

**Comments of the Russian Federation on the Comparative Study on Blocking,
Filtering and Take-down of Illegal Internet Content
as regards its part concerning the Russian Federation**

General Comments

The Comparative Study on Blocking, Filtering and Take-down of Illegal Internet Content in respect of the Russian Federation is based on a superficial study mostly of the domestic anti-extremist and anti-terrorist legislation. The research is characterized by one-sided presentation of the material containing errors and inaccuracies, erroneous citations and inadequate characteristics of Russian law. Arbitrary interpretation and distortion of the legislation as a whole forms a negative opinion about the national legal framework in this area.

In general, the quality of the document is far from high and ultimately discredits the reputation of the Council of Europe, known for its high-quality expertise and documents issued in its name. The work is not consistent with the principle of impartiality. The study gives the impression of negligence. In addition to factual errors in the dates and the titles of the laws, a broad interpretation of laws presents in the study or the author gives her speculations concerning the norms of law, without giving an explanation to her conclusions. Besides that the author allows herself to use colloquial and derogatory nicknames for laws (for example, the Federal Law On Information, Information Technologies and Protection of Information is called as "Bloggers' Act", the Federal Law On the Protection of Children from Information Harmful to their Health and Development is called as " the Russian Black List Bill", the Federal Law on Countering Extremist Activity is called as "Extremism Law"). This approach is considered as disrespect to the Russian Federation. We believe unacceptable such approaches in the documents drawn up on behalf of the Council of Europe or the Secretary General.

Furthermore the author allows herself political assessments on issues which are not within the mandate of the study. On p. 561 there is an unsubstantiated conclusion about the absence of independent courts in Russia. On p. 563 the author

speaks of "Russia's annexation of Crimea" while the Crimea became part of the Russian Federation on the basis of the free will of the inhabitants of the peninsula. Such approaches discredit the study and once again indicate its bias. Since ultimately the Study will be issued and perceived as a document of the Council of Europe, these phrases should be deleted from the text.

Notwithstanding the requirements of its methodology the Study fails to describe and to take into account the relevant conclusions of courts. If this work had been done, the study would only profit and it would help the author to be more objective and precise. Besides the relevant case-law in the Russian Federation there is a wide basis of clarifications of the Supreme Court of the Russian Federation concerning in particular the anti-extremism and anti-terrorism legislation.

Unfortunately, the value of this Comparative study seems doubtful. It does not appear to meet the high standards of the Council of Europe, including the principle of impartiality. We believe that the Secretary General has every reason to make a complaint to the authors, whose poor quality work discredits the Secretary General's initiative. Moreover, there are reasonable doubts as to the future use of external resources by the Council of Europe for such researches.

Specific comments on some points in the text:

The third paragraph of section 1 "Legal sources" provides false information about the participation of our country in the relevant international treaties. The Council of Europe Convention on the Protection of Individuals with regard to Automatic Processing of Personal Data entered into force for the Russian Federation on September 1, 2013, instead of January 1, 2013, as stated in the Study.

The Russian Federation ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse on August 9, 2013, and not 2008 as stated in the Study.

The title of the Council of Europe Convention on the Prevention of Terrorism is incorrect.

We believe it inappropriate to point out what international instruments have not been ratified by the state as it was done in relation to the Convention on Cybercrime, because states do not have an obligation to ratify conventions.

The author misinterprets the Opinion of the European Commission for Democracy through Law (the Venice Commission) on the Federal Law "On Countering Extremist Activity" in **subparagraph "a" of point 2.1.1 of section 2.** The Venice Commission is attributed words on inaccuracy of definitions of "extremism" and "extremist materials" in the Russian legislation. However, in paragraph 49 of the opinion these words refer to the term "extremist documents." Not putting the quoted text in quotation marks, the author actually assumes the authorship of the Commission's conclusions and includes in the study the fully borrowed phrase: "According to non-governmental sources, the Federal List of Extremist Materials has in recent years led to the adoption, in the Russian Federation of disproportionate anti-extremist measures". There is no specification that the words "in recent years" originally belong to the period of time up to 2012.

With the reference to this Opinion it is also stated that "the definitions of "extremism", "terrorism" and "separatism", provided by the Shanghai Convention on Combating Terrorism, Separatism and Extremism of 15 June 2001 ... all require violence as an essential element, certain of activities defined as "extremist" in the Law on Countering Extremist Activity seem not require an element of violence."

In this regard, it should be noted that the signs of extremism under Art. 1 of the Federal Law on Countering Extremist Activity, are followed from norms of the international law, namely:

Article 20, part 2 of **International Covenant on Civil and Political Rights** provides that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

European Convention for the Protection of Human Rights and Fundamental Freedoms prohibits discrimination in the enjoyment of rights and freedoms on grounds of race, color, religion, language, etc.; prohibits associations pursuing goals and activities which are contrary to criminal law or are directed against the constitutional order or the idea of mutual understanding between nations.

At the same time the above-mentioned international legal instruments do not provide for "the element of violence" as main criteria of unlawfulness of the discriminatory action.

The practice of the application of international norms prohibiting the incitement of religious enmity and insulting religious feelings of believers (in a number of countries, these actions are called «hate speech») in Canada, Denmark, France, Germany and the Netherlands is similar. Everywhere this kind of regulations is focused on the need to protect human dignity and is actively enforced providing for both criminal and civil liability. In some countries (for example, Canada) the direct intent to incite hatred or violation of peace as a result of criminal actions is a *dolus specialis* requirement for criminal liability, in others (Denmark, France, Germany and the Netherlands) criminal responsibility for hate speech is possible regardless of intent and the possible consequences.

At the same time in the international practice there is a position that hate speech causes double damage because, first of all, it is directed against individuals and groups and, secondly, against the whole state and its social and moral structure. In light of these circumstances and in the absence of the formalized concept relating to extremism within the Council of Europe the criticisms contained in the Study cannot constitute adequate recommendations.

Separately, the attention should be drawn to the notion in the fourth sentence of the fifth paragraph of **sub-section «b», point 2.1.1 section 2** regarding the alleged absence of independent courts in Russia. It is necessary to emphasize that

the issues of the functioning of the judicial system in the Russian Federation fall outside the scope of competence of the authors defined by the Study mandate.

Russia is also “blamed” with making “significant changes in the area of responsibility for the terrorist crimes committed using the Internet”.

The Study discloses the content of relevant articles of the Criminal Code. However there is no reference to the specific articles of the Criminal Code and the sanctions for the actions given in the Study are incorrect.

- "Training for terrorism" (Article 205.3 of the Criminal Code.);
- "Establishing of a terrorist organization and participation in the activities of the organization" (205.5 of the Criminal Code).

These rules are in fact directed at the suppression of terrorism in the manner and to the extent provided for by international instruments on combating terrorism.

It is very important to draw the attention to the fact that the abovementioned changes (innovations) take into account the requirements of UN Security Council Resolutions 2178 (2014), 1267 (1999), 1373 (2001), 2161 (2014), designed to consolidate and strengthen the efforts to combat international terrorism. Resolution CTC UN 2178 (2014) and other documents pay special attention to curbing illegal activities of terrorists using the Internet. This kind of activity includes incitement to terrorism, recruitment, provision of materials, information and other assistance to terrorists. It is important to note that all these actions are **non-violent actions**.

In **subparagraph «b» of point 2.1.1 of section 2** it is noted that changes in the Russian legislation introduced by the Federal Law of 02.11.2013 №302-FZ provide for "property liability of relatives of terrorists for any claims for compensation for damages caused by terrorist actions." This is a selective citation which distorts the true meaning of the appropriate Russian legislation and to some extent discredits it. The law actually does not provide for property liability of criminals' relatives for the crimes committed by the terrorists. The seizure is only possible in respect of property that was acquired illegally or obtained as a result of

the commission of terrorist activities or due to certain circumstances transferred to third parties.

Chapter 15.1. of the Criminal Code contains a number of articles that provide for the seizure of property derived from the commission of a crime on the basis of a conviction handed down by a court in a criminal case. Tools, equipment or other instrumentalities of crime belonging to the accused are also subject to confiscation. Property transferred by prisoners to third parties can be confiscated if the person who received the property knew or should have known that it is received as a result of criminal acts.

It is alleged in the first paragraph **of subparagraph "c" of point 2.1.1 of section 2** that the legislation of the Russian Federation provides for criminal liability for "separatism". The term "separatism" however is absent in the Criminal Code of the Russian Federation.

The study notes that on March 13, 2014 Russia's Prosecutor General limited access to the media website of newspaper "Grani", which is a popular opposition news portal.

In March 2014 Roskomnadzor sent demands to restrict access to six Internet resources (including the site of the Russian opposition activist Alexei Navalny) that contained calls to hold mass rallies in inappropriate places and without notice to the authorities. The organization of such spontaneous events could lead to infringement of functioning of the public transport, public facilities, jeopardizing the health of citizens.

Thus, access to the above-mentioned internet resources was not restricted on the basis of their extremism or terrorist content but in connection with violations of the law regulating the procedure for holding mass (public) events. In accordance with the Federal Law of 19.06.2004 №54-FZ "On Meetings, Rallies, Demonstrations, Processions and Picketing" one of the basic principles of the public event is the legality, in other words - compliance with the Russian Constitution and federal laws. Otherwise, the authorities have the right to apply

certain restrictive measures, including those involving blocking of illegal information on the Internet on the basis of article 15.3 of the Federal Law "On Information, Information Technologies and Protection of Information".

The **third paragraph of point 2.1.3 section 2** distorts the provisions of Article 9 of the Federal Law "On Information, Information Technologies and Protection of Information". The paper alleges that "the disclosure of information relating to the abuse and violations of law and human rights may be punished as a "disclosure of state secrets". However the article does not contain such provisions. Furthermore it is stated that the law provides for aggravated criminal liability for disclosure of information falling under state secrecy. However criminal responsibility is not regulated by this federal law.

The fourth paragraph of point 2.1.3 section 2. The author broadly interprets Article 283.1 of the Criminal Code, as this article does not contain the phrase «if the purpose of its transfer to third parties is not proven».

The fifth paragraph of point 2.1.3 of section 2 The data provided by the author do not correspond to Article 283 of the Criminal Code to which she refers.

In the **ninth paragraph of point 2.1.5 section 2** the authors have distorted the meaning of Article 12 (cross-border transfer of personal data) of the Federal Law "On Personal Data", as well as the meaning and the text of the order of Roskomnadzor of 15 March 2013 № 274. It should be noted that the list of foreign countries that are not parties to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and ensuring adequate protection of the rights of subjects of personal data approved by this Order (as amended by Roskomnadzor order №152 of 10 December 2014) listed 17 countries and not 19 as stated in the Study.

The last section of the study titled as «Assessment as to the case law of the European Court of Human Rights», refers to the practice of the Court only once in the third paragraph. The rest of the text of this section is devoted to general estimates and distortion of the facts in the spirit of the entire document. It is

unreasonably stated that “today in the Russian Federation there are a large number of laws aimed at limiting the freedom on the Internet”. The author compares the implementation of legislation with “an initiative to create a domestic equivalent to the so-called “Great Firewall of China” around web-content in Russia”. It is a biased, unreasonable statement based on a personal position which is not reflect the reality. In this regard it should be noted that new developments in regulation of the domestic segment of the Internet are broadly discussed by experts and their opinion is taken into account.

Effective regulation of Internet content in Russia is based on the Constitution of the Russian Federation, the national legislation and universally recognized norms of international law. This allows to effectively regulating the use of the national segment of the Internet, including counteraction the spread of illegal information in the digital space.