



UNIVERSITY OF TARTU

European Master's Programme in Human Rights and  
Democratization

A.Y. 2020/2021

TESTING DEMOCRATIC STANDARDS IN RUSSIA: THE CASE OF  
FREEDOM OF EXPRESSION DURING PUTIN'S ERA

A comparative analysis of national and international laws  
regulating freedom of expression in Russia and their  
application in the context of media.

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## **ABSTRACT**

The master's thesis explores the essential meaning of freedom of expression in the context of contemporary constitutional democracy and how this concept has been incorporated into Russian constitutional law.

The thesis is mainly divided into three main sections. Firstly, through a brief analysis of the context in which liberalization took place after the collapse of the Union of Soviet Socialist Republics (USSR) and especially after Russia's accession to the Council of Europe (CoE), which allowed the protection of rights that were previously not granted. Greater attention will be given to the restriction of political opinions that are not in line with those of the Russian government. In addition, as a demonstration of this challenge, two phenomena will be considered with factual data and examples. Whereas the first one is purely of a political nature and deals with providing some examples of free speech oppression during 2018 Russian election campaign, the second one has a legal dimension and deals with the 2020 Constitutional Amendments and their implications for freedom of speech. A second chapter will explore the Russian legal framework in detail by examining international and national norms regulating, protecting and restricting freedom of expression. A final third chapter will address a significant issue at the core of freedom of expression and information, which unfortunately is one of the most notorious examples of its suppression in Russia, namely media and internet restrictions.

This thesis's primary purpose is to understand why despite Russia's membership in the CoE and the various international norms that protect, regulate and limit - in exceptional cases - this right, freedom of expression is not simultaneously accepted or respected. The main assumption is that the reasons why the norms on freedom of speech and freedom of the media are not fully adopted or respected by the Russian state are surely rooted in its domestic context and thus in a set of factors such as regime, legislation but also traditions and values that make this country quite different from the rest of Europe.

**Key words:** freedom of expression, press freedom, media freedom, liberal democracy, Russia.

W.C. 23,229

## **ACRONYMS**

CoE Council of Europe

CPJ Committee to Protect Journalists

ECHR European Convention of Human Rights

ECtHR The European Court of Human Rights

EU European Union

HRC Human Rights Committee

HRW Human Rights Watch

ICCPR International Covenant on Civil and Political Rights

NATO North Atlantic Treaty Organization

NGO Non-Governmental Organization

OHCHR Office of the High Commission for Human Rights

OSCE Organization for Security and Cooperation in Europe

RF Russian Federation

RSF Reporters Sans Frontières

RSFSR Russian Soviet Federative Socialist Republic

UDHR Universal Declaration of Human Rights

UK United Kingdom

UN United Nations

US United States of America

USSR Union of Soviet Socialist Republics

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## INTRODUCTION

This thesis examines freedom of expression in Russia over the past twenty years, even though sometimes it will be necessary to also refer to the pre-Putin period for the full comprehension of specific topics. The starting point is an understanding of what the Russian state promised its citizens when the “New Russia”<sup>1</sup> was founded and subsequently in what legal forms these promises were made, and how well these promises are kept in practice. It is vital to bear in mind that no other country is so often described in terms of its past as Russia, with its imperialist and Soviet features that still often emerge today. Russia has been post-Soviet for almost three decades. However, we are still inclined to refer to Russia not in terms of what it has become but in terms of what it is still struggling to leave behind.<sup>2</sup> Arguably, compared to Soviet Russia, post-Soviet Russia is relatively free. Nevertheless, assessing freedom of expression in Russia today is not an easy task. Based on the shadow cast by Russia's past, this paper attempts to assess Russia's inability to establish a democratic system based on the analysis of freedom of expression and media freedom, showing how the present situation is also a consequence of a Soviet past that still lingers in Russian society, politics and law.

Freedom of expression and media are fundamental values of a democratic society. Moreover, it is generally considered an essential prerequisite for achieving and maintaining other human rights as well as the rule of law. This is why freedom of expression is proclaimed in the leading international instruments of the United Nations (UN), such as the 1948 Universal Declaration of Human Rights (UDHR) and the 1966 International Covenant on Civil and Political Rights (ICCPR). Since the adoption of these treaties, freedom of expression has been enshrined in the legal systems of UN member states and has become a universal right. In Europe, the UN vision of freedom of expression was developed by the CoE, which was the first to adopt the concept of freedom of expression. Within the CoE, freedom of expression is guaranteed under article 10 of the

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<sup>1</sup> The term “New Russia” refers to the birth of the new state, the Russian Federation after the collapse of the USSR in 1991.

<sup>2</sup> Jeffrey Kahn, *Freedom of Expression in Post-Soviet Russia*, (Contribution to the Symposium Building BRICS: Human Rights in Today's Emerging Economic Power), UCLA Journal of International Law and Foreign Affairs, Vol. 18, SMU Dedman School of Law Legal Studies Research Paper No. 149, 2013. Available at SSRN: <https://ssrn.com/abstract=2481050>.

European Convention on Human Rights (ECHR), a legally binding treaty for all CoE member states.

The role of the media in any society is to share information and ideas so that the public is informed, up-to-date and able to participate actively in political, economic and cultural life. Media around the world have changed radically in recent years. While broadcasting remains an essential source of information and ideas, the internet and social media platforms have become increasingly important as platforms for distributing content and organizing among individuals. International law recognizes that a free and robust press plays a crucial role as a “public watchdog” in democracies, informing societies on matters of public concern and keeping governments in check.<sup>3</sup>

As this thesis shall examine, none of the international treaties treats freedom of expression as an absolute right. However, the universal nature of freedom of expression implies that governments have a negative obligation to refrain from undue interference with this right, as reflected in international norms. States sometimes restrict freedom of expression and media freedom under various pretexts and in ways that may contradict international law at the expense of democracy. The expectations that the development of information and communication technologies would bring more freedom and enormous respect for human rights have so far been illusory.

Based on these premises, this thesis aims to gain a better understanding of what failed during Russia's democratic transition period and show how the violation of the right to freedom of expression is proof that Russia is not a democratic state today. In this paper, it shall be considered Russia's implementation of Article 10 of the ECHR, sometimes using the term international instead of European.<sup>4</sup> The ECHR itself reflects the freedom of expression as enshrined in most international treaties. The work focuses on the analysis of freedom of expression by analyzing several cases brought before the ECHR and in a

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<sup>3</sup> Dirk Voorhoof, Ad van Loon and Charlotte Vier, *Freedom of Expression, the Media and Journalists: Case-law of the European Court of Human Rights*, IRIS Themes, European Audiovisual Observatory, Strasbourg, 2017.

<sup>4</sup> Despite being noteworthy that the CoE is a regional organization as it is European, since freedom of expression ideals are in line with those of the UN, they are sometimes used as synonyms in the sense that they are embraced by the international community.

timeframe encompassing the last two decades of Russia's political history. Evidence, therefore, shows that when governments and institutions control the information channels, the foundations of a democratic system fail: citizens find they only have to deal with the news that the government decides to broadcast and only in the terms most favourable to it. Russia's repeated violations of international conventions, denounced by international organizations, are tangible proof of the threat of disinformation under which Russian citizens currently find themselves. Russia is a country in constant transition since the collapse of the USSR, and despite all the reforms, it still suffers from a democratic deficit. At the same time, Russia plays an increasingly important role in global politics and is our European neighbor and the largest state in the world.

Cooperation between Russia and Europe is necessary to help overcome socio-economic challenges regardless the apparent values and different interests.<sup>5</sup> Therefore, it is crucial to understand whether the values promoted by the CoE, such as democracy, the rule of law and human rights, are and can be implemented in a state that is quite different for historical, political and economic reasons from the majority of CoE members. In recent years, several scholars such as Evans<sup>6</sup>, Skillen, Jackson and Sherstoboeva have tried to study the particular so-called democratic transition of the Russian system, focusing on freedom of expression.<sup>7</sup> However, given recent events such as the constitutional reform that allows the president to reset his previous terms of office and stand for election again, I think it is of fundamental importance and value to study in more detail this issue. It is also the duty of European governments, out of respect for Russian citizens, to increase the values of the CoE, and because given the importance that this country has had in the past and will have in the future, it would benefit the global order.

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<sup>5</sup> To better understand the relationship between Russia and the CoE I recommend reading the book by Lauri Mälksoo and Wolfgang Benedek, *Russia and the European Court of Human Rights: The Strasbourg Effect*, Cambridge University Press, 2018.

<sup>6</sup> Alfred B. Evans, *The Failure of Democratization in Russia: A Comparative Perspective*, *Journal of Eurasian Studies*, 2(1), pp. 40-51, 2011.

<sup>7</sup> Daphne Skillen, *Freedom of speech in Russia: Politics and media from Gorbachev to Putin*, Oxon, Routledge, 2017. Camille Jackson, *Legislation as an indicator of free press in Russia. Problems of Post-Communism*, 63(5), pp. 354–366, 2016. Elena Sherstoboeva, *Regulation of Media in Russia in the context of the council of Europe standars*, Doctoral thesis, School of Communication and International Relations Blanquerna Universitat Ramon Llull, 2017.



The interest in studying this topic also emerges in view of an increasing number of organizations such as the Committee to Protect Journalists (CPJ)<sup>8</sup> that acknowledged that Russia is one of the most dangerous countries for journalists and reporters and the worst in solving murders. Beyond the numbers and statistics, which can always be subject to a margin of error, what is impressive is the trail of blood that accumulates in Russia in the case of opponents, bloggers and journalists.

In 2020, Russia was ranked 149th out of 180th for its press freedom index, according to Reporters Without Borders<sup>9</sup>, a Paris-based non-governmental organization that defends freedom of information. In 2021, a report on press freedom repression in Russia from Freedom House<sup>10</sup> also ranks Russia as an unfree state, ranking it as 20 out of 100 for overall freedom in the country and 30 out of 100 for internet freedom.<sup>11</sup> Their methodology is largely derived from the UDHR adopted by the UN General Assembly in 1948.<sup>12</sup> Freedom in the World is based on the premise that these standards apply to all countries and territories, irrespective of any criteria, and are therefore universally applicable.

The first question I raise is about the standards that define a democratic state. Is the absence of political pluralism, as seen in Russia, enough to say that it is an authoritarian state? Should standards be applied universally, or should each case be analyzed individually? This transitional period has been associated with many hopes and promises. To what extent have these promises been fulfilled? What has actually changed? As a

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<sup>8</sup> CPJ is an independent American non-governmental, non-profit organization based in New York, which has correspondents worldwide covering different areas. CPJ is primarily concerned with promoting press freedom and defending the rights of journalists. For this reason, it is also referred to as the Red Cross of journalism. Available at: [https://en.wikipedia.org/wiki/Committee\\_to\\_Protect\\_Journalists](https://en.wikipedia.org/wiki/Committee_to_Protect_Journalists).

<sup>9</sup> From the French *Reporters sans frontières* (RSF) is an international non-profit and non-governmental organization with the declared objective of safeguarding the right to freedom of information, is in line with Article 19 of the UDHR which recognizes the right to receive and share information regardless of borders, along with other international charters of rights This organization has consultative status with the UN, UNESCO and the CoE. Available at: [https://en.wikipedia.org/wiki/Reporters\\_Without\\_Borders](https://en.wikipedia.org/wiki/Reporters_Without_Borders).

<sup>10</sup> Freedom House is a non-profit NGO that conducts research and advocacy on democracy, political freedom, and human rights. Since its founding in 1941, Freedom House has been a vigorous proponent of democratic values and a steadfast opponent of dictatorships of the far left and the far right. For more information visit the website: [www.freedomhouse.org/](http://www.freedomhouse.org/).

<sup>11</sup> Freedom House, *Freedom in the world 2021, Russia*, 2021, available at <https://freedomhouse.org/country/russia/freedom-world/2021>.

<sup>12</sup> Freedom House, *Freedom in the World 2021 Methodology*, 2021, available at <https://freedomhouse.org/reports/freedom-world/freedom-world-research-methodology>.

matter of fact, the promise was shown by the ratification of the ECHR in 1998, which was a significant first step connecting Russia to Europe and yet, still twenty-two years after Russia ratified the convention, Russian citizens bring the most claims to the ECHR.<sup>13</sup> Furthermore, the new Constitution of the Russian Federation guarantees, at least formally, political and social rights and personal freedoms, including those of speech and the press. However, by exercising selective law enforcement, censorship, and restrictions, the Russian government forces the independent press into self-censorship, promoting and funding only the government press and effectively nullifying the space for counter-information. There are many standards to consider and analyze, which I believe are necessary to understand the picture. Therefore, the thesis will focus on freedom of expression, particularly freedom of expression associated with media freedom. It is clear that there is a lack of respect for those values that are fundamental to any democratic system. Moreover, it is precise with the case study of freedom of expression that I will reconnect with the original question, whether or not those promises of freedom and democracy that were made have or have not been fulfilled.

Motivated by an interest in deepening the topic of freedom of expression and the manipulation of this right in Russia, I consulted various publications, institutional documents, reports of international organizations, newspaper articles and websites, which allowed to reconstruct the ways and reasons by which the Russian government asserts its power of control over the media. Therefore, this thesis is structured in three main sections. The first chapter provides the basis for understanding the political and institutional developments of the new Russian Constitution and its system of protection of freedom of expression and the violations of this right that have occurred over the last twenty years. Particular attention is paid to the role of freedom of speech in a democratic society and to the particular historical background in which Russia began its democratic transition period. Subsequently, given the vastness of freedom of expression, our focus on media and journalistic freedoms will analyze direct and indirect political speech and opinion limitations. In an inversely proportional relationship, as government control over the flow

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<sup>13</sup> However, it is crucial to consider that the Russian Federation is also the largest CoE member state in terms of population. Therefore, while the ECHR statistics show that in 2020 Russia was the leader in the number of violations and appeals to the ECtHR, in the period from 1959 to 2020, it is Turkey that occupies the number one position. Statistic available at: [https://www.echr.coe.int/Documents/Stats\\_violation\\_1959\\_2020\\_ENG.pdf](https://www.echr.coe.int/Documents/Stats_violation_1959_2020_ENG.pdf).

of information increases, the editorial independence of the media decreases. In the concluding part of the first part of the thesis, freedom of political expression during the 2018 election campaign will be studied as well as the effects that the constitutional reforms of 2020 brought to this right and to Russian democracy. For each of these, several legal cases brought by journalists or news agencies to the European Court of Human Rights are reported. The legal proceedings were retrieved through the CoE's official HUDOC platform.

Chapter two outlines the international and national laws and conventions to which Russia has adhered since the collapse of the USSR to move closer to the democratic ideal that has been pursued but continually denied. In an attempt to assess the degree of consistency of Russian national norms and judicial practice with CoE legal standards, this work applies a comparative analysis between European and Russian national standards on free speech. Therefore, it focuses on the Russian legal perspective on defamation of freedom of political expression and in the following chapter on media. At the same time, the CoE standards are considered to the extent that it is necessary to show standard or conflicting views and trends. The Russian legal concept of oppression of free speech was explored through the analysis of national legislation and the study of judicial perspective to shed light on the judiciary's role in making the Russian legal view of free speech more consistent with CoE standards.

Even though Russia is a member of both the UN and the CoE, it shows no commitment to adopting the recommendations put forward by the international courts, whose opinions have often been against the adoption of violent conduct towards media players and their rights to free expression and association. In this chapter, emphasis is mainly placed on the guidelines on freedom of expression and information issued by the CoE. The second part of the chapter analyses the implementation of the CoE standards and, in particular, Article 10 of the ECHR, thus bringing numerous problems to light. It emerges that those who give a different opinion or who decide to take the path of ethical journalism courageously are often victims of defamation campaigns, prosecution, arbitrary arrests without charge and evidence. Criminalizing journalists or those protesting for their rights becomes a

deliberate tactic designed to intimidate and silence those who question the government's political design.

The conclusive third chapter examines media and journalistic freedom, looking first at the institutional framework and then at all the laws to restrict and oppress the media. The statistics and reports of non-profit organizations (NGO) such as Reporters Sans Frontières and Freedom House, which serve as instrumental analyses for the emergence of critical areas of the Russian media system, show how Russia lacks freedom of expression. The direct consequence of these problems is the decline of pluralism and the violation of the citizens' right to be informed impartially and neutrally on all events of public interest.

Although this dissertation analyses its subject matter primarily from the perspective of political opinion and the freedom of media and therefore does not touch on every issue of free speech in Russia in detail, it allows drawing a picture of the system that has been built during the democratic transition and brings to light the problems and motivations, both internal and external, that have caused a detachment from the values of the CoE. On the one hand, the CoE is sometimes ineffective before national laws and does not have enough power vis-à-vis Russia. On the other hand, Russia's centralized system hinders the work of journalists and does not allow its citizens to be fully and impartially informed about events in the country itself. Putin's government has complete control over the flow of information, preventing the expression of any opposition opinion. As it becomes increasingly difficult to gain access to information that is not pro-government, it is easier to shape public opinion and favour the government. This is one reason why Putin won the fourth reelection in 2018 and, thanks to the 2020 amendments, signed the law allowing him to run for president twice more and thus potentially remain in power until 2036.

## **1. FREEDOM OF EXPRESSION AND DEMOCRATIC PROCESS IN RUSSIA.**

Within this first chapter, I will elaborate concisely on the theoretical and conceptual premises of the concept of freedom of expression, followed by an overview of how it is applied as an essential prerequisite of a democratic society. Subsequently, we will see the applicability of this concept in Russia during and after its democratic transition. Considerable attention has been devoted to both legal and politically oriented research. On this basis, being impossible to account for all the immense material available on the subject, the second part of the chapter will consider two significant issues that I decided to select, namely the last general elections of 2018 as well as the constitutional reforms adopted during 2020 and I will analyze their role within this thematic area of freedom of expression and democracy.

### **1.1 The role of freedom of expression in a democratic society.**

*“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”<sup>14</sup>*

As mentioned in Article 19 of the UDHR and in Article 10 of the ECHR, a fundamental characteristic of modern democratic states is the existence of the right to freedom of expression, which includes the freedom to hold opinions and to receive and impart information and ideas without interference<sup>15</sup> from the public authority.<sup>16</sup> At the same time, it includes the freedom to hold opinions and to receive and impart information and ideas independently.<sup>17</sup>

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<sup>14</sup> United Nation, UN General Assembly, *The Universal Declaration of Human Rights*, 1948, available at <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

<sup>15</sup> Toby Mendel, *A Guide to the Interpretation and Meaning of Article 10 of the European Convention on Human Rights*, Centre for Law and Democracy, available at <https://rm.coe.int/16806f5bb3>.

<sup>16</sup> Dirk Voorhoof and Hannes Cannie, *Freedom of expression and information in a democratic society, The Added but Fragile Value of the European Convention on Human Rights*, *The International Communication Gazette*, 1748–0485; Vol. 72(4–5): 407–423, 2010.

<sup>17</sup> *Ibid.*

The right to freedom of expression is not only a cornerstone of democracy but also a prerequisite for the enjoyment of many other rights and freedoms guaranteed by both the UN and the ECtHR.<sup>18</sup> Moreover, without any doubt, if there is no guarantee of protection of this right by independent and impartial courts, a country cannot be considered free and, consequently, democratic.<sup>19</sup> Yet, freedom of expression is subject to certain restrictions that are “in accordance with the law” and necessary “in a democratic society”, as stated in paragraph two of Article 10 of the ECHR.

In this section, I will briefly analyze the right to freedom of expression as one of the pillars of democracy.

A first consideration to be made is that, as previously mentioned, it is not only a right in itself, but also allows the safeguarding of others such as freedom of assembly. On the other hand, it may also be opposed to certain rights such as respect for private life or freedom of religion, and consequently, the Courts always try to find a balance between these conflicting interests.<sup>20</sup>

A subsequent general premise is that, since this right is not absolute,<sup>21</sup> the difficulty of its application and limitation lies in balancing competing rights and interests to determine what information must or should be part of public debate and thus benefit democracy, and what information causes impermissible harm to individuals and society and thus should necessarily be restricted or sanctioned in a democratic society.<sup>22</sup>

Freedom of expression is an institutional right because it is a pillar of contemporary democracy and does not grant any government the absolute power to criminalize its citizens for the ways in which they express themselves.<sup>23</sup>

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<sup>18</sup> Council of Europe, *Freedom of expression: A guide to the implementation of Article 10 of the European Convention on Human Rights*, Human Rights handbook, No. 2, January 2004, p. 6, available at <https://www.refworld.org/docid/49f17f3a2.html>

<sup>19</sup> Ibid. p. 6

<sup>20</sup> Ibid.

<sup>21</sup> Article 10 of ECHR is not an absolute right. As it will be analyzed in the second chapter, the test for such restrictions, set out in Article 10(2), is strict, and is applied rigorously by the Court. See Toby Mendel, *A Guide to the Interpretation and Meaning of Article 10 of the European Convention on Human Rights*, Centre for Law and Democracy, available at <https://rm.coe.int/16806f5bb3>.

<sup>22</sup> Dirk Voorhoof and Hannes Cannie, *Freedom of expression and information in a democratic society, The Added but Fragile Value of the European Convention on Human Rights*, The International Communication Gazette, p. 408, 2010.

<sup>23</sup> Ibid.

It is therefore a guarantee that citizens exercise a counterweight to the constituted powers and is thus a freedom from political repression. However, we already acknowledge that this right, in its origin and its foundations, could support a negative individualism that could lead to situations of inequality in the presence of a neutral state that would respect everyone's freedom to say and express what they wish, without taking into account the enormous harm that could be caused to oppressed groups such as ethnic minorities or LGBT groups. Undoubtedly, the state must intervene in discriminatory situations and must implement positive discrimination policies, extensive programmes to prevent inequality and, as far as possible, seek to punish actions that promote violence, hatred and segregation of the most vulnerable groups. It is not so much a matter of restricting freedom of expression or suppressing it, but of seeking to strengthen democracy.<sup>24</sup>

In the next chapter, I will analyze in detail the relevant national and international laws that regulate, protect and restrict freedom of speech.

The aim of this thesis is to study the application and non-respect of this right in Russia in the hope that it may contribute to the protection of freedom of expression, journalistic freedom and the media.

## **1.2 The background for freedom of expression in Russia.**

This section examines the evolution of freedom of expression in Russia after the collapse of the Soviet Union and discusses the major problems that emerged after the ratification of the ECHR. This premise provides the historical and cultural background to contribute an understanding of the differences between Russia and other CoE member states in the application of Article 10 of the ECHR.

The collapse of the Soviet Union in 1991 was associated with the well known process of the liberalization of Russia and the transition from the “Old” to the “New Russia”, which was accompanied by many hopes and promises.<sup>25</sup> Indeed, with the dissolution of the

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<sup>24</sup> Ibid.

<sup>25</sup> Mikhail S. Gorbachev, Essay, *The Laws of Life and Political Responsibility*, Emory Int. Law. Rev, p. 321, 1992.

Soviet Union, for the very first time, Russia had the opportunity to become an open state where people could feel free to express their opinions without fear of consequences.<sup>26</sup> The freedom to express opinions of any kind seems to be the dream not of decades but of centuries.<sup>27</sup> During its long history of oppression, culminating in the Stalin period, Russians had not benefited from any freedom of expression.<sup>28</sup>

Then, under Mikhail Gorbachev, the Soviet Union began a new movement commonly known as *Perestroika*, a Russian word that literally has the meaning of “restructuring”.<sup>29</sup> The new era of hope and freedom was launched under *Perestroika* and the movement was proclaimed both nationally and internationally as an opportunity to change the oppressive policies of the past and establish new rights for all.<sup>30</sup>

Freedom of speech was considered to be one of the main catalysts for the reform movement that helped to bring down the Soviet state and begin the transition towards a democratic state.<sup>31</sup> The fall of the USSR was accompanied by the desire of the people to get rid of old policies that did not take into account the value of individual human rights.<sup>32</sup> Under any political system, there is always a natural tension between the interests of the state and the interests of the individual.<sup>33</sup> In the old Russian regime, the interests of the state usually prevailed over any other rights.<sup>34</sup> As a matter of fact, the UDHR is a Western creation and as such asserts that the individual is a bearer of human rights, the protection of which requires the limitation of the powers of the state.<sup>35</sup> However, in Soviet thought, freedoms were contingent on the collective and society as a whole was the holder of

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<sup>26</sup> Daphne Skillen, *Freedom of Speech in Russia: Politics and Media from Gorbachev to Putin*. International Journal of Communication, Routledge, p. 1, 2017.

<sup>27</sup> Ibid.

<sup>28</sup> See Lynne Viola, *Stalinism and the 1930s*, in the book: *A companion to Russian History*, Abbott Gleason ed., 2009.

<sup>29</sup> Id. P. 317; Encyclopedia Britannica, *Russia: The Gorbachev Era: Perestroika and Glasnost*, available at: <http://www.britannica.com/EBchecked/topic/513251/Russia/38564/The-Gorbachev-era-perestroika-and-glasnost>.

<sup>30</sup> For a background discussion of *Perestroika* see Archie Brown, *The Gorbachev Era*, in the book *The Cambridge history of Russia. Vol. 3, The twentieth century*, Ronald Grigor Suny, 2006.

<sup>31</sup> Daphne Skillen, *Freedom of Speech in Russia: Politics and Media from Gorbachev to Putin*. International Journal of Communication, Routledge, p. 2, 2017.

<sup>32</sup> Tatyana Beschastna, *Freedom of Expression in Russia as it Relates to Criticism of the Government*, Emory International Law Review, Vol. 27, Issue 2, pp. 1105-1144, 2013.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Daphne Skillen, *Freedom of Speech in Russia: Politics and Media from Gorbachev to Putin*. International Journal of Communication, Routledge, pp. 21-22, 2017.



human rights.<sup>36</sup> The state was not seen as a potential violator of freedoms, but as their main guarantor.

Russia's accession to the CoE in 1996 and the subsequent ratification of the ECHR on 5 May 1998 seemed to prove to be the answer to the promises made.<sup>37</sup>

As previously mentioned, the ability to express oneself freely is a fundamental part of any democracy and the signing of the Convention was certainly a big step towards this transition and a demonstration of a commitment to fulfilling its promise of democracy and building a system of human rights that would protect the citizens of the Russian Federation.<sup>38</sup>

In practice, this period of transition from the “Old Russia” to the “New Russia” was accompanied not only by some changes in the law but also in its very structure and, above all, by changes in the policies that regulated the Russian legal system itself.<sup>39</sup>

A new feature to make the foundations of this liberalization more concrete was the establishment of legal protections for human rights and fundamental freedoms. Indeed, after the Soviet collapse, Russia began to implement substantial changes to the law, including with regard to freedom of expression, but we will discuss this in more detail in the section dealing with national and international laws regulating this freedom. One further significant reform that took place during the early 1990s was undoubtedly the amendment made to the Constitution with the adoption of a new Criminal Code and international law provisions in its federal legal system during 1993.<sup>40</sup>

However, considering that most of the Russian legislation was inherited from the former communist state, it is clear that it would have taken significant effort and time to achieve concrete results. Furthermore, given Russia's history and heritage on freedom of

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<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Tatyana Beschastna, *Freedom of Expression in Russia as it Relates to Criticism of the Government*, *Emory International Law Review*, Vol. 27, Issue 2, pp. 1105-1144, 2013.

<sup>39</sup> Ibid.

<sup>40</sup> The Constitution of the Russian Federation, Sect. II, available at: <http://www.constitution.ru/en/10003000-01.htm>.

expression discussed above, the new government knew that it would be difficult to overcome the old policies and fulfill the promise of democracy.<sup>41</sup>

Yet, even though twenty-three years have passed since Russia ratified the ECHR and began adapting and reforming its legal system, it has failed to make far-reaching substantive changes. Nonetheless, during these years, Russian citizens have one of the highest numbers of complaints to the ECHR.<sup>42</sup>

Despite the awareness that a democratic transition requires time and the implementation of new mechanisms, laws as well as numerous reforms, it is evident that Russia has clearly failed to achieve full consolidation of human rights protection over the past two decades.<sup>43</sup> On the one hand, some researchers argue that this country deteriorated into authoritarianism, or even into some form of quasi-monarchical regime<sup>44</sup>, while others claim that Russia can be defined as a partial democracy or low-calibre democracy<sup>45</sup>.

In the debate on the decline of Russian democracy, the presidency played a central role. Indeed, several scholars, such as Linz<sup>46</sup>, argued that Presidentialism, as witnessed in Russia, would have been potentially damaging to democracy on account of being anti-consensual or for the transformation of politics into a zero-sum game, or for weakening the constraints on executive power, and so the list could be continued.<sup>47</sup>

The powers of the president were extended by the Constitution, but the presidency had negative effects before the new Constitution was adopted and Russian politics did not change as a constitutional type after 1993.<sup>48</sup> Presidentialism is not negative in itself, what

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<sup>41</sup> Tatyana Beschastna, *Freedom of Expression in Russia as it Relates to Criticism of the Government*, Emory International Law Review, Vol. 27, Issue 2, pp. 1105-1144, 2013.

<sup>42</sup> European Court of Human Rights, Statistical Information, *Press country profile*, available at [https://www.echr.coe.int/documents/cp\\_russia\\_eng.pdf](https://www.echr.coe.int/documents/cp_russia_eng.pdf)

<sup>43</sup> Neil Robinson, *The Politics of Russia's Partial Democracy*, Political Studies Review, 2003 Vol. 1, pp. 149-166, 2003.

<sup>44</sup> Peter Reddaway and Dmitri Glinski, *The Tragedy of Russia's Reforms: Market Bolshevism versus Democracy*, Washington DC, United States Institute of Peace Press, 2001.

<sup>45</sup> Steven Lee Solnick, 'Russia's "Transition": Is Democracy Delayed or Democracy Denied?', Social Research, 66 (3), pp. 789-824, 1999; Archie Brown, 'Evaluating Russia's Democratization', in A. Brown (ed.) *Contemporary Russian Politics: a Reader*. Oxford, Oxford University Press, pp. 546-68, 2001.

<sup>46</sup> Juan J. Linz, *The Perils of Presidentialism*, Journal of Democracy, 1 (1), 51-69, 1990.

<sup>47</sup> Neil Robinson, *The Politics of Russia's Partial Democracy*, Political Studies Review, 2003 Vol. 1, pp. 149-166, 2003.

<sup>48</sup> Ibid.

has been witnessed in Russia has been defined by scholars such as Fish<sup>49</sup> and Shevtsova<sup>50</sup>, as to the result of a “super-presidentialism”. For most of them, super-presidentialism is not defined by the constitutional powers of the presidential institution but instead, its hallmark is the dominance of personal government over impersonal institutionalized administration and the existence of a large presidential apparatus, which dominates the state bureaucracy and the legislature.<sup>51</sup>

Nevertheless, although presidential power expanded after the adoption of the new constitution in 1993, it was estimated that the way Yeltsin governed did not change and he kept his coalition oversized in order to give himself as many choices as possible in preparation for the 1996 presidential election.<sup>52</sup> Thus, it emerged that the increase in the formal powers of the presidency neither added to nor detracted from the quality of democracy in Russia after 1993.<sup>53</sup> On the contrary, it could be argued that the new constitutional powers of the presidency resolved some of the ambiguities that existed in the relationship between president and parliament.<sup>54</sup>

On the other hand, the new Constitutional amendment adopted this past 2020 allowing President Putin to remain in power until 2036 further underlines the theory of super-presidentialism at the expense of democracy.

### **1.3 Russia’s limitation to political speech and opinion.**

As stated in the previous paragraphs, freedom of expression is very broad and is exercised in many areas. Therefore, this paragraph will consider the ability to freely express political

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<sup>49</sup> Steven M. Fish, *The Executive Deception: Superpresidentialism and the Degradation of Russian Politics*, in V. Sperling (ed.) *Building the Russian State: Institutional Crisis and the Quest for Democratic Governance*. Boulder CO: Westview, pp. 177–92, 2000.

<sup>50</sup> Lilia Shevtsova, *Yeltsin’s Russia: Myths and Reality*, Washington DC: Carnegie Endowment for International Peace, 1999.

<sup>51</sup> Neil Robinson, *The Politics of Russia’s Partial Democracy*, *Political Studies Review*, 2003 Vol. 1, pp. 149–166, 2003.

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*

<sup>54</sup> Robert G. Moser, *Executive-Legislative Relations in Russia, 1991–1999*, in Z. Barany and R. G. Moser (eds) *Russian Politics: Challenges of Democratization*. Cambridge: Cambridge University Press, pp. 64–102, 2001.

criticism, which is an important component of this right and has raised many issues in Russia over the years.

This part will briefly analyze some examples of oppression by the Russian authority for political criticism made by journalists and will serve as a basis for the following section which will take the last general elections of 2018 as a case study and highlight the problems that emerged during that event.

As argued by Tatyana Beschastna, today's threat to political discourse is the result of both direct and indirect actions taken by the government to suppress freedom of expression when it comes to criticism addressed to the government. These threats are a direct result of the dependence of the judiciary inherited from the Soviet era and now being influenced by Putin's government.<sup>55</sup>

Repression of political opinions and government criticism is not new, they were indeed restricted throughout the Soviet era.<sup>56</sup> During the Stalinist period, his *prokuratura* took particularly harsh measures to limit and prosecute political speech, which were increasingly controlled.<sup>57</sup> Throughout the early 1930s, political speech and criticism of the government was primarily controlled by means of artificial famine and starvation created by the Soviet government,<sup>58</sup> then by putting its citizens in labour camps and deporting them to remote and undeveloped areas of the country.<sup>59</sup>

Afterwards, the period of mass repressions began with hundreds of thousands of people executed without trial. All sorts of criticisms made to the government were referred to the *prokuratura* which charged people without allowing them a fair trial.<sup>60</sup>

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<sup>55</sup> Tatyana Beschastna, *Freedom of Expression in Russia as it Relates to Criticism of the Government*, Emory International Law Review, Vol. 27, Issue 2, pp. 1105-1144, 2013.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid. Prokuratura - Office of the Prosecutor - is a "unified federal centralized system of agencies effectuating in the name of the Russian Federation supervision over compliance with the Constitution and the execution of laws operating on the territory of the Russian Federation." Jonathan Greenberg, *The Kremlin's eye: the 21st century Prokuratura in the Russian authoritarian tradition*, Stanford Journal of International Law, vol. 45, no. 1, 2009.

<sup>58</sup> Timothy Snyder, *Bloodlands: Europe between Hitler and Stalin*, New York, Basic Books, p. 388, 2010.

<sup>59</sup> Angus Roxburgh, *How Russia Faced Its Dark Past*, BBC News, available at <http://news.bbc.co.uk/2/hi/europe/2821281.stm>.

<sup>60</sup> Tatyana Beschastna, *Freedom of Expression in Russia as it Relates to Criticism of the Government*, Emory International Law Review, Vol. 27, Issue 2, pp. 1105-1144, 2013.

In the utter absence of any human rights, these mass trials erased any idea of freedom of expression and changed people's mentality for years to come. Yet, it would take decades before individuals would again attempt to criticize the government.<sup>61</sup>

As we have seen previously, the end of the 1980s was accompanied by the period of *Perestroika*, when the Soviet government decided to change its approach towards the socio-political development of the country.<sup>62</sup> Although still under Soviet influence, Russia experienced some changes in freedom of expression during this period, when the first limited criticisms of the government were published.<sup>63</sup> In 1991, the situation in the country culminated in the collapse of the Soviet Union.<sup>64</sup> This began the first tumultuous years of transition to the new political system involving liberties that did not exist before. The changes that may seem more concrete came after the ratification of the ECHR where freedom of expression is protected under Article 10 that includes political speech as well as criticism of government.<sup>65</sup>

As mentioned in the previous paragraphs, political criticism inevitably clashes with other rights, such as Article 8 of the ECHR which provides for the right to respect for "private and family life, home and correspondence", subject to certain restrictions that are "in accordance with the law" and "necessary in a democratic society".<sup>66</sup> In putting the picture together, it has been assessed by the ECtHR that most political criticism affects the reputation of public functionaries and some interference may be justified to protect their reputation and privacy.<sup>67</sup> Thus, on several occasions, the ECtHR has stated that politicians running for their positions should be more aware that they have a reduced expectation of privacy, as their performance will be subject to political criticism, and the protection of their reputation may be outweighed by the public interest in discussing political issues.<sup>68</sup>

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<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

<sup>63</sup> Archie Brown, *The Gorbachev Era*, Chapter 12 in *The Cambridge history of Russia: The twentieth century*, p. 316, 324–325, Ronald Grigor Suny ed., 2006.

<sup>64</sup> Tatyana Beschastna, *Freedom of Expression in Russia as it Relates to Criticism of the Government*, Emory International Law Review, Vol. 27, Issue 2, pp. 1105-1144, 2013.

<sup>65</sup> Monica Macovei, *Freedom of expression: a guide to the implementation of Article 10 of the European Convention on Human Rights*

<sup>66</sup> Council of Europe, *The European Convention on Human Rights*, Article 8, Strasbourg, Directorate of Information, 1952.

<sup>67</sup> Tatyana Beschastna, *Freedom of Expression in Russia as it Relates to Criticism of the Government*, Emory International Law Review, Vol. 27, Issue 2, pp. 1105-1144, 2013.

<sup>68</sup> Ibid.

One way to determine whether and how Russia has recognized and applied the principles of the ECHR is to analyze the cases brought before the Court concerning Article 10. Overall, but especially in the Russian case the focus of Article 10 is on freedom of expression involving political criticism, thus the following focus will only include cases involving criticism of the government or engaging in any sort of political speech.

At the outset, by far one of the most notorious and debated cases on the principles applicable in deciding cases on freedom of expression in Russia is *Grinberg v. Russia*.<sup>69</sup> In this case, the ECHR provided a broad assessment of the jurisprudence on freedom of expression, highlighted the special place of the press in a society that considers itself democratic, and allowed itself to establish broader limitations on criticism of public officials.<sup>70</sup>

The press is subject to certain limitations set out in Article 10 Part 2<sup>71</sup>, where the Court expressed that these exceptions must be interpreted strictly when applied to the press and political speech.<sup>72</sup> The Court also emphasized the essential function of the press in a democratic society and its obligations and responsibilities to disseminate information and ideas on all matters of public interest, and at the same time suggested that the press should enjoy broader protection on freedom of expression.<sup>73</sup> However, the case ended with the ECHR awarding €1,120 in damages to the newspaper publisher, a sum not sufficient to act as a deterrent.<sup>74</sup> The Russian defamation law provides for criminal sanctions of up to

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<sup>69</sup> *Ibid.* and *Grinberg v. Russia*, App. No. 23472/03, at 5–6 (Eur. Ct. H.R. 2005), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-69835>.

<sup>70</sup> *Ibid.*

<sup>71</sup> “1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.” Council of Europe, *European Convention on Human Rights*, as amended by Protocols Nos. 11 and 14, 4 November 1950, available at: [https://www.echr.coe.int/documents/convention\\_eng.pdf](https://www.echr.coe.int/documents/convention_eng.pdf).

<sup>72</sup> *Grinberg v. Russia*, App. No. 23472/03, at pp. 5–6 (Eur. Ct. H.R. 2005), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-69835>.

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.* pp. 9-10.

three years of imprisonment and remains a powerful vehicle for the government's suppression of freedom of expression.<sup>75</sup>

In the years following this case, there have been numerous cases in line with the Grinberg one. In line with this, Russian courts imposed sanctions and charges on local newspapers and their editors for publishing material criticizing the government.<sup>76</sup>

A further significant case is *Krasulya v. Russia* dated to 22 May 2007.<sup>77</sup> The applicant was the director of a regional newspaper *Noviy Grazhdanskiy Mir* who published an article signed under the pseudonym of V. Nikolayev.<sup>78</sup> The article complained about the decision of the majority of the members of the legislative body of the city of Stavropol to change the procedure for the election of the mayor of the city who would no longer be elected by its citizens but appointed by the city legislator.<sup>79</sup> This publication criticized the changes in the local election process, which was considered unfair, and claimed that the changes were made at the request of the governor himself.<sup>80</sup>

One month after publication, the prosecutor's office granted the governor's request for criminal proceedings against the editor-in-chief.<sup>81</sup> Although the legal-linguistic expert who had been hired to assess the language used and who testified at trial found no particularly offensive language in the article, the court replaced the expert's opinion with its own assessment of the article.<sup>82</sup> While it was not possible to determine who was the author of the article since it was signed by a pseudonym, the Russian court charged the publisher with criminal defamation and dissemination of defamatory statements. At the time of the appeal, the editor claimed protection of freedom of expression under Article 10 of the ECHR.<sup>83</sup>

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<sup>75</sup> Tatyana Beschastna, *Freedom of Expression in Russia as it Relates to Criticism of the Government*, Emory International Law Review, Vol. 27, Issue 2, pp. 1105-1144, 2013.

<sup>76</sup> Ibid.

<sup>77</sup> *Krasulya v. Russia*, App. No. 12365/03 (Eur. Ct. H.R, 2007), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-79574>

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> Tatyana Beschastna, *Freedom of Expression in Russia as it Relates to Criticism of the Government*, Emory International Law Review, Vol. 27, Issue 2, pp. 1105-1144, 2013.

<sup>82</sup> Ibid.

<sup>83</sup> Ibid.

The ECtHR considered whether the interference was "necessary in a democratic society". In determining the necessity of limitations on freedom of expression in cases of criticism of the government, judges should consider the following elements: the position of the person criticizing the government, the position of the person against whom the criticism was directed, the subject matter of the publication, the characteristic of the statement challenged by the domestic court of the State party, the language used by the person who criticizes, and the severity of the punishment imposed by the domestic court.<sup>84</sup> The European Court analyzed the third Grinberg factor and came to the conclusion that interference by the authorities was not "necessary in a democratic society".<sup>85</sup> Moreover, the Russian Court did not present sufficiently valid reasons to justify the judgment. Furthermore, the ECtHR stated that national courts "exceeded the narrow margin of discretion granted to them for restrictions on public interest debates" under the limitation clause and "that the interference was disproportionate to the aim pursued and not necessary in a democratic society".<sup>86</sup>

In the following years, cases concerning political criticism have continued to increase and the ECHR was again faced with similar complaints notably in *Porubova v. Russia*<sup>87</sup> and *Romanenko v. Russia*.<sup>88</sup> Thus, in *Romanenko*, the Russian court imposed civil sanctions on the founders of the newspaper for publishing an article criticizing the failure of the court's management department to act, and in *Porubova*, the national court imposed civil sanctions on the founders of the newspaper for publishing an article criticising the failure of the Court's management department.<sup>89</sup>

In *Porubova*, the national Court condemned the editor-in-chief for defamation and criminal insult<sup>90</sup> and sentenced to one and a half years of corrective work with fifteen percent of wages withheld for the benefit of the state<sup>91</sup> These severe penalties imposed by

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<sup>84</sup> Tatyana Beschastna, *Freedom of Expression in Russia as it Relates to Criticism of the Government*, Emory International Law Review, Vol. 27, Issue 2, pp. 1105-1144, 2013.

<sup>85</sup> Ibid.

<sup>86</sup> *Krasulya v. Russia*, App. No. 12365/03 (Eur. Ct. H.R., 2007), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-79574>

<sup>87</sup> *Porubova v. Russia*, App. No. 8237/03, at 1, 4 (Eur. Ct. H.R. 2010), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-94840>

<sup>88</sup> *Romanenko v. Russia*, App. No. 11751/03, at 1–2, 10 (Eur. Ct. H.R. 2010), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-94843>

<sup>89</sup> Ibid. p. 2.

<sup>90</sup> *Porubova*, App. No. 8237/03, p. 6.

<sup>91</sup> Ibid. p. 5



Russian courts merely for expressing opposing views against the authorities present significant limitations to freedom of expression and operate as a significant deterrent to other newspapers, their founders and editors-in-chief, from publishing any criticism of the government, its entities or government officials.<sup>92</sup>

Slightly different issue was presented to the ECHR in *Saliyev v. Russia*,<sup>93</sup> where freedom of expression was obstructed by the withdrawal of a newspaper from circulation. In this case, Saliyev was the president of an NGO, Investory Kolymy, in Magadan.<sup>94</sup> He wrote an article about the acquisition of shares in a local energy company by a group of Moscow companies, claiming that a high-ranking Moscow official was behind the transaction.<sup>95</sup> The editor in chief of a local newspaper, owned and run by the municipal authorities, agreed to publish the article.<sup>96</sup> The same day the newspapers were withdrawn from circulation and destroyed.<sup>97</sup> Three days later, the editor-in-chief who had authorized the publication resigned from his position.<sup>98</sup> A later investigation revealed that the newspaper had been withdrawn from circulation because of Saliyev's article.<sup>99</sup> The withdrawal was authorized by the editor-in-chief at the request of the distribution company Rospechat, a former government-owned entity.<sup>100</sup> The author of the article initiated a formal complaint against the head of the distribution company and the former editor-in-chief for unlawful interference with freedom of the press under Article 144 of the Russian Criminal Code,<sup>101</sup> that concerns the obstruction of the legitimate professional activity of journalists by forcing them to pay for a period of up to six months, or with compulsory work for a period of up to 360 hours, or with corrective work for a period of up to one year.<sup>102</sup> However, the prosecutor concluded that no interference with press freedom had occurred.<sup>103</sup>

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<sup>92</sup> Tatyana Beschastna, *Freedom of Expression in Russia as it Relates to Criticism of the Government*, Emory International Law Review, Vol. 27, Issue 2, pp. 1105-1144, 2013.

<sup>93</sup> *Saliyev v. Russia*, App. No. 35016/03, at 1 (Eur. Ct. H.R. 2011), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-101179>.

<sup>94</sup> *Ibid.* p. 2.

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.* p.7.

<sup>97</sup> *Ibid.*

<sup>98</sup> *Ibid.*

<sup>99</sup> *Ibid.* p. 8.

<sup>100</sup> *Ibid.*

<sup>101</sup> Russia Federation and William Elliott Butler, *Criminal code of the Russian Federation*, London: Simmonds & Hill, 1997.

<sup>102</sup> *Saliyev v. Russia*, App. No. 35016/03, p. 8.

<sup>103</sup> *Ibid.* p. 9.

The national Court that reviewed this decision noted that, under Russian law, only the Court can order the withdrawal of a publication from circulation, but nevertheless, concluded that no violation had occurred.<sup>104</sup> The ECtHR, after considering the submissions of the various parties and taking into account the 1991 Russian Media Law prohibiting state censorship, applied the same three-part test used in Grinberg.<sup>105</sup>

The ECtHR examined whether there was interference, and whether it was done by a state authority, and whether the interference was justified, had a legitimate purpose or not, and lastly, whether it was proportionate to the interests at stake.<sup>106</sup> The ECtHR held that the withdrawal of the newspaper issue, after it had already been published, was not justified under Article 10 of the Convention.<sup>107</sup>

The analysis of the Saliyev case shows that the Russian court ignored the free speech nature of the request and treated it as a transaction, focusing only on the contractual obligations of the parties. Indeed, the Russian Court did not analyze the content of the article, did not examine the reasons for the withdrawal, and did not balance the author's right to freedom of expression against any other interests involved. As a matter of fact, the Russian court did not recognize the right to free speech under the Russian Constitution or the European Convention.<sup>108</sup>

These cases, that I selected from 272 cases<sup>109</sup> to date in which Russia has been found to have violated Article 10, demonstrate that the Russian government employs all necessary means to restrict political speech, especially criticism towards the government. Moreover, the imposition of criminal charges on both the authors of articles and the editors and founders of newspapers creates a strong deterrent against the future publication of any politically related articles.<sup>110</sup> Also, as there is no distinction between value judgments and statements of fact in Russian defamation law, national courts can reach any conclusion

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<sup>104</sup> Ibid. p. 19.

<sup>105</sup> Ibid. p. 11.

<sup>106</sup> Saliyev, App. No. 35016/03, at 11.

<sup>107</sup> Ibid. p. 21.

<sup>108</sup> Tatyana Beschastna, *Freedom of Expression in Russia as it Relates to Criticism of the Government*, Emory International Law Review, Vol. 27, Issue 2, pp. 1105-1144, 2013.

<sup>109</sup> European Court of Human Rights, Hudoc website, available at <https://hudoc.echr.coe.int/fre#%7B%22respondent%22:%5B%22RUS%22%5D,%22violation%22:%5B%2210%22%7D>

<sup>110</sup> Tatyana Beschastna, *Freedom of Expression in Russia as it Relates to Criticism of the Government*, Emory International Law Review, Vol. 27, Issue 2, p. 1126, 2013.

about statements published by the media.<sup>111</sup> In deciding these cases, dependent judges tend to replace expert opinions with their own assessment of expressions that criticize the government in some way.<sup>112</sup> These evaluations are guided by different factors from those used by the ECtHR.<sup>113</sup> What emerges is that when deciding Article 10 cases, Russian domestic courts do not take into account Article 10 of the Convention despite the fact that Russia has ratified it.

In the report published by Human Rights Watch (HRW) on Russia's assault on free speech, it emerged that from 2012 to 2017 Russian authorities intensified their influence and control over freedom of expression, in particular by considering certain types of criticism of the government as threats to state security and public stability and by introducing significant restrictions especially on online expression and intensive surveillance of such activities.<sup>114</sup>

If new restrictions on freedom of expression appear to target the political opposition, they actually affect all Russians and limit their possibilities to express their ideas freely and without fear of consequences.<sup>115</sup> According to the report, the restriction of free speech denies a voice to anyone who is dissatisfied with the current economic crisis or even mildly critical of Russia's foreign policy decisions.

Indeed, the Russian government's repression of free speech is part of a broader political framework and its hardening on civil society that was unleashed especially after the mass protests of 2011-2012 and Vladimir Putin's return to the presidency in May 2012.<sup>116</sup> Briefly, the protests, also referred to journalistically as the White Revolution, are a socio-political phenomenon in Russia that began on 4 December 2011, during Russia's 2011 parliamentary elections and continued throughout 2012 and 2013. The revolution developed into several non-violent demonstrations, against alleged electoral fraud and irregularities that occurred during the voting, and against the then former Russian

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<sup>111</sup> Ibid.

<sup>112</sup> Human Rights Watch, *Online and On All Fronts: Russia's Assault on Freedom of Expression*, pp. 1-5, 18 July 2017, available at: <https://www.refworld.org/docid/596e08bc4.html> [accessed 14 April 2021]

<sup>113</sup> Tatyana Beschastna, *Freedom of Expression in Russia as it Relates to Criticism of the Government*, Emory International Law Review, Vol. 27, Issue 2, p. 1126, 2013.

<sup>114</sup> Human Rights Watch, *Online and On All Fronts: Russia's Assault on Freedom of Expression*, pp. 1-5, 18 July 2017, available at: <https://www.refworld.org/docid/596e08bc4.html> [accessed 14 April 2021]

<sup>115</sup> Ibid.

<sup>116</sup> Ibid.

president and at that time current prime minister Putin, who announced his intention to run again for the 2012 elections.

The protest arose thanks to journalists and political activists who denounced the irregular conduct of the elections. The violent repression of the Bolotnaya Square protests were a violation of human rights and were recognized by the ECtHR in the case of *Frumkin v. Russia*.<sup>117</sup> The Strasbourg judges unanimously found a violation of Articles 11 (freedom of assembly and association), 5.1 (right to liberty and security), 6.1 and 6.3.d (due process).<sup>118</sup> The Russian authorities failed to ensure the peaceful conduct of the assembly and to carry out arrests, pre-trial detention and administrative sentencing.<sup>119</sup> Yevgeniy Frumkin, the applicant, had alleged that he had been arbitrarily arrested in Bolotnaya Square for obstructing traffic and placed on watch until receiving an administrative sentence of 15 days' imprisonment. The court awarded him compensation of €32,000.<sup>120</sup>

Most notably, the Court pointed out that the Russian authorities failed to meet the minimum requirement of communicating with protest leaders, which is essential to ensure their peaceful conduct, prevent unrest and ensure the safety of the citizens involved.<sup>121</sup> Instead, the arrests and detention of protesters have been grossly disproportionate to the objectives pursued, and have influenced people to participate in protest assemblies and generally from actively engaging in political opposition.

Moreover, since then, things have increasingly deteriorated with Russian Parliament adopting numerous laws that restrict or can be used to interfere with freedom of speech and information.<sup>122</sup> Among the most recently introduced laws are those that threaten the privacy and security of internet communications and, ultimately, do not make any digital communication in Russia safe from government interference.<sup>123</sup> This surveillance is

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<sup>117</sup> *Frumkin v. Russia*, Appl No 74568/12, 5 January 2016, available at [https://www.legislationline.org/download/id/6309/file/ECHR\\_Case%20of%20Frumkin%20v.%20Russia\\_5.01.2016.pdf](https://www.legislationline.org/download/id/6309/file/ECHR_Case%20of%20Frumkin%20v.%20Russia_5.01.2016.pdf)

<sup>118</sup> Human Rights Watch, *Online and On All Fronts: Russia's Assault on Freedom of Expression*, pp. 1-5, 18 July 2017, available at: <https://www.refworld.org/docid/596e08bc4.html> [accessed 14 April 2021]

<sup>119</sup> *Frumkin v. Russia*, Appl No 74568/12, 5 January 2016.

<sup>120</sup> *Ibid.*

<sup>121</sup> *Ibid.*

<sup>122</sup> Human Rights Watch, *Online and On All Fronts: Russia's Assault on Freedom of Expression*, pp. 1-5, 18 July 2017, available at: <https://www.refworld.org/docid/596e08bc4.html> [accessed 14 April 2021]

<sup>123</sup> *Ibid.*

having a suffocating effect on freedom of expression online. However, we will discuss this in more detail in chapter three.

What emerges is that nowadays, many Russians are increasingly uncertain about what constitutes acceptable speech and what could land them in a big fine or even a few years in prison.<sup>124</sup>

Since the fall of the USSR, Russia has not experienced such a high level of state intrusion in media affairs. Since 2012, the legislations passed have dramatically increased state control over the media landscape. Very few exceptions remain in which the media have not become the mouthpieces of the state to make political propaganda to mobilize support for the government or to spread obvious misinformation on many current issues.

In addition, along with all these limitations, many NGOs in Russia are forced to close or are having more and more problems due to the 2012 “foreign agents” law.<sup>125</sup> These laws are harming democratic development and putting undue pressure on civil society organizations. These restrictions began in 2012 with Putin's re-election when the Russian Parliament adopted a law requiring Russian NGOs receiving foreign funding to register with the Ministry of Justice of the Russian Federation as "organizations performing the functions of foreign agents", but subsequently in June 2014, the law was amended to allow the Ministry of Justice to label "foreign agents" on its initiative.<sup>126</sup> This law has also served to discredit and demonize independent groups that accept foreign funding.<sup>127</sup>

Russian groups are also affected by these laws,<sup>128</sup> which empowers the prosecutor's office to ban as "undesirables" foreign or international organizations that allegedly threaten Russia's security, defense, or constitutional order. The prosecutor's office can use the "undesirables" amendment of 2015 not only to stop the activity of a foreign organization, but also to force Russian groups to end all contacts with the targeted foreign organization. This would seem to be aimed at further isolating independent Russian organizations from

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<sup>124</sup> Human Rights Watch, *Online and On All Fronts: Russia's Assault on Freedom of Expression*, pp. 1-5, 18 July 2017, available at: <https://www.refworld.org/docid/596e08bc4.html> [accessed 14 April 2021]

<sup>125</sup> Andrei Richter, “Foreign agents” in Russian media law, IRIS Extra, European Audiovisual Observatory, Strasbourg, December 2020.

<sup>126</sup> Ibid.

<sup>127</sup> Human Rights Watch, *Online and On All Fronts: Russia's Assault on Freedom of Expression*, pp. 1-5, 18 July 2017.

<sup>128</sup> Ibid.

their international allies and partners.<sup>129</sup> These amendments are limiting the ability of civil society organizations to function.

As we will see in detail in the next chapter, the Russian Constitution guarantees freedom of thought and expression and prohibits censorship. Moreover, since the collapse of the Soviet Union, Russia has become a party to several international and regional treaties that impose legal obligations on governments to protect freedom of expression and information. International law allows for some justifiable interference with or limitations on freedom of expression, but such measures must be taken in pursuit of a recognized legitimate aim and, above all, have an adequate legal basis, be justified as necessary and proportionate in a democratic society and cannot be arrogated or discriminated against.<sup>130</sup>

Freedom of expression is one of the essential foundations of a democratic society and extends not only to information and ideas that are favored but also to those that express divergent or critical views.<sup>131</sup>

#### **1.4 Freedom of expression in election campaign of 2018.**

Power in the Russia's authoritarian political system has been concentrated in the hands of President Vladimir Putin, who has been in power since the year 2000 -one serving as Prime Minister and the others as President - and in 2018 won his fourth term as president of the Russian Federation. In the previous section we focused on some of the means by which freedom of political expression is restricted in Russia with examples of both case law and legislations adopted to limit this right.

Now, we will briefly analyze the issue of the 2018 general elections, first giving a brief overview of Putin's government. Putin's power is enhanced by security forces loyal to him, together with a submissive judiciary, a controlled media environment and a legislature composed of a ruling party and flexible opposition groups.<sup>132</sup>

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<sup>129</sup> Ibid.

<sup>130</sup> Ibid.

<sup>131</sup> Ibid.

<sup>132</sup> Freedom House, *Freedom in the World 2018 - Russia*, 24 January 2018, available at: <https://www.refworld.org/docid/5a69a81b4.html> [accessed 14 April 2021]

By now, the Kremlin is able to manipulate elections and inhibit the real opposition, as witnessed by what happened with Aleksey Navalny case.

Indeed, in December 2017, the Central Electoral Commission banned opposition leader Aleksey Navalny from challenging Putin in the 2018 presidential election, removing from the contest the only credible opposition figure who had announced a campaign.<sup>133</sup>

As Freedom House's 2018 report showed, president Putin maintained a firm hold on power in the 2018 general elections as well as during the course of 2017. *Golos* (the Voice), a Russian broadcast on Channel One, described the elections as "administratively controlled", and highlighted their politicized registration processes and misuse of public resources to benefit candidates from Putin's party, United Russia.<sup>134</sup>

Meanwhile, the authorities continued to repress Navalny, who was imprisoned several times during the year on various charges, including organizing an unauthorized rally.<sup>135</sup> After announcing his intention to challenge Putin for the presidency in 2018, the Central Election Commission prevented Navalny from running, explaining that a past criminal conviction for embezzlement made him ineligible. Navalny and his supporters said the conviction was politically motivated, an assessment taken up by observers including the Council of Europe's Committee of Ministers, which called the charge "arbitrary and unfair".<sup>136</sup> Although surveys showed Navalny's chances of beating Putin were very low<sup>137</sup>, his disqualification eliminated the only credible opposition figure from the competition who could have demonstrated a minimum of political pluralism that should be the basis of a democratic society.

Whether or not the elections held in the Russian Federation were free, the answer is simple: they were not. The Constitution of the Russian Federation renewed in 1993 establishes a strong presidency with the power to dismiss and appoint, pending parliamentary confirmation, the prime minister.<sup>138</sup> Putin was first president for two consecutive four-year presidential terms from 2000 to 2008. Subsequently, he remained

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<sup>133</sup> Ibid.

<sup>134</sup> Ibid.

<sup>135</sup> Ibid.

<sup>136</sup> Ibid.

<sup>137</sup> Ibid.

<sup>138</sup> Ibid.

the leader, albeit as prime minister, until 2012, thus violating the Constitution's own law on the limit of two maximum presidential terms. In the 2012 presidential election, Putin enjoyed advantages including preferential media treatment, numerous abuses of office and procedural irregularities during the vote count. He officially won 63.6% of the vote against an overly weak field of opponents such as Communist Party leader Gennadiy Zyuganov, who came second with 17.2%.<sup>139</sup>

According to a Constitutional Amendment adopted in 2008<sup>140</sup>, Putin enjoyed and has been enjoying a presidential term amended to six years. In December 2017, he announced his decision to run for another fourth term in presidential elections set for March 2018 and in the absence of opposition, won them.

On the other hand, the Federal Assembly consists of the 450-seat State Duma and the 170-seat upper chamber, the Federation Council. Half of the members of the upper chamber are appointed by governors and half by regional legislatures, usually with strong federal involvement.<sup>141</sup> Since 2011, only locally elected politicians have been eligible to serve in the Federation Council; the change was designed to benefit pro-Kremlin United Russia, as most local office holders are Party members.<sup>142</sup> As already anticipated, the 2008 constitutional amendment extended the Duma's terms of office from four to five years. After the 2011 State Duma elections, when United Russia won just under 50% of the vote in irregular elections that triggered numerous protests, the Kremlin rewrote the electoral law; the authorities reinstated the mixed system abandoned after the 2003 elections, according to which half of the members of the Duma are elected with proportional representation and half in uninominal districts.<sup>143</sup>

These changes had the desired effect in September 2016, when United Russia won 343 seats in the 450-seat State Duma, gaining such a landslide majority that it effectively

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<sup>139</sup> Ibid.

<sup>140</sup> The amendments of 2008, which were proposed in November 2008 and came into force on 31 December 2008, are the first substantial amendments to the Constitution of Russia of 1993 and extended the terms of the President of Russia and the State Duma from four to six and five years, respectively. (Wikipedia. Adrian Blomfield, *Vladimir Putin could reclaim Russian presidency within months*, 6 November 2008, The Daily Telegraph, London; David Nowak, *Putin's return? Russian parliament may allow it*, Associated Press, 6 November 2008).

<sup>141</sup> Freedom House, *Freedom in the World 2018 - Russia*, 24 January 2018, available at: <https://www.refworld.org/docid/5a69a81b4.html> [accessed 14 April 2021]

<sup>142</sup> Ibid.

<sup>143</sup> Ibid.



allowed it to change the Constitution without the support of other parties.<sup>144</sup> Indeed, reaching the point where opposition candidates were simply not allowed to register, so the outcome of many elections was clear even before the election day.

Subsequently, it emerged from Freedom House's 2018 report that regional and local elections were and are being manipulated to ensure the victory of candidates who are favored by the regime.

In conclusion, it emerged how the Russian electoral system is designed to maintain the dominance of United Russia. The authorities continue to make frequent changes to the laws and timing of elections as we have seen in the case of the 2008 Amendments and will continue to observe in the next section regarding the 2020 Amendments, in order to ensure that their preferred candidates have the maximum advantage. As a result, opposition candidates have little chance of success in appealing to these decisions, or in securing a more equal playing field, and in any case are easily eliminated from the game as in the case of Navalny. Transparency and accountability are not in the government's interest, nor is the existence of political pluralism and fair, correct and competitive elections.

### **1.5 Freedom of expression and Russia's Constitutional Reforms of 2020.**

As we have seen throughout this chapter, the promises of democracy and human rights have not been fulfilled; on the contrary, it seems that the political situation in Russia is getting worse and worse as the years have passed. The political system that emerges appears to be increasingly identified with authoritarianism.

In 2020 and to this day, Russia is experiencing a severe epidemic of COVID-19. However, analysts have suggested that the authorities have downplayed the true number of coronavirus deaths, pointing, among other things, to official statistics that showed a significant increase in the overall number of deaths in the country during the year.<sup>145</sup>

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<sup>144</sup> Ibid.

<sup>145</sup> Freedom House, *Freedom in the World 2021 – Russia*, available at: <https://freedomhouse.org/country/russia/freedom-world/2021> [accessed 14 April 2021]

In July, the authorities staged a referendum on extending presidential term limits, with an affirmative result effectively allowing President Putin to remain in office until 2036.<sup>146</sup> Among other changes, the amendments allow the president, with the support of the upper house of parliament, to remove judges from the Constitutional Court and the Supreme Court, further reducing the already weak independence of the judiciary.<sup>147</sup>

In December 2019, as mentioned in section 1.4, President Putin expanded the law requiring NGOs receiving international funding to register as "foreign agents", placing restrictions on their activities and threatening their employees with fines, raids and arrests.<sup>148</sup>

These new developments, overall, increasingly threaten democracy and human rights. However, since our focus is on freedom of expression, the first question I raise is whether and how 2020 amendments have restricted it or not. In my view, the points of interest to us are Article 67 and Article 67.1 namely, In Article 67 2.1 the Russian Federation shall ensure the protection of its sovereignty and territorial integrity.<sup>149</sup> Actions (except delimitation, demarcation and re-delimitation of the state border of the Russian Federation with neighbouring states) aimed at the alienation of part of the territory of the Russian Federation, as well as appeals for such actions, are not allowed.<sup>150</sup> Subsequently, the Russian Federation must honor the memory of the defenders of the Fatherland and ensure the protection of historical truth.<sup>151</sup> It is not permitted to diminish the significance of the people's deeds in the defense of the Fatherland. These two articles make any comment about the Great Patriotic War or the Crimean question unlawful.

While these amendments do not formally alter Russia's fundamental constitutional commitments to democracy, separation of powers and individual rights found in Chapters 1 and 2 of the Russian Constitution, they represent the most significant changes to the Russian Constitution since the founding of the post-Soviet constitutional order in 1993.<sup>152</sup>

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<sup>146</sup>Ibid.

<sup>147</sup> Ibid.

<sup>148</sup> Ibid.

<sup>149</sup> Article 67, Russian Constitution (amended version).

<sup>150</sup> Article 67, Russian Constitution (amended version).

<sup>151</sup> Article 67, Russian Constitution (amended version).

<sup>152</sup> William Partlett, *Russia's 2020 Constitutional Amendments: A Comparative Perspective*, Melbourne Legal Studies Research Paper Series No. 887, 2020, available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3625390](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3625390).

What emerges from Partlett's comparative perspective, some of the constitutional changes offer the potential for the development of Russian constitutionalism.<sup>153</sup> What emerges is how they consolidate the power of the current political elite by further concentrating power in the president's office. Therefore, this undermines Russia's commitment to the separation of powers. Furthermore, these amendments also affect Russia's commitment to democracy by giving the current Russian president the possibility of two more terms in office. Finally, they reinforce constitutional nationalism, using the Constitution as a shield against Russia's international obligations. This constitutional nationalism ultimately erodes the Constitution's fundamental commitment to ensuring that Russia is an integral part of the international community. They only further weaken the unrealized project of implementing constitutional commitments in line with democratic ideals.<sup>154</sup>

To conclude, it would seem plausible how they reconnect Russia more closely with its protectionist and imperial past by explicitly declaring that Russia is the successor state of the Soviet Union, the protector of the historical truth about the defenders of the homeland, and is responsible for ensuring patriotism even in the education of children.<sup>155</sup> The amendments add to the existing requirement of the Russian constitution that Russia may not enter into international treaties that restrict individual rights or contradict the foundations of the constitutional system.<sup>156</sup>

These constant changes to the Constitution, which are always in the interests of the state and never of the citizen, are just a demonstration of the plagiaristic manipulation that Putin and his party exercise.

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<sup>153</sup> Ibid.

<sup>154</sup> Ibid.

<sup>155</sup> Ibid.

<sup>156</sup> Ibid.

## 2. LAWS AND POLICIES GOVERNING FREEDOM OF EXPRESSION IN RUSSIA.

The following chapter will analyze the policies and laws that govern, protect and restrict freedom of expression in Russia, highlighting its international dimension. Subsequently, a second part will firstly present the Russian Federation's national laws.

### 2.1 International protection of freedom of expression.

This chapter assesses freedom of expression in Russia both internationally and domestically and examines the laws and treaties that have been made to fulfill promises of protection and respect for democracy and human rights, and, at the very least, by considering the application of freedom of expression, we will see the extent to which these promises made on paper are fulfilled in actual practice.

This first part of the chapter articulates the international scope of protection of free speech and, in particular, examines the European Convention on Human Rights as a hope to influence Russian attitudes. The rulings of the ECHR established by the Convention present a roadmap for future reform according to standards that Russia has already accepted following the ratification of the ECHR on 5 May 1998.<sup>157</sup> As noted in the previous chapter, although this event is considered a significant step by post-Soviet Russia, putting into practice what was signed on a piece of paper has been and continues to be a crucial challenge. This is a consequence of the fact that Russia has retained many of the laws or customs of Soviet Russia.

#### 2.1.1 Article 10 of the ECHR.

Freedom of expression is protected by Article 10 of the ECHR,<sup>158</sup> which, as previously noted, ultimately encompasses political speech as well as speech relating to criticism of the government.<sup>159</sup> In effort to advocate this protection, the CoE stated that freedom of expression is not only a right in itself, but plays a crucial role in constituting one of the essential foundations of a free society, one of the fundamental conditions for its progress

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<sup>157</sup> See Chart of Signatures and Ratifications, *supra* note 2.

<sup>158</sup> Tatyana Beschastna, *Freedom of Expression in Russia as it Relates to Criticism of the Government*, *Emory International Law Review*, Vol. 27, Issue 2, p. 1112.

<sup>159</sup> *Ibid.* and Monica Macovei, *Freedom of expression: a guide to the implementation of article 10 of the European Convention on Human Rights*, Council of Europe, Human Rights Handbook Ser. No. 2, 2004, available at [www.coe.int/t/dgi/publications/hrhandbooks/HRHAND-02\(2004\)\\_en.pdf](http://www.coe.int/t/dgi/publications/hrhandbooks/HRHAND-02(2004)_en.pdf)

and for the development of every human being.<sup>160</sup> Hence, the CoE has repeatedly stressed the importance of protecting freedom of expression in various decisions and cases, defining it as one of the fundamental conditions for the progress and self-fulfillment of every individual.<sup>161</sup>

Article 10 is divided into two essential parts. According to Article 10(1), freedom of expression includes freedom of opinion, freedom to impart and receive information and ideas.<sup>162</sup> These freedoms are almost absolute and must be exercised without interference from the State and its public authorities.<sup>163</sup> Interference from the State is defined as any interference arising from any authority in possession of power, such as the police, the courts, government officials and any decision-making body.<sup>164</sup> While paragraph one protects this right, paragraph two sets out certain limitations that could be imposed on freedom of expression by the domestic courts of the member states of the Convention, which we will see in detail in the next paragraph.<sup>165</sup>

The CoE, in drafting this article, after affirming that everyone has the right to freedom of expression, also made it clear that this right includes both the freedom to hold opinions and the freedom to receive and impart ideas and information. It is therefore clear that, also in this context, freedom of expression is to be understood as the right to express and communicate one's ideas and information freely.<sup>166</sup> These various elements, into which this freedom is declined, in order to be protected by the article in question, do not require any particular and do not necessarily have to have a certain relevance or value recognized by society, as it is protected by the article as followed: any form of communication of opinions and ideas, provided that certain fundamental principles are respected, such as tolerance and respect for human dignity.<sup>167</sup> Furthermore, an element which was not

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<sup>160</sup> Tatyana Beschastna, *Freedom of Expression in Russia as it Relates to Criticism of the Government*, Emory International Law Review, Vol. 27, Issue 2, p. 1112 and *Handyside v. United Kingdom*, 24 Eur. Ct. H.R. (ser. A) at 23, 1976.

<sup>161</sup> See, e.g., *Lindon v. France*, 2007-IV Eur. Ct. H.R. 183, 211, 2007; *Maronek v. Slovakia*, 2001-III Eur. Ct. H.R. 337, 349, 2001; *Thoma v. Luxembourg*, 2001-III Eur. Ct. H.R. 67, 84 2001; *Lingens v. Austria*, 103 Eur. Ct. H.R. (ser. A) 11, 26, 1986.

<sup>162</sup> Convention, supra note 9, art. 10(1).

<sup>163</sup> Ibid.

<sup>164</sup> Tatyana Beschastna, *Freedom of Expression in Russia as it Relates to Criticism of the Government*, Emory International Law Review, Vol. 27, Issue 2, p. 1113.

<sup>165</sup> Dominika Bychawska-Siniarska, *Protecting the right to freedom of expression under the European Convention on Human Rights - A handbook for legal practitioners*, Strasbourg, Council of Europe, 2017.

<sup>166</sup> Ibid.

<sup>167</sup> Ibid.

present in the UDHR of the UN and which, after the drafting of the ECHR, has been included in subsequent international instruments is represented by the indications contained in the second part of the article, concerning the limits placed on the exercise of the freedoms in question. The enjoyment of the right to freedom of expression may consequently be subject to restrictions.<sup>168</sup> The duties and responsibilities referred to must be understood as binding on those who disseminate information and ideas, taking into account the medium used for that purpose, be it television, radio, or the press, and the possible harmful consequences that may result for both the public and the community from their misuse.<sup>169</sup> The formulation of Article 10 ECHR in fairly general terms has allowed the ECtHR, through its interpretation, to specify what can be understood by the term freedom of expression and what the various types of expression can be. According to the Court, the application of this article can cover both forms of political expression and artistic expression, in this case, any form of art, it can be painting, poetry, literature, or cinematography, but also expressions of the arts but also commercial expressions regardless of whether they are broadcast on television, radio or other media.<sup>170</sup>

The core of freedom of expression is freedom of information, which is considered by the Court to be the 'watchdog' of democracy.<sup>171</sup> While no explicit reference is made to the press as a whole, its role has always been considered eminent in a state under the rule of law because of its function of transmitting information and ideas in the public interest.<sup>172</sup>

The explicit inclusion of the right to information within the right to freedom of expression can be considered a crucial component, closely linked to this aspect.

### *2.1.2 Limitation of Article 10 in respect of national security, public safety, protection of other rights.*

After analyzing the elements characterizing the first part of Article 10 ECHR, we will now focus on the second one and, in particular, on the definition of the limits to the exercise of

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<sup>168</sup> Ibid.

<sup>169</sup> Ibid.

<sup>170</sup> Ibid.

<sup>171</sup> Dirk Voorhoof and Hannes Cannie, *Freedom of Expression and Information in a Democratic Society The Added but Fragile Value of the European Convention on Human Rights*, International Communication Gazette Volume 72, 4, pp. 407-423, 2010.

<sup>172</sup> Dominika Bychawska-Siniarska, *Protecting the right to freedom of expression under the European Convention on Human Rights - A handbook for legal practitioners*, Strasbourg, Council of Europe, 2017.

the right in question. Indeed, although freedom of information is recognized as having a primary role in the building and maintenance of a democratic society, this does not prevent it from being subject to particular limitations.<sup>173</sup>

The restrictive measures laid down in the Convention are necessary whenever the enjoyment of certain rights comes into conflict with other equally essential interests in need of protection.<sup>174</sup> The most common example is the conflict between the protection of privacy and the freedom of information.

Firstly, what emerges is that the exercise of freedom of information entails specific duties and responsibilities for the person exercising that right.<sup>175</sup> In addition, state interference with an individual's enjoyment of his or her rights must meet certain requirements in order to be considered in conformity with the Convention.<sup>176</sup> In accordance with the principles established in Article 10 of the European Convention, restrictions on guaranteed freedoms must be: prescribed by the law,<sup>177</sup> proportionate to the aim they are intended to achieve, and be considered necessary in a democratic society in which there is a need for them.<sup>178</sup> Nevertheless, it will sometimes be necessary to refer to the case-law of the Court in order to better understand the exact scope of these limitations and how they are able to affect the enjoyment of the right, which is the subject of our analysis.<sup>179</sup>

At the outset of this analysis, it should be pointed out that the European Court, in reviewing the restrictions imposed by States on the rights and freedoms in general enshrined in the Convention, has always stressed that there is a margin of appreciation on the part of States by virtue of which each State may differ from another in the exercise of its authority over persons subject to its jurisdiction.<sup>180</sup> The ECtHR will eventually pronounce on the compatibility of the restriction with the Convention. It will do so by assessing the circumstances of a particular case, including whether the interference

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<sup>173</sup> Ibid.

<sup>174</sup> Ibid.

<sup>175</sup> Ibid.

<sup>176</sup> Ibid.

<sup>177</sup> *Gawęda v. Poland*, judgment of 14 March 2002 and *The Sunday Times v. the United Kingdom*, 26 April 1979.

<sup>178</sup> *Długołęcki v. Poland*, 24 February 2009 and *Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995.

<sup>179</sup> Dominika Bychawska-Siniarska, *Protecting the right to freedom of expression under the European Convention on Human Rights - A handbook for legal practitioners*, Strasbourg, Council of Europe, 2017.

<sup>180</sup> Ibid.

corresponded to a pressing social need and whether it was proportionate to the legitimate aim pursued.<sup>181</sup> However, it was pointed out that the States' margin of appreciation may be more or less wide, depending on the subject matter of the appeal, thus narrower when referring to issues of general interest, wider when dealing with religious or moral issues. In addition, the list of clauses justifying a limitation of the sanctioned right is, for some of them, generic to the point of being able to have a considerable impact on the enjoyment of the freedoms in question, since it is possible to acknowledge the possibility of the state authorities defining the content of these clauses themselves.<sup>182</sup>

Each state member of the CoE has a degree of discretion in deciding and settling matters that fall under both the Convention and domestic law provisions by means that fall within the unique circumstances of each state.<sup>183</sup> There is a wide range of discretion concerning each issue. While national courts have considerable discretion and a wider margin of appreciation in economic and trade disputes, this margin is minimal if not nearly absent in the context of freedom of speech cases.<sup>184</sup> The ECHR interpretation of all limitations under the second paragraph of Article 10 is very restrictive and on a case-by-case basis.<sup>185</sup>

The primary purpose of the ECHR system is for the national courts to apply the text of the Convention as developed by the Court's jurisprudence.<sup>186</sup> For this reason, the Court remains the last resource to be relied upon. Before they bring their issues to the ECHR, citizens of member states must exhaust all available channels in their domestic legal

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<sup>181</sup> Ibid.

<sup>182</sup> Ibid.

<sup>183</sup> Tatyana Beschastna, *Freedom of Expression in Russia as it Relates to Criticism of the Government*, Emory International Law Review, Vol. 27, Issue 2, p. 1113. See BEDERMAN, supra note 43, at 104; see also Grinberg v. Russia, App. No. 23472/03, at 7 (Eur. Ct. H.R. 2005), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-69835>.

<sup>184</sup> Monica Macovei, *Freedom of expression: a guide to the implementation of article 10 of the European Convention on Human Rights*, Council of Europe, Human Rights Handbook Ser. No. 2, pp. 8-9, 2004, available at [www.coe.int/t/dgi/publications/hrhandbooks/HRHAND-02\(2004\)\\_en.pdf](http://www.coe.int/t/dgi/publications/hrhandbooks/HRHAND-02(2004)_en.pdf)

<sup>185</sup> Tatyana Beschastna, *Freedom of Expression in Russia as it Relates to Criticism of the Government*, Emory International Law Review, Vol. 27, Issue 2, p. 1113. Romanenko v. Russia, App. No. 11751/03, at 11 (Eur. Ct. H.R. 2010) (citing Krasulya v. Russia, App. No. 12365/03, at 7 (Eur. Ct. H.R. 2007) <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-79574> (“In examining the necessity of the interference in the particular circumstances of the case, the Court will take the following elements into account: the subject matter of the publication, the position of the applicants, the position of the person against whom the criticism was directed, characterization of the contested statements by the domestic courts, the wording used by the applicants, and the penalty imposed on them.”).

<sup>186</sup> Dominika Bychawska-Siniarska, *Protecting the right to freedom of expression under the European Convention on Human Rights - A handbook for legal practitioners*, Strasbourg, Council of Europe, 2017.



system.<sup>187</sup> This is why national courts are considered to be the first and most important for ensuring the free exercise of freedom of expression and for guaranteeing that any restrictions follow the requirements established in paragraph 2.<sup>188</sup>

Likewise, however, domestic courts are not supposed to interfere with the exercise of freedom of expression whenever any of the reasons listed in paragraph 2 are involved, as this would lead to a limitation of the essence of the right itself.<sup>189</sup> In deciding cases of violations of Article 10, the ECHR takes into account the Constitution of the State against which the complaint is made and the internal laws of the country, thereby placing a high burden on the State authorities to justify any interference with freedom of expression.<sup>190</sup> In deciding whether the internal tribunal of the state has exceeded its margin of appreciation, the Court applies the three-part test, which we have listed above, and which was stipulated in the Court's 1979 decision in *The Sunday Times v. United Kingdom (UK)*.<sup>191</sup>

Decisions concerning this right are often very complicated. As an example, damaging someone's reputation or honor does not always have to be considered criminal or grounds for civil action in all cases. Similarly, a public expression that undermines the judiciary's authority should not be punished every time such criticism occurs.<sup>192</sup> Consequently, public authorities have only the possibility and not the obligation to order and enforce a restrictive or punitive measure against the exercise of Article 10.<sup>193</sup>

Otherwise, there would be a risk of incurring a hierarchy of rights and values or interests, placing freedom of expression at the bottom of the list, after other rights, in this case, the right to dignity and honor, or the protection of morals or public order.<sup>194</sup> Such a hierarchy would violate all international treaties that provide for equal rights and do not allow for permanent limitations on the exercise of a right, as this would amount to a denial of that

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<sup>187</sup> Tatyana Beschastna, *Freedom of Expression in Russia as it Relates to Criticism of the Government*, Emory International Law Review, Vol. 27, Issue 2, p. 1113.

<sup>188</sup> Dominika Bychawska-Siniarska, *Protecting the right to freedom of expression under the European Convention on Human Rights - A handbook for legal practitioners*, Strasbourg, Council of Europe, 2017.

<sup>189</sup> *Ibid.*

<sup>190</sup> See Macovei, *supra* note 36, at 30.

<sup>191</sup> *Sunday Times v. United Kingdom*, 30 Eur. Ct. H.R. (ser. A) at 29 (1979).

<sup>192</sup> Dominika Bychawska-Siniarska, *Protecting the right to freedom of expression under the European Convention on Human Rights - A handbook for legal practitioners*, Strasbourg, Council of Europe, 2017.

<sup>193</sup> *Ibid.*

<sup>194</sup> *Ibid.*

right. Interference is prescribed by law and is usually aimed at protecting one or more of the following interests or values: national security; territorial integrity; public safety; prevention of disorder or crime; protection of health; morals; the reputation or rights of others; preventing the disclosure of information received in confidence; maintaining the authority and impartiality of the judiciary.<sup>195</sup>

Therefore, the primary role of Article 10 is to protect the freedom of the individual, which must be properly balanced against the State's claim of overwhelming interest.<sup>196</sup> Finally, when the Court finds that all three requirements are met, State interference will be considered legitimate.<sup>197</sup> So the burden of proving that all three requirements are met lies with the State in question. Conversely, where the Court finds that a state has failed to prove one of the three requirements, it will not examine the case further and decide that the respective interference was unjustified and, therefore, that freedom of expression was violated.<sup>198</sup>

The ECHR, in applying this test, has granted a high degree of protection to political speech in many of its decisions.<sup>199</sup> In *Lingens v. Austria*, the judgment stated that the public has a right to receive information and ideas of public interest, in particular political issues.<sup>200</sup> In drawing the line between the two rights, the ECHR has acknowledged that most political criticism affects the reputation of public officials in one way or another, and some interference may be justified to protect the reputation of public officials and their privacy.<sup>201</sup> On several occasions, the ECHR has stated that politicians in the process of running for public office should have a reduced expectation of privacy, as their

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<sup>195</sup> *Observer and Guardian v. the United Kingdom*, 26 November 1991.

<sup>196</sup> Andrzej Rzeplinski, *Restrictions to the expression of opinions or disclosure of information on domestic or foreign policy of the State*, Budapest, in Monitor/Inf (97) 3, Council of Europe, 1997.

<sup>197</sup> Dominika Bychawska-Siniarska, *Protecting the right to freedom of expression under the European Convention on Human Rights - A handbook for legal practitioners*, Strasbourg, Council of Europe, 2017.

<sup>198</sup> *Ibid.*

<sup>199</sup> Tatyana Beschastna, *Freedom of Expression in Russia as it Relates to Criticism of the Government*, Emory International Law Review, Vol. 27, Issue 2, p. 1114.

<sup>200</sup> *Lingens v. Austria*, 103 Eur. Ct. H.R. (ser. A) at p. 26 (1986).

<sup>201</sup> See *Tammer v. Estonia*, App. No. 41205/98, at 15 (Eur. Ct. H.R. 2001), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59207>; *von Hannover v. Germany*, App. No. 59320/00, at 22 (Eur. Ct. H.R. 2004), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61853>

performance will be subject to political criticism and the protection of their reputation may be outweighed by the public's interest in discussing political issues.<sup>202</sup>

Having briefly examined the main concepts of Article 10 and how its limitations are applied,<sup>203</sup> the next stage is to see how Russia implements this right and especially the role of national courts, which, as we have just seen, are the first appellation for any violation of free speech.

## **2.2 Russian Federal Legislation and freedom of expression.**

After analyzing the European aspect where freedom of expression is protected, it is equally important to examine the domestic aspect, which, as we have seen, is the first point of reference. It is in this area that numerous problems have emerged. Moreover, the domestic aspect is crucial to understand the implementation of Article 10 ECHR itself by the Russian Federation.

The transitional period towards a more liberal country can be coincided with the early 1990s and with the fall of the Soviet Union in 1991. However, the freedoms promised by the Convention's ratification are not reflected in Russian society regardless of the numerous changes, not only political but also constitutional. It is precisely the institutional changes, on the one hand, the new Constitution of the Russian Federation and, on the other hand the Criminal Code, that is the subject of this analysis through which an attempt will be made to bring out problems and how they might be addressed. The biggest issue regarding freedom of expression is that, journalists who investigate or publish something deemed anti-government are constantly targeted. There are serious censorship challenges facing every media publication, and journalists of controversial publications face severe financial burdens, if not worse. According to a study provided by the CPJ, it is estimated that from 1992 to 2020, a minimum of 58 Russian journalists were killed as a result of their work, and another seven were reported missing.<sup>204</sup> At present, it has been reported that Russia remains one of the most dangerous countries for those working in the media.<sup>205</sup>

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<sup>202</sup> Tatyana Beschastna, *Freedom of Expression in Russia as it Relates to Criticism of the Government*, Emory International Law Review, Vol. 27, Issue 2, p. 1114.

<sup>203</sup> For more information, please consult Dominika Bychawska-Siniarska, *Protecting the right to freedom of expression under the European Convention on Human Rights - A handbook for legal practitioners*, Strasbourg, Council of Europe, 2017.

<sup>204</sup> Data from the Committee to Protect Journalists, available at <https://cpj.org/data/>

<sup>205</sup> Ibid.

Therefore, the purpose of this research is to investigate the extent to which the rights to freedom of speech and expression are being challenged in Russia. At the outset of this discourse, one needs to understand how Russian legal scholars have long debated the origin of Russian constitutional principles and institutions. On the one hand, some argue that they have been imported from Western constitutions, whereas others suggest that they are unique and deeply rooted in Russia's historical reality.<sup>206</sup> In this way, however, both perspectives have the impression of being extreme.<sup>207</sup> Therefore, Elena Sherstoboeva, in her doctoral thesis, formulated a view through the analysis of several Russian legal scholars, including Medushevsky and Kravets. They argued that Russian constitutionalism simultaneously integrates both universal and unique rules, principles, and institutions.<sup>208</sup> This concept also explains the Russian view regarding freedom of speech, reflecting a specific synthesis of universal visions and the post-Soviet landscape.<sup>209</sup> The second chapter and, in particular, sections 2.2 and 2.3 clarify the Russian constitutional concept of freedom of speech as well as interpret its main elements through an analysis of the Constitution itself and the articles and clauses dealing with freedom of expression.

By implementing the provisions of international law in its domestic legal system, Russia first began its commitment to respect human rights. During the beginning of the post-Soviet era, the provisions of international law were implemented in the Russian legal system when it adopted its new Constitution in 1993, thus replacing the previous Soviet Constitution of 1978.<sup>210</sup> This process, however, was neither easy nor linear. The text of the new Russian Constitution was adopted after a long three-year cycle, which is still under debate in Russia. This initial confrontation was a consequence of differences between the communist nucleus and pro-democratic forces.<sup>211</sup> The then-Russian president

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<sup>206</sup> Elena Sherstoboeva, *Regulation of Media in Russia in the context of the council of Europe standars*, Doctoral thesis, School of Communication and International Relations Blanquerna Universitat Ramon Llull, p. 50, 2017.

<sup>207</sup> *Ibid.* p. 51

<sup>208</sup> *Ibid.*

<sup>209</sup> *Ibid.*

<sup>210</sup> Gennady M. Danilenko, *The New Russian Constitution and International Law*, American Journal of International Law, Volume 88, Issue 3, pp. 451 – 470, 1994.

<sup>211</sup> Elena Sherstoboeva, *Regulation of Media in Russia in the context of the council of Europe standars*, Doctoral thesis, School of Communication and International Relations Blanquerna Universitat Ramon Llull, p. 51-53, 2017.

Boris Yeltsin fought for the transition to democracy but clashed with the Former Soviet *nomenklatura*.<sup>212</sup>

The main problem was that the two disagreed on vital issues, such as government regulations and the separation of powers.<sup>213</sup> Due to the political context created in this historical period, rapid adoption of a new Constitution was impossible. Nevertheless, it was clear that a new Constitution was urgent and necessary. The 1978 Constitution of the Russian Soviet Federative Socialist Republic (RSFSR) governed Russian legislation, but it failed to respond to the new state policies.<sup>214</sup> Numerous constitutional contradictions caused a variety of problems. Of particular interest in our analysis are the constitutional provisions on freedom of speech and the press, which contradicted the absolute ban on censorship.<sup>215</sup>

Although several drafts of the current Constitution of the Russian Federation were prepared, the two that emerged were those of the Constitutional Commission and the Presidential Commission, which reflected the political disagreement over the separation of powers.<sup>216</sup> The first gave more power to the Supreme Soviet, while the second sought to accumulate and solidify control in the presidency. While the draft of the Constitutional Commission had a high degree of legitimacy, it failed to be adopted mainly because Yeltsin prevented it.<sup>217</sup> Ultimately, the presidential draft prepared by lawyers Sergei Alekseev and Sergei Shakhraj was presented on 29 April 1993 and became the basis for the current Russian Constitution.<sup>218</sup> Yeltsin convoked the new deliberative body, the Constitutional Conference, on 5 June 1993 to legitimize the adoption of the new Constitution. The Constitution came into force on 25 December 1993.<sup>219</sup> The Constitution provided the basis for the country's governmental power, legal system, regulatory policies, and human rights protection.

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<sup>212</sup> Ibid.

<sup>213</sup> Ibid.

<sup>214</sup> Ibid.

<sup>215</sup> Ibid.

<sup>216</sup> Ibid.

<sup>217</sup> Ibid.

<sup>218</sup> Ibid.

<sup>219</sup> Ibid.

The new Constitution of the Russian Federation proclaims that it embraces the ideals of democracy under the rule of law, with a constitutional form of government.<sup>220</sup> The people are declared the only source of power and the holder of its sovereignty (Article 3).<sup>221</sup>

Afterward, Article 2 states that the protection of human rights and freedoms is a duty of the government.<sup>222</sup> Of particular interest to us are Article 15, which governs the importance of international agreements, and then Article 29, which deals in detail with freedom of speech.<sup>223</sup> The former proclaims that the Constitution has supreme legal force in Russia. However, in part 4 it states that in the presence of an international treaty that lays down rules other than those provided for by a law of the Russian Federation, the rules of the international agreement shall nevertheless be applied as they are universally accepted, just as the international treaties and agreements of the Russian Federation constitute an integral part of its internal legal system.<sup>224</sup> Consequently, a possible interpretation could be that Russia must still follow them even if it has not acceded to some of the international treaties. In particular, this clause could be read as an obligation for Russia to comply with recommendations and declarations of the CoE institutions developing Article 10 ECHR on freedom of expression.<sup>225</sup> In addition, Article 46(3) adopts a new standard that places higher values on individual human rights and establishes the right to an individual complaints procedure.<sup>226</sup> It also states that everyone has the right to petition international organizations to protect their human rights and freedoms.<sup>227</sup>

On the other hand, with respect to Article 29 of the Russian Constitution<sup>228</sup>, which guarantees freedom of speech, it has compiled clauses from the draft of the Constitutional Commission on freedom of speech and mass information as follows: in the first point it

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<sup>220</sup> Ibid.

<sup>221</sup> *Constitution of the Russian Federation*, 25 December 1993, available at: <https://www.refworld.org/docid/3ae6b59f4.html> [accessed 27 May 2021]

<sup>222</sup> Ibid.

<sup>223</sup> Ibid.

<sup>224</sup> Ibid.

<sup>225</sup> Elena Sherstoboeva, *Regulation of Media in Russia in the context of the council of Europe standards*, Doctoral thesis, School of Communication and International Relations Blanquerna Universitat Ramon Llull, p. 54-60, 2017.

<sup>226</sup> Russian Federation, *Constitution of the Russian Federation*, 25 December 1993, available at: <https://www.refworld.org/docid/3ae6b59f4.html> [accessed 27 May 2021]

<sup>227</sup> Article 46 provides: 1. Everyone shall be guaranteed protection in court of his (her) rights and freedoms. 2. Decisions and actions (or inaction) of State government bodies, local self-government bodies, public organisations and officials may be appealed against in court.

<sup>228</sup> Russian Federation, *Constitution of the Russian Federation*, 25 December 1993, available at: <https://www.refworld.org/docid/3ae6b59f4.html> [accessed 28 May 2021]

states that everyone should be guaranteed freedom of thought and speech; in the second point, it prohibits any propaganda that insinuates social, racial, national or religious hatred as well as social, racial, national, religious or linguistic superiority.<sup>229</sup> Furthermore, no one should renounce or deprive themselves of their beliefs and ideas, just as everyone has the right to free information as long as they use a lawful medium. Point six denies censorship and values freedom of the press.<sup>230</sup>

Moreover, the standards set by the ECHR represented a much higher level of protection of individual human rights than those in place in Russia.<sup>231</sup> After the Convention's ratification, most of the legislative changes were carried out during the first years.<sup>232</sup> Changes also took place in the Civil and Criminal Codes where Russia amended Article 1, Section 2 of its Criminal Code in 2001,<sup>233</sup> and amended Article 1, Section 2 of its Civil Code in 2002.<sup>234</sup> Both amendments contain similar provisions stating that if a Russian treaty stipulates procedural rules different from those provided for by Russian law, the rules of the treaty shall apply.<sup>235</sup> By adding these provisions in both codes, the Russian Federation should have provided and demonstrated to its citizens and the international community its dedication and commitment to the promise of democracy. However, these steps were made on paper and still had to be applied by domestic courts. For all these legislative changes to come into effect, they still had to be applied by Russian courts in their judicial practice, which, as we have seen in some examples in the previous chapter, they are failing to achieve.<sup>236</sup>

### **2.3 Russian implementation of Article 10.**

In this final section of the chapter one wonders whether the limitations we analyzed previously are the only ones or whether there are also indirect means by which states and,

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<sup>229</sup> Ibid. Article 29.

<sup>230</sup> Ibid.

<sup>231</sup> Tatyana Beschastna, *Freedom of Expression in Russia as it Relates to Criticism of the Government*, Emory International Law Review, Vol. 27, Issue 2, p. 1116.

<sup>232</sup> Ibid.

<sup>233</sup> Russian Federation, *The Criminal Code of the Russian Federation*, 13 June 1996, supra note 32, at 1, art. 1(2), available at: <https://www.wipo.int/edocs/lexdocs/laws/en/ru/ru080en.pdf>.

<sup>234</sup> Russian Federation, *The Civil Code of the Russian Federation*, Part 1, art. 1(2), 2002, available at: <https://cis-legislation.com/document.fwx?rgn=3569>.

<sup>235</sup> Ibid. and Russian Federation, *The Criminal Code of the Russian Federation*, 13 June 1996, supra note 32, at 1–2.

<sup>236</sup> Tatyana Beschastna, *Freedom of Expression in Russia as it Relates to Criticism of the Government*, Emory International Law Review, Vol. 27, Issue 2, p. 1117.

particularly in our case of study, Russia, take advantage of these loopholes. Over the years, the CoE and the European Court have put much pressure on the Russian government as they receive numerous cases every year regarding the violation of Article 10.<sup>237</sup> Thus, to circumvent the pressure, the Russian government has slowly shifted from using direct methods of restricting free speech described above to various indirect approaches. Therefore, to limit criticism, it has used means such as directly removing employees who criticize the government or even by imposing administrative requirements on protest organizers and denying permission to hold mass demonstrations.<sup>238</sup>

Let us take as an example two cases brought and examined by the ECHR: *Kudeshkina v. Russia*<sup>239</sup> and *Kuznetsov v. Russia*<sup>240</sup>. *Kudeshkina* was concerned about the obstruction of free expression by dismissing an employee who was critical of the government.<sup>241</sup> Here, a Moscow City Court judge was assigned to deal with a case concerning a large-scale customs and financial fraud investigation involving a group of people and, allegedly, some senior state officials.<sup>242</sup> After a detailed examination of the case and the victim's interrogation, Judge *Kudeshkina* was removed from office. The case and the matter were handed over to another judge by the President of the court.<sup>243</sup> A few months later, Judge *Kudeshkina* participated in an election campaign, running as a candidate for the Russian Duma.<sup>244</sup> During her election campaign, although not in her official capacity as a judge, she made a statement in a newspaper interview questioning the independence of the Russian judiciary.<sup>245</sup> For this reason, Judge *Kudeshkina* was later dismissed as a judge by the Moscow Judicial Qualification Council at the request of the President of the Moscow Judicial Council after serving for eighteen years.<sup>246</sup> Her criticism of the judiciary as the basis for her dismissal.<sup>247</sup> Although the ECHR later held that her statements fell within

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<sup>237</sup> Rizwan Syed, *Analysts See Freedom of Speech in Russia Slowly Eroding*, Voice of America, 2012), available at <http://www.voanews.com/content/analysts-see-freedom-of-speech-in-russia-slowly-eroding/1490461.html>.

<sup>238</sup> *Kudeshkina v. Russia*, App. No. 29492/05, at 11 (Eur. Ct. H.R. 2009), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-91501>; *Kuznetsov v. Russia*, App. No. 10877/04, at 3–4 (Eur. Ct. H.R. 2008), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-89066>.

<sup>239</sup> *Kudeshkina*, App. No. 29492/05.

<sup>240</sup> *Kuznetsov*, App. No. 10877/04.

<sup>241</sup> *Kudeshkina*, App. No. 29492/05, p. 1.

<sup>242</sup> *Ibid.* p. 2.

<sup>243</sup> *Ibid.* pp. 2-3.

<sup>244</sup> *Ibid.* p. 3.

<sup>245</sup> *Ibid.* p. 5.

<sup>246</sup> *Ibid.* p. 11.

<sup>247</sup> *Ibid.* pp. 11-12.



her right to freedom of expression, the Moscow court refused to reinstate her in her official capacity.<sup>248</sup>

Another indirect approach to restricting free speech and opinion is reported in the case of *Kuznetsov v. Russia*.<sup>249</sup> In this case, a picket organizer was charged with violating the Code of the Russian Federation on Administrative Offenses<sup>250</sup> for allegedly untimely filing of the picket notice.<sup>251</sup> According to the Soviet Decree of 1988 and the Presidential Decree of 1992, organizers of a demonstration, meeting, or picket must submit a written notice to the municipal authorities no later than ten days before the scheduled assembly.<sup>252</sup> In return, the municipal authority must respond to the notice no later than five days before the assembly with an acknowledgment and authorization of the demonstration.<sup>253</sup> In this case, after receiving an official response from the municipal administration, the picket organizer proceeded with a picket to attract the public's attention. The organizers distributed leaflets criticizing the President of the regional court and his alleged involvement in corruption scandals.<sup>254</sup> Shortly after the picket, the organizer was accused of violating the notice requirements of the picket, distributing leaflets of an offensive nature, and obstructing the passage of citizens through the courthouse.<sup>255</sup> Finding that the notice of the picket was sent to the city administration eight days before the date of the assembly, instead of the required ten days, the Russian court found the organizer guilty of violating the code of administrative violations and imposed a fine.<sup>256</sup> Thus, although the Constitution of the Russian Federation guarantees the right to freedom of peaceful assembly, the Code of Administrative Violations, on the other hand, established fines for violation with the amount of 1,000 to 2,000 roubles for organizers and participants.<sup>257</sup>

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<sup>248</sup> Masha Karp, *The Case of Judge Kudeshkina*, Rights in Russia, 2010, available at <http://www.rightsinrussia.info/archive/blog/masha-karp/the-case-of-judge-kudeshkina>.

<sup>249</sup> *Kuznetsov v. Russia*, App. No. 10877/04, at 3 (Eur. Ct. H.R. 2008), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-89066>.

<sup>250</sup> The Russian Federation adopted this Code on December 30, 2001. It primarily serves as a comprehensive legal act to set the forms and extent of administrative liability for offences in various aspects of Russian law. Available at: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_34661/](http://www.consultant.ru/document/cons_doc_LAW_34661/).

<sup>251</sup> *Kuznetsov v. Russia*, App. No. 10877/04, at 3 (Eur. Ct. H.R. 2008).

<sup>252</sup> Tatyana Beschastna, *Freedom of Expression in Russia as it Relates to Criticism of the Government*, *Emory International Law Review*, Vol. 27, Issue 2, p. 1128.

<sup>253</sup> *Ibid.*

<sup>254</sup> *Ibid.*

<sup>255</sup> *Ibid.*

<sup>256</sup> *Ibid.* p. 1129.

<sup>257</sup> *Ibid.*

These fines, which could be imposed not only on the organizers but also on any participant in the event, function, in effect, as an indirect means of restricting freedom of expression.<sup>258</sup> A detailed examination of some cases brought against Russia demonstrates the multiple direct and indirect ways of suppressing freedom of expression, especially when it relates to criticism of the government. Although protected by the Russian Constitution, freedom of expression does not enjoy a strict control or protection by Russian courts. The wide variety of claimants who take their issues to the ECHR show that, although Russia has ratified the Convention, local courts do not uphold protected freedom of expression, and, therefore, the provisions of the ECHR.

Moreover, as we have already mentioned in the previous chapter, the long list of cases of political prisoners, noting the Pussy Riot case and the participants in the Bolotnaya Square events, is a strong indication of the limitation, not outright prohibition, of criticism of the government. Putin's third presidential term coincided with the international uproar following the conviction of the music group Pussy Riot.<sup>259</sup> Members of the young feminist rock group were sentenced to two years imprisonment after creating a music video entitled "Holy Mother, Send Putin Packing!" and posting it on YouTube. In the case of Pussy Riot, the court refused to recognize the political nature of the performance and based its decision on religious hatred.<sup>260</sup> The court also refused to recognize the political nature of the performance. The court expressly refused to decide on the political content and the political nature of the speech<sup>261</sup> and wholly avoided any consideration of freedom of expression. The court prosecuted the activists, who were protesting Putin's re-election for a third presidential term and a fourth consecutive term in government, under the criminal code, classifying their performance as a crime of religious hatred and abuse of church and religion.<sup>262</sup> The complete omission of the discussion of freedom of expression invoked by the singers indicates the refusal of the Russian judiciary to enforce freedom of expression in the face of pressure from the Putin government.<sup>263</sup>

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<sup>258</sup> Ibid.

<sup>259</sup> Yulia Ponomareva, *Putin's Third Term: Bolstering a Faltering Grip*, RUSS. BEYOND THE HEADLINES, 2013, [http://rbth.ru/politics/2013/04/24/putins\\_third\\_term\\_bolstering\\_a\\_faltering\\_grip\\_25397.html](http://rbth.ru/politics/2013/04/24/putins_third_term_bolstering_a_faltering_grip_25397.html).

<sup>260</sup> Tatyana Beschastna, *Freedom of Expression in Russia as it Relates to Criticism of the Government*, Emory International Law Review, Vol. 27, Issue 2, pp. 1129-1132.

<sup>261</sup> Ibid.

<sup>262</sup> Ibid.

<sup>263</sup> Ibid.

At the beginning of the chapter, we set out to assess freedom of expression in Russia about the domestic and European legal forms adopted and whether these have been promised on paper and put into practice. We looked at the ECtHR as hope for power capable of exerting an influence on Russian practices, even if it exists outside of Russia. Subsequently, we looked at the mal-functioning of the Russian national courts and what emerged is that the ECtHR continues to receive complaints from Russian citizens, and this indicates that the Russian judiciary has not taken any significant steps towards the practical implementation of the provisions of the Convention and the decisions of the European Court. Thus, although Russia has taken significant steps to reform its legal system and has declared freedom of expression as a fundamental human right, the practical aspects of this declaration are still lacking. As such, the commitment to the promise of democracy is unattainable in the absence of respect for declared human rights.

In the next conclusive chapter, we will detail the relationship between the media and freedom of expression in Russia. Starting from an analytical approach to the media's laws, we will see their application as well as the main challenges.

### **3. FREEDOM OF MEDIA EXPRESSION: APPLICATION OF EUROPEAN HUMAN RIGHTS STANDARDS IN THE RUSSIAN FEDERATION.**

After conducting a comparative analysis of European and national laws regulating freedom of expression in the Russian Federation and the ways in which the Russian state and courts implement Article 10 ECHR, in this conclusive chapter, we will assess their application in the context of the media. Therefore, based on the initial test on the assessment of Russian democracy through this case study, we will analyze the Russian media landscape and the applicable laws that constrain and regulate media freedom by highlighting the significant barriers and the numerous amendments and laws that oppress such freedom. Furthermore, we will see how major international organizations that test Russia's media freedom define it as a non-free state, thus demonstrating the failure to establish an institutional framework based on CoE standards.

#### **3.1 Russia's modern media landscape and freedom of the press.**

The liberty of the media, also known as freedom of the press, is fundamental in a democratic society. It is acknowledged in international law treaties to play a crucial role as a public watchdog by directly informing society on matters of public interest and keeping governments under control.<sup>264</sup> As a result, media freedom protects publications, journalists as well as the media as institutions and serves as a *lex specialis* to freedom of expression.<sup>265</sup>

After a broad analysis of freedom of expression in Russia since the collapse of the USSR and the analysis of the main political phenomena and the laws regulating this right, the media context will now be analysed in detail. First of all, we will look at the analysis of legal constraints regulating media freedom and then, we will see the application of standards in the context of the CoE.

In a concise analysis of the Russian case, one wonders where press freedom stands in Russia thirty years after the collapse of the USSR. It is argued that while the Russian media are suffering under the presidency of Vladimir Putin, the circumstances are

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<sup>264</sup> Elena Sherstoboeva, *Regulation of Media in Russia in the context of the council of Europe standards*, Doctoral thesis, School of Communication and International Relations Blanquerna Universitat Ramon Llull, p. 2, 2017.

<sup>265</sup> Jan Oster, *European and international media law*, Cambridge: Cambridge University Press, 2017.

nowhere near as dire as in the pre-Gorbachev Soviet period.<sup>266</sup> More than thirty-five years after Soviet Communist General Secretary Mikhail Gorbachev liberated the Soviet press with the policy of *glasnost*, the media landscape in the post-Soviet space has changed, and from the data published by Freedom House, certainly not for the better. After the liberalisation of the late 1980s and the relative freedom amidst the chaos of the 1990s, the press has taken a big step backwards in the Putin era, and not only in Russia.<sup>267</sup> In Freedom House's ranking, nine of the fifteen post-Soviet countries were classified as “not free”, with only the three Baltic states, also members of the European Union (EU) and North Atlantic Treaty Organization (NATO), considered free.<sup>268</sup>

Russia is among the countries whose degree of freedom of expression and media is a cause of great concern for the CoE and other international organisations and media scholars and experts.<sup>269</sup> In studies on freedom of expression in the media, several international organisations have found numerous violations by Russia in this field. For instance, in the 2016 Press Freedom Index<sup>270</sup> prepared by Reporters Without Borders, Russia occupied the 149th position out of 179 countries. Whereas this position remained until 2020, now in 2021 it collapsed to the 150th place<sup>271</sup>, demonstrating that the situation is getting worse rather than better, and if once we were still talking about a liberal transition process, now the question is whether this process is over, and one could almost refer to it as an anti-democratic trend. Furthermore, Freedom House moved Russia from the category of "partially free" to that of "not free" countries in the period from 2002 to 2016,<sup>272</sup> and from 2016 to 2021 remained classified as a non-free country.<sup>273</sup>

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<sup>266</sup> Jonathan Becker, *Lessons from Russia: A Neo-Authoritarian Media System*, Bard College, pp. 191-192, 2014, available at [https://demokratizatsiya.pub/archives/22\\_2\\_F1T0164470351334.pdf](https://demokratizatsiya.pub/archives/22_2_F1T0164470351334.pdf).

<sup>267</sup> Ibid.

<sup>268</sup> Freedom House, 2013. “Freedom of the Press 2013: Global Press Freedom Rankings,” At <http://www.freedomhouse.org/sites/default/files/Global%20and%20regional%20tables.pdf>, accessed November 9, 2013.

<sup>269</sup> Elena Sherstoboeva, *Regulation of Media in Russia in the context of the council of Europe standars*, Doctoral thesis, School of Communication and International Relations Blanquerna Universitat Ramon Llull, p. 2, 2017.

<sup>270</sup> The Press Freedom Index is an annual ranking of countries compiled and published by the international organization Reporters Without Borders since 2002 based upon the organisation's own assessment of the countries' press freedom records in the previous year. Available at [https://en.wikipedia.org/wiki/Press\\_Freedom\\_Index](https://en.wikipedia.org/wiki/Press_Freedom_Index)

<sup>271</sup> Reporters Without Borders, Russia ranking in 2021, available at <https://rsf.org/en/russia>.

<sup>272</sup> Freedom House, *Russia. Freedom of the Press 2016*, 2016, Retrieved from <https://freedomhouse.org/report/freedom-press/2016/russia>.

<sup>273</sup> Freedom House, *Russia. Freedom in the World 2021*, 2021, available at <https://freedomhouse.org/country/russia/freedom-world/2021>.

From a political perspective, it helps to clarify analytically that what is happening in the post-Soviet space is very different from the Soviet era: authoritarianism may be on the rise after the failure of democratic hopes in the 1990s and the color revolutions of the 2000s.<sup>274</sup> Since 2012, the Russian authorities have intensified their crackdown on freedom of expression, selectively casting certain criticism of the government as threats to state security and public stability, introducing significant restrictions.<sup>275</sup> As we have seen in previous chapters, the new restrictions on freedom of expression appear to target the political opposition or civic groups, but they affect all Russian citizens in practice. The restriction of free speech denies a voice to anyone who is dissatisfied and wants to express any opinion against the state.<sup>276</sup>

The Russian government's crackdown on free speech is part of a broader crackdown on civil society, unleashed after the mass protests of 2011-2012 and Vladimir Putin's return to the presidency in May 2012.<sup>277</sup> Thus, as we show in chapter two, the Russian parliament has adopted numerous laws and amendments that restrict or can be used to interfere with freedom of speech and information. However, in this respect, Russia's democratic regression, which is supposedly made to occur after the year 2000, was not really a democratic collapse but a change from an oligarchic kleptocracy in the Yeltsin era to an authoritarian state under Putin<sup>278</sup>, which is rather a democratic regression.<sup>279</sup>

As we will analyze throughout the chapter, some of the most recently enacted laws threaten the privacy and security of internet communications and, in effect, make no media communication in Russia safe from government interference.<sup>280</sup> Such uncontrolled surveillance has a stifling effect on freedom of expression online. The authorities have unjustifiably prosecuted dozens of people on criminal charges for social media posts,

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<sup>274</sup> Jonathan Becker, *Lessons from Russia: A Neo-Authoritarian Media System*, Bard College, pp. 191-192, 2014, available at [https://demokratizatsiya.pub/archives/22\\_2\\_F1T0164470351334.pdf](https://demokratizatsiya.pub/archives/22_2_F1T0164470351334.pdf).

<sup>275</sup> Human Rights Watch, *Online and On All Fronts: Russia's Assault on Freedom of Expression*, 18 July 2017, available at: <https://www.refworld.org/docid/596e08bc4.html> [accessed 20 June 2021]

<sup>276</sup> *Ibid.*

<sup>277</sup> *Ibid.*

<sup>278</sup> Wolfgang Merkel, *Are Dictatorships Returning? Revisiting the 'Democratic Rollback' Hypothesis*, *Contemporary Politics*, Volume 16 (1), pp. 17-31, 2010, available at <http://doi.org/10.1080/13569771003593839>.

<sup>279</sup> Hakan Sönmez, *Democratic Backsliding or Stabilization? The Role of Democracy Indices in Differing Interpretations*, *Politikon: The IAPSS Journal of Political Science*, Volume 46, p. 68, <https://doi.org/10.22151/politikon.46.3>.

<sup>280</sup> Human Rights Watch, *Online and On All Fronts: Russia's Assault on Freedom of Expression*, 18 July 2017, available at: <https://www.refworld.org/docid/596e08bc4.html> [accessed 20 June 2021]

online videos, media articles and interviews. Today, many Russians are increasingly uncertain about what constitutes acceptable speech and what might get them a hefty fine or prison sentence. State intrusion into media affairs has reached a level not seen in Russia since the fall of the Soviet Union. Moreover, laws passed since 2012 have dramatically increased state control over the media landscape.<sup>281</sup> With few exceptions, the mainstream media have become the voice of the state and use elaborate propaganda tools to mobilise patriotic support for the government.

While the government may control the media narrative on politically sensitive issues, critics of the government can potentially reach most Russians online due to the increasing use of social media. The most independent debate now takes place online, primarily through social media.

For instance, in 2016, the Russian parliament passed a law requiring telecommunications and internet companies to keep the content of all communications for six months and data on these communications for three years.<sup>282</sup> The law makes it easier for authorities to identify users and access personal information without judicial oversight, unjustifiably interfering with privacy and freedom of expression. A 2015 law applying to email services, social media networks and search engines prohibits the storage of personal data of Russian citizens on servers located outside Russia.<sup>283</sup> In November 2016, Russian authorities blocked LinkedIn, a social networking service with over 400 million users worldwide, for non-compliance with the 2015 legislation.<sup>284</sup>

For the most part, the post-2012 laws regarding internet content, data storage and online activity are in their early stages of implementation.<sup>285</sup> The manner and extent to which they will be enforced remain unclear. In the meantime, the authorities have vigorously enforced the old laws to prosecute online speech.<sup>286</sup> In doing so, they have increasingly confused criticism of the government with "extremism", especially on some sites. This view is especially developed on specific topics such as the annexation of Crimea, criticism

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<sup>281</sup> Ibid.

<sup>282</sup> Ibid.

<sup>283</sup> Ibid.

<sup>284</sup> Ibid.

<sup>285</sup> Ibid.

<sup>286</sup> Ibid.

or satire concerning the Russian Orthodox Church, or Russia's armed intervention in Syria.<sup>287</sup>

Adopted in the early 1990s, the Mass Media Law played in the country a crucial role in forming and functioning independent media in Soviet and post-Soviet Russia. At the same time, these studies noted that Russian mass media legislation requires further development and appropriate institutional alignment with democratic principles. Already a UN and Organization for Security and Cooperation in Europe (OSCE) member, Russia joined the CoE in 1996 and ratified the ECHR two years later. However, over the past two decades, Russian media freedom has not only made any progress but has also dramatically declined, as many scholars and media experts have observed. Of particular importance are the two "waves" of legal restrictions on speech and media adopted after the 2011-2012 crackdown on mass protests in the country and after the annexation of the Crimean peninsula in 2014. The year after the annexation of Crimea, Russia passed a new statute authorising the Russian Constitutional Court, one of the highest courts in the country, to challenge any document of any international body so even decisions of the ECHR. For these reasons, there is still much uncertainty about the impact of CoE membership on Russian media policies, and the majority of studies on this issue are few, and several too old.

A more comprehensive study by Shönfield found that the Council of Europe's political pressure on media freedom in Russia is mainly ineffective.<sup>288</sup> However, Shönfield speculated that the jurisprudence of the European Court of Human Rights could have an impact on Russian media legislation and the practice of domestic courts. At the same time, Shönfield's research focused mainly on analysing the current situation of the Russian media and the instruments used by the ECtHR to have an impact, rather than on Russian

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<sup>287</sup> Ibid.

<sup>288</sup> Dorothea Schönfeld, *Tilting at windmills? The European response to violation of media freedom in Russia*, 2014. In Lauri Mälksoo (Ed.), *Russia and European human rights law: The rise of the civilizational argument*, (pp. 91–149). Leiden, The Netherlands: Koninklijke Brill NV.



legal frameworks or the practice of national courts.<sup>289</sup> Legal research on this topic has been undertaken by Richter<sup>290</sup> and Shugrina<sup>291</sup>.

First and foremost, it should be noted that there is also a lack of recent studies providing an in-depth analysis of Russian media legislation. On the one hand, Richter revealed that international standards have a particular positive influence on media reforms in Russia, even though his conclusions concerned only some documents of the Russian Supreme Court.<sup>292</sup> On the other hand, Shugrina argued that Russian regulation of freedom of expression was mainly consistent with CoE standards, but his research is limited to a few provisions.<sup>293</sup> In general, none of these studies has comprehensively examined this issue. As for the more recent studies, they tend to refer to specific areas of media regulation or cover short periods. Another limitation of most studies on Russian media legislation is that they rarely provide an analysis of Russian media judicial practice because decisions of Russian courts were hardly accessible before 1 July 2010, as a statute obliging courts to publish their rulings<sup>13</sup> had legal effect.

The primary purpose of this last chapter is to identify the extent to which Russian media policies are and have not been sufficiently consistent with the universal vision of media freedom and the way the CoE has developed it. For these reasons, after these general premises on the media situation in Russia, in the next session, we will look at the legislative framework of the media as well as the different limitations and problems. In this way, the aim is to overcome the gaps in this thematic area and provide a more comprehensive picture.

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<sup>289</sup> Elena Sherstoboeva, *Regulation of Media in Russia in the context of the council of Europe standars*, Doctoral thesis, School of Communication and International Relations Blanquerna Universitat Ramon Llull, p. 4, 2017.

<sup>290</sup> Richter, A. (2015). Russia's Supreme Court as media freedom protector. In P. Molnar (Ed.), *Free speech and censorship around the globe* (pp. 273–298). Budapest: Central European University Press.

<sup>291</sup> Shugrina, E. S. (Ed.). (2016). *Rossija i Sovet Evropy. Istorija, Sovremennost' i Perspektivy Vzaimodejstvija Pravovyh Sistem* [Russia and the Council of Europe. History, modern times, and prospects of the integration of legal systems]. Moscow: Prospect.

<sup>292</sup> Elena Sherstoboeva, *Regulation of Media in Russia in the context of the council of Europe standars*, Doctoral thesis, School of Communication and International Relations Blanquerna Universitat Ramon Llull, pp. 4-5, 2017.

<sup>293</sup> *Ibid.* For a more in-depth study of Shugrina's and other authors' views on ECHR and Russia visit Sherstoboeva's thesis, page 111.

### 3.2 Regulation of mass media in the Russian Federation.

This second part of the chapter examines media regulation in Russia from a direct and legal basis and thus focusing only on laws regarding freedom of expression while excluding any issues that go further than Article 10 of the ECHR. Premising that research on Russian media legislation has brought up several issues, scholars in this field such as Richter<sup>294</sup> pointed out that the formation of media laws in this country has never been systematic. Instead, until two decades ago, there was a persistent absence of legislation on access to information, despite the constitutional guarantee of this right.<sup>295</sup>

Moreover, according to Sherstoboeva's study, no study has considered the development of Russian mass media legislation in the context of the CoE's perspective on Russian media policies and democratization more generally. As a result, her doctoral dissertation aimed to fill this gap. Her paper studies Russia's accession to the CoE played in the formation of Russian media legislation.<sup>296</sup>

Our starting point coincides precisely with the time when the Constitution of the Russian Federation changed. In 1993, Russia declared the establishment of freedom of expression within its new Constitution, which subsequently was amended several times. By taking Article 29 of the Constitution as an example again, it guaranteed freedom of speech and freedom of the mass media and prohibited censorship.<sup>297</sup> However, in terms of legislation with media outlines, we have to wait until 1991, when the then-president Yeltsin signed a statute that later took the name "Law on mass media" that dealt with media and online content regulation.<sup>298</sup> There were three main aspects to this law of 1991: eliminating censorship, the creation of private media, and the establishment of specific rights for journalists.<sup>299</sup> The last element was crucial, as it gave journalists the right to access

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<sup>294</sup> Andrei Richter, *Post-Soviet perspective on censorship and freedom of the media*, Moscow: IKAR, 2007, in Elena Sherstoboeva, *Regulation of Media in Russia in the context of the council of Europe standards*, Doctoral thesis, School of Communication and International Relations Blanquerna Universitat Ramon Llull.

<sup>295</sup> Ibid.

<sup>296</sup> Elena Sherstoboeva, *Regulation of Media in Russia in the context of the council of Europe standards*, Doctoral thesis, School of Communication and International Relations Blanquerna Universitat Ramon Llull, 2017.

<sup>297</sup> Ibid.

<sup>298</sup> О средствах массовой информации (Law of the Russian Federation "On the Mass Media", No. 2124-I of 27 December 1991), *Rossiiskaia gazeta (Ros. Gaz.)*, No. 32, 8 February 1992.

<sup>299</sup> Andrei Richter, *Правовые основы журналистики ("The Legal Basis of Journalism")*, pp. 49-53, 2009.

government reports, interview, and keep their sources' identity confidential.<sup>300</sup> The Russian Mass Media Law attempted to move the country in the direction of liberalization and thus align with those promises made to the Russian citizens.<sup>301</sup>

The mass media law is very detailed and has articles detailing freedom of information, anti-censorship, journalists' rights, and citizens' rights to obtain information.<sup>302</sup> Despite this, we will see how it does not entirely abolish government restrictions, but, on the contrary, these restrictions have increased with numerous amendments over the years.

These principles of media law began to be distorted when Putin came to power.<sup>303</sup> The requirement of state registration of the media, which helped the independence of newsrooms from the party, is now used punitively to remove a recalcitrant masthead.<sup>304</sup> Twenty-five years ago, a procedure could not be opened to avoid the state ban on independent media. Today, when a media outlet needs to register, it must again obtain permission from the state. According to Richter, the ECHR made this point in the case of *Dzhavadov v. Russia*, that this permission was abused.<sup>305</sup> As an addition to this, he says, the media law has been amended so that if extremist speech is found in the media, the law can punish not only the individual who disseminated the alleged extremist speech but the entire media organization.<sup>306</sup>

The limitations placed on media freedom in Article 4 of the Laws of the Russian Federation on mass media and the necessary registration requirements placed by Article 3 are just two examples of such limitations.<sup>307</sup> And even though the law allows for the existence of private and even foreign-owned media simultaneously, Article 7 authorizes the maintenance of government-controlled mass media.<sup>308</sup> Furthermore, although the mass media law grants journalists several rights, it limits these rights with several responsibilities, including penalties and sanctions for violating parts of the law. In some

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<sup>300</sup> Ibid.

<sup>301</sup> Maya Cappello (ed.), *Regulation of online content in the Russian Federation*, IRIS extra, European Audiovisual Observatory, Strasbourg, p.5, 2015.

<sup>302</sup> Ibid.

<sup>303</sup> Daphne Skillen, *Freedom of Speech in Russia. Politics and media from Gorbachev to Putin*, Routledge, 2017.

<sup>304</sup> Ibid.

<sup>305</sup> Ibid.

<sup>306</sup> Ibid.

<sup>307</sup> Maya Cappello (ed.), *Regulation of online content in the Russian Federation*, IRIS extra, European Audiovisual Observatory, Strasbourg, pp. 5-6, 2015.

<sup>308</sup> Ibid.

cases, the government can deprive journalists of their accreditation at public offices and close down media outlets.<sup>309</sup> Overall, the Mass Media Law has worked relatively well in Russia and has adequately online media in the internet age. While the Mass Media Law has gone through several amendments over the years, online media has remained truly unaffected until just a few years ago. This is likely nothing more than the consequence that at the beginning of the internet age, regulation of Russian online media was not a primary concern of the government.<sup>310</sup>

### **3.3 Formal and Informal State Control of Mass Media.**

Russia's apparent tendency to ignore universal and CoE standards and to reinterpret these standards in line with the interests of the country's political elites rather than in line with international law increasingly exacerbates the relationship with the CoE. Russian media policies were closer to CoE standards in the early 1990s when Russia promised a democratic transition. However, to date, it is evident how CoE membership has had a superficial impact on the regulation of human rights in general and, as far as our analysis of freedom of expression and the Russian media is concerned. Before 2010, when the Internet became a popular mass medium in Russia, the government's strategy regarding CoE media standards can generally be characterised as ignorant of such standards. As it will emerge from the following section, subsequent Russian media policies have mostly reinterpreted the CoE standards to justify censorship regulations, which, to some extent, reflects the former Soviet perspective on media.

A dominant trend in media regulation in Russia in recent years is undoubtedly the Russian government's increasing control over the media. Key developments include in this thematic area extend from the introduction of strict restrictions on the ability of foreign persons to own, control or operate Russian media products effective to restrictions on advertising on pay-TV channels. In addition, there is also an increase in the number of

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<sup>309</sup> Ibid.

<sup>310</sup> Ibid.

specific restrictions on the publication and distribution of mass media content as well as increased control over internet media.<sup>311</sup>

The restrictions applicable to mass media, including those introduced most recently, will now be discussed in detail. As a key trend related to Internet media, Russian government agencies' substantially increased authority, particularly Roskomnadzor, to block access to websites without the need to obtain a court order.<sup>312</sup> Initially, this power was introduced by Federal Law No. 139-FZ dated 28th July 2012 on the protection of children's rights.<sup>313</sup> The grounds for including websites on a "blacklist" were then substantially expanded. Roskomnadzor can initiate a notice to a website owner requesting the deletion of certain information prohibited by law within a few days.<sup>314</sup> If the owner does not comply with such a request, the website domain may be blocked by Roskomnadzor itself.<sup>315</sup>

In this way, online publications described above have come under the total purview of Roskomnadzor, defined as the Russian Federal Supervisory Service for Mass Media and Communications, an administrative structure within the Ministry of Communications and Mass Media.<sup>316</sup> Its primary tool in this regard is the issuance of official warnings about such abuses. A significant portion of these written warnings is related to the dissemination of extremist speech.<sup>317</sup> For example, in 2013, Roskomnadzor issued 21 "anti-extremist" warnings to the editorial boards of various publications.<sup>318</sup> The SOVA Center, a leading Russian NGO dealing with issues of hate speech, believes that 16 of these warnings lacked justified effectiveness.<sup>319</sup> In this regard, it cites eight warnings issued regarding the publication of Pussy Riot's inappropriately banned video connected with their performance in Christ the Savior Cathedral. These warnings were issued on the websites of newspapers and some web portals and news agencies such as Novyi Region and

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<sup>311</sup> Philip Lamzin, Anna Otkina, Ilya Bulgakov, *Media Regulation in Russia - A Landscape Analysis of Laws and Trends*, DLA Piper Rus Limited, The Thomson Reuters Foundation, 2016.

<sup>312</sup> Ibid.

<sup>313</sup> Ibid. More information about the topic is provided in the report.

<sup>314</sup> Ibid.

<sup>315</sup> Ibid.

<sup>316</sup> Roskomnadzor (<http://rkn.gov.ru/eng/>) is the federal body responsible for oversight and surveillance of the media in Russia, including electronic media, see Andrei Richter, *New Rules for Internet*, IRIS 2012-8/36, European Audiovisual Observatory, 2012, available at: <http://merlin.obs.coe.int/iris/2012/8/article36.en.html>.

<sup>317</sup> Maya Cappello (ed.), *Regulation of online content in the Russian Federation*, IRIS extra, European Audiovisual Observatory, Strasbourg, p.5, 2015.

<sup>318</sup> Ibid.

<sup>319</sup> Ibid.

regiony.ru. Khanty-Mansiysk online news agency muksun.fm received a warning for publishing on the Internet the article "They do not appear in mosques," which only quoted the banned book Hizb ut-Tahrir.<sup>320</sup>

In addition, during 2013 and 2014, additional amendments increasingly restricted the freedom of the media that also emphasized the ease of the Russian government in changing the laws in their favor.<sup>321</sup> As we have briefly seen, online content regulation only began to appear in Russia when it became an essential part of national law.

By signing and ratifying international legal documents, Russia is obliged to respect and promote these rights and freedoms.<sup>322</sup> Likewise, the Russian constitution requires similar protections. Mass media freedoms are reflected in Article 29 of the Constitution, which provides for the right of every person to seek freely, acquire, transfer, produce, and disseminate information by any legal method. That said, it is questionable whether these new online media regulation laws work to protect these freedoms or if they limit them.<sup>323</sup>

While the pre-2011 policy was at odds with CoE standards in that it primarily lacked rules protecting human rights and online freedoms, including free speech and free media, the post-2011 Russian legal model abounds with excessive restrictions on online content and lacks protective rules, so we can conclude that it is not in line with CoE standards at all.<sup>324</sup>

Russia often uses the same concepts as many other Western countries to restrict online free speech and media freedom; however, in Western democracies, the balance between the protection of these rights and other rights or freedoms is controlled by existing institutions, including the European Court of Human Rights, while Russia primarily ignores CoE standards. In addition, Russia has created a governmental body system that implements its repressive approach to online free speech and media freedom. Control over online freedom of speech and media is provided by the Russian parliament, enforced by

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<sup>320</sup> Ibid.

<sup>321</sup> These topics can be explored further in the report of Maya Cappello (ed.), *Regulation of online content in the Russian Federation*, IRIS extra, European Audiovisual Observatory, Strasbourg, 2015.

<sup>322</sup> Ibid.

<sup>323</sup> Elena Sherstoboeva, *Regulation of Media in Russia in the context of the council of Europe standards*, Doctoral thesis, School of Communication and International Relations Blanquerna Universitat Ramon Llull, 2017.

<sup>324</sup> Ibid.

Roskomnadzor. These bodies successfully resist any pro-liberal stance and in line with CoE standards.<sup>325</sup>

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<sup>325</sup> Ibid.

## CONCLUSION

After the collapse of the Soviet Union and during the transition from "Old" Soviet Russia to "New" Russia, the government of that time declared its intention to establish a new democratic system. Part of this transition to a true democracy was the promise to respect fundamental human rights and, therefore, freedom of expression. The practical exercise of human rights protection is the first indicator of democracy being taken seriously. During the early years of the transition, Russia adopted the ECHR, which was considered an essential first step that assumed an optimistic development in the commitment to the promise of democracy made by the government. In this context, the correlation between the concepts of human rights and democracy in Russian legal and political debate was examined.

However, the analysis that emerged in this thesis indicates the failure of the "New" Russia to respect human rights, therefore including the right to freedom of expression. Nevertheless, the provisions of the Convention required higher standards of human rights protection than those employed by Russia after the collapse of the Soviet Union. This ratification of the Convention initiated significant legal changes, but these had little effect in practice. After analyzing the specific norms and the articles that govern freedom of expression, what emerges is that the new Russian Constitution contains many statements about human rights and democracy, but their formulations are vague and have a little practical effect in court battles where the application of international law is outweighed by concerns for the protection of sovereignty. This factor indicates that Russia's domestic courts are not considering previous decisions of the Strasbourg Court when deciding questions about human rights violations.<sup>326</sup>

Subsequently, this study made it possible to reproduce the framework of the system of regulation of freedom of expression, including in the context of media, and the situation of journalists in contemporary Russia. In the course of the three chapters presented, the problem of freedom of expression and its repeated violations by the Russian government were presented. By means of a reconnaissance in historical perspective, it was possible to trace the reasons why even today this state receives the highest number of complaints to

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<sup>326</sup> Tatyana Beschastna, *Freedom of Expression in Russia as it Relates to Criticism of the Government*, Emory International Law Review, Vol. 27, Issue 2, pp. 1141-1144.



the ECtHR and is labeled as the state in which journalists run one of the highest risks, which are not only limited to the risk of ending their careers, but also to their own lives. Limitations on freedom of speech and press, in fact, come from far away in the history of this country. It is a fact that Russia has a complex history, imperialist and later Soviet, which has never guaranteed it total freedom of expression, the roots of which are still present in the Russian Federation.

Thanks to a first in-depth research of materials related primarily to the path of democratic opening after the collapse of the USSR to the erosion of freedom of expression in Russia to and including the field of communication and media, it was possible to trace the evidence of control and repression against free speech and the press, finding a worrying worsening under the authoritarian government of Vladimir Putin. Through the thesis, several problems emerged that carry important consequences for the information sector and journalists themselves. First, as we saw in the first chapter, there is interference with political opinion and government criticism, which can directly or indirectly control the opinion of journalists. In addition, there is direct interference in media operations both in altering the news itself and in "getting out of the way" those who interfere with policy through high fines or the dismissal of the critical voices themselves.

These pressures affect Russian society as a whole and its free flow of information. Second, as the thesis revealed, Russian courts do not implement ECHR instruments and standards. Since the CoE is the European body of which Russia is a member, an in-depth look at its directives regarding the protection and support of freedom of expression and thus Article 10 and its regulation was granted.

Subsequently, we have seen how the numerous repressions conducted against journalists have drawn the attention of multiple international organizations that have openly denounced the situation. The World Press Freedom Index compiled by Reporters Sans Frontières this year ranked Russia 150th out of 180 countries,<sup>327</sup> putting it in the group of the worst countries in terms of freedom of speech and respect for the rights of professionals. At the same time, Freedom House's Freedom of the Press Index sanctioned the lack of press freedom, calling it "not free." In support of these claims, the Russian

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<sup>327</sup> Reporters Without Borders, 2021 world press freedom index, 2021, available at <https://rsf.org/en/ranking/2021>.

media system currently appears to be at a dead-end, and while freedom and pluralism are the foundations of a democratic information system, it is clear that they are no longer the priority in Russia. What is more important is protecting the President's image and disseminating his political agenda. As we have seen, the voice of the opposition has been completely sidelined when it was the only one that could at least provide an alternative point of view and allow citizens to create their thinking. The public hardly has access to information that undermines the government's credibility, and this has been made possible by the centralization of the media in the hands of large government-affiliated companies, the repeated persecution of critical voices and the systematic censorship of the Internet.

Within this framework, Vladimir Putin's return to the presidency has been accompanied by multiple restrictions and limitations on the freedom to criticize the government. Starting with the condemnation of Pussy Riot, followed by the intervention of the government with the demonstration in Bolotnaya Square, accompanied by excessive prison sentences for anyone involved in criticizing the government, establishes a strong indication that criticism of the government is not invited and will be prosecuted severely.<sup>328</sup> New amendments signed into law in 2012 indicate further limitations on political speech.<sup>329</sup>

Adopted under various pretexts, Russia's excessive restrictions on freedom of expression almost always go beyond the limits of the ECtHR's "margin of appreciation" doctrine. Russian law attempts to apply many European legal concepts but generally incorporates them specifically, thus contradicting the universal vision that freedom of expression should have. Russian Courts tend to justify Russia's wide "margin of appreciation" by misinterpreting universal and European values by defining them as "Western."<sup>330</sup> However, Russian authorities should share these ideals if they signed a convention and therefore adhere to the protection of human rights. Russian authorities are aware of their commitments to the CoE and the international community to respect freedom of expression according to international standards rather than in line with Russia's "national"

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<sup>328</sup> Tatyana Beschastna, *Freedom of Expression in Russia as it Relates to Criticism of the Government*, Emory International Law Review, Vol. 27, Issue 2, pp. 1141-1144.

<sup>329</sup> Ibid.

<sup>330</sup> Elena Sherstoboeva, *Regulation of Media in Russia in the context of the council of Europe standars*, Doctoral thesis, School of Communication and International Relations Blanquerna Universitat Ramon Llull, 2017.

interests. Russian courts often do not recognize the specific role of journalism or the importance of the right to freedom of expression in a democracy. They often apply legislation as a tool to protect public officials from criticism or investigation and to impose disproportionate penalties. Despite their formal proclamation in law, freedom of speech and mass information are not established concepts in Russia, either legally or socially. The principles, nature, and outcomes of Russian policies are still predominantly of Soviet heritage. They are reminiscent of the Soviet ideology that justified restrictions on free speech by the need to protect the political establishment.<sup>331</sup> In Russia, freedom of speech and media freedom are still understood primarily as collective values, and their importance for the self-fulfilment of individuals is largely unrecognized. It is quite evident that Russia needs considerable reform to balance the protection of media freedom and free speech with other legitimate rights and interests and bring national media policies in line with international standards.

Freedom of expression and the ability to criticize the government are necessary as an external check for any society that wishes to achieve an actual state of democracy. It is of paramount importance for Russia to create a culture of public discussion regarding the function of the government and its representatives. However, this would require reducing the direct and indirect limitations discussed above that are currently imposed by the state on freedom of expression. The above analysis indicates that Russia has poorly delivered on its promise to build a genuinely democratic society. The changes made in recent years are not consistent with the intent of building a democracy and a culture of free and open speech.

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<sup>331</sup> Ibid.

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