav Dukhovnikov and Tatyana Monoenko, 2006²²⁰; Irina Kizilbashev and Mikhail Zakhozhy, 2009²²¹); the most recent investigations are those into attacks on Ilya Tan (2011), and on Timofei Butenko and Natalya Kurochkina (2013).

The only legal standard currently included in Russian criminal law is Article 144²²² of the Criminal Code, of which part three was added on 7 December 2011. It is rare when an investigation into an attack is opened under this Article (which is investigated by the Investigative Committee rather than the police).

Conclusion

The vast bulk of international law, including the European case law, equally applicable in the Russian Federation, finds that states need to take effective measures to both prevent and promptly investigate crimes against journalists. The actions of the Russian authorities in failing to follow these measures by providing adequate remedies are a violation of international law.



Chapter 5. Protection of Journalists: ARTICLE 19's practical experience

Journalists, and new emerging actors such as bloggers and citizen journalists, play a crucial role in society by exercising their right to free expression for the benefit of informing others about issues of public importance. The level of threats they face as result of their work is increasing in many countries that could be categorized under international law as peaceful, but are lacking the proper legal or institutional framework or are facing a public security crisis or social instability.

As a primary goal, ARTICLE19 aims to ensure that the State, in this case the Russian Federation, fulfils its obligation to promote and defend the right of freedom of expression. As demonstrated by the previous chapters in this report, this responsibility includes: the adoption of effective measures to protect, prevent attacks (physical, psychological and legal) against those exercising this right, and in cases where such attacks take place, to independently, speedily and effectively investigate and bring the perpetrators and instigators to justice. However, in light of the fact that currently these international standards are not being met in the Russian Federation, and will take time to implement, there is a greater need for journalists and bloggers to take measures to protect themselves.

Furthermore, there is an onus of responsibility on media houses, unions, professional associations and human rights organisations to strengthen their capacities to safeguard journalists and to prevent and eventually counteract the effects of a hostile environment that currently result in silence, censorship or misinformation. The Joint Declaration also recognises the important role of other stakeholders, including inter-governmental organisations, non-state actors, media organisations and civil society organisations.

A Holistic Approach to Protection

ARTICLE 19's Global Protection Programme is dedicated to improving the security conditions and the protection remedies for those exercising their right to freedom of expression. Our holistic approach to protection, stemming originally from lessons learned from ARTICLE 19's work in Mexico, includes not only physical security but also psychological wellbeing. It also incorporates an understanding of ethical and legal challenges as well as improving digital security.

The aim is for journalists, media workers and civil society activists to be able to continue their work in spite of the persistence of a hostile environment and the lack of proper response of the state. Enabling them to increase their abilities to prevent attacks, manage the risks they face, not only improves their capacity to respond to threats and danger, but also to keep working. Overall, the programme seeks to make individuals exercising the right to freedom of expression more secure and to limit the number of threats as well as their potential impact on the journalists' work and/or wellbeing.

Protection - where to start?

In any given context, dangers or threats are assessed on the basis of precedents and probabilities. The interpretation of events – especially the analysis of the means and methods employed by authorities and other actors, as well as the goals they pursue through violence against journalists – makes it possible to identify specific individuals at risk and what can be done to counteract the actual threats.

Documenting and analysing cases, as we have done with this report, is a key method to identify patterns, hotspots and recurrent perpetrators/masterminds. This information can then be used to pinpoint the possible protection measures to be adopted by individuals, their employers as well as the state.

Once the above information is established, the next step is to prepare a risk assessment to identify the weak spots and possible actions to counter-act threats, intimidation and attacks.

Interview with Ricardo Gonzalez, ARTICLE 19's Global Protection Officer

A19: How do you perceive the current situation for journalists in the Russian Federation?

Ricardo Gonzalez (RG): The pattern of violence against journalists has evolved from what we have witnessed in previous years. On the one hand the most extreme forms of censorship, such as assassinations, are now limited to one region – Dagestan, while on the other hand judicial harassment, threats and psychological attacks are still a common practice. Above all, the lack of a proper response by the state in both preventing interference with the work of the press and the widespread impunity perpetrates the cycle of vulnerability faced by journalists, forcing them to rely on self censorship as the only means to protect themselves.

A19: How do you think it is similar to the situation in Mexico?

RG: Both Mexico and the Russian Federation experienced a relatively recent process of expansion of liberties and advances towards an

electoral democracy but such processes are yet to further transform the media landscape and its relation with formal and informal powers. The more evident common factor is impunity which perpetrates the vulnerability and obstacle for the full exercise of freedom of expression and press freedom. Both in Mexico and The Russian Federation the source of impunity lays within the prosecutors' investigations and not necessarily in the decisions of the courts and judges.

A19: Why should people be concerned, in your opinion, about the protection of journalists?

RG: The full realization of the right to freedom of expression is an essential factor for the enjoyment of other fundamental rights and liberties, without a free, diverse and independent media the public could enjoy having the necessary information to participate in the public debate let alone held those in to power accountable. As such, a violation of the right to freedom of expression of a journalist would always produce a negative effect on the amount and quality of information provided to the general

public. Attacking press freedom is an attack the right of everyone to be informed.

A19: What are the effects of journalists not being properly protected?

RG: The lack of preparation and preventive measures could actually magnify the effect of any threat. At the same time it could also translate into transferring the risk to colleagues and even the relatives and closes friends in some extreme cases. Being prepared to face the everyday dangers actually helps protecting those around us.

A19: What are the top three things that states should do to ensure the protection of journalists?

RG: The first one is to combat impunity by punishing any type of attack or interference with the work of the media. Secondly, the State should not interfere in the exercise of press freedom in anyway including indirect means. Finally the State should provide sources of protection that may be activate before an actual attack takes place, if necessary authorities should put into place special measures for this purpose.

A19: Do you think the onus of responsibility is for journalists to protect themselves?

RG: Not at all. The State is the main source of guarantee and protection of all human rights within its jurisdiction which includes preventing any violation. If such an act takes place, governments should investigate and punish them and eventually provide the necessary measures to ensure that it will not happen again. In second place, media outlets are legally obligated to provide the necessary mean to allow its employers to conduct their duties and work in acceptable security conditions regardless of the nature of the contractual relation. Finally we cannot deny the fact the journalist cannot rely

exclusively on the response or proper conduct of the State and their employers, so they should at the same time adopt the necessary measures to protect themselves and those around them.

A19: What are the key things journalists should keep in mind in order to keep themselves safe?

RG: Prevention, prevention and prevention. Journalists should not wait to be a victim of a security incident in order to adopt a self-protection scheme. This includes the necessity to invest the necessary time to identify the potential threats and adopt security measures that will eventually allow her or him to mitigate the threats and/or manage the risk. Been prepared can actually reduce the effect of any security incident. Journalists and media in general should move from the current reactive attitude towards security to a more proactive and preventive one.

A19: Why is protection of journalists important to you?

RG: Information is power but most importantly information is a fundamental right. By promoting an enabling environment for the free flow of information, ideas and opinions, we are actually promoting a context in which other rights can be fully realized.

A19: How did you start developing the trainings/toolkits?

RG: When we opened ARTICLE 19's office in Mexico seven years ago we identified the violence against journalists as one of the most urgent element in the freedom of expression agenda. After conducting an initial analysis we realized that the great majority of journalists were operating without any means of protection. During the next couple of years we undertook the task of providing the necessary to help journalists protect themselves while continue the

work. This included the creation of several learning modules based on a holistic perspective using different elements and tools such as legal knowledge, self-protection techniques, psychological wellbeing and ethics.

A19: Is there anything you would say to journalists worried about their own safety and security?

RG: Do not worry about your safety – instead take the proper steps to ensure it. Being safe does not necessarily mean to rely on self-censorship.

Conclusion

“I learned a lot from Anna, and first of all, that you should not just describe, you should act, you should influence the events, actively try to help. It was this activism of hers, this active position which the people that killed her feared”

- Natalia Estemirova, Anna Politkovskaya Award 2007²²³.

A common thread running through the cases examined in this report is that the journalists who have been targeted – threatened, attacked and murdered – have not seen their role as one of merely reporting. They have been actively engaged in the issues they cover, asking sharp questions, probing the official line, relentlessly going that step further in the search for the truth. It is the very fact that they take this approach that leads to them being targeted and it is the reason why, despite all the threats and harassment, they continue their work unbowed.

As in every country there are few people brave enough to speak out when others are intimidated into silence. Anna Politkovskaya, Natalia Estemirova, Mikhail Beketov, Akhmednabi Akhmednabiyev and Khadjimurad Kamalov – their deaths were not just individual tragedies but huge losses for society as a whole, as the lights they shined in the search for truth were extinguished and the free flow of information was impeded. Their unpunished deaths cast a dark shadow over the respect for human rights and basic freedoms essential for the development of a democratic State.

The importance of protecting those who continue to carry out their professional journalistic duty, therefore, cannot be stressed highly enough. The first step must be reversing the “policy of impunity” that journalists, like Elena Milashina interviewed in this report, see as having been allowed to flourish in the Russian Federation over the past two decades. This means renewing efforts to bring the perpetrators and instigators of crimes against journalists to account. In many cases, as this report demonstrates, it has not been the lack of evidence or plausible lines of enquiry that has denied justice to the victims but rather the intervention of corruption or vested interests and an apparent lack of will on the part of the authorities to enforce the rule of law.

Clearly a change of attitude towards the protection of journalists is also required. The authorities must be quick to condemn attacks against individuals and ensure that investigations are carried out in an independent, speedy and effective manner. Other key stakeholders also have an important role to play. Civil society organisations and the media in the Russian Federation must monitor and report such attacks, acting as an effective watchdog on the authorities who carry out the investigations and, most importantly, providing solidarity with those journalists under attack. Such solidarity is more important than ever as the space for civil society is itself shrinking, as a result of legislation enacted by President Putin since May 2012.

International and inter-governmental organisations as well as individual States should also continue to prioritise the protection of journalists as part of their human rights concerns in their respective agendas

and relations with the Russian Federation to ensure that the country complies with its obligations under international law.

In the meantime journalists, and the media outlets that employ them, should also think carefully how to mitigate the threats and risks they face.

Appendix: Joint Declaration on Crimes against Freedom of Expression

The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information,

Having met in Paris on 13 September 2011 and in Tunis on 4 May 2012 and having discussed these issues together with the assistance of ARTICLE 19, Global Campaign for Free Expression and the Centre for Law and Democracy;

Recalling and reaffirming our Joint Declarations of 26 November 1999, 30 November 2000, 20 November 2001, 10 December 2002, 18 December 2003, 6 December 2004, 21 December 2005, 19 December 2006, 12 December 2007, 10 December 2008, 15 May 2009, 3 February 2010 and 1 June 2011;

Emphasising, once again, the fundamental importance of freedom of expression both in its own right and as an essential tool for the defence of all other rights, as a core element of democracy and for advancing development goals;

Expressing our abhorrence over the unacceptable rate of incidents of violence and other crimes against freedom of expression, including killings, death-threats, disappearances, abductions, hostage takings, arbitrary arrests, prosecutions and imprisonments, torture and inhuman and degrading treatment, harassment, intimidation, deportation, and confiscation of and damage to equipment and property;

Noting that violence and other crimes against those exercising their right to freedom of expression, including journalists, other media actors and human rights defenders, have a chilling effect on the free flow of information and ideas in society ('censorship by killing'), and thus represent attacks not only on the victims but on freedom of expression itself, and on the right of everyone to seek and receive information and ideas;

Concerned about the particular challenges and danger faced by women exercising their right to freedom of expression, and denouncing gender specific crimes of intimidation including sexual assaults, aggression and threats;

Mindful of the important contribution to society made by those who investigate into and report on human rights abuses, organised crime, corruption, and other serious forms of illegal behaviour, including journalists, media actors and human rights defenders, and of the fact that the nature of their professions makes them susceptible to criminal retribution, and that they may, as a result, be in need of protection;

Condemning the prevailing state of impunity for crimes against freedom of expression and the apparent lack of political will in some countries to address these violations, with the result that an unacceptable number of these crimes are never prosecuted, which emboldens the perpetrators and instigators and substantially increases the incidence of these crimes;

Noting that independent, speedy and effective investigations into and prosecutions of crimes against freedom of expression are essential to addressing impunity and ensuring the respect for the rule of law;

Stressing the fact that crimes against freedom of expression, if committed by State authorities, represent a particularly serious breach of the right to freedom of expression and the right to information, but that States also have an obligation to take both preventive and reactive measures in situations where non-state actors commit crimes against freedom of expression, as part of States' obligation to protect and promote human rights;

Aware of a number of root causes that contribute to crimes against freedom of expression, such as high prevailing rates of corruption and/or organised crime, the presence of armed conflict and lack of respect for the rule of law, as well as the particular vulnerability of some of those who investigate and report on these problems;

Cognisant of a number of international standards that are relevant to this issue, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Geneva Conventions of 1949 and their Additional Protocols, the International Convention for the Protection of All Persons from Enforced Disappearance, UN Security Council Resolution 1738 (2006), UN Human Rights Council Resolution 12/16: Freedom of opinion and expression, the 2007 UNESCO Medellin Declaration and the 2010 UNESCO Decision on the Safety of Journalists and the Issue of Impunity;

Adopt, in Port of Spain, Trinidad and Tobago, on 25 June 2012, the following Joint Declaration on Crimes Against Freedom of Expression:

1. General Principles

- a. State officials should unequivocally condemn attacks committed in reprisal for the exercise of freedom of expression and should refrain from making statements that are likely to increase the vulnerability of those who are targeted for exercising their right to freedom of expression.
- b. States should reflect in their legal systems and practical arrangements, as outlined below, the fact that crimes against freedom of expression are particularly serious inasmuch as they represent a direct attack on all fundamental rights.
- c. The above implies, in particular, that States should:
 - i. put in place special measures of protection for individuals who are likely to be targeted for what they say where this is a recurring problem;
 - ii. ensure that crimes against freedom of expression are subject to independent, speedy and effective investigations and prosecutions; and
 - iii. ensure that victims of crimes against freedom of expression have access to appropriate remedies.
 - iv. in situations of armed conflict, States should respect the standards set out in Article 79 of Protocol I additional to the Geneva Conventions, 1977, which provides that journalists are entitled to the same protections as civilians, provided they take no action adversely affecting their status.

2. Obligations to Prevent and Prohibit

- a. States have an obligation to take measures to prevent crimes against freedom of expression in countries where there is a risk of these occurring and in specific situations where the authorities know or should have known of the existence of a real and immediate risk of such crimes, and not only in cases where those at risk request State protection.
- b. These obligations include the following legal measures:
 - i. the category of crimes against freedom of expression should be recognised in the criminal law, either explicitly or as an aggravated circumstance leading to heavier penalties for such crimes, taking into account their serious nature; and
 - ii. crimes against freedom of expression, and the crime of obstructing justice in relation to those crimes, should be subject to either unlimited or extended statutes of limitations (i.e. the time beyond which prosecutions are barred).
- c. These obligations include the following non-legal measures:
 - i. appropriate training on crimes against freedom of expression, including gender specific crimes, should be provided to relevant law enforcement officials, including the police and prosecutors, as well, where necessary, to military personnel;
 - ii. operation manuals and guidelines should be developed and implemented for law enforcement officials when dealing with crimes against freedom of expression;
 - iii. training supported by the State should be available for individuals who may be at risk of becoming victims of crimes against freedom of expression and this issue should be covered in university courses on journalism and communications;
 - iv. systems to ensure effective access to information about the circumstances, investigation and prosecution of crimes against freedom of expression, including media access to the courts, should be put in place, subject to appropriate guarantees of confidentiality; and
 - v. consideration should be given to putting in place general measures of protection such as providing health care, insurance and other benefit programmes to individuals who may be at risk of becoming victims of crimes against freedom of expression.

3. Obligations to Protect

- a. States should ensure that effective and concrete protection is made available on an urgent basis to individuals likely to be targeted for exercising their right to freedom of expression.
- b. Specialised protection programmes, based on local needs and challenges, should be put in place where there is an ongoing and serious risk of crimes against freedom of expression.

These specialised programmes should include a range of protection measures, which should be tailored to the individual circumstances of the person at risk, including his or her gender, need or desire to continue to pursue the same professional activities, and social and economic circumstances.

- c. States should maintain detailed and disaggregated statistics on crimes against freedom of expression and the prosecution of these crimes, among other things to facilitate better planning of prevention initiatives.

4. Independent, Speedy and Effective Investigations

When a crime against freedom of expression takes place, States should launch an independent, speedy and effective investigation, with a view to bringing to trial, before impartial and independent tribunals, both perpetrators and instigators of these crimes. Such investigations should meet the following minimum standards.

a. Independent

- i. The investigation should be carried out by a body that is independent from those implicated in the events. This implies both formal hierarchical and institutional independence, and practical arrangements to secure independence.
- ii. When there are credible allegations of involvement of State agents, the investigation should be carried out by an authority outside of the jurisdiction or sphere of influence of those authorities, and the investigators should be able to explore all allegations fully.
- iii. An effective system should be put in place for receiving and processing complaints regarding investigations by law enforcement officials of crimes against freedom of expression, which is sufficiently independent of those officials and their employers, and which operates in a transparent manner.
- iv. Where the seriousness of the situation warrants it, in particular in cases of frequent and recurrent crimes against freedom of expression, consideration should be given to establishing specialised and dedicated investigative units – with sufficient resources and appropriate training to operate efficiently and effectively – to investigate crimes against freedom of expression.

b. Speedy

- i. The authorities should make all reasonable efforts to expedite investigations, including by acting as soon as an official complaint or reliable evidence of an attack against freedom of expression becomes available.

c. Effective

- i. Sufficient resources and training should be allocated to ensure that investigations into crimes against freedom of expression are thorough, rigorous and effective and that all aspects of such crimes are explored properly.
- ii. Investigations should lead to the identification and prosecution of all of those responsible for crimes against freedom of expression, including direct perpetrators and instigators, as well as those who conspire to commit, aid and abet, or cover up such crimes.
- iii. Where there is some evidence that a crime which has been committed may be a crime against freedom of expression, the investigation should be conducted with the presumption that it is such a crime until proven otherwise, and relevant lines of enquiry related to the victim's expressive activities have been exhausted.
- iv. Law enforcement bodies should take all reasonable steps to secure relevant evidence and all witnesses should be questioned with a view to ascertaining the truth.
- v. The victims, or in case of death, abduction or disappearance the next-of-kin, should be afforded effective access to the procedure. At the very least the victim or the next-of-kin must be involved in the procedure to the extent necessary to safeguard their legitimate interests. In most instances, this will require giving access to certain

parts of the proceedings and also to the relevant documents to ensure participation is effective.

- vi. Civil society organisations should be able to lodge complaints about crimes against freedom of expression – of particular importance in cases involving killings, abductions or disappearances where the next-of-kin are unwilling or unable to do so – and intervene to in the criminal proceedings.
- vii. Investigations should be conducted in a transparent manner, subject to the need to avoid prejudice to the investigation.
- viii. Restrictions on reporting on court cases involving prosecutions of crimes against freedom of expression should be limited to highly exceptional cases where clearly overriding interests prevail over the particularly strong need for openness in such cases.
- ix. In addition to criminal investigations, disciplinary proceedings should be carried out where there is evidence that public officials have committed crimes against freedom of expression in the course of their professional duties.

5. Redress for Victims

- a. Where crimes against freedom of expression are committed, the victims should be able to pursue appropriate civil remedies, regardless of whether or not a criminal act has been established.
- b. Where a conviction is entered for a crime against freedom of expression, a system should be in place to ensure that an adequate remedy is provided to the victims, without the need for them to pursue independent legal action. Such remedies should be proportionate to the gravity of the violations, and should include financial compensation, and a range of measures to rehabilitate the victims and to facilitate the return of victims to their homes in conditions of safety and/or to reinstate them in their work if they so desire.

6. Role of other stakeholders

- a. Inter-governmental organisations should continue to prioritise the fight against impunity for crimes against freedom of expression and use available review mechanisms to monitor whether States are complying with their international obligations in this area.
- b. State and non-state donors should be encouraged to fund projects which aim to prevent and combat crimes against freedom of expression.
- c. Media organisations should be encouraged to provide adequate safety, risk awareness and self-protection training and guidance to both permanent and freelance employees, along with security equipment where necessary.
- d. Relevant civil society organisations and media should be encouraged, as appropriate, to continue to monitor and report on crimes against freedom of expression, to coordinate global campaigns on crimes against freedom of expression, and to consolidate documentation, for example through a central website/portal.

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CONCLUSION

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