



Submission to the UN Human Rights Committee
Subsequent to the Adoption of the List of Issues
134th Session (28 Feb 2022 - 25 Mar 2022)
31 January 2022

Russian Federation

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SUMMARY OF THE SUBMISSION

1. Between 2018 and 2021, Freemuse documented 218 incidents of artistic freedom violations in Russia.
2. Administrative arrests are imposed arbitrarily without considering whether there are exceptional circumstances, thus restricting the rights to a fair trial, freedom of association and assembly, and the right to liberty and security.
3. The rise of nationalist discourses throughout Russia has produced a restrictive climate for artists who are often charged under anti-terrorism measures and compelled to serve prison sentences for their creative expressions.
4. The repressive dismantling of freedom of expression and LGBTI rights has permeated through regulatory bodies and cultural institutions and has provided for an environment of censorship whereby mainstream ideology echoes the discrimination propagated by the authorities.
5. Freemuse, OVD-Info, and Coming Out affirm the calls under the List of Issues, particularly regarding Articles 9, 17, 18, 19, 21 and 26.

I. INTRODUCTION

This submission is prepared in advance of the United Nations (UN) Human Rights Committee's (hereinafter, the Committee) review of Russia at its 134th Session (28 Feb 2022 - 25 Mar 2022). It provides an overview of Freemuse, OVD-Info and Coming Out (Выход)'s main concerns under the International Covenant on Civil and Political Rights (hereinafter, the ICCPR) relating to the implementation of human rights under the Covenant and restrictions on the right to freedom of artistic and creative expressions.

Freemuse is an independent international non-governmental organisation advocating for freedom of artistic expression and cultural diversity and has United Nations Special Consultative Status to the Economic and Social Council (UN-ECOSOC) and Consultative Status with UNESCO. Freemuse documents violations of artistic freedom and leverages evidence-based advocacy at international, regional, and national levels for better protection of all people, including those at risk. OVD-Info is an independent human rights project documenting political persecution and coordinating legal assistance to detainees in Russia. Coming Out (Выход) works for the universal recognition of human dignity and equal rights of all regardless of sexual orientation or gender identity by providing free psychological and legal support to the LGBTI community and their relatives, as well as documenting human rights violations of LGBTI persons in Russia. The Russian Ministry of the Justice added Coming Out to the list of so-called 'foreign agents' and this must be mentioned in their materials and reports.

II. VIOLATIONS OF THE PROVISIONS OF THE ICCPR

A. Freedom of expression, including in the form of art (Article 19) and the Right to peaceful assembly and association (Articles 21, 22); in conjunction with the Right to liberty and security of a person (Article 9)

In signing the ICCPR on 18 March 1968, the Russian Federation committed to upholding the first-generation rights explicitly provided under the binding treaty. Russia is also a party to the European Convention on Human Rights and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and thus has an obligated commitment to uphold the right to freedom of expression and assembly to under the various mechanisms. However, Freemuse, OVD-Info, and Coming Out have documented concerning violations of these rights protected under the ICCPR.

The combination of the low quality of the provisions establishing broad police powers, the lack of independent judicial oversight, and the limitations on fair trial guarantees make such legislative provisions prone to abuse by executive powers to stifle dissent and artistic expression. Russian authorities have been using the practice of imposing successive administrative arrests on activists since at least 2019, and between 2018 and 2021, Freemuse documented 218 cases incidents of artistic freedom violations in Russia. This includes 31 imprisonments, 21 detentions, 67 acts of censorship, and two attacks on artists for their creative and political expressions. A proliferation of cases was noted since the 1 July 2020 referendum which provided President Vladimir Putin a legal mechanism to stand for election in two additional six-year presidential terms following the conclusion of his current term in 2024. In response, artists and creatives in Russia used public protest performances to advocate for democratic principles and the rule of law but consequently faced legal prosecutions, fines, and arbitrary arrests under the law on public gatherings which requires protests of more than one person to obtain prior authorisation. Alongside violating the rights to freedom of expression under Article 19 and freedom of assembly under Articles 21 and 22, the arbitrary arrests of artists and creatives violates the right to liberty and security of a person under Article 9 of the ICCPR, which provides that individuals should not be subject to arbitrary arrests or detentions as prescribed by law. The European Court on Human Rights also found Russia guilty of violating the right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR).

Under Article 13 of the Law on Police, Russian police are empowered to check an individual's identity papers if there are grounds to suspect a citizen of having committed a crime or an administrative offence, and escort them to a police station for a decision on their further detention if such a decision cannot be made immediately. Under Article 14 of the same law, the police may detain criminal suspects and suspects in administrative (misdemeanour) cases, wanted persons, and fugitives. Disobeying a lawful order by a law enforcement officer is punishable under Article 19.3 of the Code on Administrative Offences (CAO) with either a fine, compulsory labour, or up to 15 days of detention. According to Article 3.9 of the CAO, an arrest is only imposed 'in exceptional cases', but Russian courts seldom question the legality of the orders, in part due to the vagueness of the provisions establishing extensive police powers. Administrative proceedings are often only based on written statements by police

officers which are considered ‘evidence’ and judges often affirm these statements as sufficient proof of an offence without questioning the officers. Further, although a presumption of innocence is declared under Article 1.5 of the CAO, the burden of proof of innocence is on the defendant, and judges often refuse to call defence witnesses or accept video or documentary evidence as proof, finding that the case file contains sufficient evidence on the case. On this legal foundation, OVD-Info has found that administrative arrests are imposed arbitrarily without considering whether there are exceptional circumstances, thus violating various rights under the ICCPR, including to a fair trial, freedom of association and assembly, and the right to liberty and security.

Illustrative of this intersecting matrix of violations is the systematic targeting of Russian protest and performance group Pussy Riot, who have been subject to 23 violations of artistic freedom as documented by Freemuse since 2018. On 22 June 2021, four Pussy Riot members were separately detained in Moscow on different charges, with each arrested for 15 days and followed by a series of subsequent administrative arrests. This campaign coincided with celebrations around the Russian Victory Day and later with the UEFA 2020 football games hosted by Russia, whereby the police investigated whether members of Pussy Riot planned to disrupt the championship games after the collective previously staged a pitch invasion during the 2018 World Cup final in Russia. On 23 June 2021, the Krasnoselsky District Court sentenced Pussy Riot member and film director Anna Kuzminykh to 15 days of administrative detention under Article 19.3 of the Code of Administrative Offences. The previous day, Kuzminykh was approached by police officers in Moscow and informed that she was required to accompany them to the police station for questioning about a criminal case. The director obliged and went with the police, but a later police report stated that Kuzminykh refused to provide documents or enter the police car to be taken for examination at the station.

In a similar sentencing under Article 19.3 of CAO, Pussy Riot member Ludmila (Lucy) Stein was sentenced at the Presnensky District Court to 15 days administrative detention on 22 June 2021. The arrest and consequential charge occurred after Stein was approached by police officers outside her home building and informed that she must attend the police station, to which she obliged. However, the police report later noted that Stein refused to answer their questions, began to resist, and behaved aggressively. One month later on 22 July 2021, fellow Pussy Riot member Rita Flores was also sentenced at the Zyuzinsky District Court to 15 days of administrative detention under Article 19.3 of CAO for an incidence of disobedience the previous day with police officers outside her home in Moscow. Similarly, on 7 May 2021, Pussy Riot member Veronika Nikulshina was arrested by police officers outside her home in Moscow and taken to the Dorogomilovo Police Station where she was charged with ‘disobedience to the police’ under Article 19.3 of CAO for allegedly not showing her identification document to officers, despite video footage indicating that Nikulshina did present the document. On 8 May 2021, Nikulshina was sentenced to five days of administrative detention, on 16 June 2021 she was detained again and received 15 days of administrative arrest, and on 2 July 2021 Nikulshina was detained a further time leading to another 15 days of arrest. Nikulshina was forced to flee the country, thus indicating the limiting and constraining impact of these policies on artistic expressions and freedom of association in Russia.

B. Prosecution of artists and censorship on grounds of ‘extremism’

Article 19 of the ICCPR provides that everyone shall have the right to hold opinions without interference and expressing them including in the form of art, whereby any restrictions must be enacted in accordance with law, serve a legitimate purpose, and be necessary to achieve that identified purpose. This three-part test on legality, legitimacy, and necessity provides a framework for restrictions under the ICCPR but Freemuse and OVD-Info have documented how restrictions in Russia do not adhere to these provisions and are in direct contravention to Russia's obligations under the ICCPR. In particular, the rise of nationalist discourses throughout Russia has produced a restrictive climate for artists who are often charged under anti-terrorism measures and compelled to serve prison sentences for their creative expressions. This impact is amplified on marginalised and minority communities within Russia whereby the narratives extolling terrorism have given rise to a complex landscape in which the negotiation and balancing of the right to free expression, artistic expression, and counter-terrorism measures is precarious and distant from international human rights legislation.

The legislation promulgating anti-extremism and anti-terrorism in Russia are not formulated with sufficient precision which allows its extensive application without sufficient safeguards against abuse. According to Paragraph 3, Article 1 of the Law on Countering Extremism Activity, extremist materials include calls for extremist activity, publications substantiating or justifying national and/or racial superiority or justifying genocide. Article 13 establishes that the decision to recognise materials as extremist is taken by a court and such materials are subsequently included in the federal register of extremist materials maintained by the Ministry of Justice currently containing more than 5200 entries, including songs, books, texts, and movies. The distribution of these materials is prohibited and punishable with up to 15 days of administrative arrest under Article 20.29 of the CAO. Public calls for extremist activity or a repeat incitement of hatred are punishable with up to five years imprisonment under Articles 280 and 282 of the Criminal Code. Further, Article 205.2 of the Criminal Code criminalises public justification of terrorism whereby the Article's accompanying note affirms 'the public justification of terrorism' as a public statement on the recognition of the ideology or practices of terrorism. The application of Article 205.2 has been increasing since 2012 with numerous charges levied for online comments expressing opinions, often through satire, about terrorist activity and discussing the motivation of persons committing them, with no explicit support elucidated.

The Constitutional Court in Russia held that extremist materials (actions or documents) are characterised by an explicit or implicit disrespect for the constitutional prohibition of incitement of social, racial, ethnic, or religious discord of, and propaganda about, the exceptional nature, superiority, or deficiency of persons on such a basis. This is despite its ruling that courts had to consider the form and content of the activity or information, its audience, purpose, social and political context (ruling 1053-O/2013). They also considered whether there was a real threat to public order arising from calls to, or substantiation or justification of, unlawful infringements of constitutionally protected values. However, OVD-Info research illustrates how the courts seldom take such factors into account and frequently base their decisions on a superficial assessment and expert studies conducted by centres and experts close to the law enforcement and adduced at their request.

Since 2018, Freemuse has documented 14 cases of violations relating to extremism in Russia. Exemplifying this concerning trend against artists is the case of Russian comedian Yury

Khovansky, who was arrested on 8 June 2021 in St. Petersburg on the accusation of justifying terrorism, after a video appeared on YouTube in which he spoke sarcastically about ultra-nationalists, mocking their chauvinist ideas and commenting on the Russian government actions regarding the 2002 hostage situation in Moscow. The Dzerzhinsky District Court in St. Petersburg ruled to keep Khovansky detained until 8 August 2021 and this pre-trial detention was later extended until September 2021 by the Kuibyshevsky District Court in St. Petersburg. Whilst detained, the comedian was included on the Federal Service for Financial Monitoring of the Russian Federation (Rosfinmonitoring) website in a list of individuals that the Russian authorities consider terrorists and extremists, thus leading to a freezing of his assets and preventing him from opening a new bank account. On 29 December 2021, Khovansky was released from pre-trial detention but remains on the extremist list. The prosecution is ongoing. Similarly, on 10 May 2021 street artist Maxim Smolnikov, known by the pseudonym Xadad, was arrested by police after posting on the Russian social media network Vkontakte in 2018 about the Arkhangelsk FSB terrorist attack. Smolnikov is being charged under Part 2 of Article 205.2 of the Criminal Code on the justification of terrorism, and if convicted, the street artist faces up to seven years imprisonment. Smolnikov was released from pre-trial detention on 6 September 2021 and at the time of writing, proceedings are still ongoing.

In a recently documented case, Freemuse recorded that on 6 December 2021 the Russian Ministry of Justice added 12 songs from the Russian band Ensemble of Christ the Saviour and the Mother Earth (Ансамбль Христа Спасителя и Мать Сыра Земля) on the list of extremist materials. This was based on a 27 July 2021 decision by the Krasnoyarsk District Court to declare the materials extremist in nature, thus criminalising the distribution of the songs. The songs parody fundamentalist and far-right ideologies and despite the band members playing neo-Nazi characters and religious conservatives in their public appearances, this is undertaken solely as an artistic performance. In a similar case, 23 November 2021 the Russian Ministry of Justice added the book, 'A Woman in Berlin. Diary - April 20 to June 22, 1945', by German writer Martha Hillers to the list of extremist materials. This action was the result of a decision by the Abakan Court of the Republic of Khakassia of 6 September 2021 which deemed the book an extremist material and consequently banned its distribution across Russia. The court found that the book incited hatred towards Russians, including Red Army soldiers. The book, first published in Russia in 2019, is autobiographical and contains a description of sexual violence by Soviet soldiers towards German women in Berlin in the aftermath of World War II.

C. Freedom of expression in the context of sexual orientation (Article 19)

Article 19 of the ICCPR prescribes the right to hold opinions and express these through various forms, including through art. This is also prescribed by Article 10 of the ECHR and under Article 14 of the ECHR, discrimination on the grounds of sexual orientation is prohibited. However, the LGBTI community is one of the most discriminated groups in Russia and are further targeted after the regressive Federal Law for the Purpose of Protecting Children from Information Advocating for a Denial of Traditional Family Values law, often called the 'gay propaganda' law, was adopted in 2013. This legislation has provided a legal framework for the authorities to censor LGBTI-content and artists, often on the rationale of protecting minors, whereby everything connected with gender or LGBTI issues is interpreted as gay propaganda. Coming Out has found that content removal is justified by the authorities

through the promotion of 'traditional values', as 'LGBT ideology' is considered to destroy the institution of the family and Russia. The law also made an offence of spreading information misleading minors that traditional and non-traditional are socially equivalent, which is punishable under Article 6.21 of the CAO with up to 100 euro fine. Foreign citizens may also be subject to a 15-day arrest followed by compulsory deportation.

Data collected by Coming Out indicates that LGBTI people may also be subjected to pressure, constructive dismissal, and violations of their labour rights due to their appearance, wearing LGBTI symbols, their participation in activist projects, or because of outing. This is de facto administered as employers do not restrict the rights of LGBTI people by violating legislation protecting the LGBTI community, but through pressure in the workplace making working conditions unbearable, such as dramatically increased workload or reduced wages. Freemuse has documented how this elusive legal and non-legal system of restrictions has contributed to a proliferating trend of self-censorship in Russia where theatres, galleries, and cinemas often refuse to display LGBTI-themed artistic content or cut specific LGBTI scenes, such as in the movie *Rocketman*, because management fears retaliation from the authorities. This wider limitation on access to artistic and creative content is in direct contravention of Article 19(3) of the ICCPR which affirms that restrictions must only be provided by the law and for necessity within the context of respecting others or protecting public order, public health, or public morals.

In 2013, the Committee criticised the 'gay propaganda law' in the *Kirill Nepomnyashchiy v Russia* (2318/2013) case on the grounds that it penalised expressions of homosexuality. The Committee indicated general measures 'to ensure that the relevant provisions of the domestic law are made compatible with Articles 19 and 26 of the Covenant,' which Russia has since failed to do. Since 2018, Freemuse has documented 22 cases of violations relating to LGBTI-themed artistic content or LGBTI artists in Russia. This includes the case of LGBTI rights activist Yulia Tsvetkova who was notified by Russian authorities on 17 January 2020 that administrative proceedings were opened against her for violating the gay propaganda law after she posted her LGBTI-related artwork on social media. Censorship on LGBTI content additionally engages discussions on gender and symbols, like rainbows, as they are considered connected to the LGBTI community. In 2021, the Head of Russian Women's Union asked the Russian President to examine if an ice-cream in rainbow colours propagandises homosexuality and in March 2021, teenagers were detained by the police for demonstrating with a rainbow flag in St. Petersburg.

Coming Out and OVD-Info have noted that this repressing dismantling of freedom of expression and LGBTI rights has permeated through regulatory bodies and cultural institutions and has provided for an environment of censorship whereby mainstream ideology echoes the discrimination propagated by the authorities and consequently stifles expression throughout public and private vernaculars. This detrimental impact is further compounded by legislation allowing for the removal of any LGBTI information for failing the 'quality of law' test, thus leaving unrestricted discretion to the executive to censor content without judicial oversight or review. Freemuse has documented how this impacts artists whose work focussed on their sexual orientation or a wider promotion of LGBTI rights facing fines of up to 2000 euros. Organisers of LGBTI-themed events and cultural activities have also been subject to mandatory documentation checks on the grounds of ensuring no minors are present. This

legislation has been subject to criticism from across international mechanisms, with the European Court on Human Rights declaring in 2017 that it contained legal provisions that violated Article 10 and 14 of the European Convention on Human Rights that reinforces stigma and encourages homophobia.

Additionally, the Russian federal censorship body, Roskomnadzor, maintains a register of blocked websites and webpages and Article 15.1 of the Law on Information, Information Technologies and the Protection of Information allows extrajudicial blocking of information considered by the federal youth agency to be inciting minors into committing unlawful acts that threaten their life or health. Article 5 of the Law on Protection of Children from Information Harmful to Their Health and Development defines information ‘rejecting family values’ and ‘non-traditional sexual relations propaganda’ as information ‘harming children's health and/or development’. Illustratively, on 16 November 2021, Roskomnadzor blocked the website of Bok o Bok – LGBT International Film Festival (bok-o-bok.com) as the site was considered to be promoting ‘a positive attitude to non-traditional sexual relations and the attractiveness of non-traditional sexual relations.’ This decision was preceded by a campaign on various homophobic Telegram channels to block the festival’s website, however in 2021 the festival was held online with movies streamed on a separate platform. In a further case, on 10 August 2020, the Spirit of Fire Film Festival’s former executive director, Larisa Zhuravleva, was fined 50,000 rubles (approximately 576 euros) under the same law for ‘promoting non-traditional sexual relationships among minors’ after screening the LGBTI-themed film Outlaw at the festival in March 2020.

III.CONCLUSION

Pursuant to the list of issues in relation to the eighth periodic report of the Russian Federation, Freemuse, OVD-Info and Coming Out echo the calls on Russia to:

1. Report on recent measures taken or planned to prevent and combat all forms of discrimination based on sexual orientation and gender identity, including in employment (Para 6).
2. Respond to allegations that counter-terrorism measures are being applied as a pretext for prosecuting political opponents and other critics of the Government (Para 9).
3. Respond to the reports of intimidation and violence against and the killing of journalists, human rights defenders and opposition politicians (Para 13).
4. Comment on concerns regarding the negative implications on the freedom of expression of the legislation passed on 18 March 2019 strengthening State control of online media, including the criminalization of insulting the State and its symbols (Para 15).
5. Outline the steps taken to revise the Federal Law on Combating Extremist Activity with a view to clarifying the vague definition of “extremist activity”, the steps taken to review the Federal List of Extremist Materials and the measures taken to prevent the arbitrary use of the Law (Para 18).
6. Respond to the reports that the enjoyment of the right to freedom of assembly has been curtailed in recent years (Para 19).

7. Respond to the reports that the presidential election held in March 2018 took place in an overly controlled environment, marked by continued pressure on critical voices and restrictions on fundamental freedoms (Para 21).

Freemuse, OVD-Info, and Coming Out also recommend that Russia:

1. Abide by its commitment to upholding the fundamental freedoms and human rights, especially pertaining to artistic freedom and creative expressions, as guaranteed by the ICCPR.
2. End the practice of arbitrarily detaining artists and creatives for their artistic or political expressions.
3. Guarantee that law enforcement officers behave according to the highest standards of policing conduct and in alignment with the ICCPR.
4. Ensure that restrictions on artists and artistic freedom on the grounds of terrorism are sufficiently undertaken only after satisfying requirements on legality, proportionality, and absolute necessity.
5. Ensure long-term and sufficient funding for independent artistic and creative work across Russia.