

# LEGAL PROBLEMS AND AGAMBEN'S "STATE OF EMERGENCY" IN POST-FEBRUARY RUSSIA: METHODOLOGICAL ANALYSIS

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**Abstract:** This article presents document flow in the context of the "state of exception" (according to Giorgio Agamben), which abolishes the effect of the usual legal distinctions, when, for example, "it is impossible to draw a line between peace and war". As a scientific contribution, the authors deepen the binary/bipolar dimension of complaints/denunciations to a plural and bureaucratic dimension and explore them from a plurality of perspectives: user, legislative and law enforcement. The statistics indicates that the vast majority of investigations are related to the anti-war Internet activity of the defendants, for registration and evidence of which predominantly automated search systems and screen-work by law enforcement bureaucrats are used, rather than a written or oral flow of grassroots/spontaneous complaints/denunciations. Research shows the diversity of government agencies/bodies involved and interdepartmental competition for quick quantitative results (the ratio of cases filed and sentences), as well as Agamben's abolition of customary legal distinctions.

**Keywords:** denunciation, anti-militarist persecution, bureaucracy, law enforcement, complaint, state of exception, Agamben.

## 1. Introduction, Methods, Data, and Fieldwork with Conflicts and Positionality

As Australian Sovietologist Sheila Fitzpatrick rightly noted, denunciation is not a unique (post)Soviet phenomenon, "*denunciation is a phenomenon of everyday life that exists in every society, albeit with great variation in type, visibility (the degree to which the practice is recognized and problematized), and incidence*" (Fitzpatrick, 1996b, p. 832). Meanwhile, complaints

and denunciations characteristic of different periods of Russian history were considered by our academic predecessors primarily as unique imperial phenomena: (1) as specific mechanisms of feedback from autocratic authorities, (2) as methods of the only available everyday political expression of will ("vernacular monitoring of the bureaucracy") and communication, and also (3) from the point of view of genre and classification features, functions, grammar and semantics of the official text, the choice of addressees and the

subject of the complaint (Fitzpatrick & Gellately, 1996; Fitzpatrick, 1996a, 1996b, 1997a, 1997b, 1997c, 1997d, 1999; Kozlov, 1996; Orlova, 2004; Utekhin, 2004; Bogdanova, 2014, 2021; Tendryakova, 2010; Kuksa, 2011; Fedosova & Kuksa, 2024). For our research tasks in this work, we benefit from the binary/bipolar logic of Sovietologist Sheila Fitzpatrick, which considers denunciations from both the state's and citizens' interests. Developing Sheila's binary/bipolar approach and the bureaucratic frame of our first article (Fedosova & Kuksa, 2024), we take into account the diversity of formats, functions, and reasons for post-February document flow and look at denunciations precisely as law enforcement communication between the common man and the state within the framework of the bureaucratic culture of complaints, appeals and statements provided for by Russian legislation and unwritten cultural customs (*in conditions of radical breakdown of law and order* (Agamben, 1998)). In other words, our scientific contribution lies in the fact that we deepen the binary/bipolar dimension of complaints/denunciations to a plural and bureaucratic dimension and examine them from a plurality of perspectives: not only the user (complainant<sup>2</sup> and victim), but also the legislator and the law enforcer. At the same time, we consider document flow in the context of the state of exception (according to Giorgio Agamben), which abolishes the effect of the usual legal distinctions, when, for example, "it is impossible to draw a line between peace and war (between external war and civil war on a global scale)"<sup>3</sup> (Agamben, 1998).

In this article, we present the post-February scale of legislative criminalization of anti-war

statements and actions (after 02/24/22), as well as the multiplicity of Russian government bodies searching for protesting offenders mainly in an automated manner, but not on the initiative of appeals/denunciations of ordinary "vigilant" citizens<sup>4</sup>. The results of cartography of Russian law enforcement agencies and the scale of persecution were obtained by us based on legal monitoring of current and canceled open regulatory legal sources/acts (Zhulin et al., 2010; Kuksa, 2011), analysis of data and statistics from human rights organizations, published articles by employees of federal law enforcement agencies (Shamaev & Boloban, 2022; Stepkin & Ryapukhina, 2022; Muradyan, 2023) and interviews with victims of denunciations<sup>5</sup>.

This research proves that in the life cycle of criminal or administrative prosecution, a complaint/denunciation is no more important than the linguistic, philological or other expert assessment of invited experts (Dubrovskiy, 2020), proving the deliberate/guilty motivation of the dissenting/protesting person (based on "motives of political or religious hatred" or "hatred of a social group"). From a bureaucratic point of view, a complaint/denunciation is just one of the documents that sometimes (if we are talking about high-status or "serial" complainants) initiates a persecution procedure and indicates an anti-war offense. An ordinary complainant may also not be able to get through to the initiation of an investigation, or he may not provide the necessary evidence, or the case may be initiated on other sources and grounds of which the complainant will not be informed.

Our scientific contribution to intellectual discussions about the function of complaint/denunciation in autocracies (Fitzpatrick & Gellately, 1996; Fitzpatrick, 1996a, 1996b, 1997a, 1997b, 1997c, 1997d, 1999; Kozlov, 1996; Orlova, 2004; Utekhin, 2004; Bogdanova, 2014, 2021; Tendryakova, 2010; Kuksa, 2011) and the actual scope of discretion of the law enforcement bureaucrat (after 02/24/22) (Lipsky,

<sup>2</sup> In this translation, the words denunciator or informer ("donoschik") are used synonymously and are applied, as a rule, to situations where sources represent and informants (respondents) emphasize a negative attitude towards the phenomenon and the subject initiating the denunciation ("donoschik"). In other cases, we used a more official and neutral (bureaucratic) term without negative connotations – applicant, addresser, complainant and application, statement, complaint.

<sup>3</sup> Giorgio Agamben continues his reasoning as follows: "The diversity of legal traditions in legal theory corresponds to the division between those who try to include the state of exception in the sphere of legal order, and those who consider it a phenomenon external to the legal order, that is, a phenomenon that is essentially political and in any case located outside the field of legal relations" (Agamben, 1998).

<sup>4</sup> Our other publication presents the typology of complainants/denunciators and the current role of legally authorized (status), "serial" (specialized) informers in the service in relation to the prosecution of public figures speaking out with an anti-war position.

<sup>5</sup> We presented our research and interviews for the first time at a conference in October 2023 at Yerevan State University (Agadjanian & Dubrovsky, 2023; Fedosova & Kuksa, 2024).

1969, 2010; Douglas, 1986; Herzfeld, 1992, 2005; Graham, 2002; Berenson, 2010, 2011; Hoag, 2011; Zhulin et al., 2010; Kuksa, 2011; Heyman, 2012; Serebrennikov, 2023; Fedosova & Kuksa, 2024) is revealed by the following ideas, proven in the article. On the one hand, the scale of anti-militarist repressions in Russia indicates that the vast majority of investigations are related to the anti-war Internet activity of the defendants (mainly male, young and middle-aged), for registration and proof of which, predominantly automated search systems and screen-work of law enforcement bureaucrats are used, rather than a written or oral flow of grassroots/spontaneous complaints/denunciations (the calculation of which is historically not interesting/beneficial to law enforcement, and therefore is virtually invisible to government statistics (Shklyaruk et al., 2015)). On the other hand, by the end of the second year of the Special Military Operation (further – SVO), statistics on the frequency of criminal and administrative corpus delicti applied (by law enforcement officers) to dissenters shows a reduction/decline in the number of criminal cases initiated compared to the first year of the SVO, except for an article with double jurisdiction, providing for administrative prejudice (Article 207.3 of the Criminal Code of the RF) and articles that are supervised by the Federal Security Agency<sup>6</sup>. This circumstance indicates the multiplicity of government agencies involved and interdepartmental competition for quantitative results (the ratio of cases filed and sentences), and also (proves) the greatest and forced activity of competing law enforcement agencies only in the criminal corpus delicti, which is preceded preliminary administrative prejudice. Finally, we show the abolition of cus-

tomary legal distinctions in emergencies (according to Giorgio Agamben) and factual reconstruction of Soviet criminal corpus delicti and investigative procedures similar to those operated in WWII through military tribunals.

In our research, we tried to “thickly” record the routine actions of law enforcement officers, authentic interpretations and flickering motivations of persons involved in the conflict (applicants and victims) and ethical assessments of ordinary people, conditioned by their bureaucratic or everyday positionality. We carefully selected a neutral anthropological scientific framework and correlated multiple perspectives in order to also understand why and how the complaint and denunciation work after February 24, 2022, namely:

- how does the increase in repressive criminal and administrative corpus delicti adopted by the Russian parliament since the beginning of the SVO affect conflicts within disciplinary institutions and confrontation between social groups standing in different hierarchical positions and/or having opposing values;
- how officials of various law enforcement agencies react to the criminalization of the anti-militarist position customary before 02/24/22, as well as to the initiatives of complainants (use complainants and their information to carry out plans or deviate from the flow of complaints);
- is the initiative and figure of the grassroots/ordinary denunciator-applicant really important for the persecution of the opposition, what role do other actors (except law enforcement officers and judges) play in this – witnesses, experts, human rights activists, media, social networks, and search systems.

For the above goals and objectives, for 24 months we collected and examined discourses and stories about denunciations told in interviews, in scientific publications, in the media and on social networks, by victims and initiators. We studied legal and judicial acts, analyzed law-making and law enforcement practice, turned to bureaucratic documents of informants in interviews and networks, to archival and judicial databases<sup>7</sup>.

<sup>6</sup> Administrative prejudice was actively lobbied by “employees of departmental universities (the University of the Prosecutor's Office of the Russian Federation, institutes of the Ministry of Internal Affairs of Russia). Among the opponents of prejudice are a number of scientists from Moscow State University. M.V. Lomonosov, Moscow State Law Academy, Far Eastern Federal University, Saratov State Law Academy, Higher School of Economics, etc.” Lawyer's newspaper 21.02.23. Problemy sostavov prestupleniy s administrativnoy preuditsiyey: o nekotorykh voprosakh tolkovaniya i primeneniya st. 280.3. [Problems of crimes with administrative prejudice: on some issues of interpretation and application of Art. 280.3]. <https://www.advgazeta.ru/mneniya/problemy-sostavov-prestupleniy-s-administrativnoy-preuditsiyey/>

<sup>7</sup> 6 current codes of Russian Federation (Civil Code 1994,96,01,06; Family Code 95; Criminal Code 96; Code of Criminal Procedure 2001; Code of Administrative Offenses 2001; Labor Code 2001); 4 Soviet codes

## 2. Criminalization of Anti-War Speech, Activities and Scale of Political Persecution

In 1996, when the new Criminal Code of the Russian Federation was adopted, the official supremacy of criminal legal protection of the individual and its priority concerning the criminal protection of public safety and state interests was proclaimed in post-Soviet Russia. Today, in warring Russia, the interests of the state take precedence, protecting its institutions and the reputation of officials instead of the priority protection of the dignity, freedoms, and lives of ordinary citizens. The first chapter of the Criminal Code of the RF on crimes against the person now only formally opens a special part of the Criminal Code of the RF, since in the last decade (and especially since the beginning of the SVO) new criminal corpuses delicti have been introduced and applied in defense of state interests and symbols, world security, public morality, historical truth<sup>8</sup> (Shamaev & Boloban, 2022; Stepkin & Ryapukhina, 2022; Muradyan, 2023). Moreover, the modern criminal legislator is gradually returning the Soviet offenses against the state, abolished at the previous stage (in the 1990s), and tightening the protection of public order and security in connection with the conduct of the SVO. Employees of federal departments openly compare the March novelties, introduced a few days after the announcement of the SVO, with the Decree of the Presidium of the Supreme Soviet of the USSR of July 6, 1941 “*On responsi-*

*bility for the spread of false rumors in wartime, causing alarm/anxiety among the population*”, which provides, upon a verdict of a military tribunal, imprisonment for a term of 2 to 5 years (if this action by its nature does not entail a more severe punishment by law) (Muradyan, 2023). In fact, in the spring of 2022, citizens were deprived of expressing their individual (if pacifist) opinion on the current events in Ukraine or a number of rights and freedoms provided for by international conventions, the Constitution and legislation through the decisive and immediate criminalization of any anti-war statements, actions and events.

So, on 03/05/22, new articles of the Criminal Code of the RF came into force – 207.3 (“military fakes”) and 280.3 (“repeated discrediting of the army”), becoming a tool for military censorship and prosecution for anti-war statements and actions. The only authoritative source of what is happening within the framework of the announced SVO are the speeches of the Commander-in-Chief of Russia and official comments by employees of the Russian Ministry of Defense (which law enforcement officers sometimes clarify with General Staff employees through inquiries<sup>9</sup>). Law enforcement officers and courts recognize as “military fakes” (referring to them as “deliberately false information about the Russian armed forces that are used outside the territory of the Russian Federation”) any mention of facts that contradict press releases of the Russian Ministry of Defense, and “discredit” – any repeated critical opinion about the actions of the Russian armed forces, if a similar administrative offense has already been recorded (criminal corpus delicti with administrative prejudice) (Shamaev & Boloban, 2022; Stepkin & Ryapukhina, 2022; Muradyan, 2023). Articles contain formal and material compositions. The maximum punishment for fakes can be up to 15 years in prison (in case of grave consequences, Part 3 of Article 207.3), for “discrediting” – up to 7 years (from the beginning it was up to 5, as in the Decree of July 6, 1941).

In total, according to OVD-info, for two years of the SVO, by 02/19/2024, 848 defendants in anti-militarist criminal cases are known under more than 8 repressive articles of the Criminal

of Russian Soviet Federative Socialist Republic (no longer in force Criminal Code 1926, 1960, Code of Criminal Procedure 1922, 1960); more than 40 laws, amendment laws, drafts and invalid laws (on Appeals, on Deputies, on the Media, on Education, on Examination, on the Ministry of Internal Affairs, on the Investigative Committee, on the Prosecutor's Office, on other authorities); dozens of subordinate regulations (podzakonnnykh NPA); dozens of screenshots of official documents (statements, responses to complaints, conclusions of ethical commissions, letters of the informers to the authorities).

<sup>8</sup> OVD-Info. 13.11.2023. Baza politicheskii motivirovannykh ugolovnykh presledovaniy, vklyuchaya anti-voyennyye 2022-2023 godov [Database of politically motivated criminal prosecutions, including anti-war 2022-2023] <https://ovd.info/politpressing> According to OVD-info data, since 2012, there have been 3,679 defendants in politically motivated cases in the country on at least 10 criminal offence. For details, see: “Anti-war cause”: OVD-info guide. <https://data.ovdinfo.org/antivoennoe-delo-gid-ovd-info>

<sup>9</sup> Verstka & Setevye svobody. March 2023. Novyye narodnye prestupleniya [New folk crimes]. <https://verstka.media/ugolovnye-dela-za-kritiku-voyny>

Code of the RF, including the two described March novelties<sup>10</sup>. In addition to Article 207.3 of the Criminal Code of the RF ("military fakes") and Article 280.3 of the Criminal Code of the RF ("repeated discrediting of the army"), anti-war statements and actions are also qualified under the following articles: Article 205.2 of the Criminal Code of the RF ("justification, propaganda or calls for terrorism"), Article 214 of the Criminal Code of the RF ("vandalism"), Article 280 of the Criminal Code of the RF ("calls for extremism"), Article 205 of the Criminal Code of the RF ("terrorist act"), Article 354.1 ("rehabilitation of Nazism"), Article 207 of the Criminal Code of the RF ("telephone terrorism"), insulting a government official, etc. In recent pre-war and war years, the pool of these articles has been used with varying intensity. The OVD-info database of politically motivated criminal prosecutions contains information about 3,741 persons involved in politically motivated cases under at least 10 criminal charges, starting in 2012.<sup>11</sup>

80% of those persecuted for their anti-war stance are men. Courts consider anti-militarist cases faster than other political cases, with the average time from the initiation of a criminal case to a court verdict being approximately 9 months.<sup>12</sup> Most often, criminal cases are opened for anti-war Internet activity – videos, publications and comments on social networks, and even messages in chats (Shamaev&Boloban 2022; Stepkin&Ryapukhina 2022; Muradyan 2023). Despite many criminal articles actively working towards Internet censorship, people continue to speak out against the war on social networks. In 2022/23, for example, Article 205.2 of the Criminal Code ("calls or justification of terrorism") began to be used more often for such statements.

If we focus on the March novelties, then the Investigative Committee has exclusive powers to investigate criminal cases of "military fakes" (Article 207.3 of the Criminal Code of the RF), the Ministry of Internal Affairs of Russia and the Investigative Committee can initiate criminal cases for "discrediting the armed forces" (double jurisdiction under Article 207.3 of the Criminal Code of the RF) (see the next section 3 about cartography of federal agencies). Of the total number of defendants in all anti-war criminal cases (as of February 19, 2024 – 848), 253 defendants are accused of "military fakes" (Article 207.3 of the Criminal Code of the RF), 145 are accused of "discrediting" (Article 280.3 of the Criminal Code of the RF)<sup>13</sup>.

At the same time, not every initiated criminal case is brought to a sentence with a real term: in 2022, such sentences accounted for 46% of the total number of sentences passed, in 2023 – 60% of the total number. It is known that the Investigative Committee brings the majority of cases to verdicts (152 defendants have already been sentenced by March 2023<sup>14</sup>). The OVD-info website also provided the current number of sentences, broken down by type of punishment: imprisonment in various types of colonies (267 people as of February 19, 2024<sup>15</sup>), forced treatment, fines, suspended sentences, other restrictions on freedom, various types of forced labor for the benefit of states. The prosecution of at least 41 defendants has already been completed – 13 of them have already served their prison sentences.

However, most often oppositionists and activists are brought under the new administrative article on "discredit" – under Article 20.3.3. Code of Administrative Offenses of the RF (Shamaev & Boloban, 2022; Stepkin & Ryapukhina, 2022; Muradyan, 2023). According to OVD-info and Mediazone, 8,696 cases are known (as of 02/19/2024<sup>16</sup>). In 2022, the average

<sup>10</sup> OVD-Info. 19.02.2024. Svodka protivoyennykh repressiy [Summary of anti-war repressions. February 2024].

<sup>11</sup> OVD-Info. 13.11.2023. Baza politicheskikh motivirovannykh ugovolnykh presledovaniy, vkluchaya protivoyennyye 2022-2023 godov [Database of politically motivated criminal prosecutions, including anti-war 2022-2023] <https://ovd.info/politpressing>

OVD-Info. 19.02.2024. Svodka protivoyennykh repressiy [Summary of anti-war repressions. February 2024].

<sup>12</sup> OVD-Info. 19.02.2024. Svodka protivoyennykh repressiy [Summary of anti-war repressions. February 2024].

<sup>13</sup> OVD-Info. 19.02.2024. Svodka protivoyennykh repressiy [Summary of anti-war repressions. February 2024].

<sup>14</sup> Verstka & Setevye svobody. March 2023. Novyye narodnye prestupleniya [New folk crimes]. <https://verstka.media/ugolovnye-dela-za-kritiku-voyny>

<sup>15</sup> OVD-Info. 19.02.2024. Svodka protivoyennykh repressiy [Summary of anti-war repressions. February 2024].

<sup>16</sup> OVD-Info. 19.02.2024. Svodka protivoyennykh repressiy [Summary of anti-war repressions. February 2024].

fine, according to Network Freedoms, was 34,237 rubles<sup>17</sup>. The number of administrative cases that are terminated due to qualification errors is not so large, since the entire law enforcement and judicial system works with accusatory bias to bring the initiated prosecution to a verdict using the available interpretative methods and examinations (Paneyakh & Volkov, 2010; Paneyakh, 2011; Dubrovskiy, 2020).

Since the legitimate (until February) and habitual anti-militaristic and pacifist position for (post-Soviet generations was declared prohibited by the legislator, numerous forms of open and partisan street, everyday and online protest activism (posters, memes, actions, reposts and online discussions) also began to be suppressed and punished (Kozlova, 2022, pp. 254-263; Kozlova & Levochskaya, 2023). According to OVD-info, as of February 14, 2024, there were 19,855 known arrests for anti-war positions on the territory of the Russian Federation from February 24, 2022 to February 14, 2024<sup>18</sup>.

It is believed that a special facial recognition system “Sphere”<sup>19</sup> is being used to suppress protests, which since 2022 *“began to be used for preventive detentions on public holidays or important public events, when, according to the authorities, protest activity is more likely”*. In most cases, according to OVD-Info & Roskomsvoboda, those detained in the Moscow metro were those who had previously been prosecuted for participating in protests or for “discrediting the armed forces.” As a rule, such arrests involved being taken to the police department (Ministry of Internal Affairs of Russia) and conducting a preventive conversation. Some detainees, whose identity was established using the

“Sfera” system, according to OVD-Info & Roskomsvoboda, appealed their detention due to the use of facial recognition algorithms against them, and also demanded that their personal data be removed from the system. However, in most cases, law enforcement officers did not and do not admit that they used a facial recognition system in connection with protest activity; they refer to the federal law *“On operational investigative activities”* and the secrecy of information about such activities.

### 3. Jurisdiction of Criminal and Administrative Cases, Cartography of Government Authorities

When studying Russian law enforcement authorities, it is necessary to abandon the monolithic perception of the state as a single and cohesive actor, including a discursive one, accepted among a number of social and humanitarian specialists. As this was accurately noted in relation to Russia by a researcher of post-communist bureaucracies, (who consulted the World Bank) Marc Berenson: *“the state is not a homogenous actor, but variations within it can be teased out by specifically looking at one area of state activity. Therefore, the state or the bureaucracy should not be treated as a monolith. It is much more than that. Focusing on the structures, constraints, incentives, and purpose of office of particular state agencies can help determine the differences within and across states”* (Berenson, 2010). Researchers of Russian public administration, it seems to us, should always take into account the importance of multi-actorism, as well as identify cultural and historical differences between agencies, their specific functionality, normative and actual numbers, everyday and current tasks, which (especially in the presence of duplication with other players) lead to different social consequences (Herzfeld, 1992, 2005; Zhulin et al., 2010; Hoag, 2011).

Monitoring illegal content, as well as bringing dissenting citizens, opposition media and organizations to criminal and administrative liability (for the offenses listed in the previous section 2) is currently being carried out, at a minimum, by the Ministry of Internal Affairs of Russia, the Investigative Committee, the FSB of Russia, Roskomnadzor, and the Prosecutor General’s

<sup>17</sup> OVD-Info. 14.10.22. Over six months, the courts imposed administrative fines of 257 million rubles in connection with the protests. <https://ovd.info/express-news/2022/10/14/za-polgodasudy-nalozhili-administrativnye-shtrafy-na-257-millionov-rublej>

<sup>18</sup> OVD-Info. 12.02.2024. Zaderzhaniya na publichnykh aktsiyakh. Dannyye za 2012–2023 gody [Arrests at public rallies. Data for 2012–2023.] <https://t.me/ovdinfo/19259> <https://data.ovd.info/dannye-po-zaderzhaniyam-na-publichnykh-aktsiyakh-za-2011-2023>,

<sup>19</sup> OVD-Info & Roskomsvoboda. March 2023. Prava cheloveka i novyye tekhnologii v Rossii [Human rights and new technologies in Russia]. Joint report to the UN High Commissioner. <https://reports.ovdinfo.org/prava-cheloveka-i-novye-tehnologii-v-rossii>

Office of the RF. and the prosecutor's office of the constituent entities of the RF. For the purposes of our research and compactness, we presented the distribution of current anti-war administrative and criminal compositions among the actors identified above in section 2. A more detailed dynamic description of the number and functions of these federal agencies was provided in a large-scale expert research (disclosed for public access) of information and powers of presidential and government federal ministries, services and agencies, as well as in a number of other studies of the security bureaucracy (Zhulin et al., 2010; Shklyaruk et al., 2015).

In accordance with Part 2 of Article 151 of the Criminal Procedure Code of the RF, preliminary investigations in criminal cases for "military fakes", a crime provided for in Article 207.3 of the Criminal Code of the RF, are carried out only by investigators of the Investigative Committee of the RF. According to Part 2 of Article 151 of the Criminal Procedure Code of the RF, a preliminary investigation in criminal cases for "repeated discrediting," a crime provided for in Article 280.3 of the Criminal Code of the RF, is carried out by investigators of the Investigative Committee of the RF and investigators of the internal affairs bodies of the RF. In accordance with Part 2. Article 151 of the Criminal Procedure Code of the RF, preliminary investigations in criminal cases of public calls for extremist activities, crimes provided for in Article 280 of the Criminal Code of the RF, are carried out by investigators from the FSB of Russia.

According to Part 3 of Article 151 of the Criminal Procedure Code of the RF, an inquiry in criminal cases for libel, that is, for the dissemination of knowingly false information discrediting the honor and dignity of another person or undermining his reputation, a crime provided for in Article 128.1 of the Criminal Code of the RF, is carried out by investigators/interrogators (*doznavatel*) of the internal affairs bodies of the RF. Following Article 28.4 of the Code of Administrative Offenses of the RF, cases of administrative offenses for insult, that is, the humiliation of the honor and dignity of another person, expressed in an indecent form, provided for in Article 5.61 of the Code of Administrative Offenses of the RF, are initiated by the prosecutor.

Roskomnadzor is an authorized federal executive body that carries out extrajudicial re-

striction of access to information on the Internet in the manner and case of calls for mass riots, extremist activities, participation in mass (public) events held in violation of the established procedure (based on the request of the Prosecutor General of the RF or his deputies), under Article 15.1 and 15.3 of 149-FZ of July 27, 2006 "*On information, information technologies and information protection*"<sup>20</sup>. Restriction of access to sites on the Internet in accordance with Article 15.1 149-FZ is also carried out on the basis of a court decision declaring information contained on an Internet resource prohibited for distribution on the territory of the RF.

Within the framework of the powers disclosed in this section, established by current legislation, the listed authorities independently and with the support of subordinate organizations conduct regular (including automated) monitoring of networks and random checks. Over the past two years (especially since 2022), the technologies of the service and digital state have switched to repressive tasks: a facial recognition system (protesters and military personnel), monitoring of social networks, automatic search for prohibited content, online censorship<sup>21</sup>, including through the involvement of subordinate and outsourcing organizations. Active informatization and automation of surveillance processes transforms street-level bureaucrats (Lipsky, 1969, 2010) from law enforcement agencies with broad discretion into screen bureaucrats, as ethnographic observations show, with less discretionary capabilities and a large amount of duplicative paper and computer work, as a rule (Shklyaruk et al., 2015). System-level or screen-level bureaucracy – a term used by public administration researchers to define a new type of bureaucracy and new amounts of discretionary powers in the context of e-government (Buffat, 2015).

To replace the "manual" identification of information prohibited on the territory of the Russian Federation with an automatic search, special

<sup>20</sup> Roskomnadzor. 4.07.2014. Blokirovka internet-stranits (Blocking Internet pages). <https://rkn.gov.ru/treatments/p459/p750/?ysclid=lnhun7b7zl503566080>

<sup>21</sup> OVD-Info & Roskomsvoboda. March 2023. Prava cheloveka i novyye tekhnologii v Rossii [Human rights and new technologies in Russia]. Joint report to the UN High Commissioner. <https://reports.ovdinfo.org/prava-cheloveka-i-novye-tehnologii-v-rossii>

technologies<sup>22</sup> are used for automated online censorship: equipment has been installed for traffic management and filtering; special social network monitoring systems have been developed – “Oculus” (for automatically searching for prohibited content in images, videos, chats, instant messengers in real time) and “Vepr” (for detecting unreliable socially significant information (“information bombs”) and anonymous messages on news sites and telegram channels via trigger topics that opinion leaders can support).

According to Roskomsvoboda, from January 1, 2022 to December 18, 2022, 9,208 sites were subject to military censorship<sup>23</sup>; for 2023, Roskomnadzor blocked a different number of resources monthly – from 394 from 04/24/23–05/23/23 to 8429 from 08/24/23–09/21/23<sup>24</sup>. According to Roskomsvoboda, in just two years, as of February 17, 2024, Roskomnadzor blocked 66,061 Internet resources<sup>25</sup>.

Experts from OVD-Info & Roskomsvoboda believe that special social network monitoring systems have probably been and will be used to make decisions about blocking content, Internet resources and to punish individuals for disseminating information on the Internet. According to human rights activists, this will lead to a reduction in the possibilities of challenging and appealing restrictions and punishments, since Russian courts do not question the correctness of decisions proven through an automated mode.

#### 4. The Life Cycle of the Screen-Prosecution and the Minimal Role of the Complaints/Denunciations

It should be noted that researchers of police eve-

ryday life and large-scale informatization of law enforcement agencies note a downward trend in the number of registered crimes and the lack of reliable detailed statistics from the state regarding the number and content of appeals to law enforcement officers, including from “vigilant” citizens: *“from the moment a message is registered to the moment a criminal case is initiated, 92% of all requests are eliminated. ... In large cities, we are aware of the ongoing practice of concealing applications from registration. But at the same time, the number of citizens’ calls to the police is growing in Russia by about 2 million per year. Registered crime is decreasing.”* (Shklyaruk et al., 2015, pp.7-8). Meanwhile, the prosecution of a subject with an anti-war public position can also be initiated (except for an automated search) based on the results of processing citizens’ appeals received either directly at the address or forwarded according to the jurisdiction of the agencies listed (above in section 3). In order to bring the offender to justice for “discrediting” or for “military fakes,” applicants, according to the field data and screenshots of documents we have, most often turned to police officers and prosecutors. However, the security forces themselves and, accordingly, the state do not have accurate statistics on such statements, and researchers are aware of a stable long-term trend: *“a constant increase in the number of applications to law enforcement agencies is combined with a decrease in the number of registered crimes,” and also that “there is no available statistical information for analysis the problems with which citizens turn to law enforcement simply do not exist”* (Shklyaruk et al., 2015, p. 9).

In the event of an independent discovery of an offense or receipt of a (third-party) report about it (or about its preparation), law enforcement officers (investigators, interrogators (*doznavatel*)) check the information, make a decision to initiate (or refuse to initiate) an administrative and criminal case (Article 145 of the Code of Criminal Procedure of the RF), carry out a (preliminary) investigation (including with the involvement of witnesses and experts (Dubrovskiy 2020)), prosecutors represent the interests of the state in the trial, in which the judges makes a decision and chooses the penalty.

Federal agencies investigate anti-war (“defamatory”, “false”, and “offensive”) content in different ways [see: scale of political persecution

<sup>22</sup> OVD-Info & Roskomsvoboda. March 2023. Prava cheloveka i novyye tekhnologii v Rossii [Human rights and new technologies in Russia]. Joint report to the UN High Commissioner. <https://reports.ovdinfo.org/prava-cheloveka-i-novye-tehnologii-v-rossii>

<sup>23</sup> OVD-Info & Roskomsvoboda. 18.12.2022. Svodka antivoyennykh repressiy (Summary of anti-war repressions. December 2022). <https://data.ovd.info/svodka-antivoennykh-repressiy-desyat-mesyacev-voyny#5>

<sup>24</sup> OVD-Info & Roskomsvoboda. 23.09.2023. Svodka antivoyennykh repressiy [Summary of anti-war repressions. September 2023]. <https://data.ovd.info/svodka-antivoennykh-repressiy-sentyabr-2023>

<sup>25</sup> OVD-Info & Mediazona 17.02.2024. Svodka antivoyennykh repressiy [Summary of anti-war repressions. February 2024].



in section 2 of this article]. Depending on which addressee the violation is reported and what evidence is attached, different procedures and penalties may be applied. Employees of state agencies with a large staff (the Ministry of Internal Affairs of Russia and the FSB of Russia) can make efforts to find the author and bring him to justice, provided that the message is registered in the appropriate capacity, which, according to our colleagues given above, occurs only when certain benefits for the federal service circumstances (Shklyaruk et al, 2015). In extrajudicial proceedings, Roskomnadzor usually acts differently: based on the request of the Prosecutor General of the RF or his deputies, they send a warning to the resource administration about the immediate removal of illegal content and threaten to block the page and subsequently the entire site, without, as a rule, searching for the direct author [see: statistics on the extent of censorship and blocked resources in section 3 of this article].

Researchers of everyday life and the functionality of law enforcement agencies note accusatory bias of criminal prosecutions (Paneyakh 2011; Paneyakh et al., 2010), as well as the fact that *"the law enforcement system is aimed at selecting cases that are easy to investigate with a socially weak and well-known suspect. Basically, it is precisely such criminal cases that reach the court"* (Shklyaruk et al., 2015). Therefore, so that the prosecution does not fall apart at subsequent stages and in court, the main task of representatives of security forces about the anti-war position of citizens is the "correct" qualification of acts that were discovered during screen-monitoring and verification of information (which could be presented, including by the "vigilant" or "serial complainant"), collecting sufficient evidence of guilt and minimal facts to support (if necessary) a causal relationship between the wrongful act and public harm (Shamaev & Boloban, 2022; Stepkin & Ryapukhina, 2022; Muradyan, 2023). Since the legislator provided for formal March criminal corpus delicti about "discredit" and "military fakes" (except the last material subparagraphs), it is assumed that evidence is mainly easily accessible and inexpensive (to obtain), roughly speaking, screenshots of anti-militarist statements on the Internet. Therefore, the investigation procedure turns out to be quick and simple, on average about 9 months, as already indicated above based on statistical data

(from human rights organizations). However, to prove intentional guilt, a high-quality examination of an invited expert (linguist, philologist, criminologist) is required, who will link the anti-war position and text with the alleged compositions of the offense and confirm the chosen qualifications (Dubrovskiy, 2020). Sometimes, law enforcement officers request information from the General Staff of the Russian Ministry of Defense to confirm the "falsity" of the facts about the Russian armed forces stated by the defendant or check with press releases of this ministry<sup>26</sup>. It is believed that the only authoritative sources of what is happening within the framework of the declared SVO are the speeches of the Commander-in-Chief of Russia and official comments by employees of the Russian Ministry of Defense.

Based on the easily accessible evidence base of formal corpus delicti and the ease of confirming intentional guilt (with the participation of invited experts), the screen-bureaucrats of the security forces (together with the trial in absentia of the defendant absent from the courtroom, which is practiced for emigrated Russians) carries out accelerated prosecution and simplified prosecution of offenders under the new March articles on "discrediting" and "military fakes" (in comparison with protracted, multi-year investigation procedures, for example, material criminal charges in the medical field). Due to the political demand for registration of such offenses and the significant speed of (on-screen and expert) investigation, we are seeing an increase in prosecutions for anti-war statements and actions specifically on social networks during the first two years of the SVO (statistics are given in section 2 of this article).

We found cases where law enforcement officers refused to accept complaints from informers/denunciators (which the latter complained indignantly on their channels or in interviews with media channels), could not qualify the unlawful act and choose the appropriate article, acted based on their own interests and circumstances (delayed consideration of cases, for example), due to the discretion granted to the lower-level bureaucrat according to Lipsky (Lipsky, 1969, 2010; Herzfeld 1992, 2005; Heyman 2012; Gra-

<sup>26</sup> Verstka & Setevye svobody. March 2023. Novyye narodnye prestupleniya [New folk crimes]. <https://verstka.media/ugolovnye-dela-za-kritiku-voyny>

ham, 2002; Hoag, 2011), up to and including deliberate dismissal from the law enforcement agencies due to the inability to serve the state in such circumstances. There were cases when the police formally supported the victims of denunciators, for example, they refused to initiate cases due to the lack of evidence of unlawful acts, they even advised to talk less in public places about the SVO and their attitude towards it<sup>27</sup>: *“I was accused of “extremist activity” and insulting the president. “Where is the insult here?” – I ask. They searched and searched, but they still didn’t decide what they would charge me with, but they still wrote a report that they found an inscription on my car.... Then he wrote a statement on his behalf, I recognized his signature in the protocol, which they gave me to photograph. In response, I filed a complaint against him for false denunciation - he already knew that the police had already carried out an investigation into the first denunciation and had not found anything criminal. And I wrote a statement against him, and I’m waiting to see how the matter ends”*.

The above examples and proof indicate that the ideological and pro-war agenda, hierarchical vertical, and kpi requirements work with traditional bureaucratic failures described by public administration researchers (Berenson 2010, 2011; Hoag 2011; Shklyaruk et al., 2015), because the bureaucratic system and the latitude of discretion of the lower-level bureaucrat, according to Lipsky, usually reproduce red tape and minimize personal costs (personal resources) to achieve new ideological goals set by top management.

## Conclusion

If in 1996, when the Criminal Code of the RF was adopted, the priority of criminal legal protection of the individual was proclaimed in post-Soviet Russia, which means that the sphere of public security and state interests were not protected by the criminal legislator in the first place. Today in Russia (as well as in the USSR during

the Second World War), the official priority of the interests of the state has been proclaimed and the criminal law protects state symbols, historical truth, the reputation of some federal law enforcement agencies, and officials, for the protection of whom the criminal legislator stands (the legitimacy of which is supported by the legislator). At this time, specialized military and emergency regimes are carried out on behalf of the population and the entire state, as well as law enforcement policies, are produced along with the March novelties widely applied to protesters and dissenting citizens (in addition to other political corpus delicti).

At this time, on behalf of the population and the entire state, specialized military, and emergency regimes are carried out, as well as law enforcement policies are carried out through the March Novels, applied to protesters and dissenting citizens, in addition to other political compositions.

Contemporary states use state-of-emergency regimes – specialized restrictive mechanisms that are introduced according to a strictly established procedure (at least in national legislation) (Agamben, 1998). Such regimes reduce the “inalienable” rights and freedoms of man and citizen guaranteed by post-war international conventions and national constitutions through the moral relativization of the Enlightenment idea, balancing between the need for population survival and state benefit (Agamben, 1998; Ignatieff, 2018; Kuksa, 2020, 2022). However, from February 24, 2022, just as at the beginning of the pandemic in the Russian Federation, emergency restrictions were introduced, bypassing the current requirements of the current legislation on a state of emergency (then) and martial law (now). In the pandemic spring of 2020, the Legislature ensured the criminalization of the movement of persons, goods and services and inconsistent fines in the name of two disparate ideas (Kuksa, 2020). The idea of preventing the spread of covid and the idea of holding a referendum on the adoption of a new constitution in unacceptable epidemiological conditions led, when combined, according to field research by several anthropologists, to the paradoxical return of the usual (post-)Soviet imitation and “outsideness/out-of-reach” (vnenakhodimost) (Yurchak, 2014), informal ignoring of the extraordinary and severe requirements of regulators, up to demonstrative

<sup>27</sup> Sibir'.Realii. April 2023. Uchenogo presleduyut za nadpis' na avtomobile [A scientist is being persecuted for writing on his car]. <https://d25maoq59f2s.cloudfront.net/a/putin-kaput-uchenogo-presleduyut-za-nadpis-na-avtomobile/32357193.html>

and hidden refusal of vaccination and medical care (Kuksa, 2020, 2022).

The post-February inflation of criminal corpus delicti by parliamentarians also leads to post-Soviet imitation among law enforcement officers and a high "density of regulation." Researchers of bureaucracy use this concept to illustrate situations where the number of decisions of regulators (parliamentarians) regarding objects of regulation per unit of time (speed) leads to the opposite effects – the costs of "legality" exceed the planned effects of "dense regulation" (Hoag, 2011; McKay, 2012; Paneyakh et al., 2010; Paneyakh, 2011; Kuksa, 2020). The ineffectiveness of "dense regulation" in the Agamben's context of the abolition of customary legal distinctions was demonstrated in this study through a description of the scale of criminalization and cartography of government authorities, which chaotically (with malfunctions and breakdowns) enforced/mobilized new and old administrative and criminal offenses for the same pacifist activities (Shamaev & Boloban, 2022; Stepkin & Ryapukhina, 2022; Muradyan, 2023) and by the second year of the SVO reduced the number of criminal and administrative cases brought before verdicts (in a situation where there is no interdepartmental competition).

At the same time, in a situation of an unnamed/hidden "emergency" and a ban on calling ongoing military actions and events by their proper names, supported by criminal prohibitions and prosecutions, (along with the imitative and chaotic work of law enforcement officers), a paradox follows. The ruling class, which has received all the legislative and enforcement levers, openly views the March novelties, introduced a few days after the announcement of the SVO, as mandatory and comparable to the military Decree of the Presidium of the Supreme Soviet of the USSR of July 6, 1941 *"On responsibility for the spread of false rumors in wartime, causing alarm/anxiety among the population"* (Muradyan, 2023).

The culture of complaints in our country is extremely diverse, however, since February 2022, Russian media and public (primarily dissident) discourse has reduced some complaints to denunciation (Fedosova&Kuksa 2024), because this lexically marks the speaker's negative attitude towards the (imaginary) fact of the applicant turning to the authorities for forceful help in or-

der to stop a perceived illegal action or anti-militarist speech. However, in order to talk about the real scale of grassroots reports of offenses and complaints under 59-FZ, it is necessary to refer to the statistics of all federal and regional authorities involved in collecting statements. On the one hand, in the Russian Federation there is no automated and accessible for external and even internal user statistics of reports of offenses; the Russian Ministry of Internal Affairs keeps records of criminal cases and sentences (Kuksa 2010; Shklyaruk et al., 2015). On the other hand, in the Russian Federation there is no mass civil litigation; it is unprofitable and costly for the average person. Our citizens, like small businesses, infrequently use civil proceedings and civil compensation for harm in relations with the state and its institutions, thereby reducing their costs and time (Hendley, 2017). It is cheaper to initiate a criminal case than to organize a civil lawsuit, for example, for compensation for material and moral damage. Because Russian civil proceedings are a long, complex and expensive process, when there may be a suitable corpus delicti (for example, libel), which is protected by criminal law, and, therefore, all costs of examination and investigation of evidence are borne by the state. Therefore, citizens turn to the state apparatus, control and supervisory agencies developed for these purposes [see: flows of complaints about medical care, rare civil claims for compensation for moral and material damage in medical cases, Kuksa, 2022), because they are accustomed to solving problems with criminal cases and criminal proceedings, attracting appeals from government prosecutors and law enforcement officers.

At the same time, according to our immersive ethnographic research, the role of ordinary complainants (as opposed to authorized and "serial" ones) over the two years of the SVO was not as significant as how media that turned out to be vehicles of moral panics (Cohen, 2011) were described, and in procedural terms was secondary, because the facts given in the application become evidence only after collecting additional information and/or an examination organized (ordered) by law enforcement officers. What is important is not the complaint itself or its author (if he is an ordinary person), but the case that is constructed ("fabricated") as a result of the work of law enforcement officials and experts (Her-

zfeld, 1992, 2005; Hoag, 2011). According to our observations, only high-status and “serial” complainants could count on the results they sought from consideration of their applications – the initiation of administrative or criminal cases and the adoption of appropriate measures.

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