



Disinformation in the media under Russian law

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Disinformation in the media under Russian law

Andrei Richter



Foreword

*What is our life? A game! Good and evil are just dreams!*¹ This excerpt from an aria sung by Hermann, the unfortunate protagonist of Tchaikovsky's opera, *The Queen of Spades*, summarises the dilemma faced by regulators trying to draw the line between legitimate news and misinformation. Can we objectively determine what is true, and what is false? From a philosophical point of view, probably not. Applying a more down-to-earth approach, however, one could say that hard facts can be established with certainty. But information is much more than just hard facts. The freedom of expression and information protected by international declarations and treaties such as the Universal Declaration of Human Rights (UDHR) or the European Convention on Human Rights (ECHR) include the freedom "to hold opinions" and to give and take "information and ideas". The ECHR reminds us nevertheless that such freedoms carry with them duties and responsibilities, and therefore may be subject to

such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The regulation of information depends therefore on the relevance of competing rights and interests. Not every expression will be scrutinised with the same intensity. Nobody expects, for example, that advertisements provide an *objective* evaluation of the product or service they are meant to promote. Historical facts can be ascertained, but the interpretation of those is *subjective* and normally left to historians to debate. Only in extreme cases, such as Holocaust denial, the presentation of false statements as historical facts, is considered illegal in certain countries.

In the Internet era, everything seems to be open to debate, no matter how factual the topic. Even science-based issues such as the climate change or vaccination are the subject of intense controversy. In such an open environment, is it better to allow a robust, unfettered exchange of ideas, allowing thereby that factual inaccuracies (whether intentional or not) slip into the debate, or should some kind of *ex ante* filter should be introduced so that fake news does not mislead the public? If the latter option were to be preferred, who should operate such a filter? A big company with a seat overseas? An administrative body? In both cases, how is the dividing line set so that neither one nor the other becomes in time a Ministry of Truth?

This article by Andrei Richter provides an overview of the legislation and case law concerning disinformation in the Russian Federation. It builds upon the chapter "Russian Federation" in an earlier publication by the European Audiovisual Observatory, "Media

¹ "Что наша жизнь? Игра! Добро и зло одни мечты!" Tchaikovsky, *The Queen of Spades*, Act III.

reporting: facts, nothing but facts?”² It covers five specific cases where disinformation is deemed illegal. These are: 1) a required reliability of information “essential for the public” on popular news aggregators; 2) a most recent general ban on unreliable “socially significant” online information; 3) a ban on false information about the activity of the USSR during the Second World War; 4) a ban on knowingly false accusations of officials of having committed extremist actions; and 5) prohibition of untrue advertising. The article also makes reference to the recent practice of the national self-regulation body on disinformation in the media.

Strasbourg, June 2019

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² Cappello M. (ed.), Media reporting: facts, nothing but facts?, IRIS Special, European Audiovisual Observatory, Strasbourg, 2018, <https://rm.coe.int/media-reporting-facts-nothing-but-facts/16808e3cda>.

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Executive summary

In a record amount of time, the hype around “Fake news” grew from being a mainstream set phrase, mainly used to express disdain towards media outlets’ reporting of news and current affairs, to becoming a hot topic on political and legal agendas all over the globe. More interestingly, this was only the beginning of a flow of new terminologies associated with the phenomenon of “disinformation”. The **first chapter** of this publication presents an overview of different definitions of disinformation from a linguistic perspective and briefly introduces the Statute “On the mass media”, which is the law regulating journalism in the Russian Federation.

By allowing the dissemination of large quantities of information, the Internet has become a catalyst for the propagation of disinformation. Consequently, Russian lawmakers reviewed the legal framework regulating the responsibility of internet intermediaries in preventing the use of news aggregators for the purpose of disseminating false information. **Chapter 2** focuses on the amendments adopted by the Russian parliament to the Federal Statute “On Information, Information Technologies and Protection of Information and to the Code on Administrative Offenses” (IT Law), in 2016. It further discusses the aggregators’ liability regime, and details the procedure by which state bodies may file complaints and report unlawful content, and the consequences they may face in case of non-compliance. The chapter also introduces the role of the Federal Service for Supervision of Communication, Roskomnadzor, in monitoring online content, including without a court decision, and ensuring the aggregators’ compliance with their new obligations.

Additionally, the IT Law underwent further amendments, in what was referred to as the “Law on Fake News”. The amendments prohibit online dissemination of “unreliable socially significant information” and provide additional powers to Roskomnadzor in terms of content control and mechanisms in place, which enable the tackling of unlawful content online but also the ability to appeal the authority’s decisions before a court. **Chapter 3** presents an overview of the main provisions of this law, which entered into force in March 2019, despite criticism from the Council on Development of Civil Society and Human Rights as well as civil society organisations, over fears of arbitrary judgments, due to a lack of clarity in the definition of an “unreliable information” and a lack of objectivity in the appreciation of elements such as truth and faith.

While the core of the debate on disinformation focuses on news and current affairs, disinformation about historical and past events has also been on the agenda of Russian lawmakers. Thus, an article was introduced in the Criminal Code to criminalise the denial of Nazi crimes, as well as the dissemination of knowingly false information about Soviet involvement in the Second World War, and in order to tackle falsification of history, as discussed in **Chapter 4**.



In addition to protecting public order, Russian law foresees measures aimed at protecting state officials from false information, under what is known as the Federal Statute “On counteraction of extremist activity”. **Chapter 5** sets out the potential conflict between defamation and the need to ensure public order, on the one hand, and the impact on freedom of expression as enshrined in European law, by which public officials may be the subject of public criticism, on the other hand.

From a consumer protection angle, misleading advertising is considered to be a sort of disinformation, due to its deliberate deceptive representation of goods and services. For that purpose, the Federal Statute “On protection of the rights of consumers” requires advertising to be fair and reliable, and criminalises misleading advertising. Moreover, the Federal Statute “On Advertising” provides a list of examples that may be deemed as “unreliable advertising”, which may be determined by the Federal Antimonopoly Service, as detailed in **Chapter 6**.

Chapter 7 explores self-regulatory measures implemented under the supervision of the principal national self-regulatory body, the Collegium for Media Complaints, and which is guided by the standards of the Code of Professional Ethics of the Russian Journalist, which tackles disinformation.

The last chapter, **Chapter 8**, considers the latest developments including two cases that are likely to feature the first application of the Law on Fake News, yet to be used in court, including false stories that are part of anti-vaccine campaigns.



1. Introduction

This *IRIS-Extra* reflects on the statutory and case law in Russia that relates to disinformation. It builds upon the chapter “Russian Federation” in an earlier publication by the European Audiovisual Observatory “Media reporting: facts, nothing but facts?”.³ That chapter provides a general overview of the regulatory framework and policies of broadcast media, print media, and online media, mostly in relation to the (intended) objectivity and fairness of reporting by Russian journalists.

While objectivity and fairness might be an antonym of disinformation, what would follow rather covers the issue of truthfulness of information, disseminated online and in broadcast media.

Dictionary definitions of disinformation range from “false information deliberately and often covertly spread (as by the planting of rumours) in order to influence public opinion or obscure the truth” (Merriam-Webster),⁴ and “false information spread in order to deceive people” (Cambridge),⁵ to “false information which is intended to mislead, especially propaganda issued by a government organization to a rival power or the media” (Oxford).

According to a recently compiled popular Russian dictionary, disinformation, considered a Gallicism or a French language-influenced neologism, is either 1) an act of misleading by means of false information, or 2) knowingly false information.⁶ A Russian legal dictionary for the military explains disinformation as “dissemination of false information about one’s forces and action plans with the aim to mislead the enemy.” Means of disinformation, it says, may include radio and the press.⁷

Interestingly enough, the origins of this term apparently trace back to the Russian neologism “dezinformatsiya” [дезинформация].⁸ The first office to design and implement disinformation campaigns worldwide, in particular, through the Soviet press, *Dezinformburo*, was established in Moscow in 1923.⁹

³ Maja Cappello (ed.), *Media reporting: facts, nothing but facts?*, *IRIS Special*, European Audiovisual Observatory, Strasbourg, 2018, pp. 111-118, <https://rm.coe.int/media-reporting-facts-nothing-but-facts/16808e3cda>.

⁴ <https://www.merriam-webster.com/dictionary/disinformation>.

⁵ <http://dictionary.cambridge.org/dictionary/english/disinformation>.

⁶ Т. Ефремова, *New Explanatory Dictionary of Russian*. (Новый словарь русского языка. Толково-словообразовательный), Moscow, Russkiy yazyk, 2000, <https://www.efremova.info>.

⁷ Nikolay Balashov, et.al., *Military Legal Encyclopedic Dictionary* (Военно-юридический энциклопедический словарь), Moscow, 2007, p. 129, <http://www.voennoepravo.ru/files/007%20VSL0V.pdf>.

⁸ <https://en.oxforddictionaries.com/definition/disinformation>.

⁹ See Evgeniy Zhirnov, *Dezinformburo: 80 Years of Soviet Disinformation Service* (Дезинформбюро: 80 лет советской службе дезинформации) / *Kommersant daily*, 13 January 2003, p. 7,



Although the term may have originated in Russia, it is almost never used in its national law. The statutory law tends to use its synonyms, such as “недостоверная информация” (unreliable or untruthful information) or “ложная информация” (false information).

One can find a **legal definition** of disinformation in an EU member state that neighbours Russia; Lithuania. “Disinformation,” which is forbidden in the national Constitution, there means “intentionally disseminated false information”.¹⁰

The most detailed **political definition** of modern-times disinformation can be found in the recent EU “Action Plan against Disinformation.” In December 2018 the European Commission and High Representative of the Union for Foreign Affairs and Security Policy forwarded to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions a Joint Communication “Action Plan against Disinformation.”¹¹ Following an earlier Communication of the European Commission,¹² the Action Plan provides a definition of disinformation:

Disinformation is understood as verifiably false or misleading information that is created, presented and disseminated for economic gain or to intentionally deceive the public, and may cause public harm.

The Action Plan also defines the scope of “public harm” by including “threats to democratic processes as well as to public goods such as Union citizens’ health, environment or security.” Disinformation, provides the document, does not include inadvertent errors, satire and parody, or clearly identified partisan news and commentary.

Coming back to the Russian law, generally speaking, the Statute “On the mass media” establishes the right of a journalist “to verify truthfulness [достоверность] of information provided to him”, as well as the duty of a journalist “to verify truthfulness [достоверность] of information that he provides”.¹³ The right to verify information brings about the special procedure established in the Statute “On the mass media” as to the access of media outlets to information possessed by the government and to all sorts of public events and natural calamities. A violation of the duty to verify information may become, in theory, an aggravating circumstance once the journalist fails to follow other provisions of the law, such as on defamation.

This publication does not touch upon a huge volume of defamation case law, where truth or falsity of information plays a decisive role for litigation. Still, it should be

<https://www.kommersant.ru/doc/358500>.

¹⁰ Republic of Lithuania, Law on the Provision of Information to the Public, 2 July 1996, No I-1418 (as of 12 January 2018), Art. 2 (part 13). See its text in English: <https://tinyurl.com/y7x7v24g>.

¹¹ Action Plan against Disinformation, Brussels, 5.12.2018 JOIN(2018) 36 final, https://eeas.europa.eu/headquarters/headquarters-homepage/54866/action-plan-against-disinformation_en.

¹² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions “Tackling online disinformation: a European Approach”, COM/2018/236 final, 26 April 2018, para. 2.1, <https://bit.ly/2rz2WrW>.

¹³ Statute of the Russian Federation on the Mass Media (О средствах массовой информации), No. 2124-1 of 27 December 1991 (with amendments as of 8 December 2003), art. 47 para 8; Art. 49 para 2. English version available at: www.legislationline.org/documents/id/16867.



noted here that the Russian legal standards on the nature of falsities in defamation cases are gradually being harmonised with those of the Council of Europe and the European Court of Human Rights. For example, in the context of defamation law, in a number of its resolutions the Supreme Court of the Russian Federation established a more enabling environment for the dissemination in the media of satire, such as political cartoons or satirical shows.¹⁴ According to the Supreme Court, exaggeration and provocation in these genres are considered permissible in the media and shall not serve as grounds for liability in defamation lawsuits.¹⁵

Furthermore, the case law in Russia establishes that “[a]ssumption or expression of one’s personal opinion cannot be considered disinformation [дезинформация] and responsibility for it (the opinion) cannot be conditioned by Art. 152 of the Civil Code [on defamation].”¹⁶

This publication covers five specific legal spheres in which disinformation is outlawed. These are: 1) a required reliability [достоверность] of information “essential for the public” on popular news aggregators; 2) a most recent general ban on unreliable [недостоверных] “socially significant” online information; 3) a ban on false [ложных] information about the activity of the USSR during the Second World War; 4) a ban on knowingly false [ложные] accusations of officials of having committed extremist actions; and 5) prohibition of untrue [недостоверная] advertising.

This publication also makes reference to the recent practice of the national self-regulation body on disinformation in the media.

¹⁴ See, e.g. Andrei Richter, Russian Federation: Supreme Court on Defamation, IRIS 2005-4:18/32.

¹⁵ A Landmark for Mass Media in Russia, IRIS-Plus, 1, 2011, Strasbourg, 2011, p. 21.
<https://rm.coe.int/1680783bbe>.

¹⁶ Decision on Case No. 2-471/2015, 15 April 2015, Sverdlovsky district court of the city of Perm, <http://xn--90afdbaav0bd1afy6eub5d.xn--p1ai/13954820>.





2. Regulation of reliability of information on news aggregators

The Russian parliament adopted in 2016 amendments to the Federal Statute “On Information, Information Technologies and Protection of Information”¹⁷ (further on – the IT Law) and the Code on Administrative Offenses.¹⁸ They require owners of internet search engines (“news aggregators”) with more than one million daily users to be accountable for the truthfulness of news content “essential for the public”, except when such content represents a verbatim reproduction of materials already published by official governmental websites, by the websites of state-run or municipal enterprises and institutions, or by the media outlets formally registered as such with the relevant Russian authorities. Such materials, if distributed by the news aggregators in Russian, in other languages of the peoples of the Russian Federation, or even in foreign languages if the website is used to disseminate advertising that targets clients in Russia, are subject to restrictions earlier imposed in the Russian Statute “On the mass media”, such as a ban on extremism, propaganda or pornography, cult of violence, use of curse words, defamation, etc.¹⁹ The owners of such news aggregators shall only be Russian citizens or Russian legal entities.²⁰

The news content understood by the statute is “publicly available information” obtained from both registered mass media outlets, and from “other sources”.

Among the particular obligations of the owners of news aggregators in relation of prohibited information, introduced in the amendments,²¹ are the following:

- 1) to verify the accuracy of publicly significant information before its dissemination through the news aggregators and immediately prevent its further dissemination therein on the basis of the prescription issued by Roskomnadzor (or Federal

¹⁷ See IRIS 2014-3/40, IRIS 2014-6/31, IRIS 2018-1/39, IRIS 2017-8:1/34, IRIS 2014-6/31, and IRIS 2014-3/40/.

¹⁸ Federal Statute “Amendments to the Federal Statute ‘On Information, Information Technologies and Protection of Information’ and to the Code on Administrative Offenses of the Russian Federation” (О внесении изменений в Федеральный закон “Об информации, информационных технологиях и о защите информации” и Кодекс Российской Федерации об административных правонарушениях), 23 June 2016, N 208-FZ, <http://pravo.gov.ru/proxy/ips/?docbody=&prevDoc=102108264&backlink=1&nd=102401866>.

¹⁹ Article 4 of the Statute, *supra* note 11.

²⁰ Para 12 of Article 10-4 of the IT law.

²¹ Subparas 3 and 4 of Para 1 of Article 10-4 of the IT law.



Service for Supervision of Communications, Information Technology and Mass Media).²²

- 2) to prevent the use of the news aggregator for the purpose of concealing or falsifying socially significant information, of disseminating unreliable socially significant news information under the guise of reliable messages.²³

The news aggregators shall store all news information, including its source and duration of dissemination, for six months. They should enable Roskomnadzor to access the data stored.

In turn the Federal Service shall compile an official register of such aggregators and control observance of the new provisions. Such a register has not been made public, although according to a press release of Roskomnadzor, it includes so far four websites: “Yandex.Novosti”, “Rambler/Novosti”, “news.mail.ru”, and “SMI2”.²⁴ The owners of the news aggregators are Mail.ru Group, Yandex, and Rambler&Co.

The statute prescribes a procedure to allow the Roskomnadzor – with or without a court decision – to monitor relevant online content, determine facts of falsification of content essential for the public, and to obligate news aggregators to stop disseminating such information.²⁵

The procedure established by the amendments to the IT Law prescribes that if any facts of falsification of socially significant information are found on the news aggregator, the distribution of unreliable socially important news information under the guise of reliable messages, as well as the distribution of news information in violation of the legislation of the Russian Federation, the authorised state bodies have the right to apply to Roskomnadzor. They can do so by completing an electronic form on the dedicated pages²⁶ of its official website, with an attachment of a court decision or a decision of the said state body (such as Office of the Prosecutor-General, Ministry of Interior, Federal Tax Service, Roskomnadzor itself) and a screenshot of the webpage with the information in question. The form presents a demand that measures be taken to stop dissemination of such information.

²² Roskomnadzor, or Federal Service for Supervision of Communications, Information Technology and Mass Media, is part of the Ministry of Digital Development, Communication and Mass Media and is empowered as the federal executive body exercising control functions and supervision in the field of mass media, mass communications, information technology and communication. See IRIS 2012-8/36.

²³ This norm closely follows the norm of Article 51 of the Statute “On the Mass Media”, *supra* note 11: “The rights of the journalist stipulated by this Statute shall not be used with the purpose of the concealment or falsification of socially significant information, the spread of rumors under the guise of reliable reports”...

²⁴ Collegium of Roskomnadzor was held with invited guests (Состоялось расширенное заседание коллегии Роскомнадзора), press release, 19 April 2017, <https://rkn.gov.ru/news/rsoc/news44173.htm>.

²⁵ Federal Statute of the Russian Federation “On amendments to the Federal Statute ‘On Information, Information Technologies and Protection of Information’ and to the Code of the Russian Federation on Administrative Offences” (*О внесении изменений в Федеральный закон “Об информации, информационных технологиях и о защите информации” и Кодекс Российской Федерации об административных правонарушениях*), 23 June 2016, N 208-FZ, <https://rg.ru/2016/06/28/zashita-dok.html>.

²⁶ See <http://208-fz.rkn.gov.ru>.



Once the procedure is complied with, Roskomnadzor, within 24 hours of receiving such a demand, examines it and sends a notification to the owner of the news aggregator, including through a specific system of interaction specified in the same amendments, to immediately terminate the dissemination of the disinformation. Following the adoption of the amendments to the IT Law, the Federal Service issued a number of orders that in particular approved procedures for sending the notification.²⁷ Roskomnadzor explained that, unlike news aggregators, social networks, blogs, websites of TV channels and websites with a newsfeed are not subject to these restrictions. The reasons for this are that they either do not *aggregate* news, or they do it by choice of an *individual* user.²⁸

The same amendments provide a new article (19.7¹⁰⁻¹) in the Code on Administrative Offences of the Russian Federation. Violation of the above provisions in the IT Law carries high administrative penalties for the owners of news aggregators, in case of non-compliance with the notification of Roskomnadzor. First-time offence for legal entities carries an administrative fine of 600 000 to one million roubles, while repeated violation entails a fine of 1.5 million roubles to three million roubles.

The case law and administrative practice on the implementation of the restrictions introduced by the amendments on news aggregators is at best scarce. We were unable to find a court decision appealing notifications of Roskomnadzor or related administrative fines. As to the practice of the Federal Service itself, its public website does not refer to any relevant case or general statistics. This may be explained, in particular, by the limited number (just four) of the subjects of this regulation and their self-restraint as to the algorithms used for news aggregation.

²⁷ Order of Roskomnadzor of 5 December 2016, No 308, On approving the form and procedure for sending by the authorized state bodies the notification to take measures to stop the dissemination of falsified socially significant information, unreliable socially important news information by the news aggregator under the guise of reliable messages, news information disseminated in violation of the legislation of the Russian Federation (Об утверждении формы и порядка направления уполномоченными государственными органами требования о принятии мер по прекращению распространения новостным агрегатором фальсифицированных общественно значимых сведений, недостоверной общественно значимой новостной информации под видом достоверных сообщений, новостной информации, распространяемой с нарушением законодательства Российской Федерации), <http://208-fz.rkn.gov.ru/docs/308.pdf>.

²⁸ Andrei Fedoseev, ComNews: Roskomnadzor discusses news aggregators (ComNews: Роскомнадзор обсудил новостные агрегаторы), press release, 30 November 2016, <https://rkn.gov.ru/press/publications/news41841.htm>. See also: <http://208-fz.rkn.gov.ru/docs/presentation.pdf>.





3. Untruthful socially significant online information

In 2017, motivated by the spread of “hate speech” and “fake news” on social media, the German Parliament adopted the Act to Improve Enforcement of the Law in Social Networks (Network Enforcement Act, or NetzDG). The law deals, in particular, with the handling of complaints about unlawful content, and demands that the provider of a social network maintains an effective and transparent procedure for handling such complaints of users in an easily recognisable, directly accessible, and permanently available procedure. Unlawful content is defined in NetzDG as content that breaches already existing provisions of the Criminal Code, such as the rules on slander in Article 185 and certain criminal law provisions on the protection from threats to the democratic rule of law.²⁹

According to Human Rights Watch, at least three countries – including Russia – directly cited the German law as a best practice when they contemplated or proposed legislation to remove “illegal” content online.³⁰

The closest to such legislation in Russia are the amendments to the IT Law that aim to stop online dissemination of certain categories of false information under the guise of truthful information. These amendments were referred to in the media as the “Law on Fake News”, and we shall use this name below.

Indeed the Explanatory Memorandum to the draft Law on Fake News makes a reference to the European law, stating:

In modern conditions of information technology development, the uncontrolled dissemination of inaccurate information disseminated under the guise of reliable communications can have a wide range of consequences associated not only with the reputational losses of citizens and organizations, manipulation of public opinion and financial gain, but create a real danger to life and health of citizens, leading to mass riots, create a threat to state, public or environmental security. Awareness of the negative aspects of the dissemination of false information prompts the state institutions of many countries to search for mechanisms to suppress it. In particular, the European Commission is developing a pan-European strategy to counter online disinformation.³¹

²⁹ Act to Improve Enforcement of the Law in Social Networks. See official translation into English: <https://bit.ly/2J29ANS>.

³⁰ Germany: Flawed Social Media Law: NetzDG is Wrong Response to Online Abuse, Human Rights Watch statement, 14 February 2018, <https://www.hrw.org/news/2018/02/14/germany-flawed-social-media-law>.

³¹ Explanatory Memorandum to the draft Federal Statute “On amendments to Article 15³ of the Federal Statute on information, information technologies and protection of information” and Article 4 of the Statute of the



The argument that, in the European Union, a “multi-year prison sentence” can be obtained for disseminating “dangerous lies online” (while Russian legislators were soft on introducing just administrative liability) was also used in the first semi-official commentary to amendments once they were adopted.³² Such arguments, when advanced at the international forums, were strongly rebuffed by the governments of the countries concerned.³³

They were adopted by the State Duma, the lower house of the Parliament, on 7 March and approved by the Federation Council, its upper chamber, on 13 March 2019. On 18 March, Russian President Vladimir Putin signed them into law.³⁴ The Law on Fake News became effective on 19 March.

The amendments are to the existing Article 15³ (“Procedures for restricting access to information disseminated illegally”) of the IT Law. The amendments prohibit online dissemination of “unreliable socially significant information”, which would constitute a “threat to life and/or health of citizens, property, threat of massive violations of public order and/or public security, or threat of establishing obstacles to the functioning of every-day supply objects, transport of social infrastructure, credit organizations, objects of power-supply, industry or communications”.

Prior to these amendments, Article 15³ already prohibited online dissemination of “information with calls to mass disorder, to conduct of extremist activity and to participation in mass (public) events held with a violation of established procedure”, as well as materials of “undesirable” international or foreign organisations.³⁵ It also prohibited dissemination of information on how to bypass the established bans.

The Law on Fake News provides additional powers to Roskomnadzor on content control of the websites, again without a court decision. Upon an appeal of the Prosecutor-General or one of his (currently) 18 deputies, Roskomnadzor is now empowered to “immediately” notify the editors of the “network publications” (or registered online media, see IRIS 2012-8/36) on this violation and instruct them to remove “unreliable

Russian Federation “On the Mass Media” (Пояснительная записка к проекту федерального закона «О внесении изменений в статью 15³ Федерального закона «Об информации, информационных технологиях и о защите информации» и статью 4 Закона Российской Федерации «О средствах массовой информации»). See the page of the draft law on the website of the State Duma: <http://sozd.duma.gov.ru/bill/606593-7>.

³² Tatiana Zamakhina, And this is not fake news: Steps taken against fakes will hit online terrorists (И это - не фейк: Меры против фейков ударят по сетевым террористам) / Rossiyskaya gazeta daily, 19 March 2019, <https://rg.ru/2019/03/19/mery-protiv-fejkovyh-novostej-v-internete-udariat-po-setevym-terroristam.html>.

³³ See, e.g. Lutte contre la manipulation de l'information – Réponse à la Russie. Intervention de Véronique Roger-Lacan, Ambassadrice, Représentante permanente de la France auprès de l'OSCE au conseil permanent du 28 mars 2019, <https://osce.delegfrance.org/Intervention-de-Veronique-Roger-Lacan-Ambassadrice-Representante-permanente-de>.

³⁴ Federal Statute “On amendments to Article 15-3 of the Federal Statute on information, information technologies and protection of information” (О внесении изменений в статью 15-3 Федерального закона “Об информации, информационных технологиях и о защите информации”), 18 March 2019, No. 31-FZ. Officially published on 19 March 2019 at <http://publication.pravo.gov.ru/Document/View/0001201903180031>.

³⁵ See Andrei Richter, Russian Federation: Blocking Internet Allowed without Court Decision, IRIS 2014-3:1/40; Andrei Richter, Russian Federation: Ban of “undesirable” sites introduced, IRIS 2018-1:1/39.



information”. The editors shall “immediately” follow the instruction of Roskomnadzor. In case of failure to abide it, Roskomnadzor then instructs ISPs to “immediately” block access to the websites of the “network publications”. Such blocking lasts until the unreliable information is removed.

The norms of Article 15³ (para 2) already provide Roskomnadzor with an effective mechanism to block online dissemination of information found illegal by the Prosecutor-General or his deputies.³⁶ Thus, this procedure shall now be used in relation to “unreliable news” in an online resource that is not a “network publication”, registered by Roskomnadzor. Article 15³ does not apply to news aggregators regulated in the procedure explained in the previous chapter.

Warnings and other administrative decisions by Roskomnadzor can be appealed in court.

Another amendment is to the Code on Administrative Offenses of the Russian Federation. It establishes fines for legal entities and physical persons, including users of social media platforms and blogs, that spread “knowingly inaccurate socially significant information”, by adding three paragraphs to Article 13.15 (“Abuse of freedom of the media”) of the Code. Due to the scale of the new offence, the penalties will most likely be used selectively, and in relation to the Russian-based networks such as OK.ru and VK.ru.

New paragraph 9 establishes an administrative penalty for “dissemination in the mass media, as well as in information and telecommunication networks, of knowingly inaccurate socially significant information under the guise of reliable messages, which created the threat of harm to life and/or to the health of citizens, property, the threat of mass disturbances of public order and/or public security or interfering with the functioning or termination of the functioning of every-day supply objects, transport or social infrastructure, credit institutions, objects of power-supply, industry or communications, if these actions of the person disseminating the information, do not contain a criminal offense”. The penalty for this offence shall entail the imposition of an administrative fine on citizens of between thirty thousand to one hundred thousand roubles with or without confiscation of the instrument of an administrative offense; on officials - between sixty thousand to two hundred thousand roubles; on legal entities - between two hundred thousand to five hundred thousand roubles with or without confiscation of the instrument of an administrative offense.³⁷

Paragraph 10 establishes a penalty for the above violation if it actually caused interference with the functioning of every-day supply objects, transport or social infrastructure, etc. or for a repeated violation of paragraph 9. Then the penalties increase to a fine, on citizens, of from 100 000 to 300 000 roubles; on officials - from 300 000 to

³⁶ See Andrei Richter, Russian Federation: Blocking Internet Allowed without Court Decision, IRIS 2014-3:1/40.

³⁷ Federal Statute “On amendments to Code of the Russian Federation on Administrative Offenses” (О внесении изменений в Кодекс Российской Федерации об административных правонарушениях), 18 March 2019, No. 27-FZ. Officially published on 19 March 2019 at pravo.gov.ru.



600 000 roubles; for legal entities - from 500 000 to one million roubles (with or without confiscation of the object of the administrative offense).³⁸

Finally, paragraph 11, introduces the offence of dissemination of disinformation “that caused the death of a person, harm to human health or property, a massive disturbance of public order and/or public safety, the termination of the functioning of life support objects, transport or social infrastructure, etc., or for a repeated violation of paragraph 10. The penalties increase further to a fine, on citizens, in the amount of from 300 000 to 400 000 roubles; on officials - from 600 000 to 900 000 roubles; on legal entities - from one million to 1,5 million roubles (with or without confiscation of the instrument of an administrative offense).³⁹ Thus the maximum fine is 1.5 million roubles, or about 20 500 euro.

The penalties introduced in these three paragraphs (9-11) shall not be applicable if dissemination of the false information in the media and internet began prior to their entry into force (that is 18 March 2019).

The Law on Fake News brought significant discussions in the media and society on its scope and actual purpose.

The Council on Development of Civil Society and Human Rights (thereinafter “the CHR”) under the President of the Russian Federation expressed a strong opposition to the draft law. It formally requested the upper house of the Parliament to reject the Law on Fake News and establish a conciliatory commission to review criticism of its provisions; both proposals were declined in the house.⁴⁰

The CHR also presented its Expert Opinion that listed critical remarks on the text of the Law on Fake News.⁴¹ Some of them refer to the subject of this publication.

The CHR noted that the Law on Fake News implies “a presumption that state control bodies - Roskomnadzor and prosecutors - have knowledge of absolute truth”, which was impossible.

While the Law on Fake News speaks of “unreliable information”, amendments to the Code on Administrative Offences refer to “deliberately unreliable information”, which

³⁸ See Article 3.7 of the Code of Administrative Offences of the Russian Federation No. 195-Fz of December 30, 2001, English version available here: <https://www.wipo.int/edocs/lexdocs/laws/en/ru/ru073en.pdf>.

³⁹ Ibid.

⁴⁰ CHR calls on the Council of Federation to dismiss the draft laws on penalties for fake news and disrespect for the authorities (СПЧ просит Совет Федерации отклонить законопроекты о наказаниях за фейковые новости и неуважение к власти), press release, 11 March 2019, <http://president-sovet.ru/presscenter/news/read/5324/>.

⁴¹ «Expert Opinion on Federal Statute “On amendments to Article 15³ of the Federal Statute on information, information technologies and protection of information” and on the statute “On amendments to Article 13.15 of the Code of the Russian Federation on Administrative Offences” adopted by the State Duma” (Экспертное заключение на принятие Государственной Думой закон «О внесении изменений в статью 15³ Федерального закона «Об информации, информационных технологиях и о защите информации» и на закон «О внесении изменений в статью 13.15 Кодекса Российской Федерации об административных правонарушениях»), 11 March 2019. The Expert Opinion was signed by the CHR Chair Mikhail Fedotov, <http://president-sovet.ru/presscenter/news/read/5324/>.



implies that the physical, official or legal person who made this administrative offence had an exact knowledge that the information disseminated by him/her was not true.

In view of the CHR, the above two notions differ in a significant way. In this regard, the Expert Opinion referred to the legal position of the Supreme Court of the Russian Federation, expressed in the Resolution of its Plenary Meeting of 24 February 2005.⁴² It quoted: “information that does not correspond to reality refers to statements about facts or events that did not take place in reality at the time to which the disputed information relates. Information that is found in court decisions and sentences, decisions of the pre-trial investigation bodies, in other procedural or other official documents cannot be considered as false, as a different court procedure is envisaged to complain upon and challenge it”. On the contrary, the Expert Opinion provided that such statements about facts and events, which are not worthy of credibility as to their conformity with the truth, should be considered false. In other words, the category of reliability of information is only indirectly related to the objective truth, and is much more related to the trust in the source of information.⁴³

That is why it is quite possible that the person brought to administrative responsibility for the dissemination of deliberately unreliable information had a reason to believe that the information disseminated by him is true, especially if there is a shortage of relevant, accurate, comprehensive, and objective information. This applies to the situations of natural calamities, man-made disasters as well as other cases, where even the competent governmental agencies are short of an accurate picture of events.

At the same time, said the CHR, an arbitrary recognition by the court of the fact of knowingly unreliable information would lead to the necessity of the court's intrusion into such – distant from the law – issues as faith and trust. This would inevitably lead to a violation, in such cases, of the constitutional rights of citizens to the freedom to receive and impart information, to freedom of expression, freedom of opinion and freedom of the media (Article 29 of the Constitution of the Russian Federation⁴⁴).

At the reading of the Law on Fake News at the Federation Council, the rapporteur and co-author of the draft, Andrei Klishas, dismissed the CHR's arguments as of “rather political or philosophical nature”.⁴⁵

In the discussion that followed his report, he denied that the amendments contradict Article 10 of the European Convention for the Protection of Human Rights and

⁴² See: Andrei Richter, Russian Federation: Supreme Court on Defamation, IRIS 2005-4:18/32.

⁴³ “Expert Opinion on Federal Statute “On amendments to Article 15³ of the Federal Statute on information, information technologies and protection of information” and on the statute “On amendments to Article 13.15 of the Code of the Russian Federation on Administrative Offenses” adopted by the State Duma” (Экспертное заключение на принятые Государственной Думой закон «О внесении изменений в статью 15³ Федерального закона «Об информации, информационных технологиях и о защите информации» и на закон «О внесении изменений в статью 13.15 Кодекса Российской Федерации об административных правонарушениях»), 11 March 2019, <http://president-sovet.ru/presscenter/news/read/5324/>.

⁴⁴ See the official translation of the Constitution into English, French and German at <http://constitution.ru>.

⁴⁵ Natalia Korchenkova, Federation Council voted against “Orange Pandemonium”: Liability for fake news and disrespect of authorities enters into force (Совет федерации проголосовал против «оранжевой свистопляски». Наказание за фейковые новости и неуважение к власти вводят в действие) / Kommersant daily, 13 March 2019, <https://www.kommersant.ru/doc/3909217>.



Fundamental Freedoms, to which Russia subscribed. In his view the Convention provides nothing about the freedom to disseminate inaccurate information under the guise of reliable one. He was also asked about possible contradiction of the Law on Fake News with Article 29 of the Constitution.⁴⁶ The position of the author of the draft law was that citizens had the right to receive reliable information, while false socially significant information that forces citizens to irrational, unreasonable actions would harm their constitutional rights and freedoms.⁴⁷ The Federation Council overwhelmingly voted for the Law on Fake News (149 for, 3 against, and 3 abstentions).

The view of civil society organisations and some media was also highly critical of the draft Law on Fake News. For example, SOVA Centre⁴⁸ found it just “redundant”. Its report said: “As for countering the spread of fake news, in our opinion, this goal is best achieved by promptly providing citizens with the most complete information and expert opinion on socially important issues.”⁴⁹

In the public debate on the need of the Law on Fake News, their proponents most often brought the example of false news on the “Winter Cherry” fire.⁵⁰ In the tragic incident of the fire in March 2018 in the “Winter Cherry” shopping mall and entertainment complex in Kemerovo, Russia, at least 60 people (more than half of them children) were killed.⁵¹ In the days that followed, a video on the circumstances of fighting the fire and the number of victims became viral in the Russian cyberspace.

This stand-alone case deserves separate consideration as it was also adjudicated in court. In May 2018 a district court in Kirov, thousands of kilometres away from Kemerovo, issued a decision that banned further distribution of the video “All truth on Shopping Mall ‘Winter Cherry’.”⁵² The decision was on an administrative case brought by the regional prosecutor, who claimed that the video “contained disinformation on the number of victims of the fire that occurred on 25 March 2018 in the ‘Winter Cherry’ mall in Kemerovo, which had caused panic, destabilization of the social and political situation and discrediting the state authorities of the Russian Federation”.⁵³ The Kirov prosecutor demanded that, following approval by the court, Roskomnadzor includes the website that

⁴⁶ *Supra* note 40.

⁴⁷ *Supra* note 41.

⁴⁸ SOVA Center for Information and Analysis is a Moscow-based Russian non-profit organization founded in 2002. It conducts research and informational work on nationalism and racism, political radicalism and human rights issues, especially government misuse of counter-extremism measures.

⁴⁹ Misuse of Anti-Extremism in December 2018. 9 January 2019. <https://www.sova-center.ru/en/misuse/news-releases/2019/01/d40490/>.

⁵⁰ See, e.g.: Tatiana Zamakhina, And this is not fake news: Steps taken against fakes will hit online terrorists (И это - не фейк: Меры против фейков ударят по сетевым террористам) / Rossiyskaya gazeta daily, 19 March 2019, <https://rg.ru/2019/03/19/mery-protiv-fejkovyh-novostej-v-internete-udariat-po-setevym-terroristam.html>.

⁵¹ See <https://www.bbc.com/news/topics/c6wnpxe46mxt/russian-shopping-centre-fire>.

⁵² In Russian: Вся правда в ТЦ «Зимняя вишня».

⁵³ Decision of Leninsky district court of the city of Kirov on the Case No. 2a-2539/2018, 21 May 2018, <http://xn--90afdbaav0bd1afy6eub5d.xn--p1ai/34289923>.



hosted the video into the Unified Register⁵⁴ as a banned website with “illegal content”, to allow nation-wide blocking of access to it.⁵⁵ He brought to the attention of the court that the Investigative Committee of the Russian Federation was investigating accusations of an unnamed citizen of Ukraine – who reportedly uploaded the video – in crimes under Article 282 (“Incitement of hatred and enmity, as well as humiliating human dignity”) of the Criminal Code.⁵⁶ The court took the above circumstances together with the norms of Articles 9 (on permissibility of blocking illegal information) and 15.1 (on the Unified Register) of the IT Law and ruled that the website should indeed be blocked by Roskomnadzor.⁵⁷

Some press reports argued against the use of the case in the debate on the adoption of the Law on Fake News. They argued that the video could not cause panic once the fire was over, and that the argument that the inflated deaths figures in the fire were “knowingly false” was in itself a “fake” one.⁵⁸

It seems that both proponents and opponents of the Law on Fake News who use the arguments of the Kemerovo fire were wrong. The amendments provide Roskomnadzor with the right to restrict unreliable information only in relation to registered “network publications”, and not just any given website, and the video with false figures was not published in a network publication.

“Rossiyskaya gazeta” daily, in its commentary on the Law on Fake News that accompanied the official publication of its text, strongly defended the adoption of the law. It summarized the law by stating:

Organised filling of fake information, designed to sow panic among internet users, now becomes outlawed. Such messages are subject to blocking, and their authors and publishers will face serious fines. Changes in the legislation, which are published by ‘RG’ [Rossiyskaya gazeta], do not aim at introducing censorship and fighting criticism of the authorities. Parliamentarians in the course of the preparation of the amendments brought to zero the risks of abuse and their selective application.⁵⁹

⁵⁴ “Unified Register of the domain names, website references and network addresses that allow identifying websites containing information circulation of which is forbidden in the Russian Federation”, available at: <http://eais.rkn.gov.ru/en/>.

⁵⁵ See more on the Unified Register and relevant procedures in: Andrei Richter and Anya Richter, *Regulation of online content in the Russian Federation: Legislation and Case Law* / Cappello M. (ed.), Regulation of online content in the Russian Federation, IRIS extra, European Audiovisual Observatory, Strasbourg, 2015, p. 14-16. <https://rm.coe.int/1680783de3>.

⁵⁶ See, e.g. Dirk Voorhoof, European Court of Human Rights: Savva Terentyev v. Russia, IRIS 2018-9:1/3.

⁵⁷ Decision of Leninsky district court of the city of Kirov on the Case No. 2a-2539/2018, 21 May 2018, <http://xn--90afdbaav0bd1afy6eub5d.xn--p1ai/34289923>.

⁵⁸ Leonid Nikitinsky, The right to lie becomes a privilege: Fake Law on Fake News is not an act of law, but an act of propaganda (Право врать становится привилегией: Фейковый «закон о фейках» – акт не законодательства, а пропаганды), *Novaya gazeta*, 25 March 2019, <https://www.novayagazeta.ru/articles/2019/03/23/79973-pravo-vrat- stanovitsya-privilegiyey>.

⁵⁹ Tatiana Zamakhina, And this is not fake news: Steps taken against fakes will hit online terrorists (И это - не фейк: Меры против фейков ударят по сетевым террористам) / *Rossiyskaya gazeta daily*, 19 March 2019, <https://rg.ru/2019/03/19/mery-protiv-fejkovyh-novostej-v-internete-udariat-po-setevym-terroristam.html>.



The commentary also reassured on the limited nature of the Law on Fake News: “We emphasise that only facts, not opinions, can be regarded as reliable or unreliable information”.⁶⁰

Leonid Nikitinsky, the court reviewer in “Novaya gazeta” and a member of the CHR, believes that the degree of credibility of the news (wherever it appears), as well as the threat factor, will be determined by the Prosecutor General so as to immediately block its dissemination through Roskomnadzor. In the absence of a mechanism and experience in the Prosecutor General’s Office for such an assessment, checking the credibility of news will take considerable time. Determining a sign of a conscious lie is hardly if at all possible, so it will be ignored, but at the same time, Roskomnadzor will block, just in case, not the particular pages, but entire websites. In addition, a bottleneck for finding justice in such cases will be the Tverskoy district court in Moscow, the only place where the complaints on the actions of the Office of the Prosecutor General are to be reviewed.⁶¹

According to results of opinion poll conducted in March 2019 the introduction of penalties for dissemination of false news in the above amendments was approved by 55 % of those polled, while 33 % disapproved.⁶² Another poll pointed to 83 % of Russians who approved of the restrictions on false news, while 57 % believed the Law on Fake News would lower the amount of falsities in the internet.⁶³

⁶⁰ Ibid.

⁶¹ Leonid Nikitinsky, The right to lie becomes a privilege: Fake Law on Fake News is not an act of law, but an act of propaganda (Право врать становится привилегией: Фейковый «закон о фейках» – акт не законодательства, а пропаганды), Novaya gazeta, 25 March 2019, <https://www.novayagazeta.ru/articles/2019/03/23/79973-pravo-vrat-stanovitsya-privilegiy>.

⁶² Levada-Centre: half of Russians do not approve of the law on disrespect to authorities (“Левада-центр”: половина россиян не одобрила закон о неуважении к власти) / Meduza, 8 April 2019. <https://meduza.io/news/2019/04/08/levada-tsentr-polovina-rossiyan-ne-odobrila-zakon-o-neuvazhenii-k-vlasti>.

⁶³ VCIOM (Russian Public Opinion Research Center), Fake news: Opinion of Russians on the new law (Фейк-ньюс: мнение россиян о новом законе), press release, 20 March 2019, <https://wciom.ru/index.php?id=236&uid=9603>.



4. False information about the Second World War

In 2014, the Russian Parliament adopted a statute introducing a new article in the Criminal Code that criminalises, in particular, the denial or acclaims of Nazi crimes and “public dissemination of knowingly false [ложных] information about the activity of the USSR during the years of Second World War.”⁶⁴

This offence shall be punished with a fine of up to three hundred thousand roubles, or in the amount of the salary or other income of the convicted person for a period of up to two years, penal labour for up to three years, or imprisonment for the same term.

Part 2 of the article establishes harsher penalties for the same acts committed by a person using his official position or through the mass media. In this case the fine raises to between 100 000 to 500 000 roubles, or in the amount of the salary or other income of the convicted person for a period of one to three years, or penal labour for up to five years, or imprisonment for the same term with the deprivation of the right to occupy certain positions or engage in certain activities for up to three years.⁶⁵

Legal scholars from a university of the Russian Ministry of Interior believe that the “main avenues of falsification of history of Russia and rehabilitation of Nazism” are as follows:

- 1) The resting on the Soviet Union and its historical successor – the Russian Federation – equal with Nazi Germany responsibility for unleashing aggressive wars in Europe while withdrawing guilt from Britain, USA, and other Western states for conniving, concessions and indulging the aggressor within the so-called “policy of appeasement.”
- 2) Denial of the just, nationwide and liberating nature of the Great Patriotic War (1941–1945).

⁶⁴ Federal Statute On amendments to certain legal acts of the Russian Federation (О внесении изменений в отдельные законодательные акты Российской Федерации), 5 May 2014, No. 128-FZ. Officially published in Rossiyskaya gazeta daily, N 101, 7 May 2014, <http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=LAW&n=162575&fld=134&dst=100008,0&rnd=0,2279262673987007#004856511722359824>.

⁶⁵ Criminal Code of the Russian Federation, Article 354-1 (“Rehabilitation of Nazism”) (introduced by a Federal Statute of 5 May 2014 N 128-FZ). This article is part of Chapter 34 (“Crimes against Peace and Security of Humankind”).



- 3) The non-recognition of the decisive role of the USSR in the victory over fascism, as well as attempts to deprive it of its victorious status.
- 4) Substitution of the concept “liberation mission” of the Soviet Union with the notion of “occupation” of the Eastern European states by the USSR or to “export socialism” to the countries of Eastern and Central Europe.
- 5) Portrayal of the Great Patriotic War as criminal and shameful, consisting of just failures and defeats of the incapable Red Army; denial of the heroic feat of the Soviet people – historical, military, moral, and humanistic.
- 6) The pursuit of forces hostile to Russia through the falsification of the history of the Great Patriotic War to manipulate the public opinion and political views of the population of Russia, to destabilise the situation, to sow discord between nations and public forces, as well as between the states that used to be parts of the Soviet Union, to weaken their historical ties, to undermine their security, including military security, to achieve the isolation of Russia from the world community.⁶⁶

So far the “forces” that aim to make this offense are scarce. According to the latest official statistics, for the first half of 2018, no one was convicted of a violation of part 1 or 2 of Article 354-1, while in one case of conviction the crime in part 1 of the article was used as collateral charges.⁶⁷ In 2017 just two persons were convicted of violating part 1 of the Article, while in three more cases this crime was used as collateral charges.⁶⁸

In its 2017 report, SOVA Centre found that Article 354-1 was used along with the provisions that ban “public calls to extremist activity” and “hate speech” and concerned publications on the internet (usually through social networks OK.ru and VK.ru). In all the cases concerned, the penalties were not severe, and comprised of only a fine or conditional sentences.⁶⁹ The report points to several “clearly inappropriate criminal cases opened in 2017 under Article 354-1 of the Criminal Code”.⁷⁰ They include a case of an electronic copy of the Russian-language book *Восточные размышления* (Eastern Reflections), a collection of articles by Polish publicist Jan Nowak-Jeziorański. The court banned both print and online distribution of it. The court relied primarily on the prosecutor’s assertion that the distribution of the book violated Article 354-1, as it contained false information about the activities of the USSR during the Second World

⁶⁶ E.V. Gribanov, I.V. Yablonsky, Criminal liability for rehabilitation of Nazism: historical and legal basis and characteristics (Уголовная ответственность за реабилитацию нацизма: историко-правовые основания и характеристика) / Society and Law (Общество и право) journal, 2017, No. 1, pp. 145-146, https://mvd.ru/upload/site119/folder_page/003/467/465/sl-2017-159.pdf.

⁶⁷ See Document No. 10-a, “Report on the number of convicted offenders for all offenses of the Criminal Code of the Russian Federation” (Отчет о числе осужденных по всем составам преступлений Уголовного кодекса Российской Федерации), <http://www.cdep.ru/index.php?id=79&item=4759>.

⁶⁸ See Document No. 10-a, “Report on the number of convicted offenders for all offenses of the Criminal Code of the Russian Federation” (Отчет о числе осужденных по всем составам преступлений Уголовного кодекса Российской Федерации), <http://www.cdep.ru/index.php?id=79&item=4572>.

⁶⁹ Maria Kravchenko, Olga Sibireva, Natalia Yudina / Ed. by Alexander Verkhovsky, Xenophobia, Freedom of Conscience and Anti-Extremism in Russia in 2017: A collection of annual reports by the SOVA Center for Information and Analysis, Moscow: SOVA Center, 2018, pp. 20-21, <https://www.sova-center.ru/files/books/pe18-text.pdf>.

⁷⁰ Ibid. Pp. 62-64.



War, such as assessment of the Warsaw Uprising, the Volyn Massacre, and the Katyn Massacre. The St. Petersburg City Court upheld the first instance court decision in January 2018. In SOVA's opinion, this decision "explicitly restricts historical debate and constitutes an unreasonable interference with the right to freedom of speech."⁷¹

⁷¹ Ibid. Pp. 63-64.





5. False accusations of extremism

Among all post-Soviet states, in 2002 the Russian Federation pioneered by adopting a Federal Statute “On counteraction of extremist activity”.⁷² In its current form, the definition of extremist activity/extremism therein comes through a list of activities that includes “public, knowingly false accusation of an individual holding state office of the Russian Federation or state office of a Russian Federation constituent entity of having committed actions mentioned in the present Article and that constitute offences while discharging their official duties”. This provision follows the logic that false accusations against high-ranking officials in serious crimes, such as extremism, can lead to destabilisation. Why particularly such accusations are considered a form of extremist activity, while others are not, remains unclear.

The overall definition of extremism in the Federal Statute was strongly criticized by the European Commission for Democracy through Law (Venice Commission) in its Opinion on the issue. It stated that this specific point “is of a particularly convoluted nature”:

In ordinary words, false accusations of extremism are also considered extremism, but this only applies if the victim of the accusation is a state official, not an ordinary citizen for whom one has to rely on the general provisions that cover slander or defamation. Such an approach is contrary to the established practice of the ECtHR, according to which public officials, acting civil servants and other public officials are required to tolerate more criticism than ordinary people... The latter principle has been reiterated by the Committee of Ministers of the Council of Europe in its Declaration on the Freedom of Political Debate in the Media, according to which “[p]olitical figures should not enjoy greater protection of their reputation and other rights than other individuals, and thus more severe sanctions should not be pronounced under domestic law against the media where the latter criticise political figures”... Although such accusations might not be examples of good practice, they certainly should not be unduly qualified as extremist conduct and should not lead to the application of preventive or corrective measures. This would endanger the democratic debate on the performance of government officials, which is essential for the preservation of a democratic society.⁷³

⁷² See IRIS 2002-8:15/32.

⁷³ European Commission for Democracy through Law (Venice Commission), Opinion on the Federal Law On Combating Extremist Activity of the Russian Federation, adopted by the Venice Commission at its 91st Plenary Session (Venice, 15-16 June 2012), CDL-AD(2012)016, paras. 43-45, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)016-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)016-e).



There is case law that is relevant to this provision. A recent report by SOVA Centre highlighted a particular decision by the district court in St. Petersburg. The court banned five materials from Ukrainian websites (including a video and three articles) containing statements about the involvement of Russian special services in the terrorist attacks that have taken place in Russia since the late 1990s, as well as in the attacks that have taken place on Ukrainian territory since the start of the armed conflict there. The court relied on the above provision on false accusation of extremism of the Federal Statute on counteraction of extremist activity. In the opinion of SOVA Centre, the trial failed to prove convincingly that the authors of the materials or commentators, whose opinion they cited, were putting forward “knowingly false” statements; that is, statements that they themselves had no reason to believe.⁷⁴

⁷⁴ Maria Kravchenko, *Inappropriate Enforcement of Anti-Extremist Legislation in Russia in 2017* / Ed. by Alexander Verkhovsky, 24 April 2018, <https://www.sova-center.ru/en/misuse/reports-analyses/2018/04/d39253/>.



6. Misleading advertising

The Federal Statute “On protection of the rights of consumers” provides for the producers (providers) and sellers of goods and services to provide truthful information about themselves, their goods and services.⁷⁵

The case law on violations of this right in the media is limited and may be illustrated by the decision of the district court in Krasnoyarsk Territory. In a civil lawsuit a consumer demanded from the local TV company “Kansk 5th Channel” to correct “disinformation” [дезинформацию] in the news programme related to the 9-months length of the heating period in the city. In fact, the court found, its length was not determined. It decided to oblige the TV company to provide a correction of the wrong information in the newscast “News from 5th Channel”. The court, though, refused to demand a removal of untrue information from YouTube, as it could not determine whether it was the defendant who posted the video with the newscast therein.⁷⁶

The general requirements for advertising in Russia include a provision that the advertising should be fair and reliable [достоверная], while misleading advertising and unreliable [недостоверная] advertising are not allowed.

The Federal Statute “On Advertising” does not define what is “unreliable advertising”, but it contains a 20-item list of examples of goods (services) and their manufacturers (providers) that may be deemed unreliable, if it contains false information (“information that does not correspond to reality”).⁷⁷ The list in particular points to information on:

- the advantages of the advertised goods in comparison with the goods in circulation produced by other manufacturers and sold by other sellers;
- the characteristics of the goods, including their nature, composition, method and date of manufacture, qualities, etc.;
- the range of available goods, as well as the time period during which and the place where they are available for sale; and

⁷⁵ The Federal Statute “On protection of the rights of consumers” (О защите прав потребителей), 7 February 1992, No. 2300-1, Art. 8-10, http://www.consultant.ru/document/cons_doc_LAW_305/.

⁷⁶ Decision on the case No. 2-2794/2015, 29 July 2015, by the Kansk City Court of the Krasnoyarsk Territory, see <http://xn--90afdbaav0bd1afy6eub5d.xn--p1ai/9806918>.

⁷⁷ Federal Statute “On Advertising” (О рекламе), 13 March 2006, No 38-FZ, Article 5 (“General Requirements Applicable to Advertising”). See Andrei Richter, Russian Federation: New Advertising Statute, IRIS 2006-4:19/34. See the English translation text of the statute on the website of the governmental watchdog Federal Antimonopoly Service, or FAS at:

[http://en.fas.gov.ru/upload/documents/Federal%20Law%20No.%2038-FZ%20on%20Advertising%20\(as%20amended%20in%202014\).pdf](http://en.fas.gov.ru/upload/documents/Federal%20Law%20No.%2038-FZ%20on%20Advertising%20(as%20amended%20in%202014).pdf).



- the price of the goods, payment method, discounts, tariffs and other terms and conditions of their purchase.

The fact of whether the advertising is unreliable is to be established by the Federal Antimonopoly Service (FAS), which may demand cessation of the further dissemination of the advertising and, through the courts, demand from the violator the dissemination of information that “counters” the falsities and provides truthful information (“counter-advertising”).

In 2018 the FAS found 5.389 violations of the advertising law (in 2017 – 5.418). In as many as 983 cases, or 18.24 % of violations, the ban on unreliable advertising was breached (in 2017 – in 11.92 % of the violations).⁷⁸

One of the most common cases of false information in advertising is groundless positioning of a brand, goods or a manufacturer or service provider as ‘the best’ or ‘number one’. Both the FAS and the Russian courts require that, in order to prove superiority, the advertiser should indicate the criteria of comparison and, if necessary, provide documentary confirmation of the claimed fact.⁷⁹

Advertising can be recognised as unreliable also in the cases when false information was about the activity (goods, services) of the competitor.⁸⁰

When putting the Russian legal practice on unreliable advertising in the context of the law in the countries of the European Union, experts conclude that FAS reacts to a wider spectrum of cases. This happens when untruthful advertising is not misleading *per se*, and, for example, provides the commercial name (brand) of the producer, and not the formal name of the legal entity itself.⁸¹

A routine example of the FAS stopping false advertising can be seen in a recent press report published by the FAS.⁸² In Altai Region, a network of hypermarkets Lenta distributed untrue advertising about the scale of its discounts. Lenta organised a distribution of advertising instant messages for customers with loyalty cards of the network, third largest in Russia, with the promise of a 40 % discount on a certain product,

⁷⁸ Results of implementing state control over adherence to the law of the Russian Federation on advertising in 2018 (Итоги осуществления государственного надзора за соблюдением законодательства Российской Федерации о рекламе за 2018 год), report, no date provided, https://fas.gov.ru/pages/rezultati_raboti_v_reklame.

⁷⁹ Yulia Yarnykh, Russian Federation: Advertising Law In Russia, Gowling WLG, 10 June 2014, <http://www.mondaq.com/russianfederation/x/319738/advertising+marketing+branding/Advertising+Law+In+Russia>.

⁸⁰ Resolution of the Supreme Arbitration Court of the Russian Federation (now defunct) “On certain aspects of arbitration courts’ case law on the Federal Statute ‘On advertising” (О некоторых вопросах практики применения арбитражными судами Федерального закона “О рекламе”), No. 58, 8 October 2012, http://arbitr.ru/as/pract/post_plenum/68264.html.

⁸¹ D. Grigoriev, The notion of ‘untruthful advertising’ in Russian law (Понятие ‘недостоверная реклама’ в российском законодательстве) / Otrastli prava, 8 November 2016, <http://xn---7sbbaj7auwnffhk.xn--p1ai/article/21276>.

⁸² Aleksey Andreev, “Information that does not correspond to reality makes advertising inadmissible” (Информация, которая не соответствует действительности, делает рекламу ненадлежащей), 1 February 2019, <https://fas.gov.ru/publications/17448>.



but in reality the discount stated in the promotion was not provided. The message said: “40% for everything to care for face, body, hair, hygiene products”. The regional branch of FAS recognized the advertisement of Lenta improper and violating the requirements of the Federal Statute “On Advertising”.

The complaint on the falsity of information in advertising came from a resident of Barnaul, who was denied a 40 % discount when she bought a shampoo. According to the enclosed voucher, the buyer, when paying for the purchase, received a discount of only 5 % on the loyalty card. During the consideration of the case by the FAS, Lenta explained that the discount was not provided for technical reasons.

Due to the fact that the advertisement contained false information about the scale of discounts, the advertisement of Lenta was considered by the FAS to be improper. It explained in the press report that an advertisement is recognised as unreliable if it contains false information on the cost or price of a product, the procedure for its payment, the amount of discounts, tariffs, and other conditions for purchasing goods. This case of violating the relevant requirements of the Federal Statute “On Advertising” was also filed by the FAS to a court so that it initiates an administrative case and sets a fine, the amount of which for legal entities, according to the Code on Administrative Offenses of the Russian Federation, ranges from 100 000 to 500 000 roubles.⁸⁵

⁸⁵ Ibid.





7. Self-regulation

The Code of Professional Ethics of the Russian Journalist – the approval, acceptance and following of which is an absolute condition for one’s membership in the Russian Union of Journalists – contains the following provisions:

The journalist disseminates and comments only information of whose reliability he is convinced and the source of which is well-known to him. He will do his utmost to avoid damage to any party due to its incompleteness or inaccuracy, deliberate concealment of socially meaningful information or through dissemination of knowingly false information. <...>

The journalist considers malicious distortion of facts, slander, and receipt – under any conditions – of payment for the dissemination of false or for concealment of truthful information as grave professional misdeeds <...>.

When convinced that he has published a false or distorted material, the journalist is obliged to correct his mistake using the same print and/or audiovisual media, which were utilised to publish the material. <...>

The journalist is responsible by his name and reputation for the reliability of all his messages and for the fairness of all his judgements, which are disseminated with his signature, pseudonym or anonymously, yet with his knowledge and approval.⁸⁴

The Public Collegium for Media Complaints (*Общественная коллегия по жалобам на прессу* – PCMC) is the principal national self-regulatory body guided by the standards of the Code of Professional Ethics of the Russian Journalist. Over the past five years it has issued about twenty decisions related to dissemination of disinformation, mostly in national broadcast media. In fact, the PCMC – on the basis of its first decision of such kind, on Rossiya-1 TV – provided the following three characteristics of propaganda-driven disinformation:

- A targeted selection of facts that make for a tight “script”; the active use of misinformation, where useful and possible; the manipulation of facts, statistics, or opinions (including expert opinions); a shift in emphasis where direct misinformation seems impermissible.
- An action taken according to the logic of “the end justifies the means”; the use of means and methods that are mainly incompatible with values such as honesty and truthfulness.

⁸⁴ Code of Professional Ethics of the Russian Journalist (Кодекс профессиональной этики российского журналиста), <https://tinyurl.com/y8xrb62d>.



- The falsification of the appearances of reliability of information, including its sources.⁸⁵

This particular decision of the PCMC was later noted and assessed by a court, the Court of Justice of the European Union (CJEU). It made an important reference to the decision in its judgment on a request to annul sanctions (“restrictive measures”) of the Council of the EU, in so far as those applied to the applicant, the Head of the Russian Federal State new agency “Rossiya Segodnya” (and presenter of Rossiya-1). The restrictive measures were introduced for being a “central figure of the government propaganda supporting the deployment of Russian forces in Ukraine”. In particular, the Court noted that, on 13 February 2014, the PCMC adopted a decision concerning the applicant following a complaint relating to the ‘Vesti nedeli’ (News of the Week) programme that he presents. In that decision, the Court of Justice found, the PCMC considered that the news programme presented the events that took place on Independence Square in Kyiv (Ukraine) “in a manner which was biased and contrary to the journalistic principles of social responsibility, harm minimisation, truth, impartiality and justice, in order to manipulate Russian public opinion through disinformation techniques.”⁸⁶ In those circumstances, said the Court of Justice, “it must be concluded that, by relying on the decision of the [PCMC]... the Council [of the European Union] was entitled to consider that the applicant had engaged in propaganda.”⁸⁷

⁸⁵ “On the complaint of the Commission on Journalists’ Ethics, Ukraine, regarding the programme *Vesti nedeli* of the TV channel Rossiya-1 and its presenter, Dmitry Kiselyov, triggered by the airing of a story “Ukrainian Assembly” (broadcast from 8.12.2013)” (О жалобе Комиссии по журналистской этике (Украина) на программу «Вести недели» (телеканал «Россия-1») и её ведущего Дмитрия Киселёва в связи с выходом в эфир сюжета «Украинское вече» (выпуск от 08.12.2013), Decision of the Public Collegium on Media Complaints, N 98, 13 February 2014, <https://tinyurl.com/y9cupeoh>.

⁸⁶ JUDGMENT OF THE GENERAL COURT (Ninth Chamber) in Case T-262/15, *Dmitrii Konstantinovich Kiselev v Council of the European Union*, 15 June 2017, para 98, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=ecli:ECLI:EU:T:2017:392>.

⁸⁷ *Ibid.*, para 111.



8. Latest developments and conclusion

While the Law on Fake News has not been used in courts so far, it is likely that the first case will arrive soon. According to media reports, a member of the upper chamber of the Parliament filed a complaint to the Prosecutor General's office. The reason was that a national daily, "Moskovskiyi komsomolets", disseminated seemingly false information on the complainant's official appeal to ban yoga classes in detention facilities.⁸⁸

Like elsewhere else in the world, disinformation is becoming a serious issue in the health sphere of Russia, in particular, with anti-vaccine information and biased untrue stories being disseminated through social media. In early April 2019, the first deputy Minister for Health Care of the Russian Federation, in response to an inquiry by the deputy chairman of the State Duma's Committee on Health Protection, reported, that the Ministry had drafted a law to ban the dissemination of such information and introduce administrative liability for public calls to refuse from being vaccinated.⁸⁹

To summarise, most of these restrictions analysed above were relatively recently introduced in the Russian law and are related to the more recent forms of dissemination of disinformation, such as the internet. The related case law so far is scarce (especially if compared with the public debate that accompanied the adoption of the laws), which might point to the educational rather than practical nature of the norms.

This is definitely related to the Russian authorities's concern about the panic or mobilising effect that the dissemination of uncontrolled news and other information could have on the population, by undermining approved views on the nation's most important historical event (victory in the Second World War) or the function of the officials in society.

It seems that disinformation under the legal names of "unreliable information" and "knowingly false information" presents a useful demon that can be easily and speedy banned and blocked wherever it comes in front of the public with the aim to keep the population calm and passive.

⁸⁸ BBC Russian Service, "They started to use the Law on Fake News in Russia. The first was Mizulina (В России начали использовать "закон о фейках". Первой стала Мизулина)", 6 April 2019, <https://www.bbc.com/russian/news-47850601>.

⁸⁹ TASS, "Ministry of Health suggests to punish for dissemination of calls to refuse vaccination" (Минздрав предлагает наказывать за распространение призывов к отказу от прививок), 5 April 2019, <https://tass.ru/obschestvo/6298804>.



Issues of disinformation during election campaigns are regulated rather in the context of the defamation of candidates.⁹⁰

At the same time the current notorious political disinformation in Russian television programmes, both for national and foreign audiences, that reflects the official view on world affairs, as referred in the above-mentioned EU documents and decisions of the PCMC, does not present an issue for the courts. Such political disinformation has been reflected in the decisions of the self-regulation body and scorned by it, though with little if any effect on the media or the public.

⁹⁰ See *Media coverage of elections: the legal framework in Europe*. Cappello Maja (ed.), IRIS Special 2017-1. European Audiovisual Observatory, Strasbourg, 2017. – P. 99-106. <https://rm.coe.int/16807834b2>.

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