

Chairman of the Constitutional Court of the Russian Federation V.D. Zorkin

**Председателю
Конституционного Суда Российской Федерации
В.Д. Зорькину**

Aptysheva Olga Romanovna (case N 3919/15-01/2023)
Vasiliev Konstantin Olegovich (case N 4020/15-01/2023)
Markus Christina (case N 3912/15-01/2023)
Mets Alexander Vadimovich (case N 3930/15-01/2023)
Rubnenkov Ivan Andreevich (case N 3940/15-01/2023)
Filippov Maxim Sergeevich (case N 3921/15-01/2023)
Shatryuk Kristina Evgenievna (case N 3938/15-01/2023)
Isaeva Evgenia Maksimovna (case N 3954/15-01/2023)
Vasilyeva Ekaterina Stanislavovna (case N 3965/15-01/2023)
Kononov Alexey Andreevich (case N 4001/15-01/2023)
Yashin Ilya Valeryevich (case N. 4325/15-01/2023)
Demyanchuk Daria Andreevna (case N 4418/15-01/2023)
Lagodich Konstantin Sergeevich (case N 4327/15-01/2023)
Savinov Sergey Gennadievich (case N 4513/15-01/202)
Serdyukov Yury Petrovich (case N 4515/15-01/2023)
Evdokimova Maria Andreevna (case N 4723/15-01/2023)
Krechetova Anna Valerevna (case N 4744/15-01/2023)
Summ Lyubov Borisovna (case N 4879/15-01/2023)
Sherchenkov Alexander Aleksandrovich (case N 5210/15-01/2023)
Shutova Kristina Olegovna (case N 5078/15-01/2023)
Orlov Oleg Petrovich (case N 5267/15-01/2023)

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CONSTITUTIONALITY OF THE CODE OF ADMINISTRATIVE OFFENCES OF THE RUSSIAN FEDERATION, ARTICLE 20.3.3

I. Introduction

1. This legal brief has been prepared by Lawyers' Rights Watch Canada (LRWC) and joined by the International Bar Association's Human Rights Institute (IBAHRI), and Professor Dr. Dr. h.c. Angelika Nußberger as *amici curiae*. By submitting this legal brief to the Constitutional Court, the *amici curiae* seek to assist the Court to arrive at decisions that are in accordance with the Russian Federation's international human rights law obligations, as reflected in the Constitution of the Russian Federation (Constitution).¹
2. The *amici curiae* are as follows:
 - a. Lawyers' Rights Watch Canada (LRWC), founded in 2000, is a Canadian organization of lawyers and other human rights defenders who promote the implementation and enforcement of international law and standards designed to protect the independence and security of lawyers and other human rights defenders around the world. LRWC produces legal analyses of national and international laws and standards relevant to human rights violations against human rights lawyers and defenders. LRWC has held special consultative status at the United Nations (UN) ECOSOC since 2005. This legal brief was prepared by Catherine Morris, BA, JD, LL.M., on behalf of LRWC. Ms. Morris is the past executive director and UN Representative of LRWC. and a former adjunct professor, Faculty of Law, University of Victoria, Canada.

¹ The Constitution of the Russian Federation [Constitution], adopted by popular vote on 12 December 1993, with amendments approved by all-Russian vote on 1 July 2020. Translation provided by the Constitutional Court to European Commission for Democracy Through Law, Strasbourg, Opinion No. 992 / 2020 CDL-REF(2021)010, 4 February 2021, available at: <https://rm.coe.int/constitution-of-the-russian-federation-en/1680a1a237>.

- b. Established in 1947, the International Bar Association (IBA) is the world’s leading international organisation of legal practitioners, bar associations and law societies. The IBA influences the development of international law and shapes the future of the legal profession throughout the world. It has a membership of over 80,000 individual lawyers and 195 bar associations and law societies spanning all continents. The IBA established its Human Rights Institute (IBAHRI) in 1995 under the honorary presidency of Nelson Mandela, to promote and protect human rights and the independence of the legal profession under a just rule of law. The IBA has held special consultative status at the UN ECOSOC since 1947.
 - c. Professor Dr. Dr. h.c. Angelika Nußberger is a law professor at the University of Cologne, Germany, where she serves as Director of the Academy for European Human Rights Protection, Chair of Constitutional Law, Public International Law and Comparative Law and Director of the Institute for Eastern European Law and Comparative Law. Prof. Nußberger is an International Judge at the Constitutional Court of Bosnia-Herzegovina. She was appointed Vice-President of the Venice Commission of the Council of Europe in 2021. She was a judge of the European Court of Human Rights from 2011 to 2019 and was the Court’s Vice-President from 2017 to 2019. She is the author of *The European Court of Human Rights* (Oxford University Press, 2020).
3. The Constitutional Court of the Russian Federation (Constitutional Court) is presently considering several cases which concern the constitutionality of Article 20.3.3 of the Code of Administrative Offences of the Russian Federation (CAO Article 20.3.3.)² in connection with the above-listed Complaints, which challenge the constitutionality of CAO Article 20.3.3. (as amended on 25 March 2022).³
 4. With this legal brief the *amici curiae* offer to the Constitutional Court an assessment as to whether CAO Article 20.3.3. complies with the international law obligations of the Russian Federation, including:
 - a. International human rights treaties and instruments, including the *Charter of the United Nations*,⁴ the *Vienna Convention on the Law of Treaties* (VCLT),⁵ the *International Covenant on Civil and Political Rights* (ICCPR),⁶ and the *European Convention on*

² Code of Administrative Offences of the Russian Federation. Article 20.3.3. Public actions aimed at discrediting the use of the Armed Forces of the Russian Federation in order to protect the interests of the Russian Federation and its citizens, maintain international peace and security, or exercise the authorities of the Russian Federation of their powers for these purposes [Статья 20.3.3 КОАП РФ. Публичные действия, направленные на дискредитацию использования Вооруженных Сил Российской Федерации в целях защиты интересов Российской Федерации и ее граждан, поддержания международного мира и безопасности или исполнения государственными органами Российской Федерации своих полномочий в указанных целях], as amended 25 March 2022 and 18 March 2023, available at: <https://rulaws.ru/koap/Razdel-II/Glava-20/Statya-20.3.3/>. For the amendment of 25 March 2022, see Federal Law “On Amendments to Articles 8.32 and 20.3.3 of the Code of the Russian Federation on Administrative Offenses” dated March 25, 2022 N 62-FZ (last edition).

³ None of the Complaints pertain to the amendment of CAO Article 20.3.3. made on 18 March 2023.

⁴ United Nations [UN], *Charter of the United Nations* [UN Charter], 24 October 1945, 1 UNTS XVI, Articles 55 and 56, <https://www.un.org/en/about-us/un-charter/full-text>.

⁵ UN, *Vienna Convention on the Law of Treaties* [VCLT], 23 May 1969, United Nations, Treaty Series, vol. 1155, Articles 26 and 27, available at: <http://www.refworld.org/docid/3ae6b3a10.html>.

⁶ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://www.refworld.org/docid/3ae6b3aa0.html>.

Human Rights (ECHR)⁷ (binding on the Russian Federation for incidents which occurred up until 16 September 2022); references are also made to customary international law⁸ related to international human rights law,⁹ binding on all States;

- b. Other international instruments that elaborate international human rights standards, including the UN *Basic Principles on the Independence of the Judiciary*¹⁰ and the UN *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (Declaration on Human Rights Defenders).¹¹

5. This legal brief proceeds as follows:

I. Introduction (paras 1-5)

II. The Constitutional obligation to ensure that CAO Article 20.3.3. complies with the Russian Federation's international law obligations (paras 6-17)

- The duty of the judiciary to enforce treaty obligations of the State (paras 8-10)
- Equality before the courts: Duty of the judiciary to be impartial and independent (paras 11-17)

III. CAO Article 20.3.3. and summary of complaints (paras 18-21)

IV. Limitations and restrictions on human rights and fundamental freedoms (paras 21-65)

A. The principles of legality and legal certainty (paras 22-32)

- Accessibility and foreseeability (paras 27-29)
- Principles of legality and legal certainty in Russian legislation (paras 30-32)

B. Limitations on rights and freedoms may be prescribed for legitimate aims only (paras 33-64):

- The rights to freedoms of opinion and expression (paras 36-45)
- The right to freedom of thought, conscience, religion or belief (paras 46-51)
- Right to freedom of peaceful assembly (paras 52-56)

⁷ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5 [ECHR], available at:

<https://www.refworld.org/docid/3ae6b3b04.html>. For the relevance of the ECHR, please refer to paragraph 9, *infra*.

⁸ UN, *Statute of the International Court of Justice* [Statute of the ICJ], 18 April 1946, Article 38(b), available at: <https://www.refworld.org/docid/3deb4b9c0.html>.

⁹ UN, *International Human Rights Law*, available at: <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law>.

¹⁰ UN, *Basic Principles on the Independence of the Judiciary*, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1985, and endorsed by General Assembly resolutions 40/32 and 40/146), available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary>.

¹¹ UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: resolution / adopted by the General Assembly*, 8 March 1999, A/RES/53/144, [UN Declaration on Human Rights Defenders], available at: <https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders/declaration-human-rights-defenders>. The UN Declaration on Human Rights Defenders was adopted by consensus of the General Assembly, thus representing a commitment to its implementation by all UN member States.

- Right to participate freely in public dialogue and debate (paras 57-60)
- International human rights obligations regarding human rights defenders (paras 61-64)

V. Conclusion (para 65-66)

II. The Constitutional obligation to ensure that CAO Article 20.3.3. complies with the Russian Federation’s international law obligations

6. CAO Article 20.3.3. was adopted by the State Duma of the Russian Federation and entered into force on 4 March 2022.¹² It was amended on 25 March 2022.¹³ While CAO Article 20.3.3. was amended again on 18 March 2023,¹⁴ the incidents that are the subjects of the Complaints occurred prior to the 18 March 2023 amendment. This legal brief raises several issues regarding the compliance of CAO Article 20.3.3 (as amended on 25 March 2022) with the Constitution,¹⁵ insofar as the Constitution reflects rights protected under international human rights law binding on the Russian Federation.

7. The Constitution, Article 15.4, provides that:

Universally recognized principles and norms of international law as well as international agreements of the Russian Federation should be an integral part of its legal system. If an international agreement of the Russian Federation establishes rules, which differ from those stipulated by law, then the rules of the international agreement shall be applied.

The duty of the judiciary to discharge human rights treaty obligations of the State

8. The Russian Federation has legal obligations to comply with the international treaties to which it is a State Party.¹⁶ The customary international law principle of *pacta sunt servanda*, codified in the *Vienna Convention on the Law of Treaties* (VCLT),¹⁷ was ratified by the Russian Federation on 29 April 1986.¹⁸ VCLT, Article 26, obligates States Parties to perform their treaty obligations in good faith.¹⁹ VCLT, Article 27, provides that a State Party may not rely on provisions of its internal law to justify a failure to meet its treaty obligations.²⁰

¹² Federal Law No. 31-FZ of March 4, 2022. See paragraph 21, for the text of COA Article 20.3.3 as amended 25 March 2022 and 18 March 2023.

¹³ Federal Law No. 62-FZ of March 25, 2022 “On Amendments to Articles 8.32 and 20.3.3 of the Code of the Russian Federation on Administrative violations.”

¹⁴ Federal Law No. 57-FZ of March 18, 2023 ”On Amendments to Articles 13.15 and 20.3.3 of the Code of the Russian Federation on Administrative Violations.”

¹⁵ Constitution, *supra* note 1.

¹⁶ VCLT, *supra* note 5.

¹⁷ The VCLT is considered to be customary international law. See Karl Zemanek, “Vienna Convention on the Law of Treaties” Vienna, 23 May 1969, UN Audiovisual Library of International Law, available at: <http://legal.un.org/avl/ha/vclt/vclt.html>.

¹⁸ UN Treaty Collection, Chapter XXIII, Law of Treaties: Vienna Convention on the Law of Treaties, Status as at 23 May 2023, available at: https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=en.

¹⁹ VCLT, Article 26, *supra* note 5; HRCtee, UN Human Rights Committee (HRCtee), *General Comment No. 31, Nature of the General Legal Obligation on States Parties to the Covenant*, [GC 31], U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), para.3, available at <http://www.refworld.org/docid/478b26ae2.html>.

²⁰ VCLT, Article 27, *supra* note 5; HRCtee, GC 31, *ibid*.

9. The State duty to discharge its treaty obligations in good faith applies to all branches of the government, including the judiciary.²¹ The UN Human Rights Committee (HRCttee),²² has affirmed that:

All branches of the State (executive, legislative and judicial) and other public or governmental authorities, at whatever level – national, regional or local – are in a position to engage the responsibility of the State party... (underline added).²³

Accordingly, all levels of the judiciary of the Russian Federation have the responsibility to respect, protect, and fulfil the rights and freedoms under international treaties to which the Russian Federation is a party.²⁴

10. Human rights treaties to which the Russian Federation is a party include the ICCPR, ratified by the Russian Federation on 16 October 1973.²⁵ The ECHR was binding on the Russian Federation until 16 September 2022,²⁶ and, accordingly, the ECHR is directly applicable to the incidents that are the subject of the Complaints, all of which occurred before 16 September 2022. The provisions of the ECHR are also important for comparative purposes when interpreting the parallel provisions of other UN and regional human rights treaties. The jurisprudence of the European Court of Human Rights (ECtHR), along with the jurisprudence of other international and regional authorities, is among the subsidiary sources of international law for purposes of “determination of rules of law.”²⁷

Equality before the courts: Duty of the judiciary to be impartial and independent

11. Under international law, the judiciary at all levels is required to be impartial and independent as stipulated by international law and standards. ICCPR, Article 14, states:

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

12. The HRCttee, in its General Comment No. 32, has explained that this provision is not confined to formally-defined charges under a criminal code but “guarantees in general terms the right to equality before courts and tribunals... [and] must also be respected

²¹ Among other provisions, see: ICCPR, Article 2(b).

²² The Human Rights Committee (HRCttee) is the body of independent experts established by the ICCPR and mandated to oversee States Parties’ implementation of the treaty. The International Court of Justice has confirmed that interpretations of the Committee and other treaty monitoring bodies are to be given great weight. Judgment of the International Court of Justice (30 November 2010), para .66-68, available at <https://www.icj-cij.org/sites/default/files/case-related/103/103-20101130-JUD-01-00-EN.pdf>.

²³ HRCttee, GC 31, para 3, *supra* note 19; HRCttee, General Comment no. 34, Article 19, Freedoms of opinion and expression [GC 34], 12 September 2011, CCPR/C/GC/34, para 7, available at: <http://www.refworld.org/docid/4ed34b562.html>.

²⁴ UN, International Human Rights Law, available at: <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law>.

²⁵ UN Treaty Collection, Chapter IV, Human Rights, International Covenant on Civil and Political Rights, Status as at 17 May 2023, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=en.

²⁶ European Court of Human Rights, Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights, March 2022, available at: https://echr.coe.int/Documents/Resolution_ECHR_cessation_membership_Russia_CoE_ENG.pdf.

²⁷ Statute of the ICJ, *supra* note 8.

whenever domestic law entrusts a judicial body with a judicial task²⁸ (underline added). General Comment No. 32 further clarifies that ICCPR, Article 14, encompasses the right of access to independent and impartial courts not only in the determination of criminal charges, but also “rights and obligations in a suit at law.” That is, access to the administration of justice “must effectively be guaranteed in all such cases to ensure that no individual is deprived, in procedural terms, of his/her right to claim justice.”²⁹ Accordingly, the right to an impartial and independent court applies to the Constitutional Court’s duties to decide on the validity and interpretation of CAO Article 20.3.3.

13. The UN *Basic Principles on the Independence of the Judiciary* contains the universal standards for judicial independence, as follows:

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.

2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.³⁰

14. Fully consistent with the international law and standards above, the Constitution of the Russian Federation provides for equality of all persons before independent and impartial courts in Articles 10, 19, and 46, as follows (underlines added):

Article 10

State power in the Russian Federation shall be exercised on the basis of its division into legislative, executive and judicial authority. Bodies of legislative, executive and judicial authority shall be independent.

Article 19

1. All persons shall be equal before the law and the court.

2. The State guarantees the equality of human and civil rights and freedoms regardless of sex, race, nationality, language, origin, material and official status, place of residence, attitude to religion, convictions, membership of public associations, or of other circumstances. All forms of limitations of human rights on social, racial, national, language or religious grounds shall be prohibited.

Article 46

Everyone shall be guaranteed protection in court of his (her) rights and freedoms.

15. Article 2 of the Constitution, affirms that the Russian Federation places “supreme value” on people’s rights and freedoms, and stipulates that the “recognition, observance and protection of human and civil rights and freedoms shall be an obligation of the State.” The

²⁸ HRCtee, *General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial* [GC 32], 23 August 2007, CCPR/C/GC/32, para 7, available at: <https://www.refworld.org/docid/478b2b2f2.html>, citing Communication No. 1015/2001, *Pertterer v. Austria*, para. 9.2 (disciplinary proceedings against a civil servant).

²⁹ HRCtee, GC 32, para 9, *ibid*.

³⁰ UN *Basic Principles on the Independence of the Judiciary*, para 1, 2, *supra* note 12.

Constitution provides specific guarantees of protection of international human rights law in Articles 45 and 46, with specific recognition of rights to freedom of conscience and religion (Article 28), opinion, conscience and expression (Article 29), assembly (Article 31), and equal protection of the law without discrimination (Article 19).

16. Article 18 of the Constitution further provides that:

Human and civil rights and freedoms shall have direct force. They shall determine the meaning, content and implementation of laws, the functioning of legislative and executive authority and of local self-government, and shall be guaranteed by law.

17. Accordingly, the Constitutional Court should assess CAO Article 20.3.3. independently and impartially in accordance with international law and standards applicable to the Russian Federation, including the ICCPR and the ECHR.

III. CAO Article 20.3.3. and summary of the Complaints

18. CAO Article 20.3.3., as amended on 25 March 2022 and 18 March 2023,³¹ provides as follows:

1. Public actions aimed at discrediting the use of the Armed Forces of the Russian Federation in order to protect the interests of the Russian Federation and its citizens, maintaining international peace and security, including public calls to prevent the use of the Armed Forces of the Russian Federation for these purposes, or to discredit the execution by state bodies of the Russian Federation of their powers outside the territory of the Russian Federation for these purposes, as well as discrediting the provision by volunteer formations, organizations or individuals of assistance in the performance of tasks assigned to the Armed Forces of the Russian Federation, if these actions do not contain signs of a criminally punishable act
- shall entail the imposition of an administrative fine on citizens in the amount of thirty thousand to fifty thousand rubles; on officials - from one hundred thousand to two hundred thousand rubles; for legal entities - from three hundred thousand to five hundred thousand rubles.

2. The same actions, accompanied by calls for holding unauthorized public events, as well as creating a threat of harm to the life and (or) health of citizens, property, a threat of mass disruption of public order and (or) public safety, or a threat of interfering with the functioning or stopping the functioning of objects life support, transport or social infrastructure, credit organizations, energy, industry or communications facilities, if these actions do not contain signs of a criminally punishable act,
- shall entail the imposition of an administrative fine on citizens in the amount of thirty thousand to fifty thousand rubles; on officials - from one hundred thousand to two hundred thousand rubles; for legal entities - from three hundred thousand to five hundred thousand rubles.³²

³¹ Note that the amendment of 18 March 2023 added the phrase, “as well as discrediting the provision by volunteer formations, organizations or individuals of assistance in the performance of tasks assigned to the Armed Forces of the Russian Federation.” While the fully amended article is set out herein, none of the Complaints pertain to the amendment of 18 March 2023 as they occurred before that amendment.

³² CAO Article 20.3.3, *supra* note 2.

19. Of relevance to the issues discussed in this legal brief is the possibility of future criminal charges, including the possibility of imprisonment, in the event of repeated conviction under CAO Article 20.3.3. Acts prohibited by CAO Article 20.3.3., in the case of a “similar act” within a year, are potentially punishable with sentences of imprisonment under Criminal Code Article 280.3. Part 1, which (as amended on 18 March 2023)³³ states as follows:

1. Public actions aimed at discrediting the use of the Armed Forces of the Russian Federation in order to protect the interests of the Russian Federation and its citizens, maintaining international peace and security, including public calls to prevent the use of the Armed Forces of the Russian Federation for these purposes, or to discredit the execution by state bodies of the Russian Federation of their powers outside the territory of the Russian Federation for these purposes, as well as discrediting the provision by volunteer formations, organizations or individuals of assistance in the performance of tasks assigned to the Armed Forces of the Russian Federation, committed by a person after he was brought to administrative responsibility for a similar act within one year

-shall be punishable by a fine in the amount of 100 thousand to 300 thousand rubles, or in the amount of the wage or salary, or any other income of the convicted person for a period of one to two years, or by compulsory labor for a term of up to three years, or by arrest for a term of four to six months, or by deprivation of freedom for up to five years with the deprivation of the right to hold certain positions or engage in certain activities for the same period (underline added).³⁴

20. CAO Article 20.3.3. has been invoked by Russian law enforcement authorities, as a basis for charging persons for peacefully expressing opinions or merely appearing in peaceful solitary or group demonstrations. For example, Complainants have been charged under CAO Article 20.3.3 for the following conduct:

- a. Lawful and peaceful statements of abstract ideals of peace, e.g.:
 - 6 March 2022, Shatryuk Kristina Evgenievna, a solo demonstration with the poster “15 years for the phrase “NO WAR?” (Charged under part 1 of CAO Article 20.3.3.).
 - 26 April 2022 Savinov Sergey Gennadievich, a solo demonstration with the poster “For peace (in Russian). Peace (in English)” (Charged under part 1 of CAO Article 20.3.3.).
 - 30 April 2022, Filippov Maxim Sergeevich, a solo demonstration with the poster quoting John Lennon’s song, “Give peace a chance.”
 - Vasilyeva Ekaterina Stanislavovna, “No war” inscription on her bag (date of incident not known to the *amici curiae*). (Charged under part 1 of CAO Article 20.3.3.).
 - Sherchenkov Alexander Aleksandrovich, a solo demonstration with the poster “No war” (date of incident not known to the *amici curiae*) (Charged under part 1 of CAO Article 20.3.3.).

³³ Federal Law No. 57-FZ of March 18, 2023 "On Amendments to Articles 13.15 and 20.3.3 of the Code of Administrative Offenses of the Russian Federation."

³⁴ Federal Law No. 58-FZ of March 18, 2023 "On Amendments to the Criminal Code of the Russian Federation," This amendment increased the maximum prison term from three years to five years.

- Summ Lyubov Borisovna, a solo demonstration with the poster ““These are the tears of poor mothers! They cannot forget their children who died in the bloody field, how not to raise the weeping willow of their drooping branches...” Nekrasov, Listening to the horrors of war” (excerpt from Nekrasov’s poem) (date of incident not known to the *amici curiae*) (Charged under part 1 of CAO Article 20.3.3.).
 - Shutova Kristina Olegovna, a solo demonstration with the poster "As for me, there is no peace now." (date of incident not known to the *amici curiae*) (Charged under part 1 of CAO Article 20.3.3.).
- b. Lawful and peaceful pleas for peace, respect for pacifism, the right to democracy, or an end to armed conflict, e.g.;
- 6 March 2022, Lagodich Konstantin Sergeevich, a repost of the video from YouTube channel Navalny “Take to the streets against the war” (Charged under part 2 of CAO Article 20.3.3.).
 - 18 March 2022, Aptysheva Olga Romanovna, a solo demonstration with the poster “I am horrified by what the State of the Russian Federation is doing with our closest friend and with our country; please stop the war; I don’t want to be afraid of the future!” (Charged under part 1 of CAO Article 20.3.3.)
 - 20 March 2022, Krechetova Anna Valerevna, a solo demonstration with the poster with the text "Fascism will not pass” (Charged under part 1 of CAO Article 20.3.3.).
 - 27 March 2022: Isaeva Evgenia Maksimovna, a solo anti-war performance in which she poured red paint on the stairs of the City Duma building, while standing with a poster with the inscription "My heart bleeds, I feel that it is useless to call for reason, so I appeal to your hearts. Women, children, old men and old women die every day in Ukraine. From bombings, hunger, inability to get out of the rubble or get medicine. Their graves blacken with makeshift crosses in courtyards and playgrounds, thousands of wounded and maimed, millions of broken destinies. If you find an excuse for this, then your heart has gone blind. Find the strength in yourself for mercy and compassion. Do not support bloodshed!" Repeating the phrase: "The heart bleeds" (Charged under part 1 of CAO Article 20.3.3.).
 - 10 April 2022, Mets Alexander Vadimovich, a solo demonstration with the poster “No war!” and showing a white-blue-white flag [colours of a flag used by anti-war advocates in Russia] (Charged under part 1 of CAO Article 20.3.3.).
 - 14 April 2022, Evdokimova Maria Andreevna, a solo demonstration with the poster "Thank you to those who refused to kill and die" with drawings of the flags of the Russian Federation and Ukraine (Charged under part 1 of CAO Article 20.3.3.).
 - 24 April 2022, Serdyukov Yury Petrovich, a solo demonstration with the poster “Pacifism is not a crime NO WAR Enough militocracy [sic] and militarism” (Charged under part 1 of CAO Article 20.3.3.).
 - 26 April 2022, Savinov Sergey Gennadievich, an anti-war solo demonstration (Charged under part 1 of CAO Article 20.3.3.).

- 2 May 2022, Rubnenkov Ivan Andreevich, a solo demonstration with the poster painted like the white-blue-white anti-war flag, with the inscription, "No fascism no war" (Charged under part 1 of CAO Article 20.3.3.).
 - Kononov Alexey Andreevich, a solo demonstration with the poster: "Freedom to Russia, peace to Ukraine" (date of incident not known to the *amici curiae*) (Charged under part 1 of CAO Article 20.3.3.).
 - Orlov Oleg Petrovich (human rights defender, and member of Memorial), a solo demonstration with the poster "Crazy Putin is pushing the world towards nuclear war" (date of incident not known to the *amici curiae*) (Charged under part 1 of CAO Article 20.3.3.).
- c. Lawful and peaceful insistence on answers regarding allegations of violations of international human rights, humanitarian law, or international crimes, e.g.
- 6 March 2022: Demyanchuk Daria Andreevna, a poster stating: "Putin, this is a crime against people" and a backpack with the text: "I am against the war in Ukraine" at the rally (Charged under part 1 of CAO Article 20.3.3.).
 - 5 April 2022, Markus Christina, a solo demonstration with the poster "Putin, who is responsible for the atrocities in Bucha? 24.02 - ? stop this war!" (Charged under part 1 of CAO Article 20.3.3.).
 - Yashin Ilya Valeryevich, opposition politician, two posts on social media about the war: Telegram post, "Bombing for peace is like fucking for virginity. 50 years have passed, but the slogans are still relevant." The text was accompanied by a photo of protesters in the United States against the Vietnam War some 50 years ago. Facebook link to a video with a statement, "What to do if your country starts military aggression? If, instead of defending your homeland, soldiers are sent to fight for a foreign land? What to do if you suddenly realize that the head of state is giving criminal orders to invade the territory of an independent state?" (date of incident not known to the *amici curiae*) (Charged under part 1 of CAO Article 20.3.3.).

21. The above-noted Complaints all indicate only peaceful expressions and actions protected by both international human rights treaties and Constitutional provisions on human rights that are directly operative in Russian law (Article 18) and are to be protected implemented by independent and impartial courts (Article 46). Accordingly, it is respectfully submitted that CAO Article 20.3.3. is unconstitutional.

IV. Limitations and restrictions on human rights and fundamental freedoms

22. Under international human rights law, States may restrict certain rights and freedoms that are not designated as absolute under human rights treaties.³⁵ Among the rights which may be subject to certain limitations are rights to freedoms of expression (ICCPR Article 19), peaceful assembly (ICCPR Article 21), and the manifestation of religion (ICCPR Article

³⁵ Some rights and freedoms are absolute and can never be derogated or limited. For example, torture and ill-treatment are forbidden under all circumstances (ICCPR, Articles 4, 7), as well as the right to equality before independent and impartial courts, from which no deviation is permitted. HRCtee, GC 32, *supra* note 34. Also see International Committee of the Red Cross, Rule 100. Fair Trial Guarantees, International Humanitarian Law Database, available at: <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule100>).

18.3).³⁶ Yet, specific conditions must be met in order for such limitations to be in compliance with international law, and such limitations must be done strictly in accordance with the conditions prescribed under specific articles of relevant international treaties.³⁷

23. The HRCttee has consistently emphasized that the onus is on the authorities to substantiate how any limitations or restrictions on freedoms of expression, assembly, or manifestation of religion are permissible according to a strict three-part test:³⁸

- a. **Provided by law:** The restriction imposed must conform to the principle of legality and be provided by law that is clear and accessible to everyone³⁹ and formulated with sufficient precision to enable citizens to regulate their conduct in advance of their actions; and,
- b. **Pursues a legitimate aim:** The restriction must be shown to be for the legitimate purposes set out in the ICCPR, limited to protection of the rights or reputation of others, national security, public order, or public health or morals.⁴⁰
- c. **Necessary and proportionate** to achieve legitimate purpose: The restriction must be shown by the authorities to be necessary and the least restrictive and proportionate means to achieve the purported (legitimate) purpose.⁴¹

24. In the 2014 case of *Primov and Others v. Russia*,⁴² the ECtHR Court recalled its previous jurisprudence confirming that ECHR Article 11 (set out in paragraph 58 below), “establishes a three-tier test: an interference will constitute a breach of Article 11 unless it is “prescribed by law”, pursues one or more legitimate aims under paragraph 2 and is “necessary in a democratic society” for the achievement of those aims.”

25. In line with these principles, Article 55.3 of the Constitution reflects, in part,⁴³ provisions of international human rights law, saying that: “Human and civil rights and freedoms may be limited by federal law only to the extent necessary for the protection of the basis of the

³⁶ ICCPR, Articles 18.3, 19, 21, *supra* note 7.

³⁷ HRCttee, GC 34, especially paras. 30-36, *supra* note 25; HRCttee, General Comment no. 37 (2020) on the right of peaceful assembly (article 21) [GC 37], available at: <https://digitallibrary.un.org/record/3884725>; Also see the UN Commission on Human Rights, *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, 28 September 1984, E/CN.4/1985/4, available at: <https://www.refworld.org/docid/4672bc122.html>; European Court of Human Rights, Guide on Article 11 of the European Convention on Human Rights: Freedom of assembly and association, 31 August 2022. Available at: https://echr.coe.int/Documents/Guide_Art_11_ENG.pdf.

³⁸ HRCttee GC 34, *supra* note 25, especially paras. 30-36; HRCttee, GC 37, *ibid*; also see ECtHR, Guide on Article 11 of the European Convention on Human Rights: Freedom of assembly and association, 31 August 2022.

³⁹ For a summary, see the UN Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, A/HRC/20/17, 4 June 2012, para 64, available at: <https://undocs.org/A/HRC/20/17>.

⁴⁰ A/HRC/20/17, *ibid*, para 81.

⁴¹ A/HRC/20/17, *ibid*.

⁴² ECtHR, *Primov and Others v. Russia*, App. No. 17391/06 (2014), para. Available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-144673%22%5D%7D>

⁴³ Note that this Constitutional provision is not fully consistent with international human rights law in that the protection of “constitutional order or “interests” of other people are not permissible justifications for restrictions on fundamental human rights and freedoms.

constitutional order, morality, health, rights and lawful interests of other people, and for ensuring the defence of the country and the security of the State.

26. Thus, the Constitution, too, affirms the three-tier test that limitations on rights and freedoms must be provided by law, pursue only the legitimate aims established by the Constitution, and be necessary and proportionate to the achievement of a legitimate purpose.

A. The principles of legality and legal certainty

Accessibility and foreseeability

27. According to relevant international treaties, including the ICCPR, limitations on freedom of expression (Article 19), manifestation of religion (Article 18.3), and peaceful assembly (Article 21), must be prescribed by law. However, it is not sufficient for a law introducing limitations on rights or freedoms merely to exist. To be valid, such a law must meet to certain criteria, including legal certainty and foreseeability.⁴⁴ Thus, a law must be framed in clear and precise terms so that everyone can understand and foresee the legal consequences of their acts or omissions.⁴⁵ It must be formulated with sufficient precision to enable individuals to regulate their conduct; individuals “must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.”⁴⁶

28. The HRCttee, in its General Comment No. 34, stated that not every restriction may qualify as “law.”

... a norm, to be characterized as a “law,” must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution. Laws must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not.⁴⁷

29. The ECtHR has similarly set out the elements required to meet the standard of a valid law:

- a. **Accessibility:** The law must be available to the public;⁴⁸ and

⁴⁴ *Vgt Verein Gegen Tierfabriken v Switzerland*, App no 24699/94, ECHR 2001-VI, 28 June 2001, at 52; *Kokkinakis v Greece*, App no 14307/88, Series A no 260-A, 25 May 1993, at 52.

⁴⁵ UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, A/67/292, 10 August 2012, paras 64-67, available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=a/67/292.

⁴⁶ *Ibid*, para 49; Also see ECtHR, *Sunday Times v. The United Kingdom*, 6538/74, 29 March 1979, paras 48, 49, available at: <https://www.refworld.org/cases/ECHR.3ae6b7240.html>.

⁴⁷ HRCttee, *General Comment No. 34: Freedom of Opinion and Expression*, 12 September 2011, CCPR/C/GC/34, para 25, available at: <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

⁴⁸ ECtHR, *Sunday Times v. The United Kingdom*, 6538/74, 29 March 1979, para 49, available at: <https://www.refworld.org/cases/ECHR.3ae6b7240.html>; ECtHR, Guide on Article 7 of the European Convention on Human Rights: No punishment without law: the principle that only the law can define a crime and prescribe a penalty, 31 August 2022, available at: https://echr.coe.int/Documents/Guide_Art_7_ENG.pdf or https://echr.coe.int/Documents/Guide_Art_7_RUS.pdf.

- b. **Foreseeability:** “An individual must know from the wording of the relevant provision... what acts and/or omissions will make him criminally liable and what penalty will be imposed for the act committed and/or omission...”⁴⁹ Provisions that are overly vague are “incompatible with the requirements of clarity and foreseeability”⁵⁰ (underline added).

Principles of legality and legal certainty in Russian legislation

30. The Constitution reflects the international law principles of accessibility and foreseeability in Articles 15.3 and 24.2. Article 15.3 provides that laws have no force unless they have been officially published for the information of the general public. However, Article 24.2 further provides that:

24.2. State government bodies and local self-government bodies and their officials shall be obliged to provide everyone with access to documents and materials directly affecting his (her) rights and freedoms, unless otherwise envisaged by law.

While Article 24.2 specifically speaks directly to accessibility, the element of foreseeability is inferred insofar as the relevant documents and materials must be adequate to inform everyone about what rights and freedoms are affected and what behaviours are prohibited. Besides, Article 17 of the Constitution enshrines the principle that “human and citizens’ rights and freedoms are acknowledged and guaranteed in accordance with general principles and norms of international law in accordance with the present Constitution.”⁵¹

31. It is submitted that CAO Article 20.3.3. fails to comply with the principles of legality and legal certainty, as follows:

- a. **Vague:** The phrase “discrediting the use of the Armed Forces of the Russian Federation” in CAO Article 20.3.3. is vague, as the term “discrediting” [дискредитацию] does not have a fixed meaning that would be readily discernible to individuals, and it is not a legal term defined in law. Thus, this phrase is manifestly unclear and undefined, leading to arbitrary interpretation. This makes it impossible for an individual to foresee what actions might be interpreted as “discrediting.” The law lacks clarity such that a person cannot reasonably know whether their behaviour can be construed as a violation until after they have been charged under CAO Article 20.3.3.
- b. **Overbroad:** CAO Article 20.3.3. is overbroad, in that the vague phrase, “discrediting the use of the Armed Forces of the Russian Federation” has been interpreted by authorities to apply not only to statements or conduct directed at the armed forces or other authorities *per se*. For instance, it apparently can involve any form of communication or conduct interpreted by the law enforcement authorities to question or disagree with the “special military operation” on the territory of Ukraine, including through peaceful expression of views, interpersonal communications in electronic messages, telephone conversations, or in-person

⁴⁹ ECtHR, *Sunday Times v. The United Kingdom*, *ibid*; ECtHR Guide on Article 7, *ibid*.

⁵⁰ ECtHR, Guide on Article 7, *ibid.*, para 30.

⁵¹ Constitution Article 17(1), *supra* note 1.

conversations. This vague and overbroad law has been applied to charge persons in cases of peaceful, solo demonstrations featuring expressions of only abstract concepts such as signs saying “no war” or “give peace a chance,” and in which neither the armed forces or other authorities, nor their activities have been mentioned. (See brief case summaries, particularly those listed in paragraph 23.a. above.)

32. Therefore, it is respectfully submitted that CAO Article 20.3.3. contravenes the Russian Constitution. It is further submitted that the mere clarification or refinement of the provision's language will not suffice to rectify the deficiency of the provision, as it violates the Russian Constitution not only in this respect, but in other respects as well.

B. Limitations on rights and freedoms may be prescribed for legitimate aims only

33. CAO Article 20.3.3 states that its purpose is “protecting the reputation of Russia’s armed forces, to protect the interests of the Russian Federation and its citizens, maintaining international peace and security.” Permissible limitations on rights and freedoms include public safety and protection of national security. However, the language of CAO Article 20.3.3. provides no clearly understandable nexus between the stated goal of “maintaining international peace and security” and the permissible aims provided by international human rights law.

34. Accordingly, the purposes of CAO Article 20.3.3, as they are set out in the law, are not among the permissible aims listed in ICCPR Articles 18, 19, 20, 21 or 22 or ECHR Articles 9, 10, 11 (set out below in paragraphs 39ff.).

35. It is respectfully submitted that the limitations introduced by Article 20.3.3 do not meet the requirements of legitimate aim, or necessity and proportionality. Given that the aims are not substantiated as legitimate, they consequently cannot be deemed necessary or proportional to achieve a legitimate aim. Since CAO Article 20.3.3. fails to demonstrate that it has a legitimate aim, it accordingly illegitimately violates the rights to freedoms of opinion and expression; thought, conscience, religion or belief; peaceful assembly; and political participation, as discussed below.

The rights to freedoms of opinion and expression

36. ICCPR Article 19 provides that:

1. Everyone shall have the right to freedom of opinion.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.

37. Article 19.3, states that restrictions on the right to freedom of expression are the only permissible only as they are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

38. The HRCttee has stated in General Comment 34 that the State is required to “demonstrate the legal basis for any restrictions imposed on freedom of expression.”⁵² General Comment 34 expresses particular concern about laws regarding disrespect for authority and protection of the honour of public officials. The HRCttee stated that “laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned.” General Comment No. 34 specifically provides that States Parties “should not prohibit criticism of institutions, such as the army or the administration”⁵³ (underline added). In its 2018 Concluding Observations on Tunisia, the HRCttee expressed concern about legislation that provided for penalties “in cases of criticism of official bodies, the army or the administration.”⁵⁴

39. The UN Special Rapporteur on freedom of opinion and expression has expressed concern about the potential for penal defamation laws to be abused, especially when issues affecting the public interest are involved.⁵⁵ The Special Rapporteur concluded that: “Sanctions for defamation should not be so large as to exert a chilling effect on freedom of opinion and expression and the right to seek, receive and impart information; penal sanctions... should never be applied” (underline added).⁵⁶

40. ECHR Article 10 similarly provides for freedom of expression, stating:

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.

41. The ECtHR has held that “the limits of permissible criticism are wider with regard to a government official in the course of performance of his or her functions than in relation to a private citizen.”⁵⁷ Bodies of the executive branch of the State, such as the armed forces,

⁵² HRCttee, GC 34, para 27, *supra* note 25.

⁵³ HRCttee, GC 34, para. 138, *supra* note 25.

⁵⁴ HRCttee, Concluding observations on Tunisia (CCPR/C/TUN/CO/5), para. 18, available at: <https://digitallibrary.un.org/record/626830>.

⁵⁵ A/HRC/20/17, paras. 78-88 and 97, *supra* note 45.

⁵⁶ HRCttee, GC 37, *supra* note 37, citing UN Human Rights Council, *Report of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression*, Abid Hussain, 29 January 1999, UN Doc. E/CN.4/1999/64, para. 28(h).

⁵⁷ *OOO Memo v. Russia*, appl. 2840/10, 15 March 2022, available at: <https://hudoc.echr.coe.int/eng?i=001-216179>; ECtHR, *Incal v. Turkey*, appl. no. 22678/93, 9 June 1998, available at: <https://hudoc.echr.coe.int/eng?i=001-58197>;

are legitimately “subject to the close scrutiny not only of the legislative and judicial authorities but also of public opinion”⁵⁸ (underline added). Also see paragraphs 60-64 below regarding the right to participate in public dialogue and debate (Article 25 of the ICCPR).

42. The Constitution incorporates protection against discrimination on the basis of political or other opinion, stating in Article 13:

1. Ideological diversity shall be recognized in the Russian Federation.
2. No ideology shall be proclaimed as State ideology or as obligatory.

43. The Constitution, Article 29, incorporates the international law right to freedom of opinion and expression, stating:

1. Everyone shall be guaranteed freedom of thought and speech.
[...]
3. Nobody shall be forced to express his thoughts and convictions or to deny them.
4. Everyone shall have the right freely to seek, receive, transmit, produce and disseminate information by any legal means. The list of types of information, which constitute State secrets, shall be determined by federal law.
5. The freedom of the mass media shall be guaranteed. Censorship shall be prohibited.

44. The wording of CAO Article 20.3.3. is contrary to international law and the Russian Federation Constitution in that it shows none of the legitimate purposes for limiting freedom of expression that are set out in international treaties or the Constitution. Instead, it illegitimately allows for the targeting individuals bases solely on their peaceful expression of views or for scrutinizing the actions of the military and officials, matters inherently of public interest. Such expressions fall under the protection of expression and opinion under both international law and the Russian Federation Constitution.

45. Furthermore, CAO Article 20.3.3. has been used against persons on the basis of their political or other opinion in violation of ICCPR, Article 2 (quoted in paragraph 49 below), by charging them for opinions and peaceful expression that promote peace or oppose armed conflict in principle, or that peacefully express dissent regarding the Russian Federation’s “special military operation” on the territory of Ukraine.⁵⁹

ECtHR, *OOO Ipress and Others v. Russia* (Application No. 33501/04, 38608/04, 35258/05 and 35618/05), 22 January 2013, para 70, available at: <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-116024&filename=001-116024.pdf> or

<http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=ARB&n=366678#4h6Q3XT2lsUqBnT11>. See also *Grinberg v. Russia* (App no. 23472/03) ECtHR 21 July 2005, available at:

<https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-69835&filename=001-69835.pdf&TID>.

⁵⁸ *OOO Memo v. Russia*, *ibid*, citing ECtHR, *Sener v. Turkey*, no. 26680/95, 18 July 2000, para 40, available at: <https://hudoc.echr.coe.int/eng?i=001-58753>.

⁵⁹ See, e.g. the cases described in paragraph 23.

The right to freedom of thought, conscience, religion or belief

46. ICCPR Article 2 requires that States Parties that the rights set out in the Covenant are respected and ensured to everyone “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (underline added).
47. ICCPR Article 18 guarantees the right to freedom of thought, conscience, and religion, including the right, “either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.” The right to freedom of thought, conscience, religion or belief set out in Article 18.1 of the ICCPR is non-derogable.⁶⁰ Article 18.3 provides that “[f]reedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”
48. The HRCtee, in its General Comment No. 22, emphasised that any restrictions on the rights protected under Article 18 must not be applied in a manner that would vitiate the rights guaranteed in the ICCPR. The HRCtee further clarified that restrictions should not be discriminatory, nor should they be used to curtail the expression of religious or non-religious beliefs.⁶¹ The HRCtee also underscored the importance of ensuring that restrictions are not imposed for ends that are contrary to the ICCPR or applied in a manner that is inconsistent with the State’s obligations under the Covenant.⁶²
49. The ECHR, Article 9, similarly provides that:

1 Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2 Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

50. The Constitution, in Articles 19 and 28, incorporates international law protecting against discrimination on the basis of conscience and religion, stating:

Article 19

1. All persons shall be equal before the law and the court.

2. The State guarantees the equality of human and civil rights and freedoms regardless of sex, race, nationality, language, origin, material and official status, place of residence, attitude to religion, convictions, membership of public

⁶⁰ ICCPR, Article 4, *supra* note 7.

⁶¹ HRCtee, *General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)* [GC 22], 30 July 1993, CCPR/C/21/Rev.1/Add.4, para 8, available at: <https://www.refworld.org/docid/453883fb22.html> .

⁶² HRCtee, GC 22, *ibid.*, para 8,

associations, or of other circumstances. All forms of limitations of human rights on social, racial, national, language or religious grounds shall be prohibited.

Article 28

Everyone shall be guaranteed freedom of conscience and religion, including the right to profess individually or collectively any religion or not to profess any religion, and freely to choose, possess and disseminate religious and other convictions and act in accordance with them (underlines added).

51. CAO Article 20.3.3. has been applied in a manner that is contrary to the right to freedom of conscience, religion or belief protected under ICCPR Article 18, ECHR Article 9, and the Constitution Articles 19 and 26. Internationally, it is unlawful to prohibit the manifestation of beliefs or dissemination of religious beliefs, including church sermons, public statements or social media posts pertaining to peace or anti-war convictions. The vague and overbroad restrictions imposed by CAO Article 20.3.3. fail to disclose a nexus with any legitimate aim to protect public order, health, morals or the protection of the rights and freedoms of others as required by ICCPR Article 18.3 and ECHR, Article 9. Instead, CAO Article 20.3.3. has been applied in ways that contradict these international treaties as well as the Constitution, including prosecuting people for their lawful and peaceful dissemination of their religious or other beliefs, such as belief in pacifism, as the case of Serdyukov Yury Petrovich, listed at Paragraph 23.b. above.

Right to freedom of peaceful assembly

52. ICCPR Article 22 protects the right freedom of peaceful assembly, including online assembly, protected by ICCPR Article 21:

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

53. UN HRCtee General Comment No. 37 on Article 21⁶³ emphasizes that the right to peaceful assembly is a fundamental right, “at the very foundation of a system of participatory governance based on democracy, human rights, the rule of law and pluralism.” General Comment No. 37 also affirms the State duty to protect peaceful assemblies “wherever they take place: outdoors, indoors and online; in public and private spaces; or a combination thereof”⁶⁴ and that all forms of assemblies, “including demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and flash mobs” are to be protected under Article 21.

54. General Comment No. 37 on Article 21, provides that:

8. The recognition of the right of peaceful assembly imposes a corresponding obligation on States parties to respect and ensure its exercise without

⁶³ HRCtee, GC 37, *supra* note 37.

⁶⁴ HRCtee, GC 37, *supra* note 37, para 6.

discrimination. This requires States to allow such assemblies to take place without unwarranted interference and to facilitate the exercise of the right and to protect the participants. The second sentence of Article 21 provides grounds for potential restrictions, but any such restrictions must be narrowly drawn...

[...]

13. While the notion of an assembly implies that there will be more than one participant in the gathering, a single protester enjoys comparable protections under the Covenant, for example under article 19 (underline added; footnote in original omitted).

[...]

25. States must ensure that laws and their interpretation and application do not result in discrimination in the enjoyment of the right of peaceful assembly, for example on the basis of race, colour, ethnicity, age, sex, language, property, religion or belief, political or other opinion, national or social origin, birth, minority, indigenous or other status, disability, sexual orientation or gender identity, or other status... (underline added).

55. Similarly, the ECHR provides in Article 11, that:

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others...

56. Contradicting these norms, CAO Article 20.3.3. has been used to dramatically curtail the right to freedom of peaceful assembly in Russia, including punishment of the Complainants along with thousands of other persons engaging in legitimate and entirely peaceful demonstrations, including solo demonstrations, as is their right at international law and under Russia's Constitution. The language of CAO Article 20.3.3. fails to provide any understandable connection with any of the legitimate purposes set out in ICCPR Article 21 or ECHR Article 11.2 for limiting the right to freedom of peaceful assembly.

Right to participate freely in public dialogue and debate

57. ICCPR Article 25(a) provides that every citizen has the right to participate in public dialogue and debate not only through their chosen representatives but also directly.⁶⁵

58. The HRCtee, in its General Comment No. 25, affirms the right of public participation, noting that "citizens participate in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression,

⁶⁵ HRCtee, General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service, [GC 25] 12 July 1996, CCPR/C/21/Rev.1/Add.7, paras. 8, 25, 26, available at: <https://www.refworld.org/docid/453883fc22.html>.

assembly and association.”⁶⁶ In 2018, the UN Special Rapporteur on the situation of human rights defenders emphasised the requirement of public consultation, saying that before a piece of legislation is adopted, “it must be promulgated democratically, meaning that it should be subject to broad consultations with individuals and associations concerned, including civil society.”⁶⁷ In the case of CAO Article 20.3.3., all public consultation was precluded prior to the hasty adoption of the law on 4 March 2022 and its subsequent amendments. Since its adoption, participation in public dialogue and debate, including by civil society, about any of the matters related to CAO Article 20.3.3. has been censored, silenced, and punished, creating a chilling climate that precludes public participation guaranteed by ICCPR Article 25.

59. The HRCttee, in its General Comment No. 34, discusses the importance of ensuring freedom of public debate about public institutions and authorities, stating that:

... in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high. Thus, the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties, albeit public figures may also benefit from the provisions of the Covenant. Moreover, all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition⁶⁸ (underline added).

CAO Article 20.3.3. violates the right to participate in public dialogue and debate set out in ICCPR Article 25, which provides for no exceptions that would limit public criticism of public figures or authorities, including armed forces.

60. The Constitution of the Russian Federation stipulates in Article 1 that Russia is a democratic country governed by the rule of law. The right to participate freely in peaceful public dialogue and debate is guaranteed by Constitutional protection of the rights to freedoms of thought, conscience, opinion, expression, association, and assembly, discussed above. CAO Article 20.3.3. violates these Constitutional guarantees by prohibiting and punishing peaceful expression of opinion, dissent, and criticism of important public policies regarding Russia’s “special military operation” in Ukraine.

International human rights obligations regarding human rights defenders

61. The UN Declaration on Human Rights Defenders⁶⁹ affirms the right of all persons to engage in activities for the promotion and protection of human rights.⁷⁰ The application of CAO Article 20.3.3. particularly affects the rights of human rights defenders to peacefully carry out their legitimate activities and to exercise their rights to promote and protect

⁶⁶ HRCttee, GC 25; Office of the High Commissioner for Human Rights [OHCHR], Report: Guidelines on the right to participate in public affairs, 20 July 2018, available at: https://www.ohchr.org/sites/default/files/Documents/Issues/PublicAffairs/GuidelinesRightParticipatePublicAffairs_web.pdf

⁶⁷ A/67/292, *supra* note 51, also see OHCHR, *ibid*.

⁶⁸ HRCttee, GC 34, *supra* note 25, citing *Rafael Marques de Morais v. Angola*, Communication No. 1128/2002, U.N. Doc. CCPR/C/83/D/1128/2002 (2005).

⁶⁹ UN Declaration on Human Rights Defenders, *supra* note 11.

⁷⁰ *Ibid*, including Articles 1, 2, 6, 7, 8.

human rights through peaceful expression, assembly and political participation. It is important to note that the definition of human rights defenders encompasses not only professional lawyers and human rights workers but also everyone who peacefully promotes the protection of human rights and freedoms, including those who advocate for international peace and the right to a democratic order.⁷¹

62. The preamble of the UN Declaration on Human Rights Defenders specifically recognizes “the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms” and states that “the absence of international peace and security does not excuse non-compliance.” Thus, the Declaration affirms the fundamental principles of the *Charter of the United Nations*, Article 1,⁷² and the preamble of the *Universal Declaration of Human Rights*.⁷³ The UN Declaration on Human Rights Defenders also affirms the right of everyone to participate in the conduct of public affairs.⁷⁴
63. The Declaration on Human Rights Defenders sets out duties of States to ensure the protection of human rights defenders, and affirms, among other things, that:
 - a. “everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” (Article 1, underline added);
 - b. “the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration” (Article 12.2);
 - c. “...everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms...”
64. CAO Article 20.3.3. contradicts the Declaration on Human Rights Defenders in that it fails to ensure that human rights defenders are protected from prosecution for lawfully engaging in public education, reporting, and advocating for an end to suspected violations of human rights or international humanitarian law by authorities, including armed forces. See for example, the summaries of cases set out in paragraph 23.c. above.

V. Conclusion

65. In summary, this legal brief has set out arguments intended to assist the Constitutional Court to assess CAO Article 20.3.3. independently, impartially, and in good faith, in

⁷¹ UN Special Rapporteur on human rights defenders, About human rights defenders, n.d., available at: <https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders/about-human-rights-defenders>.

⁷² UN Charter, *supra* note 4.

⁷³ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html>.

⁷⁴ UN Declaration on Human Rights Defenders, *supra* note 11, Article 8.

accordance with international law and standards applicable to the Russian Federation. For the reasons set out above, it is respectfully submitted that CAO Article 20.3.3 contradicts fundamental rights to freedoms of expression, religion, peaceful assembly, and public participation guaranteed by the ICCPR and the ECHR and affirmed by the Constitution. It is further submitted that the wording of CAO Article 20.3.3. does not substantiate the limitations it imposes on rights and freedoms have been established for legitimate purposes set out in the ICCPR, ECHR, or the Constitution. CAO Article 20.3.3. also fails to meet the requirements of the principles of legality and legal certainty in that the wording of the law is so vague and overbroad that it has been applied to the lawful and peaceful expressions and conduct, such as that of the Complainants. Finally, it is respectfully submitted that clarification or refinement of the language of CAO Article 20.3.3 would be insufficient to rectify the law's deficiencies.

66. It is respectfully submitted that to ensure that the Russian Federation's international human rights obligations are guaranteed and the rights under the Constitution of the Russian Federation are protected, the Constitutional Court of the Russian Federation should declare that Article 20.3.3 of the Code of Administrative Offences of the Russian Federation does not ensure the protection of the rights and freedoms guaranteed under the Constitution of the Russian Federation and is unconstitutional.

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