



**Information note regarding retaliation of the Government of the Russian Federation
against the
Andrey Rylkov Foundation for Health and Social Justice (ARF)
for promoting the recommendations made by the UN Committee on Economic,
Social and Cultural Rights (CESCR) to the Russian Federation in its Concluding
Observations**

Moscow, 14 February 2012

Attention:

- UN Special Rapporteur on the situation of human rights defenders
- UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression
- UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health
- Members of the UN Committee on Economic, Social and Cultural Rights

We request this report to be considered jointly by the aforementioned Special Rapporteurs as an individual complaint on violation of the right to the highest attainable right to health and the right to freedom of expression, by way of the Government's retaliation against the human rights defenders named below.

Information about the victim: The **Andrey Rylkov Foundation for Health and Social Justice (ARF)** is a non-governmental, not-for-profit organization incorporated in the Russian Federation in September 2009 with the aim to develop and promote humane drug policy based on tolerance, protection of health, dignity and human rights in Russia. ARF is a small organization which does not have an office. Most of its activities, including human rights promotion and protection are performed with help of volunteers.
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Irina Teplinskaya is a community relations coordinator of ARF
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Information about the violator: The Russian Federation
State agency: Moscow City Department of the Federal Drug Control Service (FDSC) of the Russian Federation.

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This report has been drafted by the Andrey Rylkov Foundation in consultation with the Canadian HIV/AIDS Legal Network (www.aidslaw.ca), the Eurasian Harm Reduction Network (www.harm-reduction.org) and Harm Reduction International (www.ihra.net).

Summary

The Government of the Russian Federation has retaliated against and suppressed the activities of the ARF, including the exercise of the freedom of expression of ARF, aimed at promoting recommendations given by the CESCRC to the Russian Government in its Concluding Observations of 20 May 2011 (UN Doc. E/C.12/RUS/CO/5) *“to apply a human rights-based approach to drug users so that they do not forfeit their basic right to health. The Committee strongly recommends the State party to provide clear legal grounds and other support for the internationally recognized measures for HIV prevention among injecting drug users, in particular the opioid substitution therapy (OST) with use of methadone and buprenorphine, as well as needle and syringe programs and overdose prevention programs.”* The FDCCS has been persecuting ARF staff member for challenging the legal ban on OST in the domestic courts and international human rights bodies. Most recently, on 3 February 2012, the Federal Drug Control Service (FDCCS) has shut down the ARF website that provides information about these CESCRC recommendations and the measures the CESCRC (and other UN agencies) have recommended be adopted in Russia.

1. Human Rights activities of ARF

- 1.1 From 2009 to 2011, ARF filed: four complaints to the UN Special Rapporteur on the Right to Health; a shadow report to the UN Committee against Torture with regard to the 5th Periodic Report of the Russian Federation; and information on the strategic court cases led by ARF with regard to access to OST, access to treatment for hepatitis C, and the defense of people who use drugs in criminal cases.
- 1.2 As Secretariat for the Public Monitoring Mechanism for Drug Policy Reform in Russia, in April 2010 ARF submitted to the CESCRC a shadow report with regard to 5th Periodic Report of the Russian Federation. In the report, ARF presented strong evidence of how the government violated the right to health of people with addictions to narcotic drugs, including by banning by law access to internationally-recognized and WHO-recommended interventions such as OST, needle and syringe programs, and overdose prevention programs. Following the shadow report, oral testimony and two additional written submissions from ARF, the CESCRC issued the aforementioned recommendation to the government of the Russian Federation.

2. Promotion of the CESCRC recommendations on the national level

- 2.1 ARF had chosen a multifaceted strategy for promotion of the CESCRC recommendations, including proceedings before domestic courts, direct appeals to the highest state authorities, and activities to raise public awareness of the need for the measures recommended by the CESCRC. We outline briefly key aspects of each of these elements of ARF’s work.

- 2.2. In the domestic courts, ARF developed and supported strategic litigation regarding the case of ARF community relations coordinator Irina Teplinskaya. She has been suffering opioid dependence for more than 25 years with numerous unsuccessful attempts of treatment by all methods available in Russia; treatment with OST has been impossible given the legal ban maintained by the government. As a result of her dependence and lack of access to OST, Irina acquired HIV (which later progressed to AIDS), tuberculosis and hepatitis C, and was jailed on multiple occasions for drug-related crimes for 16 years in total. In April 2011, Teplinskaya requested OST to be prescribed to her by the Ministry of Health. It refused, referencing the legal ban on OST in Russia. The refusal was challenged in court in May 2011 with reference to the CESCR recommendations. In the court, ARF maintained that the national health and drug laws should be interpreted in favor of OST as required by the meaning of Article 12 of the *International Covenant on Economic, Social and Cultural Rights*, which forms part of Russia's domestic law according to Article 15 of the *Constitution of the Russian Federation* (see relevant text below). Both the trial court and the court of appeal ignored the CESCR recommendations as “meaningless to the case”. When domestic remedies were exhausted, ARF filed an application against the Russian Federation to the European Court for Human Rights (in August 2011). The cases was widely reported by the Russian and international mass media. Ms. Teplinskaya gave many interviews to newspapers and radio programs. All the submissions in the case, the replies of the authorities and court decisions were posted on the ARF website for unrestricted public access.
- 2.3 ARF also promoted the CESCR's recommendations by appealing to the President, Prime Minister and Ombudsman of the Russian Federation in June 2011. In its letter, ARF requested that said officials consider making the domestic laws and policies on health and drugs in line with international obligations of the Russian Federation, again as required by Article 15 of the national *Constitution*. In particular, ARF requested that the President propose a bill providing for legal and financial support for substitution treatment using methadone and buprenorphine (which medications are included on the WHO's List of Essential Medicines¹), as well as needle and syringe programs – both of which measures are recommended by WHO, UNAIDS and the UN Office on Drugs and Crime (UNODC) as key elements of an effective response to HIV among injection drug users^{2,3}.
- 2.4 In September 2011, the Administration of the President informed ARF that it had forwarded the letter to the Ministry of Health. In December 2011, the Ministry of Health replied by saying that OST could not be considered as a treatment for drug addiction and that OST with use of methadone has the same adverse affects on a human being with the use of heroin, and that the proposed introduction of OST recommended by WHO was nothing but masked propaganda of drug legalization. It added that “the arguments proposed in the letter [of ARF] look unpersuasive, didactical and interfere with the Russian legislation.” In response, ARF submitted to the President another letter with legal arguments for implementation of the CESCR recommendations and references to WHO reports and publications that state that OST is one of the most effective methods of treatment of opioid dependence.

¹ See para 24.5 *Medicines for disorders due to psychoactive substance use*. WHO List of Essential Medicines. 17th edition. March 2011. Page 31. www.who.int

² See. WHO, UNODC, UNAIDS *Technical Guide for countries to set targets for universal access to HIV prevention, treatment and care for injecting drug users*. 2009.

³ See also paragraph 20 of the Political Declaration on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem. Adopted on the 52nd session of the UN Commission on Narcotic Drugs (CND) and endorsed by the UN General Assembly Resolution A/RES/64/182; see also Resolution 53/9 adopted by CND on the 53rd session in March 2010 where the principal UN bodies endorse nine core interventions for HIV prevention amongst injecting drug users, including OST and needle and syringe programs.

2.5 In order to educate the broader public about the CESCR recommendations, as well as a broad range of human rights concerns of people who use drugs, and to make public its human rights promotion activities, ARF maintained a website containing the following information:

- The detailed information about ARF's cooperation with the CESCR, including all its submissions to the Committee and the CESCR recommendations to Russia in its Concluding Observations of 20 May 2011.
- Information about other human rights activities of ARF.
- Information about OST, including a library of scientific publications, WHO recommendations and evidence from different countries using OST to treat people with opioid dependence.
- Information about harm reduction, including scientific reports about the effectiveness of needle and syringe programs in the prevention of HIV.
- Information about developments in drug policy in Russia, other countries and at the UN.
- Personal stories of people who use drugs and/or suffer from lack of access to effective drug dependence treatment, HIV prevention measures, treatment for HIV, TB and hepatitis C, and other consequences of illicit drug use and dependence.
- Re-posted newspaper articles, video clips and other mass media materials about drug policy, human rights and HIV prevention among people who use drugs.
- Information about ARF's social work helping people who use drugs reaching medical and social services, including ARF's needle and syringe activities in Moscow.
- Activity and financial reports regarding the projects undertaken by ARF.

3. Retaliation against ARF community relations coordinator Irina Teplinskaya

3.1 In August 2011, Irina Teplinskaya was apprehended at the international airport in her native city of Kaliningrad by the Federal Border Control Service, who charged her with possession of contraband for possessing a tablet of methadone. A criminal case was initiated. However, multiple violations of the procedural laws were so obviously pointing to the fact that the tablet of methadone was planted on Ms. Teplinskaya during her search at the airport that the Regional Prosecutor's service ordered a termination of the case five days after the launch of the investigation.

3.2 The case files were transferred to the Federal Drug Control Service (FDSC), which launched a new investigation where Ms. Teplinskaya was the only witness. She was interrogated twice by the FDSC only about her public activities, not about the circumstances when the tablet of methadone was found at the airport. Taking into account that the investigation has been going on since early October 2011 with no activities other than two interrogations of Ms. Teplinskaya, there are grounds to believe that the investigation was set up in order to control and monitor her activities by providing a legal basis for compelling her to attend the FDSC bureau at any time to answer further questions, including about her location and her current activities. Ms. Teplinskaya has to abide by the order, knowing that it would be very easy for FDSC to turn her into a suspect given that she is the only participant of the case. During the time spent under investigation, Ms. Teplinskaya became very nervous. For her and many of those who are familiar with the Russian special services' methods of work, the FDSC investigation is linked to her human rights activities. Ms. Teplinskaya's only motivation to continue with her work in promoting and defending human rights is her awareness that there are more than two million opioid-dependent people in Russia who lack access to effective drug treatment, and that her stand might help them.

4. Retaliation directly against ARF

- 4.1 In December 2011, ARF president Anya Sarang received a phone call from the Moscow department of the economic crime police. The officer calling did not provide the exact name of the branch or the department. Ms. Sarang was asked about the ARF office address. She said that ARF is too small an organization to have an office but provided the judicial address (a flat of one of the ARF co-founders). Then she asked an officer about the reason why the economic police wanted this information. The officer explained that he was not sure himself what exactly was the reason for the checkup, but it was all about “some kind of methadone” and that there is a complaint against ARF signed by Nikita Lushnikov, the President of the NGO “The Center of Healthy Youth”. Later Sarang contacted Lushnikov personally, through facebook, with a question why he filed a complaint with the economic police. He replied: “I never wrote any complaints, we just signed a letter in which we supported Ministry of Health in counteraction to the methadone program. I could never sign a complaint against someone whom I don’t even know; this is not how I was raised. To be honest I just trust the Ministry of Health, that is why I have signed the letter.”
- 4.2 On 19 January 2012 Ms Sarang was informed by her relatives that the local police office served her a note to come to the Moscow City Prosecutor’s Office. As Ms Sarang was not in Moscow she requested the Russian Human Rights organization AGORA to contact the Prosecutor’s Office on the matter. The Office replied that indeed there was a checkup of ARF conducted by the Moscow City Prosecutor’s Office at the request of the General Prosecutor’s Office because of promotion of substitution treatment.
- 4.3 On 3 February 2012, the ARF website was shut down by ARF’s internet service provider on order of the FDSCS “*due to placement of materials which propagandize (advertise) use of drugs, information about distribution, purchasing of drugs and inciting to use of drugs*”. No formal inquiry took place preceding the website closure.
- 4.4 On 10 February 2012, FDSCS official Anastasya Boyarkina commented to Radio Freedom that the General Prosecutor’s Office had checked the ARF website and found that there was “a propaganda of substitution therapy, which is prohibited in the Russian Federation.” According to Boyarkina, this constituted a violation of the *Law “On narcotic means and psychotropic substances”* (see relevant text below) as well as the Strategy of the State Antidrug Policy. According to Boyarkina, there was no violation of the right to freedom of expression.⁴

5. Focus of this report

- 5.1 The aforementioned facts constitute cumulative evidence the Government’s efforts to suppress ARF’s human rights promotion activities, Culminating in the latest step of shutting down its website – a violation of freedom of expression of leading human rights defenders in Russia who are pursuing the implementation of the CESCER’s recommendations aimed at realizing the right to the highest attainable standard of health.

⁴ Irina Chevtaeva, “Experts on the Russian Drug Policy and the Ban on its Discussion. Irina Chevtaeva,” 10 February 2012, online via: http://www.svobodanews.ru/content/article/24479968.html?utm_source=dlvr.it&utm_medium=twitter&utm_campaign=SvobodaRadioTwitter

- 5.2 The FDPS investigation of the case of the tablet of methadone in which Ms. Teplinskaya remains a witness has been undertaken pursuant to Russian procedural laws. Taken separately from ARF's and Ms. Teplinskaya's human rights activities, the case might appear to be just an ordinary investigation. Indeed, FDPS is legally mandated to launch a formal investigation based on the fact that a tablet of illicit substance was found on Russian Federation territory. However, Ms. Teplinskaya currently has the status of a witness and could remain so for the duration of an investigation, which could run indefinitely according to Russian laws. Taking into account Ms. Teplinskaya's ties to ARF, the circumstances which strongly suggest that the tablet was planted on her at the airport, as well as the recent FDPS action against ARF, the possibility that FDPS might turn her into a suspect at any point in the investigation, and reinstitute criminal charges against her, hangs over her at all times as a means of intimidation.
- 5.3 Although it is extremely frustrating for Teplinskaya to be under constant threat of prosecution, it is not possible to challenge the investigation unless or until the FDPS reinstitutes charges against Ms. Teplinskaya. Therefore, for the purpose of this report, the investigation of the participation of Teplinskaya shall remain important background information indicative of a larger pattern of conduct of seeking to silence human rights defenders.
- 5.4 The same shall be said about the fact that the General Prosecutor's Office conducted a formal check of ARF activities at the request of a Member of Parliament, as well as about the fact that the police economic crime squad called Ms. Sarang following on the letter engineered by the Ministry of Health. Until said law enforcement agencies limit any of ARF's rights and freedoms, the aforementioned information serves primarily as background information indicative of this larger pattern.
- 5.5 Against this backdrop of ongoing intimidation, the fact of the ARF website closure is a distinct action directly and unquestionably violating freedom of expression; it is the main focus of this report. Indeed, with the website closure, the FDPS interfered with the fundamental freedom to receive and impart information in the context of public health, activities of human rights defenders and participation of civil society in public life, whether it be discussions of existing drug policy or proposals to change legislation. Thus, the FDPS injunction to close the website "*due to placement of materials which propagandize (advertise) use of drugs, information about distribution, purchasing of drugs and inciting to use of drugs*" must be assessed as to whether it was legal and, if so, if it was done in an arbitrary manner and/or if it led to a limitation of freedom of expression and information.
- 5.6 As we outline below, the FDPS order compelling closure of the ARF website runs contrary to the Russian Constitution and the international obligations of the Russian Federation. We ask that the Committee and the Special Rapporteurs to whom this complaint is addressed intervene immediately with the Russian government to ensure this FDPS injunction is lifted immediately.

6. The laws of the Russian Federation

Constitution of the Russian Federation, 1993⁵

Article 15

1. The Constitution of the Russian Federation shall have the supreme juridical force, direct action and shall be used on the whole territory of the Russian Federation. Laws and other legal

⁵ Official translation <http://www.constitution.ru/>

acts adopted in the Russian Federation shall not contradict the Constitution of the Russian Federation.

4. The universally-recognized norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation fixes other rules than those envisaged by law, the rules of the international agreement shall be applied.

Article 29 (4)

Everyone shall have the right to freely look for, receive, transmit, produce and distribute information by any legal way. The list of data comprising state secrets shall be determined by a federal law.

Article 32 (1)

Citizens of the Russian Federation shall have the right to participate in managing state affairs both directly and through their representatives.

Article 41

1. Everyone shall have the right to health protection and medical aid. Medical aid in state and municipal health establishments shall be rendered to individuals gratis, at the expense of the corresponding budget, insurance contributions, and other proceeds.

2. In the Russian Federation federal programmes of protecting and strengthening the health of the population shall be financed by the State; measures shall be adopted to develop state, municipal and private health services; activities shall be promoted which facilitate the strengthening of health, the development of physical culture and sport, ecological and sanitary-epidemiological well-being.

3. The concealment by officials of the facts and circumstances posing a threat to the life and health of people shall entail responsibility according to the federal law.

Article 55 (3)

The rights and freedoms of man and citizen may be limited by the federal law only to such an extent to which it is necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defense of the country and security of the State.

Federal Law #3-FZ of 8 January 1998 “On narcotic means and psychotropic substances”⁶

Article 46. Prohibition of propaganda in the sphere of turnover of narcotic means, psychotropic substances and precursors thereof and in the sphere of cultivation of plants which contain narcotics.

1. Propaganda of narcotic means, psychotropic substances, precursors thereof and of cultivation of plants which contain narcotics, carried out by legal and physical persons and aimed at distribution of information about modes and methods of development, manufacturing and use of narcotic means, psychotropic substances and precursors thereof, places of their purchasing, methods and places of cultivation of plants containing narcotic means, as well as manufacturing and distribution of books, outputs of mass media, distribution of aforementioned information by way of information-telecommunication networks and committing other activities for the same aims is prohibited.

⁶ Unofficial translation by Canadian HIV/AIDS Legal Network staff member.

2. Propaganda of any advantages in use of certain narcotic means, psychotropic substances, analogues and precursors thereof, plants containing narcotic means, including propaganda of medical use of narcotic means and psychotropic substances, plants containing narcotic means, which suppress a man's willpower or adversely affect his mental or physical health is prohibited.

[...]

4. Violation of the rules set up by the present article leads to liability according to the laws of the Russian Federation.

5. In case of establishing the facts of repeated violation by the legal person of rules of parts 1,2 and 3 of the present article, the activities of the said organization could be suspended or terminated by a court's judgment.

Federal Law # 38-FZ of 13 March 2006 "On advertising activities"⁷

Article 7. Merchandise for which advertising is restricted

Advertising is not allowed for:

[...]

2) narcotic means, psychotropic substances and precursors thereof, plants containing narcotic means and psychotropic substances or precursors thereof;

[...]

Code of Administrative Violations of the Russian Federation, 2001⁸

Article 6.13. Propaganda of narcotic means, psychotropic substances, precursors thereof, plants containing narcotic means or psychotropic substances or precursors thereof.

1. Propaganda or illicit advertisement of narcotic means, psychotropic substances or precursors thereof, plants containing narcotic means, psychotropic substances or precursors thereof shall be punished with administrative fine for physical persons - from 4 to 5 thousand rubles with forfeiture of advertising materials and equipment used for its production; for state officials from 40 to 50 thousand rubles; for entrepreneurs from 40 to 50 thousand rubles or administrative suspension of their activities for up to 90 days with forfeiture of advertising materials and equipment used for its production; for legal persons – from 800 thousand to 1 million rubles with forfeiture of advertising materials and equipment used for its production, or administrative suspension of their activities for up to 90 days with forfeiture of advertising materials and equipment used for its production.

2. The same activities committed by the foreign citizen or stateless person shall be punished with a fine from 4 to 5 thousand rubles with administrative deportation from the territory of the Russian Federation, or administrative arrest for up to 15 days with administrative deportation from the territory of the Russian Federation.

Note: There is no administrative offence in distribution of information about narcotic means, psychotropic substances and precursors thereof in specialized publications for medical and pharmaceutical workers.

⁷ Unofficial translation by Canadian HIV/AIDS Legal Network staff member.

⁸ Unofficial translation by Canadian HIV/AIDS Legal Network staff member.

The Strategy of the Anti Drug Policy of the Russian Federation up to the year 2020, approved by the Decree of the President of the Russian Federation № 690 on 9 June 2010⁹.

Para 32. The main actions to improve the effectiveness and development of drug treatment services:

(g) non-admission of use in the Russian Federation of substitution therapy with use of narcotics and psychotropic substances from the List I and the List II,¹⁰ as well as non-admission of legalization of some types of drugs for medical purposes;

Para 48. Partially manageable risks to the Strategy: Intensification of attempts to legalize substitution therapy with the use of narcotic drugs and propaganda of drug use under pretence of syringe exchange;

7. Domestic Legal Practice

- 7.1 A review of domestic application by the FDCS and Russian courts of the above-noted legal provisions shows an ongoing, widespread violation of freedom of expression regarding matters of drug users' health and human rights by the Russian government, which violations cannot be justified pursuant to the *International Covenant on Civil and Political Rights*¹¹. The closure of the ARF website is the latest such violation, and requires a prompt response by the Special Rapporteurs and the CESCR to whom this complaint is submitted.
- 7.2 In June 2009 **The Supreme Court of the Russian Federation** upheld the lower courts' judgments in favor of the FDCS order to punish the accused for illicit advertisement of narcotic means by selling belt buckles with a hemp leaf pictured on them. A fine of 4,000 rubles was imposed and 14 belt buckles were confiscated.¹²
- 7.3 In May 2007 **the Court of Arbitration of the Far East Circuit of the Russian Federation** upheld the judgment of the lower court in favor of the FDCS order to terminate the sale of beer with extracts of hemp seeds because the label on the bottle contained a picture of the hemp leaf, which was categorized by the FDCS as drug propaganda as defined by Article 46(1) of the Federal Law No. 3-FZ of 8 January 1998 "On narcotic means and psychotropic substances".¹³
- 7.4 In March 2011, **the FDCS Department of Novosibirsk region** (a region of the Russian Federation) ordered the regional internet provider to remove from a website the following movies: *Fear And Loathing In Las Vegas*, 1998; *Trainspotting*, 1996; *Drugstore Cowboy*, 1989; and other well-known movies. The FDCS stated its order was aimed at preventing offences stipulated in Article 6.13 of the Code of Administrative Violations of the Russian Federation. The internet provider abided by the order without challenging it in court.¹⁴

⁹ Unofficial translation by Canadian HIV/AIDS Legal Network staff member.

¹⁰ As stated in footnotes 4 and 5, methadone is in the List I (prohibited for any use with exception for scientific and police purposes). Buprenorphine is in the List II (substances allowed for medical use but not for drug treatment).

¹¹ UN Economic and Social Council, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, UN Doc. E/CN.4/1985/4, Annex (1985)

¹² Supreme Court of the Russian Federation: Postanovlenie of 26 No. 31-AD09-3.

¹³ The Court of Arbitration of the Far East Circuit of the Russian Federation: Judgment of 15 May 2007. Case No. F03-A16/07-1/923,

¹⁴ FDCS News Digest of 31 March 2011, online via www.fskn.gov.ru.

- 7.5 In April 2009, **the Federal service on surveillance of communications and mass media in Permsky krai** (a region of the Russian Federation) followed the order of FDCS Department of Permsky krai prohibiting the newspaper “New Companion” posting photos of the painting of the contemporary Russian painter Dmitry Vruble. The order categorized the painting as drug propaganda. Later the FDCS order was sent to the coordinator of the exhibition asking him to remove the picture or restrict access of children to see it.¹⁵
- 7.6 In April 2006, the **FDCS Department in Tatarstan** (a region of the Russian Federation) launched an administrative investigation into the activities of Professor Vladimir Mendelevich who promoted OST by way of scientific discussions and by posting relevant literature on his website. As a result the website was shut down.¹⁶
- 7.7 In all the cases of alleged drug propaganda, the FDCS relied on experts’ opinion (linguist and/or psychologist) that a particular picture, painting, or wording might stimulate an interest in drug use in viewers or readers.

8. FDCS action against ARF is arbitrary action in breach of procedural laws of the Russian Federation

- 8.1 The laws of the Russian Federation do not provide FDCS with competence to order the blocking of a web site based on allegations of “drug propaganda.” According to the Federal Law “On narcotic means and psychotropic substances” and the Code of Administrative Violations, the FDCS could launch an administrative investigation into the facts of propaganda and bring the case to the attention of the court.
- 8.2 The final decision on whether activities constituting “drug propaganda” took place rests with the court. There is no court decision identifying any information on the ARF website as drug propaganda. Hence, the FDCS order to block the web domain is not based on Russian law. In other words, the FDCS order was issued outside of established legal procedures and is arbitrary.
- 8.3 It is also important to note that the FDCS order to block the ARF website carried no explanation of which content on the website was categorized by the FDCS as drug propaganda. This fact strongly suggests that the order was issued in an arbitrary manner. Taking into account the background information about the retaliation against ARF for its human rights activities, the manner in which the FDCS order has been worded and issued is further proof of the on-going suffocation of public debates over drug policy in Russia.

9. CESC and special procedures also need to consider the underlying substantive violation of freedom of expression by FDCS under ‘drug propaganda’ laws

- 9.1 The complainants object not only to the arbitrariness and procedural improprieties in the FDCS action in shutting down their website, but also to the substantive violation of freedom of expression (and, thereby, the right to the highest attainable standard of health) inherent in FDCS’ application of Russia’s “drug propaganda” laws. The FDCS order to block the ARF website demonstrates the FDCS’s desire to categorize the website content as drug propaganda.

¹⁵ Valery Mazanov “Dumb&Damber” (14 April 2009) *New Companion* (newspaper), online: www.nk.perm.ru.

¹⁶ Ekaterina Vorobyova “Professor of Medicine is Suspected of Drug Propaganda” (11 April 2006), *Kommersant* (newspaper) ([Коммерсантъ\(Казань\)](http://www.kommersant.ru/regions/16)) (newspaper), №63 (3394), online: www.kommersant.ru/regions/16

If the FDCS order of 25 January 2012 is cancelled, there is nothing to stop FDCS from launching an administrative investigation and seeking to have a court declare the content of ARF's website "drug propaganda."

- 9.2 In this case, the ARF faces a real risk of a fine from 800,000 to 1,000,000 roubles (27,000 to 33,000 USD - a huge amount for such a small organization) and even subsequent suspension or total termination of its activities by the decision of the court.
- 9.3 The above-mentioned domestic legal practice clearly demonstrates that the courts uphold FDCS orders, no matter how intrusive on freedom of expression, and no matter how absurd or farfetched, as long as FDCS purports to offer even the weakest veneer of "experts'" evidence in support of its claims that the expression (e.g., pictures or text) stimulates an interest in drug use.
- 9.4 The task of the FDCS to "prove" before the court that the content of the ARF website is drug propaganda would be even easier because Article 46(2) of the Federal Law "On narcotic means and psychotropic substances" goes so far as to prohibit "propaganda of medical use of narcotic means and psychotropic substances which suppress the man's willpower or adversely affect his mental or physical health". Indeed, by publicizing information about OST, ARF falls exactly under the definition of Article 46(2) as OST is an internationally recognized and WHO recommended method where narcotic mean (methadone) and psychotropic substance (buprenorphine) are used for medical purposes.
- 9.5 It would not be difficult for the FDCS to obtain from Russian medical authorities an ostensibly "experts'" opinion that methadone suppresses human willpower and adversely affects mental and physical health. Contrary to well-established, peer-reviewed scientific research, and the position of WHO (which lists methadone on its Model List of Essential Medicines), and other UN agencies (e.g., UNAIDS and UNODC), the official position of the Russian health authorities is using methadone to treat opioid dependence has the same adverse affects on human beings as the use of heroin.
- 9.6 Moreover, the State Antidrug Policy, adopted in June 2010, clearly distinguishes as a threat any attempts to make OST legal, against which FDCS is mandated to fight.¹⁷ Thus, the danger that the FDCS will take further steps to have ARF fined heavily, or even to have its activities terminated, is very real.

10. Does the categorization of information about OST — as well as needle and syringe programs and overdose prevention programs — as "drug propaganda" violate the international treaty obligations of the Russian Federation?

10.1 The following facts should be noted from the outset of the assessment:

- ARF posted on its website only official documents of human rights bodies, WHO, UNODC, UNAIDS, as well as scientific reports and newspaper articles; and, based on these, official submissions to the Russian courts and other authorities regarding the need to introduce OST, needle and syringe, and overdose prevention programs.

¹⁷ Strategy of the State Antidrug Policy (para 48). Adopted by the Decree of the President # 690 of 09.06.2010

- OST, needle and syringe programs, and overdose prevention programs were strongly recommended to Russia by the CESCR in its Concluding Observations of 20 May 2011 (para. 29).
- In addition, the CESCR requested Russia to disseminate the Concluding Observations widely among all levels of society, in particular among State officials, the judiciary and civil society organizations, and to publicize them as widely as possible (para. 38).

10.2 By imposing the injunction on distributing information about OST, needle and syringe, and overdose prevention programs, the Government of the Russian Federation makes it impossible to fulfill its obligations under the *International Covenant on Economic, Social and Political Rights*, in particular its obligations under Articles 12 and 2, which require it to take steps with a view to achieving progressively the full realization of the right of everyone to the highest attainable standard of physical and mental health – which necessarily includes people with opioid dependence.

10.3 Information about OST, needle and syringe programs and overdose prevention programs concerns important public health matters, such as treatment of drug dependence and reducing the harm of illicit drug use, including prevention HIV and other blood-borne diseases among people who use drugs. This remains true regardless the fact that the official drug policy of the Russian Federation considers OST and needle and syringe programs to be a threat to the national drug strategy.

10.4 Restriction of access to important information about public health is a violation of Article 41 of the Russian Constitution as well as Article 12 of the *International Covenant on Economic, Social and Cultural Rights*¹⁸.

10.5 The Federal Law “On narcotic drugs and psychotropic substances” defines drug propaganda very broadly. Anything containing the word or picture of a drug or a plant containing a narcotic substance may be interpreted as drug propaganda.

10.6 The general interpretative principles relating to the justification of limitations of provisions in the International Covenant on Civil and Political Rights were adopted by the UN Economic, Social Council¹⁹ and further developed by the Human Rights Committee (HRC). According to HRC restrictions to the freedom of expression must not be overbroad. The principle of proportionality has to be respected, not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law.²⁰ A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.²¹ The above-listed examples of the domestic legal practice demonstrate that such broadly-defined laws are implemented in an extremely arbitrary fashion. The FDSC only establishes the fact that the picture, painting or wording allegedly stimulates an interest in drug use. This is a way too broad fact to serve the ground for the final conclusion on limitation of the freedom of expression. The experts’ opinions, which FDSC invokes in the cases of drug propaganda, do not legitimize the limitation. Indeed the

¹⁸ (CESCR: General Comment #14(2000), paras 11,12,34,37).

¹⁹ UN Economic and Social Council, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, UN Doc. E/CN.4/1985/4, Annex (1985)

²⁰ HRC General comment No. 27, para. 14. See also HRC communications No. 1128/2002, *Marques v. Angola*; No. 1157/2003, *Coleman v. Australia*. (As quoted in the HRC General Comment No 34)

²¹ See HRC General Comment No. 27. (As quoted in the HRC General Comment No 34)

word narcotic may itself stimulate an interest to drugs and drug use. Shall the word be excluded from the vocabulary?

- 10.7 The scope of freedom of expression is not to be assessed by reference to a State's "margin of appreciation."²² In any given case, the State must demonstrate the precise nature of the alleged threat to national security or public order, or public health or morals, as the case may be, that is invoked in restricting freedom of expression.²³ The necessity and proportionality of the specific action taken must also be demonstrated by the State, in particular, by establishing a direct and immediate connection between the expression and the threat.²⁴
- 10.8 The way that the FDCS has used the laws against ostensible "drug propaganda" to limiting freedom of expression shows how broadly-defined laws can be misused to stifle debate over important matters of national health and drug policy. The broad legal definition creates legal uncertainty, further fueled by the arbitrariness of the FDCS and the national courts' decision-making in determining what constitutes "drug propaganda."
- 10.9 It is essential to stress that the action of FDCS must be assessed in light of the human rights activities of ARF. Not only was the information posted on the website important as part of the public debate over health and drug policy, it was even more important because it promoted CESCR recommendations aimed at realizing access for all to effective health services. Protection of national security or of public order, or of public health or morals, is never an adequate justification for the muzzling of any advocacy of human rights and other democratic tenets.²⁵
- 10.10 The *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*²⁶ (Article 6) provides that freedom of expression in the context of human rights promotion includes the right to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms, as provided for in human rights instruments and other applicable international instruments.
- 10.11 The injunction on ARF's freedom of expression, arbitrarily imposed by the FDCS based on a poorly-drafted law on drug propaganda, should therefore be determined by the Special Rapporteurs and the CESCR to be a worrisome violation by the FDCS of the international obligations of the Russian Federation, such as the rights to freedom of expression and to the highest attainable standard of health – and this should be of particular concern in that the violation of freedom of expression targets civil society members because they are advocating for the realization of the right to health via the implementation of CESCR's own recommendations..

11. Why it is important to act immediately regarding the ARF website closure?

²² See HRC communication No. 511/1992, *Ilmari Lämsman, et al. v. Finland*, Views adopted on 14 October 1993. (As quoted in the HRC General Comment No 34)

²³ See HRC communications Nos. 518/92, *Sohn v. Republic of Korea*; No. 926/2000, *Shin v. Republic of Korea*. (As quoted in the HRC General Comment No 34)

²⁴ See HRC communication No. 926/2000, *Shin v. Republic of Korea*. (As quoted in the HRC General Comment No 34).

²⁵ See HRC communication No. 458/91, *Mukong v. Cameroon*, Views adopted on 21 July 1994. (As quoted in the HRC General Comment No 34)

²⁶ Adopted by the UNGA Resolution A/RES/53/144 8 March 1999

- 11.1 In the *Overview of the present working methods* of the Committee,²⁷ the CESCR stressed that it is not in a position to consider and act upon the follow-up information on the Committee's conclusions and recommendations, received from NGOs, without reopening its dialogue with a State Party. The Committee also emphasized that the primary responsibility for the implementation of Concluding Observations lies with the national government. Therefore, the Committee recommended that the follow-up be submitted by NGOs directly to the competent national authorities with a view to assisting them in implementing the Committee's concluding observations.
- 11.2 Completely respecting the working methods of the Committee and fully appreciating its constraints, we would like to alert the Committee that there are good grounds to believe that ARF's attempt to follow-up the CESCR recommendations with the Russian authorities has led to nothing but retaliation from the government agencies, now including blocking the ARF website. The issues around OST, needle and syringe, and overdose prevention programs are extremely politicized in Russia, of which ARF already informed the Committee as well as the Special Rapporteur on the Right to Health in 2010 and 2011.
- 11.3 In an adverse political environment, it is hard to count on any protection of the ARF by the authorities in Russia. In fact, to the contrary, it is entirely reasonable to expect further targeting of ARF by the Russian authorities if no prompt action is undertaken by international human rights bodies. At best, the ARF will likely face a huge fine for drug propaganda. At worst, the ARF will be shut down for allegedly circulating "drug propaganda." Allowing the suppression of ARF's human rights activities would clearly have a chilling effect on all human rights defenders in Russia, especially those who promote human rights of the most vulnerable and marginalized groups of people, such as people who use drugs and people living with or vulnerable to HIV.
- 11.4 ARF has already taken the issue to the domestic courts. However, taking into account the practice of the Russian courts on drug propaganda cases, chances are that the domestic courts would simply uphold the FDCS stance that advocating for access to OST, needle and syringe programs, and overdose prevention programs is engaging in "drug propaganda."

12. Possible avenues for the effective international protection of ARF and further promotion of the economic, social and cultural rights

- 12.1 This report serves as an official joint complaint to the above-named Special Rapporteurs. Their urgent appeal to the Government of the Russian Federation is an important way to proceed with the immediate protection of ARF.
- 12.2 At the same time, the situation surrounding ARF's human rights activities has been made possible because of the poorly-drafted drug laws, compounded by the arbitrary practice of their implementation and the country's official drug policy of "zero tolerance" for drugs, which *de facto* results in a zero tolerance for people who use drugs and/or those who advocate for their health and human rights. In its submissions to the Committee in 2010 and 2011, the ARF drew the Committee's attention to the fact that the poorly-drafted drug laws were important legal obstacles for access to social and medical services for people who use drugs. Now these laws are used to stifle debate on human rights, health and drug policy.

²⁷See the Report on the CESCR Forty-Fourth and Forty-Fifth Sessions (E/2011/22 - E/C.12/2010/3), paras. 44-45.

- 12.3 Bearing in mind the importance of freedom of expression to the promotion and realization of economic, social and cultural rights, and the fact that drug laws can be and are being used to obstruct such promotion and realization, the CESCR is well placed to make a statement on this issue during its forthcoming session in May 2012. It would be of help if representatives of the Russian Government were invited to discuss the matter of such a statement, and what has prompted it, with the Committee.
- 12.4 Another possible avenue is stipulated in Article 22 of the *International Covenant on Economic, Social and Cultural Rights*. That Article provides the CESCR, through the mandate of the UN ECOSOC, to bring to the attention of the UN Commission on Narcotic Drugs and its secretariat, the UN Office on Drugs and Crime (UNODC), the need to furnish the Russian Government with technical assistance regarding the matters arising out of the CESCR's Concluding Observations to Russia (specifically, paragraph 29 of the Concluding Observations of 20 May 2011 with regard to the 5th Periodic Report of the Russian Federation).
- 12.5 In particular, the Government of the Russian Federation is in need of assistance in drafting laws and policies on narcotic drugs that would contribute to the effective, progressive realization of the right to the highest attainable standard of health, as required under the *International Covenant on Economic, Social and Cultural Rights*, including by way of providing clear legal grounds and other support for internationally recognized measures for HIV prevention among injecting drug users, in particular OST using methadone and buprenorphine, as well as needle and syringe programs and overdose prevention programs. Also, the Russian Government would benefit from technical assistance that would prevent poorly-drafted and arbitrarily-enforced drug laws (e.g., on "drug propaganda") from stifling public debate on matters of human rights and health, and instead respect freedom of expression.

13. Conclusion

The situation with the ARF deserves international attention. Human rights defenders of the most marginalized people also need defending when targeted. When freedom of expression is arbitrarily infringed in order to silence those who protect and promote human rights, the whole system of human rights and rule of law is jeopardized. We therefore ask you not to leave unnoticed the issues reported herein; we ask that you take steps forthwith to and help the Russian Government respect the Constitution of the Russian Federation and its international obligations.