

*(Translated from Russian)*

**Permanent Mission of the Russian Federation to the United Nations Office and other International Organizations in Geneva**

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No. 1297

The Permanent Mission of the Russian Federation to the United Nations Office and other international organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and, with reference to letter OL/RUS/2/2018 from the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, has the honour to transmit herewith information on the adoption of amendments to certain legislative acts of the Russian Federation relating to the activities of the media.


The Permanent Mission of the Russian Federation takes this opportunity to convey to the Office of the United Nations High Commissioner for Human Rights the renewed assurances of its highest consideration.

Geneva, 6 April 2018

Office of the United Nations High Commissioner for Human Rights  
Geneva

HRC/NONE/2018/55  
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**Information from the Russian Federation following the request of the Special Rapporteurs of the United Nations Human Rights Council on the promotion and protection of the right to freedom of opinion and expression and on the promotion and protection of human rights and fundamental freedoms while countering terrorism regarding the adoption of amendments to certain legislative acts of the Russian Federation relating to the activities of the media**

*Reference:* OL RUS 2/2018

The Russian Federation has considered the request of the Special Rapporteurs of the United Nations Human Rights Council on the promotion and protection of the right to freedom of opinion and expression and on the promotion and protection of human rights and fundamental freedoms while countering terrorism regarding the adoption of amendments to certain legislative acts of the Russian Federation relating to the activities of the media, including the amended definition of “media performing the functions of a foreign agent”, and would like to communicate the following.

We note that the information contained in the above-mentioned request from the Special Rapporteurs includes distorted messages concerning legislative and law enforcement practices in the Russian Federation as regards restrictions on access to information on Internet sites, and measures taken in relation to certain foreign media.

Federal Act No. 327-FZ on amendments to articles 10 (4) and 15 (3) of the Federal Act on information, information technologies and information protection and to article 6 of the Mass Media Act of the Russian Federation was adopted on 25 November 2017 (the amendments entered into force on 1 January 2018). These amendments define the procedure for restricting access to information that contains calls for mass unrest, extremist activity or participation in public events held in violation of the established order and to information materials from foreign non-governmental organizations whose activity is recognized as undesirable in the Russian Federation in accordance with Federal Act No. 272-FZ of 28 December 2012 on sanctions against individuals involved in violations of fundamental human rights and freedoms and of the rights and freedoms of citizens of the Russian Federation. It should be emphasized that recognizing an organization as “undesirable” does not define it as extremist. Prohibition of the dissemination of information materials from “undesirable organizations” is also not linked to extremist activity.

The amendments adopted in fact specify the conditions for restricting access within the Russian Federation to information disseminated in violation of Russian legislation. Article 15 (3) of Federal Act No. 149-FZ of 27 June 2006 on information, information technologies and protection of information (hereafter Federal Act No. 149-FZ) states that access within the Russian Federation to illegal information containing, in particular, calls for mass unrest, extremist activity and participation in public events held in violation of the established order may be restricted. The basis for such a restriction is a demand by the Procurator-General of the Russian Federation or his deputies. This Act also provides for the owner of the information resource to receive a mandatory notification from the authorized executive body regarding the need for immediate removal of the materials containing information that has been disseminated in violation of the law. In addition, Federal Act No. 149-FZ implies that access to the resource may be re-established once the owner of the resource has removed the unlawful material. The owner must notify the authorized executive body responsible for monitoring and oversight in the field of media and communications, the Federal Service for Oversight in the Field of Communications, Information Technologies and Mass Communications (hereafter Roskomnadzor), of the removal. This notification may be sent by email, which increases the efficiency of joint action by the interested parties. Access is resumed following verification.

The amendments to information-related legislation made in November 2017 introduced a definition of “foreign media performing the functions of a foreign agent” into Act No. 2124-1 of 27 December 1991 on the mass media (the Mass Media Act). Consequently, articles 6 (3) and 6 (4) of the above-mentioned Act state that a legal entity registered in a foreign State or a foreign structure with no separate legal identity that is distributing printed, audio, audiovisual or other information and materials to the general

public (foreign media) may be designated as foreign media performing the functions of a foreign agent, irrespective of its organizational and legal form, if it receives funding and (or) any physical assets from foreign States, their government bodies, international or foreign organizations, foreign citizens, stateless persons or their authorized representatives, and (or) from Russian legal entities receiving funding and (or) any physical assets from such sources. Accordingly, under the procedure established by the authorized federal executive body, foreign media may be subject to the provisions of Federal Act No. 7-FZ of 12 January 1996 on non-profit organizations, which regulates the legal status of non-profit organizations performing the functions of a foreign agent, with the exception of specific provisions that apply only to organizations created as non-profit organizations. In accordance with Decree of the President of the Russian Federation No. 579 of 2 December 2017, the authorized federal executive body is the Ministry of Justice of the Russian Federation.

Foreign media outlets designated as performing the functions of a foreign agent have the rights and responsibilities specified in the Federal Act on non-profit organizations for non-profit organizations performing the functions of a foreign agent. For instance, the procedure and frequency with which such media outlets shall report on their activities, as well as the procedure for verifying those activities, are regulated in accordance with article 32 of the Federal Act on non-profit organizations, regarding the reporting requirements for non-profit organizations performing the functions of a foreign agent.

The Ministry of Justice has developed a draft order to approve the procedure for applying, to foreign media performing the functions of a foreign agent, the provisions of the Federal Act on non-profit organizations, as they pertain to regulating the legal status of non-profit organizations performing the functions of a foreign agent. To date, the document has undergone public consultation and anti-corruption assessment procedures.

It should be noted that these amendments arose from the need to introduce into law an entity that was participating in legal relations in practice but which did not have a separate legal status (previously there was no regulation of foreign media in legislation).

Consequently, the amendments to Russian legislation adopted in late 2017 are intended only to establish the procedure for designating an entity as foreign media performing the functions of a foreign agent, and not to restrict its activities. Moreover, the amendments do not provide for the introduction of censorship, and they in no way limit the dissemination by or financing of the media concerned or lay down the way in which they publish information on the Internet.

The introduction of a procedure for designating a foreign media outlet as performing the functions of a foreign agent is intended to ensure the transparency and openness of the activities of legal entities registered in a foreign State or of foreign structures with no separate legal identity that are distributing printed, audio, audiovisual and other information and materials (foreign media) to the general public and receiving funding and any physical assets from foreign sources.

The proportionality of the restrictions is ensured by the fact that they do not imply an unlimited ban on the dissemination of information in the Russian Federation by foreign and international non-governmental organizations whose activity is considered undesirable.

It should be noted that the inclusion of media outlets in the appropriate register does not deprive them of their right to judicial protection.

Any analysis of the amendments to legislation regulating media activity should be carried out with due regard for the fact that, in the Russian Federation, the principle of freedom to disseminate information, as enshrined in international and constitutional law and national legislation, is strictly observed. For instance, under article 29 of the Constitution of the Russian Federation, the freedom of the media is guaranteed and censorship is prohibited. This position is also entrenched in article 3 of the Mass Media Act, which establishes the inadmissibility of censorship.

Protection of the principles of the constitutional order is one such constitutional value, alongside the freedom of the media and freedom of opinion and expression.

The Constitution of the Russian Federation therefore includes a ban on the activities of voluntary associations whose goals or actions are aimed at changing by force the foundations of the constitutional order and violating the integrity of the Russian Federation, undermining State security, forming armed units, and inciting discord based on social grounds, race, nationality or religion (art. 13).

The restriction of access to information containing calls for mass unrest, extremist activity or participation in public events held in violation of the established order is a measure intended to detect and prevent activity of an extremist, terrorist or separatist nature.

It should be noted that, as provided for in the legislation of the Russian Federation on information, information technologies and the media, the above-mentioned restrictions on the dissemination of information intended to incite hatred and discord or discrimination on the basis of gender, race, religion, ethnicity or social background, or terrorist and extremist propaganda are in full compliance with the universally recognized principles and norms of international law.

Indeed, the Universal Declaration of Human Rights enshrines the right of every person to freedom of opinion and expression. This right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers (art. 19). In the exercise of his or her rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society (art. 29).

The International Covenant on Civil and Political Rights establishes that everyone has the right to freedom of expression. This right includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his or her choice (article 19 of the Covenant). The exercise of the above-mentioned rights carries with it special duties and responsibilities. This right may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary for respect of the rights or reputations of others, or for the protection of national security or of public order, or of public health or morals.

Article 10 of the European Convention on Human Rights establishes that the exercise of the freedom to receive and impart information and ideas without interference by public authority and regardless of frontiers may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Under the Joint declaration on freedom of expression and “fake news”, disinformation and propaganda, adopted in Vienna on 3 March 2017, States may only impose restrictions on the right to freedom of expression in accordance with the test for such restrictions under international law, namely that they be provided for by law, serve one of the legitimate interests recognized under international law, and be necessary and proportionate to protect that interest.

According to this Joint Declaration, State measures to block websites, IP addresses, ports or network protocols are extreme measures which can be justified where it is provided by law and is necessary to protect human rights or other legitimate public interests, including in the sense of that it is proportionate, there are no less intrusive alternative measures which would protect the interest and it respects minimum due process guarantees.

The restriction of access to information containing calls for mass unrest, extremist activity or participation in public events held in violation of the established order is a measure intended to detect and prevent activity of an extremist, terrorist or separatist nature.

Due account should be taken of the fact that international legal instruments permit the restriction of rights and freedoms for the purposes of combating crime, and particularly terrorism, which is the most dangerous form of crime.

Under article 5 of the International Convention for the Suppression of Terrorist Bombings, acts, in particular where they are intended or calculated to provoke a state of terror in the general public or in a group of persons or particular persons, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature and are punished by penalties consistent with their grave nature.

The International Convention for the Suppression of the Financing of Terrorism provides that each State party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person officially responsible for the management or control of that legal entity has committed an offence. Such liability may be criminal, civil or administrative.

The Shanghai Convention on Combating Terrorism, Separatism and Extremism of 2001 provides for cooperation between parties to this Convention on the development and adoption of agreed measures to prevent, detect and suppress extremism, separatism and terrorism.

The Guidelines of the Committee of Ministers of the Council of Europe on human rights and the fight against terrorism, adopted by the Committee of Ministers on 11 July 2002, establish that States parties may, for specific reasons, restrict most non-absolute rights under the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. These reasons include exceptional circumstances, such as the threat of a terrorist act. States have a margin of appreciation, that is, broad discretionary powers, in striking a balance between the rights of individuals and the interests of national security.

With regard to the concept of “countering violent extremism” (CVE), as mentioned by the Special Rapporteurs, it should be noted that there is no definitive understanding or acknowledgement of this concept in the international community. At present, the only general and highly restrained assessment by the United Nations of the content and long-term potential of international cooperation to counter violent extremism is contained in General Assembly resolution 70/291 of 1 July 2016 on the United Nations Global Counter-Terrorism Strategy Review. This resolution “takes note of”, rather than “welcomes” the Plan of Action to Prevent Violent Extremism of the former Secretary-General of the United Nations, the core document on the concept of CVE, while the implementation of its recommendations is to be considered by member States “as applicable to the national context”.

Furthermore, the relevant international documents related to counter-terrorism do not define “violent extremism”. The United Nations documents on counter-terrorism and related issues referred to by the Special Rapporteurs either do not contain a definition, or any definition is purely descriptive.

The Russian Federation, together with many other States, considers CVE to be an ambiguous concept, substituting for and emasculating the task of counter-terrorism and capable of serving the purpose of excusing terrorists by categorizing them as “bad” or “not entirely bad”. Moreover, the concept of CVE may be used as justification for interference in the internal affairs of sovereign States with the aim of removing undesirable “authoritarian” regimes, including through the direct or indirect use of groups of “not entirely bad extremists” (“terrorists”).

The Russian Federation, together with a sizeable group of countries, upholds other principles of organizing international cooperation to counter extremism and considers these aims primarily to be part of the prevention of terrorism. At national level and that of international cooperation, only States and their authorized bodies should play a leading role, while civil society organizations may be involved only as additional supporting players.

Sovereign States, who bear the primary responsibility for ensuring that society remains safe from terrorism and extremism, must protect their citizens from the spread of

dangerous extremist ideologies and practices within their territories. Ensuring that the competent authorities are able to legally restrict access to information resources that contain calls for extremist activity and mass unrest, including in the media and on the Internet, must be fully assimilated to such justified measures.

The tasks of countering extremism and extremist activity (without reference to its qualification as violent) are fully reflected in Russian legislation, including in such basic legal and regulatory instruments as Federal Act No. 114-FZ of 25 July 2002 on combating extremist activity, the Criminal Code of the Russian Federation and the Strategy to Combat Extremism in the Russian Federation by 2025 (approved by the President of the Russian Federation on 28 November 2014, No. Pr-2753). In addition, Russian national legislation is continually being improved to take account of current trends and realities.

Statistical data confirm the effectiveness of the work carried out by Russian law enforcement agencies. For example, in 2017, Roskomnadzor received 192 demands from the Procurator-General of the Russian Federation or his deputies for restriction of access to illegal information in 994 information resources (pages on Internet sites). Moreover, only 2 complaints against the 192 decisions to restrict access to information resources were filed and subsequently upheld in court.

In the same year, over 87,900 information resources on “web mirrors” (indexes of Internet sites) were uncovered, which hosted the illegal information indicated in the Procurator-General’s demands. Access to 13,500 indexes within Russian territory was restricted. Illegal information was deleted from the remaining information resources.

It should also be noted that, in 2017, over 86,000 “web mirrors” with extremist materials were found, including:

- Over 44,600 sites and (or) site indexes containing propaganda for the activities of the international terrorist organization “Islamic State”;
- Over 5,400 sites and (or) site indexes disseminating materials from Ukrainian radical right-wing neo-Nazi organizations (“Pravyi Sektor”, UNA-UNSO, UPA, S. Bandera’s “Tryzub”, “Bratstvo” and other organizations whose ideologies justify the crimes of Nazis and their allies).

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