

RUSSIAN FEDERATION 2014
MONITORING OF THE LAW
ENFORCEMENT PRACTICE
OF THE NEWLY ADOPTED LAWS, AMEND-
MENTS AND LAW INITIATIVES

INTERNATIONAL
 HELSINKI
ASSOCIATION FOR
HUMAN RIGHTS

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ABOUT THE PROGRAM

In 2013–2014, a number of legislative instruments were enacted in the Russian Federation that fell under special notice on the part of the human rights defenders.

Starting November 2012, Russian human rights organizations began to collect unbiased information about the quality of the enacted laws and their practical application. Starting that time Moscow Helsinki Group has developed such activities into the Program on monitoring newly adopted laws and its implementation.

This monitoring focused on: amendments to the legislation on public events; combating reviling religious beliefs and citizens' feelings, right to freely move and travel within Russia Federation territory, separate legal acts in realization of measures for increasing the prestige and attractiveness of the draft army, re-defined treason and espionage activities, disclosing personal data, and attempt to control internet activities.

In order to achieve the set goal the Program engaged experts who conducted the analysis of the laws and other regulatory instruments, as well as their practical implementation, drew certain conclusions and gave recommendations on the adjustment of the laws. In particular, the following persons participated in the project as authors of the expert opinions and reviews:

Olga Gnezdilova, attorney, coordinator of the monitoring program of the Inter-regional Human Rights Advocacy Group,

Lev Levinson, expert of the Institute for Human Rights,

Alexey Goloshchapov, expert of the Independent Legal Expert Council, member of the Presidential Council for the Development of Civil Society and Human Rights,

Sergei Nasonov, expert of the Independent Legal Expert Council, Expert of the Standing Commission for Test Cases of the Presidential Council for the Development of Civil Society and Human Rights, Cand. Sc. (Law),

Yevgeni Bobrov, Head of the Commission on migration policies created at the President Council on Civil Society Development and Human Rights.

Within the framework of the project public discussions of the laws and the subordinate legislation took place with the participation of experts, representatives of the legal and human rights advocacy community, members of the Presidential Council for the Development of Civil Society and Human Rights, members of the Public Chamber of the Russian Federation, etc.

For the purpose of prompt informing of all persons concerned the website “Monitoring of the new Russian laws and their administration in the field of protection of human rights” (<http://mhg-monitoring.org>) was developed and launched, where newsletters, expert opinions, publications and reviews are posted now. Some well-known experts were video-interviewed expressly for the said website.

Based on the results of the work performed, this collected volume was prepared including expert opinions, legislation reviews, reviews of the law enforcement practice, as well as the conclusions and recommendations with regard to changes in the legislation and law enforcement.

SECURING OF THE FREEDOM OF PEACEFUL ASSEMBLY

REVIEW OF THE RUSSIAN LEGISLATION AND THE RESOLUTIONS OF THE EUROPEAN COURT OF HUMAN RIGHTS

The freedom of peaceful assembly is one of the most important universally recognized freedoms of people guaranteed by the international law: Article 21 of the International Covenant on Civil and Political Rights and Article 11 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, as well as Article 30 of the Universal Declaration of Human Rights.

The freedom of assembly is of special importance in the securing of democratic values: the observance thereof determines the opportunity of implementation of other most essential human rights (liberty of speech, right to obtain and disseminate information, participation in the management of a state). As a rule, the violation of the freedom of assembly affects the interests of a significant number of people.

The ensuring of the freedom of assembly is to a large extent determined by procedural terms and allows for the possibility of limitation in certain circumstances. The most important source of establishment of the boundaries for the allowed interference is the precedent setting resolutions of the European Court of Human Rights (ECHR).

The freedom of assembly in the field of legal relations has its own unique specifics. Unlike the violations of other rights and freedoms the forms and ways of limiting the freedom of assembly are of public nature, i. e. all circumstances of prohibitions are documented and known to the fullest extent.

Over the last five years, ECHR has delivered only four judgments with regard to Russia recognizing the actual violation of the freedom of peaceful assembly (cases of Makhmudov, 2007; Barankevich, 2007; Sergei Kuznetsov, 2008; Alekseyev, 2010). In addition, the UN Committee for Human Rights handed down in 2012 one opinion on the acknowledgment of limitation of the freedom of assembly in the case of Chebotaryov v. Russia. A number of cases are still pending consideration.

Cases against Russia have their own specifics. Firstly, the Russian Federation has always been insisting on the lawfulness of limitations and restrictions of assembly. It substantiates the prohibitions by the requirement to protect law and order, morals, etc. which are allegedly jeopardized by meetings. These arguments are not accepted by ECHR for the reason that the state does not provide evidence of the real nature of such threats. Secondly, neither of the delivered judgments has in any way impacted the practice and the national legislation: no general measures have been applied for the purpose of elimination of conditions for and sources of violations; no court resolution has been reviewed concerning the complaints of the claimants. As a truly textbook example of how the authorities ignore the resolutions of ECHR upon the pretence of “national interests,” the situation with the refusal to implement the resolution in the case of Alekseyev v. Russia can serve (prohibition of gay pride marches in Moscow).

For the Russian Federation, the problem of limitation of the freedom of assembly has an extremely situational meaning, especially in the light of the gradual legislative limitations of the freedom of assembly. This being said, the wordings of the innovations introduced to the legislation are intentionally unclear, which provides for the opportunity of their broad interpretation in the law enforcement practice. This is just the reason why the greatest number of problems with the observance of the freedom of assembly is evident only in the regions where local authorities strive to limit the freedom of assembly to the maximum possible extent.

The situation deteriorated dramatically with the approval of the amendments to FL “On meetings, rallies, demonstrations, processions and picketing” (hereinafter referred to as FL No.54), as well as to the Code of Administrative Violations (CAV) that took effect on June 9, 2012. The amendments vested the constituent entities of the Russian Federation with wide-ranging powers of regulation of assembly. During the year 2012–2013 in all 83 constituent entities of the Russian Federation the regional laws were enacted which made more severe the

procedure and possibility of conduct of peaceful assembly by introducing the limitations that enable to prohibit every assembly on technicalities.

On 31 March 2014, already after the completion of the working day, at 06:12 P.M., a group of deputies brought in to the State Duma Federal Law draft No.485729-6 “On amendments to certain legislative instruments of the Russian Federation (to the extent of improvement of the legislation on public assemblies).” The amendments are proposed to be made to the law “On assemblies, rallies, demonstrations, processions and picketing” itself, the Code of Administrative Violations, the Law “On the police,” the Criminal Code and the Criminal Procedure Code.

Provisions of the federal laws limiting the freedom of assembly

FL No.54 even prior to the amendments of 2012 had contained the norms and provisions that had disproportionally limited the freedom of assembly in the Russian Federation.

The main contradiction was in the procedure for the “approval of public events” that determines the prohibition on a public campaign in the event when the local government insists on a different place or time of such campaign. Such essentially casuistic procedure is established with the help of the following provisions:

- ✓ Clause 2 Part 1 Article 12: “communicate to the organizer of the public event within three days upon receipt of the notification of the public event (and in the event of notification of picketing by a group of persons less than five days prior to such picketing—on the day of receipt thereof) a reasoned proposal on changing the place and (or) time of the public event, as well as a proposal on the removal by the organizer of the public event of nonconformity of the purposes, forms and other conditions of the event specified in the notification;”
- ✓ Clause 5 Article 5: “The organizer of the public event shall not have the right to conduct it in the event when the notification of the public event was not filed within the established term, or in the event when no agreement with the executive authority of the constituent entity of the Russian Federation or the local self-government body is reached with regard to the change upon their reasoned proposal of the place and (or) time of the public event.”

Consequently, local and regional authorities received the opportunity to shift the public event to a different place without prohibiting the declared public event. All kinds of reasons, even the most absurd ones, can be used as arguments, because the federal law does not contain any framework grounds in connection with which the authority could propose a different place for the conduct of the event. The organizers of the event will be most often unsatisfied with the proposed place because it will not enable the achievement of the goals thereof (in particular, in the event of protests against the acts and resolutions of government authorities).

On April 2, 2009, the Constitutional Court of the Russian Federation gave Determination No.484-O-P “With regard to the complaint of citizens Aleksandr Vladimirovich Lashmankin, Denis Petrovich Shadrin and Sergei Mikhailovich Shimovolos against the violation of their constitutional rights by the provision of Part 5 Article 5 of the Federal Law “On meetings, rallies, demonstrations, processions and picketing”. The complaint contained the description of the actual abuse of the provisions of FL No.54 in connection with the “proposals on the shifting of the assembly” appealed against in the courts of three regions of Russia without success. The court refused to recognize the actual breach of the Constitution of the Russian Federation without in fact giving any reasons. The only argument used by the Constitutional Court was that the “proposal” to change the place or time of the public event was not a “prohibition” in the meaning of this word.

It should be noted that the casus of the arbitrary but inexplicit prohibition of peaceful assembly rooted in the procedure of FL No.54 is not an unconditional regulatory constraint, but is used only in the events when the authorities are focused on fighting against protest campaigns. This political interest is confirmed by the practice of the selective prohibition of public events in regions. Furthermore, in the majority of the regions such prohibitions were either not applied, or applied in isolated instances before 2012.

International authorities also experience apparent difficulties in the assessment of this kind of procedural prohibitions.

On July 10, 2012, the ECHR delivered its resolution for the case of Berladir and others v. Russia (complaint No.34202/06). In this case, the refusal of the Moscow Government was appealed against to conduct an alternative anti-fascist demonstration and the prohibition of picketing near the building of the city hall. The Court resolved that Article 11 of the Convention was not breached and recognized as unconvincing the argument of the organizers of

the picket that a place of picketing other than near the city hall would not enable them to achieve the goals thereof. Therefore, the ECHR recognized the argument of the state as convincing: the availability of a parking lot near the city hall (notwithstanding that, the applicants had argued that on Sunday for which the picketing had been planned the parking lot had been empty). The President of the Chamber of the Court N.Vayich and the judge representing Russia A.Kovler had to express a dissenting opinion on the violation of Article 11 and the absence of an efficient court proceeding.

The resolution *per se* is unprecedented; it contradicts the letter and intent of all previously adopted resolutions regarding the freedom of association, contains the conclusions and assessments that are disproportionate to the values of the democratic society. The main gap in the conclusions of the Court was in the evaluation of the procedure of “approval of” public campaigns established in FL No.54. The Court, in particular, acknowledged that the procedure of “proposing of a different place for the conduct of the meeting” was not a disguised prohibition (irrespective of substantiation and achievement of the goal of the meeting) assuming that the “proposal” to shift the event to a different location was necessary and justified and presuming that the Moscow city hall had been judging from socially important and plausible reasons. The court in principle refused to study the arguments and reasons for the “shifting” and “did not notice” the political motivation in the acts of the authorities and the discrimination of the meeting organizers.

Along with that, it is possible to state that the resolutions delivered by the ECHR did not affect the situation in Russia. The Russian Federation failed to take general measures in accordance with the delivered judgments, including the review of the provisions of the law the implementation of which had become exactly the reason for the violation of the right for the freedom of assembly.

It is characteristic that the impact of the resolutions of the Constitutional Court of the Russian Federation on the national legislation is also very limited. Before 2013, the court adopted a number of essential provisions, which have not been so far reflected in the legislation, in particular:

- ✓ the condition was defined for the “achievement of the goals of a public event”: “in the location and (or) at the time which correspond to its social and political significance;”
- ✓ the exact procedure was established for the determination of the boundaries of the location of the meeting: the conventional boundary of the event location should coincide with the boundaries of the

- land allotment of buildings, structures and infrastructure facilities;
- ✓ the authorities should negotiate the place of the meeting with the organizers.

On June 8, 2012, Federal Law No.65-FZ was enacted which introduced amendments to FL No.54, as well as CAV RF. The law was enacted hastily, immediately in two readings, and was not discussed publicly.

The law strengthened the administrative liability for violating the established procedure of organizing or conduct of meetings, rallies, demonstrations, processions and picketing. In particular:

- ✓ the maximum amounts of the administrative fines were increased unprecedentedly for violating the procedure for the conduct of a meeting, for citizens up to three hundred thousand Roubles, for officers up to six hundred thousand Roubles;
- ✓ the punitive sanction in form of compulsory community service was introduced and the administrative liability was established for the evasion of compulsory community service;
- ✓ the period of limitation was established of one year as from the day of administrative violation, which is also unprecedented for an administrative punishment.

The amendments and supplements made to FL No.54 establish, inter alia, that:

- ✓ a person with an unexpunged or unspent conviction for the commission of a premeditated crime against the fundamentals of the constitutional system and national security or a crime against public security and public order, or a person two or more times brought to administrative liability for violations of the legislation on assembly may not be the organizer of the public event;
- ✓ the organizer of the public event shall bear civil liability for damages inflicted by the participants of the public event;
- ✓ participants of public events may not: hide their faces, including use masks, concealment means, other objects designed for the purpose of causing difficulties in the checking of identity; bear arms or similar objects, explosive and flammable substances; have in their possession and (or) drink alcoholic beverages; stay in the place of the public event in a state of alcoholic intoxication;
- ✓ the time of finishing of the public event has been shifted from 11:00 P.M. to 10:00 P.M. local time;

- ✓ a picket shall be deemed a single-person picket only in the event when it is held at the distance of not less than 50 metres from the other picket.

The law has also introduced a special procedure for the regulation of assembly.

Article 8 of the law establishes the so-called special locations for the holding of meetings: meetings shall be held there under the notification procedure, and without notification in the event of a small number of participants (as a rule less than 100 participants).

For the purpose of determination of specially designated locations, the following shall be taken into account: “achievement of purposes of the public event, accessibility by transport, possibility of use by the organizers and participants of public events of infrastructure facilities, compliance with hygienic standards and rules, security of organizers and participants of public events, other persons”.

On the other hand, regions were granted the right to prepare the list of the locations where meetings are prohibited. According to FL No.54, they include “restricted” areas. No special limitations were established for the purpose of introduction of additional prohibitions in regions. Furthermore, as a justification for the limitation “preventive considerations” are applied—prohibitions may be established for the locations where public events *may result in* the disturbance of operation of institutions, transport, law and order.

It is important to note the positive changes resulting from the law. The supplement to Part 3 Article 12 *establishes only two grounds for a denial of registration of a meeting*: when the meeting is held in a “prohibited location” and when there are people among the organizers who have been previously held liable for violations of the legislation on assembly. At the same time the procedure established in Articles 5 and 12 for the proposing by the government of any “other place and time” subject to substantiation under any vain pretext remained unchanged. In fact, the provisions of Article 12 can be construed so that when wishing to prevent the assembly the local government can always insist on the holding of meetings only in “specially designated” places even if these places do not meet the goals of the meeting.

In connection with the adoption of the legislative amendments, the deputies of the State Duma E. Mizulina and V. Solovyov, as well as a complaint by E. Savenko sent a request to the Constitutional Court of the Russian Federation. On February 14, 2013, the Constitutional Court of the Russian Federation delivered a corresponding ruling.

The court included the interpretation of the following provisions of FL No.54:

- ✓ in terms of the prohibition “to act as the organizer of a public event for a person two or more times brought to administrative liability for administrative violations” the period of limitation is established (which was not established in the law) of one year—a common one for administrative violations (Clause 1 of the concluding part of the ruling);
- ✓ in terms of the prohibition of campaigning prior to the approval of the public event established in Article 10 the Court determined that this provision “does not prevent the organizer of the public event prior to the agreement upon its place and (or) time from informing the future participants of the public event about its expected goals, form, place, time and other terms” (Clause 2 of the concluding part).

Only some provisions were recognized as contradicting the Russian Constitution:

- ✓ Clause 6 Article 5 in accordance with which the organizer bears liability “for damages inflicted by the participants of the public event irrespective of manifestation by them of due care for the maintenance of public order and the absence of guilt in the infliction of such damages” (Clause 4 of the concluding part);
- ✓ the outrageous amount of the minimum fines established in CAV RF for the violation of the legislation on meetings (Clause 7 of the concluding part), as well as the penalty in form of compulsory community service, but only when the event “did not cause harm to health, property of individuals or legal entities, or the occurrence of other similar consequences” (Clause 8 of the concluding part).

The assessment by the Constitutional Court of the Russian Federation of the procedure for the determination of the “uniform locations specifically designated or suitable for the purpose of public events” can be considered most important and essential. On the one hand, the Court decided that the delegation of authority to regions as regards the determination of such locations was not the limitation of the freedom of assembly but only determined the possibility of their “specification.” On the other hand, the Court, being probably under the impression of the list of the limitations established by regional laws, admitted: “No criteria are recognized on a regulatory basis which could ensure the equality of legal conditions of exercising by the citizens of

the right for the freedom of peaceful assembly in the event of determination by executive authorities of constituent entities of the Russian Federation of specifically designated or suitable places for the conduct of public events, which results in the possibility of its ambiguous interpretation and, hence, arbitrary application” (Clause 6 of the concluding part).

For the most part the ruling seems declaratory because it contains a lot of general statements which make no practical impact. For example, “the public authority shall use its best endeavours to make it take place in the location specified by the organizer and at the scheduled time, and shall not attempt to find reasons upon any pretext which could justify the need for deviations from the proposals submitted by the organizer of the public event” (Clause 2.2).

It is important that Clause 12 prescribe bringing of regional laws in compliance with the resolution of the Constitutional Court. In the situation when the majority of them are extremely harsh and contradict not only the international standards but also the federal legislation, the resolution of the Constitutional Court can be recognized as very important and well timed.

Considering Federal Law draft No.485729-6 “On amendments to certain legislative instruments of the Russian Federation (to the extent of improvement of the legislation on public assemblies)” the following responsibilities:

Criminal liability

Surely, a great surprise was the proposal to introduce criminal liability for the third in a row over the period of 180 days violation of the procedure of conduct or organization of a public assembly.

The repeated nature will be proved by three court rulings that enter into effect according to Articles 20.2 or 20.2.2 of the Code of Administrative Violations of the Russian Federation.

It is proposed to place the new article 212.1 of the Criminal Code of the Russian Federation “Repeated violation of the established procedure of organization or conduct of an assembly, rally, demonstration, procession or picketing” right after “Mass rioting” (Article 212) and before “Hooliganism”. The offence immediately falls within the scope of the category of medium gravity providing for up to 5 years of imprisonment and a penalty in the amount of up to 1 million Roubles (Article 1 of the Draft Law) which is currently provided for in the Criminal Code, for example, for drug trafficking as part of an organized group or on a large scale. Not the police but the Investigation Committee

will initiate and conduct such cases (Article 2 of the Draft Law). Court judgments of guilt of violating the procedure of conduct of assemblies are currently delivered unprecedentedly easily, at least in Moscow. This is facilitated by the imperfection of the procedure—the judge is not obliged to cause the making of court proceeding transcript, and the testimony of in fact the prosecution party—police officers—is estimated by the court as neutral witness testimony.

Administrative fines and arrests

Unless the frequency of public assemblies grows manifold, the criminal liability will have in the draft law a rather preventive and cooling effect. The draft law authors themselves referred to the statistics showing that of 681 people arrested on 24 March in Moscow during the announcement of the sentence in the Bolotnaya case only three have been on more than two occasions held liable for violating the procedure of conduct of public assemblies.

30-day long arrests and fines will cause a more massive effect for Roubles, which are introduced for the same acts for which the “ceiling” fine makes currently 20 thousand Roubles.

Below are the most common situations in which an individual can be arrested or fined. Indeed, fines for legal entities are manifold higher, but the bringing thereof to this kind of liability is still an exotic thing, for which reason they are not quoted here.

Interestingly, the famous “15 clear days” of arrest are increased to 30 days for the first time since the Soviet times.

30 days of arrest can be given for:

- ✓ Defiance to police officer repeated over the period of one year (Article 19.3 of the Code of Administrative Violations), provided it is committed by the organizer or participant of a public assembly (or a fine in the amount of 5 thousand Roubles);
- ✓ Being held liable under any part of Article 20.2 repeated over one year (or a fine in the amount of 150 to 300 thousand Roubles);
- ✓ Participation in a “joint mass attendance (or movement) of citizens” repeated over one year, provided it happens next to “dangerous” places like courts, or creates obstacles for pedestrians, etc. (or a fine in the amount of 150 to 300 thousand Roubles).

20 days of arrest for:

- ✓ Joint mass attendance (or movement) of citizens (constituting no public assembly), irrespective of whether the attendees cause nuisance, but if next to court buildings or the building of the Presidential Executive Office, as well as various hazardous production facilities (or a fine in the amount of 50 to 300 thousand Roubles).

Thus, simply standing next to a court building (like it was, for instance, on 21 and 24 April during the announcement of the sentence in the Bolotny case) without banners or slogans will be punished with an arrest for up to 20 days or a fine from 50 to 300 thousand Roubles.

15 days of arrest for:

- ✓ Participation in an unauthorized assembly, rally, demonstration, procession or picketing resulting in obstacles for pedestrians, transport, etc. (or a fine in the amount of 10 to 20 thousand Roubles);
- ✓ Joint mass attendance (or movement) of citizens (constituting no public assembly) resulting in obstacles for pedestrians, etc. (or a fine in the amount of 10 to 20 thousand Roubles).

10 days of arrest for:

- ✓ Violation of the procedure of organization of a public assembly (Part 2 Article 20.2 of the Code of Administrative Violations)—for example, organizing of a picket without prior notification (fine from 20 to 30 thousand Roubles remains unchanged).

Other interesting things

There are introduced amendments to the law “On the police” enabling them to cordon (block) areas in order to not only control mass riot, like it was previously provided for in the law, but now to prevent mass riots and “other acts violating the rights and freedoms of citizens”, which, of course, creates unlimited grounds for such preventive measures (Article 4 of the Draft Law).

Cases under Articles 19.3, 20.2 and 20.2.2 of the Code of Administrative Violations will be considered only at the place of commitment of the offence. This means that judges in the city districts, which are traditional for campaigning, or in central city districts will “specialize” in such cases.

To the law “On assemblies...” the amendments are planned to be made which prohibit having about oneself any pyrotechnical articles (except for

matches and pocket lighters). Often used fusees fall within the scope of this category.

A journalist attending a public assembly must wear a “clearly visible distinctive emblem of a mass media representative.”

Otherwise, he/she will probably be deemed a participant thereof.

In the explanatory note the prohibition is mentioned which is not included in the text of the draft law itself—the prohibition on the attendance of an event of “socio-political nature,” even if held upon agreement with the authorities, together with children under the age of 14.

Regional Legislation

The new version of the law enabled at the regional level in addition to the federal law (Article 8 of FL No.54) the limitation of the list of places where street campaigns are not allowed.

Previously mass meetings had been allowed everywhere except where explicitly prohibited by the federal law, and the list of limitations had been exhaustive. This provision legalized the previously used unspoken practice of reservations designated for public activities, because all places to which the activists were sent were most remote from government buildings and often turned out to be even suburban forests or cemeteries. Most popular among regional authorities was the idea of organizing “Hyde Parks” in an evidently perverted interpretation—the wish to designate only special places for the purpose of public events. This being said, regional authorities do not limit the places of mass cultural or formal events. In accordance with Clause 1.1 Article 8 of FL No.54, regional authorities determine “places specifically designated or suitable for the purpose of discussion of issues of public importance and expression of public opinion, as well as for the mass attendance by citizens for the purpose of open sharing of public views with regard to topical issues primarily of socio-political nature”.

This clearly discriminatory approach and the wish to limit the protest activities of the population to the maximum possible extent determined the conditions for the adoption by regional authorities of the extremely repressive laws oversaturated with various limitations and procedural terms.

Since the time of approval of the amendments to FL No.54, the preparation of regional laws on the securing of the freedom of assembly started in

regions. The first of such laws was enacted on July 5, 2012 in Kemerovo Region, the next one on July 25 in the Republic of Mari El.

The Kemerovo law ¹ contains significant restrictive provisions, and the approval thereof caused protests on the part of the community in the region. The law contains a quite extensive list of locations where public meetings are prohibited: railway stations, airports, retail and leisure complexes (centres), markets, children's and educational institutions, cultural, healthcare, fitness and sports organizations, as well as their detached territories, facilities and structures, buildings in which cultural, sportive, entertainment, educational centres are located (during cultural, sportive, entertainment and other events held therein); pedestrian ways, public transport stops, children's and sports playgrounds, places where events are organized with the participation of children; as well as territories directly adjacent to the facilities listed in this article, and motor roads.

The standard was set for the maximum occupancy of such specifically designated places: one person (!) per each two square meters (!).

The law of Kemerovo Region was adopted as a sample by other regions. In these conditions, the participants of the Network for the Legal Protection of the Freedom of Assembly developed a model law draft. The draft complied with the international standards, the interpretations of the provisions of the federal law adopted by the Supreme Court and the Constitutional Court of Russia. The draft was distributed via the network of regional human rights defenders, as well as through regional representative offices of the Communist Party of the Russian Federation. The discussion of the law drafts caused stormy debates in the regions. However, the majority of votes in the regional legislative assemblies belong to United Russia, for which reason the Kemerovo law was taken as a basis.

In the early autumn, the laws were adopted in the first reading in the Tomsk, Kirov, Oryol, Sverdlovskaya, Ulyanovsk, Ivanovo, Chelyabinsk, Nizhny Novgorod, Samara region, the Perm Territory, the Chuvash Republic, Tatarstan and other regions. By the end of the year, the laws were enacted in all constituent entities of the Federation.

All regional laws contain an extensive list of places where meetings are prohibited. The majority of the laws set a flat ban on the conduct of meetings near the buildings of regional and local government. The distance varies from 50 to 100 m. It is characteristic that in a certain part of the regional laws (for

¹ Law of Kemerovo Region "On some issues of conduct of public events."

example, in the Sverdlovskaya region) the definition “territories adjacent to the facilities” is used, which allows for the arbitrary varying of the territory of the “restricted place”.

In addition, the majority of the regional laws establish a ban on the conduct of meetings on pedestrian ways (in all places intended for the use by pedestrians) and next to public roads.

The list of “restricted locations” grew constantly due to the “exchange” between the legislative assemblies, and the laws were supplemented with new prohibitive terms and rules.

Thus, in Chelyabinsk Region and the Chuvash Republic the law drafts included the provisions on the prohibition of meetings next to privately owned buildings and structures (without the owners’ consent), and in Sverdlovsk Region—the prohibition of meetings next to multi-dwelling units and residential buildings and near the areas of location of religious organizations.

The law of the Chelyabinsk region “On the procedure of notification about public events” contains the provisions binding the organizer to submit to the city hall additional documents at the time of notification about the meeting:

- ✓ written permissions issued by owners of all property located within two hundred meters from the place of conduct of the campaign;
- ✓ statements of absence of records of conviction or administrative liability to be obtained by the organizer from the police.

In addition the Chelyabinsk legislation requires that the public servants have to be informed about all meetings to be held inside premises with the participation of more than one hundred people, which contravenes the federal law explicitly stating that the subject of its regulation covers only street campaigns.

In Chuvashia the regional legislation prohibits public campaigns at the distance of less than 200 meters from kindergartens, educational or healthcare institutions.

In Kazan, the standards of the maximum occupancy during campaigns were set for 17 sites. On pedestrian ways, areas next to government buildings and retail centers, theatres and markets not more than 0.3 persons per each 1 square meter are allowed (i. e. per each participant more than 3 square meters (!) of space). As a comparison: in Moscow, even as many as two persons may protest on each one square meter according to the regional legislation.

In Nizhny Novgorod Region, the list of the restricted locations for the conduct of meetings is comprised of 36 items².

Typically, the “restrictions” regarding meetings in certain places extend automatically to single-person pickets for which no notification is required.

Furthermore, the regional legislation includes different innovations only adding restrictions to the disproportionately strict requirements to meeting organizers.

In the legislation of the Republic of Mari El meeting organizers must conduct a briefing for all (!) participants of the meeting prior to the start thereof. In Samara Region, a prior consent of the police is required in order to hold a meeting.

Although the federal law declares the guaranteed application for meetings of specially designated locations without notification, even here the regions added extra conditions. For example, in Ulyanovsk Region meeting organizers must submit a procedure of the meeting for “approval.”

Revealingly, only two cases are known when the Prosecutor’s Office protested against the extremely strict rules of regulation of meetings, which contradict the federal law.

The careful following of the regional laws means an absolute prohibition on the use of public places within the city for the purpose of meetings and rallies, as well as the absence of choice of routes for the purpose of processions.

Wherein does the national legislation contravene the constitutional provisions and international standards?

The current version of FL No.54 contravenes substantially the constitutional and international provisions and standards.

First, the provisions of the law contain the procedural restrictions of the freedom of assembly the application of which in fact establishes in the Russian Federation the *authorization-based* procedure of peaceful assembly. The condition of holding public events only in certain locations is formalized in the legislation, which disregards the principle of the free choice of the place

² Law “On the introduction of amendments to Law No.196-Z of the Nizhny Novgorod region dated December 27, 2007 “On the procedure of notification about public events in the territory of the Nizhny Novgorod region.”

and time of the meeting. These provisions contradict Article 31 of the Russian Constitution guaranteeing the freedom of assembly in the legal sense and in practice of its application. This right is recognized as indefeasible and is secured by the international treaties.

Judging from the precedent-based practice the ECHR applies the following definition: “The right for the freedom of assembly implies both private encounters and public meetings in public places, as well as meetings on the same location or processions; this rights may be exercised by both individual participants and meeting organizers”³.

In the case of *Makhmudov v. Russia* the ECHR emphasized the extrinsic value of the freedom of assembly: “The Court has acknowledged that the right for peaceful assembly formalized in Article 11 is the fundamental right in a democratic society and like the right to freedom of expression constitutes one of the keystones of the society”⁴.

The notification-based procedure presumes the right for a free choice by citizens of the location for a public event depending upon the goals thereof. The locations where public events are not allowed are limited and included in the exhaustive list (Article 8 FL No.54). However contrary to the legal logic and the principle of Article 55 of the Constitution of the Russian Federation (“the rights may be limited by the federal law”) the lawmakers have allowed for an arbitrary extension of the list of such locations in the regional laws. As a justification of limitation, the “preventive considerations” are provided for: restrictions may be established for those locations where meetings “can cause” interference with the operation of institutions, transport, law and order.

Correspondingly, such conditions have resulted in prohibition of public events “on traffic ways” in the majority of the regional laws. Consequently, the regional laws in the Russian Federation have in fact introduced a **prohibition on all demonstrations**.

The exercise of freedom of assembly implies the possibility of conduct of spontaneous (impromptu) events caused by any important developments and

³ *Barankevich v. Russia*, *Adali v. Turkey* (March 31, 2005), *Christians against Racism and Fascism v. the United Kingdom* (July 16, 1980), etc.

⁴ July 26, 2007. In addition *Djavit An v. Turkey* (February 20, 2003), *Christians Against Racism and Fascism v. the United Kingdom*.

occurrences. In such cases, citizens arrive at public places in their cities to express their opinion regarding the occurrence. Such spontaneous demonstrations, meetings and processions are traditional for the Russian Federation.

The ECHR acknowledged that impromptu meetings should be considered as an expected (and not the sole) exercise in healthy democracy. Therefore, government authorities must protect all kinds of impromptu meetings and facilitate the conduct thereof provided they be of peaceful nature⁵. In this connection, the federal law must provide for an exception from the requirement of prior notification in the event when such prior notification is simply impossible from the practical standpoint. Instead, the provisions of Articles 5 and 7 of FL flatly disallow spontaneous (impromptu) public events, which constitutes a direct violation of the freedom of assembly.

Article 8 of FL provides for the possibility of holding public events without notification, but only in the event, when the number of its participants does not exceed 100.

More often than not regional and local government bodies render remote sites suitable for spontaneous events when preparing the list of places for the conduct of possible meetings. In the event of an excessive number of participants or in the event of absence of organizers at such meeting law enforcement agencies may terminate it at any time.

Such undue restrictions practically rule out the possibility of conduct of impromptu meetings.

The provisions of FL No.54 exclude the **presumption** of human rights and freedoms in this field of legal relations. Human beings and their rights are in accordance with Article 2 of the Russian Constitution the supreme value, and the protection of these rights is the main responsibility of the state. By implication of Article 18, human rights determine both the contents of laws and the practice of administration thereof.

This principle was not in fact mentioned in FL No.54 prior to the amendments dated 2012. The Constitutional Court of the Russian Federation in its rulings No.2-P dated January 15, 1998; No.3-P dated February 18, 2000 and No.484-O-P dated April 2, 2009 when determining the location for the meeting recognized the need to meet the following conditions: “Consequently, the disputed statutory provision stipulating the authority of public bodies to

⁵ Please refer to *Oya Ataman v. Turkey* (December 5, 2006).

make a substantiated proposal to change the place and (or) time of the public event and stating the requirement to agree upon this proposal with its organizers, implies that the proposed option of the public event makes possible the achievement of the goals of this event in the place and (or) at the time corresponding to its socio-political importance.”

In the amendments, dated 2012 the achievement of the goals of a public event is mentioned in Clause 2.2 Article 8 among other conditions: “when determining the specially designated locations and establishing the procedure of their use.”

This principle is in fact not applied in practice. The possibility of achievement of the meeting goals is practically not taken into account by local and regional authorities when they consider notifications about meetings and “propose other locations for the conduct of public events.”

This principle is ignored in the regional laws in terms of determination of places where meetings are not allowed. The major part of the regional laws contains restrictions regarding the holding of meetings next to all government buildings. Thus, all protest campaigns against acts and decisions of government authorities are prohibited because an evident condition for the achievement of the goals of similar campaigns is their holding in the immediate proximity to the buildings where government authorities are located.

The above ruling of the RF Constitutional Court dated April 2, 2009 declares, “Government authorities must negotiate the place of the meeting with organizers.” However, FL No.54 does not formalize the principles of not only the priority of the freedom of assembly, but also the parity of interest during such negotiations. The final decision on the notification falls within the scope of competence of the registration authority. Furthermore, the legislation establishes the right of this authority to determine the “suitability of the location” without taking into account the interests of the organizers of the public event.

The legislation determines the possibilities of limitation of the freedom of assembly on “preventive grounds” and the arbitrary interference by law enforcement agencies.

Part 2 Article 15 of the Russian Constitution establishes the responsibility of government authorities, local self-government bodies and officers to comply with the Constitution and the federal laws. Article 18 announces that the rights and freedoms of man and citizen define the meaning, contents and application of laws, the activities of the legislative and executive power, local self-government bodies, and are secured by the system of justice.

The constitutional provision on the legitimacy of limitation of the freedom of peaceful assembly for the purpose of protection of the constitutional principles is applicable “*only to the required extent.*” This provision is consonant with the principles of proportionality, adequacy and substantiation of the immediate threat to the constitutional values.

In the judicial practice, the principle of proportionality of interference is not normally considered because Article 5 of FL No.54 (on the prohibition of meetings upon submission of substantiated proposals as to changes in the place and time of public events) does not contain any limitations.

According to the resolutions of the ECHR in the cases of Stankov and the United Macedonian Organization Ilinden v. Bulgaria (October 2, 2001) and the United Communist Party of Turkey and others v. Turkey (January 30, 1998), the principle of proportionality requires a full and impartial assessment of the particular circumstances impacting the meeting. The ECHR also resolved that the grounds to which government authorities refer for the purpose of confirmation of the proportionality of their actions must be “significant and sufficient,” as well as “rely on a “reasonable estimation of the relevant facts.”

In the case of Makhmudov v. Russia, the ECHR gave the following assessment to the circumstances of the violation of the freedom of assembly (similar to those presented in the case files): “64. The states must not only protect the right of peaceful assembly, but also refrain from the unfounded indirect limitation of this right. Due to the specific nature of the freedom of assembly and its direct relation to democracy there must be cogent reasons for an entrenchment of this right.”⁶

It should be particularly noted that the ECHR had already considered cases where the same arguments and grounds had been used as those used by the registration authorities in the event of a “substantiated” limitation of the freedom of peaceful assembly and which were in their turn recognized as lawful by the courts (in the presented resolutions). In all such cases, the ECHR had found such arguments and grounds unsound.

1. Grounds for the **ensuring of public security** (including the ensuring of security of other persons).

⁶ Please refer to the case of the Political Party Ouranio Toxo and others v. Greece (October 20, 2005) and Adali v. Turkey.

In the case of *Makhmudov v. Russia*, the Court recognized that the arguments about the restriction of meetings due to the “threat of terrorism” were unfounded because no proof of such threat was produced, including by the registration authority. In addition, the ECHR found wrongful the acts of the Prefect’s Office of the South-Western Administrative District of Moscow that despite referring to the threat of terrorism had held its own events in public places. Such outrageous fact made the Court give a harsh estimate to the acts of the registration authority: “By cancelling the claimant’s meeting the local authorities behaved despotically. The Court finds that there were no grounds for the entrenchment on the claimant’s right to assembly” (Clause 72 of the resolution).

In the same manner, in the case of *Stankov and the United Macedonian Organization Ilinden v. Bulgaria* the Court found that the safety considerations (even relating to the constitutional values) could not serve as a ground for the limitation of the freedom of assembly in the event when the “permissibility threshold” is observed, in particular in the demonstration of acts of violence. In this case the ECHR formulated a special requirement to the procedure of agreement established by the national legislation: “the automatic application of preventive measures for the purpose of suppression of the freedom of assembly and the freedom of expression, except in the events of incitement to violence or denial of the democratic principles (irrespective of how shocking and unacceptable certain opinions or expressions may seem to government authorities, and how unlawful the declared requirements may be) inflicts harm to democracy and often puts it under threat... The Court has resolved that although the considered issues related to the national symbols and the national identity that was not a sufficient ground for the granting to the government authorities of such wide discretion.”

2. In the resolution of the ECHR in the case of *Makhmudov v. Russia* the restriction of the public event due to the **conduct on the specified site of a different public event** was found unlawful too.

The ECHR recognized that the limitation of the freedom of assembly by the city administration for the reason of availability of other applications for public events was unacceptable in the resolution dated May 3, 2007 in the case of *Baczowski v. Poland*, as the city administration had not taken any measures in order to allocate the meetings across the territory. The concerns of the city administration regarding threats to the participants could not be taken into account because they were not based on actual and real threats.

3. In the above-mentioned resolution the Court also determined that the restrictions of meetings due to the **observance of the traffic rules** “were not consonant with the constitutional guarantees of the freedom of assembly.”

4. The unacceptability of limitation is also determined by the **responsibility of the state to observe the right to counter-demonstrate** (resulting from the presumed “freedom of assembly”).

In particular, by the resolution of the ECHR in the case of *Plattform Ärzte für das Leben v. Austria* (June 21, 1988) it was established that the “right to counter-demonstrate may not extend to the acts preventing the exercise of the right to demonstration.”

Therefore, as every human being or group of them have the right to express their views without interference on the part of other persons the counter-demonstrators must not interrupt the acts of those who do not share their opinion. This being said, other public events (including festive events) organized at the instigation of the authorities themselves must not be considered meetings, and the priority in the exercise and protection must not extend to them⁷.

It is necessary to recognize as significant the circumstance that in the course of the practical registration of notifications the administrations intentionally organize other events on the specified sites for the purpose of justification of their refusal to register notifications.

5. Along with that the ECHR recognizes the priority in the securing of the freedom of assembly **over the interest of institutions and enterprises** (both state-owned and private) and determines for this purpose the responsibility of the authorities to secure the same.

In particular, in the case of *Appleby and others v. the UK* (October 15, 2002) the ECHR resolved that a successful exercise of the right to freedom of expression “does not just depend upon the responsibility of the state to refrain from interference, but may also require active protection even in the field of relations between private persons”⁸: “In the event... when the prohibition on access to private premises prevents any efficient exercise of the freedom of expression or it can be stated that a violation of the very essence of this right has taken place, the Court does not rule out the possibility of occurrence of an active responsibility of the state to protect the exercise of

⁷ Case of *Makhmudov v. Russia*.

⁸ Please also refer to the resolution in the case of *Ozgur Gundem v. Turkey* (March 16, 2000), as well as *Fuentes Bobo v. Spain* (February 29, 2000).

the rights guaranteed by the Convention by way of regulation of the right to private property. As an example a city with self-administration can serve where all municipal authorities are controlled by a private organization.”

In all cases of conflict of interest, the following doctrine is applied: “The states must not only protect the right to peaceful assembly but also refrain from the unfounded indirect limitation of this right. Due to the specific nature of the freedom of assembly and its direct relation to democracy there must be cogent reasons for an entrenchment on this right.”⁹

Therefore, the arguments that can be used by the registration authority to substantiate “reasoned proposals” when they have no evidential basis are unlawful and result in an illegal limitation of the freedom of assembly. As different “concerns” are not supported by evidence of any threat or source of danger and are declared prior to the actual conduct of the public event they are a priori **unjust**.

Thus, judging from the resolutions of the ECHR it is allowed to use the limitation of the right to peaceful assembly only in the event of violent acts (or other acts unacceptable from the standpoint of the description in Part 3 Article 55 of the Russian Constitution). All measures of preventive nature for the purpose of avoiding of violations are unacceptable in the course of these legal relations.

FL No.54 establishes in its Articles 13 and 15–17 that the registration authority **may** allow for an interference with public events for the purpose of observance of the constitutional principles **only during the conduct thereof and only through an authorized person**. The Federal Law gives no other powers, including for preventive purposes, to the registration authority. This procedure in general ensures both the priority in the protection of the freedom of assembly, and the possibility to limit the freedom of assembly in the event of a real threat on the part of the meeting of violation of the rights and freedoms of other people or other constitutional values. Along with that, the procedure of interference on the part of regional authorities established in the law is almost never complied with. For example, Article 17 of FL establishes the procedure of provision to organizers of a written instruction (protocol) in the event of cancellation of the meeting. However, over the time the law remains in effect no single case of fulfillment of this requirement has been registered. Thus, regional authorities demonstrate the selective application of the provisions of the law acting in the conditions of impunity.

⁹ Cases of Makhmudov v. Russia and Adali v. Turkey.

The provisions of FL give to the registration authority an unlimited opportunity to prohibit public events and act for their own benefit, including for political reasons.

The law stipulates that the regional authority perform the regulation of the freedom of assembly. However, the law does not provide for clear criteria and procedures to determine such regulation. It only declares that the limitation of assembly may be justified by a “disturbing of the operation of vital infrastructure facilities, transport or social infrastructure, communication, or jam the movement of pedestrians and (or) means of transport, or impede access by citizens to residential premises or facilities of transport or social infrastructure”. Furthermore, regions establish rules of conduct of meetings in the territory of “monuments of history and culture”. Regions also approve at their own discretion the standards of the maximum occupancy and the distances for the locations of meetings¹⁰.

Consequently, **the Russian Federation has rejected the statutory regulation of the fundamental freedom** having allocated the whole responsibility for the implementation of FL No.54 to regional government authorities and created thereby the unprecedented conditions where 83 different regional laws securing the freedom of assembly are in effect in the same country. Such approach contradicts the constitutional principles of the Russian Federation (Article 18 of the Russian Constitution) that establish **the equality of all rights and freedoms of citizens irrespective of the place of residence**.

At the time of enactment of the law, regulating the freedom of assembly the most important principle of substantiation of the legislative restriction of human rights and freedoms was violated. However, this principle was not observed in the Russian Federation at the time of enactment of many other laws limiting the rights and freedoms. In the above-mentioned petition to the Constitutional Court of the Russian Federation, the deputies of the State Duma and writer Limonov stated the violation of this principle. However, the RF Constitutional Court ignored the arguments of the claimants and did not find any violation of the Constitution; it only considered instead the compliance of the procedure of adoption of the law with the provisions of the rules of procedure of the State Duma of the Russian Federation.

¹⁰ Article 8 of FL No.54.

In accordance with Part 3 Article 55 of the Russian Constitution, a limitation of any right of a citizen is allowed only for the purpose of “protection of the constitutional system, health, rights and legitimate interests of other persons, and the ensuring of national defence and national security.”

A limitation may be used only to the required extent. By implication of Parts 1 and 2 Article 55 of the RF Constitution any limitation must not only be substantiated but also provide for a provable fact of threat to the principles and values established in Part 3. Furthermore, such limitation may not be used as a restrictive provision, but must be proportionate to not only the place but also the circumstances of avoidance of the threat of violations. This being said, the limitation must be time framed.

At the time of adoption in 2012 of the amendments to FL No.54, no arguments were stated even formally in the explanatory note to the draft to explain in support of what constitutional values the limitations are adopted with regard to freedom of assembly. The regional laws were enacted in the same manner.

The responsibility of organizers of public events can be recognized as discriminatory as it provides for outrageous administrative sanctions for violating the legislation on assembly.

The new version of the law deprives those persons of the right to act as organizers of campaigns who have a conviction or who have been held liable twice or more with the imposition of administrative sanctions under a number of articles of CAV, in particular Articles 20.2 (violation of the procedure of conduct of or participation in public campaigns), 19.3 (failure to obey legitimate demands of police officers). The prohibition is formalized in the law as an additional limitation but in fact, it represents nothing but a second punishment in form of a restriction of a type of activity which is unacceptable according to Part 1 Article 50 of the Russian Constitution.

The increase of the fines for violating the procedure of participation in and organization of campaigns by ten times and more contravenes the resolution of the ECHR in the case of *Ezelin v. France* dated April 26, 1991: “The freedom of participation in peaceful assembly is so important that a person must not be subjected to sanctions—even the softest of the disciplinary penalties—for the participation in unrestricted demonstrations provided this individual does not commit something improper during this event.”

The first practice of imposition of fines demonstrates the disproportionality of the punishment, as well as the low efficiency of judicial authorities in

the establishment of the real circumstances of the case. The main problem is that by violation of order practically any act may be meant, for example the exceeding of the expected number of participants of the campaign that the organizer has to specify in the notification.

Summary

The situation with the securing of the freedom of assembly in Russia is critical. The amendments adopted in 2012–2014 to the legislation are not in line with the Constitution of the Russian Federation and the international standards; they contravene the letter and intent of the Guidelines of the Freedom of Assembly of ODIHR OSCE and the Venice Commission of the Council of Europe in accordance with which:

- ✓ the rights and freedoms of man and citizen may be limited by federal law only to the extent required for the protection of the fundamentals of the constitutional system, morals, health, rights and legitimate interests of other persons, the ensuring of national defence and national security (Part 3 Article 55 of the Constitution);
- ✓ it is important to eliminate the abuse of preventive measures and maintain the procedure of proving (on the basis of the principle of presumption of innocence);
- ✓ regulatory acts must not contain provisions and procedures allowing for violent interpretation.

With the transfer of the powers in connection with the regulation of the procedure of meetings to regional legislative authorities, citizens have created the situation where each region establishes its own conditions for the exercise of the freedom of assembly. The regional laws are prepared without account and effect of the constitutional and international principles and rules of ensuring of the freedom of assembly. Neither of the regional laws contains the procedure of securing the goals of the meeting—a necessary condition mentioned in the federal legislation. It is evident that the extensive list of the limitations introduced by the regional laws can in no way secure the achievement of the goals of the meeting. In particular, the prohibition on the conduct of meetings next to government buildings rules out the achievement of goals of a protest meeting.

The federal law introduces the disproportionately strict requirements to meeting organizers and the punitive sanctions. Where necessary these conditions enable the prohibition of any protest public event and thus create a pretext for mass political repressions.

Conclusions

Based on the observations regarding the practice of ensuring of the freedom of assembly in Russia after the tightening of the legislation the following conclusions can be drawn:

1. In general, the practice of denying “approval” of public events did not undergo any changes. For prohibiting of meetings, the authorities registering public events take practically no recourse to the new powers but use the previous tried-and-true approach requiring to “shifting” the meeting to a place knowingly unsuitable for the purpose thereof. Some reduction in the number of denials of approval of public campaigns can be noted which is largely relating the decreased protest activity.
2. The practice of appealing against “prohibitions” of public events has not in fact changed. The courts very rarely give judgments in favor of meeting organizers. However even favorable judgments do not affect the practice of arbitrary and biased limitations of meetings because they are delivered after the scheduled date of the meeting.
3. The Ministry of Internal Affairs of Russia engages even more forces for the purpose of control over the conduct of public events. For the supervision of public activists, the procedural powers and the means of criminal prosecution are widely used, in particular in the so-called “Bolotny” case.
4. The practice of detention of public activists is being extended; the measures of administrative punishment of the detainees are being stiffened. These measures make a notable impact on Russian citizens who are reasonably apprehensive about participation in public events fearing unprovoked detention and beating, even in the event when meetings are held legally, i. e. are “authorized.”

CHANGES TO LEGISLATION ON OFFENDING RELIGIOUS BELIEFS AND FEELINGS OF CITIZENS

On July 1, 2013, Federal Law No.136-FZ “On amendments to Article 148 of the Criminal Code of the Russian Federation and certain legislative instruments of the Russian Federation in order to counteract offence to religious beliefs and feelings of citizens” entered into effect and made a great stir. The law introduces criminal liability for “public acts expressing obvious disrespect for society and performed with the purpose of offending religious feelings of citizens” with the maximum penalty in form of one year of imprisonment, and in the event of performance of such acts “in places designated for worship services, other religious rites and ceremonies”—up to three years of imprisonment (new version of Article 148 of the Criminal Code). In addition, the penal sanctions were upgraded under Article 5.26 of the Code of Administrative Violations for wilful public profanation of venerated religious and world-view objects or symbols. The fine, which had previously amounted to 1,000 Roubles as a maximum, was increased to 50,000 Roubles, and for officers to up to 250,000 Roubles.

It is pertinent to examine the text, which was eventually approved by the Duma and became a law in two systems of coordinates: its constitutionality and legal consistency from the perspective of the legislation, and on the other part—as an occurrence in the law making process. From the viewpoint of the legislation, the law can hardly be recognized as legally consistent and constitutional. However, we cannot fail to acknowledge the following: in the current legal reality, the law enabling prosecution for the so-called “offence to religious feelings” was relaxed. Let us start with this, probably unexpected, statement.

The draft law brought in to the Duma with a peal of bells by representatives of all factions and the final version of the law are two big differences. Initially

the authoring team which, apart from the representatives of Edinaya Rossiya and LDPR, included N. Levichev and E. Mizulina from Spravedlivaya Rossiya and S. Obukhov from CPRF had suggested criminal liability literally for “public offence to, insult of worship services, other religious rites and ceremonies of religious associations practicing the religions constituting an integral part of the historic heritage of the peoples of Russia, as well as public offence to religious beliefs and feelings of citizens.” The punishment for the above had been up to three years of imprisonment, and in the event of performance of such acts in the places of conduct of worship services—up to five years. In this form, the draft law had passed the first reading. At the output, however, after the reworking of the draft for the second reading the reference to the most honoured religions was deleted from the text, as well as the words about the disrespect for worship services, rites and ceremonies. Now public acts (the first condition is the public nature) are deemed punishable if they express obvious disrespect for society (the second condition) and are performed with the purpose of offending of religious beliefs. Which means that apart from their insulting nature the acts become punishable when performed intentionally, in particular with the view to offend religious feelings. The absence of just one of the above-mentioned characteristics rules out the application of Article 148.

Most important, in our opinion, is the definition of the aggrieved party—not citizens in general, but believers. What is meant here? People gathering at an exhibition, in a theatre, cinema, irrespective of their religious beliefs gather there not as believers, but as visitors, viewers, technical staff, etc. In their capacity as believers, they come to a church, study the Bible together, or go on a pilgrimage tour. Believers are defined here as a special category like in the articles of the Criminal Code protecting, for instance, passengers, or pedestrians, or patients.

An individual having lunch in a café is not a pedestrian there, even if he/she always goes by foot. The rights of a patient are violated by a doctor or official who deprive him/her of benefits, but not by a thief who burglarizes such patient’s apartment. In the event when a believer is overcharged or spoken to rudely as a client he/she becomes the aggrieved party not as a believer, but as a citizen or customer, although his/her feelings are offended (what is said in the title of the article about the feelings of citizens does not play any role; the constituent elements of an offence are determined only by disposition).

Someone who enters a convent wearing a pair of shorts, or a monastery wearing a low-necked dress is unlikely to intend specifically to insult the nuns

or monks. A publicist like V. Pozner saying on the TV things, which can be considered, offending by a certain category of believers, does it in a correctly formulated way, and this by no means can be qualified as an expression of obvious disrespect for society. In all these cases, Article 148 is not applicable. Alternatively, for example, some statement, even if public and insulting, aimed at the “Orthodox Cossacks” or the “Russian Orthodox people” in general does not fall within the scope of Article 148 of the Criminal Code either, because it protects the “religious feelings of believers,” and not their national, patriotic or other feelings. Only feelings of religious nature are the object of crime.

Yes, the investigation and the court in the Russian Federation by no means always interpret in good faith the provisions of the Criminal Code. Sometimes it happens that the accused has given his own thing, but is imputed a guilt on theft, or a purchase is qualified as a “sale.” So the understanding of Article 148, as set forth above, like any other understanding is not necessary in the formal sense for the investigation, the prosecutor and the court. The more especially as the law is applied in the Russian Federation in an accusatorily biased way by custom. However, even with account of this objective factor the law of June 29, 2013 turned out to relax the criminal prosecution for “blasphemy.”

The truth is that anyone who today can be prosecuted under the new Article 148 (on religious feelings) could previously, before its inclusion in the Criminal Code, be easily put to trial and even imprisoned under Article 282 (rousing hatred and antagonism on grounds of religion, like in the cases of the Sakharov Centre), Article 213 (hooliganism motivated by religious intolerance and discord, like in the case of Pussy Riot), Article 214 (antireligious vandalism). Should the punk prayer service have happened after the enactment of the amendments regarding religious feelings its participants would have been prosecuted under Part 2 Article 148 (offence of little gravity), and not under Part 2 Article 213 (grave offence with up to seven years imprisonment, under which they were in fact put to trial). Regardless how serious the arbitrary behaviour is, it is still uncommon to charge someone under the general article provided there is a specific one. Especially because it is still possible to award the same two years under the new article. Possible, but more difficult, because such factors as no record of convictions, dependent children, etc. should be taken into account. Those with no previous convictions are usually never imprisoned for offences of little gravity.

I think that not by accident the law on religious beliefs turned out vegetarian. The authorities considered it sufficient to confine themselves to the

propagandist campaign surrounding the “traditional values.” It is not for nothing that Yakov Nilov, Chairman of the Duma Committee for Religious Organizations, presenting the law in the first reading repeated on four occasions that the authors did not at all wish to organize a “Butovo reservation.” It is not for nothing that at the Presidential Council for the development of civil society and human rights Irina Khakamada who has never played dangerous games criticized the draft law.

The law does not work. In addition, not because there are no criminal cases of this type. However, because the “E” units (counteracting extremism) and the investigative branch that services them continue to use the more capacious and strict Article 282. The religiously charged political repressions under Article 282 (both allegedly aimed at the protection of believers and against them—the cases of Muslims and Jehovah’s Witnesses) represent not a theoretical, but a quite specific human rights issue the topicality of which has not at least reduced over the previous fifteen years. No cases are initiated under Article 148, and there seems to be no repression potential hidden therein. As it is, the Code is full of anti-extremists provisions, which have budded off the said Article 282. The enactment of the law on religious feelings resulted in no real (in human terms) consequences.

All this being said, the law on offending religious feelings represents yet another stage in the clericalization of the Russian legislation, yet another deviation from the fundamentals of the constitutional order—the principle of a secular state. It is indicative that when proving the pertinence of such law the said deputy Nilov cited as an example the profanation of a temple in Kaliningrad and called it the “Baltic Fleet Cathedral.” It has never occurred to him, Chairman of the Committee for Affairs of Religious Organizations, that the availability in the Armed Forces of their own cathedrals where soldiers and seamen are taken marching in columns is an immediate violation of the Federal Law “On the status of military personnel” under which military men may only participate in worship services and religious ceremonies as private individuals, the command may not use their job-related powers in the interest of any confessions, the government may not ensure “solemnizations” which may only be performed in the territory of a military unit “upon request of military personnel, at their own cost and with the unit commander’s consent” (Article 8). This law enacted in 1998 is still in effect, as are the Fundamentals of the Legislation on Culture of 1992 that capture the priority of human rights in the field of cultural activities over the rights of religious organizations (Article 9). Similarly, no one

has annulled, and will hardly take the risk of annulling the Declaration of Rights and Freedoms of Man and Citizen asserted by the Supreme Soviet in 1991, which guarantees, inter alia, the equal freedom of religious and atheistic activities, equal rights to disseminate religious or atheistic views and act in accordance therewith (Article 14). The latter means the complete legality of proactive anti-religious speeches, and not only the right to be an atheist in your own kitchen. Believers might disapprove anti-religious campaigns, and vice versa. However, the State does not fit in here—unless it is necessary to part fighters. However, in the countries where the state is neither atheistic, nor priest-ridden there are normally no fights between believers and non-believers; and if this is the case then it is between believers and other believers.

In the countries that have already survived their medieval time or which have done without it like the USA no special legislation on religion is required; there has not been any in the United States and in Europe, it is gradually vanishing. The status of religious organizations does not in any way differ (should not differ) from the status of other organizations. However, the enactment in 1990 by the Supreme Soviet of the RSFSR of the Law “On the freedom of conscience”, followed by the enactment by the Supreme Soviet of the USSR of a similar union-wide law was inevitable and justified after 70 years of persecution against the Church. The 1990 laws restored religious freedoms, liquidated government supervision and interference, but did not turned any groups of believers or believers in general into a privileged caste.

The Law of the RSFSR of 1990 established that “the state is neutral as regards the matters of the freedom of conscience and beliefs, i. e. it does not take the side of any religion or worldview” (Article 10).

The Federal Law “On the freedom of conscience and religious associations” of September 26, 1997 did not contain such a provision. Instead, it introduced a limitation of the rights of religious associations depending on the time of their appearance in the Russian Federation. While the Constitutional Court, which prohibited the extension of the 15-year long term to previously registered organizations, removed the acuteness of this discrimination the neutrality disappeared from the effective law of 1997. The preamble specifying the essence of the law includes the list of “titular” religions, the confessions were differentiated, second-rate believers appeared and then religious associations the membership in which must be repudiated under the pains and penalties of criminal prosecution.

There was no need to repeal the first Russian law and replace it with the law of 1997. However, today even the effective law requires protection from the ever-increasing governmentalization of the “traditional” religious institutes, and even greater limiting and restrictive measures in relation to religious and anti-religious dissidents.

The so-called “protection of the feelings of believers” is a link in this ideological and political process, which has nothing to do with truly religious people. This is why it is about the protection of unknown feelings, and not fully understandable and definite rights. Is there anything special about the feelings of believers so that they require special protection unlike the feelings of atheists? Criticizing the draft law, deputy Oleg Smolin (CPRF) noted: *“We are told that non-religious people have no sacred space; in other words, there is nothing sacred with them. Expressly for those who think this way I would like to quote the prominent Christian philosopher Nikolay Berdyaev: ‘The Russian atheism that turned out to be linked to socialism is a religious phenomenon. At the heart of it, there was love for truth... The remarkable ability of people of nihilistic worldview to sacrifice is a reflection of the fact that nihilism was a unique religious occurrence... That was the structure of the soul from which saints emerged. This can equally relate to Dobrolyubov, or Chernyshevsky... The militant atheism of the Russian revolutionary, socialistic and anarchistic movements was the Russian religiosity, the Russian apocalypitics turned inside out.’ So non-religious people have their sacred space, too, except that it is different.”*

Apart from the ideologization and clericalization of the legislation, the law “On religious feelings” is also unacceptable for more general reasons, as Yury Sinelshikov, a CPRF deputy, mentioned during the debates: *“Regretfully we can state that in our country the trend still remains where the criminal law is the main regulator of social relations. This is typical for an unhealthy society.”*

SERVING MILITARY DUTY BY RUSSIAN CITIZENS

REVIEW OF THE RUSSIAN LEGISLATION ON MATTERS OF MILITARY SERVICE

Federal Law No.288-FZ “On amendments to certain legislative instruments of the Russian Federation on the matters of establishment of the human mobilization reserve” dated December 30, 2012 entered into effect on January 1, 2013. In order to make up for the quantitative shortage in the contract-based military personnel (should this issue be present or occur in the future) this law creates a new type of military service—the mobilization reserve to be formed on a voluntary basis out of reserved military persons.

Now the reserve of the Armed Forces of the Russian Federation, other forces and military agencies has been divided into two categories: the mobilization reserve (as a form of continuation of military service) and the mobilization resource (reserve itself: other citizens who have completed their service under conscription or resigned upon completion of the contract).

The reservists serve based on the territorial principle, i. e. reside at home and are engaged in certain activities according to mobilization assignments. The reserve is most likely created for the purpose of social support and protection from unemployment of professional military retirees.

Not the institute itself, which is being created, can be assessed critically, but its legislative appearance. By developing the existing trend of transferring of regulation from the level of the federal law to the level of by-laws (which is typical for the current legislation in general) this law provides for the possibility of imposition on the reservists, apart from the duties associated with respective military posts, of uncertain “other duties” “established by the Regulation on the procedure of enrolment of Russian citizens in the mobilization

human reserve.” The Russian Government approves the Regulation. Even though the law has been effective for more than a year, this by-law has not been adopted yet, which constitutes a violation of the legislation.

The powers, rights and obligations of the defence and law enforcement agencies, including military formations, must only be exhaustively established in a federal law.

The Federal Law No.7-FZ “On amendments to certain legislative instruments of the Russian Federation on the matters of activity of the military police of the Armed Forces of the Russian Federation” dated February 3, 2014 entered into effect on February 4, 2014.

The situation with the recently enacted law on the military police is similar. While the military reserve could be established by way of making amendments to the effective laws, the establishment of the military police required the adoption of a special law regulating its activities, determining the status, rights and obligations of employees, i. e. a law equivalent to the law “On the police.”

The law dated February 3, 2014 only indicates the creation of a new structure by the means of introduction of a number of small supplements. The law “On defence” now includes the following entry: *“The main areas of activity, the functions and the powers of the military police are determined by the federal constitutional laws, federal laws, basic military regulations, the Manual of the Military Police of the Armed Forces of the Russian Federation and other regulatory legal instruments of the Russian Federation.”* At the same time the following novel appears in the law “On the status of military personnel”: *“For the purpose of fulfilment of job duties and special duties, including as part of the military police of the Armed Forces of the Russian Federation (hereinafter referred to as the military police) the military personnel may be granted additional rights to use weapons, physical force, special means, specifying of demands which are subject to compulsory implementation, subordination to strictly defined persons, and other rights determined by the federal laws, basic military regulations, the Manual of the Military Police of the Armed Forces of the Russian Federation (hereinafter referred to as the Manual of the Military Police) and other regulatory legal instruments of the Russian Federation.”*

This means that: 1) a new defence and enforcement agency is created with uncertain powers the scope of which will be determined by the Minister of Defence; 2) the military police will be engaged for the purpose of performance of “special duties” by which any number of things can be meant; 3) while the regular police may use weapons, special means, physical force in the events strictly

stipulated in the federal law, the military police will be empowered to use force and weapons outside the law, in the course of fulfilment of “special duties,” by order of the Minister of Defence or under a presidential order.

According to Article 55 (Part3) of the Russian Constitution, only federal laws may limit the rights and freedoms of man and citizen. For this reason, the federal law must regulate the powers and areas of activity of the military police, the rights and obligations of the employees thereof, the conditions of use by them of weapons and physical force completely.

The law also states that the military police is “intended for the purpose of protection of life, health, rights and freedoms of military personnel”, “for the prevention of crime,” and not only in the Armed Forces, as well as for the purpose of ensuring... of road traffic safety. The absence of clear boundaries of interference of the military police in the civil sphere tends to result in the use thereof not only for the resolution of internal issues of the military organization.

Its brisk passing through the Parliament supports the fact that this law was caused by the vital interest of the authorities. On December 2, 2013, the President brought in the draft of this law and signed it as early as on 3 February. It took less than two months, and excluding the New Year holidays less than one and a half months to perform three readings, as well as the consideration by the Federation Council. In the meanwhile, according to the Regulation of the State Duma, after bringing in of any draft law and after the first reading thereof it must be forwarded to the holders of the right of legislative initiative, which in the normal course of things requires the minimum of two and a half months before the second reading alone. The holders of the right of legislative initiative are, in particular, regional parliaments where the draft law must be received, examined, discussed at a plenary session, after which local deputies must vote on the opinion prepared in relation thereto or amendments made thereto after the first reading. Between the first and the second reading of this law just one week passed. This alone casts doubt on the legitimacy of this and a number of other laws enacted in the mode of special operation.

Another indicative thing is that not the Committee for Defence, but the Committee for Security was appointed the responsible committee that worked in the Duma on the draft law and secured its unimpeded passing. This is because in the current Duma the Committee for Defence belongs to the Communist Party of the Russian Federation, and the Committee for Security to United Russia.

The Federal Law No.111-FZ “On amendments to Article 23 of the Federal Law on military duty and military service” dated June 7, 2013 *entered into effect on August 1, 2013*.

As assured by the General Staff, the number of those sent to serve in the army will grow by one thousand soldiers annually due to this law. It follows therefrom that Russian nationals who have completed their military service in another state (then being not Russian nationals) are now no longer subject to exemption from military service due to the enactment of the above law. New Russian nationals under the age of 27 can now be called up, even if they have already completed their compulsory military service in their native country.

However, these citizens are still somewhat exempt, but only former nationals of the states with which Russia has a special international treaty in this respect. As of today, no such treaty exists with any country. The only thing that exists is international bilateral treaties with a number of former USSR states, such as Tadzhikistan or Turkmenistan, on the completion by Russian citizens of military service in the armed forces of these states. Hence, the exemption from conscription remains in force only for those who were Russian nationals at the time of completion of their military service in the army of such other state.

The Federal Law No.170-FZ “On amendments to certain legislative instruments of the Russian Federation to the extent of implementation of measures aimed at the promotion of prestige and attractiveness of compulsory military service” dated July 2, 2013 *entered into effect in January 1, 2014*.

The government have decided to increase the attractiveness of military service using the carrot and stick approach. The role of the stick is played by the so-called “black spot” which has now come to existence thanks to this law—“the recognition of a citizen as not having completed compulsory military service without any legitimate grounds”. The citizens branded this way are deprived as from 2014 of the right to be employed as state civil servants or municipal servants. The military service record book containing now such entry made at the time of transfer to the reserve will be the evidence of such defectiveness. As absence of legitimate grounds, any event can be treated when the citizen fails to complete compulsory service without deterrent or exemption granted by resolution of the call-up commission.

The law has a bright anti-constitutional tinge, because the principles of presumption of good faith and innocence are completely ignored, as well as the right to not be punished for acts for which no liability is established in the

legislation. The law “on attractiveness” of anything cannot serve as a law introducing liability. The law introducing punishment in form of prohibition on certain types of activity is the Criminal Code. Because the prohibition on holding certain positions or being engaged in certain types of activity is a kind of criminal penalty. The principle of legality taken as the basis for the Criminal Code means that the criminal nature and the punishment of an act can be determined only by the Criminal Code. No punishment can be irreversible and endless. Even those convicted for life have a chance to be released early on parole, and one of the grounds of abolition of capital punishment is the irreversibility of this punishment.

The said law introduces punishment without crime—a life-long deprivation of the right to be engaged in a certain type of activity. Based on the common law the Criminal Code, however, allows for the infliction of such penalty for the period of up to five years as a primary punishment, an up to three years as an additional punishment.

In the event of failure by a citizen to complete military service without legitimate grounds this means that either he has committed a criminal offence in form of evasion of draft, for which he must be punished in accordance with Article 328 of the Criminal Code, or he was not called-up through the fault of officers responsible for such call-up. Even if someone effectively avoided the receipt of the draft notice by roaming the desert until he is 27 years old, he would bear no liability for not being held criminally liable. Not to mention that there were in fact legitimate grounds but the military commissariat or the conscription commission from sadistic or corruptive motives did not accept them.

Even if the law under comment does increase the attractiveness of anything, then not that of compulsory military service, but of service in military commissariats. The need to obtain a documented confirmation of determent or exemption in order to not become the one stripped off his rights increases manifold the corruptogenic potential of those issuing the said documents.

It is impossible to explain in a legal way why state and municipal service turns out to depend on military service; why service in the army has become a condition of employment to a civil service post. This in effect means the militarization of civil service. If a citizen who has completed his service in the army is in terms of quality better than the one who has not, if the army gifts an individual with such qualities, then women must not be allowed to hold a civil service post, like it was 200 years ago.

A few words about the “carrot.” There is no carrot. The law suggests the following award for the completion of compulsory service (apart from the glow of satisfaction): the privileged right for those discharged from service and having a higher education diploma to be admitted *“to study according to higher education programs in the field of economics and management and corresponding to additional professional programs within the framework of programs and projects approved by the President of the Russian Federation and the Russian Government, in accordance with the procedure and on the terms provided for in the said programs and projects.”*

The privilege of making it into the authorities will be exercised by way of proving your advantages as compared to your likes: surely, the number of those wishing will significantly exceed the number of prizes at stake. The procedure and the terms of use of this advantage are unknown; this is why there are no such programs or projects. The “benefit” granted by the law turns out to be a non-thing.

The Federal Law No.185-FZ (version of December 28, 2013) “On amendments to certain legislative instruments of the Russian Federation and recognition as void of legislative instruments (certain provisions of legislative instruments) of the Russian Federation in connection with the enactment of the Federal Law “On education in the Russian Federation” dated July 2, 2013 entered into effect on January 1, 2014 in the version as of December 28, 2013.

The following amendments were made to the Federal Law “On military duty and military service:”

- ✓ the compulsory military training in schools and colleges became part of the educational program,
- ✓ elementary military training in schools and other educational institutions was declared a preparation for not only military, but any state service.

A new deterrent was introduced for the period of studying at preparatory divisions of certain higher education institutions the list of which is approved by the Government. This deterrent, like the previous and remaining deterrent till the completion of basic education, does not deprive a citizen of the right to use one more education-related deterrent, but only for the purpose of getting a higher education according to the programs of bachelor’s and specialist’s degree.

A deterrent was introduced for students of religious educational organizations licensed for the carrying out of educational activities. This being said,

the licensing of ecclesiastical educational organizations is in fact of permissive nature, which depends on the opinion of an expert commission. The commission assesses the “expediency of licensing of that particular institution” (letter of the Ministry of Education of Russia dated November 28, 2000). There are no prizes for guessing that as a rule the license is issued only to “titular” religious organizations named in the preamble to the Law “On the freedom of conscience and religious associations” (Orthodoxy, Islam, Buddhism and Judaism).

MONITORING LEGISLATION OF RUSSIAN FEDERATION ON TREASON

By Federal Law No.190-FZ “On amendments to the Criminal Code of the Russian Federation and Article 151 of the Criminal Procedure Code of the Russian Federation” dated November 12, 2012 the following amendments were made to the Criminal Code of the Russian Federation:

- 1) paragraph 1 of Article 275 was restated to read as follows: “Treason against the State, i. e. commitment by a citizen of the Russian Federation of espionage, disclosure to a foreign state, an international or foreign organization, or their representatives of information constituting State secrets which has been entrusted to a person or has become known to him/her in connection with their service, job, study or in other cases provided for in the legislation of the Russian Federation, or provision of financial, material and technical, consulting or other aid to a foreign state, an international or foreign organization, or their representatives in activities directed against the security of the Russian Federation;”
- 2) paragraph 1 of Article 276 was restated to read as follows: “Transfer, collection, stealing or storage for the purpose of transfer to a foreign state, an international or foreign organization, or their representatives of information constituting State secrets, as well as transfer or collection by order of foreign intelligence or a person acting for its benefit of other information for the purpose of using it against the security of the Russian Federation, i. e. espionage, provided these acts are committed by a foreign national or a person destitute of nationality.”

The analysis of the new versions of the above articles gives rise to certain doubts as to their conformity to the principle of legal certainty, which creates

a danger of violation of the constitutional principle of equality before the law and courts in the practical application of these provisions.

The laws providing for restrictions in the exercising of human rights and freedoms must not be arbitrary or unsubstantiated. The legal provisions limiting the exercising of human rights and freedoms must be set forth clearly and be accessible to everyone. According to the international law standards a law must be accessible, unambiguous and worded in the clearest possible terms to enable everyone to foresee to a sufficient degree of definiteness the illegality of any particular act. It must provide for sufficient guarantees and efficient remedies against unlawful or wrongful introduction or application of restrictions of human rights.

Uncertainty as a technical legal defect represents logical and lingual deviations, deformations in the construction and expression of legal provisions, which are manifested in the absence of an accurate and complete regulatory legal setting, which unavoidably leads to a deterioration of the regulatory properties of the law, impedes the interpretation of its provisions and prevents their efficient enforcement.

As a text error, the uncertainty of a legal instrument is manifested:

- ✓ in lingual (lexical) ambiguity resulting from breach of lingual techniques and means of wording of legal texts (use of non-finite verb phrases in impersonal sentences, use of properties of words, word combinations, etc.);
- ✓ in logical uncertainty as a result of incompliance with the principles and rules of formal logic in the course of preparation and adoption of regulatory legal instruments;
- ✓ in graphical uncertainty as a consequence of violation of the regularities and rules of organization of regulatory legal material.

The analysis of the text of the said bill enables us to detect all of the above manifestations of uncertainty of the legal instrument:

Law provisions “in activities directed against the security of the Russian Federation,” Art.275 of the Criminal Code of the Russian Federation (CC RF); “information for the purpose of using it against the security of the Russian Federation” (Art.276 of CC RF)

Manifestations of legal uncertainty: The term “security” lacks clear legal definition. According to Art.1 of Law No.2446-1 of the Russian Federation “On security” dated March 5, 1992, security is “... the state of protection of vital interests of an individual, the society and the State from

internal and external threats.” This definition seems loose and unclear. In addition, the extension of this provision to cover the internal security of the Russian Federation gives rise to graphical and logical uncertainty.

Law provisions: From the definition of activities of “a foreign state, an international or foreign organization, or their representatives” the attribute of hostility is excluded (Art. 275 of CC RF).

Manifestations of legal uncertainty: Without this attribute under the definition of treason against the State contacts of Russian nationals may fall which they maintain with foreign organizations and persons who are critically minded but not unfriendly, and which the authorities do not approve. In this situation, any contact of Russian nationals with representatives of international human rights organizations is a potential danger. It is impossible to distinguish criminal behaviour from non-criminal one.

Law provisions “... disclosure to a foreign state, an international or foreign organization, or their representatives of information constituting State secrets... which has become known to him/her in connection with their service, job or study...” (Art. 275 of CC RF).

Manifestations of legal uncertainty: According to Law No.5485-1 of the Russian Federation “On state secret” dated July 21, 1993, “The preservation of State secret ... is guaranteed by way of establishment of liability” only in the event of provision of citizens with access to State secret generally and in accordance with a special procedure (Art.21, 211, 26 of the Law of July 21, 1993). A national who becomes aware of any information outside the procedure of provision of access thereto “on a voluntary basis” and who has not been warned about the obligation of non-disclosure of State secret can’t and is not obliged to classify the information as constituting State secret or other guarded secret, and, hence, is not subject to liability for the disclosure of State secret. The discrepancies among the mentioned legal norms results in the condition of legal uncertainty.

Law provisions “... as well as transfer or collection by order of foreign intelligence or a person acting for its benefit, of other information...” (Art.276 of CC RF).

Manifestations of legal uncertainty: This wording means a no-fault liability for espionage for a person who transfers any information to another person, even if the latter is not a representative of intelligence authorities of a foreign state. The commitment by an individual of acts “for

the benefit of foreign intelligence” is a matter of judgment allowing for violent interpretation.

Given the grave consequences of erroneous and arbitrary application of criminal law provisions the general legal principles set thereto especially strict requirements as regards their certainty and accuracy of contents, utmost clarity and completeness of description of the essential elements of offence, availability of exact criteria of definition of prohibited act, which must be apprehensible and clearly realizable by a perpetrator and rule out every, the more so loose, interpretation by the law enforcement practice.

The criterion of certainty of a legal provision as a constitutional requirement to a law-maker was established in a number of Decrees of the Constitutional Court of the Russian Federation (including the one dated April 25, 1995 in the case of testing of constitutionality of Article 54 of the Housing Code of the RSFSR; dated July 15, 1999 in the case of testing of constitutionality of certain provisions of the Law of the RSFSR “On the state tax service of the RSFSR” and the Laws of the Russian Federation “On the fundamentals of the tax system in the Russian Federation” and “On the federal tax police authorities”). In accordance with the position of the Constitutional Court of the Russian Federation “the general law criterion of certainty, clarity and unambiguousness of a legal provision follows from the constitutional principle of equality before the law and the courts (Article 19, Part 1 of the Constitution of the Russian Federation), as such equality can only be ensured subject to the uniform understanding and construction of the provision by all law enforcers. In contrast, the uncertainty of contents of the legal provision allows for possible unlimited discretion in the process of law enforcement and unavoidably leads to arbitrary treatment, and, consequently, to the violation of the principles of equality, as well as the supremacy of law”.

As noted by the Constitutional Court of the Russian Federation in the Decree dated May 27, 2003 in the case of testing the constitutionality of the provision of Article 199 of the Criminal Code of the Russian Federation, the assessment of the degree of certainty of the concepts contained in the law must be performed based on not only the law text itself, the wordings used therein, but also based on their place in the system of regulatory prescriptions. In the context of this position it should be emphasized that unclear wordings of this bill are not compensated for by the provisions of other regulatory instruments, which increases the legal uncertainty of the provisions of the bill.

The uncertainty of the said provisions of the articles of the Criminal Code of the Russian Federation will inevitably result in a broad practice of use of non-detailed and unclear accusation. This will violate the most important right of the accused—to know what they are accused of and defend themselves against the brought charges (Cl. “a” § 3 Art.6 of the European Convention on the Protection of Human Rights and Fundamental Freedoms).

The European Court noted on a number of occasions “as far as criminal cases are concerned, the clear and complete notification of the charged offence and the legal qualification which the court could bring against the accused are material terms of a fair legal proceeding” (CommEDH, Chichlian et Ekindjian, Avis, 65). The European Court underlined “The notification provided for in Cl. 3 Art. 6 must simultaneously concern real facts incriminated to the accused and forming the basis of the accusation, and their legal qualification” (CommEDH, Chichlian et Ekindjian, Avis, 50).

The resolutions of the European Court emphasize the special role of the contents of the indictment in the exercising of the right of the accused to know what they are accused of: “The indictment plays a crucial role in criminal prosecution: as from the time of the notification the person brought into the proceeding is deemed having been officially notified about the legal and actual grounds for the charge stated against him/her” (Kamasinski, 79).

Evidently, in the said situation the laid down positions of the European Court for Human Rights and the provisions of Article 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms will be violated.

LEGAL ASPECTS OF PROTECTION OF INFORMATION AND USE OF THE INTERNET BY PRIVATE USERS

REVIEW OF RUSSIAN LEGISLATION ON INFORMATION PROTECTION

Federal Law No.187-FZ “On amendments to certain legislative instruments of the Russian Federation on the matters of protection of intellectual property rights in information and telecommunication networks” dated July 2, 2013 has been submitted for scientific legal examination.

The Federal Law under examination has been in effect since 01 August 2013 and is comprised of four articles by the means of which amendments have been made to the Civil Code, the Civil Procedure Code, the Arbitration Procedure Code and Federal Law No.149 “On information, information technologies and protection of information” dated July 27, 2006 (Corpus of legislative acts of the Russian Federation, 2006, No.31, Art. 3448; 2010, No.31, Art.4196; 2011, No.15, Art. 2038; No.30 Art.4600; 2012, No.31, Art. 4328; 2013, No.14, Art. 1658; No.23, Art. 2870).

First, it is worth mentioning that the said law covers the protection of exclusive rights to films, television films and cinema films. However, the matters of exclusive right¹ are governed by Part 4 of the Civil Code of the Russian Federation where no such notion as “film” is used. Article 1263 of the Civil Code uses such notion as “audio-visual piece”—“An audio-visual piece is a piece

¹ Article 1229 of the Civil Code of the Russian Federation contains references to exclusive right in the singular.

comprised of a fixed series of interconnected images (accompanied or not accompanied by sound) and intended for visual and aural (when accompanied by sound) perception with the help of corresponding technical devices. Audio-visual pieces include cinematographic pieces, as well as all pieces expressed by the means which are similar to cinematography (television and video films and other similar pieces) irrespective of the method of their initial or subsequent fixation.”

Thus, the law under analysis narrows significantly the notion of the copyright items to which it extends its scope solely to films, television films and cinema films, whereas the notion used in Article 1263 of the Civil Code of the Russian Federation is broader and includes other audiovisual pieces, such as commercials, music clips, amateur video, home video, etc.

Along with that one more draft, law has been now brought in to the State Duma. The draft of the said regulatory legal instrument widens the scope of the law under analysis from films to all copyright items.

We are talking about Federal Law draft No.342640-6 “On amendments to the Civil Code of the Russian Federation, the Civil Procedure Code of the Russian Federation, the Arbitration Procedure Code of the Russian Federation and the Federal Law “On information, information technologies and protection of information.”

The draft law says that in the course of legal proceeding the information in controversy may be blocked or deleted by the holder of exclusive rights to any result of intellectual activity (book, piece of music, photograph, film, etc.) prior to the adoption by the court of an act with which the consideration by the court of the case on merits is completed. As from August 1, 2013, holders of exclusive rights to films can do it, too.

Before filing to the court of a petition, seeking the application of injunctive relief in a civil or arbitration process the right holder will have to submit to the information broker a statement of violation of copyrights and related rights. The decision on the application of measures of public enforcement will be adopted only in the event when the information broker fails to perform the acts required to stop the violation of the said rights (please find more details in the next section).

Only the holders of rights to films will preserve the opportunity to claim the application of injunctive measures prior to the referral to the court. The holders of exclusive rights to other results of intellectual activities will be able

to petition for the application of injunctive measures after the submission of the statement of claim.

It is planned to make amendments to the provisions on the jurisdiction and cognisance of disputes regarding the protection of copyrights and related rights to materials published on the Internet. The court for intellectual property rights will consider all such cases, except for cases of protection of rights to films.

Currently such disputes are resolved either by courts of general jurisdiction, or by arbitration courts in accordance with the general rules of jurisdiction and cognisance (see Chapter 3 of the Civil Procedure Code of the Russian Federation, § 1 and 2 of Chapter 2 of the Arbitration Procedure Code of the Russian Federation). As far as cases of protection of exclusive rights to films are concerned, they are considered in the Moscow City Court provided this court has applied preliminary injunctive measures in connection therewith (Part 3 Art.26 of the Civil Procedure Code of the Russian Federation).

“In accordance with Clause 1 Art. 90 of the Arbitration Procedure Code of the Russian Federation injunctive measures mean prompt temporary measures aimed at the securing of the claim or the claimant’s proprietary interests. Art. 91 of the Arbitration Procedure Code contains the list of these measures, including, inter alia, the seizure of money funds (including money funds that will be received in the bank account) or other property owned by the defendant and being in his possession or the possession of other persons, the prohibition on the performance by the defendant and other persons of certain acts relating to the subject matter of the dispute.

Law No.187-FZ has not introduced to the Civil Procedure Code of the Russian Federation any general provisions on preliminary injunctive measures. The supplementing of the Civil Procedure Code with Art. 144.1 means in fact that preliminary injunctive measures may be applied by the court only within the framework of consideration of cases on the protection of the claimant’s intellectual property rights to films, including cinema films, television films, in information an telecommunication networks, and not within the framework of any cases within the scope of competence of courts of general jurisdiction.

It follows from the provisions of the newly introduced Art. 144.1 of the Civil Procedure Code of the Russian Federation that prior to the submission of the statement of claim the court may rightfully apply preliminary injunc-

tive measures. The purpose thereof is to ensure the protection of the exclusive rights to films, including cinema films, television films, of the claimant in information and telecommunication networks, including on the Internet.

For the purpose of application of preliminary injunctive measures, an organization or a citizen must submit a petition for the preliminary ensuring of protection of exclusive rights to films, including cinema films, television films, in information and telecommunication networks (including on the Internet).

The petition for the preliminary ensuring of protection of exclusive rights to films, including cinema films, television films, in information and telecommunication networks (including on the Internet) may be filed:

- ✓ in writing;
- ✓ or by way of completion of the form published on the official website of the court in the information and telecommunication network—the Internet. In this event, a certified digital signature must be affixed thereto in accordance with the procedure established in the federal law (Cl.1 Art.144.1 of the Civil Procedure Code of the Russian Federation). For this purpose the applicant must visit the webpage of the Moscow City Court: <http://lk.mos-gorsud.ru/MccPortal/register>.”²

By the law under analysis the provision has been added to Art. 26 of the Civil Procedure Code in accordance with which the Moscow City Court in the capacity of a court of first instance considers civil cases in connection with the protection of exclusive rights to films, including cinema films, television films, in information and telecommunication networks, including on the Internet, and regarding which preliminary injunctive measures have been applied by it.

The said article in combination with the provisions of Art. 144.1 of the Civil Procedure Code grants to the Moscow City Court the right to apply injunctive measures in the event of submission of a petition for the preliminary ensuring of protection of exclusive rights to films, including cinema films, television films, in information and telecommunication networks, including on the Internet. For this purpose, the applicant must submit to the court the documents in support of the actual use in information and telecommunication networks, including the Internet, of the intellectual property items, and the applicant’s rights to the said items. Failure to submit the said documents to the court constitutes a ground for the rendering of a ruling denying the

² Please refer to L.Chistyakova “Anti-piracy” law // Taxation Bulletin. 2013. No.9. P.20–33.

preliminary ensuring of protection of exclusive rights to films, including cinema films, television films, in information and telecommunication networks, including on the Internet, where the court clarifies the right to submit a new application subject to the compliance with the requirements of the present part, as well as the right to file a statement of claim in accordance with the general procedure. In the event of filing of the petition for the ensuring of protection of exclusive rights to films, including cinema films, television films, in information and telecommunication networks, including on the Internet, in accordance with the present article by way of completion of the form published on the official website of the Moscow City Court in the information and telecommunication network—the Internet, the documents in support of the actual use in information and telecommunication networks, including on the Internet, of the intellectual property items, and the applicant's rights to the said items may be submitted in electronic form.

Injunctive measures contemplate the ensuring of restriction of access to the information (film) in the event of satisfaction by the court of the request contained in the submitted petition for injunctive measures. The access to the film in controversy is in fact blocked for the period of consideration of the claim.

As noted by the Plenum of the Supreme Arbitration Court of the Russian Federation in Decree No.60 “On certain matters arisen in connection with the creation in the system of arbitration courts of the Court for Intellectual Property Rights” dated October 8, 2012, pursuant to Cl. 4.2 Part 1 Art. 33 of the Arbitration Procedure Code of the Russian Federation and with account of Cl. 2 Art. 43.4 of Federal Constitutional Law No.1-FKZ “On arbitration courts in the Russian Federation” of 28.04.1995 (hereinafter referred to as Law No.1-FKZ), the cases specified in Cl.1 Art. 43.4 of Law No.1-FKZ submit to the jurisdiction of arbitration courts irrespective of the legal capacity of the participants of the legal relations in dispute, as well as the nature of the dispute. This means that corresponding cases are admissible to the Court for Intellectual Property Rights as a court of first instance.

Nevertheless, the petition for the preliminary ensuring of protection of exclusive rights to films, including cinema films, television films, in information and telecommunication networks, including on the Internet, may only be filed to the Moscow City Court (Cl. 3 Art. 144.1 of the Civil Procedure Code of the Russian Federation).

The law under consideration suggests the supplementing of Federal Law No.149-FZ “On information, information technologies and protection of information” with Article 15.2 which established the duty of the information broker to block the access to the films in controversy and entitles the right holder to refer to the information broker (Internet service provider) or to the federal executive body fulfilling the functions of control and supervision in the field of mass media with a request for blocking such resource or webpage where the film in controversy is contained.

“In the event of detection in information and telecommunication networks, including on the Internet, of films, including cinema films, television films, or information required for the obtaining thereof using information and telecommunication networks, which are distributed without its consent or other legitimate ground the right holder may refer to the federal executive body fulfilling the functions of control and supervision in the field of mass media, mass communications, information technologies and communication with a petition for the application of measures aimed at the restriction of access to the information resources distributing such films or information, on the basis of a judicial act which has come into effect.”

Upon receipt from the right holder of the petition the federal executive body fulfilling the functions of control and supervision in the field of mass media, mass communications, information technologies and communication based on judicial acts which have entered into effect shall do the following within three business days:

- 1) determine the hosting service provider or other person ensuring the publishing in the information and telecommunication network, including on the Internet, of the said information resource, and servicing the website owner where the information is published containing films, including cinema films, television films, or the information required for the obtaining thereof using information and telecommunication networks, without the right holder’s consent or other legitimate ground;
- 2) forward to the hosting service provider or other person stated in Clause 1 of the present part a notification in electronic form in Russian and in English about the violation of exclusive rights to films, including cinema films, television films, with the indication of the name of the piece, its author, right holder, domain name and network address enabling the identification of the website where the infor-

mation is published containing films, including cinema films, television films, or the information required for the obtaining thereof using information and telecommunication networks, without the right holder's consent or other legitimate ground, as well as page indexes of the website enabling the identification of such information, and with the request for the application of measures aimed at the deletion of such information.

Within one working day upon receipt of the notification the hosting service provider shall inform thereof the owner of the information resource serviced by it and notify the owner about the need to immediately delete the information published illegally or to apply measures aimed at the restriction of access thereto.

Within one business day upon receipt from the hosting service provider of the notification about the need to delete the information published illegally, the owner of the information resource shall delete such information. In the event of refusal or failure on the part of the information resource owner to do that, the provider shall restrict access to the corresponding information resource within not more than three business days upon receipt of the notification.

This law can be assessed positively as a regulatory instrument ensuring the protection of the right to intellectual property guaranteed by Article 44 of the Russian Constitution. On the other hand, this law deserves some critical comments, the main of which resolves itself to the following:

"Thus, the law maker has granted to Roscomnadzor the right to suspend access to the Internet resource where, in the opinion of the right holder, the video file is contained for the use of which the latter has not given its consent. In the opinion of many online companies, this will jeopardize entrepreneurial activities in the sphere of information. Any malicious person (for example, an unfair competitor) can leave a comment on any website with a link to the item of copyrights or related rights. This is enough for the resource to be blocked within the framework of "injunctive measures." The granting to Roscomnadzor of the said powers will significantly "strengthen" the position of this body in the system of executive authorities, which is not particularly balanced as it is.

The activities of this structure are quite specific and reduce themselves to supervision in the field of specific information technologies. Such legislative measure will facilitate the development of secrecy and administrative discretion in the resolution of issues of suspension of access to information resources. This will lead to corruption. The organ that controls Roscomnadzor is the Russian Public

Prosecutor's Office. However, prosecutors do not have special knowledge required for the verification of the forms and methods used by the said agency to detect wrongdoers. Hence, the Public Prosecutor's supervision in this sphere will have no positive effects without its corresponding upgrading.”³

In particular, the Ministry of Culture provides the following clarification to the Federal Law under analysis:

“Two criteria were taken as the basis: focus on the user and involvement of the court. Based thereon the Russian law was compared to foreign legislative and enforcement equivalents.

Judging from the results of the said comparative analysis it turns out that the Copyright Alerts in the USA, the Digital Economy Act in Great Britain, the HADOPI in France, the Copyright (Infringing File Sharing) Amendment Act in New Zealand, and the famous German torrent practice are all focused on the user, whereas Law No.187-FZ in Russia does not at all concern it.

This being said, the above western mechanisms enable blocking without the involvement of the court, while the new Russian Law provides for a compulsory expert examination of the right holder's application by two of the three existing government branches—the executive (Roscomnadzor) and the judicial (Moscow City Court).

In other words, Law No.187-FZ is the one that much better takes the rights of users into account. Even better than the American, European and other worldwide equivalents. From the perspective of weighted decisions it seems to leave the said equivalents behind, as it provides for both compulsory involvement of the court, and filtering by the federal executive body, which, unlike Russia, is not implemented in the above foreign countries.”

Law No.187-FZ contains the provisions the application of which can cause substantial harm to the industry of information technologies. Thus, the possibility of blocking a network address based on the petition of the right holder cannot be treated as a positive aspect, because one network address may contain many domain names. Consequently, the blocking of one network address can result in the blocking of websites, which have nothing to do with the violation of the intellectual property rights.

³ V. Strelnikov “Anti-piracy law” against the freedom of the Internet // *EZh-Yurist*. 2013. No.35. P. 1, 4–5.

Law No.187-FZ does not establish the term and the obligation to restore the access to the previously blocked information resource. The Law says the information broker transmitting the materials is not obliged to know that the use of the corresponding result of intellectual activities or means of individualization by the person initiating the transmission of the material containing the corresponding result of intellectual activities or means of individualization is unlawful. This provision will force it to block access to information resources at the request of any person acting as the right holder who has notified the information broker transmitting the materials about the existing violation of intellectual property rights. In the event of failure by the information broker to comply with the said requirement it too will be subject to liability for the violation of intellectual property rights. However, it will be extremely difficult for such information broker transmitting the materials to evaluate the lawfulness of the petitioner's acts.

A system of objections has been provided for as regards the lawfulness of the petition of the person acting as the right holder. The determination of the court on the use of injunctive measures can be appealed against, but only by the persons participating in the case. Thus, the legislation does not provide for the procedure of appealing against the court determination prior to the filing of the statement of claim, and the consideration of the appeal against the court determination on the adoption of injunctive measures can take up to two months⁴.

REVIEW ON RUSSIAN LEGISLATION ON USING THE INTERNET

On May 5, 2014, the State Duma adopted the Federal Law No.97-FZ, which was immediately called the "law on bloggers" or also the "law on strengthening the control over citizens' Internet communications" in the Russian Internet. A group of deputies from all fractions, including Mitrofanov, Lugovoi, Dengin and the chairperson of the Committee for Security and Anti-Corruption Yarovaya, proposed the law as a part of the anti-terrorism legislative package.

⁴ Please find more details in K. Vasichkin. Liability for violation of intellectual property rights on the Internet // Legislation and economics. 2013. No.9.

This legal act is designed in the spirit of prohibitory legislative trend and illustrates the attempts to introduce mechanisms of legal regulation of content in the web. It inspired a broad public discussion and sharp criticism in the Internet sector and the blogosphere.

Apart from setting bloggers actually equal to mass media, the law also imposes new obligations on the participants of in-network relations on disseminating information in the Internet, obliges to notify the Federal Service for Supervision in the Sphere of Telecom, Information Technologies and Mass Communications (Roscomnadzor) about beginning the activity on the web, prohibits anonymity and introduces very significant penalties for failure to comply with these requirements. The text of the Law is full of legal casuistry, blurred and imprecise definitions and includes ambiguous technical mechanisms for its implementation. The proposed norm about the mandatory six-month storage of all logs (information about user activity) by all organizers of information dissemination actually nullifies the fundamental human and civil rights to privacy of correspondence and privacy of private life.

1. The organizer of information dissemination in the Internet is a person performing activities on maintaining the functioning of information systems and (or) programs for electronic computers, which are designed and (or) used for the reception, transmission, delivery and (or) processing of electronic messages of the Internet users.

2. The organizer of information dissemination in the Internet must notify in the way prescribed by the Russian Government the federal executive body exercising functions of control and supervision in the field of mass media, mass communications, information technologies and communications, about the beginning of the activities described in part 1 of this article.

According to the text of the law any owner of a website with feedback function, as well as any developer of software containing whatever functionality for sending and receiving information on the web, must notify Roscomnadzor on the beginning of its activities. Thus, the law actually extends its geography to the whole world, breaking one of the fundamental principles of civil and criminal law—the territorial application of a law. No matter the residents of which country the owners of the website are, which language is the information on the website translated into, which content the website has, which domain zone is the website registered in, in which territory are its power servers (hosting) located, the website owner must notify Roscomnadzor about the beginning of his work.

3. The organizer of information dissemination in the Internet must store within the territory of the Russian Federation the information about the facts of reception, transmission, delivery and (or) processing of voice information, written text, images, sounds or other electronic communications of the Internet users and the information about these users for six months after the end of such actions, and provide this information to the authorized state bodies engaged in investigative activities or provision of security in the Russian Federation in the cases stated by federal laws.

4. The organizer of information dissemination in the Internet must ensure the implementation of the requirements for hardware and software, used by the organizer in the operated information systems, established by the federal executive authority in the sphere of communications in coordination with the authorized state bodies engaged in investigative activities or provision of security in the Russian Federation, for the purpose of conducting by these bodies in cases stated by federal laws of activities to implement their tasks, as well as take measures to prevent the disclosure of organizational and tactical methods of these activities. The order of interaction of organizers of information dissemination in the Internet with the authorized state bodies engaged in investigative activities or the Government of the Russian Federation establishes provision of security in the Russian Federation.

The law actually states that any owner of a website, online service or software is required to carry out a twenty-four-hour non-judicial surveillance of all Internet users, and at his own expense carry out the collection and storage of data about the user activity not authorized either by the users or by the court. Such an approach spares the law enforcement agencies from the need to bear any expenses on purchasing the expensive equipment required for data collection and organization of accounting and storage of such data, placing the mentioned costs on the industry. However, this principle obviously contradicts the Articles 23 and 24 of the Constitution of Russia, according to which the restriction of the right to the privacy of correspondence, telephone conversations, postal, telegraph and other communications is possible only on the basis of a court decision, and the collection, storage, use and dissemination of information about the private life of a person without his consent is not permitted. Thus, in Russia starts an order of constant monitoring of all communications of Internet users and massive data collection, which was previously, according to disclosures of Snowden, carried out by U. S. intelligence agencies secretly. Herewith the law expressly prohibits “the organizers

of information dissemination” to disclose any information about the mechanisms and methods of collecting data about the user activity.

5. Obligations under this article do not apply to operators of state information systems, operators of municipal information systems, communications operators providing communications services on the basis of the relevant license in the field of the licensed activities, as well as do not apply to citizens (individuals) engaged in activities specified in part 1 of this article for personal, family and household needs. The Government of the Russian Federation defines the list of personal, family and household needs in the implementation of the activities referred to in part 1 of this article for the purpose of applying the provisions of this article.

The legislator exempted the providers from the application of the law, as they are already carrying out similar activities using the mechanism of SORM-3, which must be in a mandatory manner installed and connected to the equipment of the provider. The Government of the Russian Federation will determine the definition of certain information as personal, family or household for exemption of activities of owners of certain information resources and programs as well as citizens.

Article 10.2. The special aspects of distribution of publicly available information by a blogger.

1. The owner of a site and (or) a page in the Internet, where the publicly available information is published and the access to which get more than three thousand Internet users daily (hereinafter—a blogger) ...

In the understanding of Internet users, a blogger is an owner and an author of an online diary, which uses a blog platform for presenting of his thoughts and observations on a particular occasion to a narrow or a wide range of readers. However, the law specifies that a blogger is any “owner of a site and (or) a page” in the global Internet with the attendance of more than 3,000 people per day. This provision causes the greatest perplexity among specialists, as the law does not define the mechanism of counting attendance of a page or a site. The counting algorithm will obviously be given in the bylaws. However, we should talk about the number of unique visitors.

... while publishing and using the mentioned information including publishing the mentioned information on these websites or pages of the websites by other Internet users, must secure the enforcement of laws of the Russian Federation, in particular:

1) must not allow the use of the site or site pages in the Internet for the purposes of criminal offenses, for the disclosure of information constituting a state secret or other secret protected by law, for the dissemination of materials containing public appeals to terrorist activities or publicly justifying terrorism, other extremist materials and materials that promote pornography, violence and cruelty, and materials containing obscene language;

2) must check the accuracy of the information posted publicly before its publication and immediately remove the false information;

3) must prevent the dissemination of information about the private life of a citizen in violation of the civil law;

4) must comply with the prohibitions and restrictions stipulated by the legislation of the Russian Federation on referendum and the legislation of the Russian Federation on elections;

5) must comply with the requirements of the legislation of the Russian Federation governing the distribution of information;

6) must respect the rights and legitimate interests of citizens and organizations, including honour, dignity and business reputation of citizens, organizations' reputation.

These obligations do not introduce any innovations, but repeat the norms of the laws in force, according to which any citizen (not just a blogger) must comply with the requirements of Russian legislation and not undertake any illegal actions. However, the owner of a site/page is not only responsible for the content of information posted with his consent, but is entirely responsible for the content of all the comments that are left on his site/page by unauthorized users. The fears of experts in connection with the inclusion into the text of the law of such a provision are that the mentioned tool can be used for provocation and unfair competition. Virtually any information about the private life and professional reputation of public officials can be recognized as illegal (also including the information on undeclared income and illegal activities), which is posted by citizens conducting social control, if such information is not confirmed by a court decision being in legal force.

2. While posting the information on the website or webpage in the Internet it is not allowed:

1) to use a website or a webpage in the Internet for the purposes of concealing or falsifying socially important information, dissemination of deliberately false information under the guise of reliable;

2) to disseminate information for the purposes of discrediting a citizen or some categories of citizens on grounds of sex, age, race or ethnic origin, language, religion, profession, place of residence and work, and also because of their political beliefs.

These wordings also caused confusion among many legal practitioners and civil activists. It is unclear what “the use of a website or a webpage for the purposes of concealing/falsifying socially important information” and how the checks will be organized to reveal the concealing/falsifying of such facts, who will determine, which information should be recognized as socially important and which mean not. The law can be also used to prosecute citizens and close websites, criticising the activities of public politicians and law enforcement officials, which situation can affect the work of many social organizations and movements engaged in civil investigations against corrupt officials and representatives of law enforcement agencies.

3. A blogger has the right:

1) to freely seek, receive, transmit and distribute the information in any way in accordance with the legislation of the Russian Federation;

2) to express on his site or page in the Internet his personal judgments and assessments with his name or a nickname;

3) to post or allow to post on his site or page in the Internet texts and (or) other materials from other Internet users if the posting of such texts and (or) other materials does not contradict the legislation of the Russian Federation;

4) to distribute advertising on his site or page in the Internet on a remuneration basis in accordance with the civil legislation, the Federal Law from March 13, 2006 No.38-FZ “On Advertising.”

The law does not give any additional rights to bloggers, which they have not previously had. The article lists fundamental rights belonging to everyone according to paragraph 4 of article 29: everyone has the right to freely seek, receive, transmit, produce and distribute information in any legal way; paragraph 1 of article 29 freedom of thought and expression is guaranteed to everyone; article 34 everyone has the right to freely use their abilities and property for entrepreneurial and other economic activities not prohibited by law. The remark of the Human Rights Council seems fair that the original purpose of the bill, as stated by a number of deputies, was setting major bloggers equal to mass media in order “to protect the rights of citizens and arrange the dissemination of information and exchange of data between Internet users.” While the own-

ers of the Internet mass media have the right to voluntarily register as mass media, mandatory registration requirements for bloggers was chosen with consequent administrative responsibility in the event of noncompliance. The law burdens bloggers with additional journalist duties, such as review the accuracy of the posted information, as performance the constant moderation and editing of other users comments left on the website/webpage). At the same time the law does not grant bloggers additional rights granted to journalists, such as the right to attend the specially protected places of natural disasters, accidents, and catastrophes, mass riots and mass gatherings, as well as the areas in which the state of emergency is declared, the right to access documents and materials, the right to be accredited by the state authorities, which are obliged to pre-notify them of meetings, briefings and other events, provide transcripts, protocols and other documents, create favourable conditions for making records and other rights under the law "On mass media."

4. The abuse of the right to distribute publicly available information taking the form of violating the requirements of parts 1, 2 and 3 of this article shall cause criminal, administrative or other liability in accordance with the legislation of the Russian Federation.

The law provides for a serious responsibility, including criminal, for violating obligations and restrictions imposed by the above regulations.

5. A blogger is obliged to place on his site or page in the Internet his family name and initials, e-mail address for sending him legally relevant messages.

Obviously, in the digital age where the information about users is illegally collected by private corporations and intelligence agencies of different countries, one of the basic human rights is the right to anonymity and encryption, which ensures the observance of fundamental human and civil rights to privacy of private life and privacy of correspondence. However, the law actually prohibits the human right to anonymity by introducing an obligation for bloggers to indicate their real family name and initials.

6. A blogger is obliged immediately upon receiving a court decision, which came into force and contains the requirement to publish it on the site or page, to publish it on his site or page in the Internet.

The possibility of implementing the provisions of the law by imposing the obligation on foreign bloggers to publish the decisions of Russian courts seems quite questionable.

7. The owners of the sites in the Internet, which are registered as Internet media in accordance with the Law of the Russian Federation from December 27, 1991 No.2124-I “On mass media,” are not bloggers.

With this paragraph, the Internet media registered as mass media are excluded from the effect of the law. In fact, the bill introduces the institute of mandatory registration of any journalistic or literary activity in Russia, offering two mechanisms of such registration: as a mass media with the full set of rights provided either by the special law or as a blogger with a limited set of rights.

8. The federal executive body exercising functions of control and supervision in the field of mass media, mass communications, information technologies and communications maintains a register of sites and (or) site pages in the Internet that host publicly available information and the access to which get more than three thousand Internet users daily. In order to ensure the development of the register of sites and (or) site pages in the Internet the federal executive body exercising functions of control and supervision in the field of mass media, mass communications, information technologies and communications:

- 1) organizes the monitoring of sites and site pages in the Internet;
- 2) approves the methodology for determining the number of users of the site or site page in the Internet daily;
- 3) has the right to request from the organizers of information dissemination in the Internet, bloggers and other persons the information necessary for maintaining such a register. The persons listed above must provide the requested information no later than ten days from the date of receiving the request of the federal executive body exercising functions of control and supervision in the field of mass media, mass communications, information technologies and communications.

As mentioned above, many experts question the procedure currently being drafted by Roscomnadzor on determining the number of users of the site/page that is. At the same time there are no legal mechanisms to influence the foreign owners of websites (such as *Twitter*, *Facebook*, *Google*) provide the confidential information about users on the first request of the Russian regulator, except for the only efficient mechanism—blocking the site entirely on the territory of the whole country at the level of communications operators. However, this method of influence on the multimillion social network appears disproportionate for the failure of the owner of the

online service to comply with responsibility to disclose data concerning even a single user.

9. In case of detection in information-telecommunications networks, also including the Internet, of websites or webpages hosting publicly available information and the access to which get more than three thousand Internet users daily, including the consideration of relevant requests of citizens or organizations, the federal executive body exercising functions of control and supervision in the field of mass media, mass communications, information technologies and communications:

1) includes the abovementioned site or site page in the Internet into the register of sites and (or) site pages in the Internet that host publicly available information and the access to which get more than three thousand Internet users daily;

2) determines the hosting provider or other person providing hosting for the site or site page in the Internet;

3) addresses the hosting provider or the person referred to in paragraph 2 of this part with the electronic notice in Russian and English about the necessity to provide the data enabling to identify the blogger.

Paragraph 3 of the article confirms the intention of the legislator to regulate not only the Russian segment of the Internet, the so-called Runet, but the entire global Network, also including the websites that are even outside the Russian jurisdiction.

10. Within three working days on receiving the notification referred to in paragraph 3 of part 9 of this article, the hosting provider or the person referred to in paragraph 2 of part 9 of this article must provide the data enabling to identify the blogger.

11. Upon the receipt of the information specified in paragraph 3 of part 9 of this article, the federal executive body exercising functions of control and supervision in the field of mass media, mass communications, information technologies and communications sends notification to the blogger about the inclusion of his website or website page into the register of sites and (or) site pages in the Internet that host publicly available information and the access to which get more than three thousand Internet users daily, specifying the requirements of Russian legislation applicable to this site or site page in the Internet.

12. If the daily access to the site or site page in the Internet during three months is less than three thousand Internet users, this site or site page in the

Internet is excluded from the register of sites and (or) site pages in the Internet that host publicly available information and the access to which get more than three thousand Internet users daily after the request of the blogger and the blogger is sent an appropriate notice about it. This site or site page in the Internet may be excluded from the register without the request of the blogger if the daily access to the site or site page in the Internet during six months is less than three thousand Internet users.

The deadline for provision of data is very short, which, in addition to the new obligations imposed on hosting providers by the laws No.139-FZ, No.187-FZ and No.398-FZ and the articles 15.1–15.3 of the Federal Law “On information” in connection with spreading illegal information, will require staff increase and expansion of working duties of the employees of hosting providers. This can cause the growth of prices for hosting services, and also give additional reasons for the flight of hosts under the jurisdiction of other countries.

The Law provides that the registration of all “3,000-bloggers” is made mandatory, but the exclusion from the register of bloggers is made only after the request of the blogger, if the daily access to the site or site page in the Internet during three months is less than three thousand Internet users. Without the personal request of the blogger the automatic exclusion from the register, “may be” performed only after six months if the daily attendance is less than three thousand Internet people.

An “organizer of information dissemination” may face the measures of federal blocking of his site/page/service at the level of Internet providers of access for failure to fulfil the obligations imposed by the Law.

Article 154. The procedure of limiting access to the information resource of an organizer of information dissemination in the Internet

1. If the failure of an organizer of information dissemination in the Internet to comply with his obligations under the article 101 of this Federal Law is established by a judgment on administrative offense which has entered into legal force, the authorized federal executive body sends a notification in his address (the address of its branch or representative office), indicating the period to comply with these obligations, which must not be less than fifteen days.

2. Upon the failure of an organizer of information dissemination in the Internet to comply with his obligations under the article 101 of this Federal Law in the period specified in the notification, the access to information systems and (or) programs for electronic computers, designed and (or) used to receive, transmit, deliver and (or) process electronic communications of Internet users,

the operation of which is provided by this organizer, is limited by communications operator providing services to provide access to the Internet on the basis of the court decision which has entered into legal force or decision of the authorized federal executive body until such obligations are fulfilled.

The procedure of interaction of the authorized federal executive body with an organizer of information dissemination in the Internet, the procedure of sending the notification mentioned in part 1 of this article, the procedure of limiting and regaining access to those mentioned in part 2 of this article information systems and (or) programs and the procedure of informing citizens (individuals) about such limitations are established by the Government of the Russian Federation.

Thus, the fourth reason for blocking Internet resources is added into the text of the Federal Law “On Information.” At the same time the law provides that a decision on the website/web-service blocking can be taken within an administrative procedure by Roscomnadzor, which excludes the possibility of protecting in an open competitive court trial the violated rights and the rights of users-customers of the website/web-service with the assistance of the owner or the operator of information dissemination participating in the case.

Make the following amendments in the Code on Administrative Offences of the Russian Federation:

1) to paragraph 1 of part 1 of article 3.5, after the words “by part 4 of Article 18.15,” add the words “by article 19.710;”

2) article 13.18 reword as follows:

“Article 13.18. Hindering the reliable reception of radio and television programs and work of Internet sites

1. Hindering the reliable reception of radio and television programs by creating artificial interference

— will cause an administrative fine for citizens in the amount from five hundred to one thousand roubles; for officials—from one thousand to two thousand roubles; for legal entities—from ten thousand to twenty thousand roubles.

2. Hindering the work of Internet sites, including the official websites of state authorities or local authorities, except for the cases of limiting access to Internet sites based on a court decision or decision of the authorized federal executive body, or the commission of actions aimed to deliberately unlawfully limit the access to these sites

— will cause an administrative fine for citizens in the amount from five hundred to one thousand roubles; for officials—from one thousand to two thousand roubles; for legal entities—from ten thousand to twenty thousand roubles;”

3) to chapter 13 add the article 13.31 of the following content:

“Article 13.31. Failure to comply with obligations by an organizer of information dissemination in the Internet

1. Failure by an organizer of information dissemination in the Internet to comply with the obligation to notify the authorized federal executive body about the beginning of activities on maintaining the functioning of information systems and (or) programs for electronic computers, which are designed and (or) used for the reception, transmission, delivery and (or) processing of electronic communications of Internet users

— will cause an administrative fine for citizens in the amount from one thousand to three thousand roubles; for officials—from ten thousand to thirty thousand roubles; for legal entities—from one hundred thousand to three hundred thousand roubles.

2. Failure by an organizer of information dissemination in the Internet to comply with the established by federal law obligation to store and (or) provide to the authorized public bodies engaged in investigative activities or provision of security in the Russian Federation the information on the facts of reception, transmission, delivery and (or) processing of voice information, written text, images, sounds or other electronic communications of the Internet users and the information about such users

— will cause an administrative fine for citizens in the amount from three thousand to five thousand roubles; for officials—from thirty thousand to fifty thousand roubles; for legal entities—from three hundred thousand to five hundred thousand roubles.

3. Failure by an organizer of information dissemination in the Internet to comply with the obligation to ensure the implementation of the established by federal law requirements for hardware and software, used by the organizer in the operated information systems, aimed to enable the authorized state bodies engaged in investigative activities or provision of security in the Russian Federation, in cases stated by federal laws to perform such activities, as well as take measures to prevent the disclosure of organizational and tactical methods of these activities

— will cause an administrative fine for citizens in the amount from three thousand to five thousand roubles; for officials—from thirty thousand to fifty thousand roubles; for legal entities—from three hundred thousand to five hundred thousand roubles.

Note! For administrative offenses referred to in this article the persons engaged in entrepreneurial activities without forming a legal entity are subject to administrative sanctions as legal entities.;

4) add Article 19.710 of the following content:

“Article 19.710. Failure to provide information or provision of deliberately false information to the body exercising functions of control and supervision in the field of telecom, information technologies and mass communications

1. Failure to provide or late provision of information to the body exercising functions of control and supervision in the field of telecom, information technologies and mass communications by a hosting provider or other person providing hosting for a site or site page in the Internet of the data enabling to identify the blogger or provision to that body of deliberately false information

— will cause an administrative fine for citizens in the amount from ten thousand to thirty thousand roubles; for legal entities—from fifty thousand to three hundred thousand roubles.

2. Committing the administrative offense under part 1 of this article repeatedly throughout the year

— will cause an administrative fine for citizens in the amount of thirty thousand to fifty thousand roubles; for legal entities—from three hundred thousand to five hundred thousand roubles or administrative suspension of activity for up to thirty days.”;

5) in article 23.1:

a) to part 1 after the figures “13.16,” add the words “part 2 of article 13.18, articles” after the numbers “13.28,” add the words “parts 2 and 3 of article 13.31, articles”;

b) to part 2 after the number “19.73,” add the words “part 2 of article 19.710;”

6) in part 1 of article 23.44 the figures “13.18” replace with “part 1 of article 13.18, articles,” after the number “13.30,” add the words “part 1 of article 13.31,” after the words “(within the limits of their authority)” add the words “, article 19.710;”

7) in Part 2 of Article 28.3:

a) to paragraph 1, after the words “paragraph 2 of article 13.15,” add the words “part 2 of article 13.18,” after the number “13.30,” add the words “part 2 of article 13.31, article;”

b) to paragraph 56 after the number “13.12,” add the words “parts 2 and 3 of article 13.31,”.

Make the following amendments in The Federal Law from July 7, 2003 No.126-FZ “On Communications” (Collected Legislation of the Russian Federation, 2003, No.28, art. 2895; 2006, No.31, art. 3431; 2007, No.7, art. 835; 2010, No.7, art. 705; No.31, art. 4190; 2012, No.31, art. 4328; No.53, art. 7578; 2013, No.30, art. 4062; No.44, art. 5643; No.48, art. 6162):

1) to section 2 of paragraph 2 of article 44 after the words “performance of the contract for the provision of telecommunications services,” add the words “procedure for identification of users of data transmission services and providing access to the information and telecommunications network Internet and the data terminal equipment they use”;

2) in Article 46:

a) to section 3 of paragraph 1, after the word “operation” add the words “as well as the requirements provided for in paragraph 2 of article 64 of this Federal Law;”

b) to paragraph 5 add the words “and to ensure the installation in its communications network of the technical facilities for control of compliance by communications provider with the requirements, established in articles 151–154 of the mentioned Federal Law, provided through the procedure prescribed by the federal executive body exercising functions of control and supervision in the field of mass media, mass communications, information technologies and communications.”

For failure to perform the new duties imposed on all participants of the network relations—the website owners, hosts, domain administrators, developers of software, internet-services, access providers and the users themselves—the law sets very severe administrative punishments in the form of substantial fines:

- Failure to notify the authorized body about the beginning of activities on information dissemination—imposition of administrative fine for citizens in the amount from 1,000 to 3,000 roubles; for officials—from 10,000 to 30,000 roubles; for legal entities—from 100,000 to 300,000 roubles.

- Failure to provide the personal data of users to the authorities, engaged in investigative activities or provision of security in the Russian Federation,—imposition of administrative fine for citizens in the amount from 3,000 to 5,000 roubles; for officials—from 30,000 to 50,000; for legal entities—from 300,000 to 500,000 roubles.

- Failure to connect the servers to special equipment “of the authorities, engaged in investigative activities or provision of security,”—imposition of administrative fine for citizens in the amount of 3,000 to 5,000 roubles; for officials—from 30,000 to 50,000 roubles; for legal entities—from 300,000 to 500,000 roubles.

- Disclosure or making public of information about the organizational and tactical methods of activities for collection and transferring of data—imposition of administrative fine for citizens in the amount from 3,000 to 5,000 roubles; for officials—from 30,000 to 50,000 roubles; for legal entities—from 300,000 to 500,000 roubles.

- Failure to provide or late provision to Roscomnadzor by a hosting provider or other person providing hosting for a site or site pages in the Internet of data enabling to identify a blogger, or provision to that body of deliberately false information—imposition of administrative fine for citizens in the amount from 10,000 to 30,000 roubles; for legal entities—from 50,000 to 300,000 roubles.

- Repeated failure to provide personal data of a blogger—imposition of administrative fine for citizens in the amount from 30,000 to 50,000 roubles; for legal entities—from 300,000 to 500,000 roubles or administrative suspension of activity for a period of up to thirty days.

The present Federal Law entered into force on August 1, 2014.

The State Duma adopted the law on April 22, 2014, approved by the Council of Federation on April 29, signed by the President on May 5, published in “Rossiyskaya Gazeta” on May 7. The law enters into force fully without any transitional provisions on August 1, 2014. The haste with which the law was adopted is obvious. In order to implement the laws at least 13 bylaws should be developed. On June 2 Roscomsvoboda published the first four documents, which had been developed in haste secretly and received from the source from the working group on the adopted law.

Thus, for example, the approved version of the Regulation of information storage and the order of its provision by information dissemination organizers in the Internet to the authorized state bodies, engaged in investigative activities or provision of security in the Russian Federation, contains the provision according to which it is necessary to collect data on the user ID, all his contacts from address book and e-mail, the number and volume of messages, about all authorizations through other services, personal correspondence within the Internet resource, the exact time of visits, DNS-servers used by the user, correspondence with providers of hosting and domain name registrars, all information entered during the registration of the user on the Internet-resource, the information about the hardware and software used by the user, all the facts of authorization with the exact time, all the facts of changes by the user of his data, the facts of termination by the user of using the website, the facts about the financial operations of the user with the information on correspondent—the identifier of the payment system, currency and amount of the transactions (indicating the identifier of the payment system (“electronic wallet”), incoming and spent amounts of money, and a number of other data that seems confidential, which should be only known by the initiator and the recipient. However, the regulation lists the cases when the organizers of information dissemination (site owners) can make an agreement with the regulator, according to which he will be able to independently provide access to such user information in full on a regular basis and without any queries. In this case, they are exempt from the obligation to store such information.

The bylaw also tries to determine the territorial boundaries and the range of subjects in the Internet, which fall under the regulation of the law. At the same time, attempts are made to determine the list of persons the law will be applicable to.

DENIAL OF ACCESS TO PROHIBITED INFORMATION ON INTERNET

The practice of recognition of information as prohibited for dissemination is not new for Russia; it is regulated by a whole corpus of federal laws. The subject matter of the present analysis are not the limitations imposed on pub-

lishing of information constituting a secrecy protected by the law—commercial secret, business secret, attorney-client privilege, tax secrecy or adoption secrecy. What is meant here is that the government thinks it necessary to impede or even prohibit the accessing of information on ethical grounds by citizens, as they understand them.

The primary regulatory legal instrument governing the relations in the information sphere is Federal Law No.149-FZ “On information, information technologies and protection of information” of July 27, 2006 (hereinafter referred to as FL “On information”). This act provides the key definitions such as information, access to information, electronic document, dissemination of information, domain name, etc., formalizes the general principles of statutory regulation, as well as determines on a framework basis the procedure for the denial of access.

For the purpose of this analysis, the general principle of freedom of search for obtaining, transmission, production and dissemination of information using any lawful means (Clause 1 Article 3 of the Law) is of paramount importance. This being said, any limitation of access to information is possible solely pursuant to the federal law and only for the legitimate purpose of protection of the fundamentals of the constitutional system, morals, health, rights and legitimate interests of other persons, and ensuring of national defence and national security. The Constitution of the Russian Federation establishes the prohibition on propaganda or campaigning causing social, racial, national or religious hatred and antagonism, as well as propaganda of social, racial, national, religious or language superiority.

FL “On information” does not determine the procedure for denial of access to information, which may be ad hoc different. Special federal laws do not always contain requirements to the procedure for the recognition of information as prohibited. Before the entry into effect of the amendments to FL “On protection of children from the information impairing their health and development,” “On information” and “On communication” the main instruments of blocking access to websites was the anti-extremist legislation and the rules of registration of domain names.

In 2012, the analysts of the AGORA Association recorded 608 cases of blocking of access to Internet pages. One of the most commonly used grounds for this purpose was FL “On counteracting extremist activities.” Article 12 of the law prohibits the use of public communications networks for the purpose of extremist activities. In the meanwhile by extremist activities many different

actions are meant that are in one form or another connected with the distribution of information: public extenuation of terrorism and other terrorist activity; incitement of social, racial, national or religious hatred; propaganda of exclusiveness, superiority or deficiency of a human being on the grounds of his/her social, racial, national, religious or language affiliation, or attitude to religion; distribution of extremist materials; propaganda of Nazi and similar symbols, etc. Consequently, the Prosecutor's Office and Roscommnadzor as the bodies in charge of counteracting extremism on the Internet have two grounds to require blocking of access to Internet resources: (1) distribution of materials included in the Federal List of Extremist Materials maintained by the Ministry of Justice of Russia, and (2) publishing of materials causing, for example, social hatred as it is understood by the agencies.

It is worthy of note that the provisions of the anti-extremist legislation are regularly criticized for the non-specific and vague wordings allowing for their arbitrary interpretation and application.

Not only the indefiniteness of the term "social group" invites questions, for which reason citizens criticizing officials can be held liable for the incitement of hatred towards representatives of the authorities. The quality of the expert opinions on the basis of which the resolutions are as a rule adopted on the recognition of information materials as extremist, are beneath criticism too. E. Strukova, Expert of the SOVA Centre, made the following stinging remark: "The incompetency of experts and the illiteracy of court officials who add items to the Federal List of Extremist Materials have not long been surprising anyone."

As stated in the special report of the AGORA Association "Russian Internet services in the government's employ," over the recent years the Russian authorities have been increasingly frequently trying to control the Internet not directly but via the so called intermediaries represented by pseudo-NPOs (what is called GONGO—government-operated non-governmental organizations in the English speaking world), providers depending on the terms of licensing, registrars of domain names, etc.

An extremely convenient method of practically instant blocking of access to an unwanted website if it is registered in Russian national domains *.ru* or *.рф* was provided to the Russian authorities by the Coordination Centre (CC) of the National Domain Name on the Internet (an autonomous non-profit organization authorized to discharge the functions of a national registrar and, consequently, develop the rules of registration of secondary level domain names).

In November 2011, CC approved the new version of the Rules of registration of domain names in the domains *.ru* and *.pф*⁵.

Previously the Rules had provided the registrar with the opportunity to terminate the delegation of a domain in the *.pф* zone without the administrator's consent only on the basis of a court judgment or a *substantiated* request of one of the heads of the agency engaged in the investigative activity (which is unlawful too but could give at least some guarantees). The rules for the *.ru* domain had not at all provided for such ground as request by power-wielding agencies. The new version of the rules does not require any substantiation or explanation. It is sufficient to simply forward a corresponding decision to the registrar and spare oneself the trouble of argumentation. After the scandal caused by the publishing in October 2011 of the new Rules, the CC had to explain away and make corrections. A few months later the "explanations" of the disputed item appeared on their website, however the Rules themselves remained unchanged.

The RU-CENTER company—one of the biggest Russian registrars and the actual monopolist when it comes to third level geo domains of *xxx.msk.ru* and *xxx.spb.ru* types—went to even greater lengths.

Clause 3.3.6 of the Regulation on the registration of third level domains constituting an obligatory addendum to all contracts for domain name registration deserves to be quoted in full:

"3.3.6. The Contractor shall have the right to immediately terminate the delegation of the domain for the purpose of prevention of illegal activity, as well as activity inflicting harm to third parties, including the activity in connection with the distribution and promotion of pornographic materials, incitement to violence, extremist activities, overthrow of power, etc., as well as the *activity conflicting with public interests, the principles of humanity and morals, infringing on human dignity or religious feelings, etc.* For this purpose, the Registrar may rightfully give an independent evaluation of the User's activity with respect to violation of the legislation, including in the events when no definition of these acts is formalized in regulatory instruments (our Italics.—MHG). The definition of pornographic materials is published on the Registrar's website: http://www.nic.ru/dns/service/hosting/moral_standards.html."

This "etc." with which the open list of the grounds for blocking of information at the discretion of RU-CENTER ends is worthy of special note.

⁵ Please refer to the website of the CC: <http://cctld.ru/ru/docs/rules.php>.

However, the most high-profile legislative initiative of the recent time in the field of regulation of the Internet and censoring was the so called law on black lists—Federal Law No.139-FZ “On the introduction of amendments to the Federal Law “On protection of children from the information impairing their health and development” and certain legislative instruments of the Russian Federation concerning the limiting of access to illegal information on the Internet” dated July 28, 2012.

In fact the discussion of the matter of granting to the government of the right to block access to “harmful information” on the spot without court resolutions had long been in progress, however when the decision was taken the draft underwent three readings and was signed by the President within one and a half months. Clearly, there was no public discussion, and neither the Internet community, nor the civil society, nor even representatives of the business sphere were asked.

Nevertheless, there was a lot of vocal criticism. The Russian Association of Electronic Communications (RAEC) proposed a whole range of amendments to the draft law noting, “The too extensive class of materials subject to the inclusion in the Register on the basis of the decision of the federal executive body authorized by the Russian Government can result in abuse and sabotage the implementation of the law provisions. The expert evaluations that will be taken as the basis for the purpose of determination whether the material “incites for the performance of acts posing a threat to their life and (or) health, including infliction of harm to their own health, or for suicide” cause disbelief and must be substantiated in a court proceeding.”

In the official *Google* blog, it was stated as follows: “The adverse consequences of application of the law will exceed the expected positive effect and put user access to legal resources under threat.”

Live Journal said “The amendments to the law may lead to the introduction of censoring in the Russian language segment of the Internet, the creation of a black list and stop lists, as well as blocking of individual websites. Unfortunately, the practice of enforcement of the law in Russia bespeaks a high probability of exactly this worst case scenario.”

Yandex: “The proposed methods provide room for possible abuse and give rise to many questions on the part of users and representatives of Internet companies.”

On July 10, 2012, before the adoption of the draft law immediately in the second and third readings the Russian speaking *Wikipedia* interrupted its operation for one day as a mark of protest against censoring. The special press release said: “The lobbyists and activists supporting these amendments claim that they are intended exclusively against the content like child pornography and “similar things,” but the observance of the provisions and wordings brought in for discussion will result in the creation in Russia of an equivalent of the “great Chinese firewall.” *Yandex, Live Journal, Lurkmore, VKontakte, 2ck* and some other services and portals supported the campaign.

The draft law was also criticized by representative of the OSCE in charge of the matters of freedom of mass media D. Miyatovic for the non-transparency of the procedures, the exclusion of the court from the process of taking decisions on the blocking of websites, and the unclear criteria of inclusion of information in the prohibited category: “Any attempt to prohibit the unclearly defined contents on the Internet in the absence of a transparent procedure will most likely lead to the excessive blocking of contents and possibly to censoring, which as a result will obstruct the free information flow.”

After the entry of the law into effect and a few months of its application V. Lukin, the Human Rights Commissioner of the Russian Federation paid attention to the defects thereof and noted in his annual report that “while understanding and sharing the motives that had actuated the lawmakers to develop the listed laws the Commissioner still considers necessary to monitor their application during the current year with the purpose of discovering of possible gaps and deficiencies, including those conditioned upon their unexplainably quick enactment.”

The law is in essence about the “creation of the Unified Register of domain names, page indexes on the Internet and network addresses enabling the identification of websites on the Internet containing the information prohibited for dissemination in the Russian Federation.”

The Register is maintained by an authorized organization (this role was initially applied for by the Safe Internet League) or a government body (currently Roscomnadzor) which on the basis of opinions issued by specialists of the Federal Drug Control Service (FDCS), the Federal Service for Supervision of Protection of Consumer Rights and Human Welfare (Rospotrebnadzor) or Roscomnadzor adopts a decision on the inclusion in the register of certain pages, websites or whole IP addresses.

The register includes the websites that contain two categories of prohibited information: (1) the information recognized as prohibited based on a judicial act, and (2) information recognized as prohibited based on a decision of the executive body authorized by the government. The first category includes child pornography, information on the methods of production and use of drugs, and information on the ways of committing suicide, as well as appeals for committing suicide. The second category includes any information recognized as prohibited by the court, for instance, extremist materials.

In April 2013, the law was enacted that supplemented the list of the materials subject to blocking without court ruling with information about minor children that suffered as a result of unlawful acts (omission to act), the dissemination of which is prohibited on the basis of the federal laws⁶.

It should be noted that again, like in other new laws, the limitation of rights and freedom is performed on the basis of an extremely vague provision (the original version was even about the possibility of extrajudicial blocking of “information inciting children to commit acts posing threat to their life and (or) health”). It should be kept in mind that the list of the grounds for extrajudicial blocking would be inevitably supplemented if for no other reason than because FL “On protection of children from the information...” contains a quite extensive spectrum of prohibited topics. In accordance with Part 2 Article 5 of the Law “the information prohibited for dissemination among children includes the information:

- 1) inciting children to commit acts posing threat to their life and (or) health, including to harm their own health or to commit suicide;
- 2) which can arouse children’s desire to use narcotic substances, psychotropic and (or) intoxicating substances, tobacco goods, alcoholic and alcohol-containing products, beer and beverages produced on the basis thereof, participate in gambling, prostitution, vagrancy or beggary;
- 3) that substantiates or justifies the acceptability of violence and (or) brutality, or incites to perform violent acts in relation to people or animals, except for the events provided for in the present Federal Law;

⁶ Federal Law No.50-FZ of the Russian Federation “On the introduction of amendments to certain legislative instruments of the Russian Federation to the extent of limiting of dissemination of information about minor children who suffered as a result of unlawful acts (omission to act)” of April 5, 2013 // Ros. gaz. 10.04.2013. No.6053. URL: <http://www.rg.ru/2013/04/10/deti-dok.html>.

- 4) negating family values and developing disrespect for parents and (or) other family members;
- 5) justifying wrongful behaviour;
- 6) containing strong language;
- 7) containing information of pornographic nature”.

Clearly, there are no distinct criteria in the legislation for the inclusion of information in the listed categories, because they can hardly be developed in principle. Meanwhile, this inclusion means that all providers will have to block access to such information for their subscribers. Therefore, the website owner will either have to delete the information in relation to which an unknown expert adopts a decision on prohibition on unclear grounds, or appeal against such blocking in the court. This being said, one should be prepared to the following: considering the speed of performance of Russian courts the website can remain blocked for a long time.

The methods using which the information is assessed, and the identities of experts, as well as the expert opinions themselves are inaccessible to the public and the owners of the blocked websites. They may at the best hope to obtain from the provider a copy of the decision of the government authority on the recognition of the information as prohibited. However, this document does not contain any useful data, except for the number and date of the decision that may be appealed against. In an attempt to obtain more information one can only refer to the court requesting the opinion and the methods, as well as summoning experts for questioning.

The complete list of the blocked resources is closed as well. An average user can only check on the official website www.zapret-info.gov.ru whether some particular address, website or page is included in the register.

Apart from the indefinite grounds for the denial of access, the method thereof constitutes a serious problem too. The law says that the denial of access may be performed based on the domain name, the universal page locator or the network address. This means that because of just one page containing unwanted information not only the whole website can be blocked, but also even the IP address, which may easily be common for tens of resources, not connected between one another. According to the RoscomSvoboda portal (RuBlackList.net), the register contained 237 IP addresses as of March 11, 2013, which resulted in an involuntary blocking of over 4.5 thousand resources that had shared the address with the prohibited ones.

As the only method of protection of rights of owners of the blocked websites, the appealing can serve against the unlawful acts of Roscomnadzor or other authorized bodies in connection with the inclusion of the IP address in the Register, in the court on the basis of Article 254 of the Civil Procedural Code of the Russian Federation or in the arbitration court on the basis of Article 198 of the Arbitration Procedural Code of the Russian Federation.

A year earlier the Supreme Court of the Russian Federation voiced its opinion as regards the role of the provider in the denial of access⁷, that stated that in providing the technical capability of accessing information prohibited by the law the provider in fact acts as its disseminator in relation to other parties. Being technically capable, it must pursuant to the law take measures aimed at the restriction of access to the website concerned. By doing this the provider ends up in the situation when it is first forced to implement even a knowingly unlawful decision on blocking, and only after that has the right to appeal against the same. It is clear that in the vast majority of cases the providers that fully depend on licensing terms will not dispute the decision but obey in order to maintain the conformable conditions of doing business.

The law “on black lists” and the decisions adopted on the basis thereof can not obviously pass the “test for the observance of three conditions” of the ECHR in accordance with which any limitations of the rights and freedoms are acceptable only in the event when they are provided for in the law, pursue a legitimate purpose and are required in a democratic society.

The law sets the goal to protect children from the information impairing their health and development. However, in fact it restricts access of all Internet users to an indefinite range of information. The government failed to provide arguments in favour of an urgent public need for the introduction of full extrajudicial blocking of entire IP addresses, whereas such blocking is considered in the international law as an extraordinary and exceptional measure similar to the prohibition on issuing newspapers or broadcasting.

The law does not meet the requirements of legal certainty, as it does not enable citizens to reasonably foresee the consequences of their acts. Moreover, the mechanism of implementation of the law is such that even bona fide

⁷ Determination No.58-Vpr11-2 of the Judicial Panel for Civil Law Cases of the Supreme Court of the Russian Federation dated May 10, 2011: http://www.vsrfr.ru/print_page.php?id=7647.

website owners against whom the government raises no claims may face limitations of their constitutional right only because their website shares the IP address with a prohibited resource.

A significant limitation of the capabilities of the owner of the blocked resource in terms of judicial defence becomes a consequence of the closed nature of the procedures of recognition of information as prohibited, the methods using which the evaluation is performed, and the procedure of appointment of experts, because information of this kind is required for the purpose of preparation of the claim.

Only some cases of appealing against inclusion in the Register and denial of access to websites are known. However, the court decisions in these cases can be of paramount importance in the situation with the regulation in the sphere of the Internet.

ANALYSIS OF PRACTICAL ADMINISTRATION OF THE LAW

The situation with the “law on black lists”, a conventional name for the corpus of the provisions contained in FL “On protection of children from the information impairing their health and development”, FL “On information” and Decree No.1101 of the Russian Government dated October 26, 2012, confirms one again the thesis that only bad administration of a law can be worse than a bad law. As a result the idea of harmonization of the regulation of legal relations on the Internet proactively promoted by some deputies has been fully discredited. Only a serious review of the law may improve the situation accompanied by the formalization of the guarantees of observance of the constitutional freedom of expression of opinion.

As can be seen even now the costs, including economic and reputational costs, incurred by Russia in connection with the implementation of the law exceed by far its usefulness, which is confirmed by nothing at all. Indeed, there is no substantiated research in support of the positive effect of the law on the preservation of children’s health and development. The “Streisand effect” and the nature of the Internet itself lead to an immediate and unlimited distribution and duplication of all prohibited information. This can only be stopped through full disconnection of RuNet as exemplified by North Korea.

On the other hand, the application of the law is being criticized by the Internet industry represented by the Russian Association of Electronic Communications believing it to be dangerous for the development of RuNet, make an adverse impact on the business, and capable of resulting in a collapse of many regional mass media.

The law has made a serious impact on the reputation of the Russian authorities both at the international level, and within the country. Many unfounded denials of access to some extremely popular resources like *Wikipedia*, *Lurkmore* and *RuTracker.org* caused first outrage and later laughter on the part of millions of Russian Internet users. The vicious press releases of the Federal Service of Supervision of Protection of Consumer Rights and Human Welfare, the ignorant “expert opinions” on the basis of which individual posts in social networks and entire Internet services were blocked, the complaints of Roscomnadzor about the lack of highly-skilled specialists for the purpose of maintenance of the register, the war against imaginary drugs—all this could not be reacted on in any way other than roars of laughter and mockery.

The small number of claims against the unfounded denials must not be interpreted misleadingly—this is just the beginning, and the number of claims will definitely grow. The dismissals cranked out by Russian courts will be compensated by the significantly increased speed of consideration of cases by the ECHR. By the way, only a few months ago the ECHR requested Turkey to pay 8.5 thousand euro to the owner of the unlawfully blocked website. Multiply this amount by 13,500 (the maximum quantity of the websites blocked under the law “on black lists”) and you will receive more than one hundred million euro that may be potentially recovered from our country as a result of acts of the deputies, officials and courts.

The law “on black lists” has been in effect for a sufficiently long time to enable the evaluation of its practical administration and the efficiency of the established mechanisms of controlling the materials distributed on the Internet.

When the discussions of the idea of filtering of content with the purpose of protection of children started in Russia the representatives of the Internet community and online-businesses expressed their nearly unanimous opinion that the proposed methods of counteraction of “harmful information” would lead to not exactly the results that were claimed by the draft law authors.

During the round table discussion in the TV studio of the *Dozhd* television channel one of the authors—S. Zheleznyak, deputy of the State Duma representing United Russia, said: “Our task is certainly to protect, not attack... protect our children from the information that can directly harm their health and even life.”

The authors of the report prepared by the Centre for New Media and Society of the Russian School of Economics published in 2012 claimed: “The piecemeal approach used by the Russian Government to the regulation of the Internet by way of regulation of harmful content in accordance with Law No.436-FL “On protection of children from the information impairing their health and development” can undermine the development of ICT, violate civil liberties and impede the development of computer literacy.”

The digital awareness of our fellow citizens in connection with the enactment of the law has rather increased, at least regarding the matters connected with the use of anonymizers and VPN-clients. However, the freedom of speech has suffered a massive blow delivered by the law “on black lists.” It is even not about thousands of websites becoming inaccessible on doubtful grounds without any judicial or public control. The statutory formalization of the possibility of arbitrary denial of access to not just individual pages but also entire IP addresses results in the vagueness of the legal system, corrupts the executors of law, and ultimately shakes the foundations of the constitutional system.

It is to be recalled that the objective of the “black lists” is the protection of children from the information impairing their health and development. For the purpose of achievement of this undoubtedly noble goal millions of adult legally capable Russian citizens are limited in their constitutional right to receive information freely and deprived of access to thousands of websites against the owners of which even no claims have been raised in connection with their content. This state of things violates not only Part 3 Article 55 of the Constitution of Russia establishing that the rights and liberties of man and citizen may be limited by the federal law *only to the extent required* for the purpose of protection of the fundamentals of the constitutional system, morals, health, rights and legitimate interests of other persons, and ensuring of national defence and national security. The law “on black lists” and especially its practical administration also contravene the set of the international legal responsibilities of our country.

When joining the Council of Europe Russia undertook to observe the Convention on the Protection of Human Rights and Fundamental Freedoms, as well as recognized the jurisdiction of the European Court for Human

Rights as obligatory in connection with all matters of interpreting and application of the Convention. Part 2 Article 10 of the Convention requires from the state in each case of limitation of rights and freedom to evaluate critically the actual need for such limitation in a democratic society and the proportionality of the applied measures to the legitimate purpose. In this respect, the provisions of Part 3 Article 55 of the Constitution fully comply with the article of the Convention.

The broadly applied practice of inclusion of IP addresses in the Register, and, as a result, thousands of “innocent” resources are blocked, obviously violates the principle of proportionality of the limitation. This is exactly how the ECHR assessed the similar situation in the case of Ahmet Yildirim v. Turkey (resolution of December 18, 2012) on the blocking of an IP address. The applicant was the owner and administrator of a private website within the Google Sites system on which he had been publishing academic articles and his opinions with regard to various issues. His resource had been blocked after the delivery by the court of Denizli of the ruling on the blocking of access to the website of the accused as an injunctive remedy within the framework of a criminal case of an insult to the memory of Atatürk. The Telecommunications Administrations of Turkey (analogous to our Federal Service for Supervision in the Sphere of Telecom, Information Technologies and Mass Communications) referring to the technical incapability of isolated blocking of the said website had blocked access to the whole service sites.google.com, as a result of which also the applicant’s website had been affected. The ECHR came to the conclusion that the interference by the government with the exercising of the applicant’s right for the freedom of expression had been unlawfully limited, and stated, in particular, that the absence of a clear legal framework enabling the regulation of the process of limitation of the freedom of information on the Internet contradicted the guaranteed right for the freedom of expression.

It is worthy of note that the Joint Declaration of the UN, the OSCE and the OAS on Freedom of the Internet adopted on June 1, 2012 establishes that the forced blocking of entire websites and IP addresses constitutes an exceptional measure similar to the prohibition of newspapers and broadcasting. It is impossible to imagine that in a democratic society the issuing of newspapers or broadcasting of a TV channel were terminated without any court ruling. However, when it is about an IP address or a domain name no problems occur notwithstanding that from the perspective of the principles of the international law

on the freedom of information the termination of broadcasting of, say, Channel One does not in any way differ from the blocking by the providers of access to the IP addresses of YouTube or even an individual private blog.

Having analyzed the available information about the administration of Article 15.1 of FL “On information”, as well as the Rules of creation, generation and maintenance of a unified automated information system “Unified register of domain names, page indexes of websites in the information and telecommunications network Internet, and network addresses enabling the identification of the websites in the information and telecommunications network Internet containing the information prohibited for distribution in the Russian Federation” approved by Decree No.1101 of the Government of the Russian Federation on October 26, 2012, we can come to the conclusion that the law does not comply with the requirements of legal certainty, and the Rules introduce an actually obligatory inclusion in the Register of IP addresses, which will constantly mean unfounded blocking.

Thus, according to RoscomSvoboda, 98.9 % of the domains are being blocked unlawfully⁸.

Unfortunately, in the final versions of the draft law “on black lists” and Decree No.1101 the recommendations of the experts of the Russian Association of Electronic Communications (RAEC) to specify the conceptual framework in more detail and waive the blocking of IP addresses were completely ignored.

The explanatory note to the law draft said, “The Russian legislation to the extent of forced blocking of Internet pages containing information prohibited for distribution is well behind the best equivalents existing in the world”. Even if that was so, Russia must be well “ahead” of them now. Director for Liaison with Government Authorities of *Mail.Ru* Group M. Yakushev noted “This is not the Chinese option. This is obviously the option of some more hindward countries that strive to control the information environment of the state based, for example, on religious considerations like the national religion of Islam.”

This applies especially to the grounds for blocking and the judicial control of the law administration. To the list of the grounds for the extrajudicial blocking of access to information on the Internet that was previously comprised of three items—child pornography, propaganda of drugs and instructions on committing suicide—one more item has now been added without any substantiation: information about minor children who suffered as a result

⁸ As of September 5, 2013. Please find here: <http://reestr.rublacklist.net>.

of unlawful acts (omission to act) the distribution of which is prohibited by the federal laws, e. g. personal data such as last name, first name, patronymic, birth date, place of study or work, as well as photo and video images of minor children, audio records of their voices, personal data of their parents, etc.

During the short public discussion the experts of RAEC—the key association of participants of the Internet industry—stated that the law draft contradicted the Constitution and posed threat to the development of Internet in Russia. While there is a consensus in the world on the prohibition of child pornography (not to mention different approaches to the definition of this term), the appeal for suicide is an exclusively Russian know-how.

As a matter of fact, on April 8, 2012, when the list was supplemented one thing happened that the experts had been apprehensive about even before the enactment of the law: having created and mastered the mechanism of prompt blocking of information on the Internet the authorities began to extend the list of the grounds. Now the suggestion is to include the materials insulting the feelings of believers, intellectual property items in connection with which an application of the right holder exists, information about the private life of people (including property owned by officials abroad), etc.

The attitude of the Internet community to such initiatives was illustrated by the research performed by *Wobot Company* upon request of the Public Opinion Foundation. Having analyzed the discussion in the blogosphere of the activities of the Federal Service for Supervision in the Sphere of Telecom, Information Technologies and Mass Communications in connection with the creation of the Register of prohibited websites during the first month of its existence the authors came to the conclusion that “the establishment of the register of prohibited websites has caused a stormy negative reaction on the part of Internet users, which is due to the stable attitude of Russian users to information on the Internet as to free and publicly available.” Since then the situation has hardly changed, and the term “black lists” has been long replaced by the new less academic but much more rich one—“sh... t register.”

Nevertheless, the website zapret-info.gov.ru enjoyed evident popularity. As reported by representatives of the Federal Service for Supervision in the Sphere of Telecom, Information Technologies and Mass Communications, during the first 12 hours of operation of the resource 100,000 unique visitors visited it. On November 9, the head of Roscomnadzor said that more than 180 websites had been already included in the Register. The new rules of blocking affect most diverse resources, and given the availability of information about

the methods used by the specialists of the FDCCS, Roscomnadzor and especially Rospotrebnadzor, as well as the total non-transparency of the procedure, the justness of the vast majority of blockings raises serious doubts.

Access to the Encyclopaedia of Modern Culture, Folklore and Subcultures *Lurkomore* (Lurkmore.to) was blocked based on resolution of the Federal Drug Control Service that found some articles to be the propaganda of drugs. The administrators of the website became aware of the claims of the agency only after the blocking of access—the Federal Service for Supervision in the Sphere of Telecom, Information Technologies and Mass Communications did not attempt to resolve the situation at all. After a few days of the trench warfare accompanied by the change of the IP address and statements about the unacceptability of censoring, the disputed materials were deleted and the resource was removed from the Register.

The next websites to catch it in the neck were the torrent tracker RuTracker.org and one of the biggest free online libraries LibRus.ec. The first one paid the price for the seeding of “Encyclopaedia of suicide”, and the second one for the “cannabis soup” from the “Anarchist’s cookbook.” Both resources had to obey and removed the said materials under the threat of full blocking.

On November 18, one of the IP addresses of Google appeared in the Register for the first time. A few days later, the situation repeated with another address and as a result, users faced problems with accessing the services of the social network Google+ and the Blog platform Blogger. After that, practically all popular social networks in Russia—VKontakte, LJ.rossia.org, Odnoklassniki, Facebook, YouTube—were subject to blocking.

In early April of the current year, claims were raised against Wikipedia: the article “Smoking cannabis” was found by the Federal Drug Control Service to be an instruction on the use of marihuana. It turned out later that 15 pages (17 according to Wikipedia) had been included in the Register). However, the service decided to ignore the existence of the Register. On April 8, the founder of Wikipedia J. Wales said that blocking is always more preferable than making concessions to censors, and that “bowing to pressure from weak and cowardly politicians—those who are afraid of dissemination of knowledge—is not the way of Wikipedia.” That is exactly what happened. The articles were edited, but not because the Internet community recognized the justness of the claims, but because they had not been in line with the rules of Wikipedia itself. After that, the Federal Service for Supervision in the Sphere of Telecom, Information Technologies and Mass Communications

in order to save the face pretended that everything was fine and the pages were removed from the Register.

By the way, the story with *Wikipedia* illustrated that blocking does not achieve the claimed goals of protection of children and that they are very inefficient given the availability of a huge number of most easy to use bypass means. On the contrary—after the inclusion in the Register of the article “Smoking cannabis” its traffic increased by more than 100 times—the “Streisand effect” worked.

It is characteristic that in some cases the blocking of the biggest social networks occurred somewhat accidentally, for just a few hours. Then the message appeared informing about a “technical failure.”

That was how Rostelekom explained the blocking of *YouTube*, *Odnoklassniki* and *Vkontakte* in Oryol, Bryansk and Ryazan Regions.

In May, the Federal Service for Supervision in the Sphere of Telecom, Information Technologies and Mass Communications called the inclusion of *Vkontakte* in the Register a “sad mistake.” It turned out that four specialists of the agency in charge of the maintenance of the register had been working flat out 12 hours each day sometimes inevitably pressing wrong buttons.

It should be noted, that already six months before the management of the agency had complained about failures in the operation of the system caused by imperfect software (supplied by the way by the Safe Internet League) and high load. In all appearances, the technological problems have not been solved until today, and the situation with the evaluation of information does not look better. Approximately, at that time the Federal Service for Supervision in the Sphere of Telecom, Information Technologies and Mass Communications had declared its plan to start training experts in the field of information products under the aegis of the Moscow State University. The materials that become available to the public after the court proceedings in connection with the unfounded blockings are indicative of the disastrously low level of professionalism of the experts engaged in the evaluation of network publications. There is no other way to obtain them—the whole procedure of evaluation of information and decision making is in fact a secret.

Notwithstanding that, there are now thousands of websites and hundreds of IP addresses in the Register, not more than ten cases of judicial appealing against blockings are known. We are aware of three court judgments in connection with the operation of the Register. There may be more of them, but not by much.

On April 1, 2013, the Obninsk City Court dismissed the claim of the administrator of the farcical encyclopaedia Absurdopedia.net requiring the recognition as unlawful the inclusion in the Register of the article “How to do it right: committing suicide.” The publication was of obviously humorous nature, and all instructions reduced themselves to the following: “Don’t rush, even in the water closet. This is so much for losers. This is a stupid death in agony... Do not play Anna Karenina, even with a tram. You will definitely die, but does the driver deserve all this trouble?” Meanwhile, the decisions of the Federal Service for Supervision of Protection of Consumer Rights and Human Welfare and the court with regard to the lawfulness of blocking access to this material are serious and based on expert opinions.

The professor of the Department of Psychiatics and Narcology of the Sechenov Medical University writes: “despite the ironical hue of the material it describes different way of committing suicide... some descriptions of the ways to commit suicide are preceded by the following words: “I you want to be remembered ...,” “You will die in glory if...” This may create an opinion about suicide as an acceptable act encouraged by the society.”

The professor of the Department of Oral Lore of the Faculty of Arts of the Moscow State University claims authoritatively: “Prohibited information is *contained in the whole website* and in the heading first of all...”

The Director and Deputy Director of the Centre for studying of problems of upbringing, formation of healthy lifestyle, prevention of drug use and social and pedagogical support to children and youth conclude: “The authors overestimate their artistic skills and demonstrate the lack of their own mental and moral upbringing... Adults with a steady mind will probably react with irony on these recommendations, but in the event of children reading them it is difficult to forecast how they will be perceived.”

Certainly, there is no description of the logic of the research, indication of commonly accepted scientific methods of evaluation of the text or argumentation in the expert opinions fertile in such words as “apparently,” “probably” and “difficult to forecast.” However, there were enough of them to limit the constitutional rights of citizens. By the way, the inclusion in the Register of the network address of the *Absurdopedia* led to the blocking of all websites hosted by *Wikia*.

On May 6, 2013, the Arbitration Court for Moscow refused to recognize upon application of *YouTube LLC* as unlawful the decision of the Federal Service for Supervision of Protection of Consumer Rights and Human Welfare

on the prohibition of the video “The correct way to cut your veins.” As a result, the company had to restrict the access to the video in the territory of Russia. Like in the above case under the scary title, one can find a farcical recommendation on the preparation for Halloween and making a fancy dress. Supporting the rightness of the Federal Service for Supervision of Protection of Consumer Rights and Human Welfare the court stated particularly: “in some cases the way to commit suicide can be contained even in its title that without excessive details, descriptions and photographs, e. g. “dying from 1,000 cuts” may point to how to commit suicide⁹.

The third case is similar to that in which the ECHR had recognized the violation by Turkey of Article 10 of the Convention. On December 19, 2012, Roscomnadzor included upon decision of the Federal Drug Control Service the IP address 69.163.194.239 in the Register because on the website “Rastaman Fairy Tales” located there something about cannabis had been found. It did not at all bother the executors of the law that under the said address some tens of innocent websites were registered. The owner of one of them—News of Electronic Book Publishing (*digital-books.ru*)—referred to the court with a claim. However, on June 19, 2013 the Tagansky District Court of Moscow dismissed it. In the course of consideration of the case, it turned out that in strict compliance with the requirements of Clause 12 of the Rules of creation, generation and maintenance of the Register Roscomnadzor in the event of refusal to delete the prohibited page included the whole IP address in the Register, and the providers, consequently, had to block the said address. Despite the discovered statutorily formalized disproportionality of reaction and the apparent contradiction of the provisions of the law “on black lists” to the Main Law of the country, the district court supported by Roscomnadzor refused to forward the request to the Constitutional Court of the Russian Federation.

A telling illustration of the problems that occur with the filtering of the content of IP addresses was the story with the 23 minute long blocking by Rostelekom of Yandex for the reason that one of the network addresses coincided with the address of some resource containing information about psychotropic substances.

⁹ Resolution of the Arbitration Court for the city of Moscow of May 13, 2013 in case No.A40-14061/2013. Please refer to the website of the Moscow Arbitration Court: http://kad.arbitr.ru/PdfDocument/a2b2663f-0694-4e0a-bf9a-fb1088a2e991/A40-14061-2013_20130513_Reshenija%20i%20postanovlenija.pdf.

In August, a hearing was to be held in the Tverskoy District Court of Moscow about a tweet where the officers of Rospotrebnadzor had found such a serious appeal for committing suicide that it had been necessary to block access to that short message across the whole Russia.

It is typical for all mentioned cases that neither the law administration agencies represented by Rospotrebnadzor, the FDCS and Roscomnadzor, nor the judges did not bother to substantiate the need for the prohibition of information, which is an apparent and gross violation of a whole corpus of statutory provisions, from FL “On information” to the Russian Constitution and the European Convention on the Protection of Human Rights and Fundamental Freedoms.

The experience of the law administration shows that any resource can be under threat, a word like “drug” or “suicide” found there is enough. A good example is the website of the online game *Eve Online* the administrators of which had to delete the page mentioning an imaginary drug.

It even came to incidents that are more ridiculous. The universal macro image for the blocking of any website in the territory of the Russian Federation—a table with farcical ways to commit suicide, usage of drugs and three naked babies—ended up in the register immediately after publishing.

The most serious defect is in Clause 12 of the Rules of maintenance of the Register. This clause provides for the obligatory inclusion in the Register of the network address of the resource from which the disputed information was not deleted. It is the blocking of IP addresses, not indexes of particular pages that attracts a good deal of criticism on the part of the experts. Provided there is a capability of isolated blocking of information recognized as illegal by the court the blocking of the address is a means blatantly disproportionate to the pursued goal.

RECOMMENDATIONS

- It is necessary to statutorily formalize clear and scientifically substantiated criteria of evaluation of information, based on the checking of availability of a real threat to the health of children.

- Supplement the open part of the “Uniform register...” with a section containing the full texts of resolutions of authorised bodies on the recognition of information as prohibited, with attachment of all materials on which such resolution is based (expert opinions, statements, assessments, etc.).

- Delete from FL “On information” and Decree No.1101 the possibility to block network addresses. Limit the Unified Register only with uniform resource locators (URL).

- Delete from the list of prohibited information constituting ground for the inclusion in the Register “appeals for suicide” and “information about minor children” as non-specific and allowing for an arbitrary limitation of the freedom of speech without evident positive effect.

- Introduce a moratorium on further extension of the list of grounds for the blocking of access to information.

- Exclude Rospotrebnadzor from the list of the agencies authorized to take decisions constituting grounds for the inclusion of page indexes, domain names and network addresses in the Register.

- Formalize an exhaustive list of sites accessible by children where the implementation of administrative and organizational measures is required, as well as the application of technical, software and hardware means of protection of children from the information impairing their health and development.

LIABILITY FOR LIBEL

REVIEW OF THE RUSSIAN LEGISLATION

The migration over a few months of libel from the criminal to the administrative legislation and back is interesting not because of the demonstration thereby of unscrupulousness and lack of professionalism in United Russia. In addition, not because it has shown the real role of D. Medvedev in the country. Moreover, even not because of the discussion about the required criminal liability for defamation that has been afresh called into existence.

The main result of this story is the confirmation of the thesis of the quite unstable Russian legal system causing disrespect for the law that in its turn shakes the said system even more. This is exactly what the authors of the most well known legislative innovations of the recent time have been doing. The fines provided for in CAV for the violation of the law on meetings that exceed the similar sanctions stipulated in the Criminal Code, destroy the generally well-set up legislation on administrative violations. The practice of extrajudicial blocking of websites formalized in the law “on black lists” emphasizes the disrespect of the authorities for the court.

The draft of Federal Law No.559740-5 “On the introduction of amendments to the Criminal Code of the Russian Federation and certain legislative instruments of the Russian Federation” that decriminalized libel had been brought in for consideration to the State Duma by President Medvedev in June 2011 within the framework of the widely advertised liberalization of the criminal legislation. On November 17, 2011, 312 deputies voted for the said law draft in the third reading, including P. Krashennikov, I. Yarovaya, D. Vyatkin, R. Shlegel, B. Reznik representing United Russia. That was they who later together with the deputies who joined them in the new State Duma proposed the law draft returning libel back to the Criminal Code.

The poorly reasoned tearing around of the deputies who first supported the “presidential law draft” almost unanimously and six months later abrogated it with poker faces showed once again that they do not even think about the public good, but press voting buttons mechanically as instructed by the heads of the faction.

Explaining the reasons for their “correction of mistakes,” the authors of the new law on the new criminalization of libel said the following.

Yarovaya: “Only those see threats who understand that libel for them is a lifestyle and means of living.”

Krashennikov: “The decriminalization of the article “Libel” performed within the framework of liberalization of the criminal policy and the stipulation for various libellous fabrications, and in other words the dissemination of false statements about someone, of administrative fines in the amount of up to three thousand Roubles have resulted in the practically unpunished accusation of the deepest sins made by some citizens and calling the people mobsters, terrorists and bribe takers.”

In the explanatory note to the draft law, the idea of the deputy was expanded: “the existing measures of protection of the honour and dignity of an individual formalized in CAV RF... are totally insufficient. Thus, the sanctions stipulated in Part 1 Article 5.60 “Libel” of CAV RF in form of a fine for individuals in the amount of up to two thousand Roubles seem inefficient... In the opinion of the authors the adoption of the law draft will facilitate the ensuring of improved protection of the constitutional rights of citizens, first and foremost against the dissemination of knowingly false information discrediting the individual’s honor and dignity.”

Clearly, there was no research of efficiency or inefficiency of the decriminalization of libel over the six months during which Article 5.60 of CAV was in effect. It is impossible to assess impartially its effect over such short period when even the courts did not have enough time to understand clearly how to apply the new provision. Speaking about some citizens who with impunity call people bribe takers the former deputy from the Union of Right Forces as simple as betrayed himself.

On the contrary, according to the explanation given in the explanatory note to the law draft decriminalizing libel and insult, these acts “correspond in terms of their social danger ... to offences provided for in the Code of the Russian Federation for administrative violations rather than the Criminal Code of the Russian Federation.” This law draft was approved and supported

by Russian the Supreme Court and the government that made a point of the need for the humanization of the criminal policy.

As far as libel and insult are concerned, the document really became a revolutionary one. Libel had been considered a criminal offence in the Russian Empire, the Soviet Union and the Russian Federation. It is characteristic, by the way, that since the time of the first Soviet Criminal Code of 1922 and till summer of 2012 the structure of the set of crime elements had little changed. The differentiation had been based on the extent of dissemination of the discrediting information with addition of an accusation of a grave offence as an extra qualifying feature.

In general, the problem of legal liability for libel has, in our opinion, two aspects. The first one is associated with the structure of the set of crime elements and the qualification. The second one is the matter of principle concerning the expediency of criminal liability for an offence that obviously does not result in any immediate danger to the society.

On May 5, 1998, the European Convention on Protection of Human Rights and Fundamental Freedom entered into effect for the Russian Federation, which means that the precedent-based practice of the ECHR became obligatory. This particular circumstance imposes on Russia the responsibilities of general nature in form of the requirement to bring the national legislation in compliance with the provisions of the Convention.

For example, the use in the article of the extremely broad term “information” contravenes the standpoint of the ECHR regarding the need to distinguish between stating of facts the correspondence of which to the real state of things can be verified and personal judgments and opinions. The criteria of truth and falseness cannot be applied to the latter and, hence, one cannot speak about the “undoubted falseness” of such information. Meanwhile, neither the old, nor the effective version of the article “Libel” makes this distinction, which provides many opportunities for their arbitrary interpretation and application. Moreover, in this wording, the law does not meet the requirements of legal certainty; i. e. judging from the text of the law citizens cannot match their cats to the requirements thereof. Theoretically, this situation will enable the casting of discredit on any issued verdict of guilty in a case of libel.

The Plenum of the Russian Supreme Court had to remove the deficiencies of the law. Ruling No.3 “On judicial practice in cases of protection of honour and dignity of individuals, as well as business reputation of individuals and

legal entities” dated February 24, 2005 said that the “term “defamation” used by the ECHR “is identical to the term of dissemination of discrediting information that does not reflect the real situation contained in Article 152 of the Civil Code of the Russian Federation,” and that courts “should distinguish between the existing statements of facts the correspondence of which to the real state of things can be verified, and personal judgments, opinions, beliefs that do not constitute the subject matter of judicial defense in accordance with Article 152 of the Civil Code of the Russian Federation because they can not be verified for the correspondence to the real state of things as they constitute the expression of personal opinion and views of the defendant.”

It is unclear why the authors of the law on the criminalization of libel decided to walk twice into the same water.

However, as can be seen in the analysis of the text of Article 128.1 of the Civil Code of the Russian Federation, the legal drafting technique had more than once let the deputies down. Thus, Part 4 establishes liability for libel combined with the accusation of a “crime of sexual nature,” whereas the Criminal Code contains no definition of such crimes. It is possible that the deputies meant the crimes specified in Articles 131 to 135. But the criminal law can not be applied on the basis of assumptions and, therefore, the acts listed in Article 18 of the Criminal Code of the Russian Federation “Crimes against sexual immunity and sexual freedom of individuals” can not be considered crimes of sexual nature for the purpose of Article 128.1 pursuant to the principles of lawfulness and legal certainty.

In addition, Part 4 establishes liability for libel “stating that an individual suffers from a disease posing threat to other people”¹. This provision implies that the availability of such disease certainly discredits the individual, which is a violation of the constitutional rights of ill people for the equality before the law and the court, as well as for the protection of dignity of the individual, increasing their social stigma. It should be reminded that in accordance with Part 3 Article 5 of the Federal Law “On the fundamentals of protection of health of citizens of the Russian Federation” the state guarantees for citizens

¹ Please refer to Decree No.715 of the Russian Government “On the approval of the list of diseases of social significance and diseases posing threat to others” dated December 1, 2004. Among them: HIV, hepatitis B and C, tuberculosis, sexually transmitted diseases, malaria, and some other.

the protection from all forms of discrimination on the grounds of their diseases. The special provision of Article 17 of the Federal Law “on prevention of spreading in the Russian Federation of the disease called the human immunodeficiency virus (HIV)” prohibits the discrimination of individuals because they have HIV. Article 14 of the European Convention on the Protection of Human Rights and Fundamental Freedoms prohibits all discrimination on any grounds. This being said, discrimination may be expressed not only in the establishment of certain restrictions on the exercising of rights and liberties, but in the encouragement by the state of the stigma aimed against particular social groups, which takes place in the event of the law provision concerned. The ECHR claims that indirect discrimination occurs when there is a “general political course or measures that being disproportionately prejudged affect some particular group notwithstanding that such course/measure are not aimed specifically at this group” (resolution dated May 4, 2001 in the case of *Hugh Jordan v. the United Kingdom*, § 154).

Part 5 provides for punishment for libel combined with the accusation of individual of a grave and especially grave crime, i. e. in accordance with Article 15 of the Criminal Code of the Russian Federation of deliberate acts for which the Code provides for the maximum possible punishment in form of imprisonment for the period of over five years. This category includes the most common malfeasances in office such as abuse of office, exceeding of official powers, bribe taking and giving and a whole number of other crimes. As a rule, these are the crimes that become the subject matter of journalistic investigations, and, hence, Article 128.1 in its most severe part targets mostly journalists, which cannot but make an impact on their desire to discharge their professional duties. The maximum scope of the penalty established by this article is obviously excessive. The most severe sanction implies a fine in the amount of up to 5 million Roubles or compulsory community service of up to 480 hours. Previously persons convicted of libel, especially for the first time, could be subjected to conditional sentence. Now the maximum possible fine stipulated in the Criminal Code can be imposed in accordance with Part 5.

It is worthy of note that it is the person that considers himself/herself affected as a result of the dissemination of discrediting information contrary to the real state of things who is to the greatest extent interested in the restoration of honour and dignity, as well as compensation for the inflicted harm. In addition, the efficient mechanism of achievement of both goals is provided

by the Civil Code of the Russian Federation and the legislation on mass media that stipulate the refutation of false information and the compensation for the inflicted harm because of its dissemination. The sufficiency of the civil law mechanism was pointed to on repeated occasions by practicing lawyers and legal theorists. For example attorney H. Reznik: “For an individual the protection by the civil law is more efficient, as well as more useful. A libeled citizen is firstly interested in rehabilitation and secondly in the compensation for the inflicted harm. The civil law fully satisfies these interests: mass media disseminating lies are bound by the court to publish a retraction, compensate the individual concerned for property damage and emotional distress—the experienced physical and moral suffering.”

The article on libel establishing liability for the dissemination of knowingly false information that discredits honour and dignity of other person does not take into account the nature of such information even in the event when it is about public discussions of political and other matters of social importance.

In accordance with the legal proposition of the Supreme Court of the Russian Federation voiced in the above Decree of the Plenum, the courts should keep in mind that according to Articles 3 and 4 of the Declaration on Freedom of Political Discussion in Mass Media adopted on February 12, 2004 in the 872nd session of the Committee of Ministers of the Council of Europe, the politicians who strive to earn support from public opinion agree by doing so to become the subject matter of the public political discussion and criticism in mass media. Government officials can be subjected to criticism in mass media in relation to how they discharge their duties because it is necessary for ensuring of an open and responsible exercising by them of their powers. This principle must be applied in the criminal law as well, however the lawmakers has ignored this requirements.

The ECHR insists that the freedom of journalism includes, *inter alia* the possibility to make recourse to some degree of exaggeration or even provocation². We believe that the real risk of abuse and arbitrary application of Article 128.1 of the Criminal Code of the Russian Federation for putting pressure of journalists performing their investigations outweighs far the dubious need for the existence in a democratic society of such extensive interpretation of the notion of criminal libel.

² Resolution dated March 22, 1995 in the case of *Prager and Oberschlick v. Austria*, § 38.

The Council for the Development of Civil Society and Human Rights at the Russian President proposes, apart from the reduction of the sanctions and the limiting of the disposition of this article on libel with the dissemination of information about a person's private life, to transfer all such cases to the category of private charge in order to deny the government the opportunity to hold people liable on an arbitrary basis without personal judgment by the affected party as regards the assessment of the inflicted harm.

These proposals of the Council seem one-legged. The final goal of such reform must be the complete abolishment of criminal or administrative liability for libel.

REVIEW OF THE MATERIALS ON STIFFENING RESPONSIBILITY FOR PEOPLE RESIDING WITHOUT OFFICIAL REGISTRATION AND ELIMINATION OF THE “ELASTIC HOUSES”

On January 31, 2011 State Duma parliamentarian, P. Krashennnikov, had introduced the draft on Federal law No.494206-5 “On amending the Housing Code of Russian Federation and other norms of Russian Federation” (hereinafter referred to as draft on banning the *elastic houses*). Amendments to legal norms that regulate registration of Russian citizens, migrants’ registration, and real estate registration limit the norms of allocated square meters per person (10 sq. m in Moscow, in regions less). Limitations are not spread on spouses and kids, other people requesting registration at the same residence (usually apartments) would have inquire the court decision on recognizing the petitioner as the family member.

Two years later, on January 9, 2013 RF President had introduced the draft of the Federal law No.200753-6 “On amending separate legal acts of Russian Federation (hereinafter referred to as draft on stiffening residence registration, aka *propiska*, provisions). The draft defines phantom registration as one that has unreliable document support and demonstrates no intentions on actual residency. The draft imposes criminal charges: from fines \$3,000–15,000 to 3-year imprisonment. The administrative responsibility increases by 2 to 3 times, in case a person lives without a passport, with no residence registration, or if an owner of the property allows to reside without officially registering people from \$50–70 to \$50–250. The draft also defines sanctions such as fining officials (\$1,000–1,800) and legal entities (\$8,000–25,000). Important to mention that in 2012 the government has negatively responded to first draft stating that the new norm sets no procedure on how unregistered

residents could be revealed and it doesn't defined the corresponding government agency that should set up such a procedures.

So on January 10, 2013 the Commission on migration, policies created at the President Council on Civil Society Development and Human Rights publishes the project of the simplified mechanism for registering citizens of Russian Federation. It suggests using the notifying character for citizens of Russia upon presenting their passports and excluding any other proof for residence in Russia through electronic terminals as those used for phone payments. The registration certificate then is received via regular post on the addressed indicated personally by the applicant. In January 2013 this Commission on migration policies has severely criticized draft on banning the *elastic houses* and draft on stiffening residence registration, aka *propiska*, provisions, stating that these drafts break the institute of notifying registration into its complete opposite, perverting the meaning of registering procedure as exceptionally statistical. This may lead to intentional invalidity and prevent citizens form realization of imposed responsibility to register, which in turn severely breaks the constitutional right free movement and selection of the residence place. The Commission defined the drafts as ineffective and unrealizable measures that would facilitate corruption. Though the Commission admits that the goals on lessening incontrollable migration and corruption are correct, the methods chosen to realize those goals are inappropriate; the draft demand complete reprocessing and the institute of registration people should either remain the same or be more simplified using the draft developed by the Commission.

Nevertheless, already on February 15, 2013 the draft on stiffening residence registration provisions is passing first reading practically unanimously in State Duma. On March 1, 2013, the Public Chamber of Russian Federation draft on stiffening residence registration provisions was approved in general with exceptions of amendments for criminal charges. The Public Chamber had pointed that the requirement to prove the validity of intentions to register (being a relative) is an unacceptable linkage of the right to housing to availability of registration. The Chamber also defined that the law contains no procedures on revealing unregistered citizens.

The Commission on migration policies created at the President Council on Civil Society Development and Human Rights had developed the new procedure on registering citizens of Russian Federation (protocol 3) using as grounds the successful mechanisms for foreign nationals registration since

2007. General provisions stipulate that citizens of Russian Federation could be registered in all estates where they live regardless of its character, residence or not. In case a citizen has no estate to be registered at, he/she can register at his employer. In absence of both a citizen registers at migration service division of the district he/she lives in. The arrival registration is suggested to be made voluntary (non-mandatory).

On September 4, 2013 the draft developed by the Commission on migration policies created at the President Council on Civil Society Development and Human Rights found Presidential support. Later in September 2013, the Council was asked to develop recommendations on improving Russian legislation on registering citizens of Russia, considering also recommendations on measures of responsibility for illegal identification documentation turnover. In November 2013 during special sessions of the council, the recommendations were adopted in the Council and forwarded to the President. In early December 2013, members of the Council already discussed the amendments with the President. Already on December 13, right after this meeting with the Council, the draft on stiffening residence registration, aka *propiska*, provisions, had passed second and third readings at State Duma without any changes suggested by the Council. Soon after the draft was adopted by the Federation Council, was signed by the President on December 21, 2014 with the name of Federal law No.376, and became active on January 3, 2014. At the end of December 2013, the legal department of the President administration announced that due to the Federal law No.376, the Council's recommendations on its amendment might be considered only during regular procedures of the law realization and practice. In February 2014, the Federal Migration Service had agreed that the Council's recommendations on amending Federal law No.376 as worthy but never supported it officially, though promising to consider recommendations in improving the population registration system.

During December 2013–March 2014 the Council, Public Chamber, and involved human rights organizations receive multiple appeals from citizens with complaints on mass raids to their residence by the police demanding eviction because of improper registration. Many complaints are actual calls for help and determination of citizens for radical measures, including self-immolation. Obviously, the consequences of adopted law No.376 include the increase of lease payments, failure to lease apartments for large families and other categories of citizens because property owners are unwilling to register

such categories. In addition, the law imposes greater responsibilities for registration absence, which led to increased number of unregistered people. At the same time, the law develops no mechanisms for people's registration, opening floor to more corruption. Besides, the authorities take no systematic measures on combating the black market of false documents, services of which are openly advertised on streets and in the media.

The geo-political tension developed during spring-summer of 2014 has created additional sphere for the monitoring of the freedom of movement for portion of Russian citizens, who serve in forces of the Ministry of Interior, all intelligence services and agencies, all level judges, and many other professional groups. For instance, the police are prohibited from exiting borders of Russian Federation to at least 200 countries; reasons for selection of these states are not explained. Allegedly, this limitation covers those who have minimum access to classified information. Meanwhile, police officers of regular squads all over Russia indicate rejection of their rapports for planned foreign vacations, though officially no document was presented to public. The same happens even to the nurses who serve in the police and FSB in-house clinics and hospitals and to judges. There were no official statements on this unspoken rule, except the one given by the Federal Service over Drug Turnover as a recommendation: "for security reasons it is not recommended to visit countries that have extradition." On April 11, 2014, the Russian Ministry of Foreign Affairs has posted the announcement asking Russian citizens to refrain from visiting countries who have extradition agreements with the United States. Anti-Americanism propaganda is taking-up its pace; and the Russian Ministry of Foreign Affairs states that the US Administration rejects accepting the fact of reattachment the Crimea peninsula to mainland Russia, the act fully corresponding to the International Law and the U. N. Charter. In fact, the Administration attempts to chase Russian citizens as their routine work, which develops additional threats related to the U. S. sanctions against Russians.

During summer, 2014, months the number of fines imposed to Russian citizens for illegal registration of work immigrants has substantially increased. The soundest case is charge against famous human rights activists, member of Moscow Helsinki Group's network of regional human rights organization, member of the movement "For Human Rights" from Obninsk, Tatyana Koltlyar, On July 2, 2014 she was officially accused in 2 articles of Russian Criminal Code (322.2 и 322.3): organization of illegal migration and fake registration for foreign citizens. Tatyana has rejected all charges imposed. Because of her

human rights activities, she was accused in assistance to illegal migration. Important to say that Tatyana registered at her apartment people who come to Kaluga region from Tadzhikistan within the State program on assisting voluntary relocation of Russian nationals from abroad. The repatriate may not participate in this Program unless registered at some residence in Russia; so the impersonal support for such people is the only way to legalize excluding the way of purchasing such registration. Tatyana has suffered persecutions and accusations from the authorities, she was first undertaken written testimony for not leaving the place, then she was demanded to pass the psychiatric exam, though later, all types of restrictions against Tatyana were reverted.

Some citizens find a good source of income in providing fake registration to migrants, meaning that they officially register a person at his/her residence, while in reality the newly registered resident doesn't live at the address but pays a lot of money to the homeowner. Such residences have a common name of elastic apartments or rubber apartments. Cases of penalizing Russian citizens for providing residence registration to migrants increased this summer: homeowners in Moscow, Saratov, Perm, Divnogorsk, Yekaterinburg, Buryatia, Tomsk, Novokuznetsk, etc. Each fine is an equivalent to \$3,000. At the same in July 2014, the Prosecutor General had criticized the work of law-enforcement organs in migrants' control. Primarily he stated that the information exchange between the police and migration service is ineffective, and the fight against elastic apartments is very shallow. We continue to observe all known cases, because along with those who break the law in demand for easy income, there are people like Tatyana Kotlyar.

At the end of July, the Federal Migration Service of Russia has suggested the draft of the norm that would define the fact of fake residence registration. The migration rules were restricted even more since 2013. The newly introduced document covers responsibilities of migrating foreign nationals and not Russian citizens. The document defines what fake residence registration is and states that the review could be performed only by the police in cooperation with the Migration Service officers. The new rules also increase the fine size from \$3,000 to \$15,000 with possibilities for 3-year sentence.