



16 December 2009

## STATEMENT

### **Russia: ARTICLE 19 Concerned About Continued Harassment of Oleg Orlov Under Criminal Defamation Laws**

**ARTICLE 19 expresses its concern about the ongoing civil and criminal defamation proceedings against Oleg Orlov, head of the Russian human rights organisation Memorial. ARTICLE 19 is especially concerned that Orlov faces criminal charges after his civil trial – for the same alleged defamatory remarks about Chechen President Ramzan Kadyrov – has already been settled.**

The cases against Oleg Orlov relate to remarks he made after the kidnapping and murder of Natalia Estemirova on 15 July 2009. Estemirova was a prominent human rights defender and represented Memorial in Chechnya. She was abducted near her home in Grozny and her body was found later the same day near Nazran, in neighbouring Ingushetia.

Orlov stated that he believed that Ramzan Kadyrov was morally responsible for the murder of Natalia Estemirova and for the overall deteriorating human rights situation in Chechnya. These remarks were later published on the Memorial website and Kadyrov sued Orlov for defamation.

On 6 October, the Tverskoy District Court of Moscow partially satisfied Kadyrov's claims and ordered Orlov and Memorial to pay 70,000 rubles (approximately USD2,400), as well as publishing a retraction saying that the statement "*does not correspond to reality*". Orlov and Memorial currently have a pending appeal against this ruling.

Subsequently, on 20 October, Orlov was further charged with defamation under Article 129.3 of the Russian Criminal Code, for the same original statement. This trial is now underway and he faces up to three years' imprisonment if convicted.

ARTICLE 19 considers that criminal defamation is a breach of the fundamental right to freedom of expression. The organisation believes that all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws. The criminalisation of a particular opinion or expression implies a clear State interest in controlling it, and imparts a social stigma to it, neither of which is justified in relation to the protection of individuals' reputations. The use of civil proceedings in defamation cases is sufficient for the protection of one's honour and reputation.

These proceedings against Oleg Orlov also come at a time when the Government of the Russian Federation has been specifically urged by the UN Human Rights Committee to protect the right to freedom of expression, as part of its obligations under the International Covenant for Civil and Political Rights (ICCPR).

The UN Human Rights Committee, in its sixth periodic review of the Russian Federation's performance under the ICCPR in October this year, expressed concern over the use of criminal defamation legislation in Russia stating "*that the practical application of the Mass Media Act as well as the arbitrary use of defamation laws has served to discourage critical media reporting on matters of valid public interest, adversely affecting the freedom of expression in the State party.*" In its recommendations, the Committee called on the government to de-criminalise defamation and subject it only to civil lawsuits, capping any damages awarded, and to amend its Criminal Code to reflect the principle that public figures should tolerate a greater degree of criticism than ordinary citizens and ensure that the laws have a proper balance between the protection of a person's reputation and freedom of expression.

In addition, the European Court of Human Rights (ECtHR) is very clear that public officials should tolerate more, not less, public criticism, especially in matters of significant public interest. The Court also stresses the fact that public officials have voluntarily accepted posts that may leave them open to criticism and that there are often alternative means of redress rather than defamation cases, namely by publicly countering accusations.

In particular, a 2007 ruling in the *Dyuldin and Kislov v. Russia* case states, "[The] dominant position which the government occupies makes it necessary for it to display restraint in resorting to libel proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries or the media."

ARTICLE 19 also stresses that the ECtHR is clear about the distinction between statements of fact and statements of opinion. In practice, the Court allows a considerable degree of leeway to statements of opinion and has been liberal in its interpretation of what constitutes a fact and what constitutes a value judgement, normally deciding in favour of the latter. The Court has also held that requiring defendants to prove the truth of value judgements is illegitimate. This is because the existence of facts can be demonstrated, whereas the truth of a value judgment is not susceptible of proof. Furthermore, even in the cases of the absence of hard proof for allegations and strong language, the Court stressed that when the discussion is on a matter of important public concern freedom of expression should prevail.

Based on the above, ARTICLE 19 therefore calls on the Russian Federation to:

- To drop the criminal defamation case against Oleg Orlov and to take all necessary steps for decriminalisation of defamation as a matter of urgency.
- Immediately open a full and impartial investigation into the murder of Natalia Estemirova and ensure that both the perpetrators and instigators are brought to justice.
- Take all measures necessary to protect those reporting on human rights violations in Russia, and especially in the North Caucasus, against acts of violence, threats and intimidation.

### **NOTES TO EDITORS:**

- For more information please contact Anoush Begoyan, Programme Officer for Europe at [anoushb@article19.org](mailto:anoushb@article19.org) or tel: +44 20 7324 2500.
- ARTICLE 19 is an independent human rights organisation that works around the world to protect and promote the right to freedom of expression. It takes its name from Article 19 of the Universal Declaration of Human Rights, which guarantees free speech.