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A Landmark for Mass Media in Russia

2011-1

LEAD ARTICLE

Russia's Modern Approach to Media Law

- Procedure for the Adoption of Resolutions
- Foundations of the Media Regulation
- Censorship
- Title of the Media
- Online Media
- Access to Information
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IRIS *plus* 2011-1
A Landmark for Mass Media in Russia

ISBN (Print Edition): 978-92-871-7050-7 ISBN (PDF-Electronic Edition): 978-92-871-7053-8
Price: EUR 24,50 Price: EUR 33
European Audiovisual Observatory, Strasbourg 2011

IRIS *plus* Publication Series
ISSN (Print Edition): 2078-9440 ISSN (PDF-Electronic Edition): 2079-1062
Price: EUR 95 Price: EUR 125

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Typesetting:
Pointillés, Hoenheim (France)

Print:
Pointillés, Hoenheim (France)
Conseil de l'Europe, Strasbourg (France)

Cover Layout:
Acom Europe, Paris (France)

Publisher:
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Please quote this publication as:
IRIS *plus* 2011-1, A Landmark for Mass Media in Russia, (Susanne Nikoltchev (Ed.), European Audiovisual Observatory, Strasbourg 2011)

A Landmark for Mass Media in Russia

Foreword

When on 15 June 2010 the Supreme Court of the Russian Federation adopted Resolution No. 16 "On the Judicial Practice Related to the Statute of the Russian Federation 'On the Mass Media'", the first international voice applauding this step was that of Dunja Mijatovic, the OSCE Representative on Freedom of the Media, who called it a "landmark resolution" and "a commendable effort to bring Russian court practice in line with international media freedom standards".[1]

In addition to its paying tribute to international standards, the Resolution merits recognition as it shows how Russian Media Law may be adapted to the changed media environment, a task that the Russian legislator has not explicitly handled and that therefore has become an issue for the courts. In several of the 38 points contained in the Resolution, the Supreme Court instructs lower courts as to how to interpret and apply the Statute on the Mass Media of 1991 to digital and Internet based services in today's market. Through these instructions, as well as via its comments on other areas relevant to the media, the Supreme Court fills in the gaps in the overall legal framework applicable to mass media.

The Resolution provides more than simply guidance for Russian courts. It offers an approach to a more modern legal framework that Russia might provide for the audiovisual sector. For this reason, the content of the Resolution needs to be made accessible to a much wider audience than Russian courts. This requires translating the original Russian text into other languages, on the one hand, and explaining its meaning and context to readers who lack education in the Russian legal system, on the other hand.

This IRIS *plus* does both. Its lead article highlights the most important commentaries of the Resolution and pinpoints to which provisions of the Statute on Mass Media or other legal texts they relate. The ZOOM-part contains the translation of the full text of the Resolution into the language of this publication. It should be noted that translating the Resolution was a comparative legal study in itself given that a significant part of the Russian legal terminology and concepts have no equivalent in many other countries and their respective languages. This is certainly true for English, German and French, the official working languages of the European Audiovisual Observatory. In case of doubt we recommend also consulting the original Russian version of the Resolution, which is available at:
http://merlin.obs.coe.int/redirect.php?id=12489

1) See Press Release of the OSCE Representative on Freedom of the Media of 16 June 2010, available at http://www.osce.org/fom/66479

Drawing the circle to a close, the related reporting of this IRIS *plus* focuses on international media freedom standards set by the European Court of Human Rights in more recent decisions that might guide the Russian Supreme Court when it makes pronouncements on future issues concerning the mass media.

Strasbourg, February 2011

Susanne Nikoltchev
IRIS Coordinator
Head of the Department for Legal Information
European Audiovisual Observatory

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Andrei Richter
Moscow Media Law and Policy Centre

I. Introduction to the procedure for the adoption of resolutions by the Supreme Court

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.

To recall some of the background, according to the Constitution of the Russian Federation (Art. 126)[1] the supreme judicial body for civil, criminal, administrative and other cases under the jurisdiction of common courts is the Supreme Court of the Russian Federation (hereinafter "the Supreme Court"), which among other duties shall "provide explanations on the issues of court practice". According to the Statute "On the Judicial System of the RSFSR",[2] which is still in force, explanations introduced by the Plenary Meeting of the Supreme Court are binding for both the courts of law and other state bodies, as well as for state officials[3] who apply the law. The binding nature of the explanations is stipulated by Art. 56 ("Powers of the Supreme Court of the RSFSR") of the Statute.

According to V.V. Demidov, at the time Secretary of the Plenary Meeting of the Supreme Court of the Russian Federation and meanwhile retired, such explanations represent a "specific form of court precedent". They generalize on the approaches and current trends developed by the case law for a specific category of civil or criminal cases and are based upon the experience and knowledge of the judges, practicing attorneys and legal scholars. Styled as precise explanations, they differ from commentaries published by legal scholars and experts inasmuch as the latter are mostly based on the commentator's personal vision of how a particular norm should be interpreted. "Explanations that the Supreme Court adopted in its plenary meetings as resolutions become a guide that must be applied in order to rule in a lawful, well-grounded and just way", said Judge

1) The Constitution was adopted by popular vote on 12 December 1993. See http://constitution.ru/ for the official translations of the Constitution into English, German and French.
2) RSFSR stands for Russian Soviet Federative Socialist Republic. Statute of the RSFSR of 8 July 1981 (last amended on 7 May 2009) "On the Judicial System of the RSFSR" (О судоустройстве РСФСР) / "Vedomosti VS RSFSR", 1981, N 28, st. 976.
3) According to Russian law an official means a person who exercises the functions of a public officer on a constant or temporary basis, or is vested with special authority, that is, a person who is vested, pursuant to the procedure established by law, with managerial powers in respect of persons who are not officially subordinated to him, as well as a person exercising organisational-and-managerial or administrative-and-economic functions in state bodies, bodies of local self-government, governmental and municipal organisations, in the Armed Forces of the Russian Federation, or in other troops and military regiments of the Russian Federation (see, e.g. Art. 2.4 of the The Code of Administrative Offences of the Russian Federation (No. 195-FZ of 30 December 2001) in English translation at http://www.russian-offences-code.com/SectionI/Chapter2.html)

Demidov.[4] These recommendations, although they are highly persuasive, are, however, not law *per se*. Therefore, the Supreme Court sees no collision between Art. 56 of the Statute "On the Judicial System of the RSFSR" and the Constitution, which stipulates that "judges shall be independent and submit only to the Constitution and the federal law" (Art. 120, para. 1).

The draft of the Resolution *О практике применения судами Закона Российской Федерации «О средствах массовой информации»* (On Judicial Practice Related to the Statute of the Russian Federation "On the Mass Media") was developed since 2009 by a working group of the Supreme Court of the Russian Federation headed by deputy Chief Justice Vladimir Nechaev, with Vyacheslav Gorshkov serving as Judge-Rapporteur. In December 2009, five "external" experts in media law were brought into the group.[5] The expanded team met about a dozen times to discuss amendments to the draft.

In spring 2010 the final draft was approved by the working group, then by the Council of legal scholars and experts (a permanent body of the Supreme Court), and thereafter sent out to the regional courts, interested public bodies (the Prosecutor-General, the Administration of the President of the Russian Federation, the Ministry of Justice, the Ministry of Communications and Mass Communications, and the Federal Service for Supervision of Communications, Information Technologies and Mass Media), legal research institutions and colleges, key mass media outlets, etc. Their representatives were invited to participate in the discussion of the draft held on 20 April 2010 at the Plenary Meeting of the Supreme Court. At the Plenary Meeting the text was approved by a formal vote, but – in order to take into account a number of suggestions presented by speakers at the session – an editorial group was formed comprising the speakers and the key working group members. This group was assigned to find a consensus. After about another dozen meetings of the group the consensus was found and at the Plenary Meeting, on 15 June 2010, all 78 judges of the Supreme Court, who were present, unanimously approved in a point-by-point vote the final text of the Resolution that was subsequently published in the official gazette *Rossiyskaya gazeta* on 18 June 2010.[6]

II. Foundations of the Media Regulation

The Resolution of 15 June 2010 No. 16 "On the Judicial Practice Related to the Statute of the Russian Federation 'On the Mass Media'" (hereinafter – the Resolution), adopted by the Supreme Court, sets out the important political and legal principle that the "freedom to express opinions and views and the freedom of mass information are the foundations for developing a modern society and a democratic state", thus underlining the place and role of the free media in the system of institutions and values of the Russian State. Courts should take this principle into consideration in all cases in which this freedom is challenged in the name of values that are not exactly the foundations for developing democracy in the Russian Federation, such as public morals or the reputation of citizens and companies.

Limitations on the freedom of mass information, as the Resolution reminds, are admissible exclusively if imposed by a federal statute of the Russian Federation and cannot be introduced

4) Interview of judge V.V.Demidov to correspondent of journal "Advokatskie vesti" (Адвокатские вести) K. Lisukova (publication date unclear, most likely released in 2004). See the official website of the Supreme Court at: http://www.supcourt.ru/print_page.php?id=740

5) Dr. Yury Baturin; Dmitry Golovanov, Viktor Monakhov, Dr. Mikhail Fedotov and this author. Incidentally, two of the five are correspondents of IRIS, the monthly legal publication of the European Audiovisual Observatory, see http://www.obs.coe.int/oea_publ/iris/iris_plus/index.html.

6) Постановление Пленума Верховного суда Российской Федерации "О практике применения судами Закона Российской Федерации «О средствах массовой информации»" No. 16. (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'" 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. A clearer unofficial translation into English by this author is included in the Zoom section accompanying this article.

by any other legal act. The Supreme Court refers here to the provisions of Art. 55 para. 3 of the Constitution of the Russian Federation, which stipulates that the rights and freedoms of a person and citizen may be limited only by a federal statute to the extent necessary to protect the foundations of the constitutional system, morals, health, rights and legal interests of other persons, and to defend the country and the security of the state.[7] Therefore, if judges are adjudicating on the question whether or not media professionals may be exposed to liability charges, the judges are instructed to verify possible limitations on the right to freedom of information of the media professionals are indeed covered by a federal statute (and not solely, for example, by regional statutes, decrees of the President or governmental resolutions).

The Resolution enumerates international covenants that regulate freedom of expression and freedom of mass information and are binding for the Russian Federation. In this regard the Resolution steps out of routine by referring the Russian courts not only to the relevant provisions of the International Covenant on Civil and Political Rights and the European Convention on Human Rights but also to the rarely recalled Final Act of the Conference on Security and Cooperation in Europe (CSCE) and the CIS Convention on Human Rights and Fundamental Freedoms.[8]

III. 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"[9] (hereafter – Statute on the Mass Media) that refer to the ban on censorship (point 14[10]). Although in general the Resolution's statement is trivial the text provides some curious nuances.

The courts are reminded that according to Art. 3 para. 1 of the Statute on the Mass Media censorship is the demand made by officials, state bodies, or local self-government bodies, organizations 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), as well as for the suppression of the dissemination of messages and materials[11] or separable parts thereof.

The Supreme Court notes 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 of the journalist to obtain prior approval for disseminating this type of information. Therefore, the Supreme Court's message is 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. This is important for court cases on the content of media materials disseminated on the basis of interviews because the Supreme Court's reading of the provision allows the editorial offices to edit interviews independently (under the condition that they do not violate copyright law). This rule is even more evident if a journalist makes his own story based on the interview without "distortion of its meaning and the words of the interviewee" (point 14).

According to the Supreme Court it is a different question under what conditions the founders of the mass medium (whose status resembles in many ways that of owners of the media outlet)[12]

7) This article of the Constitution in its turn follows the official Russian translation of the European Convention on Human Rights where the word "law" (e.g. in Articles 5-12) was interpreted as "*закон*", or "statute".
8) See "Commonwealth of Independent States: Convention on Human Rights" by Andrei Richter in IRIS 1995-6: Extra, available at: http://merlin.obs.coe.int/iris/1995/6/article100.en.html
9) Statute of the Russian Federation "On the Mass Media" No. 2124-1 of 27 December 1991 as of 8 December 2003 (in English): http://merlin.obs.coe.int/redirect.php?id=12475
10) Unless otherwise stated point numbers in brackets hereinafter refer to the points of the Resolution.
11) The law 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.
12) For further details on the nature of founders see IRIS Special, "The Regulatory Framework for Audiovisual Media Services in Russia", European Audiovisual Observatory, Strasbourg, 2010.

may lawfully demand that its editorial office or its editor ask for their prior approval on messages and materials that they intend to disseminate. The answer depends on whether or not the editorial charter or a separate agreement between the founder and the editorial office (that under certain circumstances replaces the editorial charter) foresees this possibility. The Supreme Court concludes that, in the absence of such a provision, any interference by the founder with the professional independence of the editorial office and the rights of a journalist is illegal.

The Resolution explains that despite a general ban on censorship stipulated by Art. 29 of the Constitution of the Russian Federation, Arts. 56 and 87 of the Constitution allow for a possibility of limiting freedom of mass information as a temporary measure in case of a state of emergency or the martial law (although these articles do not specify that censorship is indeed such a measure). In these cases censorship can be imposed and enforced following the procedure established by the Federal Constitutional Statutes[13] "On the State of Emergency" and "On the Martial Law".

IV. Title of the media

The Resolution indicates that the title of a media outlet is not a statement as such, since "its function is essentially to identify the given media outlet for its actual and prospective audience" (point 10). Therefore the title may not be evaluated in court as to whether or not it reflects the "real state of affairs". Thus a refusal to register a media outlet based on the fact that its title does not reflect the "real state of affairs" is illegal. This clarification closely follows the judgment of the European Court of Human Rights in the case of *Dzhavadov v. Russia* (Application no. 30160/04, 27 September 2007).

The Supreme Court adds that a court may still evaluate the title of a media outlet regarding the presence or absence of an abuse of the freedom of mass information in the terms of Art. 4 para. 1 of the Statute on the Mass Media. For example, the title shall not contain appeals to exercise terrorist activities, advertising for pornography or the cult of violence and cruelty (all listed in Art. 4 as abuse).

It goes on to discuss cloning of titles of mass media (i.e., titles of channels and the programmes within a channel's schedule) and in particular court cases where the plaintiff argues that his media outlet was denied registration on the grounds of Art. 13 para. 1 subpara. 4 of the Statute on the Mass Media (when a mass medium with the same form of dissemination of mass information has already been registered under the same name). The Supreme Court reminds the judges that the statute refers to cases in which the titles are identical. Therefore a refusal to register the media outlet on the grounds that the new title is confusingly similar to a title already registered is illegal. Thus Roskomnadzor,[14] the registration body of the executive branch, is denied the right to rule on similarity of titles.

The Supreme Court also addresses the problem of similar titles, which is quite widespread in the Russian media. It confirms that the use of mass media titles that are similar to the extent that they can be confused with each other may mislead the audience. In that case the protection of the persons holding the rights to the title of the mass media is enforced by the means foreseen by the existing legislation. Thus, without being explicit, the Supreme Court most likely refers to Part 4 of the Civil Code of the Russian Federation[15] dealing with the regulation of intellectual property and to the Federal Statute "On Protection of Competition".[16]

13) 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.
14) 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.
15) Part 4 of the Civil Code of the Russian Federation of 18 December 2006 N 230-FZ. See more on the law in "Transformation of Authors' Rights and Neighbouring Rights in Russia" by Dmitry Golovanov in IRIS *plus* 2008-2.
16) Federal Statute "On Protection of Competition" of 26 July 2006, N 135-FZ.

V. Regulation of online media

The Supreme Court made a bold step and tailored the norms of the Statute on the Mass Media, which was adopted in 1991 and hence before the phenomenon of the Internet had come to Russia, to the social relations that characterise the virtual world and that require a legal framework. Neither has the text of the Statute on the Mass Media been amended to take into account these new relations, nor was a special statute addressing Internet-related legal issues ever adopted. As a result the legal framework for interactive and online services was quite unclear and allowed for different interpretations of the potentially applicable norms. The Supreme Court proved its courage in applying the logic of the Statute on the Mass Media to the relations between the providers and users of online services.

Art. 24 para. 2 of the Statute on the Mass Media allows 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". The Supreme Court says that in doing so the courts shall take into account the peculiarities of disseminating mass information online (point 6). According to the Resolution, the main peculiarity is that there is no mass media product (in the sense of Art. 2 of the Statute on the Mass Media) in the online process of dissemination of mass information. Without a physical product, dissemination of a product is impossible, and therefore online sites are not to be considered as a form of mass media *per se*. This disputable logical construction leads the Supreme Court to important legal conclusions. The main one is that websites are not subject to mandatory registration as they would be if they were to be considered mass media outlets. Thus the Resolution confirms the legal tradition that has emerged in Russia in the absence of clear rules, namely that the registration of websites can be done on a voluntary basis only.[17] If the registration takes place then the authors of online services acquire the status of journalists with all the rights and privileges foreseen by the Statute on the Mass Media. Many websites seek such registration because they want to receive accreditation with state bodies for their reporters. Now registration will become easier because point 6 of the Resolution stipulates as follows:

> "According to Article 1 of the Statute of the Russian Federation *On the Mass Media*, freedom of mass information includes the right of any person to found a mass media outlet in any form that is not prohibited by the law. Starting Internet websites and using them to periodically disseminate mass information is not banned by the law. Considering this and based on the comprehensive list of grounds to refuse state registration of a mass media outlet set out in part 1 of Article 13 of the mentioned Statute, the registration authority has no right to refuse the registration of an Internet website as a mass media outlet should its founder express the wish to obtain such a registration."

In other words, registration is not necessary but if requested it should always be provided.

On the other hand, if a website is registered as a mass media its staff bears the same responsibilities as journalists. The site itself is subject to the system of warnings from Roskomnadzor or a public prosecutor in cases of abuse of the freedom of mass information. Such warnings may eventually lead to the site being forced to close down as a media outlet (the procedure is described below in the section on "Abuse of the freedom of mass media"), although in such a case it would probably be able to continue to operate as a regular website. These consequences deter many website operators who therefore refrain from requesting registration. The Resolution acknowledges that those who violate the law when disseminating information through Internet websites not registered as mass media outlets shall be subject to penal, administrative, civil, and other liability under the legislation of the Russian Federation. However, they may not be subjected to the specific provisions foreseen by the legislation on the mass media (point 6) among which are stricter penalties for dissemination

17) See further reasoning in IRIS Special, "The Regulatory Framework for Audiovisual Media Services in Russia", 2010, p. 7.

in the mass media of extremist calls, insult or slander (Arts. 129 and 130 of the Criminal Code of the Russian Federation).

The Resolution provides a vital clarification on the issue whether there is a need to obtain a broadcasting licence to disseminate audiovisual programming online. If Art. 24 para. 2 of the Statute on the Mass Media were applicable to the Internet, then the rules established for broadcasting including the need to obtain a licence would also have to be applied. The Supreme Court recalls that a broadcasting licence is necessary if technical means for over-the-air, wire, or cable television and radio broadcasting are used to distribute the mass media output (Art. 31 of the Statute on the Mass Media). It then considers that such technical devices are not used for disseminating mass information through websites. As a consequence, the Supreme Court concludes, a person who disseminates mass information online does not need to acquire a broadcasting licence. This explanation removes the threat for online broadcasters that performing online commercial or non-profit activities without a licence might lead to administrative liability, which would have been the case had a licence been deemed obligatory by law (Art. 14.1 and Art. 19.20 of the Administrative Code of the Russian Federation).

This explanation, which is important for the freedom of the audiovisual media, disregards, however, that at the time when the Statute on the Mass Media was adopted online broadcasting did not exist. But one might also argue that the Russian legislator failed to regulate the issue in this statute or adopt a special broadcasting statute during all these years.

Further on the Resolution reiterates that the provisions of Art. 24 para. 2 of the Statute on the Mass Media refer to the applicability of the rules established for radio and television, but only where such rules are established by the Statute on the Mass Media. As the latter refrains from the regulation of advertising, the rules established by the Statute "On advertising"[18] in relation to commercials in television and radio broadcasting do not apply to the Internet. This had been open to question with regard to the norms relating to the amount and time of advertising and bans or restrictions on advertising of certain types of goods and services (such as tobacco, alcohol or medical services). At the same time the Resolution mentions that general rules on dissemination of advertisements in the mass media established by the Statute "On advertising" shall be applied to those websites registered as mass media outlets. Because there are no such general rules (with a minor exception for advertising to raise funds for shared construction of real estate), the Supreme Court probably refers to such basic principles of advertising as fairness and credibility of information.

The Resolution discusses the acute issue of who has the burden of proof in the case of alleged violations of the law occurring on the Internet (point 7). It points out that notary offices are allowed to provide assistance to those who intend to sue on online offences (but before they actually file a lawsuit) in securing the necessary proof. The notary offices may do so in particular by certifying the content of an Internet website at a specific moment in time if there are grounds to believe that it will become impossible or difficult to furnish proof in the future. The Supreme Court instructs the judges that they have the right to accept such proof in cases relating to the dissemination of information online.

The Resolution also recalls that in such cases evidence may additionally be secured by the judge because the range of proof that can be provided is not limited by law (Arts. 64-66 of the Civil Procedural Code of the Russian Federation). The question of when it is necessary to secure proof is a matter to be adjudicated while taking into account the following aspects: the nature of the petition made to the court and in particular the case's subject-matter, the circumstances that require to secure such evidence and the reasons of the applicant for requesting provision of proof. In pressing cases, when preparing the court hearing and during the hearing itself, the court (judge) has the right to examine (view) the proof on the spot.

18) See "Russian Federation: New Advertising Statute" by Andrei Richter in IRIS 2006-4/34, available at: http://merlin.obs.coe.int/iris/2006/4/article34.en.html

An issue dealt with in the Resolution that enjoyed intense attention by the media is the liability of the "editorial offices" of registered Internet sites 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 an outlet 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) and subsequently fails to amend (or delete) the communication and the communication has been judged to be illegal by a court. Here the Resolution draws a parallel between such fora and live broadcasts that do not make broadcasters liable in accordance with Art. 57 ("Absolution from Responsibility") of the Statute on the Mass Media.

At the stage of editing the draft resolution representatives of Roskomnadzor strongly objected to this reasoning. Their position was based on the argument that registration as a mass media outlet assigns the editorial office of an Internet site certain responsibilities. Among such responsibilities, the basic one is editing the information disseminated by the media outlet. The way in which this duty is performed directly relates to potential liability for violations of the Statute on the Mass Media, and in particular for dissemination of extremist speech. Roskomnadzor was worried about a possible hike in extremist materials, as well as materials that propagate pornography and the cult of violence and cruelty under the disguise of comments on the websites registered as mass media.

Soon after the adoption of the Resolution, on 6 July 2010, the head of Roskomnadzor issued Order No. 420 which approved "Rules for addressing requests concerning the prohibition of abuse of the freedom of mass media by material sent to the mass media and disseminated through information telecommunication networks, Internet included". The Rules have been drafted in accordance with the Statute on the Mass Media, Regulations on Roskomnadzor, and the Resolution.

According to the Rules, if comments that appear on websites registered as mass media seem to abuse the freedom of mass media a Roskomnadzor official makes a screenshot of the questionable material and prepares a report, to which it adds a copy of the screenshot. Immediately thereafter Roskomnadzor sends to the mass media outlet a request suggesting to remove or to edit the material. The request is signed by the head of a Roskomnadzor department and is registered and formulated following standard internal rules.

The request is to be sent to the editorial office of the online media via e-mail to the Internet address announced on their website (with a marker of notification of delivery), as well as via fax. The fact and time of the dispatch of the request must be documented. Compliance with the action suggested is checked one working day after the dispatch. In case the demand to remove the questionable material is not met or the performed editing does not result in the removal of the elements of abuse of the freedom of mass media, an official warning to the editorial office is issued. The Rules have already been used on a number of occasions.

One may doubt the legality of some of the provisions of the Rules. To begin with, the 24-hour deadline is set neither in the Statute on the Mass Media, nor in the Resolution. The absence of any time reference in the law made it impossible for the Resolution to find a requirement for the mass media outlet to act "immediately" or "as soon as possible". Moreover, there is no obligation for a mass media outlet to indicate its e-mail address on its website, to check its e-mails every day, or to have a facsimile device. In response to this criticism raised by this author in an interview to the *Deutsche Welle* radio, the broadcaster received an inquiry from an assistant to the head of Roskomnadzor as to the time limits that exist in Germany for reacting to official complaints. In reply the station provided Roskomnadzor with a memo published on the website of both *Deutsche Welle* and Roskomnadzor.[19] It indicated in particular that the normal practice in Germany for website operators was to have a grace period of a week in controversial situations when consulting lawyers might be necessary to come to a conclusion.

19) See the websites of *Deutsche Welle* (http://www.dw-world.de/dw/article/0,,5915106,00.html) and Roskomnadzor (http://rsoc.ru/press/publications/news12554.htm).

The Resolution abstains from giving guidelines on situations in which the editorial office of an online media are addressed not by public bodies and officials but by individuals who believe that their rights and legal interests were violated in comments disseminated via Internet fora and chats. Will the media outlet that ignores such a complaint be still exempt from responsibility? The discussion in the editorial group showed that the majority believed that the persons defamed should make use of their right to a refutation of the defamatory statements in the same fora and chats.

VI. Guarantees for access to information

The Resolution clarifies some issues concerning the access of journalists to information that is of public interest. The Supreme Court reiterates that information inquiry by the editorial office of a mass medium (Art. 39 of the Statute on the Mass Media) is a legal means to seek information on the activities of state bodies, bodies of local self-government, state and municipal organizations (commercial and non-commercial), public associations, and their officials (point 15). The novelty of the explanation is that it explicitly puts both commercial and non-commercial public organisations under the obligation to provide information, while earlier the former were typically excluded for reasons of commercial secrecy.

One important instruction to the courts in relation to information requests is based on Art. 38 of the Statute on the Mass Media, which stipulates that providing data requested by the editorial office of a mass media outlet is a form of satisfying citizens' rights to promptly receive information from the mass media on activities of public bodies and their representatives. Taking into consideration "that after a long period of time the requested information may lose its currency", the Resolution instructs the courts "to examine and adjudicate such cases as quickly as possible" (point 15).

In the context of access to information the Resolution deals with the issue of accreditation of journalists (point 21). It discusses Art. 48 of the Statute on the Mass Media, which is the only article in Russian law that concerns accreditation. The Resolution contains several conclusions:

1. Accreditation provides journalists with additional possibilities of seeking and obtaining information in comparison with those who are not accredited.

2. Rules concerning accreditation by state bodies, bodies of local self-government, state and municipal organizations may not impose limitations on the rights and freedoms of accredited journalists other than those foreseen in the federal statutes (for example, the suspension of an accreditation would not be a permissible measure as it is not stipulated by a federal statute).

3. There are no grounds to refuse accreditation or to cancel it other than those listed in Art. 48 (these are: violation of the rules of accreditation and/or a court decision holding that the accredited journalist defamed the accrediting organisation).

Thus the Supreme Court in fact says that a public body may not legally deny accreditation to a mass medium previously not accredited at that body, and it instructs the courts to assist journalists who sue against such a denial.

VII. Transparency of court proceedings

Somewhat separately, the Resolution discusses several norms that are not related to the Statute on the Mass Media, or at least not directly. The norms in question are from the Federal Statute "On the Provision of Access to Information on the Activity of Courts in the Russian Federation" that was only about to enter into force when the Resolution was adopted.[20] In point 17 of the

20) The Federal Statute "On the Provision of Access to Information on the Activity of Courts in the Russian Federation" entered into force on 1 July 2010. See "Russian Federation: Transparency of Courts to Be Strengthened" by Andrei Richter in IRIS 2009-3: Extra, available at: http://merlin.obs.coe.int/iris/2009/3/article101.en.html

Resolution, the Supreme Court recalls that judges have no right to deny journalists access to court proceedings or to stop them from covering a particular case unless such a possibility is directly foreseen by law. Such a possibility is provided for by the procedural law related to closed sessions or in the situation where a person may be expelled from the courtroom for violation of the order of the court proceeding. Journalists may not be denied access, for example, because of a shortage of seats in the courtroom. The Resolution explains that any "closed door session" of the court of law on grounds that are not directly stipulated by the federal statutes contradicts the constitutional provisions that examination of cases in all courts shall be open. It also represents a possible violation of the right to a fair and public hearing as stipulated by point 1 of Art. 6 of the European Convention on Human Rights and also point 1 of Art. 14 of the International Covenant on Civil and Political Rights.

In point 16 of the Resolution, the Supreme Court explains under what conditions a request for information on activities of the courts may be denied. Among the circumstances foreseen by the Federal Statute "On Provision of Access to Information on the Activity of Courts in the Russian Federation" features "obstruction to justice", which is described in the following way:

> "The information that may be refused according to paragraph 5 part 1 of Article 20 of the mentioned Federal Statute (the requested information presents an obstruction to justice) includes such information whose dissemination can create obstacles for execution of a fair trial guaranteed by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (for example, it may jeopardise the equality of the parties, the adversarial nature of the proceedings, the presumption of innocence and reasonable terms for a case examination)."

The Resolution further explains the procedures for the use of recording equipment in the courtroom. It reminds that according to the procedural law anyone (including journalists) when present at a court hearing may record the court proceedings in writing or by using audio recording equipment. The law does not oblige the person that makes the audio recording to notify the court of his doing so. At the same time the recording of a hearing by film, photo or video, or via television or radio broadcasting is allowed only with the court's (judge's) permission and the reporter is obliged to make his intention known to the court (judge). The Supreme Court provides an important reference point for judges when deciding whether or not to allow such audiovisual recording or broadcast: they shall balance the right of everyone to freedom of information, on the one hand, with the right of everyone to protect one's private life, personal and family secrets, honour and good name, secrecy of correspondence, telephone, mail, telegraph and other communications, and one's image, on the other. Thus for the first time the courts are recommended to consider in such situations the necessity to observe the right to information.

VIII. Protection of journalists' privileges

Like elsewhere in the world 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 is discussed in the Resolution.

According to Arts. 57 and 35 of the Statute on the Mass Media, the editorial office, editor-in-chief and journalists of a mass medium are exempt from liability for disseminating information that is part of so-called "obligatory reports", that is statements that an editorial office is obliged to publish by law or pursuant to a court order. The Resolution (point 22) adds to the very few narrowly defined cases when the law speaks of an obligation to disseminate specific information (e.g. under the martial law) the case of broadcasting or publishing (free of charge) material for election or referendum campaigning according to the rules of the relevant legislation. Such an obligation exists, for example, for state but also private broadcasters that agree to provide airtime for campaigning and therefore must comply with the conditions set in the Federal Statute "On basic guaranties of the electoral rights and the right to participate in a referendum of citizens of

the Russian Federation".[21] The Resolution also includes in the list of exemptions the obligations imposed on the national state-run broadcaster by the Federal Statute "On Guarantees of Equality of Parliamentary Parties as to the Coverage of their Activities by the State-Run General TV and Radio Channels".[22] By doing so the Supreme Court makes a bold step towards protecting the media from liability for the contents of the campaigning messages that they disseminate. Such dissemination typically occurs without real possibility for the editors to amend the content as any attempt of interference could be considered a violation of the electoral rights of candidates. From now on all liability for pre-election statements lies with the politicians who make these statements.

The editorial office, the editor-in-chief and journalists are also exempt from liability in case the information that they disseminate is obtained from a news agency. In addition, the Statute on the Mass Media stipulates that when a media outlet is disseminating information received from a news agency it is mandatory to make a reference to the news agency which made the information available. The Supreme Court does not make the exemption from liability dependent on compliance with the reference requirement because it stipulates that in any case the outlet should prove that the disseminated information comes from a news agency (point 22).

The Supreme Court gives a crucial explanation with regard to the exemption 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. The Resolution (point 23) instructs judges that the contents of such interviews shall have a legal nature equal to that of an official response of such organisations to an information request by the mass media outlet (and in the case of disseminating the latter the media are also exempt from liability). Thus the media are now free from having to verify information provided by a variety of interviewed persons – from politicians and officials to press spokesmen. Earlier the practice of holding journalists liable for the content of interviews was quite common.

Further on the Resolution discusses a privilege related to official speeches and statements made by public officials as well as by delegates to the meetings of public associations such as political parties. There was a certain legal ambiguity as to which speeches can be considered "official". The Supreme Court held that they include, for example, speeches by an official at a scheduled meeting, held in the presence of journalists, in specially allocated premises of a building of the corresponding body, organisation or public association and in accordance with the approved agenda (point 23).

Because the media are exempt from liability only if they reproduce the words of the officials "literally", the Supreme Court explains that the Statute on the Mass Media does not necessarily require verbatim reproduction as the courts believed was the case. The Resolution states 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". At the same time, the Supreme Court notes that it is important to consider that every so often exact fragments of statements, reports or materials, when quoted out of context, can appear to have a different meaning to the original meaning of the statement, report or material. Thus the Resolution's interpretation of literal reproduction becomes very favourable for responsible media outlets.

Art. 57 of the Statute on the Mass Media also makes media outlets immune from liability for literal reproduction of materials taken from other mass media "which can be ascertained and called to account for a breach of the legislation of the Russian Federation on mass media". When considering the norm, the Supreme Court recalls that the "other mass media" do not need to be

21) See e.g. "Russian Federation: Electoral Campaigning Rules Modified" by Dmitry Golovanov in IRIS 2007-1/30, available at: http://merlin.obs.coe.int/iris/2007/1/article30.en.html and "Russian Federation: Changes in Election Law Concern Broadcast Media" by Natalie Boudarina in IRIS 2002-8/20, available at: http://merlin.obs.coe.int/iris/2002/8/article20.en.html

22) See "Russian Federation: Equal Rights Law Passed" by Andrei Richter in IRIS 2009-7/32, available at: http://merlin.obs.coe.int/iris/2009/7/article32.en.html

necessarily outlets registered in Russia. According to the provisions contained in paragraphs 2 and 3 of Art. 402 of the Civil Procedural Code of the Russian Federation, a foreign outlet can be held liable in Russia, if the defendant organisation, its administrative body, branch or representative office are on the Russian territory or if the defendant citizen resides in Russia or if the defendant has property on Russian territory, or (even more importantly) – in defamation cases – if the plaintiff resides in Russia.

IX. Public interest

The Supreme Court notes that there are three norms in the federal law related to mass media activities that refer to "the public interest":

1. Art. 49 para. 1, sub-para. 5 of the Statute on the Mass Media stipulates a ban on the dissemination of information concerning the private life of citizens in the mass media without their prior consent or the prior consent of their legal representatives unless disseminating the information is necessary for the protection of public interests.

2. Art. 50 para. 1 sub-para. 2 of the same statute allows for dissemination of reports and materials produced with the assistance of hidden audio- and video recording, film recording and photography if this is necessary for the protection of public interests and provided that measures against possible identification of outsiders have been taken.

3. Art. 152^1 of the Civil Code of the Russian Federation specifies that the divulging and further use of the image of a citizen is allowed only with the consent of the citizen. His consent is not needed, however, if the use of the image is in state, social or other public interests.

Because the notion of public interest is not legally defined, courts are in a difficult position when adjudicating on conflicts based on different interpretations of public interest. Providing such a definition turned out to be a difficult task, especially because the laws of other European countries rarely provide examples.[23] Therefore the Supreme Court relies for its definition on the case law of the European Court of Human Rights.

The Resolution notes 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 does not limit the notion to clear-cut examples but goes 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" (point 25).

With this reasoning the Russian Supreme Court clearly follows the arguments of the European Court of Human Rights in its famous judgments concerning the cases of *Observer and Guardian v. the United Kingdom* and *von Hannover v. Germany*.[24] If the media disclose aspects of private life with the aim to uncover corruption or other offences of politicians and officials such an endeavour establishes circumstances that grant the editorial office immunity from lawsuits aimed at protection of private and family life. This needs to be distinguished from cases when the disclosure of private

23) 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 Andrei Richter in IRIS 2010-9/32, available at: http://merlin.obs.coe.int/iris/2010/9/article32.en.html

24) Cases of *Observer and Guardian v. the United Kingdom* (Application no. 13585/88); *von Hannover v. Germany* (Application no. 59320/00).

information is done for the sake of sensation or seeks to cater to lowbrow interests of the audience. In these cases the law shall not grant protection.

This position of the Supreme Court is extremely important for the sake of political discussion in the Russian media because it allows journalists to widely use the rights provided to them by the Statute on the Mass Media and the Civil Code of the Russian Federation.

X. Protection of confidential sources

The Supreme Court discusses another important issue for political journalism: the conditions for disclosure of confidential sources of information. The Resolution reminds the courts that they shall be guided by Art. 41 of the Statute on the Mass Media, which stipulates that the editorial office is obliged to keep the source of information secret and has no right to name the person who has provided the information with the proviso that his name not be divulged. The Resolution states that the personal data of the person making the proviso is "secret information, which is specially protected by the federal statute" (point 26). An exception applies, if the demand for disclosure is made by a court of law in connection with a case pending before that court.

By providing this explanation the Supreme Court confirms that there is no contradiction between Art. 41 of the Statute on the Mass Media quoted above and Art. 56 of the Criminal Procedure Code of the Russian Federation adopted after the Statute on the Mass Media. Art. 56 provides a list of persons who may not be called to testify in court as witnesses (attorneys, clergymen, etc.). The list does not mention journalists or editorial workers, which does not exclude in principle that there may be other groups enjoying relief from the duty to witness in court. This is confirmed by the Constitution (Art. 51 para. 2) which declares: "A federal statute may envisage other cases of absolution from the obligation to testify". The importance of the explanation of the Supreme Court lies in reminding prosecutors and investigation bodies that are more accustomed to work with the Criminal Procedure Code than the Statute on the Mass Media which norm to apply – and that is the norm of the Statute on the Mass Media on confidentiality of sources.

And even though a court of law may still demand such a disclosure at any stage of the case deliberations, the Supreme Court makes an important clarification for the freedom of the media in this regard. The Resolution stipulates that such a demand is allowed only after "all other means to learn about relevant circumstances, which are important for the just examination and adjudication of the case, are exhausted and the public interest in disclosure of the source of information overrides the public interest in keeping it a secret" (point 26). Here again the Supreme Court follows the case law of the European Court of Human Rights.[25] It is clear that the Resolution obliges the courts from now on to provide reasons for why the public interest in disclosure would outweigh the necessity to keep the source secret.

XI. Moral damages

Three months after the final adoption of the Resolution, two more points were added to the text. Both relate to the issue of moral damages and reveal the Supreme Court's concerns over the high damages awarded by courts. Point 37 of the Resolution reminds judges of the relevant provisions of the Civil Code of the Russian Federation. According to these provisions, the violation of personal non-property rights (such as life, health, dignity, privacy, freedom of movement and freedom of residence) or other immaterial benefits (such as business reputation of legal entities or copyright) of a person by dissemination of information in the mass media, and the infliction of moral damage (physical or moral sufferings) upon a person, entitle the person concerned to claim damages. Point 38 of the Resolution is more specific insofar as it states that compensation for moral damages shall serve the specific purpose for which it was established by the law – that

25) E.g. judgment on the case of *Goodwin v. the United Kingdom* (Application no. 17488/90).

is to compensate the injured person for his physical or moral sufferings (Art. 151 of the Civil Code of the Russian Federation). In this regard the Resolution calls upon courts to ensure that the compensation is not used for other purposes. In particular courts shall not establish circumstances that will actually limit the right to freedom of expression, including the freedom of opinion and the freedom to obtain and to disseminate information and ideas without any interference by public authorities. To underline this statement, the Resolution refers again to Art. 29 of the Constitution of the Russian Federation and Art. 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. It also refers to Art. 10 ("The Limits of Exercising the Civil Rights") of the Civil Code of the Russian Federation, which forbids inter alia that citizens and legal entities perform actions with the express purpose of inflicting damage on another person, and that bans any abuse of civil rights in other forms.[26] In this context the Supreme Court notes that the amount of compensation granted as moral damages in order to be reasonable and just (Art. 1101 para 2 of the Civil Code of the Russian Federation) "should not lead to the violation of the freedom of mass information".

These two points of the Resolution develop further the ideas that the Supreme Court reiterated in earlier resolutions such as its Resolutions "On issues of application of the law on compensation of moral damages" (20 December 1994), "On a court decision" (19 December 2003), and "On judicial practice related to disputes on the protection of honour and dignity of citizens, as well as of the business reputation of citizens and legal entities"[27] (24 February 2005).

XII. Abuse of the freedom of mass media

An abuse of the freedom of mass information (Art. 4) leads to written warnings issued by authorised bodies and public officials to the editorial office of a mass media outlet (editor-in-chief) or its founder (for example, according to Art. 16 of the Statute on the Mass Media, Art. 8 and 11 of the Federal Statute "On counteracting extremist activity").[28] It is to be remembered that under the Federal Statute "On counteracting extremist activity" the activities of a mass media organisation may be terminated if the warning is not appealed, or deemed illegal by the court, and if the infringements are repeated within twelve months from the date when the warning was issued or if new facts are discovered that prove the carrying out of an extremist activity by the mass media organisation. The Statute on the Mass Media tolerates two repetitions of the infringements (followed by warnings) before a court order for the termination of the activity of the mass media outlet is issued and not just one as is the case under the anti-extremism act. The court shall thus impose a ban on the production and dissemination of the mass media to stop an abuse of the freedom of mass information (according to Art. 16 and 16^1 of the Statute on the Mass Media, Art. 11 of the Federal Statute "On counteracting extremist activity").

A case concerning the closure of a media outlet should be dealt with only by the top court of the particular subject (region) of the Russian Federation where the dominant part of the dissemination of the media outlet takes place (that is, the second instance court) (point 31). This explanation reportedly helped a media outlet, which had been shut down for extremism on the very day of the Resolution's adoption, to successfully appeal this decision of a Moscow district court.

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26) See the text of the Civil Code of the Russian Federation (Part I) in English at: http://www.russian-civil-code.com/PartI/
27) See "Russian Federation: Supreme Court on Defamation" by Andrei Richter in IRIS 2005-4/32, available at: http://merlin.obs.coe.int/iris/2005/4/article32.en.html
28) See its text in English at http://medialaw.ru/e_pages/laws/russian/extrimist.htm . See also "Russian Federation: How to Prevent Extremism in Mass Media" by Natalie Boudarina in IRIS 2002-8/15, available at: http://merlin.obs.coe.int/iris/2002/8/article32.en.html , "Russian Federation: Electoral Campaigning Rules Modified" by Dmitry Golovanov in IRIS 2007-1: 16, available at: http://merlin.obs.coe.int/iris/2007/1/article30.en.html , "Russian Federation: Anti-extremism Amendments" by Nadezhda Deeva in IRIS 2007-9/19, available at: http://merlin.obs.coe.int/iris/2007/9/article27.en.html , and "Russian Federation: Warning to Broadcaster Annulled" by Andrei Richter in IRIS 2009-8: 18/28, available at: http://merlin.obs.coe.int/iris/2009/8/article28.en.html

The Supreme Court explains that the warnings issued by the authorised bodies[29] or their officials represent an authoritative declaration that leads to legal consequences for the founder/ co-founders of the mass media outlet and/or its editorial office (editor-in-chief). Earlier in a substantial number of cases[30] the authorised body would attempt to prevent court deliberations on the legality of warnings by claiming that they just forewarned a person to refrain in the future from illegal activity, and to prevent offences. Thus, so was the argument, their letters of warning had no direct or negative influence on the activity of the person. Therefore they could not be disputed in court. Disagreeing with this reasoning, the Supreme Court stresses that disputes about warnings are susceptible to judicial examination in accordance with the procedure stipulated in Chapters 23 and 25 of the Civil Procedural Code of the Russian Federation (point 27).

These two chapters are part of Subsection III of the Code ("Proceedings on Cases Arising from Public Legal Relations"): Chapter 23 describes the general provisions, whereas Chapter 25 determines the procedure for disputing decisions and actions (inaction) of state bodies, officials and governmental employees.

Russian judges have also received a number of additional reference points on how to deal with disputes concerning the legality of warnings (point 28). When determining whether indeed an abuse of the freedom of mass information took place (and the warning is therefore legal) the courts shall now

> "take into account not only the words and phrases (wording) in the article, television or radio programme but also the context in which they were delivered (such as aim, genre and style of a publication, a programme or a part of it, 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 the representatives of the editorial office of the mass media outlet towards the expressed opinions, judgments or statements), as well as take into account the social and political situation in the country at large or in one of its parts (depending on the area of dissemination of the particular mass medium)".

Again the Supreme Court follows the position of the European Court of Human Rights expressed in its judgments in *Jersild v. Denmark*,[31] *Leroy v. France*[32] and other cases. It seems that not only the courts but also the authorised bodies (Roskomnadzor and the public prosecutor's office) and their officials will have to take the above quoted points into consideration when substantiating to the editorial offices their demands relating to an abuse of the freedom of mass information.

Without making it explicit, the Resolution seems to suggest that the courts when adjudicating on a possible abuse of mass information clarify whether or not the editor-in-chief aimed at such an abuse. It is the editor-in-chief who according to the Statute on the Mass Media takes the final decisions on the production and issue of a mass medium and it is he who bears responsibility for respecting the conditions that the Statute on the Mass Media and other legislative acts of the Russian Federation (para 10 part 1 Art. 2 and part 5 Art. 19) impose on the activity of a mass medium.

When adjudicating on the attitude of the interviewer and/or editors to statements made by the participants of live broadcasts, the courts shall "take into account the peculiarities of television and radio broadcasting which limit the possibilities of journalists and editors to correct, clarify, interpret or comment" (point 28). It appears that the explanation does not refer only to the so-

29) That is Roskomnadzor and any office of the public prosecutor.
30) Like in the case of the *South Park* cartoon series, see Russian Federation: "Warning to Broadcaster Annulled" by Andrei Richter in IRIS 2009-8/28, available at: http://merlin.obs.coe.int/iris/2009/8/article28.en.html
31) Case of *Jersild v. Denmark* (Application no. 15890/89).
32) *Arrêt de la Cour européenne des Droits de l'Homme (cinquième section), affaire Leroy c. France, requête n° 36109/03 du 2 octobre 2008.*

called live "author's programmes" where broadcasters benefit from an exemption from liability concerning the content (Art. 57 para. 1 point 5 of the Statute on the Mass Media).

In this context, the Resolution directly quotes point 5 of the Declaration on freedom of political debate in the media of the Council of Europe's Committee of Ministers (2004):[33] "The humorous and satirical genre, as protected by Article 10 of the [European] Convention [on Human Rights], allows for a wider degree of exaggeration and even provocation, as long as the public is not misled about facts". This reference, which can also be found in earlier resolutions of the Supreme Court,[34] helps to establish a more enabling environment for the dissemination of political cartoons, satirical shows, etc., in the media. Exaggeration and provocation in these genres are now considered permissible in the media and shall not serve as grounds for liability in defamation lawsuits.

Further on the Supreme Court notes that Art. 4 para. 1 of the Statute on the Mass Media considers it to be an abuse of the freedom of mass information if mass media are used for committing penal offences. At the same time, courts have exclusive jurisdiction to rule on criminal cases (part 1 of Art. 8 of the Criminal Procedural Code of the Russian Federation). Therefore neither Roskomnadzor, nor the prosecutor are entitled to decide whether the mass media has indeed been used for committing a penal offence. Thus the legality of a warning on this type of abuse shall be determined with consideration of whether an enforceable conviction or any other judicial decision on the criminal case exists (point 28).

XIII. Suspension of activity, suspension of coverage

The Resolution recalls that according to the Statute on the Mass Media the legal nature of the suspension of media activity is to temporarily prohibit the production and/or distribution of the output of the mass media outlet.

The Supreme Court stipulates that suspending the activity of a media outlet represents an exceptional interim measure in support of a claim. Courts shall only use it to the extent that they may rule on a request for a preliminary decision in cases concerning the termination of the mass media activity directly foreseen by the Statute on the Mass Media or the Federal Statute "On counteracting extremist activity" (points 29 and 30). This leads the Supreme Court to two important conclusions. The Resolution points out that in other civil cases concerning the activity of the mass media, media activity may not be suspended on application for interim measures. Along with this guidance, the Supreme Court denies (but only in civil cases) courts the right to ban editorial offices from preparing and disseminating new materials on certain events or persons. A different court decision would not meet the aims set in Art. 139 ("Grounds for Interim Measures") of the Civil Procedural Code and "will not be necessary to secure the authority and impartiality of justice" (point 30). Such a ban would also compromise justice because, as is mentioned in point 17, the court (judge) may not prevent mass media representatives "from covering a particular court case, with the exceptions foreseen by statute". The Supreme Court aims at cases where plaintiff files a request for a preliminary injunction with the court to stop the media outlet from publishing any new materials that concern him.

The explanations of the Supreme Court on this matter expand the freedom of expression beyond the limits set in Art. 10 of the European Convention on Human Rights by brushing away any possibility to limit such freedom by banning the coverage of certain subjects. The explanations are related to the recent (2009) judgment of the European Court of Human Rights in the case of *Obukhova v. Russia*,[35] but at the same time go far beyond what was said in the judgment.

33) See https://wcd.coe.int/ViewDoc.jsp?id=118995&Lang=en
34) For example in the Resolution "On judicial practice related to disputes on the protection of honour and dignity of citizens, as well as of the business reputation of citizens and legal entities" (24 February 2005), see "Russian Federation: Supreme Court on Defamation" by Andrei Richter in IRIS 2005-4/32, available at: http://merlin.obs.coe.int/iris/2005/4/article32.en.html
35) Case of *Obukhova v. Russia* (Application no. 34736/03).

In this judgment, the Strasbourg-based European Court of Human Rights referred to a request of a plaintiff (a judge) to a Russian court to order interim measures, and notably an interlocutory injunction against a newspaper to prevent publication of "any articles, letters or materials about the factual circumstances of the traffic accident of 22 September 2001, as well as about the court proceedings concerning that accident until they [had] finished". While the European Court of Human Rights ruled that such a measure was not "necessary in a democratic society" (27), it did not contest that the interference was "prescribed by law", namely the provisions of the Code of Civil Procedure of the Russian Federation governing application of interim measures. Moreover, as regards the legitimate aim of the interference, the Court was prepared to accept that the injunction envisaged "maintaining the authority of the judiciary" as one of its legitimate aims. The Court did so because this phrase includes the protection of the rights of litigants and because the purpose of the injunction was to enable the defamation action to be heard without the plaintiff's rights in the meantime being prejudiced (21).

The Supreme Court made another major remark concerning the discussion on interim measures in civil cases where a mass media outlet is the defendant. In order to comply with the requirements of Art. 140 para. 3 of the Code of Civil Procedure of the Russian Federation ("measures granted in response to a claim shall be proportional to the plaintiff's claim") the courts shall consider the nature of the offences that took place (particularly, whether they can be regarded as cases of abuse of the freedom of mass information or if they represent other violations of the mass media law), but also assess the negative consequences for the freedom of mass information which can be caused by imposing such measures (point 30).

XIV. Conclusion

The Resolution is unique and a long-awaited and important event in the legal regulation of Russian mass media. By analysing its text one remarks the extraordinary character of its essential content.

The Resolution's approach to various norms 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 such acts of the Supreme Court of the Russian Federation. The Resolution was welcomed by international institutions such as the OSCE Representative on Freedom of the Media[36] and was positively reviewed in the Western press.[37]

In our view the significance of the Resolution is not only to set uniform rules for court practice. Adopted at a critical stage in national journalism, it pushes the editorial offices to provide an honest service aimed at truthfully and critically informing the public on issues of common interest, and most of all, on political developments in Russia. At the same time, journalism as mass entertainment for the sake of ratings and maximum profits now gets less protection in courts.

The Resolution allows Russian media to engage in socially responsible journalism without being threatened by illegal pressure in the courtroom, extreme demands by state bodies and excessive bureaucratic procedures. By adopting it the Supreme Court in fact instructs the judges to stand guard of a professionally honest quality journalism in Russia.

36) See http://www.osce.org/fom/item_1_44628.html and http://www.osce.org/fom/item_1_46159.html
37) See e.g. Richter A, "Russian media granted greater freedom", The Guardian (London), 22 June 2010, p. 30, available at: http://www.guardian.co.uk/commentisfree/2010/jun/21/russia-court-mass-media-freedoms-journalism#start-of-comments

Recent Decisions of the European Court of Human Rights on Freedom of Expression

The interpretation of Media Law in any country subscribed to the European Convention on Human Rights must live up to the standards, which are set by Article 10 of the Convention and which are being applied and clarified by the European Court of Human Rights. The lead article of this IRIS *plus* discusses several aspects of Russian Media Law that because of alleged violations of Article 10 of the Convention have also been dealt with by the European Court of Human Rights. Among them are (i) the conditions for refusing access to information, (ii) the protection of journalists' privileges especially with regard to civil and criminal liability, (iii) the balancing of public interests against other protected interested such as the right of privacy, (iv) the protection of confidential sources and (iv) the suspension of journalistic activity.

Picking up on these aspects, the Related Reporting-section of this IRIS *plus* offers two articles on how the European Court of Human Rights balanced the need to protect confidential and sensitive data against the interest of transparency (see below I), three articles on where it drew the line for when sanctions such as a conviction for defamation unduly limit the freedom of information – also in the context of the Internet (see below II), two articles on how the Court judged the public interest in receiving information concerning court and crime reporting (see below III), one article on the limits of ordering the disclosure of journalistic sources (see below IV) and a final article on the distinction between illegitimate censorship and the limited exceptions of legitimate prior restraints on publications (see below V).

We have taken these entries from our IRIS newsletter of the last and the current year, which were all authored by

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I. Confidentiality and Sensitivity of Data

Case of Gillberg v. Sweden

The European Court of Human Rights has delivered a judgment in an interesting case with a peculiar mix of issues related to freedom of expression, academic research, medical data, privacy protection and access to official documents. The defendant state is Sweden, a country very familiar with the principle and practice of access to official documents. The right of access to official documents has a history of more than two hundred years in Sweden and is considered one of the cornerstones of Swedish democracy. The case shows how access to official documents, including research documents containing sensitive personal data, can be granted to researchers, albeit under strict conditions. It furthermore demonstrates that Sweden applies effective procedures to implement orders granting access to official documents: those who refuse to grant access to official documents after a court decision has so ordered can be convicted on the basis of criminal law. The case reflects the idea that progress in scientific knowledge would be hindered unduly if the research methodology of a study or scientific data analysis and the conclusions build on the data were not open to scrutiny, discussion and debate, albeit under strict conditions of privacy protection regarding medical data.

In this case, a Swedish professor at the University of Gothenburg, Mr. Gillberg, has been responsible for a long-term research project on hyperactivity of children and attention-deficit disorders. Certain assurances were made to the children's parents and later to the young people themselves concerning the confidentiality of the collected data. According to Mr. Gillberg, the university's ethics committee had made it a precondition for the project that sensitive information about the participants would be accessible only to himself and his staff and he had therefore promised absolute confidentiality to the patients and their parents. The research papers, called the Gothenburg study, were voluminous and consisted of a large number of records, test results, interview replies, questionnaires and video and audio tapes. They contained a very large amount of privacy-sensitive data about the children and their relatives.

Some years later, two other researchers not connected to the University of Gothenburg requested access to the research material. One had no interest in the personal data as such but in the method used and the evidence the researchers had for their conclusions, the other wanted access to the material to keep up with current research. Both requests were refused by the University of Gothenburg, but the two researchers appealed against the decisions. The Administrative Court of Appeal found that the researchers should be granted access to the material, as they had shown a legitimate interest and could be assumed to be well acquainted with the appropriate ways of handling confidential data. It was also considered to be important to the neuropsychiatric debate that the material in question be exposed to independent and critical examination. A list of conditions was set for each of the two researchers, which included restrictions on the use of the material and the prohibition of removing copies from the university premises. Notified by the university's vice-chancellor that the two researchers were entitled to access by virtue of the judgments, first Mr. Gillberg and later the university refused to give access to the researchers. The university decisions were annulled however by two judgments of the Administrative Court of Appeal. A few days later, the research material was destroyed by a few colleagues of Mr. Gillberg.

The Swedish Parliamentary Ombudsman brought criminal proceedings against Mr. Gillberg, who a short time later was convicted of misuse of office. Mr. Gillberg was given a suspended sentence and a fine of the equivalent of EUR 4,000. The university's vice president and the officials who had destroyed the research material were also convicted. Mr. Gillberg's conviction was upheld by the Court of Appeal and leave to appeal to the Supreme Court was refused. A short time later, Mr. Gillberg lodged an application with the Strasbourg Court of Human Rights. He complained in particular that his criminal conviction breached his rights under Articles 8 (right of privacy, including personal reputation) and 10 (freedom of expression) of the Convention. Mr. Gillberg also complained under Articles 6 (fair trial) and 13 (effective remedy) of the Convention that in the civil proceedings concerning access to the research material he did not have a standing before the Administrative Courts. Several times Mr. Gillberg's requests for relief for substantive defects to the Supreme Administrative Court were refused because he could not be considered a party to the case.

As Mr. Gillberg lodged his application before the Court more than six months after these judgments, this part of the application had been submitted too late and was rejected pursuant to Article 35 §§1 and 4 of the Convention. While on the face of it the case raised important ethical issues involving the interests of the children participating in the research, medical research in general and public access to information, the Court considered itself to only be in a position to examine whether Mr. Gillberg's criminal conviction for refusing to execute a court order granting access to official documents was compatible with the Convention. The Court found that the conviction of Mr. Gillberg did not as such concern the university's or the applicant's interest in protecting professional secrecy with clients or the participants in the research. That part was settled by the Administrative Court of Appeal's judgments. For reasons of inadmissibility of the application regarding the judgments of the Administrative Courts, the European Court was prevented from examining any alleged violation of the Convention by these judgments.

Regarding the remaining and hence crucial complaints under Article 8 and 10, Mr. Gillberg emphasised that there had been a promise of confidentiality to the participants in the research, as a precondition for carrying out his research and that the order to grant access to the research material and his conviction for refusing to do so amounted to a violation of his right to private life and his right to negative freedom of expression (the right to refuse to communicate).

The European Court left the question whether there had been an interference with Mr. Gillberg's right to respect for his private life for the purpose of Article 8 open, because even assuming that there had been such an interference, it found that there had been no violation of that provision. According to the Court, Convention States have to ensure in their domestic legal systems that a final binding judicial decision did not remain inoperative to the detriment of one party; the execution of a judgment is an integral part of a trial. The Swedish State therefore had to react to Mr. Gillberg's refusal to execute the judgments granting the two external researchers access to the material. The Court noted Mr. Gillberg's argument that the conviction and sentence were disproportionate to the aim of ensuring the protection of the rights and freedoms of others, because the university's ethics committee had required an absolute promise of confidentiality as a precondition for carrying out his research. However, the two permits by the committee he had submitted to the Court did not constitute evidence of such a requirement. The Swedish courts had moreover found that the assurances of confidentiality given to the participants in the study went further than permitted by the Secrecy Act. As regards Mr. Gillberg's argument that the Swedish courts should have taken into account as a mitigating circumstance the fact that he had attempted to protect the privacy and integrity of the participants in the research, the European Court agreed with the Swedish criminal courts that the question of whether the documents were to be released had been settled in the proceedings before the administrative courts. Whether or not the university considered that they were based on erroneous or insufficient grounds had no significance for the validity of the administrative courts' judgments. It had thus been incumbent on the university administration to release the documents and Mr. Gillberg had intentionally failed to comply with his obligations as a public official arising from the judgments. The Court therefore did not find that his conviction or sentence was arbitrary or disproportionate to the legitimate aims pursued. It concluded, by five votes to two, that there had been no violation of Article 8 of the Convention.

With regard to the alleged violation of the right to freedom of expression under Article 10 of the Convention, Mr. Gillberg invoked his "negative right" to remain silent. The Court accepted that some professional groups indeed might have a legitimate interest in protecting professional secrecy as regards clients or sources and it even observed that doctors, psychiatrists and researchers may have a similar interest to that of journalists in protecting their sources. However, Mr. Gillberg had been convicted for misuse of office for refusing to make documents available in accordance with the instructions he received from the university administration after a Court decision; he was thus part of the university that had to comply with the judgments of the administrative courts. Moreover, his conviction did not as such concern his own or the university's interest in protecting professional secrecy with clients or the participants in the research. The Court unanimously concluded that there had been no violation of Article 10 of the Convention.

The judgment of the European Court is certainly an eye-opener for many actors in countries of the Council of Europe working in the domain of access to official or administrative documents,

academic research, the processing of sensitive personal data and data protection authorities. The jurisprudence of the Swedish courts and of the European Court of Human Rights demonstrates that confidentiality of data used for scientific research and protection of sensitive personal data is to be balanced against the interests and guarantees related to transparency and access to documents of interest for the research society or society as a whole. The concurring opinion of Judge Ann Power, which is annexed to the judgment in the case of Gillberg v. Sweden, elaborates the importance of this approach by emphasising that "the public has an obvious interest in the findings and implications of research. Progress in scientific knowledge would be hampered unduly if the methods and evidence used in research were not open to scrutiny, discussion and debate. Thus, the requests for access, in my view, represented important matters of public interest", without however disregarding the principles and values of protection of personal data.

- Judgment by the European Court of Human Rights (Third Section), case of Gillberg v. Sweden, No. 41723/06 of 2 November 2010
  http://merlin.obs.coe.int/redirect.php?id=12820

IRIS 2011-1/1

Case of Pasko v. Russia

The European Court of Human Rights found no violation of Article 10 of the Convention in the highly controversial case of Pasko v. Russia. The case concerns Grigoriy Pasko, a Russian national who at the time of the events was a naval officer and worked as a military journalist on the Russian Pacific Fleet's Newspaper "Boyevaya Vakhta". Mr Pasko had been reporting on problems of environmental pollution, accidents with nuclear submarines, transport of military nuclear waste and other issues related to the activities of the Russian Pacific Fleet. Mr Pasko had also been in contact on a free-lance basis with a Japanese TV station and a newspaper and had supplied them with openly available information and video footage. These contacts with Japanese journalists and a Japanese TV station and newspaper were pursued by Mr Pasko of his own volition and were not reported to his superiors.

In November 1997, Mr Pasko was searched at the Vladivostok airport before flying to Japan. A number of his papers were confiscated with the explanation that they contained classified information. He was arrested upon his return from Japan and charged with treason through espionage for having collected secret information with the intention of transferring it to a foreign national. Mr Pasko was sentenced in December 2001 to four years' imprisonment by the Pacific Military Fleet Court, as he was found guilty of treason through espionage for having collected secret and classified information containing actual names of highly critical and secure military formations and units, with the intention of transferring this information to a foreign national. He was released on parole in January 2003.

Relying on Articles 7 (no punishment without law) and 10 of the European Convention of Human Rights, Mr Pasko complained that the Russian authorities had applied criminal legislation retrospectively and had subjected him to an overly broad and politically motivated criminal persecution as a reprisal for his critical publications. The Court considered that the essence of the case was the alleged violation of Article 10, since Mr Pasko's complaints under Article 7 concerned the same facts as those related to Article 10. The Court therefore decided to examine the complaints under Article 10 only.

After having accepted that the Russian authorities acted on a proper legal basis, the Court observed that, as a serving military officer, the applicant had been bound by an obligation of discretion in relation to anything concerned with the performance of his duties. The domestic courts had carefully scrutinised each of his arguments. The courts had found that he had collected and kept, with the intention of transferring to a foreign national, information of a military nature that had been classified as a State secret and which had been capable of causing considerable damage to national security.

Finally, the applicant had been convicted of treason through espionage as a serving military officer and not as a journalist. According to the European Court, there was nothing in the materials of the case to support the applicant's allegations that his conviction had been overly broad or politically motivated or that he had been sanctioned for any of his publications. The Court found that the domestic courts had struck the right balance of proportionality between the aim of protecting national security and the means used to achieve that purpose, namely the sentencing of the applicant to a "lenient sentence", much less severe than the minimum stipulated in law. Accordingly, the Court held by six votes to one that there had not been a violation of Article 10.

- Judgment by the European Court of Human Rights (First Section), case of Pasko v. Russia, Application. no. 69519/01 of 22 October 2009
  http://merlin.obs.coe.int/redirect.php?id=12167

IRIS 2010-1/1

II. Defamation

Case of Andreescu v. Romania

The applicant, Gabriel Andreescu, is a well-known human rights activist in Romania. He was among those who campaigned for the introduction of Law No. 187, which gives all Romanian citizens the right to inspect the personal files held on them by the Securitate (the former Romanian intelligence service and secret police). The law also allows access to information of public interest relating to persons in public office who may have been Securitate agents or collaborators. A public agency, the *Consiliul Naţional pentru Studierea Arhivelor Securităţii* (National Council for the Study of the Archives of the Securitate - CNSAS) is responsible for the application of Law No. 187. In 2000, Andreescu submitted two requests to the CNSAS: one to be allowed access to the intelligence file on him personally and the other seeking to ascertain whether or not the members of the Synod of the Romanian Orthodox Church had collaborated with the Securitate. He received no reply and organised a press conference at which he criticised A.P., a member of the CNSAS, making reference to some of A.P.'s past activities. Andreescu's remarks on A.P.'s past received widespread media coverage.

A.P. made a criminal complaint against Andreescu accusing him of insult and defamation. After being acquitted in first instance, Andreescu was ordered by the Bucharest County Court to pay a criminal fine together with a high amount in compensation for non-pecuniary damage. The appeal Court ruled that he had not succeeded in demonstrating the truth of his assertion that A.P. had collaborated with the Securitate. Furthermore, a certificate issued by the CNSAS had meanwhile stated that A.P. had not collaborated.

Relying on the European Convention of Human Rights and Fundamental Freedoms, Andreescu lodged an application with the European Court of Human Rights concerning his conviction for defamation. Although the interference by the Romanian authorities with Andreescu's freedom of expression had been prescribed by law and had pursued the legitimate aim of protecting A.P.'s reputation, the European Court considered that the sanction was a violation of Article 10 of the Convention. The Court held that Andreescu's speech had been made in the specific context of a nationwide debate on a particularly sensitive topic of general interest, namely the application of the law concerning citizens' access to the personal files kept on them by the Securitate, enacted with the aim of unmasking that organisation's nature as a political police force, and on the subject of the ineffectiveness of the CNSAS's activities. In that context, it had been legitimate to discuss whether the members of that organisation satisfied the criteria required by law for holding such a position. Andreescu's remarks had been a mix of value judgments and factual elements and he had especially alerted public opinion to the fact that he was voicing suspicions rather than certainties.

The Court noted that those suspicions had been supported by references to A.P.'s conduct and to undisputed facts, such as his membership with the transcendental meditation movement and the modus operandi of Securitate agents. According to the Court, Andreescu had acted in good faith in an attempt to inform the public. As his remarks had been made orally at a press conference, he had no opportunity of rephrasing, refining or withdrawing them. The European Court was also of the opinion that the Romanian court, by convicting Andreescu, had paid no attention to the context in which the remarks at the press conference had been made. It had certainly not given "relevant and sufficient" reasons for convicting Andreescu. The Court noted furthermore that the high level of damages - representing more than 15 times the average salary in Romania at the relevant time - could be considered as a measure apt to deter the media and opinion leaders from fulfilling their role of informing the public on matters of general interest. As the interference with Andreescu's freedom of expression had not been justified by relevant and sufficient reasons, the Court held that there had been a violation of Article 10. It also found a breach of Article 6 § 1 of the Convention (right to fair trial) due to Andreescu's conviction without evidence being taken from him in person, especially after he had been acquitted at first instance. The Court held that Romania was to pay Andreescu EUR 3,500 in respect of pecuniary damage, EUR 5,000 for non-pecuniary damage and EUR 1,180 for costs and expenses.

- Judgment by the European Court of Human Rights (Third Section), case of Andreescu v. Romania, No. no. 19452/02 of 8 June 2010
  http://merlin.obs.coe.int/redirect.php?id=12677

IRIS 2010-9/1

Case of Renaud v. France

The European Court of Human Rights recently delivered a judgment regarding defamation and insult on the Internet. The Court was of the opinion that the sharp and polemical criticism of the public figure in question was part of an ongoing emotional political debate and that the criminal conviction for defamation and insult amounted to a violation of the freedom of expression guaranteed by Article 10 of the European Convention of Human Rights.

The applicant in the case was Patrice Renaud. He is the founder of a local association (*Comité de défense du quartier sud de Sens*) opposing a big construction project planned in the city of Sens. To this end he also initiated a website, sharply criticising the mayor of Sens, who supported and promoted the building project. In 2005, and on appeal in 2006, Renaud was convicted in criminal proceedings for defamation and for publicly insulting a citizen discharging a public mandate, on account of remarks concerning the mayor of Sens. On the website he had inter alia compared the urban policy of the mayor to the policy of the former Romanian dictator Ceaucescu. Renaud was convicted for defamation because of the specific allegation that the mayor was stimulating and encouraging delinquency in the city centre in order to legitimise her policy of security and public safety. Also the insinuation that the mayor was illegally putting public money in her own pockets was considered defamatory, while the article on the association's website in which Renaud had written that the mayor was cynical, schizophrenic and a liar was considered to be a public insult. Renaud was ordered to pay a fine of EUR 500 and civil damages to the mayor of EUR 1,000.

Relying on Article 10 (freedom of expression), Renaud complained of his conviction before the European Court of Human Rights.

The European Court recognised that the applicant, being the chairman of the local association of residents opposing the construction project and the webmaster of the Internet site of the association, was participating in a public debate when criticising public officials and politicians. The Court admitted that some of the phraseology used by Renaud was very polemic and virulent, but stated that on the other hand a mayor must tolerate such kind of criticism as part of public debate which

is essential in a democracy. The Court was of the opinion that when a debate relates to an emotive subject, such as the daily life of the local residents and their housing facilities, politicians must show a special tolerance towards criticism and that they have to accept "*les débordements verbaux ou écrits* " (free translation: "oral or written outbursts"). The Court considered the allegations of Renaud to be value judgments with a sufficient factual basis and came to the conclusion that the French judicial authorities had neglected the interests and importance of freedom of expression in the matter at issue. The conviction of Renaud was thus an interference with his right to freedom of expression which did not meet any pressing social need, while at the same time such a conviction risks engendering a chilling effect on participation in public debates of this kind. Therefore, the European Court found a violation of Article 10 of the Convention.

- Judgment by the European Court of Human Rights (Fifth Section), case of Renaud v. France No. 13290/07 of 25 February 2010
  http://merlin.obs.coe.int/redirect.php?id=12444

IRIS 2010-6/1

Case of Alfantakis v. Greece

The European Court of Human Rights recently delivered a judgment on the right to freedom of expression of a lawyer convicted for the insult and defamation of a public prosecutor during a television interview. In a case that received considerable media coverage, Georgis Alfantakis, a lawyer in Athens, was representing a popular Greek singer (A.V.). The singer had accused his wife, S.P., of fraud, forgery and use of forged documents causing losses to the State of nearly EUR 150,000. On the recommendation of the public prosecutor at the Athens Court of Appeal, D.M., it was decided not to bring charges against S.P. While appearing live as a guest on Greece's main television news programme 'Sky', Mr Alfantakis expressed his views on the criminal proceedings in question, commenting in particular that he had "laughed" on reading the public prosecutor's report, which he described as a "literary opinion showing contempt for his client". The public prosecutor sued Mr Alfantakis for damages, arguing that his comments had been insulting and defamatory. Mr Alfantakis was ordered by the Athens Court of Appeal to pay damages of about EUR 12,000. Alfantakis applied to the European Court of Human Rights, relying on Article 10 of the European Convention of Human Rights. He complained about the civil judgment against him which he considered an unacceptable interference in his freedom of expression.

According to the European Court it was not disputed that the interference by the Greek authorities with Alfantakis's right to freedom of expression had been "prescribed by law" - by both the Civil Code and the Criminal Code - and had pursued the legitimate aim of protecting the reputation of others. The Court took notice of the fact that the offending comments were directed at a member of the national legal service, thus creating the risk of a negative impact both on that individual's professional image and on public confidence in the proper administration of justice. Lawyers are entitled to comment in public on the administration of justice, but they are also expected to observe certain limits and rules of conduct. However, instead of ascertaining the direct meaning of the phrase uttered by the applicant, the Greek courts had relied on their own interpretation of what the phrase might have implied. In doing so, the domestic courts relied on particularly subjective considerations, potentially ascribing to the applicant intentions he had not in fact had. Nor had the Greek courts made a distinction between facts and value judgments, instead simply determining the effect produced by the phrases "when I read it, I laughed" and "literary opinion". The Greek courts had also ignored the extensive media coverage of the case, in the context of which Mr Alfantakis's appearance on the television news was more indicative of an intention to defend his client's arguments in public than of a desire to impugn the public prosecutor's character. Lastly, they had not taken account of the fact that the comments had been broadcast live and could therefore not be rephrased. The Court came to the conclusion that the civil judgment ordering Mr Alfantakis to pay damages was not based on sufficient and pertinent arguments and therefore had

not met a "pressing social need". Hence, there had been a violation of Article 10. The Court awarded Mr Alfantakis EUR 12,939 in pecuniary damages.

- Judgment by the European Court of Human Rights (First Section), case of Alfantakis v. Greece, Application No. 49330/0 of 11 February 2010
http://merlin.obs.coe.int/redirect.php?id=12301

IRIS 2010-4/2

III. Court and Crime Reporting

Flinkkilä a.o. and four other connected cases v. Finland

The European Court of Human Rights in five judgments of 6 April 2010 came to the conclusion that Finland had violated the right of freedom of expression by giving too much protection to the right of private life under Article 8 of the Convention. In all five cases the Court was of the opinion that the criminal conviction of journalists and editors-in-chief and the order to pay damages for disclosing the identity of a public person's partner amounted to an unacceptable interference with the freedom of expression guaranteed by Article 10 of the European Convention of Human Rights.

All applicants in all five cases were journalists, editors-in-chief and publishing companies that were involved in the publishing in 1997 of a total of nine articles in a newspaper and in several magazines concerning A., the National Conciliator at the time, and B., his female partner. The articles focused primarily on the private and professional consequences for A. of an incident in 1996. This incident, including the revelation of B's identity, had earlier been reported upon in the Finnish print media and on television. During that incident A. and B. entered A.'s home late at night while A.'s wife was there and, as a result of an ensuing fight, B. was fined and A. was sentenced to a conditional term in prison. A few weeks later, a newspaper and several magazines revisited the incident and the court case, this time with more background information, interviews or comments. All articles mentioned B. by name and in addition gave other details about her, including her age, name of her workplace, her family relationships and her relationship with A., as well as her picture.

A. and B. requested that criminal investigations be conducted in respect of the journalists for having written about the incident and the surrounding circumstances. The journalists and media companies were ordered by the domestic courts to pay fines and damages for the invasion of B.'s private life. The Finnish courts found in particular that, since B. was not a public figure, the fact alone that she happened to be the girlfriend of a well-known person in society was not sufficient to justify revealing her identity to the public. In addition, the fact that her identity had been revealed previously in the media did not justify subsequent invasions of her private life. The courts further held that even the mere dissemination of information about a person's private life was sufficient to cause them damage or suffering. Therefore, the absence of intent to hurt B. on the part of the applicants was irrelevant. The Finnish courts concluded that the journalists and the media had had no right to reveal facts relating to B.'s private life or to publish her picture as they did.

The journalists, editors-in-chief and media companies complained under Article 10 of the Convention about their convictions and the high amounts they had to pay in damages to B. Having examined in earlier case law the domestic Criminal Code provision in question, the European Court found its contents quite clear: the spreading of information, an insinuation or an image depicting the private life of another person, which was conducive to causing suffering, qualified as an invasion of privacy. In addition, even the exception stipulated in that provision - concerning persons in a public office or function, in professional life, in a political activity or in another comparable activity - was equally clearly worded. Even though there had been no precise definition of private life in the law, if the journalists or the media had had any doubts about the remit of that term, they should

have either sought advice about its content or refrained from disclosing B.'s identity. In addition, the applicants were professional journalists and therefore could not claim not to have known the boundaries of the said provision, since the Finnish Guidelines for Journalists and the practice of the Council for Mass Media, albeit not binding, provided even stricter rules than the Criminal Code.

However, there had been no evidence, or indeed any allegation, of factual misrepresentation or bad faith on the part of the applicants. Nor had there been any suggestion that they had obtained information about B. by illicit means. While it had been clear that B. was not a public figure, she was involved in an incident together with a well-known public figure with whom she had been in a close relationship. Therefore, B. could have reasonably been seen as having entered the public domain. In addition, the disclosure of B.'s identity was of clear public interest in view of A.'s conduct and his ability to continue in his post as a high-level public servant. The incident was widely publicised in the media, including in a programme broadcast nationwide on prime-time television. Thus, the articles in question had not disclosed B.'s identity in this context for the first time. Moreover, even if the events were presented in a somewhat colourful manner to boost sales of the magazines, this was not in itself sufficient to justify a conviction for breach of privacy. Finally, in view of the heavy financial sanctions imposed on the applicants, the European Court noted that B. had already been paid a significant sum in damages by the television company for having exposed her private life to the general public. Similar damages had been ordered to be paid to her also in respect of other articles published in other magazines by the other applicants listed above, which all stemmed from the same facts. Accordingly, in view of the severe consequences for the applicants in relation to the circumstances of the cases, the European Court held that there had been a violation of Article 10 of the Convention in all five cases.

Under Article 41 of the Convention (just satisfaction), the Court held that Finland was to pay the applicants sums ranging between EUR 12,000 and EUR 39,000 for pecuniary damages, between EUR 2,000 and EUR 5,000 for non-pecuniary damages and between EUR 3,000 and EUR 5,000 in respect of costs and expenses.

➜ Judgment by the European Court of Human Rights (Fourth Section):

- Case of Flinkkilä a.o. v. Finland, Application No. 25576/04 of 6 April 2010
  http://merlin.obs.coe.int/redirect.php?id=12420

- Case of Jokitaipale a.o. v. Finland, Application No. 43349/05 of 6 April 2010
  http://merlin.obs.coe.int/redirect.php?id=12421

- Case of Iltalehti and Karhuvaara v. Finland, Application No. 6372/06 of 6 April 2010
  http://merlin.obs.coe.int/redirect.php?id=12422

- Case of Soila v. Finland, Application No. 6806/06 of 6 April 2010
  http://merlin.obs.coe.int/redirect.php?id=12423

- Case of Tuomela a.o. v. Finland, Application No. 25711/04 of 6 April 2010
  http://merlin.obs.coe.int/redirect.php?id=12424

IRIS 2010-5/2

Case of Laranjeira Marques da Silva v. Portugal

In one of its first judgments of 2010 the European Court of Human Rights has clarified how court and crime reporting can rely on the right to freedom of expression guaranteed by Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Convicting a journalist or a publisher for breach of the secrecy of a criminal investigation or because of defamation of a politician can only be justified when it is necessary in a democratic society and under very strict conditions.

The applicant in this case, Mr Laranjeira Marques da Silva, was the editor of the regional weekly newspaper Notícias de Leiria at the relevant time. In 2000 he wrote two articles about criminal proceedings brought against J., a doctor and politician well-known in the region, for the sexual assault of a patient. In an editor's note he called upon readers to supply further testimonies relating to other possible incidents of a similar nature involving J. A short time later Mr Laranjeira Marques da Silva was charged with a breach of the *segredo de justiça* , a concept similar to confidentiality of judicial investigation, and with the defamation of J. The Leiria District Court held in 2004 that Mr Laranjeira Marques da Silva had overstepped his responsibilities as a journalist and had aroused widespread suspicion of J. by insinuating, without justification, that the latter had committed similar acts involving other victims. He was found guilty of a breach of the *segredo de justiça* and of defamation. He was sentenced to a daily fine payable within 500 days and ordered to pay EUR 5,000 in damages to J. On appeal, the applicant challenged his conviction concerning the *segredo de justiça* on the ground that he had obtained access to the information in question lawfully. On the defamation issue, he argued that he had simply exercised his right to freedom of expression and that his articles had been based on fact and, moreover, were related to a subject of general interest. The Court of Appeal dismissed his appeal in 2005. A constitutional appeal and later an extraordinary appeal seeking harmonisation of the case law with the Supreme Court were also unsuccessful. In Strasbourg, Mr. Laranjeira Marques da Silva complained essentially that his conviction had infringed his right to freedom of expression.

As to the applicant's conviction for breach of the *segredo de justiça*, the European Court was of the opinion that the Portuguese authorities' interference with his freedom of expression had been "prescribed by law" and that the interference in question had pursued the legitimate aim of protecting the proper administration of justice and the reputation of others. The Court however pointed out that neither the concern of safeguarding the investigation nor the concern of protecting the reputation of others can prevail over the public's interest in being informed of certain criminal proceedings conducted against politicians. It stressed that in this case there was no evidence of any damaging effects on the investigation, which had been concluded by the time the first article was published. The publication of the articles did not breach the presumption of innocence, as the case of Mr. J. was in hands of professional judges. Furthermore, there was nothing to indicate that the conviction of Mr. Laranjeira Marques da Silva had contributed to the protection of the reputation of others. The Court held unanimously that the interference with the right of freedom of expression of the applicant was disproportionate and that therefore there had been a violation of Article 10.

As to the conviction for defamation, the Court accepted that the disputed articles dealt with matters of general interest, as the public had the right to be informed about investigations concerning politicians, including investigations which did not, at first sight, relate to their political activities. Furthermore, the issues before the courts could be discussed at any time in the press and by the public. As to the nature of the two articles, the Court pointed out that Mr Laranjeira Marques da Silva had simply imparted information concerning the criminal proceedings in question, despite adopting a critical stance towards the accused. The Court observed that it was not its place or that of the national courts to substitute their own views for those of the press as to what reporting techniques should be adopted in the journalistic coverage of a court case. As to the editor's note, the Court took the view that, notwithstanding one sentence that was more properly to be regarded as a value judgment, it had a sufficient factual basis in the broader context of the media coverage of the case. Hence, while the reasons given by the national courts for Mr Laranjeira Marques da Silva's conviction had been relevant, the authorities had not given sufficient reasons justifying the necessity of the interference with the applicant's right to freedom of expression. The Court further

noted that the penalties imposed on the applicant had been excessive and liable to discourage the exercise of media freedom. The Court therefore held, by five votes to two, that the conviction for defamation did not correspond to a pressing social need and that there had been a violation of Article 10 of the Convention.

- Judgment by the European Court of Human Rights (Second Section), case of Laranjeira Marques da Silva v. Portugal, Application No. 16983/06 of 19 January 2010
  http://merlin.obs.coe.int/redirect.php?id=12237

IRIS 2010-3/1

IV. Protection of Journalistic Sources

Case of Financial Times a.o. v. UK

Eight years ago the British courts decided in favour of a disclosure order in the case of Interbrew SA v. Financial Times and others. The case concerned an order against four newspapers (FT, The Times, The Guardian and The Independent) and the news agency Reuters to deliver up their original copies of a leaked and (apparently) partially forged document about a contemplated takeover by Interbrew (now: Anheuser Bush InBev NV) of SAB (South African Breweries). In a judgment of 15 December 2009, the European Court of Human Rights (Fourth Section) came to the conclusion that this disclosure order constituted a violation of the right of freedom of expression and information, which includes press freedom and the right of protection of journalistic sources, as protected by Article 10 of the European Convention of Human Rights.

On the basis of a leaked report by a person X and further investigations by journalists, the British media in November and December 2001 reported that Interbrew (now: Anheuser Bush InBev NV) had been plotting a bid for SAB. The media coverage had a clear impact on the market on shares of Interbrew and SAB, with Interbrew's share price decreasing, while both the share price and the volume of SAB's shares traded obviously increased. At the request of Interbrew, the High Court on 19 December 2001 ordered delivery up of the documents under the so-called Norwich Pharmacal principle. This principle implies that if a person through no fault of his own becomes involved in the wrongdoing of others so as to facilitate that wrongdoing, he comes under a duty to assist the person who has been wronged by giving him full information and disclosing the identity of the wrongdoer. The four newspapers and the news agency were ordered not to alter, deface, dispose or otherwise deal with the documents received by person X and to deliver up the documents to Interbrew's solicitor within 24 hours. The newspapers and Reuters appealed, but the disclosure order was confirmed by the Court of Appeal. In the London Court's judgment it was emphasised that what mattered critically in this case was the source's purpose: "It was on any way a maleficent one, calculated to do harm whether for profit or for spite, and whether to the investing public or Interbrew or both." The public interest in protecting the source of such a leak was considered not sufficient to withstand the countervailing public interest in letting Interbrew seek justice in the courts against the source. It was also underlined that there is "no public interest in the dissemination of falsehood", as the judge had found that the document, leaked by person X to the media, was partially forged. The Court of Appeal said: "While newspapers cannot be asked to guarantee the veracity of everything they report, they in turn have to accept that the public interest in protecting the identity of the source of what they have been told is disinformation may not be great." Accordingly, the Court of Appeal dismissed the appeals. On 9 July 2002, the House of Lords refused the newspapers leave to appeal, following which Interbrew required that the newspapers and Reuters comply with the court order for delivery up of the documents. The newspapers and Reuters however continued to refuse to comply and applied to the European Court of Human Rights, arguing that their rights under Article 10 of the Convention had been violated.

The European Court of Human Rights came to the conclusion that the British judicial authorities in the Interbrew case did indeed neglect the interests related to the protection of journalistic sources, by overemphasising the interests and arguments in favour of source disclosure. The Court accepted that the disclosure order in the Interbrew case was prescribed by law (Norwich Pharmacal and Section 10 of the Contempt of Court Act 1981) and was intended to protect the rights of others and to prevent the disclosure of information received in confidence, both of which are legitimate aims. The Court however did not consider the disclosure order to be necessary in a democratic society. First, the Court in general terms reiterated that freedom of expression constitutes one of the essential foundations of a democratic society and that, in that context, the safeguards guaranteed to the press are particularly important: "protection of journalistic sources is one of the basic conditions for press freedom. Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest. As a result, the vital "public watchdog" role of the press may be undermined and the ability of the press to provide accurate and reliable reporting may be adversely affected" (§59). Disclosure orders in relation to journalistic sources have a detrimental impact not only on the source in question, whose identity may be revealed, but also on the newspaper against which the order is directed, whose reputation may be negatively affected in the eyes of future potential sources by the disclosure, and on the members of the public, who have an interest in receiving information imparted through anonymous sources and who are also potential sources themselves. The Court accepted that it may be true that the public perception of the principle of non-disclosure of sources would suffer no real damage when overridden in circumstances where it is clear that a source was acting in bad faith with a harmful purpose and disclosed intentionally falsified information. The Court made clear, however, that domestic courts should be slow to assume, in the absence of compelling evidence, that these factors are present in any particular case. The Court emphasised most importantly that "the conduct of the source can never be decisive in determining whether a disclosure order ought to be made but will merely operate as one, albeit important, factor to be taken into consideration in carrying out the balancing exercise required under Article 10 §2" (§63).

Applying these principles to the Interbrew case. the European Court of Human Rights came to the conclusion that the British Courts had given too much weight to the alleged bogus character of the leaked document and to the assumption that the source had acted *mala fide*. While the Court considered that there may be circumstances in which the source's harmful purpose would in itself constitute a relevant and sufficient reason to make a disclosure order, the legal proceedings against the four newspapers and Reuters did not allow X's purpose to be ascertained with the necessary degree of certainty. The Court therefore did not place significant weight on X's alleged purpose in the present case, but did clearly emphasise the public interest in the protection of journalistic sources. The Court accordingly found that Interbrew's interests in eliminating, by proceedings against X, the threat of damage through future dissemination of confidential information and in obtaining damages for past breaches of confidence were, even if considered cumulatively, insufficient to outweigh the public interest in the protection of journalists' sources. The judicial order to deliver up the report at issue was considered to constitute a violation of Article 10 of the Convention. The European Court was unanimous in its judgment, although it took the Court seven years to come to its conclusion.

- Judgment by the European Court of Human Rights (Fourth Section), case of Financial Times v. The United Kingdom, Application no. 821/03 of 15 December 2009
  http://merlin.obs.coe.int/redirect.php?id=12221

IRIS 2010-2/1

V. Imposition of prior restraints on publication

Case of Ürper a.o. v. Turkey

The Court's judgment in the case of Ürper a.o. v. Turkey firmly condemns the bans on the future publication of four newspapers. At the material time the applicants were the owners, executive directors, editors-in-chief, news directors and journalists of four daily newspapers published in Turkey: Ülkede Özgür Gündem, Gündem, Güncel and Gerçek Demokrasi. The publication of all four newspapers was suspended, pursuant to section 6(5) of the Prevention of Terrorism Act (Law no. 3713) by various Chambers of the Istanbul Assize Court, between 16 November 2006 and 25 October 2007, for periods ranging from 15 days to a month in response to various news reports and articles. The impugned publications were deemed to publish propaganda in favour of a terrorist organisation, the PKK/KONGRA-GEL, as well as to express approval of crimes committed by that organisation and its members.

The applicants alleged, under Article 10 of the Convention, that the suspension of the publication and distribution of their newspapers constituted an unjustified interference with their freedom of expression. The European Court reiterates that Article 10 of the Convention does not, in its terms, prohibit the imposition of prior restraints on publication. However, the dangers inherent in prior restraints are such that they call for the most careful scrutiny. This is especially true as far as the press is concerned, for news is a perishable commodity and to delay its publication, even for a short period of time, may well deprive it of all its value and interest. As freedom of the press was at stake in the present case, the national authorities had only a limited margin of appreciation to decide whether there was a "pressing social need" to take the measures in question. The Court was of the opinion that, as opposed to earlier cases that have been brought before it, the restraints under scrutiny were not imposed on particular types of news reports or articles, but on the future publication of entire newspapers, whose content was unknown at the time of the national court's decisions. In the Court's view, both the content of section 6(5) of Law no. 3713 and the judges' decisions in the instant case stem from the hypothesis that the applicants, whose "guilt" was established without trial in proceedings from which they were excluded, would re-commit the same kind of offences in the future. The Court found, therefore, that the preventive effect of the suspension orders entailed implicit sanctions on the applicants to dissuade them from publishing similar articles or news reports in the future and to hinder their professional activities. The Court considered that less draconian measures could have been envisaged, such as the confiscation of particular issues of the newspapers or restrictions on the publication of specific articles. The Court concluded that by suspending the publication and distribution of the four newspapers involved, albeit for short periods, the domestic courts largely overstepped the narrow margin of appreciation afforded to them and unjustifiably restricted the essential role of the press as a public watchdog in a democratic society. The practice of banning the future publication of entire periodicals on the basis of section 6(5) of Law no. 3713 went beyond any notion of a "necessary" restraint in a democratic society and, instead, amounted to censorship. There has accordingly been a violation of Article 10 of the Convention.

- Judgment by the European Court of Human Rights (Second Section), case of Ürper a.o. v. Turkey, Application nos. 14526/07, 14747/07, 15022/07, 15737/07, 36137/07, 47245/07, 50371/07, 50372/07 and 54637/07 of 20 October 2009
  http://merlin.obs.coe.int/redirect.php?id=12168

IRIS 2010-1/2

Resolution No. 16 of the Plenum 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
(with addenda by the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 21 of 16 September 2010)

According to Article 29 of the Constitution of the Russian Federation everyone shall have the right to freely look for, receive, transmit, produce and distribute information by any legal means. No one may be forced to express his views and convictions or to reject them. Everyone shall be guaranteed the freedom of ideas and speech and the freedom of mass information. Censorship shall be banned.

According to paragraph 1 of Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

The freedom to express opinions and views and the freedom of mass information are the foundations for the development of a modern society and a democratic state.

At the same time the exercise of these freedoms may be subject to certain restrictions as prescribed by statute and necessary in a democratic society.

The Constitution of the Russian Federation imposes a ban on propaganda or agitation instigating social, racial, national or religious hatred and strife as well as propaganda on social, racial, national, religious or linguistic supremacy (Article 29). The Statute of the Russian Federation *On the mass media* imposes a ban on the abuse of the freedom of mass information.

While applying the legislation that regulates issues of freedom of speech and freedom of mass information, the courts shall keep the balance between rights and liberties guaranteed by Article 29 of the Constitution of the Russian Federation, on the one hand, and other rights and freedoms of a person and a citizen as well as values protected by the Constitution of the Russian Federation, on the other.

In order to ensure the correct and uniform application of the legislation concerning freedom of mass information and adjudicating on the issues that arise in the courts when applying the Statute of the Russian Federation *On the mass media*, the Plenum of the Supreme Court of the Russian Federation, following Article 126 of the Constitution of the Russian Federation, resolves to give the courts of law the following explanations:

1. The legal regulation of the relationships concerning freedom of speech and freedom of mass information is contained in the federal statutes including the Statutes *On the mass media, On providing access to the information on activities of state and local self-government bodies, On providing access to the information on activities of courts of the Russian Federation, On guarantees of equality of parliamentary parties in the matters of covering their activities by the state generally accessible television and radio channels, On the order of reporting of the state bodies in the state mass media, On advertisements, On the state of emergency, On the martial statute, On counteracting terrorism, On counteracting extremist activities, On the main guarantees of electoral rights and the right to participate in referendum of the citizens of the Russian Federation, On referendum of the Russian Federation, On elections of the President of the Russian Federation, On elections of the deputies to the State Duma of the Federal Assembly of the Russian Federation*, as well as other legal acts adopted in accordance with the established procedure.

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2. International acts that regulate matters of freedom of speech and mass information and that are mandatory for the Russian Federation due to part 4 of Article 15 of the Constitution of the Russian Federation include the International Covenant on Civil and Political Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms, the Final Act of the Conference on Security and Cooperation in Europe and the Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms.

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3. While considering cases related to the mass media it is necessary to understand that the exercise of the freedom of opinion and the freedom of mass information carries with it special duties and special responsibilities and may be subject to such restrictions as are prescribed by statute and are necessary in a democratic society in order to respect the rights and reputation of other persons, for the protection of state security and public order, prevention of disorder and crime, protection of health and morals, for preventing the disclosure of information received in confidence and for maintaining the authority and impartiality of the judiciary (Article 29 of the *Universal Declaration of Human Rights,* paragraph 3 of Article 19 and Article 20 of the *International Covenant on Civil and Political Rights,* paragraph 2 of Article 10 of the *Convention for the Protection of Human Rights and Fundamental Freedoms*, Articles 29 and 55 of the *Constitution of the Russian Federation*).

The provisions of part 3 of Article 55 of the Constitution of the Russian Federation stipulate that the rights and freedoms of a person and citizen may be limited only by a federal statute to the extent necessary to protect the foundations of the constitutional system, morals, health, the rights and legal interests of other persons or to ensure the defence of the country and security of the state.

Judging on the above-said, while adjudicating on the issue of legality of limitations with regard to the persons engaged in production and dissemination of mass information as well as when adjudicating on the matter of bringing such persons to liability, it is necessary to define whether these limitations were indeed imposed by a federal statute.

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4. When applying the Statute of the Russian Federation *On the mass media*, the courts shall take into account the changes that took place after the statute entered into force on 8 February 1992, in particular the introduction of a self-government system and guarantees thereto in the Russian Federation that provides for autonomous decisions of local importance by the population and whose bodies are not included in the system of state power bodies (Article 12, part 1 of Article 130 of the Constitution of the Russian Federation, Article 1 of the Federal Statute *On general principles of organization of legislative (representative) and executive bodies of the state power of the subjects of the Russian Federation*, Article 1 of the Federal Statute *On general principles of organization of local self-government in the Russian Federation*).

Thus the provisions of the Statute of the Russian Federation *On the mass media* which refer to the state bodies (for example, part 1 of Article 3, part 1 of Article 7, part 4 of Article 18, part 5 of Article 19, part 1 of Article 25, part 2 of Article 35, paragraph 2 part 1 of Article 47, Article 56, paragraphs 3 and 4 part 1 of Article 57, part 1 of Article 58 and paragraph 3 part 1 of Article 61) are to be considered applicable not only to the state power bodies and other state bodies but also to the local self-government bodies.

When applying the provisions of paragraph 2 part 1 of Article 57 of the mentioned statute, the courts shall particularly consider that these provisions cover literal reproduction of fragments of speeches of the members of elective state power bodies and local self-government.

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5. According to the provisions of Article 2 of the Statute of the Russian Federation *On the mass media*, periodical dissemination of information consists in the dissemination of an aggregation of messages and materials destined for an unlimited number of recipients at least once a year. Mass media is a form of periodical dissemination of mass information that includes periodical printed publications, radio and television programmes.

Therefore a mass medium in itself cannot have any rights and responsibilities and correspondingly cannot be a party in proceedings (Article 34 of the Civil Procedural Code of the Russian Federation).

Due to paragraph 9 part 1 of Article 2 and part 1 of Article 8 of the Statute of the Russian Federation *On the mass media*, for an editorial office to carry out production and issuance of a mass media, a state registration is needed. An exception would be the cases of exemptions of mass media from state registration enumerated in Article 12 of this Statute.

If when adjudicating a case on protection of citizen rights and freedoms it is established that these rights and freedoms are violated when disseminating messages and materials in a mass media outlet which in violation of the Statute of the Russian Federation *On the Mass Media* is not registered, then the court has the right to order the defendant to make a refutation at his or her own expense or pay for the publication of the plaintiff's reply in another media.

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6. Periodical dissemination of mass information can be conducted through telecommunication networks (information and telecommunication networks), including the Internet. When considering cases on dissemination of mass information through such networks the courts shall consider the following.

According to part 2 of Article 24 of the Statute of the Russian Federation *On the mass media*, the rules established by this statute for radio and television programmes are applicable to the periodical dissemination of mass information via teletext and videotext systems, as well as other telecommunication networks, if the legislation of the Russian Federation does not establish other provisions.

The provisions of the Statute of the Russian Federation *On the mass media* must be applied to these cases taking into account the special features of disseminating information through such networks (for example, the absence of a mass media output, as defined in paragraph 6 part 1 of Article 2 of this Statute, i.e. circulation or part of the circulation of a particular issue of the periodical printed edition, a particular issue of the radio or television programme, circulation or part of the circulation of an audio- or video recording of the programme). It needs to be considered that messages and images that are part of the website content online can be accessible to any person from anywhere and at any time upon one's choice under the condition of having the necessary devices and online access.

Due to Articles 8, 10, and 11 of the mentioned Statute state registration of a mass media depends on the dissemination of a mass media output. Because in the dissemination of mass information

through Internet websites there is no mass media output, according to the current legislation Internet websites are not subject to mandatory registration as mass media outlets. This means that the persons engaged in the dissemination of mass information through Internet websites cannot be held liable for the production or dissemination of the output of an unregistered mass media outlet.

Persons that infringe upon legislation when disseminating mass information through Internet websites that have not been registered as mass media outlets shall be subject to penal, administrative, civil, and other liability according to the legislation of the Russian Federation, without taking into account the specific provisions laid down by the legislation on the mass media.

According to Article 1 of the Statute of the Russian Federation *On the mass media*, freedom of mass information includes the right of any person to found a mass media outlet in any form that is not prohibited by the law. Starting Internet websites and using them to periodically disseminate mass information is not banned by the law. Considering this and based on the comprehensive list of grounds to refuse state registration of a mass media outlet set out in part 1 of Article 13 of the mentioned Statute, the registration authority has no right to refuse the registration of an Internet website as a mass media outlet should its founder express the wish to obtain such a registration.

Article 27 of the Statute of the Russian Federation *On the mass media* foresees the mandatory indication of imprint. Considering the peculiarities of imprint data dissemination in an Internet website registered as a mass media outlet, there shall be indicated in particular the name of the registration authority and the registration number. The absence of such information can be a reason for subjecting persons that exercise periodical mass information dissemination through Internet websites registered as mass media outlets to liability for breaking the order of providing the imprint of a mass media.

A broadcasting licence is necessary if technical means for over-the-air, wire, or cable television and radio broadcasting are used to distribute the mass media output (Article 31 Statute of the Russian Federation *On the mass media*). As such technical devices are not used for disseminating mass information through Internet websites, a broadcasting license is not necessary for a person that disseminates mass information through an Internet website.

When considering cases relating to the dissemination of mass information through telecommunication networks (including Internet websites) the courts shall take into account that the provisions indicated in part 2 of Article 24 of the Statute of the Russian Federation *On the mass media* cover these cases with the rules established only by this Statute in regards to the radio and television programmes. Specifically, it means that Internet websites are not covered by the provisions regarding advertising in television and radio programmes established in the Federal Statute *On advertisements*. At the same time, general rules on dissemination of advertisements in the mass media established by the Statute *On advertisements* shall be applied to the Internet websites registered as mass media outlets with due consideration of the peculiarities of information dissemination via such networks.

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7. The federal statutes do not lay down any kind of limitations as regards the ways in which the fact of information dissemination of information through telecommunication networks (including via Internet websites) can be proved. That is why when adjudicating on the issue of whether the fact of dissemination did indeed take place, the court according to Articles 55 and 60 of the Civil Procedural Code of the Russian Federation has the right to accept any type of proof foreseen by the civil procedural legislation.

The Civil Procedural Code of the Russian Federation and part 2 of Article 102 of the *Basics of the Russian Federation legislation on the notarial system* do not allow for a possibility for the notary to provide evidence on cases already in the courts. However, due to part 1 of Article 102 of the *Basics of the Russian Federation legislation on the notarial system*, before initiating a civil case the notary may provide the proof necessary for the case (in particular by certifying the content of an

Internet website taken at a specific moment of time) if there are grounds to consider that in the future provision of the proof will be impossible or difficult.

In cases relating to the dissemination of information via telecommunication networks, the possibility is not excluded for the proof to be secured by the judge because the range of proof that can be provided is not limited by statute (Articles 64-66 of the Civil Procedural Code of the Russian Federation). The issue of the necessity to secure proof is adjudicated taking into account the essence of the petition to the court including information on the case subject-matter, on circumstances that require such a proof to be confirmed as well as on reasons that make the applicant request to secure proof (part 1 of Article 65 of the Civil Procedural Code of the Russian Federation).

In pressing cases, when preparing the court hearing and during the hearing itself according to paragraph 10 part 1 of Article 150 and to Article 184 of the Civil Procedural Code of the Russian Federation, the court (judge) has the right to examine the proof on the spot (particularly to view in real time the online information stored at a specific resource of a telecommunication network). The proof's review and examination are conducted following the procedure prescribed by Articles 58 and 184 of the Civil Procedural Code of the Russian Federation: with notification of the persons that take part in the case, indicating the results of the review in the protocol, calling witnesses and experts if needed, etc.

If additional questions emerge, related for example to the particularities of the information dissemination process through telecommunication networks, that require special knowledge in this field, the judge according to Article 79 of the Civil Procedural Code of the Russian Federation has the right to initiate an examination by an expert.

When consultations, explanations or direct technical support are required to review the proof, to replay the recordings, to assign an expert examination, to impose measures to secure the proof, a specialist may be brought to participate in the case (part 1 of Article 188 of the Civil Procedural Code of the Russian Federation).

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8. Under the provisions of the Statute of the Russian Federation *On the mass media*, production and dissemination of mass information includes founding of the mass media, production and issue of the mass media and production and dissemination of the output of the mass media.

In light of this, when considering the issue of the composition of persons taking part in a court case on mass information production and dissemination, the courts shall adjudicate depending on which level of mass information production and dissemination the questionable legal relationship appears and which persons according to the above-mentioned Statute, the editorial charter and/or contracts concluded in accordance with Articles 20 and 22 of the mentioned Statute have the right to exercise the relevant types of activities.

At the same time it is necessary to consider that the provisions of the Statute of the Russian Federation *On the mass media* allow for the possibility of one and the same person to participate in different stages of mass information production and dissemination. Thus, the founder of a mass media can exercise the function of its editorial office, its publisher and its distributor; the editorial office can be the founder of the mass media outlet, or its publisher, or its distributor; the publisher can be the founder of the mass media outlet, or its editorial office, or its distributor (part 5 of Article 18, part 4 of Article 19, and part 2 of Article 21 of the mentioned Statute).

When seeking to identify the founder (co-founders) of a periodical printed publication, its editor-in-chief, the address of its editorial office, the publisher and the printing office, it is necessary to take into account the imprint of a mass media outlet, which according to Article 27 of the Statute of the Russian Federation *On the mass media* should carry such information.

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9. Due to the provisions of Articles 8, 11, and 18 of the Statute of the Russian Federation *On the mass media*, the founder (co-founders) makes the decision of launching a mass media outlet, as well as participates in organizing the editorial activity (particularly by affirming its editorial charter and/or by concluding an agreement with the editorial office of the mass media (its editor-in-chief)). In light of this, when considering petitions resulting from such legal relationships, the founder (co-founders) of the mass media outlet can be brought to court.

According to part 2 of Article 18 of the mentioned Statute, the founder has the right to obligate the editorial office to place a message or other material on his behalf (founder's statement). Considering this, in court cases relating to the dissemination of a founder's statement the appropriate defendant is the founder (co-founders), but when there are no indications that the message or material is related to the founder, the editorial office may also be brought in as a defendant.

In case a legal entity is abolished or reorganized, or a state power body, other state body or local self-government body is abolished, and those entities were founders of a mass media outlet, then according to part 4 of Article 18 of the Statute of the Russian Federation *On the mass media* the editorial office can be brought to court instead of the founder unless the editorial charter foresees differently.

In case of the founder's death (him or her being a physical person), according to paragraph 1 of Article 6 of the Civil Code of the Russian Federation, part 4 of Article 18 of the mentioned Statute is applied and the editorial office of the mass media outlet can be brought to court unless the editorial charter indicates the person (persons) that in case of the founder's death take over his or her rights and duties in relation to this mass media outlet.

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10. When adjudicating cases disputing a refusal to register a mass media outlet it is important to consider that part 1 of Article 13 of the Statute of the Russian Federation *On the mass media* sets out an exhaustive list of grounds for such a refusal. A refusal to register a mass media outlet may not be made on the basis that the mass media outlet is exempted from state registration according to Article 12 of the mentioned Statute (for example, it may not be done when the founder of a periodical printed publication with a circulation of less than 1,000 copies expresses his or her wish to register this mass media outlet).

When applying the provisions of points 2 and 3 part 1 of Article 13 of the mentioned Statute it is necessary to consider the following. The main function of the title of a mass media is to identify the mass media for its audience and potential customers on the mass media market. Thus the title of mass media cannot be evaluated from the point of view of correspondence or non-correspondence to reality. A refusal to register a mass media outlet based on the fact that its title does not correspond to reality is illegal.

The title of a mass media can be evaluated from the point of view of the presence of abuse of the freedom of mass information in the terms of part 1 of Article 4 of the Statute of the Russian Federation *On the mass media* or the absence of such abuse. For example, the title of a mass media outlet may not contain appeals for exercising terrorist activity, propaganda of pornography, or of the cult of violence and cruelty.

When adjudicating cases on challenging the refusal for a mass media registration upon the basis indicated in paragraph 4 part 1 of Article 13 of the Statute of the Russian Federation *On the mass media* (when the registration authority registered earlier a mass media with the same title and form of dissemination) it is important to consider the following:

The Statute of the Russian Federation *On the mass media* is to be interpreted so that a mass media is understood to have the same mass media title as another, if its title literally coincides with that of another, previously registered, mass media. A refusal of a registration upon the basis that the title of the mass media under registration process is similar to another, to the extent that it can be confused with the title of a mass media registered before, may not be acknowledged as legal.

As the title of a mass media is aimed in the first place to differentiate it from other mass media, the use of titles that are similar to the extent that they can be confused with each other may mislead the customers (audience) regarding the mass media output. In that case, the protection of the rights of the persons that have the right to the title of the mass media is exercised through the means provided for in the legislation in force.

When comparing the forms of dissemination of mass information it is important to consider that a periodical printed edition, a radio programme, a television programme, a video programme and a newsreel programme represent different forms of dissemination of mass information. At the same time a newspaper, a magazine, a collection of stories, an almanac, a bulletin are all different types of the same form of dissemination of mass information, that is a periodical printed publication (paragraph 3 and 4 of part 1 of Article 2 of the Statute of the Russian Federation *On the mass media*).

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11. When considering cases which relate to declaring invalid a mass media registration certificate, it is necessary to consider that the exhaustive list of grounds for such a declaration is defined in Article 15 of the Statute of the Russian Federation *On the mass media*. The reason indicated in part 5 of Article 8 of the above Statute (the founder has not started the mass media production one year after the certificate was issued) is a particular case of the reason foreseen in paragraph 2 part 1 of Article 15 of this Statute (the mass media is not in print (not on air) for more than a year).

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12. According to paragraph 9 part 1 of Article 2 of the Statute of the Russian Federation *On the mass media*, production and dissemination of the mass media is exercised by the editorial office of a mass media outlet, which can be an organization, a citizen, or an association of citizens. The editorial office exercises its activity on the basis of professional independence (part 1 of Article 19 of the Statute of the Russian Federation *On the mass media*). Considering this, if the legal issues in question relate to the production and dissemination of the mass media (including those related to the content of the disseminated messages and materials), then the editorial office can be brought to court. In case the editorial office of a mass media is neither a physical person nor a legal entity, the founder and the editor-in-chief can be brought to court.

As the termination of a mass media activity leads to invalidity of the certificate of its registration and of the editorial charter (part 6 of Article 16 of the Statute of the Russian Federation *On the mass media*), the decision to terminate its activity affects the rights and interests of not only the founder (co-founders) but also of the editorial office that, according to part 1 of Article 8 of the mentioned Statute, has the right to exercise the production and dissemination of the mass media since its registration. In light of this, both the founder (co-founders) and the editorial office can be brought to court in cases relating to the termination of a mass media activity.

When checking the authority of the editorial office representatives it is necessary to consider that the editor-in-chief represents the editorial office in court without any special permits regarding his or her powers, as such right of the editor-in-chief is based on the provisions of part 5 of Article 19 of the Statute of the Russian Federation *On the mass media*. The editor-in-chief is the person that heads the editorial office (regardless of the name of the position) and makes final decisions regarding mass information production and dissemination (paragraph 10 part 1 of Article 2 of the Statute of the Russian Federation *On the mass media*).

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13. When the legal issues in question concern the production of mass media output, the appropriate defendant according to paragraph 12 part 1 of Article 2 of the Statute of the Russian Federation *On the mass media* is the publishing house which executes material and technical provisions for the production of such output, as well as any other legal entity equal to the

publisher, or self-employed entrepreneur or a citizen for whom this activity is not the main one or is not the main source of income.

If the issues in question have to do with the dissemination of mass media output, the appropriate defendant according to paragraph 13 part 1 of Article 2 of the Statute of the Russian Federation *On the mass media* is the distributor or a person that exercises the dissemination of output pursuant to an agreement with the editorial office or the publisher or upon any other legal basis.

At the same time in court cases concerning the content of the disseminated information, neither the publisher nor the distributor of the output of the mass media are proper defendants as according to the provisions of the Statute of the Russian Federation *On the mass media* these persons may not interfere in the editorial activity that defines the content of messages and materials.

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14. The courts shall be attentive to the fact that according to part 1 of Article 3 of the Statute of the Russian Federation *On the mass media* censorship is the demand made by officials, state power bodies, other state bodies or local self-government bodies, organizations 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 on messages and materials (except for the cases when the official is an author or interviewee), as well as the suppression of the dissemination of messages and materials and separate parts thereof.

The demand for mandatory prior approval on messages and materials can be legal if it is made by the editor-in-chief as the person responsible for ensuring the disseminated materials correspond to statutory requirements. The legality of such a demand by the founder of the mass media depends on whether such possibility is foreseen in the editorial charter or in an agreement that replaces it. When there is no corresponding provision any interference of the founder in the sphere of professional independence of the editorial office and the rights of a journalist is illegal.

It is not an act of censorship when the demand of a public official for mandatory prior approval on messages and materials is addressed directly to a journalist and relates to an agreement on the draft text of an interview (transcript) taken from this official (part 1 of Article 3 of the Statute of the Russian Federation *On the mass media*). While the courts shall take into account that making such a demand is the right of the interviewed person, there is no obligation to obtain such prior approval.

If the author of the article, item, etc., based upon the interview is a journalist and not the interviewee, the editorial office may edit the initial text of the interview to create the above mentioned works, while not allowing distortion of its meaning and the words of the interviewee.

In cases where an official is the author of the article, note, etc., then the demand for mandatory prior approval of the above materials directed to the editorial office or the editor-in-chief cannot be considered as censorship as such demand is a form of exercising author's right to the inviolability of the work and protection of the work from distortion foreseen by Article 1266 of the *Civil Code of the Russian Federation*.

According to subparagraph 4 paragraph 6 of Article 1259 of the *Civil Code of the Russian Federation* reports on events and facts that are of exclusively informational nature (for example, daily news reports) are not considered copyrighted objects. A demand for mandatory prior approval of the above reports is inadmissible except in the cases stipulated in the federal statutes.

The provision of messages and materials by the mass media editorial office prior to publication to a state power body, other state body or local self-government body, organization, public association or public official is not an act of censorship, where this is done upon the initiative of the editorial office (editor-in-chief) in order to elicit a stand on the message or material and has the goal of verifying the reliability of information received from the source (author), collecting additional information or obtaining a comment.

It is not censorship when authorized bodies and public officials make written warnings to the founder or editorial office (editor-in-chief) in case of an abuse of the freedom of mass information (for example, according to Article 16 of the Statute of the Russian Federation *On the mass media* or Article 8 of the Federal Statute *On counteracting terrorism*), as well as when a court of law imposes a ban on producing and disseminating mass media in cases indicated by federal statutes aiming to prevent an abuse of the freedom of mass information (for example, according to Articles 16 and 16[1] of the Statute of the Russian Federation *On the mass media* or Article 11 of the Federal Statute *On counteracting extremist activity*).

Courts shall take into account that in spite of a general ban on censorship foreseen by Article 29 of the Constitution of the Russian Federation its Articles 56 and 87 allow for a possibility of limiting freedom of mass information as a temporary measure in case of a state of emergency or under martial law. In these cases censorship can be imposed and executed in the manner established by the Federal Constitutional Statutes *On the state of emergency* and *On the martial statute*.

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15. When adjudicating cases that concern information gathering, it is important to take into account that selection of a legal way to seek information is made by the journalist and the editorial office independently, except for the cases explicitly stated by federal statutes (for example, part 4 of Article 4 of the Statute of the Russian Federation *On the mass media*, paragraph b of Article 12 of the Federal Constitutional Statute *On the state of emergency*, subparagraph 14 paragraph 2 of Article 7 of the Federal Constitutional Statute *On martial law*).

One of the legal ways of gathering information on the activity of state power bodies, other state bodies, bodies of local self-government, state and municipal organizations (commercial and non-commercial), public associations or their officials is a request by the editorial office for such information (Article 39 of the Statute of the Russian Federation *On the mass media*).

A refusal or delay in providing the information requested can be appealed (challenged) in court (paragraph 3 part 1 of Article 61 of the Statute of the Russian Federation *On the mass media*).

When applying the provisions of Articles 38 - 42 of this Statute in cases concerning appeals (challenges) against a refusal or delay in information provision, the courts shall take into account that matters regarding the provision of information on the activity of bodies, organizations, public associations (including requests by the editorial offices of mass media outlets) can be regulated by other federal statutes and legal acts, if adoption of such acts is foreseen by the legislation in force (for example, parts 2 and 3 of Article 2 of the Federal Statute *On providing access to information on the activities of state and local self-government bodies* and part 2 of Article 2 of the Federal Statute *On providing access to information on the activities of courts of the Russian Federation*).

The provisions of the Statute of the Russian Federation *On the mass media* do not oblige the editorial office of the mass media outlet to indicate in its request for what purposes the information is requested or justify the necessity to obtain the information requested.

The request for information can concern any type of activity of the corresponding body, organization, public association, or official. The subject of the request may include information on income, property, property-related obligations of the state and municipal employees; the details relating to the provision of such information are defined by legal acts of the Russian Federation (part 5 of Article 8 of the Federal Statute of the Russian Federation *On counteracting corruption*). For example, the order of providing the editorial offices of the all-Russian mass media outlets with the information regarding incomes, property and property-related obligations of state employees of the Russian Federation, federal state employees and their family members, for publication therein, is imposed by the Decree of the President of the Russian Federation of 18 May 2009 No. 561 (with the subsequent amendments).

If the requested information contains data that is part of the State, commercial or other secret protected by statute, a refusal to provide such information is lawful according to part 1 of Article 40 of the mentioned Statute.

Special protection for secrete information is provided, for example, in the following federal statutes: *On state secrets, On personal data, On commercial secrets, On counteracting terrorism (paragraph 10 of Article 2), On administration of archives in the Russian Federation (Article 25), On the basics of citizens' health protection in the Russian Federation (Article 61), On psychiatric help and citizens' rights guarantees during its provision (Article 9), On preventing the spread of tuberculosis in the Russian Federation (paragraph 1 of Article 12), On the advocatory and legal profession in the Russian Federation (Article 8), On banks and banking (Article 26), Family Code of the Russian Federation (Article 139), Tax Code of the Russian Federation (Article 102)*.

Other grounds for denying information on the activity of bodies, organizations, public associations, and officials (including upon the request of editorial offices of mass media) can be foreseen by other federal statutes (for example, Article 20 of the Federal Statute *On providing access to information on the activities of the courts of the Russian Federation* and Article 20 of the Federal Statute *On providing access to information on the activities of state and local self-government bodies*).

According to part 2 of Article 40 of the Statute of the Russian Federation *On the mass media*, the requested information shall be provided within a seven-day term. In cases where the data cannot be provided within this term, the entity which has received the request sends to the editorial office of the mass media outlet a notification indicating the date when the information will be provided. A maximum term of delay is not indicated. However, the courts shall take into account that such a term is stipulated in particular by the Federal Statute *On providing access to information on the activities of state and local self-government bodies*. According to part 6 of Article 18 of this Statute, a delay in providing information on the activity of state and self-government bodies may not exceed a 15-day term above the term established for the provision of the information requested.

The terms of examination and adjudication of a case concerning the refusal or delay in providing data requested by a mass media outlet are defined in the provisions of Article 154 and part 1 of Article 257 of the Civil Procedural Code of the Russian Federation. At the same time, considering that according to Article 38 of the Statute of the Russian Federation *On the mass media* providing data requested by the editorial office of a mass media outlet is a form of fulfilment of citizens' rights to promptly receive via the mass media information on the activities of state power bodies, bodies of local self-government, state and municipal organizations, public associations and their officials, as well as the fact that after a long period of time the requested information may lose its currency, the courts shall take measures to examine and adjudicate such cases as quickly as possible.

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16. The courts shall also take into account that according to part 1 of Article 20 of the Federal Statute *On providing access to information on the activities of the courts of the Russian Federation*, there are grounds for refusing a request for information related to courts' activities (including following a request by the editorial office of a mass media outlet).

Apart from that, based on the grounds of part 2 of Article 20 of the present Statute, a request for information on activities of the courts can be denied if such information has already been published in the mass media or published on the official websites of the courts, of the Judicial Department under the Supreme Court of the Russian Federation, or of the departments (sections) of the Judicial Department in the regions of the Russian Federation.

The information that may not be provided according to paragraph 5 part 1 of Article 20 of the mentioned Federal Statute (the requested information presents an obstruction to justice) includes such information that after being disseminated can create obstacles to a fair trial guaranteed by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (for example, it may jeopardise the equality of the parties, the adversarial nature of the proceedings, the presumption of innocence and reasonable terms for a case examination).

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17. The court (judge) may not prevent mass media representatives from being present at the court hearings (part 1 of Article 12 of the Federal Statute *On providing access to information on the activities of the courts of the Russian Federation*) and from covering a particular court case, with the exceptions foreseen by statute (for example, if the case is examined in a closed court hearing or if the mass media representatives are expelled from the court room for breaking the public order during the hearings (Article 159 Civil Procedural Code of the Russian Federation, Article 258 of the Penal Procedural Code of the Russian Federation)).

At the same time the order of access of citizens (individuals), including representatives of organizations (legal entities), public associations, state power and local self-government bodies to the court rooms or other facilities is imposed by the courts' by-statutes and/or other provisions on the internal activity of courts (part 1 of Article 12 of the Federal Statute *On providing access to information on the activities of the courts of the Russian Federation*).

A closed hearing (of the whole case or a specific part of it) is allowed only upon a motivated resolution or decision of the court (judge) in cases foreseen by federal statutes (Articles 10 and 182 Civil Procedural Code of the Russian Federation, parts 1 and 2 of Article 24.3 Code on Administrative Infringements of the Russian Federation, Article 241 of the Penal Procedural Code of the Russian Federation).

At the same time when administrating justice the courts shall remember that a closed hearing without grounds stipulated in the federal statutes violates the constitutional principle of openness of justice (part 1 of Article 123 of the Constitution of the Russian Federation). It may also be considered as a violation of the right to a fair and public court hearing foreseen by paragraph 1 of Article 6 of the *Convention for the Protection of Human Rights and Fundamental Freedoms* and paragraph 1 of Article 14 of the *International Covenant on Civil and Political Rights*.

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18. On the basis of the provisions of part 7 of Article 10 of the Civil Procedural Code of the Russian Federation, part 3 of Article 24.3 of the Code on Administrative Infringements of the Russian Federation and part 5 of Article 241 of the Penal Procedural Code of the Russian Federation, representatives of mass media outlets when present in a court hearing have the right to take a record of the court proceedings in writing or using audio recording equipment. Pursuant to the above norms, the person that makes the audio recording is not obliged to notify the court of taking such a record, nor to obtain permission to do so.

On the other hand, given that film and photo recording, video recording and television or radio broadcasting of a case hearing are allowed only with the court's (judge's) permission (part 7 of Article 10 of the Civil Procedural Code of the Russian Federation, part 3 of Article 24.3 of the Code on Administrative Infringements of the Russian Federation, part 5 of Article 241 of the Penal Procedural Code of the Russian Federation), a mass media representative present at an open court hearing who wishes to produce film and/or photo recording, video recording, television or radio broadcasting of the court hearing, must notify the judge of his intention to do so, in order to obtain the corresponding permission.

When deciding whether to grant permission to make a film and/or photo recording, video recording, television or radio broadcast of a court hearing, the court (judge) shall take into account the corresponding procedural norms (part 7 of Article 10 and part 5 of Article 158 of the Civil Procedural Code of the Russian Federation, part 3 of Article 24.3 of the Code on Administrative Infringements of the Russian Federation, part 5 of Article 241 of the Penal Procedural Code of the Russian Federation) and shall seek to balance the right of everyone to freely seek, obtain, transfer, produce, and disseminate information by any legal means (part 4 of Article 29 of the Constitution of the Russian Federation, Article 1 of the Statute of the Russian Federation *On the mass media*) and the right of everyone to protect one's private life, personal and family secrets, to protect one's honour and good name, the secrecy of correspondence, telephone, mail, telegraph and other communications (Article 23 of the Constitution of the Russian Federation) and to protect one's image (Article 152^1 of the Civil Code of the Russian Federation).

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19. Considering that the openness of the justice system presupposes the necessity of a broad informational coverage of the courts' activity, the courts shall seek a wider use of the mass media for an objective, reliable and fast coverage of their activities.

The court's official representative that interacts with the editorial offices of the mass media is the chairman of the court of law or the person authorized by the chairman of the court (part 1 of Article 22 of the Federal Statute *On providing access to information on the activities of the courts of the Russian Federation*). Apart from that, in order to interact with the editorial offices of the mass media outlets, the courts (except for district courts, garrison martial courts and peace judges) may define within their staff specific structural units (part 3 of Article 22 of the mentioned Federal Statute).

When providing information on their activity, courts shall observe the requirements of the legislation in force on the order, form and terms of providing such information. At the same time, it is important to remember that according to paragraph 2 of Article 10 of the Statute of the Russian Federation *On the status of judges in the Russian Federation* a judge does not have to provide any explanations (including to mass media representatives) on the essence of the cases under consideration or adjudicated or to present them for an inspection to anyone otherwise than in the cases and in accordance with the procedures stipulated in the procedural statute.

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20. According to Article 23 of the Federal Statute *On providing access to information on the activities of the courts of the Russian Federation*, disputes on the coverage of the courts' activities in the mass media are adjudicated by the court following a procedure established by statute. Disputes relating to the coverage of the courts' activities in the mass media can be adjudicated following an extrajudicial procedure by the bodies or organizations that are competent to adjudicate informational disputes.

In light of this, in case of such a dispute it is possible to present a petition to the Public Collegium on Press Complaints (hereinafter referred to as the Collegium) that according to paragraph 4.1 of its Charter, adopted on 14 July 2005, examines informational disputes, first and foremost of moral and ethical type, arising in the mass media field, including those on the violation of principles and norms of professional journalistic ethics. Within the Collegium competences are informational disputes that affect human rights in the mass media field.

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21. Legal ways of looking for and obtaining information for its further production and dissemination for an unlimited number of individuals include the institute of accreditation of journalists (correspondents) foreseen by Article 48 of the Statute of the Russian Federation *On the mass media* that provides them with additional possibilities of seeking and obtaining information.

When considering petitions to annul the rules of accreditation for journalists introduced by the state power bodies, other state bodies, local self-government, state and municipal organizations, on acknowledging illegal decisions on denial of accreditation to journalists, on accreditation deprivation or on violation of the rights of an accredited journalist, it is important to remember the following.

According to the provisions of part 3 of Article 55 of the Constitution of the Russian Federation, limitations of human rights and freedoms (including freedom of speech) shall not be considered legal if imposed not by federal statute but by other legal acts.

The rules of accreditation approved by the state power bodies, other state bodies, local self-government, state and municipal organizations may not impose other means of limiting rights and freedoms of accredited journalists than those set in the federal statutes (for example, in the

form of accreditation's suspension) nor conditions for their implementation. Nor is it possible to add new grounds to refuse to grant accreditation or to annul accreditation other than those listed in Article 48 of the Statute of the Russian Federation *On the mass media*. At the same time it is important to consider that in case a mass media outlet terminates its activity, then its journalists' accreditation is annulled as part 1 of the mentioned Article stipulates that the right to accreditation of a journalist directly depends on whether the editorial office of the mass media outlet exercises its activity.

In order to provide advance notification to journalists about the sessions, conferences and other events, which is a responsibility of the accreditation bodies, organizations and public associations as foreseen by part 3 of Article 48 of the Statute of the Russian Federation *On the mass media,* the latter must have certain personal data regarding each accredited journalist (in particular, information on the address, on phone numbers). This considered, the accreditation rules for journalists that require that they provide such information match the provisions of the Statute of the Russian Federation *On the mass media* according to which the accreditation of a journalist is only possible upon his/her consent. Therefore, it is understood that the journalist is also ready to give consent for the editorial office to provide certain data on himself/herself.

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22. According to the provisions of Article 35 of the Statute of the Russian Federation *On the mass media*, obligatory reports include statements that the editorial office of a mass media outlet is obliged to publish according to the law or by order of a court of law.

According to the first part of the mentioned Article, the editorial office of a mass media outlet is to publish court decisions which entered into force, if the court decision includes a requirement for its publication in this particular mass media.

Cases when the editorial offices of the mass media outlets indicated in part 2 of Article 35 of the Statute of the Russian Federation *On the mass media* are obliged to publish materials according to the legislation of the Russian Federation include, among others, the following. Obligatory publication of materials in the mass media outlets whose founders are the federal state power bodies is referred to in the Federal Statutes *On political parties* (paragraph 2 clause 1 of Article 14) and *On technical regulation* (paragraph 2 clause 9 of Article 9). The requirement to provide air time and editorial space for election campaigning and referendum canvassing is imposed upon the state and/or municipal broadcasters and the state and/or municipal periodical print publications that are included in the list referred to in paragraph 7 of Article 47 of the Federal Statute *On the basic guarantees of electoral rights and the right to participate in a referendum of citizens of the Russian Federation*, as well as upon non-state broadcasters indicated in paragraph 8 of Article 51 of this Federal Statute.

When applying part 3 of Article 35 of the Statute of the Russian Federation *On the mass media* it is important to consider the entry into force of the Federal Statute *On guarantees of equality of parliamentary parties in the matters of covering their activities by the state generally accessible television and radio channels* that regulates matters relating to the coverage of activities of the parliamentary parties by the state generally accessible television and radio channels, i.e. relating to the provision of information about the activity of the parliamentary parties, their bodies, structural units as well as persons and factions of the political parties indicated in paragraphs 2-6 part 2 of Article 4 of this Statute.

According to the provisions of the Federal Constitutional Statutes *On the state of emergency* (paragraph z, part 2 of Article 18, Article 23) and *On martial law* (subparagraph 2 paragraph 1 of Article 14, subparagraph 4 paragraph 1 of Article 15), information on declaring the state of emergency and on the procedures for executing certain measures taken under state of emergency or martial law is transmitted via the mass media. As in the mentioned statutes there is no indication as to which mass media should undertake this obligation, this information shall be published in the mass media that is designated by the President of the Russian Federation, by the commandant of a territory where the state of emergency is introduced or by the federal executive body acting within its competence to implement martial law.

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23. When adjudicating on the issue of the grounds for exemption from liability of an editorial office, editor-in-chief or journalist for disseminating information that infringes rights and legal interests of citizens or represents an abuse of the freedom of mass information and/or rights of a journalist, it is necessary to consider the fact that Article 57 of the Statute of the Russian Federation *On the mass media* contains an exhaustive list of circumstances under which the editorial office, editor-in-chief or journalist are exempt from responsibility to check the reliability of information that they report and thus from liability for its dissemination. Dissemination does not mean the acquaintance of the editor-in-chief or other staff of an editorial office with the material before publication (putting on air) of the mass media product.

According to paragraph 2 part 1 of Article 57 of the Statute of the Russian Federation *On the mass media*, the editorial office, editor-in-chief or journalist are exempt from liability in case the information is received from a news agency. Part 3 of Article 23 of the mentioned Statute stipulates that when a mass media is disseminating information from a news agency it is mandatory to indicate that the information was received from the news agency. The editorial office, editor-in-chief or journalist can be exempt from liability according to paragraph 2 part 1 of Article 57 of the Statute of the Russian Federation *On the mass media* also in the case they prove that the disseminated information comes from a news agency.

When applying paragraph 3 part 1 of Article 57 of the Statute of the Russian Federation *On the mass media* the courts shall consider that the information contained in the interviews of officials of state power and local self-government bodies, of state and municipal organizations, institutions, enterprises and of bodies of public associations, and of the official representatives of their press services represent a response to an information request.

When applying paragraph 4 part 1 of Article 57 of the Statute of the Russian Federation *On the mass media* the courts shall consider whether the official has the authority to speak in the name of the represented body, organization or public association, and if the speech in question can be considered an official one according to its time, place and topic. Official speeches include, for example, speeches of an official at a scheduled meeting, held in the presence of journalists, in specially allocated premises of a building of the corresponding body, organization or public association and in accordance with the approved agenda. If the court establishes that an official was not authorized to make a public statement and was expressing his/her own opinion only (and the editorial office of a mass media outlet, editor-in-chief or journalist were aware of that), then the editorial office of a mass media outlet, editor-in-chief or journalist may not be exempt from liability as stipulated in paragraph 4 part 1 of Article 57 of the Statute of the Russian Federation *On the mass media* for literally reproducing such statement.

Literal reproduction of statements, reports, materials and their fragments (paragraphs 4 and 6 part 1 and part 2 of Article 57 of the Statute of the Russian Federation *On the mass media*) amounts to 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. At the same time it is important to consider that every so often exact fragments of statements, reports or materials when quoted out of context can appear to have a different meaning to the original meaning of the statement, report or material. If when reproducing statements, reports, materials and their fragments in the mass media some changes or comments that distort the meaning were added, then the editorial office of the mass media outlet, editor-in-chief or journalist may not be exempt from liability as stipulated in paragraphs 4 and 6 part 1 of Article 57 of the mentioned Statute. The burden of proof as to the accuracy of the quotation in reproducing a statement, report, material or their fragments according to part 1 of Article 56 of the Civil Procedural Code of the Russian Federation is carried by the editorial office of the mass media outlet, the editor-in-chief or the journalist that refer to such circumstance. Proof of the accuracy of the reproduction in this case can be an audio recording, written proof (including a fax message), witness testimonies, and other forms of proof that are to be evaluated in accordance with Article 67 of the Civil Procedural Code of the Russian Federation.

If an Internet website registered as a mass media publishes comments of its readers without pre-moderation (e.g., on the readers' forum of such a website), then the rules stipulated in part 2 of Article 24 and paragraph 5 part 1 of Article 57 of the Statute of the Russian Federation *On the mass media* for author's works that go on air without pre-recording shall be applied to the content of these comments. In case there is a petition from the authorised state body that established an abuse of the freedom of mass information in the comments, the editorial office of this mass media outlet has the right to delete or edit them guided by the provisions of Article 42 of the Statute of the Russian Federation *On the mass media*. If the comments containing the abuse of the freedom of mass information remain accessible to the website users, then the provisions of paragraph 5 part 1 of Article 57 of the Statute of the Russian Federation *On the mass media* are not applied. Considering this, when adjudicating on the issue whether to hold the editorial office liable for the violation the courts shall find out whether any petitions from the authorised state body to remove information from the forum were brought, and whether the relevant information was deleted or edited.

When applying paragraph 6 part 1 of Article 57 of the Statute of the Russian Federation *On the mass media* it is important to consider that by another mass media is meant not only a mass media outlet registered in the Russian Federation but also, according to the provisions of parts 2 and 3 of Article 402 of the Civil Procedural Code of the Russian Federation, a foreign mass media, if the defendant organization, its administrative body, branch or representative office are on the territory of the Russian Federation or if the defendant citizen resides in the Russian Federation or if the defendant has property on the territory of the Russian Federation, or – in cases relating to the protection of honour, dignity and business reputation – the plaintiff resides in the Russian Federation.

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24. When adjudicating a petition to judge as illegal a refusal to place a reply (comment, remark) in a mass medium it is necessary to consider the following.

According to the provisions of paragraphs 3 and 7 of Article 152 of the Civil Code of the Russian Federation and Article 46 of the Statute of the Russian Federation *On the mass media*, in cases not related to the protection of honour and dignity of citizens, nor of business reputation of citizens and legal entities, the right to reply in a mass medium is given to a citizen or legal entity that were referred to in the disseminated information, not only when the disseminated information (even when such information was true) infringes upon the rights and lawful interests of a citizen, but also when the information disseminated was not true.

Information that contains isolated inaccuracies (for example, misprints) can be acknowledged as untrue only in case these inaccuracies have led to statements of facts or events that did not take place at the moment described in the information.

If the mass media provided partial or one-sided information that leads to a distorted perception of an event that took place, or a fact, or a sequence of events, and such publication infringes upon the rights, freedoms or interests, as protected by law, of a citizen or organization then the affected persons have the right to publish their reply in the same mass media following the procedure stipulated in Article 46 of the Statute of the Russian Federation *On the mass media*.

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25. Paragraph 5 part 1 of Article 49 of the Statute of the Russian Federation *On the mass media* stipulates a ban on the dissemination in the mass media of information concerning the private life of citizens unless they or their legal representatives have given their consent to such actions, with the exception of the cases in which such dissemination is necessary for the protection of public interests. Paragraph 2 part 1 of Article 50 of the above mentioned Statute allows for dissemination of reports and materials produced with the assistance of hidden audio- and video recording, film recording and photography, if it is necessary for the protection of public interests and measures against possible identification of outsiders have been taken.

Article 152[1] of the Civil Code of the Russian Federation specifies that divulging and further use of the image of a citizen is allowed only with consent of the citizen. Such consent is not needed in particular when the image is used in state, social or other public interests.

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 courts shall 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.

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26. If during the deliberations on a case one of the parties raises a question of disclosure of the source of information on which the publication in the mass media was based, the court shall be guided by part 2 of Article 41 of the Statute of the Russian Federation *On the mass media*, which stipulates that the editorial office is obliged to keep the source of information secret and has no right to name the person who has provided the information with the proviso of non-divulgence of his name, except for the case when the corresponding demand comes from a court of law in connection with a case it is trying. Therefore, the personal data of the person who has provided the information with the proviso of non-divulgence of his name is secret information, which is specially protected by the federal statute. During any stage of the case deliberations the court of law has the right to demand from the corresponding editorial office to disclose information on the source of the information if all other means to learn about relevant circumstances, which are important for the just examination and adjudication of the case, are exhausted and public interest in disclosure of the source of information overrides public interest in keeping it a secret. The demand to disclose the source of information can be forwarded to the editorial office by the court of law in relation to the case being tried.

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27. The abuse of the freedom of mass information (Article 4 of the Statute of the Russian Federation *On the mass media*) leads *inter alia* to the issue by the authorized state body or official of a warning to the founder (co-founders) of a mass media outlet or its editorial office (editor-in-chief), as well as the termination of the activity of the mass media outlet by the court (Article 16 of the Statute of the Russian Federation *On the mass media*, Articles 8 and 11 of the Federal Statute *On counteracting extremist activity*).

Taking into consideration the fact that the warnings issued by the public authority or an official consist of an authoritative expression that leads to legal consequences for the founder/co-founders of the mass media outlet and/or its editorial office (editor-in-chief), disputes concerning such warnings are liable to examination in accordance with the procedure stipulated in Chapters 23 and 25 of the Civil Procedural Code of the Russian Federation.

When assessing the authority of the persons that delivered the warning under litigation, the courts shall take into account the fact that it is the registration authority that has the right to issue warnings on violation of the provisions of Article 4 of the Statute of the Russian Federation *On the mass media* (Article 16 of the mentioned statute), and as to a violation of the provisions of the Federal Statute *On counteracting extremist activity* it is not only the registration authority that has such right but also the federal executive body in the field of press, broadcasting and mass communications, as well as the Prosecutor-General of the Russian Federation or a relevant prosecutor subordinate to him (Article 8 of the mentioned federal statute). When deciding on the question of which federal executive body is entrusted with execution of the above-mentioned functions it is necessary to consider the provisions of the legal acts that specify the structure of the federal executive bodies and their duties.

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28. When adjudicating on cases relating to the abuse of the freedom of mass information, the provisions of Article 4 of the Statute of the Russian Federation *On the mass media* shall be applied in conjunction with other federal statutes regulating certain relations in society: *On counteracting terrorism, On counteracting extremist activity, On narcotic drugs and psychotropic substances* and others.

According to part 1 of Article 4 of the Statute of the Russian Federation *On the mass media*, it is inadmissible in particular to use the mass media for committing penal offences. Since in the Russian Federation only the courts have the exclusive jurisdiction to decide on criminal cases (part 1 of Article 8 of the Code of Criminal Procedure of the Russian Federation) whether or not a mass media has indeed been used for committing a penal offence shall be determined while taking into account whether an enforceable conviction or any other judicial decision on the criminal case exists.

While determining whether indeed an abuse of the freedom of mass information took place the court of law shall take into account not only the words and phrases (wording) in the article, television or radio programme but also the context in which they were delivered (such as aim, genre and style of a publication, a programme or a part of it, 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 the representatives of the editorial office of the mass media outlet towards the expressed opinions, judgments or statements), as well as take into account the social and political situation in the country at large or in one of its parts (depending on the area of dissemination of the particular mass medium).

The courts shall take into consideration the fact that according to Article 5 of the *Declaration on freedom of political debate in the media* the humorous and satirical genre, protected by Article 10 of the *Convention for the Protection of Human Rights and Fundamental Freedoms*, allows for a wider degree of exaggeration and even provocation, as long as the public is not misled about facts.

The courts shall take into account the peculiarities of television and radio broadcasting which limit the possibilities of journalists and editors to correct, clarify, interpret or comment on statements made by the participants to live broadcasts.

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29. According to the Statute of the Russian Federation *On the mass media* the suspension of media activity is a temporal prohibition of production and issue of a mass medium, of making and/or distributing the output of the mass media outlet.

The suspension of the mass media activity is possible by decision of the mass media founder (co-founders) (in cases and following the procedure directly stipulated in the editorial charter or in the contract between the founder and the editorial office or the editor-in-chief), on the grounds of an interim court order in a case relating to the termination of the mass media activity (Article 16 of the Statute of the Russian Federation *On the mass media*, part 3 of Article 11 of the Federal Statute *On counteracting extremist activity*) or on the grounds of a decision of a court of law (Article 16 of the Statute of the Russian Federation *On the mass media*).

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30. The issue of the application for interim measures in civil cases concerning the mass media is adjudicated according to the rules stipulated in Chapter 13 of the Civil Procedural Code of the Russian Federation.

Part 1 of Article 140 of the Civil Procedural Code of the Russian Federation contains an approximate list of interim measures that may be granted in a case and specifies the right of

the judge or the court to take different measures if necessary in accordance with the purposes stipulated in Article 139 of this Code. The suspension of the activity of a mass medium is an exceptional interim measure and can be used only in cases relating to the termination of the activity of the mass medium since in such cases this measure corresponds to the purposes stated in Article 139 of the Civil Procedural Code of the Russian Federation and is envisaged in part 5 of Article 16 of the Statute of the Russian Federation *On the mass media* and part 3 of Article 11 of the Federal Statute *On counteracting extremist activity*.

In other civil cases concerning the activity of the mass media, suspension of the media activity may not be used as an interim measure, nor may a ban be imposed on a mass media outlet on preparing and disseminating new information on a certain topic, as in such cases the mentioned measures will not correspond to the purposes stated in Article 139 of the Civil Procedural Code of the Russian Federation and will not be necessary to secure the authority and impartiality of justice.

In order to comply with the requirements of part 3 of Article 140 of the Civil Procedural Code of the Russian Federation on proportionality of interim measures, it is important to consider the nature of the violations that took place (particularly, whether they can be regarded as cases of an abuse of the freedom of mass information or represent other violations of the legislation on the mass media), as well as assess the negative consequences for the freedom of mass information which can be caused by the imposition of such measures.

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31. According to paragraph 3 part 1 of Article 26 of the Civil Procedural Code of the Russian Federation, cases relating to termination of the activity of a mass media disseminated predominantly on the territory of one constituent subject of the Russian Federation are under the jurisdiction of the Supreme Court of the Republic, of the court of the territory or of the region,[1] of the court of the city of federal status, of the court of the autonomous region and the court of the autonomous district.

If the mass medium is disseminated on the territory of two or more constituent subjects of the Russian Federation the case regarding termination of the activity of this mass medium shall be heard by the court (from the list specified in Article 26 of the Civil Procedural Code of the Russian Federation) whose jurisdiction is extended to the territory of predominant dissemination of the mass medium.

If the actual territory of dissemination of the mass media does not match the territory specified in its registration data, the jurisdiction of cases regarding termination of the activity of the mass media outlet shall be determined based on the mass media registration data since the change of the territory of dissemination of a mass media outlet from the one stated during the registration is allowed only on condition of re-registration of the mass media outlet (paragraph 6 part 1 of Article 10 and part 1 of Article 11 of the Statute of the Russian Federation *On the mass media*).

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32. Pursuant to the provisions of the Statute of the Russian Federation *On the mass media* termination of the activity of a mass media outlet consists of a ban on production and issue of the mass medium as well as on making and distributing the output of the mass medium.

When adjudicating cases on termination of the activity of a mass media outlet it is important to take into consideration the fact that this liability measure can be imposed only in accordance with the procedure and on the grounds stipulated by the federal statutes, particularly by Article 16 of the Statute of the Russian Federation *On the mass media* and Articles 8 and 11 of the Federal Statute *On counteracting extremist activity*.

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1) Note of the Editor: this rules means that only the top court of an administrative unit of the Federation has jurisdiction. This unit can have different names such as court of the republic, court of the federal city, court of the region, court of the territory.

In cases relating to the termination of the activity of a mass medium the court may not approve a settlement agreement, as in such cases the legality of the activity of the editorial office of the mass media outlet is at stake and adjudicating on this issue may not be influenced by agreements of one sort or another between the public body (official) that petitioned the court and the founder (co-founders) of the mass media outlet or its editorial office.

*

33. When considering cases on the termination of the activity of a mass media outlet it is important to take into account that it is the registration authority that has the right to petition to terminate the activity of the mass media outlet, while whenever such a petition is based on the grounds stipulated in the Federal Statute *On counteracting extremist activity*, it is also the federal executive body in the field of press, broadcasting and mass communications, the Prosecutor-General of the Russian Federation or a relevant prosecutor subordinate to him that have such a right (part 1 of Article 16 of the Statute of the Russian Federation *On the mass media*, part 2 of Article 11 of the Federal Statute *On counteracting extremist activity*).

When considering which body is authorized to execute the previously mentioned powers it is important to consider the provisions of the legal acts specifying the structure of the federal executive bodies and their powers.

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34. The courts shall note the differences in the grounds for terminating the activity of a mass media outlet stipulated in part 3 of Article 16 of the Statute of the Russian Federation *On the mass media* and in part 3 of Article 8 of the Federal Statute *On counteracting extremist activity*.

According to part 3 of Article 16 of the Statute of the Russian Federation *On the mass media*, only such violations of Article 4 of this statute committed by the editorial office of the mass media outlet which served as a ground for the registration authority to issue a warning to the founder and/or the editorial office (editor-in-chief) are to be taken into consideration.

The provisions of part 3 of Article 8 of the Federal Statute *On counteracting extremist activity* do not require imposing a warning concerning new facts that confirm signs of extremism in the activity of the mass media outlet and which served as a ground for the authorized body (official) to take legal action. As also follows from the mentioned provision of the federal statute the violations discovered after the warning being issued but found in published materials disseminated before the above mentioned warning may not be considered as new facts.

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35. The courts shall pay attention to the differences in the provisions for the calculation of the period within which violations of the statute related to dissemination of mass information can be counted as well as the warnings issued in connection with them, that are contained in part 3 of Article 16 of the Statute of the Russian Federation *On the mass media* and in part 3 of Article 8 of the Federal Statute *On counteracting extremist activity*.

As stipulated in part 3 of Article 16 of the Statute of the Russian Federation *On the mass media*, the activity of the mass media outlet may be terminated in the case when repeated violations which caused the registration authority to issue written warnings to the founder and/or the editorial office (editor-in-chief) took place within twelve months preceding the legal action.

According to part 3 of Article 8 of the Federal Statute *On counteracting extremist activity*, the activity of the mass media outlet may be terminated if within the twelve months since the warning was issued new facts have been revealed that confirm the existence of signs of extremism in the activity of this mass media outlet.

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36. When considering and adjudicating on the cases relating to terminating the activity of a mass media outlet on the grounds stipulated in part 3 of Article 16 of the Statute of the Russian Federation *On the mass media* and part 3 of Article 8 of the Federal Statute *On counteracting extremist activity* the warnings found illegal by the court of law may not be taken into account.

The court of law has the right to adjudicate on a demand for terminating the activity of a mass media outlet having assessed the legitimacy of the issued warning.

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37. If personal non-property rights or other nonmaterial benefits of a person were breached by dissemination in the mass media of information and moral damages (physical or moral sufferings) were inflicted upon a person, then the person is entitled to claim compensation for the damages (Articles 151, 1099 of the Civil Code of the Russian Federation). According to paragraph 3 of Article 1099 of the *Civil Code of the Russian Federation* compensation for moral damages takes place regardless of compensation of payable material damages.

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38. The amount of compensation for moral damages is defined by the court of law in monetary terms and is recoverable in favour of the plaintiff (paragraph 1 of Article 1101 of the Civil Code of the Russian Federation).

Compensation for moral damages shall serve the purpose it was established for by law – to compensate the injured person's physical or moral sufferings (Article 151 of the Civil Code of the Russian Federation). Exercise of the right to receive compensation for moral damages for other purposes, in particular to establish circumstances in which everyone's right to freedom of expression, including freedom of opinion and freedom to obtain and to disseminate information and ideas without any interference of public authorities will be actually limited, shall not be allowed (Article 29 of the Constitution of the Russian Federation, Article 10 of Convention for the Protection of Human Rights and Fundamental Freedoms and Article 10 of the Civil Code of the Russian Federation).

Courts shall take into consideration that the amount of compensation for moral damage should be reasonable and just (Article 1101 paragraph 2 of the Civil Code of the Russian Federation) and should not lead to the violation of the freedom of mass information.

Reasonable and just criteria shall also be applied when determining the amount of compensation for moral damages to be collected from political figures, public figures and functionaries.

Chief Justice of the Russian Federation
V.M. Lebedev
Secretary of the Plenum, Justice of the Supreme Court of the Russian Federation
V.V. Doroshkov

Published in «Rossiyskaya Gazeta», 18 June 2010

Official translation: http://www.vsrf.ru/vscourt_detale.php?id=6786 and http://www.vsrf.ru/vscourt_detale.php?id=6787

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24,50 € - ISBN 978-92-871-7050-7