Judicial practice on media freedom in Russia: the role of the Supreme Court

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Judicial practice on media freedom in Russia:

the role of the Supreme Court

Andrei Richter

Foreword

The need for coherence in the interpretation of the law is not an invention of modern times, but dates back already to Roman law. The first jurist to attempt to put some order into the mass of remedies and interpretations that constituted the civil law was Quintus Mucius Scaevola about a century before the end of the Republic (died 82 BC). He identified a number of general rules, called *definitiones*, which were summary statements of the state of the law.

Some centuries later (AD 529), when the compilers of the Digest under emperor Justinian were writing the compendium also known as the Pandects, they were instructed to eliminate any disagreement among the works they excerpted.[1] The goal was to ensure that all judges around the Roman empire were providing the same interpretation of the law, according to the two fundamental principles of fairness (*aequitas*) and practicality (*utilitas*).[2]

A similar need for consistency is shared by our contemporary judges, and we have an important example of such an exercise from the Russian Federation's highest court. For the first time in its history, in 2010 the Russian Supreme Court adopted a Resolution providing a set of interpretation rules (*explanations*), with the goal of ensuring a uniform application of media legislation across the Russian Federation. These *explanations* serve as interpretative guidance for the judges at any level, and they are quoted as arguments for their decisions.

This article of Andrei Richter provides an overview of the way Russian jurisprudence has been influenced by these interpretative guidelines since their adoption six and a half years ago, and delves into the following areas:

- Media freedom (hereunder also censorship and abuse of the freedom of mass media),
- Regulation of online media (including responsibility for content),
- Rights of journalists (as protection of privileges and public interest),
- Access to information (including accreditation of journalists and transparency).

What can clearly be noticed is that judges tend to be more attentive to follow the constitutional guarantees on media freedom, and also the provisions on freedom of expression as enshrined in the European Convention of Human Rights and in the case-law of the European Court of Human Rights. Interestingly, the Resolution of the Russian Supreme Court has also inspired neighbouring countries. In 2015 the Supreme Court of

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[1] See Stein, P., "Interpretation and legal reasoning In roman law", in Chicago-Kent Law Review, 1995, Volume 70, Issue, 4, http://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=2999&context=cklawreview.

[2] See Cartwright, M., "Roman law", Definition, in Ancient History Encyclopedia, 2013, http://www.ancient.eu/Roman_Law/.

the Republic of Kyrgyzstan adopted a similar Resolution reproducing among others the principles concerning the need to balance rights to honour and dignity with freedom of expression.

Strasbourg, March 2017

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1. Introduction

In June 2010 Russia's highest court adopted for the first time in its history a coherent interpretation of relevant case law in relation to the mass media, editors and journalists – Resolution of the Plenary of the Supreme Court of the Russian Federation "On the Judicial Practice Related to the Statute of the Russian Federation 'On the Mass Media'" ("the Resolution").[3]

To recall some of the background, according to the Constitution of the Russian Federation (Art. 126)[4] and the Federal Constitutional Statute "On the Supreme Court of the Russian Federation" (Art. 2)[5] the Supreme Court of the Russian Federation ("the Supreme Court") performs judicial supervision over the activities of courts in civil, criminal and administrative cases, cases regarding the resolution of economic disputes and other cases, and provides *explanations* on the issues of court practice. The Supreme Court provides such *explanations* "based on its study and generalisation" of judicial practice and "in order to guarantee the uniform application of media legislation of the Russian Federation".[6] Thus the *explanations* of the law provided by the highest court in its resolutions serve as an interpretative guidance for the judges who tend to quote them in the arguments of their decisions. These *explanations*, though, are not binding in their nature as the judges are "independent and submit only to the Constitution and the federal law".[7]

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[3] Постановление Пленума Верховного суда Российской Федерации *"О практике применения судами Закона Российской Федерации «О средствах массовой информации»"* (Resolution of the Plenary of the Supreme Court of the Russian Federation "On the Judicial Practice Related to the Statute of the Russian Federation 'On the Mass Media'"). 15 June 2010, No. 16. See the Russian text at http://merlin.obs.coe.int/redirect.php?id=12489. An official English translation is available on the website of the Supreme Court at: http://www.vsrf.ru/vscourt_detale.php?id=6786 and http://www.vsrf.ru/vscourt_detale.php?id=6787. An unofficial translation into English/German/French and an analysis by this author is included in IRIS *Plus* 2011-1, "A Landmark for Mass Media in Russia", http://www.obs.coe.int/documents/205595/264635/Iris_plus_2011-1_EN_FullText.pdf.

[4] Constitution of the Russian Federation was adopted by a popular vote on 12 December 1993. See http://constitution.ru/ for the official translations of the Constitution into English, German and French.

[5] Federal Constitutional Statute *О Верховном Суде Российской Федерации* ("On the Supreme Court of the Russian Federation") of 5 February 2014, N 3-FKZ. An English translation of the statute is available on the official webpage of the Supreme Court of the Russian Federation: https://vsrf.ru/catalog.php?c1=English&c2=About%20the%20Supreme%20Court&c3=&id=9439. Federal Constitutional Statutes have a higher status than Federal Statutes, they are adopted following a more complex procedure and may not be vetoed by the President.

[6] Federal Constitutional Statute *О Верховном Суде Российской Федерации* ("On the Supreme Court of the Russian Federation"). Art. 2, Part 7, para 1.

[7] Constitution of the Russian Federation. Art. 120, Part 1.

This article attempts to review the way the Resolution influenced litigation and brought changes in the statutory law in the Russian Federation over the six and a half years since the adoption of the Resolution in 2010. A study of the trends and tendencies in the case law has mostly academic value in Russia as the judges, due to the constitutional provisions cited above, pay little attention to the judgments rendered by their peers, although the references to various resolutions of the Supreme Court are usually present in the case law. For example, it can be estimated that there have been more than 1700 references in the court decisions to the Resolution "On the Judicial Practice Related to the Statute of the Russian Federation 'On the Mass Media'".

This article will focus on some cases that seem representative of the best judicial practice that enables freedom of the media that spearheads the Resolution itself. It will refer mostly to decisions of the appellate courts to avoid omitting a possible dismissal of the trial court's decision upon appeal. The case law and statutory law amendments are generally structured along the issues dealt with in the Resolution's text. The key topics of this article are (1) Media Freedom (censorship, abuse of the freedom of mass media); (2) Regulation of Online Media (including responsibility for content on Internet media fora), (3) Rights of Journalists (title of the media, protection of journalists' privileges, public interest, scope of moral damages), and (4) Access to Information (including accreditation of journalists and transparency of court proceedings).

The analysed court decisions are made available mostly through the RosPravosudie [RusJustice] database,[8] a non-commercial online project that provides access to some 120 million documents issued since 2006, mostly texts of court decisions made publicly available due to the enforcement of the Federal Statute "On the Provision of Access to Information on the Activity of Courts in the Russian Federation."[9] Those decisions are all properly documented and taken from the official websites of the Russian courts. Another useful source of the decisions was the news agency *Sudebnye resheniya RF*[10] [Court Decisions in RF], a registered mass media outlet of PIK-Press stock company.

[8] https://rospravosudie.com

[9] Federal Statute *Об обеспечении доступа к информации о деятельности судов в Российской Федерации* ("On the Provision of Access to Information on the Activity of Courts in the Russian Federation") (as amended) No. 3262-FZ of 22 December 2008. An English translation of the statute is available on the official webpage of the Supreme Court of the Russian Federation at: www.supcourt.ru/catalog.php?c1=English&c2=Documents&c3=&id=6800. See also Richter A., "Court Reporting by Audiovisual and Online Media in the Russian Federation", IRIS *Plus* 2014-2. http://www.obs.coe.int/documents/205595/264635/IRIS%2B_2014-2_ENcomplet.pdf/3727f446-a872-4d6d-85ba-0f7734a8ac34.

[10] http://xn--90afdbaav0bd1afy6eub5d.xn--p1ai/.

2. Media Freedom

2.1. Censorship

An important place in the Resolution is taken by the Supreme Court's commentary on the provisions in the Statute of the Russian Federation "On the Mass Media"[11] ("Statute on the Mass Media") that refer to the ban on censorship. Although in general the Resolution's statement is trivial the text provides some important nuances.

For example, the courts were reminded that Art. 3 para. 1 of the Statute on the Mass Media defines censorship as the demand made by officials, state bodies, or local self-government bodies, organisations or public associations that the editorial office of a mass medium or its representatives (in particular the editor-in-chief or his/her deputy) obtain from them prior approval for the publication of messages and materials (except for cases when the official is an author or interviewee). It also includes the demand for the suppression of the dissemination of messages and materials[12] or separable parts thereof.

At the same time the Supreme Court noted that officials have indeed the right to demand that their prior approval be given, when the subject matter to be disseminated consists of their own materials or interviews given to journalists. By contrast, the law does not foresee a corresponding obligation on the journalist to obtain prior approval for disseminating this type of information. Therefore, the Supreme Court's message was that while such a demand is not an act of censorship, a journalist's refusal to provide the transcript for an advance agreement on it is not punishable.

There are only a few cases that are referring to the conclusion of the Resolution related to the right to demand a prior approval. A high-profile decision demonstrates that even though there is no obligation on the journalist to grant such a demand, a refusal to do so may be considered a significant circumstance[13] in the court case.

The case concerned a defamation lawsuit which was brought against "Media Holding Expert", its magazine "Russkiy reportior" and journalist Yulia Vishnevetskaya, by the director of a major farm who was at the same time a deputy of the Moscow Regional

[11] Statute of the Russian Federation О средствах массовой информации ("On the Mass Media") No. 2124-1 of 27 December 1991 (with amendments as of 8 December 2003, see in English at: www.legislationline.org/documents/id/16867).

[12] The statute does not define what it understands by "messages" and "materials". It appears, however, that messages are meant to be texts or speeches, while materials can be visual and therefore refer to videos, photos etc.

[13] A significant circumstance is to be intended as a factor to be recognised by the court alongside with the existing norms.

Duma. The plaintiff gave an interview to the reporter who then published a story in the magazine and on its website, based on this interview. The plaintiff referred to the fact that despite his clearly expressed demand in the presence of a witness for a preliminary approval of the text of the interview, it was not done. The court found that the article formed the readers' opinion of the plaintiff as a man who being committed to nationalism violates the freedom of migrants to choose their place of residence and work.

Referring to the Resolution, the district court confirmed that a demand by an official addressed directly to the journalist to pre-negotiate the original text (decryption) of his interview does not represent an act of censorship. The court came to the conclusion that to find an exception from the norm of Art. 3 para. 1 of the Statute on the Mass Media that generally prohibits censorship, it should establish the following three components: presence of a call to the editorial office or directly to a journalist for a prior approval of reports and materials; the special subject of this call – an official; and the status of this official as an author or an interviewee in relation to the published material. The court ordered publication of a refutation in the magazine and on its website.[14] Meanwhile, the publication of the article almost immediately led to the decision of another court to cancel the plaintiff's registration as a candidate for the Moscow Regional Duma of the new convocation. The latter decision was revoked only a few years later by the Supreme Court of the Russian Federation[15].

2.2. Abuse of the freedom of mass media

2.2.1. Context of abuse

An abuse of the freedom of mass information (Art. 4 of the Statute on the Mass Media), such as "extremist" speech, leads to written warnings issued by Roskomnadzor[16] and prosecutors' offices to the editorial office of a mass media outlet (editor-in-chief) or its founder. Further on, it may lead to the termination of the outlet if the warnings are repeated and/or not deemed illegal by the court[17].

When determining whether indeed an abuse of the freedom of mass information took place (and the warning was therefore legal) the Resolution advised the courts to take

[14] Trial decision in absentia of Savelovsky District Court of Moscow in case N 2-1877/2012 of 4 April 2012, http://xn--90afdbaav0bd1afy6eub5d.xn--p1ai/bsr/case/1359798.

[15] Ruling of the Judicial Collegium on administrative cases of the Supreme Court of the Russian Federation in case N 4-KG13-43 of 12 February 2014, http://www.vsrf.ru/stor_pdf.php?id=579698.

[16] Roskomnadzor is a Russian abbreviation for the Federal Service for Supervision of Communications, Information Technologies and Mass Media under the Ministry of Communications and Mass Communications. See more at http://eng.rkn.gov.ru/about/.

[17] The warnings are not public documents and unless the editors choose to reprint them in their media outlet, they are basically made public through the decisions of the courts. General statistics on the causes of the warnings are periodically reported by Roskomnadzor.

into account not only the words and phrases but also their *context* (such as their aim, genre and style, whether they can be considered as an expression of opinion in the sphere of political discussions or as an attempt to draw attention to the discussion of socially important matters, and what is the attitude of the interviewer and/or of the journalist towards the expressed opinions or statements).

The context, form, and content of the information made public, the existence and content of comments or other expression of attitude towards extremist information has remained an important element of further Supreme Court resolutions, such as one on "On Judicial Practice Relating to Criminal Cases on Crimes of an Extremist Nature".[18]

Although the courts started to take into account the context and purpose of the abusive statements, this argument does not seem to apply if the material cited in the media has already been recognised by the courts as extremist, and entered into the Federal Registry of extremist materials.[19] For example, upholding the demand to repeal the court decision recognising illegal the warning issued by Roskomnadzor, the appeals court proceeded from the fact that Hitler's "Mein Kampf" has already been recognised as extremist. The arguments of the first instance court that the purpose of the article published in the newspaper "Uralsky rabochiy" (Ural worker) with quotations from the book was not calling for extremist activity, but rather to draw attention to the danger of Nazi ideas in modern Russian society, were found to be erroneous. The appeals court, pointing out that an appropriate explanation of the Resolution on context and aim in this case does not apply, confirmed the legality of the warning by Roskomnadzor.[20] The article, however, is still available on the newspaper's website, as the deletion of the article was not part of the decision.[21]

2.2.2. The validity of Roskomnadzor warnings

In 2013, Art. 4 of the Statute on the Mass Media was amended to include a total ban on swearing in the mass media, including on online media outlets.[22] This has led to a drastic rise in Roskomnadzor warnings for use of obscene words.[23] In a high-profile case, such

[18] See Richter, A., "Russian Federation: Supreme Court on extremism and terrorism", IRIS 2017-1/31, http://merlin.obs.coe.int/iris/2017/1/article31.en.html.

[19] Such a registry is prepared and published by the Ministry of Justice of the Russian Federation based on the decisions of courts in Russia that recognise particular texts, images, videos as violating the ban to disseminate extremism. As of 25 January 2017, it has 4022 entries. http://minjust.ru/ru/extremist-materials.

[20] Appellate Ruling of the Judicial Collegium on administrative cases of the Sverdlovsk Regional Court in case N 33-6771/2015 of 20 May 2015, http://xn--90afdbaav0bd1afy6eub5d.xn--p1ai/bsr/case/7294265.

[21] See http://xn-----6kcabbhjttpdjeip1d1agppy8h0e.xn--p1ai/society/10637/.

[22] Federal Law of 5 April 2013 No. 34-FZ "О внесении изменений в статью 4 Закона Российской Федерации "О средствах массовой информации" и статью 13.21 Кодекса Российской Федерации об административных правонарушениях" ("On amendments to Article 4 of the Statute of the Russian Federation "On the Mass Media" and to Article 13.21 of the Administrative Code of the Russian Federation"), Ros. Gaz., No. 6052, 9 April 2013, www.rg.ru/2013/04/09/mat-dok.html.

[23] Out of 142 warnings issued in 2015, 46 were issued for use of obscene words, being the largest category of abuse of freedom of mass information in 2015 (as well as in 2014). See Публичный доклад 2015. Федеральная служба по надзору в сфере связи, информационных технологий и массовых коммуникаций

warnings were successfully challenged in court with the help of the Resolution's arguments. On 19 March 2014 the Judicial Collegium on administrative cases of the Supreme Court of the Russian Federation made a resolution on an appeal complaint from JSC "News Agency Rosbalt."[24] The Supreme Court looked into the two warnings issued by Roskomnadzor on 12 and 25 July 2013 to the editorial office of the online news service Rosbalt.

During its session, the Judicial Collegium has established that Roskomnadzor asked the Moscow City Court to terminate the activity of this news agency, referring to the spread on its website – via hyperlinks to YouTube – of videos containing obscene language. The Moscow City Court based its 31 October 2013 decision on the statement by Roskomnadzor on two previously made warnings and satisfied the complaint by permanently terminating Rosbalt's certificate of registration, which then lost its privileges as a mass media outlet. Earlier, by a separate decision of the magistrate judge, the editor of Rosbalt was fined for dissemination of foul words in the mass media.

Rosbalt appealed the City Court's decision to the Supreme Court. Having agreed that the contested decision was based on the letter of the law, the Judicial Collegium of the Supreme Court did not agree with the conclusions of the lower instance court on the necessity of termination of the activities of the media outlets, based on the following circumstances and arguments.

It rather followed the legal findings of the Constitutional Court of the Russian Federation[25] by saying that "limitations by law of freedom of expression and the right to disseminate information may not take place in relation to activities or information on the mere grounds of their inconformity with established traditional views, or contradiction with moral and/or religious preferences. Otherwise it will mean a retreat from the constitutional demand of necessity, proportionality and fairness of limitations of human rights…"

The Supreme Court's Judicial Collegium found that the lower courts had refused to look into the *essence* of Roskomnadzor claims. Making a decision on the termination of the media outlet as a measure necessary to protect the rights and lawful interests of other persons, the court must be convinced that, taken together, repeated violations of Art. 4 were indeed significant. Only then taking into account all circumstances of the case, including the assessment of the nature of violations committed by the editors and the consequences caused by them, the court can go to such extreme measures.

According to the Judicial Collegium, the question of whether such an extreme measure is proportionate and adequate was not considered by the Moscow City Court. The latter should have found out the nature of the offence, its circumstances and effects, etc. For example, as follows from the case, the links to the videos posted on YouTube and

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Министерства связи и массовых коммуникаций Российской Федерации. (Open Report of Roskomnadzor for 2015), p. 56, http://rkn.gov.ru/docs/docP_1485.pdf.

[24] Ruling of the Judicial Collegium on administrative cases of the Supreme Court of the Russian Federation in case N 5-APG13-57 of 19 March 2014, http://www.supcourt.ru/stor_pdf.php?id=584842.

[25] Such as those in resolutions of the Constitutional Court of 30 October 2003 N 15-P, 16 June 2006 N 7-P, 22 June 2010 N 14-P.

containing obscene language were removed from the Rosbalt website immediately after the issuance of the Roskomnadzor warnings in order to avoid accusations of *repeated* violation of the law. The City Court also failed to take into account that for a number of years prior to the offence under review Roskomnadzor did not make any claims to Rosbalt.

In determining the proportionality of the liability measures in this case, the Judicial Collegium considered it proper to proceed not from the content of the videos with foul words, but from the total content of the two webpages where the videos were placed (linked), to take into account their context. As seen from the case, the hyperlinks that caused the warnings were related to the news reports by Rosbalt entitled "Citizens of Krasnodar detained violent Southerner with an ax" and "Pussy Riot defiled the oil rigs." According to the Judicial Collegium, these stories were rather of a socio-political type, and not aiming to shock, i.e. deliberately violate the generally accepted norms and rules of conduct by striking the imagination of Internet users with profanity.

Under the circumstances, the Supreme Court held that the termination of the media outlet's activity was not a legitimate measure of protection from abuse of freedom of the media. Therefore, the Moscow City Court decision was pronounced null and void, while the Judicial Collegium issued a new decision that dismissed the withdrawal of Rosbalt's registration.

3. Regulation of Online Media

3.1. General

In 2010, the Supreme Court made a bold step in the Resolution to tailor the norms of the Statute on the Mass Media, which was adopted in 1991 and hence before Internet was a reality in Russia, to the social relations that characterised the virtual world and that required a legal framework.

An important legal conclusion of the Supreme Court was that websites were not subject to a mandatory registration as mass media outlets, but if they requested such registration, it should always be provided by the governmental body, Roskomnadzor.

The Resolution also provided a clarification on the need to obtain a broadcasting licence to disseminate audiovisual programming online. The Supreme Court recalled that such a licence was necessary only if technical means for over-the-air, wire, or cable television and radio broadcasting were used to distribute the mass media output (as was then stated in Article 31 of the Statute on the Mass Media). As such technical devices were not used for disseminating mass information through websites, those who disseminated mass information online did not need to acquire a broadcasting licence.

In 2011, a set of amendments was adopted to Article 31 of the Statute on the Mass Media that in particular eliminated the condition to use specific means for broadcasting, and made it clear that a licence was also necessary to be obtained for the dissemination of programmes online, if the broadcasts were based on a schedule.

The Resolution applied the logic of the then Article 24 ("Other mass media") of the Statute on the Mass Media that allowed for "the rules established for radio and television" to be applied "to periodical dissemination of mass information via teletext and videotext systems and other telecommunications networks".

By the same 2011 amendments to the Statute on the Mass Media, a systematic regulation of online media took the place of the vaguely-formulated Article 24, then abolished. In particular the new norms introduced a "network publication" as one of the forms of dissemination of mass information. They considered a single issue or renewal of a network publication as a form of the product of the mass media, while providing access to a network publication has become a form of dissemination of the product of a mass media outlet. Under a "network publication", the Statute on the Mass Media now defines "any site in information-telecommunications network Internet registered as a mass media outlet". Thus, the owners (founders) of websites were invited to go through a special registration process established and mandated by the Statute on the Mass Media for print publications, as well as broadcast programmes and stations. After such registration, they

and the editorial staff of such websites fall under the legal regime of the Statute on the Mass Media, with its rights and responsibilities. While such registration of a network publication remains formally optional, no editorial office of a mass media outlet may engage in professional activity (including broadcasting online) without such registration.[26] Thus the logic behind the freedom of online media outlets not to be registered as the mass media was violated.

The same applies to the conclusion of the Resolution that the provisions of Article 24 banned the regulation of *advertising* of online media unless it was established by the Statute on the Mass Media. As the latter refrains from the regulation of advertising, the rules established by the Federal Statute "On Advertising"[27] in relation to commercials in television and radio broadcasting did not apply to network publications. Soon after Article 24 was abolished, on 6 July 2012 an amendment to the advertising law was adopted.[28] It expanded the list of the media where advertising of alcohol products was banned (Article 21 para. 2) by adding Internet websites. A violation of the ban on placing alcohol advertising in any form in Runet (the Russian segment of the Internet) or by Russian companies shall be punishable by law including possible blocking of the websites in question.[29] That move made a strong blow to the financial sustainability of online news media. [30]

3.2. Responsibility for content on Internet media fora

An issue dealt with in the Resolution that was widely reflected in the follow-up case law is the liability of the "editorial offices" of Internet sites registered as media outlets (or

[26] See Richter A. Regulation of online content in the Russian Federation, IRIS *Extra*, European Audiovisual Observatory, Strasbourg, 2015, http://www.obs.coe.int/documents/205595/264641/IRIS+extra+Regulation+of+online+content+in+the+Russian+Federation.pdf.

[27] See Richter A. Russian Federation: New Advertising Statute. IRIS 2006-4/34, http://merlin.obs.coe.int/iris/2006/4/article34.en.html.

[28] Federal Statute No.119-FZ, 20 July 2012 О внесении изменений в статью 21 Федерального закона "О рекламе" и статью 3 Федерального закона "О внесении изменений в Федеральный закон "О государственном регулировании производства и оборота этилового спирта, алкогольной и спиртосодержащей продукции" и отдельные законодательные акты Российской Федерации и признании утратившим силу Федерального закона "Об ограничениях розничной продажи и потребления (распития) пива и напитков, изготавливаемых на его основе (On amendments to Article 21 of the Federal Statute "On Advertising" and Article 3 of Federal Statute "On amendments to the Federal Statute "On state regulation of production and turnover of ethyl alcohol, alcohol and alcohol-containing products" and particular legal acts of the Russian Federation and on invalidation of the Federal Statute "On restrictions of retail sale and consumption of beer and beer-based products"), Ros. Gaz., N 166, 23 July 2012, http://www.rg.ru/2012/07/23/reklama-dok.html.

[29] See Richter A. Russian Federation: New Rules for Internet IRIS 2012-8/36, http://merlin.obs.coe.int/iris/2012/8/article36.en.html.

[30] See more in Richter A. *Regulation of online content in the Russian Federation*, IRIS *Extra*, European Audiovisual Observatory, Strasbourg, 2015, http://www.obs.coe.int/documents/205595/264641/IRIS+extra+Regulation+of+online+content+in+the+Russian+Federation.pdf.

network publications, as defined in the 2011 amendments to the Statute on the Mass Media) for statements made by readers/viewers on the website's fora and chat pages. If this section of the website is not pre-moderated, the editorial office of such a network publication can become liable only if it receives a complaint from Roskomnadzor or a public prosecutor that the content of a communication presents an abuse of the freedom of the mass media (Art. 4 of the Statute on the Mass Media), subsequently fails to amend (or delete) the communication, and the communication has been judged to be illegal by a court. Thus, the Supreme Court conducted a so-called "analogous regulation" indicating that the rules established under Art. 57 ("Absolution from Responsibility") of the Statute on the Mass Media for television and radio programs are applicable to cases of dissemination of mass information (in fact, most often textual) through telecommunication networks.

3.3. Injunctions of Roskomnadzor

The *administrative practice* of applying the procedure introduced by the Resolution for notices to Internet media on the impermissibility of the abuse of the freedom of mass information demonstrates that in 2015, Roskomnadzor sent to the editorial boards of registered network publications 1729 injunctions to remove or edit readers' comments, or 11 times more than in 2011 when the practice began (see Table 1). [31]

Table 1. Breakdown of Roskomnadzor Injunctions Regarding Readers' Comments in Network Publications in 2015.

CAUSE	NUMBER OF INJUNCTIONS
Evidence of extremism	213 (12,3%)
Propaganda of the cult of violence and cruelty	192 (11,1%)
Use of obscene language	1309 (75,7%)
Propaganda of narcotics	13 (0,8%)
Propaganda of pornography	2 (0,1%)
Total	**1729 (100%)**

Thus, it can be said that instead of 1729 warnings to media editors which would lead to the compulsory closure of media outlets, 1729 notices were sent that left to journalists themselves the opportunity to correct the situation through their own efforts.

[31] Source of the Table: Публичный доклад 2015. Федеральная служба по надзору в сфере связи, информационных технологий и массовых коммуникаций Министерства связи и массовых коммуникаций Российской Федерации. (Open Report of Roskomnadzor for 2015), p. 56.

3.4. Case law on defamation and privacy[32]

An analysis of jurisprudence concerning the defence of honour, dignity and business reputation, and the violation of privacy and the right to an image, in connection with dissemination of comments on fora on websites, indicates the following trends or "rules".

3.4.1. Lack of liability of network publications for defamatory comments

The courts are inclined to believe that the position expressed by the Resolution with regard to comments that abuse freedom of mass information also implies that editors of network publications should not be held liable for remarks of a defamatory nature if posted by readers (let us call this Rule 1). The courts proceed from the premise that if the liability for an abuse of the media freedom comes only after the refusal to follow the injunctions from Roskomnadzor, then the absence of such an injunction indicates the general lack of responsibility of the editors for online comments. In the court decisions, one can find, for example, the following argument: "In the materials of the case, information is absent confirming the injunction of the authorised state body with a demand for the removal of content from the forum, therefore the proper defendant in this case is the person who directly posted the disputed information on the site".[33] In following this logic, the courts ignore the fact that Roskomnadzor is not even mandated to monitor possible violations of reputation rights.

In some cases, the courts believe that if a complaint claiming that a certain defamatory comment is untrue is addressed to the network publication's editor, and then followed by its immediate takedown and unavailability for users of that particular website, then "there are no reasons for placing liability on the editorial board for dissemination of content that does not correspond to reality"[34] (Rule 2).

The court nevertheless is likely to uphold the right to demand from the website owners (or the editors of the network publication)[35] publication of a refutation of the

[32] This subsection is based on the author's chapter "Comments on the Internet Media Forum: Law and practice in Russia" in "2013 Social Media Guidebook" / Eds. C.Moeller and M.Stone. – Vienna: OSCE Representative on Freedom of the Media, 2013. http://www.osce.org/fom/99563.

[33] Decision of the Arbitration Court of the Chukotka Autonomous Region in case N A80-85/2011 of 28 June 2011, http://rospravosudie.com/act-shepulenko-m-yu-as-chukotskogo-ao-28-06-2011-v-iske-otkazat-polnostyu-s. See also Decree of the 19th Arbitration Appellate Court (Voronezh) in case N A08-5210/2010-30 of 25 February 2011, Decision of the Sovetsky District Court in Krasnodar in case N 2-5102/10g of 21 October 2010.

[34] Ruling of the Judicial Collegium for civil cases of the Maritime Territorial Court in case N 33-7523 of 22 August 2012, http://rospravosudie.com/act-oredelenie-ot-22-avgusta-2012-goda-33-7523-reshenie-bez-izmeneniya-lozenko-irina-andreevna-sharoglazova-oksana-nikolaevna-stepanova-elena-vasilevna-27-08-2012-o-zashhite-chesti-dostoinstva-delovoj-rep-s. See also Decision of the Sovetsky District Court, Krasnodar, 21 October 2010, No. 2-5102/10g.

[35] The court chooses whether the demand should be addressed to the website owners or to the editors of the network publication.

defamatory comments (Rule 3). At the same time, in several decisions, the courts indicated that "reports on a forum, comments to articles whose authors are third parties are not materials that can be refuted, no matter in which form they were expressed, since in each and every case, they constitute opinion and judgments."[36] In other words, the demand to refute such remarks would not be legally grounded. Apparently, discrepancies in the approach are related to the nature of the comments posted.

3.4.2. Lack of liability of other websites for defamatory comments

Moreover, Rule 1 operates by analogy regarding sites that are *not* registered as network publications. Under such circumstances, courts establish that liability should not be imposed on the owners of a post-moderated website with a forum enabling such moderation of the posts.[37] When adjudicating on the lawsuits against website owners, the courts often note that in compliance with point 3 of Art. 17 of the Federal Statute "On information, information technology and on the protection of information"[38], in the event that dissemination of certain information is restricted or forbidden by federal law, the civil liability for the dissemination of such information is not borne by the person providing the services of mere conduit and hosting.

In such cases, the courts believe that content defaming the plaintiff is disseminated not by the site owner, but directly by the authors of the statements whose identity the court cannot establish. Unless the plaintiff provides proof of the defendant's commissioning of any actions whose purpose would be to post comments containing unlawful content, in particular, actions to disseminate information defaming the plaintiff, then a lawsuit to the site owner is not subject to satisfaction (Rule 4).

The courts believe that the very fact of a forum moderation in such a way that readers' comments are allowed to be posted without initial checking of the information contained in the posts does not violate the law. Therefore, it cannot be viewed as an activity aimed at the dissemination of defamatory information.[39] A court can come to such

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[36] Decision of the Kueda District Court of Perm Territory in case N 2-3 of 7 April 2011.
See also the decision of the Syktyvkar City Court of the Republic of Komi in case N 2-2168/ of 29 April 2011.

[37] Decision of the Arbitration Court of Maritime Territory in case N A51-6831/2010 of 29 July 2010, https://rospravosudie.com/court-as-primorskogo-kraya-s/judge-zayashnikova-olga-leonidovna-s/act-300886843/. Decision of the Centralniy District Court in Kemerovo, Kemerovo region, in case N 2-3133/10 of 12 August 2010. Appellate Ruling of the Judicial Collegium for civil cases of the St. Petersburg City Court in case N 33-6882/2012 of 31 May 2012, http://www.consultant.ru/cons/cgi/online.cgi?req=doc;base=SARB;n=31630#0.

[38] Federal Statute "Об информации, информационных технологиях и о защите информации" ("On information, information technology and on the protection of information") No. 149-FZ of 27.07.2006.
See its text in English at http://www.wipo.int/wipolex/en/details.jsp?id=14090.

[39] Appellate Ruling by the Judicial Collegium on civil cases of the St. Petersburg Municipal Court in case N 33-6882/2012 of 31 May 2012, http://www.consultant.ru/cons/cgi/online.cgi?req=doc;base=SARB;n=31630#0. Decision of the Centralniy District Court in Kemerovo, Kemerovo Region in case N 2-3133/10 of 12 August 2010.

a conclusion on the basis of examination of the users' agreement with the service provider, in which, for example, it is stated that "the service provider does not initiate the user's creation of information or its transmission or selects the target of the user's information or influences its integrity." Thus, the court rules, "the defendant does not bear responsibility for the information transmitted since under the terms of the above-mentioned user's agreement, from the moment he is registered at a given site, it is the user who takes all the risks of liability for the information posted."[40] In other words the justifications for the imposition of liability on a website owner for dissemination of content by users of the site can be established only when the owner's guilt for dissemination is proven.[41]

3.4.3. Opposite position on liability of websites

Some litigation offers a contrary interpretation of this issue, imposing liability on the site owner if he merely had an opportunity to edit and check the information posted in the readers' comments of the forum, but failed to do so.[42]

Such an argument was confirmed in a decision of the now abolished Higher Arbitration (Supreme Economic) Court, which imposed liability on a site owner (administrator) for anonymous statements on a website violating the rights of third parties, since the owner was a person "who provides the relevant conditions and technical capacities (or gives consent to the provision of such conditions) for visitors of his Internet site." Moreover, the liability in this case was also reflected in the need to compensate "reputational damage" in the amount of 100,000 roubles. [43]

In rare cases, the courts may come to a paradoxical opinion that "taking into account the special features of the way in which information is disseminated on an Internet site the persons who bear responsibility for posting statements on a forum are the owners of the IP addresses and not the service provider or the site administrator."[44]

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[40] Decision of the Arbitration Court of the Chukotka Autonomous District in case N A80-85/2011 of 28 June 2011, http://rospravosudie.com/act-shepulenko-m-yu-as-chukotskogo-ao-28-06-2011-v-iske-otkazat-polnostyu-s. See also: Decision of Sovetsky District Court in Krasnodar, in case N 2-5102/1021 of October 2010.

[41] Appellate Ruling by the Judicial Collegium on Civil Cases of the Supreme Court of the Chuvash Republic in case N 33-1925-12 of 20 June 2012.

[42] Decision of the Arbitration Court of the Maritime Territory in case N A51-6831/2010 of 29 July 2010, https://rospravosudie.com/court-as-primorskogo-kraya-s/judge-zayashnikova-olga-leonidovna-s/act-300886843/.

[43] See Resolution of the Federal Arbitration Court of Moscow District, in case N A41-19354/11 of 22 May 2012; Ruling of the Collegium of Judges of the RF Higher Arbitrage Court to reject the referral of the case to the Presidium of the RF Higher Arbitrage Court in case N VAS-8444/12 of 16 July 2012.

[44] Decision of the Arbitrage Court of the Chukotka Autonomous District in case N A80-85/2011 of 28 June 2011, http://rospravosudie.com/act-shepulenko-m-yu-as-chukotskogo-ao-28-06-2011-v-iske-otkazat-polnostyu-s.

3.4.4. Rulings on freedom of online comments

On the issue of a site owner's liability, special attention must be paid to two similar appellate rulings issued in June 2012 by the Supreme Court of the Chuvash Republic, one of the provinces of the Russian Federation.[45] They overturn decisions of a district court in Cheboksary on defamation lawsuits in connection with dissemination of information online.

By decisions of the court of first instance (that is, the district court), the owner of the Internet portal *nasvyazi.ru* was established responsible for dissemination of defamatory statements. Along with the authors of the statements, he was obliged to publish on the website a refutation with the apologies proposed by the plaintiffs, compensate moral harm caused by the statements, and pay the court fees.

The decisions were appealed to the Chuvash Supreme Court on the grounds that the site owner merely provided an opportunity to others to publish their opinions and to familiarise themselves with information published by the users. The complaints stated that, as an intermediary, the site owner, in compliance with the legal position outlined in the Joint Declaration on Freedom of Expression and the Internet[46], could not be held liable for disseminated information.

In its ruling, the Chuvash Supreme Court first of all indicated that the right to free expression is reflected in the standards of international law, including Article 10 of the Convention on the Protection of Human Rights and Fundamental Freedoms and Article 19 of the International Covenant on Civil and Political Rights:

> *"This principle is extended also to the Internet, as well as all other means of communications. In creating forums, site owners offer users an opportunity to receive and impart information, that is to realise the above right. Restrictions on the freedom of expression on the Internet are admissible only in those cases where they correspond to the established international norms and can be applied only in cases provided by law."*

In that connection, the appellate court focused on the nature and content of the Joint Declaration on Freedom of Expression and the Internet, which outlined the principles of liability of intermediaries. In particular, para 2(a) of the Declaration states:

> *"No one who simply provides technical Internet services such as providing access, or searching for, or transmission or caching of information, should be liable for content generated by others, which is disseminated using those services, as long as they do not specifically intervene in that content or refuse to obey a court order to remove that content, where they have the capacity to do so ('mere conduit principle')."*

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[45] Appellate Ruling of the Judicial Collegium in Civil Cases of the Supreme Court of the Chuvash Republic in case N 2-81/2012 of 18 June 2012, and Appellate Ruling of the Judicial Collegium of Civil Cases of the Chuvash Republic Supreme Court in case N 2-82/2012 of 20 June 2012.

[46] Declaration signed by the UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur on Freedom of Expression and ACHPR Special Rapporteur on Freedom of Expression and Access to Information on 1 June 2011, http://www.osce.org/fom/78309.

Para 2(b) of the Joint Declaration on Freedom of Expression and the Internet notes the necessity of considering the question of insulating fully other intermediaries from liability for content generated by others under the conditions defined in para 2(a). At a minimum, intermediaries should not be required to monitor user-generated content and should not be subject to extrajudicial content takedown rules which fail to provide sufficient protection for freedom of expression.

The Chuvash Supreme Court noted that the court of first instance, in making its decision on imposing liability on the site owner, indicated that the Joint Declaration is not a binding norm of law. Without objecting to this position, the appellate court nevertheless indicated that "the imposition of liability on the site owner is possible only on the grounds provided by the general standards of civil law." Even so, the general principles, including international ones, in resolving the issue of liability of owners of sites that are not mass media outlets, could not fundamentally diverge from the principles of liability for owners of sites that were media outlets. This was also borne out by the concurring legal positions in the international documents and the Resolution.

The appellate court also noted that in making the decision to impose liability for failure to take down content, the trial court did not cite any legal norms obliging site owners to remove users' statements which other users object to. In addition, at the time when the owner received the demands to remove the posts, as they did not correspond to reality and defamed the plaintiffs, there was no court decision confirming such nature of the statements.

All these arguments served as a basis for overturning the district court's decision and issuing a new one, according to which the site owner was obliged only to post a refutation on the site as edited by the Chuvash Supreme Court. Absolution from responsibility for disseminating untrue statements could not serve as the basis for a rejection of the demand to publish a refutation, said the ruling. The minimum time period for keeping the refutation on the site was defined as one year from the moment of publication while the original strings of posts were to be removed.

Rule 5 may be that comments on forums are generally outside the jurisdiction of civil cases on protection of reputation. In one decision, the court found that the statements of personal opinion and evaluation of a specific topic discussed on the forum in the form of public debates could not in principle be subject to judicial evaluation in cases of defamation. A person who believes that a value judgment or opinion disseminated through the mass media (or by analogy, on the Internet in general) affects one's rights and lawful interests can use the right provided by the Civil Code and the Statute on the Mass Media for a reply, comments, or statements in the same mass media to expose the falsehood of the disseminated comments, and offer a different evaluation.[47]

In a similar case another court expressed a similar position:

[47] Decision of the Arbitration Court of the Chukotka Autonomous District in case N A80-85/2011 of 28 June 2011, http://rospravosudie.com/act-shepulenko-m-yu-as-chukotskogo-ao-28-06-2011-v-iske-otkazat-polnostyu-s. Decision of the Kueda District Court of the Perm Territory in case N 2-3 of 7 April 2011.

"an Internet blog is an instrument for online communication, that is, it constitutes a form of communication with comments from specific persons who express their own opinions and assessments regarding the topic of discussion provided by these same persons…The posted article on the forum and the comments under it published online as private opinion can be disputed by the plaintiff in the form of polemics, that is, a "reply, replica, or comment" which the plaintiff can freely and independently publish on the same forum. The plaintiff has the right to comment on the author's statements for the purpose of justifying the incorrectness of the disseminated judgments, and offer a different evaluation."[48]

[48] Appellate Ruling of the Judicial Collegium for Civil Cases of the Saint Petersburg City Court in case N 33-6882/2012 of 31 May 2012, http://www.consultant.ru/cons/cgi/online.cgi?req=doc;base=SARB;n=31630#0.

4. Rights of Journalists

4.1. Protection of journalists' privileges

Russian journalists, editors and media outlets enjoy certain privileges that under particular circumstances protect them from the need to check the truthfulness of the information that they disseminate, and from related accusations of violating the law. They are all listed in Art. 57 of the Statute on the Mass Media, and each of them was discussed in the Resolution. Some of its arguments served well in the case law that followed.

For example, the Supreme Court gave a crucial explanation with regard to the exemption of the media from liability for information contained in interviews with representatives of state and local self-government bodies, state and municipal organisations, institutions, enterprises, bodies of public associations, and the official representatives of their press services. In fact it made media free from having to verify information provided by a variety of interviewed persons – from politicians and officials to press spokesmen.

Further on the Resolution discussed a privilege related to official speeches and statements made by public officials, as well as by delegates to meetings of public associations such as political parties. Because media are exempt from liability only if they reproduce the words of the officials "literally", the Supreme Court explained that literal reproduction is "a form of quotation that does not change the meaning of the statements, reports, materials and their fragments and where the author's words are quoted without distortion".

The courts usually refer to the conclusions of the Resolution on the reproduction of speeches by officials in disputes on defamation. For example, when adjudicating on the complaint on a trial court decision on dissemination in the municipal newspaper "Suty" (Kernel), and on its website, of defamatory statements based on the content of remarks of the head of the district administration, the appellate court in Saratov determined the following:

> *"A comparative analysis of the text of remarks and the news items proves that the mass media was truly conveying the meaning of the statements of an official; the text of the items does not contain any additional information other than that communicated by the official."*

The appellate court took into account that although the remarks of the head of local administration and the text of the news items published were literally not identical, "the meaning of a fragment of the speech of the official was generally not distorted." It agreed

with the arguments of the counsel of the media outlet that "the information impugned by the claimant was publicly disseminated by the highest official of the municipal service during the performance of his official duties at a regular conference with the participation of journalists, whose function was to report on the information made available at the conference." Given these circumstances, the appellate court took a new decision which absolved the editorial office from liability for disseminating defamatory statements.[49]

The Resolution also noted that proof of the accuracy of the reproduction can be an audio recording, witness testimonies, and other.

In the 2016 Review of litigation on defamation[50] ("the Review"), another instrument of making case law uniform, though of lesser importance than resolutions, the Supreme Court of the Russian Federation acknowledged the following:

> *"There used to be cases when the courts denied the claims as the plaintiffs were unable to prove the fact of dissemination of the defamatory information via broadcasting, such as broadcasting channels, since at the time of going to court the [legally provided] term of storage [of 1 month] in the archives of television and radio broadcasting companies of the programming aired [live] had expired. The courts hereby wrongly regarded such materials as the only admissible evidence confirming the content of the disputed information, while the listings of the programming published in newspapers and magazines served as the only evidence of the fact of its distribution."*[51]

The Review claimed that since the adoption of the Resolution the litigation changed for the better. In one case brought as an example, the fact of distribution of a television programme was established by the court on the basis of a video recording provided by the plaintiff on a CD; testimonies of a witness who stated he made the video with the help of a TV tuner during the broadcast of the television programme, a report of the broadcasting company on its actual programming, testimonies of witnesses on the fact of watching the programme live and on pronouncement by the defendant of the disputed statements.[52]

In another case the trial court accepted as evidence the certificate of a legal entity providing the services of monitoring media content. According to the certificate the considered telecast was indeed broadcast at a specific time and contained the contested information. This allowed confirming the dissemination of the information about the plaintiff.[53]

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[49] Appellate Ruling of the Judicial Collegium on administrative cases of the Saratov Regional Court in case N 33-2223 of 15 April 2015, http://xn--90afdbaav0bd1afy6eub5d.xn--p1ai/bsr/case/7311541.

[50] *Обзор практики рассмотрения судами дел по спорам о защите чести, достоинства и деловой репутации* ("Review of litigation on the protection of honour, dignity and business reputation"), approved by the Presidium of the Supreme Court of the RF on 16 March 2016 / Bulletin of the Supreme Court of the RF, N 10, 2016, http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=LAW&n=195322&fld=134&dst=1000000001,0&rnd=0.5377783869630374#0.

[51] Ibid.

[52] Ibid.

[53] Ibid.

4.2. Public interest

The Resolution noted that there are norms in the statutory law that refer to "the public interest" that allows to disseminate information concerning the private life of citizens without their prior consent, to disseminate reports and materials produced with the assistance of hidden audiovisual and photo equipment, and to divulge the image of a citizen without his/her consent.

The notion of public interest is not legally defined in the Russian statutory law. Its definition was also absent in the international and national statutory law of other European countries.[54] Therefore the Resolution used the definition from the case law of the European Court of Human Rights [55] and prescribed that "public interest shall be understood not as any interest expressed by the audience but as, for example, the need of the public to reveal and expose a threat to the democratic state governed by the rule of law and to civil society, to public safety, and to the environment."

The Supreme Court did not limit its definition to clear-cut examples but went further by instructing the courts to "make a distinction between reporting facts (even controversial ones) capable of contributing in a positive way to a debate in society, concerning, for example, officials and public figures in the exercise of their functions, and reporting details of the private life of an individual who does not exercise any public functions. While in the former case the mass media exercises its public duty by contributing to imparting information on matters of public interest, it does not do so in the latter case."

The Russian courts have widely accepted this definition of public interest. For example, the appellate court upheld the decision of a district court in Khabarovsk which did not recognise the right of the former candidate for an elected office to protect his image and information about his private life from disclosure in a television programme and on its website. The court found that the information on the amount and sources of income, assets, on deposits and securities of the plaintiff was previously made public at his registration as a candidate, while the photograph used in the TV report was made by the plaintiff public by publishing it on the campaign posters at the time of his election campaigning. Both courts held that the use of personal information and image in the report produced by the television news agency "Province" was without distortion of the previously published records and was covered by the public interest as explained in the

[54] See, e.g. the Statute of the Republic of Moldova on Freedom of Expression described in "Moldova: Freedom of Expression Act Enters into Force" by A. Richter in IRIS 2010-9:1/32, http://merlin.obs.coe.int/iris/2010/9/article32.en.html. Another notable example is the Statute of Ukraine *Про інформацію* ("On information"). Its Art. 29, as amended on 13 January 2011, promulgates that "Classified information may be disseminated if it is socially necessary, that is becomes subject of public interest and the public's right to know this information outweighs the potential harm from its distribution." In its turn, "Information becomes the subject of public interest if it indicates a threat to national sovereignty and territorial integrity of Ukraine; provides for implementation of constitutional rights, freedoms and duties; indicates a possibility of human rights violations, deception of the public, harmful environmental effects and other negative actions (or continuing inaction) of natural or legal persons, etc." See its text (in Ukrainian) at: http://zakon4.rada.gov.ua/laws/show/2657-12.

[55] *Von Hannover v Germany* [2004] Application no. 59320/00), http://hudoc.echr.coe.int/eng?i=001-61853.

Resolution. The interest was in the public discussion of issues related to the sphere of housing and utilities services to citizens of Khabarovsk provided by the management company headed by the plaintiff. [56]

The Resolution was also used as an argument in a district court decision in Moscow. The lawsuit was filed by the pop singer Grigory Leps against the company NTV and the producer of a sensationalist TV show "You would not believe it!" (*Ты не поверишь!*) broadcast on NTV. The counsel of the defendants argued that although the collection and dissemination of information about private life such as on the construction by the plaintiff of a house near Moscow and its costs was made without his consent it was justified by the fact that he is a public figure. The court did not agree, pointing out that "the need to disseminate information about the private life of the plaintiff for the protection of public interest … has neither been proven by the defendant, nor established by the court." The decision also referred to the preamble to the Resolution, stating that "freedom of mass information is a foundation for the development of a modern society and a democratic state." A lawsuit for the protection of the right to privacy and the right to the protection of the image of the citizen and the recovery of moral harm was partially satisfied. Though the plaintiff claimed a monetary compensation for moral harm in the amount of 500 000 rubles to be paid by each of the defendants, the court ordered them to pay 10 times less.[57]

4.3. Scope of moral damages

The need to decrease the high damages awarded by the courts was a matter of concern clearly expressed in the Resolution. It stated that compensation for moral damages shall serve the specific purpose for which it was established by the law – that is to compensate the injured person for his physical or moral sufferings. In this context the Supreme Court noted that the amount of compensation granted as moral damages in order to be reasonable and just "should not lead to the violation of the freedom of mass information."

This is an argument accepted in current litigation. A trial court in Ufa made a decision on the lawsuit against Башкирское спутниковое телевидение (Bashkir Satellite Television) that demanded compensation for moral damages in the amount of 500 000 rubles. The plaintiff, a shop owner, claimed that information disseminated by the defendant in a TV report and on its website that the shop sells alcohol beverages that are counterfeit and dangerous to health damaged his reputation. The court noted that the Resolution required the courts to keep in mind that the amount of non-pecuniary

[56] Appellate Ruling of the Judicial Collegium on administrative cases of the Khabarovsk Regional Court in case N 33-3761/2014 of 25 June 2014, http://xn--90afdbaav0bd1afy6eub5d.xn--p1ai/bsr/case/6687052.
[57] Resolution of Presnensky District Court in Moscow in case N 2-1571/2013 (no date, publication date: 24 August 2014), http://xn--90afdbaav0bd1afy6eub5d.xn--p1ai/bsr/case/6796246.

damages should not lead to a breach of freedom of the media. Due to these and other circumstances, the court awarded the plaintiff 3000 rubles.[58]

In determining the amount of compensation, the courts also take into account the degree of dissemination of information, considering that the wider the audience, who learned about the defamatory statements, the greater shame is suffered by the plaintiff, and therefore the greater compensation that may be assigned. For example, another district court in Ufa, when determining the amount of compensation for moral harm caused by the information disseminated by a network publication, took into account the actual number of its site visitors, the duration of time when the defamatory story was online, as well as the fact that the defendant, having received the complaint of the plaintiff, first edited the content and then deleted it, while the editors came forward with an apology. The court considered it necessary to reduce the amount of compensation from 100 000 to 5 000 rubles.[59]

However, the Supreme Court continues to consider the question on the evaluation the amount of monetary compensation of non-pecuniary damages among the most topical issues arising in today's litigation.[60]

4.4. Name of the media outlet

The Resolution discussed cloning of titles of mass media, and in particular, court cases where the plaintiff argues that his media outlet was denied registration as a mass medium with the same form of dissemination of mass information that has already been registered under the same name.

This question is also reflected in the jurisprudence. Thus, the Arbitration Court of Moscow Circuit found that the similarity in the name of the mass media outlet requested by the applicant to be registered – Informatsionnoe agentstvo "Голос / News agency Golos" – with a previously registered network publication "Голос / Golos" [golos means voice in Russian – *ed.*] could not serve as a basis for a refusal by Roskomnadzor for such

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[58] Resolution of Leninsky District Court in Ufa in case N 2-1294/14 of 22 May 2014. http://xn--90afdbaav0bd1afy6eub5d.xn--p1ai/bsr/case/6657773. See also Resolution of Pravoberezhny District Court in Magnitogorsk, Chelyabinsk Region in case N 2-2195 /2011 of 28 December 2011, https://rospravosudie.com/court-pravoberezhnyj-rajonnyj-sud-g-magnitogorska-chelyabinskaya-oblast-s/act-102655126/. See also the case of Tatmedia as described in: Richter A., "Court Reporting by Audiovisual and Online Media in the Russian Federation", IRIS plus 2014-2, http://www.obs.coe.int/documents/205595/264635/IRIS%2B_2014-2_ENcomplet.pdf/3727f446-a872-4d6d-85ba-0f7734a8ac34.

[59] See e.g. Resolution of Kirovsky District Court in Ufa in case N 2-4048/10 of 8 December 2010, http://rospravosudie.com/court-kirovskij-rajonnyj-sud-g-ufy-respublika-bashkortostan-s/act-103222535/.

[60] "Обзор практики рассмотрения судами дел по спорам о защите чести, достоинства и деловой репутации" (Review of litigation on the protection of honour, dignity and business reputation), approved by the Presidium of the Supreme Court of the RF on 16 March 2016 / Bulletin of the Supreme Court of the RF, N 10, 2016, http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=LAW&n=195322&fld=134&dst=1000000001,0&rnd=0.5377783869630374#0.

registration. The conclusion of lower courts that the plaintiff intended to set up a network publication instead was based on the assumption that did not match the evidence presented in the case. The court of third instance determined that a news agency and a network publication are different forms of dissemination of mass information. It invalidated the decision of Roskomnadzor, and ordered the public authority to restore the rights of the applicant by registering a media outlet with this name.[61]

[61] Ruling of the Arbitration Court of Moscow Circuit in case N A40-181536/2013 of 3 April 2015, http://taxpravo.ru/sudebnie_dela/statya-362411-postanovlenie_arbitrajnogo_suda_moskovskogo_okruga_ot_03042015_g__a40_181536_2013. See also Decision of Tagansky District Court in Moscow in case N 2-1966/12 of 28 June 2012, https://rospravosudie.com/court-taganskij-rajonnyj-sud-gorod-moskva-s/act-106553284/.

5. Access to Information

5.1. Journalists' right to information

The Resolution clarified some issues concerning the access of journalists to information. The Supreme Court reiterated that an information inquiry by the editorial office of a mass medium is a legal means to seek information on the activities of state bodies, bodies of local self-government, state and municipal organisations (commercial and non-commercial), public associations, and their officials. The novelty of the explanation was that it explicitly put all legal entities (both commercial and non-commercial) under the obligation to provide information, while earlier the former were excluded for reasons of commercial secrecy.

In a case that might be considered as a typical court dispute, a municipal unitary enterprise Teploenergo, that provided heating to dwellers, refused to provide a media outlet with information on the number of its employees, on the amount of arrears of wages owed to them, on payables and receivables, by referring to its commercial status and trade secrets. The court, in its turn, referred to the instructions of the Resolution and upheld the plaintiff's claim by ordering the director of Teploenergo to provide the requested information.[62]

In the disputes on refusing requests for information, the courts often refer to another provision of the Resolution related to an unrelated issue that the editor of a mass media outlet needs no special power of attorney or other documents to prove his authority.[63] For example, the Supreme Court of Bashkortostan rejected the arguments of the appeal that a request of the editor of the online news agency "Vashi sosedi" (Your neighbors) to provide information was not accompanied by documents proving his authority, a copy of the certificate of registration of mass media, etc. It found that the

[62] Resolution of Belogorsky City Court in Amur Region in case N 2-1774/2013 ~ M-2035/2013 of 5 September 2013, https://rospravosudie.com/court-belogorskij-gorodskoj-sud-amurskaya-oblast-s/act-441867283/.

[63] See e.g., Appellate Ruling of the Judicial Collegium on administrative cases of the Supreme Court of the Republic of Bashkortostan in case N 33-13662/2015 of 13 August 2015, http://xn--90afdbaav0bd1afy6eub5d.xn--p1ai/bsr/case/7507651; Resolution of Kalininsky District Court in Ufa in case N 2-4653/2014 of 20 October 2014, http://xn--90afdbaav0bd1afy6eub5d.xn--p1ai/bsr/case/6926437; Resolution of Kalininsky District Court in Ufa in case N2-6318/2014 of 20 October 2014, http://xn--90afdbaav0bd1afy6eub5d.xn--p1ai/bsr/case/6926438; Resolution of Oktyabrsky District Court in Ufa in case N 2-6890/2014 of 28 November 2014, http://xn--90afdbaav0bd1afy6eub5d.xn--p1ai/bsr/case/7009651; Resolution of Demsky District Court in Ufa in case N2-111/2015 of 13 January 2015, http://xn--90afdbaav0bd1afy6eub5d.xn--p1ai/bsr/case/7170778; Resolution of Demsky District Court in Ufa in case N 2-191/2015 of 26 January 2015, http://xn--90afdbaav0bd1afy6eub5d.xn--p1ai/bsr/case/7170770.

request listed data that allowed determination of the sender, as well as the address of its official website where information about the media outlet and its editor was freely accessible.[64]

5.2. Accreditation of journalists

In the context of access to information the Resolution also dealt with the issue of accreditation of journalists. In particular it pointed that the rules concerning accreditation by state bodies, bodies of local self-government, state and municipal organisations may not impose limitations on the rights and freedoms of accredited journalists, other than those foreseen in the federal statutes. It also found no grounds to refuse accreditation other than those listed in the Statute on the Mass Media (violation of the rules of accreditation and/or a court decision holding that the accredited journalist defamed the accrediting organisation).

Litigation as a whole follows these instructions. The Tula Regional Court, for example, confirmed the decision of the district court in relation to its refusal of the Tula regional government to accredit journalists of the information agency Tulskie novosti (Tula news). Its ruling has consistently and thoroughly rejected the following arguments of the defendant to deny accreditation:

1) "doubts in the outlet's reputation in the media environment",
2) "taking stock of the activity of mass media outlet",
3) claim that the accreditation bodies have only the right, but not "an unconditional duty to respect an application for accreditation of journalists",
4) claim that news agency's website "published materials without identifying their authors, and full of judgments that led to improper comments, to a biased opinion about the activities of the Tula regional authorities, insulting comments, profane comments",
5) doubts that "the applicant in the future will comply with the Rules of accreditation of journalists and relevant provisions of the Statute on the Mass Media",
6) claim that the application for accreditation "has not been signed by someone with authority to its signature" (but instead by the founder of the media, temporarily appointed the editor),
7) need to "respect the limits of the quota," and claims that the application for accreditation was "above the existing quota",

[64] Appellate Ruling of the Judicial Collegium on administrative cases of the Supreme Court of the Republic of Bashkortostan in case N 33-13475/2015 of 11 August 2015, http://xn--90afdbaav0bd1afy6eub5d.xn--p1ai/bsr/case/7507665.

8) absence of a "difference between accredited journalists and those without accreditation", as well as the fact that the journalists of this particular outlet "did receive one-off accreditations to cover the government's particular events",

9) claim that the Tula regional government cannot be held responsible for the consideration of the application for accreditation of journalists, as the procedure is managed by the press service of the government,

10) claim that the procedure was done under the defunct Rules of accreditation of journalists.

The appellate court upheld the decision of the lower instance court to oblige the regional government and its press service to eliminate the violations of the rights of the news agency, by granting its application for accreditation of journalists at the regional government.[65]

5.3. Transparency of court proceedings

The Resolution noted that the openness of the justice system presupposes the necessity of a broad coverage of the courts' activity. It recalled that judges had no right to deny journalists access to court proceedings or to stop them from covering a particular case unless such a possibility was directly foreseen by the law. The Resolution further explained the procedures for the use of recording equipment in the courtroom, and noted that when deciding whether to allow audiovisual recording or broadcast, judges should balance the right of everyone to freedom of information with the right to privacy.

In 2012 the Supreme Court of the Russian Federation moved further when adopting another Resolution,[66] this time completely devoted to interpreting the Federal Statute "On the Provision of Access to Information on the Activity of Courts in the Russian Federation" (see above). In particular the 2012 Resolution allowed online reporting or texting (e.g. with the use of Twitter, or online text reporting on a news website) without permission of the presiding judge. The 2012 Resolution instructed judges that, when deciding on the admissibility of photography, video, film recording, or live transmissions of open court proceedings, they should start from the assumption that such activity was possible in every case.

Widening the meaning of its 2010 Resolution "On the practice of application by the courts of the Statute of the Russian Federation 'On the Mass Media'", the Supreme Court in its 2012 Resolution made it clear that failure to comply with the requirements of the openness of court proceedings constitutes a violation of due judicial process and

[65] Appellate Ruling of the Judicial Collegium on administrative cases of the Tula Regional Court in case N 33-3238 of 13 December 2012, http://xn--90afdbaav0bd1afy6eub5d.xn--p1ai/bsr/case/4615003.

[66] *Об открытости и гласности судопроизводства и о доступе к информации о деятельности судов* (Resolution of the Plenum of the Supreme Court of the Russian Federation on Openness and Transparency of the Judicial Process and on Access to Information on the Activity of the Courts), No. 35 of 13 December 2012. See its text (in Russian) at: www.vsrf.ru/Show_pdf.php?Id=8331.

serves as a basis for cancellation of court judgments, "if such violation has respectively resulted in or could lead to the adoption of an illegal and (or) unjustified decision, did not allow a comprehensive, full and objective examination of the case…".[67]

[67] See more in: Richter A., "Court Reporting by Audiovisual and Online Media in the Russian Federation", IRIS *Plus* 2014-2, http://www.obs.coe.int/documents/205595/264635/IRIS%2B_2014-2_ENcomplet.pdf/3727f446-a872-4d6d-85ba-0f7734a8ac34.

6. Conclusion

The Supreme Court of the Russian Federation continues to play a crucial role in promoting human rights by instructing judges to give more weight to freedom of the media considerations. Adopted in 2010, the Resolution was a unique and a long-awaited important event in the legal regulation of Russian mass media. Despite a generally problematic state of freedom of information in the Russian Federation, in the past six to seven years, the judges tend to be more attentive to the need to follow the national standards on media freedom as a human right. In this particular context, they feel freer to refer to the constitutional guarantees, as well as to the freedom of expression provisions of the European Convention on Human Rights and the case law of the European Court of Human Rights.

According to the Constitution, the Supreme Court cannot change the law, but it can and it does continue to interpret it in the best possible way for democracy and freedom of the media in Russia. Recent amendments to the Statute on the Mass Media and other pieces of legislation seem to reverse this positive trend set by the Supreme Court's Resolution.

The Resolution's approach to various issues is also important for the neighbouring countries where the same or similar norms exist in the media law, because their top courts are attentive to the position of the Supreme Court of the Russian Federation. Just recently the Supreme Court of Kyrgyzstan adopted a Resolution "On judicial practice on adjudication of disputes on the protection of honour, dignity and business reputation" which reproduced some of the ideas of the Resolution in Russia, such as on the need to balance rights to honour and dignity with the freedom of expression, on the nature of official speeches and statements made by public officials, and on the meaning of the literal reproduction of such statements.[68]

[68] Resolution of the Plenum of the Supreme Court of Kyrgyz Republic "О судебной практике по разрешению споров о защите чести, достоинства и деловой репутации" (On judicial practice on adjudication of disputes on the protection of honour, dignity and business reputation) N 4 of 13 February 2015. See the text (in Russian) at: http://www.media.kg/law/postanovlenie-plenuma-verxovnogo-suda-kr/.

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