Rights in extremis: Russia’s anti-extremism practices from an international perspective
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Executive summary

In this report, ARTICLE 19 and SOVA Center examine the interpretation of various pieces of Russian legislation – in particular on ‘extremism’ and incitement to terrorism – by the Russian judiciary in contravention of the country’s obligations under international human rights standards. This report finds that the relevant legislation fails to comply with international freedom of expression standards and that it is also applied in a restrictive manner, often to quell political dissent, thus making it an instrument of state control and censorship.

The report finds that the Russian authorities employ a very broad concept of ‘extremism’ and use a variety of laws to tackle it. This legislation includes:

- Legislation purportedly aimed at protection of national security;
- Prohibitions on incitement to hatred or violence; and
- A broad range of other speech-related prohibitions, such as blasphemy and memory laws.

This report – without endorsing this conflated understanding of the concept of ‘extremism’ in Russia – analyses the relevant domestic legislation to assess its compliance with international freedom of expression standards. It also examines problematic jurisprudential practices, through several case studies, that further amplify negative aspects of the legislation. These include reliance on scientific expertise as a substitute for the court’s own assessment of the legality of the actions at issue, and formalistic assessment of the impugned acts and evidence, without taking into account the actual danger posed to society. These judicial practices are contrasted with the jurisprudence of the European Court of Human Rights (the European Court) and the practices of national courts in the Council of Europe countries. Furthermore, the report highlights the jurisprudence of the European Court in a number of Russian ‘extremism’ cases (as understood in the Russian context), and the failure of the Russian government to address the practices denounced in these cases.

ARTICLE 19 and SOVA Center urge the Russian government to bring the respective legislation and practices in compliance with the country’s obligations under international human rights standards. We believe that this compliance will also help to achieve the purported aim of the legislation in question: to provide protection against genuine national security threats and to counter incitement to violence and hatred.

Summary of recommendations

- All relevant legislation should be revised to ensure its compliance with international human rights standards. In particular:
  - The definition of extremist activity (in Article 1 of the Federal Law on Combating Extremist Activities, and referred to in Article 280 of the Criminal Code) and terrorist speech-related offences (in the Law on Counteraction to Terrorism and in Article 205.2 of the Criminal Code) should be amended. Only the threat, use, call for, or other explicit support of violence should be criminalised;
  - Narrow the scope of Article 280.1 of the Criminal Code, so that it only pertains to calls to violent separatism;
  - The provisions of Article 282 of the Criminal Code on incitement should be amended. The advocacy of discriminatory hatred, which constitutes incitement to hostility, discrimination, or violence, should be prohibited in line with Articles 19, para 3 and 20, para 2 of the International Covenant on Civil and Political Rights (ICCPR), establishing a high threshold for limitations on free expression (as set out in the Rabat Plan of Action). The prohibition of ‘abasement of dignity’ should be removed from Article 282;
  - Protection of ‘social group’ should be removed from Article 282 of the Criminal Code and Article 20.3.1 of the Code of Administrative Offences;
  - The provision concerning the public display of banned symbols in Article 20.3 of the Code of Administrative Offences should be amended; the intent to propagate violent extremist views should be an essential element of the offence; and
  - The provision concerning rehabilitation of Nazism (Article 354.1 of the Criminal Code) should be amended. Unless another illegal purpose is pursued through the impugned expression (such as incitement to hatred, violence, or discrimination), it should not be criminalised. The prohibition on ‘dissemination of intentionally false information about the activities of the USSR during the Second World War’ should be excluded.
  - The provisions of the Criminal Code, the Code of Administrative Offences, and other legislation that is not compatible with international freedom of expression standards should be abolished entirely, in particular:
    - Article 148, Parts 1 and 2 of the Criminal Code that prohibits ‘insulting the feelings of believers’ and Article 5.26, Part 2 of the Code of Administrative Offences on public desecration of religious objects;
    - The mechanism of banning ‘information materials,’ including the Federal List of Extremist Materials and Article 20.29 of the Code of Administrative Offences, which prohibits distribution of materials included in the list;
Restrictions for people ‘with respect to whom a court decision that has entered into legal force, established that their actions show evidence of extremist activity’ set out in Article 9, Part 3 of the Law On Freedom of Conscience and on Religious Associations, and Article 19 of the Law On Public Associations and Article 15 of the Law On Non-profit Organizations;

Article 4, Part 3-2, para C of the Law On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation (one-year prohibition to run for elected office as a consequence of having been punished under one of the ‘anti-extremist’ articles of the Code of Administrative Offences (Articles 20.3 or 20.29); and

Restrictions on access to banking services imposed on suspects as well as convicted offenders in anti-extremism and anti-terrorism prosecutions, except for those suspected or convicted of the most serious crimes, or crimes specifically related to financial activities.

The Russian judiciary, law enforcement authorities, and public bodies should be provided with comprehensive and regular training on relevant international human rights standards applicable to ‘hate speech,’ ‘terrorism’ and ‘extremism,’ and freedom of expression in general;

The Supreme Court should compile consolidated guidelines on the application of anti-extremism and counterterrorism regulations restricting public statements. These should be detailed and easy-to-use instructions for courts based on the international standards;

In collaboration with experts and civil society, law enforcement authorities should develop investigative guidelines on the prosecution of incitement cases, based on international human rights law; the existing guidelines should be brought in line with the international standards. The government should ensure that all law enforcement authorities are made aware of the guidelines during their trainings and in the course of their work; and

The Russian judiciary should apply domestic law in a manner that complies with Russia’s international human rights obligations. In particular, in incitement to hatred cases, they should apply the six-part test, set out in the Rabat Plan of Action, and the pertinent recommendation of the Supreme Court of the Russian Federation, thus only imposing sanctions that are in line with the gravity of the impugned offences. The judiciary should also make use of scientific experts only when their specialist knowledge is needed to interpret or assess particular evidence, as opposed to having this specialist knowledge substitute the court’s own assessment of the legality of the actions at issue.

Introduction

International human rights standards recognise that terrorism and incitement to violence and hatred constitute a serious threat to human rights, democracy, peace, and social cohesion, thus obliging states to protect their citizens and others from the threat(s) of such acts. However, the efforts of states in this regard must respect the rule of law and international human rights standards. Moreover, states must not misuse provisions against terrorism and incitement to criminalise the legitimate actions of opposition groups, civil society organisations, human rights defenders, and others.

Yet, it is precisely this phenomenon that we see in Russia, i.e. the application of the law far beyond its purpose, often with a view to silencing dissenting opinions, thus rendering it an instrument of state control and censorship.

In Russia, the concept of ‘extremism’ is applied very broadly: it is an umbrella term, which is used to conflate various types of activity.1 These include ideologically motivated violence, incitement to hatred or violence – which states are obliged to prohibit if it reaches above a certain threshold, provided the restrictions comply with international human rights standards – as well as other activities, some of which can be legitimately restricted on the basis of protecting national security. However, it also includes types of expression which must not be restricted under international human rights standards, such as historical debate or blasphemy. The prohibitions on these types of expression are contained in several legislative acts, in particular the Law on Counteraction to Terrorism, the Law on Combating Extremist Activity, the Criminal Code, and the Code of Administrative Offences.

This report examines the problematic implementation of the ‘extremism’ related legislation for its failure to comply with international freedom of expression standards. First, it sets out key international standards in relation to these three categories of restrictions; second, it analyses the relevant domestic legislation; and third, it provides illustrations of the practice through an analysis of a number of case studies that constitute Russian jurisprudence in this field.

ARTICLE 19 and SOVA Center hope that this report will assist the Russian authorities in reviewing the relevant legislation and constructing a clear and positive legal and policy framework so that the right to freedom of expression can be effectively protected in Russia. We also hope that it will advance the implementation of applicable international human rights law in this area, including to increase understanding of the standards laid out in the United Nations (UN) Rabat Plan of Action among members of the judiciary, law enforcement agencies, and other stakeholders, as well as supporting more informed public discussion on these issues in Russia.
Applicable international human rights standards

The right to freedom of expression and information

The right to freedom of expression is protected by Article 19 of the Universal Declaration of Human Rights and given legal force through Article 19 of the ICCPR and Article 10 of the European Convention on Human Rights (the European Convention), as well as other regional treaties.

The scope of the right to freedom of expression is broad. It requires states to guarantee to all people the freedom to seek, receive, or impart information or ideas of any kind, regardless of frontiers, through any media of a person's choice. The UN Human Rights Committee (HR Committee), charged with interpreting the ICCPR, has affirmed that the scope of the right extends to the expression of opinions and ideas that others may find deeply offensive.

The right to freedom of expression is not absolute. A state may, exceptionally, limit the right subject to the condition that the limitations are:

- Provided for by law: any law or regulation must be formulated with sufficient precision to enable individuals to regulate their conduct accordingly;
- In pursuit of a legitimate aim, listed exhaustively as: respect of the rights or reputations of others; or the protection of national security or of public order (ordre public), or of public health or morals;
- Necessary and proportionate in a democratic society, i.e. if a less intrusive measure is capable of achieving the same purpose as a more restrictive one, the least restrictive measure must be applied.

Additionally, Article 20 of the ICCPR sets out a number of specific types of expression which must be prohibited under the ICCPR, namely 'propaganda for war' and 'any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.'

While states are obliged to prohibit this type of expression under the law, restrictions must still be limited to ensure broad restrictions on expression are avoided. At the international level, the Rabat Plan of Action – adopted by experts following a series of consultations convened by the UN Office of the High Commissioner for Human Rights – provides guidance on what constitutes incitement under Article 20, para 2 of the ICCPR.

Terrorism’ and ‘extremism’ and freedom of expression

There is no universally agreed definition of ‘terrorism’ and ‘extremism’ (or ‘violent extremism’) under international law, although international bodies – including the UN Security Council, UN Secretariat, General Assembly, and the UN charter and treaty bodies as well as regional institutions – employ these terms routinely. These terms are often used interchangeably in political and media discourse.

Human rights bodies have repeatedly highlighted the tension between freedom of expression and counterterrorism measures. In particular, General Comment No. 34 clearly provides:

“States parties should ensure that counter-terrorism measures are compatible with Article 19, para 3. Such offences as ‘encouragement of terrorism’ and ‘extremist activity’ as well as offences of ‘praising,’ ‘glorifying,’ or ‘justifying’ terrorism, should be clearly defined to ensure that they do not lead to unnecessary or disproportionate interference with freedom of expression. Excessive restrictions on access to information must also be avoided. The media plays a crucial role in informing the public about acts of terrorism and its capacity to operate should not be unduly restricted. In this regard, journalists should not be penalised for carrying out their legitimate activities.”

Human rights mandate holders have also warned against the misuse of concepts of anti-extremism and antiterrorism prohibitions and stressed that these concepts should not be used as the basis for restricting freedom of expression unless they are defined clearly and narrowly. They also warn that they should never be used to stifle legitimate criticism of the government or in pursuit of a political, or any other, agenda – even where that agenda is different from the objectives of the government.

The UN Special Rapporteur on human rights and counterterrorism has elaborated upon the threshold that laws relating to incitement to terrorism must meet in order to comply with international human rights law, stipulating that laws:

- Must be limited to the incitement of conduct that is truly terrorist in nature;
- Must restrict freedom of expression no more than is necessary for the protection of national security, public order and safety, or public health or morals;
- Must be prescribed by law in precise language, and avoid vague terms such as ‘glorifying’ or ‘promoting’ terrorism;
- Must include an actual (objective) risk that the act incited will be committed;
- Should expressly refer to intent to communicate a message and intent for this message to incite the commission of a terrorist act; and
- Should preserve the application of legal defences or principles leading to the exclusion of criminal liability by referring to ‘unlawful’ incitement to terrorism.
In addition, recommendations developed by international experts and civil society, including the Johannesburg Principles on National Security, Freedom of Expression and Access to Information (Johannesburg Principles) and the Tshwane Principles on National Security and the Right to Information, consider extensively the types of restrictions that can be imposed on freedom of expression for the purposes of national security. According to the Johannesburg Principles, ‘incitement to terrorism’ offences will only be considered to be necessary in a democratic society if they are constructed and construed narrowly. By contrast, expression that only transmits information from or about an organisation that a government has declared threatens national security must not be restricted. The UN Secretary-General has supported this interpretation, stating that ‘laws should only allow for the criminal prosecution of direct incitement to terrorism, that is, speech that directly encourages the commission of a crime, is intended to result in criminal action and is likely to result in criminal action.

‘Hate speech’ and incitement to hatred

The term ‘hate speech’ also has no universally agreed upon definition under international human rights law: it is generally understood as an expression of hatred towards an individual or group on the basis of a protected characteristic. The concept can be divided into three categories, distinguished by the response required from states, under international human rights law:

- Severe forms of ‘hate speech’ that international law requires states to prohibit, including through criminal, civil, and administrative measures, under both international criminal law and Article 20, para 2 of the ICCPR;

- Other forms of ‘hate speech’ that states may prohibit to protect the rights of others under Article 19, para 3 of the ICCPR, such as discriminatory or bias-motivated threats or harassment;

- ‘Hate speech’ that is lawful but nevertheless raises concerns in terms of intolerance and discrimination, meriting a critical response by the state but that should nonetheless be protected from restriction under Article 19, para 3 of the ICCPR.

As noted above, the Rabat Plan of Action advances authoritative conclusions and recommendations for the implementation of Article 20, para 2 of ICCPR. It states that prohibitions on incitement must be focused on advocacy of discriminatory hatred targeting a protected group. ARTICLE 19 has long argued for the characteristics of a protected group to be interpreted on a broad basis and that the speaker’s intention and capability of inciting action by the audience against the target group must be considered.
Six-part test incorporated to the Rabat Plan of Action to assess the severity of hatred

THE TEST WAS PROPOSED AFTER A SERIES OF EXPERT MEETINGS IN RABAT (MOROCCO) IN 2012

1. Context of the expression
   - the existence of conflict in society
   - the existence and history of institutionalised discrimination
   - the legal framework
   - the media landscape
   - the political landscape

2. Speaker
   - the position of the speaker
   - their authority or influence over the audience
   - the relationship of the audience to the speaker
   - the degree of vulnerability and fear among the various communities
   - level of respect or obedience of authority voices

3. Intent
   - intent to engage in advocacy to hatred
   - intent to target a group on the basis of a protected characteristic
   - knowledge of the consequences of their action

4. Content of the expression
   - form and style
   - direct or indirect calls for discrimination, hostility or violence
   - nature of the arguments deployed
   - balance between arguments audience’s understanding

5. Extent and magnitude of the expression
   - public nature of the expression
   - the means of the expression
   - intensity or magnitude of the expression in terms of its frequency or volume
   - media freedom, in compliance with international standards

6. Likelihood of harm occurring including its imminence
   - reasonable probability of discrimination, hostility or violence occurring as a direct consequence of the expression
   - actual occurrence of harm may be considered an aggravating circumstance in criminal cases

In order to determine this, the Rabat Plan of Action sets out a six-part test to assess incitement cases:

- Context: consider the social, political, or economic context of the speech, particularly any history of conflict or persecution of the protected group in question;
- Identity of the speaker: the position of authority or influence the speaker holds, such as whether they are a public official or religious leader;
- Intent: whether the speaker intended to engage in advocating for discriminatory hatred, namely whether they intended to target a protected group on the basis of their protected characteristics, and whether they knew that their expression would likely incite the audience to discrimination, hostility, or violence;
- Content of the expression: what was said, including consideration of the form and style of the expression and what the audience understood from this;
- Extent and magnitude of the expression: the public nature of the expression and the means of communicating it, as well as its intensity or magnitude in terms of its frequency or amount; and
- Likelihood of harm occurring, including its imminence: there should be a reasonable probability of discrimination, hostility, or violence occurring as a direct result of the expression.

Other forms of ‘hate speech’ or discriminatory expression that do not meet the threshold of Article 20, para 2, according to these criteria, may still be prohibited. However, any such prohibition must pass the three-part test in order to be considered as compliant with international standards on freedom of expression.

Debates on historical issues

A key argument in defence of the right to freedom of expression is based on the importance of open debate to the discovery of truth, including about historical figures and events. Simultaneously, however, historical ‘truth’ is not equivalent to mathematical certainty, and is often a contested matter that also involves expressions of beliefs or opinions. State-imposed restrictions on such matters make an ‘assumption of infallibility’ or of state-ownership of the truth, and stifle society’s ability to seek and discuss its history. As academia and science have their own methods in place to establish truth, there is no need for state control, except the restrictions applied in the specific cases listed below. The European Court has recognised this on several occasions: it has established that debates on historical issues justify higher protection of freedom of expression as they relate to matters of general interest, and recognised the importance in a democratic society of historical debate.
Nevertheless, under certain conditions, human rights law allows for restrictions on historical debate. This includes intentional misrepresentation of historical fact and denials of established historical facts, such as the Holocaust. The HR Committee\(^{26}\) and the European Court\(^{27}\) have taken similar attitudes towards Holocaust denial. They regard the suffering of Jewish people during World War II as a universally recognised historical reality and have found that denying these crimes against humanity constitutes a serious threat to public order. Accordingly, states are given a wider margin of appreciation with respect to restricting Holocaust denial and revisionism,\(^{28}\) or such speech is considered to fall outside the scope of the right to freedom of expression altogether.\(^{29}\)

The assessment of restrictions on historical debate is quite case-specific and depends on the interplay between the nature and potential effects of such statements and the context in which they were made. The European Court has also considered a number of factors when examining cases related to historical debates, including the manner in which the impugned statements were phrased or could be construed,\(^{30}\) the specific interest or right affected by the statements,\(^{31}\) the impact of the statement,\(^{32}\) or the time passed since the historical event to which the impugned statements relate.\(^{33}\)

**Blasphemy/defamation of religion**

Human rights law protects the rights of individual persons and, in some instances, of groups and persons but not of abstract entities, such as values, religions, beliefs, ideas, or symbols (blasphemy or defamation of religion). As noted above, Article 19, para 3 of the ICCPR and Article 10 of the European Convention only allow restrictions to be placed on freedom of expression when necessary ‘for the respect of the rights and reputations of others, for the protection of national security or public order, or of public health or morals,’ which does not include the protection of values, beliefs, or religions as a legitimate aim or to shield the feelings of believers from offence or criticism.

In General Comment No. 34, the HR Committee stated that:

> Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant.\(^{34}\)

Importantly, this provision reflects not only the HR Committee’s earlier jurisprudence but also reinforces the position of other UN human rights bodies, notably the UN Human Rights Council (HRC) that dropped any reference to ‘defamation of religions’ since the adoption of resolution 16/18 of April 2011.\(^{35}\)

Other international human rights bodies have repeatedly pointed to the incompatibility of the protection of symbols, religions, and beliefs with international law.\(^{36}\) Similar conclusions were reached in the Council of Europe recommendations.\(^{37}\) Notably, Council of Europe Member States such as Denmark, the United Kingdom, Iceland, Norway, and Malta have all repealed criminal prohibitions on blasphemy.

Further, the Rabat Plan of Action recommended that:

> States that have blasphemy laws should repeal them, as such laws have a stifling impact on the enjoyment of freedom of religion or belief, and healthy dialogue and debate about religion. They were deemed ‘counterproductive, since they may result in de facto censure of all inter-religious or belief and intra-religious or belief dialogue, debate and criticism’… In addition, many blasphemy laws afford different levels of protection to different religions and have often proved to be applied in a discriminatory manner… Moreover, the right to freedom of religion … does not include the right to have a religion or belief that is free from criticism or ridicule\(^{38}\).
Russian legal framework on ‘extremism’

This chapter analyses the relevant Russian ‘anti-extremism’ legislation (as understood in the Russian context) for its compliance with international freedom of expression standards.

As noted earlier, there is a confusing and, at times, convoluted understanding of what constitutes ‘extremism’ in Russia, and some legal provisions are applied in an inconsistent manner by the law enforcement and judiciary. For example, the provisions on incitement to hatred are applied to public statements purportedly undermining national security and vice versa. However, in this report, these provisions are analysed only once, under appropriate subheadings.

Constitutional protection of the right to freedom of expression

The 1993 Constitution of the Russian Federation recognises the primacy of international law; thus, all the norms of international law, described above, are directly applicable in the country. The Constitution also enshrines the right to freedom of expression. Article 29 states that:

1. Everyone shall be guaranteed the freedom of ideas and speech.
2. The propaganda or agitation instigating social, racial, national or religious hatred and strife shall not be allowed. The propaganda of social, racial, national, religious or linguistic supremacy shall be banned.

Furthermore, Article 13 of the Constitution prohibits instituting any state-sponsored or mandatory ideology as well as ‘the creation and activities of public associations whose aims and actions are aimed at a forced change of the fundamental principles of the constitutional system and at violating the integrity of the Russian Federation, at undermining its security, at setting up armed units, and at instigating social, racial, national and religious strife shall be prohibited.’ Hence, while the state cannot impose its ideology, it can suppress activities directed against the fundamentals of the Constitution.

Article 55 (3) of the Constitution allows limitations on human and civil rights and liberties ‘only to the extent required for the protection of the fundamentals of the constitutional system, morality, health, rights and lawful interests of other persons, for ensuring the defence of the country and the security of the state.’

The restrictions on freedom of expression, contained in both Article 29 and Article 13, go beyond the scope of permissible restrictions as pronounced in the international freedom of expression standards:

- First, the terms ‘supremacy’ and ‘strife’ are not further defined anywhere in the Russian legislation; and
- Second, Article 13 can be interpreted as prohibiting any kind of ‘separatism’ (without any violent activities involved) and this interpretation is also reflected in subsequent secondary legislation. Similarly, ‘undermining the security of the state’ or ‘instigating strife’ are also prohibited, irrelevant of their connection with violence or calls to such.

Prohibitions of terrorism and extremism

The provisions pertaining to the criminalisation of speech deeming to incite ‘terrorism’ or ‘extremist activity’ are contained in several legislative acts. These include but are not limited to:

- The Law on Counteraction of Terrorism, which prohibits, inter alia, ‘promotion of terrorist ideas, dissemination of materials or information calling for terrorist activities, substantiating or justifying the necessity of such activities;’
- The Law on Combating Extremist Activity provides a list of actions qualified as ‘extremist’ as well as definitions of ‘extremist organisation,’ ‘extremist materials,’ and ‘the symbols of an extremist organization.’ ‘Extremist activity’ comprises a number of actions, such as terrorism, forcible change of the foundations of the constitutional system, violation of integrity of the Russian Federation, violent obstruction of lawful activities of the authorities, forcible prevention of citizens’ electoral rights, and hate crimes. Furthermore, it also includes vaguely defined speech offences, such as, inter alia, ‘public justification of terrorism and other terrorist activity,’ ‘stirring up of social, racial, ethnic or religious discord,’ ‘propaganda of the exceptional nature, superiority or deficiency of persons on the basis of their social, racial, ethnic, religious or linguistic affiliation or attitude to religion,’ false accusations against officials of having committed extremist actions, ‘propaganda and public show of Nazi emblems or symbols or of emblems or symbols similar to Nazi emblems or symbols to the point of confusion between the two,’ ‘public show of attributes or symbols of extremist organizations,’ ‘mass dissemination of knowingly extremist material, and likewise the production or storage thereof with the aim of mass dissemination,’ as well as public calls to extremist activity, i.e. to any of the actions mentioned above. Thus, extremist activity is framed very broadly in the law. Some of the acts defined as ‘extremist’ constitute offences under the Criminal Code, while others are covered by provisions in the Code of Administrative Offences.

The Criminal Code includes a number of related offences, such as:

- Public calls for terrorist activity and public justification or propaganda of terrorism (Article 205.2): According to the explanatory note to Article 205.2, the term ‘public justification of terrorism’ is understood as ‘a public statement on the recognition of the ideology or practices of terrorism as correct, and in need of support and a following.’
and propaganda of terrorism as ‘distribution of materials and/or information aimed at forming the ideology of terrorism, convincing of its attractiveness or creating the sense of permissibility with respect to terrorist activities.’ The concept of ‘terrorist ideology’ has not been defined in the Criminal Code or in other legislation;

- **Public calls for extremist activity** (Article 280): The ‘extremist activity’ is the wide range of actions defined in the Law on Combating Extremist Activity (see above), some of which pertain to national security. Inciting such activity falls under Article 280. These provisions are sometimes used by law enforcement authorities against criticism of authorities, alleging this constitutes calls for ‘forcible change of the foundations of the constitutional system’ or violence against officials; while no distinction is made between actual calls for violence and abstract calls for revolution or the change of the system. These provisions are also used against xenophobic statements, mainly online, combined with calls to violence.

- **Public calls for violating the territorial integrity** (Article 280.1): This provision is applied to so-called ‘separatist propaganda.’ Pursuant to the clarification issued by the Supreme Court, the provision also applies when the impugned expression does not otherwise include calls to ‘illegal actions.’

The Code of Administrative Offences contains two related offences:

- **Distribution of extremist materials**: The provisions of Article 20.29 prohibit ‘production and mass distribution of extremist materials or their storage for the purpose of distribution.’ If any informational material (book, leaflet, audio, video, image, online posting, etc.) is found to be ‘extremist,’ as defined in the Law on Combating Extremist Activity, and banned by a court, it is included in the Federal List of Extremist Materials, a blacklist maintained by the Ministry of Justice. The list contains a wide range of materials, including those materials inciting terrorism or violence, xenophobic videos as well as peaceful opposition materials or even crude jokes. Theoretically, every person must be familiar with the contents of the list and avoid distribution of the materials that are on it. Currently, the list exceeds 4,700 items. Most are described in an overly vague/ambiguous manner, making compliance or enforcement practically impossible for individuals and for law enforcement, respectively.

- **Abuse of freedom of mass information**: The provisions of Article 13.15 prohibit, inter alia:

  - Distribution of information containing manuals on manufacturing improvised explosives and explosive devices, when this act does not otherwise constitute a criminal offence;
  
  - Production and distribution of mass media output containing public calls to terrorist activity as well as materials that justify terrorism or incitement to extremist activity or justify the need for such activity except for cases liable under Articles 20.3, 20.3.1, and 20.29 of the Code of Administrative Offences (this special provision concerns only legal entities, not individuals); and

  - ‘Distribution of information about a public association or other organisation included into a published list of social and religious associations banned by the court under the Law on Combating Extremism without mentioning the ban.’ This provision is frequently applied against mass media outlets that omitted the required disclaimer in publications that otherwise do not appear to promote the ideology of the proscribed organisations.

**ARTICLE 19** and SOVA Center find that these provisions fall short of international freedom of expression standards that require that restrictions on freedom of expression be narrowly drafted and proportionate to the aim pursued. Our concerns are two-fold:

- First, the legislation uses vague and overbroad terms that do not meet the criterion of legality required by international freedom of expression standards. This allows the misuse of the provisions by law enforcement agencies to prevent criticism of authorities, alleging that this criticism constitutes calls for ‘forcible change of the foundations of the constitutional system’ or violence against officials; or for prosecuting critics of the annexation of Crimea and against activists of nationalist movements in different Russian republics. Often, no distinction is made between actual calls for violence and abstract calls for revolution or for a change of the system.

- Second, many acts or types of behaviour that, while unlawful, simply do not reach the level at which the extraordinarily intrusive measures provided under antiterrorism criminal legislation can justifiably be used. The definition extends to forms of behaviour that would warrant a public order response, not an antiterrorism response. For example, some statements online would fall within the definition of terrorism but we question whether the use of draconian antiterrorist powers against a post that might have limited reach would be proportionate, bearing in mind other options available to deal with such situations. It is significant to note that the HR Committee regularly criticises states for the broad scope of their antiterrorism laws.

We suggest that the provisions on terrorism and extremism activities are similarly overbroad and should be replaced with more precise definitions. Only the direct incitement of terrorist and other violence should be prohibited.
Prohibitions on incitement to hatred

Criminal Code

The Criminal Code prohibits incitement to hatred or enmity as follows:

- Article 282, Part 1 of the Criminal Code prohibits ‘actions aimed at the incitement of hatred or enmity, as well as abasement of dignity of a person or a group of persons on the basis of sex, race, nationality, language, origin, attitude to religion, as well as affiliation to any social group, if these acts have been committed in public or with the use of mass media or information and telecommunication networks including the Internet;’

- Article 282, Part 2 states that use of violence, or the threat of it, the use of official position and committing these offences in an organised group are aggravating circumstances.

The majority of cases concern web postings provisions and often concern ethno-xenophobic and militant jihadist propaganda. The vast majority of criminal convictions for ‘extremism’ have been handed down under these provisions and often concern ethno-xenophobic and militant jihadist propaganda. The vast majority of cases concern web postings (in particular the sharing of xenophobic videos, songs, and memes). By the same token, provisions of Article 280 of the Criminal Code (prohibiting public calls for extremist activity, see above) are used against xenophobic statements, mainly online, combined with calls to violence. The provisions of Article 282 are also purportedly applied to protect national security – by proxy of protecting authorities as a social group from manifestations of hatred.

There are several problems with these provisions in terms of their compliance with international human rights standards, in particular:

- Key terms of the provisions are not defined in the Criminal Code. Accordingly, it is not immediately evident from the text of the Criminal Code that it sets a high threshold, with hatred and enmity only referring to intense and irrational emotions of opprobrium, enmity, and detestation towards the target group; and that incitement exclusively refers to statements that create an imminent risk of discrimination, hostility, or violence against persons belonging to those groups;

- Prohibited conduct, in the provisions of the Criminal Code, goes beyond the provisions of Article 20, para 2 of the ICCPR. Prohibited action includes ‘the incitement of hatred or enmity, as well as abasement of dignity.’ There is no reference to incitement to discrimination and violence; although ‘enmity’ in Russian is a synonym of ‘hostility.’

- The list of protected grounds in the provisions is exhaustive, covering sex, race, nationality, language, origin, attitude to religion, as well as affiliation to any social group. Other grounds – such as age, sexual orientation, gender identity, and disability, among others – are excluded from protection. We note that Article 20, para 2 of the ICCPR, which only prohibits incitement on grounds of national, racial, or religious hatred, may not be exhaustive. ARTICLE 19 has argued that states’ obligations to protect the right to equality more broadly, with an open-ended list of protected characteristics, supports an expansive interpretation of the limited protected characteristics explicitly referred to in Article 20, para 2 of the ICCPR, to provide equal protection to other individuals and groups who may similarly be targeted, with discrimination or violence, on the basis of other recognised protected characteristics.

- Simultaneously, we acknowledge that the provisions of Article 282 of the Criminal Code on ‘social group’ – included within the protected grounds – is construed to comprise state officials or law enforcement authorities in Russia. This is despite specific instructions to the contrary by the Supreme Court, which dovetails with the European Court’s jurisprudence by setting a higher threshold for criminalising speech targeting authorities compared to ordinary individuals. We note that the obligation under Article 20, para 2 of the ICCPR to prohibit incitement does not recognise ‘social group’ or ‘class’ as characteristics requiring specific protection by states. While the protected grounds of national, racial, or religious hatred may not be exhaustive, as noted above, the list of protected characteristics should be considered in light of the right to non-discrimination as provided under Article 2, para 2 and Article 26 of the ICCPR. Although both have been interpreted expansively to include characteristics such as sexual orientation, gender identity, and disability, the criteria for differentiation should be objectively justified and reasonable. Belonging to a particular social group or class is not an objectively justifiable and reasonable criterion. Unlike nationality, disability, or ethnic origin, for example, ‘social group’ and ‘class’ are very vague categories, and – as is the case in Russia – the authorities can exploit them to classify criticism of state authorities as ‘incitement.’

Russian criminal law does not outline a specific test for assessing incitement cases. However, in September 2018, the plenary meeting of the Supreme Court of the Russian Federation adopted a resolution on the use of anti-extremist articles of the Criminal Code, constituting authoritative guidance on how to interpret these provisions, mostly Article 282 of the Criminal Code. Importantly, the resolution:

- Stressed that whenever these articles are applied, fundamental freedoms may only be restricted as a last resort, in accordance with the Constitution and international law; and

- Clarified the process for evaluating the context of a public statement in relation to the motive of a defendant or the assessment of whether a statement constitutes a danger to society. The Supreme Court recommends to take into account the form, content, and number of published materials in question (including those previously recognised as extremist), the context of the publication, the presence of any commentary describing the publisher’s attitude toward the material, the entire content of the defendant’s online presence, and any personal data or information, the size and composition of the post’s audience, and readers’ reactions to the publication.

ARTICLE 19 and SOVA Center welcome the Supreme Court’s affirmation of the six-part test set out in the Rabat Plan of Action. However, it remains to be seen whether this will improve the practice of the lower courts: in the past, the latter have largely ignored the guidance of the Supreme Court concerning extremism cases.
Furthermore, in January 2019, an amendment came into force that partially changed the qualification of the impugned behaviour, from a criminal offence to an administrative offence. Using the same language as Article 282, Part 1 of the Criminal Code, new Article 20.3.1 of the Code of Administrative Offences now applies to this behaviour. Only if a person subsequently re-offends within 12 months, Article 282, Part 1 continues to apply.

Prior to the Supreme Court’s resolution of September 2018, Russian courts did not apply the six-part threshold test contained in the Rabat Plan of Action. After the resolution was issued, those charged under Article 282, as well as those convicted whose criminal sentence had not yet expired, got an opportunity to seek the retrial of their cases. As of December 2018, several of the previously instigated cases were actually dismissed.63 These cases should be distinguished from those that have been terminated since January 2019 as a result of decriminalisation under Article 282. However, it remains to be seen whether the Supreme Court’s guidance on the analysis of content and context will have a positive effect on the lower courts’ jurisprudence.

### Code of Administrative Offences

The Code of Administrative Offences also prohibits incitement to hatred or enmity (Article 20.3.1). As noted above, in January 2019, a new provision of the Code of Administrative Offences entered into force prohibiting incitement of hatred, using the same language and concerning the same impugned behaviour as Article 282, Part 1 of the Criminal Code, but entailing milder punishment. An individual meanwhile remains subject to liability under the Criminal Code provision when s/he is a repeat offender who has been convicted under Article 20.3.1 of the Code of Administrative Offences within the past 12 months.64

Additionally, the Code of Administrative Offences also bans public display of banned symbols. Article 20.3 prohibits ‘propaganda or public display of Nazi paraphernalia or symbols, or paraphernalia or symbols of extremist organizations, or other paraphernalia or symbols, propaganda or public display of which is banned by federal laws.’ These provisions have been mainly applied against displaying swastikas or other symbols of organisations banned as ‘extremist.’ The law prohibits any display of banned symbols, while the intent or context are not assessed. For example, some web users have been convicted for posting historical photos with Nazi symbols. In 2017, over 1,600 people were convicted under Article 20.3.65 In December 2018, a bill partially limiting the scope of Article 20.3 of the Code was introduced in the Russian Parliament;66 the proposal is still pending.

Furthermore, provisions of Article 20.29 of the Code of Administrative Offences (prohibiting ‘mass distribution of extremist materials’) is used in cases of banned xenophobic videos, songs, images, and texts posted online (some of them explicitly call for racist violence, others are intolerant jokes). It has been also used to prosecute persons who belong to religious groups of which the state does not approve. At times, entire denominations or religious groups have been banned on the basis of distributing religious materials deemed as extremist.67 The wide range of banned content means that it is impossible to identify what material is likely to be banned as extremist and what is not.

### Criminal Code provisions aimed at "extremist" speech

<table>
<thead>
<tr>
<th>ARTICLE</th>
<th>FINE</th>
<th>IMPRISONMENT</th>
<th>OTHER PUNISHMENTS</th>
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<tr>
<td>148 part 1 and 2</td>
<td>Public disrespect for society with the purpose to insult religious feelings of believers</td>
<td>Up to 500,000 rubles or up to 3 years’ income</td>
<td>Up to 3 years</td>
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<tr>
<td>205.2</td>
<td>Public calls for terrorist activity and public justification or propaganda of terrorism</td>
<td>100,000 – 1,000,000 rubles or up to 5 years’ income</td>
<td>2 to 7 years</td>
</tr>
<tr>
<td>354.1</td>
<td>Rehabilitation of Nazism</td>
<td>Up to 800,000 rubles or up to 3 years’ income</td>
<td>Up to 5 years</td>
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<tr>
<td>280</td>
<td>Public calls for extremist activity</td>
<td>100,000 – 300,000 rubles or up to 1 to 2 years’ income</td>
<td>Arrest for 4 to 6 months or prison term of up to 5 years</td>
</tr>
<tr>
<td>280.1</td>
<td>Public calls for violating the territorial integrity of the Russian Federation</td>
<td>100,000 – 300,000 rubles or up to 1 to 2 years’ income</td>
<td>Arrest for 4 to 6 months or prison term of up to 5 years</td>
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<tr>
<td>282</td>
<td>Incitement of hatred or enmity as well as abasement of dignity</td>
<td>300,000 – 600,000 rubles or up to 2 to 3 years’ income</td>
<td>2 to 6 years</td>
</tr>
</tbody>
</table>
Equally, ARTICLE 19 and SOVA Center find that the provisions fall short of international human rights standards that protect freedom of expression. In particular:

- The new Article 20.3.1 of the Code of Administrative Offences uses the same language as Article 282 of the Criminal Code and does not comply with relevant standards for the same reasons as outlined above;
- The relevant provisions of the Code of Administrative Offences do not explicitly require consideration of the intent; and
- Regarding the prohibition of the public display of banned symbols in Article 20.3, the problem is that there is no consideration as to whether the intention in displaying these symbols was to incite violence, discrimination, or hostility. This allows for the imposition of restrictions without further consideration of the context and in the absence of any safeguards for the protection of freedom of expression. The legislation does not provide any exceptions or defences; for example, if the symbols are displayed in the context of promoting debate on ethnic issues, about historical events, or making contributions to public debate.

## Administrative Code provisions aimed at “extremist” speech

<table>
<thead>
<tr>
<th>ARTICLE</th>
<th>TARGET</th>
<th>FINE</th>
<th>IMPRISONMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 20.29</td>
<td>Individuals</td>
<td>1,000 – 3,000 rubles</td>
<td>Arrest for 15 days</td>
</tr>
<tr>
<td>Production and distribution of extremist materials</td>
<td>Legal entities</td>
<td>100,000 – 1,000,000 rubles</td>
<td>Suspension of coercions for up to 90 days</td>
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<tr>
<td>Article 20.3</td>
<td>Individuals</td>
<td>1,000 – 2,500 rubles</td>
<td>Arrest for 15 days</td>
</tr>
<tr>
<td>Propaganda or public demonstration of Nazi paraphernalia or symbols, or paraphernalia or symbols of extremist organizations</td>
<td>Legal entities</td>
<td>10,000 – 100,000 rubles</td>
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<tr>
<td>Article 20.3.1</td>
<td>Individuals</td>
<td>10,000 – 25,000 rubles</td>
<td>Up to 100 hours of Community service, arrest for 15 days</td>
</tr>
<tr>
<td>Incitement of hatred or enmity as well as abasement of dignity</td>
<td>Legal entities</td>
<td>250,000 – 500,000 rubles</td>
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</table>

### Defamation of religion/blasphemy

The Russian legislation contains several prohibitions that fall within the concept of ‘defamation of religion/blasphemy:

- **Insulting feelings of believers:** Article 148, Parts 1 and 2 of the Criminal Code criminalises ‘expressing obvious disrespect for society and committed in order to insult religious feelings of believers.’ Article 148, Part 1 has most frequently been applied to online statements critical of religion (almost exclusively Orthodox Christianity), for example, atheist memes.

- **Desecration of religious objects:** Article 5.26, Part 2 of the Code of Administrative Offences penalises ‘desecration’ of religious literature, symbols, emblems, and objects of worship. It has also been used to punish those who share atheist images online (even though the offenders did not use real objects of worship).

ARTICLE 19 and SOVA Center note that repeal of defamation of religion/blasphemy laws is recommended in the Rabat Plan of Action, and strongly supported by the HR Committee in its General Comment No. 34, and has been similarly recommended by several UN special procedures and in European and other regional standards. Together, these standards put forward several arguments supporting the repeal of defamation of religion/blasphemy laws under international human rights law, making it clear that these laws fall short of each of the requirements of the three-part test set out in Article 19, para 3 of the ICCPR. The prohibitions in the provisions of the Russian legislation cited above are therefore:

- Not provided for by law, as they employ terminology that is either vague or so subjective as to empower an arbitrary or abusive interpretation;
- Not in pursuit of a legitimate aim, as international human rights law distinguishes between the protection of ideas or beliefs themselves, and the protection of the rights of people on the basis of their religion or belief. The aim remains illegitimate even in the case that the expression is offensive to those adhering to the religion or belief.
- Not necessary in a democratic society, in particular as it may be abused to prevent and punish the expression of minority or controversial views, as is indeed the case in Russia. This includes inter- and intra-religious dialogue, but also commentary on religious doctrine and tenets of faith. It is also susceptible to discriminatory application, as it ordinarily privileges the religion or belief of a dominant group against those held by minority or marginalized religious or belief communities.
**Other provisions**

In relation to propaganda activities, provisions on extremist and terrorist groups should also be mentioned here. Collective distribution of inflammatory statements or materials may entail sanctions under Article 282.1 (organising activities of an extremist community or participation in such a community) and distribution of materials or promoting the ideology of banned organisations may result in prosecution under Criminal Code Articles 282.2 and 205.5 – which penalise managing activities of organisations banned as extremist or terrorist, or participation in them. While Articles 282.1 and 282.2 imply punishment of up to ten years of imprisonment, conviction under Article 205.5 can lead to the imposition of a life sentence.

Additionally, pursuant to the 2013 Law, Russian banks have to limit the operations of individuals suspected of, charged with, or sentenced for involvement in extremist activity or terrorism to the withdrawal of 10,000 roubles (about 130 euro) per month. For this purpose, individuals are added to the so-called Rosfinmonitoring List; however, the procedure for listing or de-listing an individual is arbitrary and non-transparent.

Offenders may also face certain limitations on civil rights, such as prohibition to work with minors, the right to establish or to participate in non-profit and religious organisations, and to manage mass media. Those who acquired Russian citizenship in ways other than by birth can be deprived of their citizenship (if convicted under Article 205.2, Part 2 of the Criminal Code) or lose their right to stand in elections for a year (if they are found guilty under Articles 20.3 or 20.29 of the Code of Administrative Offences).}

**Historical debates and the rehabilitation of Nazism**

The Criminal Code also includes the offence of the rehabilitation of Nazism (Article 354.1). It prohibits the ‘denial of facts, established by the verdict of the International Military Tribunal for the trial and punishment of the major war criminals of the European Axis countries’ and ‘approval of the crimes, specified by the judgment.’ Furthermore, the article penalises ‘distribution of false information on the activities of the Soviet Union during World War II’ and ‘distribution of information expressing obvious disrespect to society with regard to the days of military glory and the memorable dates of Russia associated with defending the Fatherland and desecration of symbols of Russia’s military glory.’

Additionally, the Code of Administrative Offences is also used in the context of preventing the rehabilitation of Nazism:

- **Abuse of Freedom of Mass Information:** Article 13.15, Part 4 provides for fines against legal entities for public distribution of information ‘expressing obvious disrespect to society with regard to the days of military glory and the memorable dates of Russia associated with defending the Fatherland and desecration of symbols of Russia’s military glory,’ including via mass media or the Internet;

- **Mass distribution of extremist materials:** Under Article 20.29, and pursuant to the Law on Combating Extremist Activity, any writings by Nazi and fascist leaders such as Hitler or Mussolini are inherently classified as extremist materials.

ARTICLE 19 and SOVA Center reiterate that legislation that criminalises or sanctions expression challenging historical facts and an official version of history concerning the crimes committed during World War II is fundamentally incompatible with Russia’s international legal obligations under Articles 19 and 20 of the ICCPR. Hence, unless another illegal purpose is pursued through these impugned acts (such as incitement to hatred or violence), the legislation does not pursue a legitimate aim in imposing restrictions on freedom of expression. The legislation also uses vague wording and fails to require that any interference with the freedom to seek historical truth should be proportionate to the value or the interest protected by freedom of expression guarantees.
**Enforcement: Domestic courts’ practices from an international perspective**

This chapter documents the problematic practice of the Russian judiciary in implementing an ‘anti-extremism’ legal framework, including the subsequent review of some of the domestic jurisprudence of the European Court. Where relevant, the chapter also offers examples of how similar issues were handled by courts in other Council of Europe countries.

**Recent jurisprudence of the European Court on the application of Russian ‘anti-extremism’ legislation**

The European Court has communicated to the Russian government several dozen cases concerning the application of ‘anti-extremism’ legislation. At the same time as the release of this report, the European Court has rendered decisions in five cases. In each case, the Court analysed, in detail, whether the interference with the right to freedom of expression had been necessary in a democratic society.

**Dmitrievskiy v Russia**

This case concerned Stanislav Dmitriyevskiy – a human rights activist, executive director of the Russian-Chechen Friendship Society, and the editor-in-chief of Pravo-Zashchita newspaper – who received a suspended sentence of two years’ imprisonment under provisions of incitement to hatred (Article 282, Part 2, para b of the Criminal Code) for publishing two articles in 2006. The articles, written by two Chechen separatist leaders, blamed the Russian authorities for the on-going conflict in the Chechen Republic.

In its decision, the European Court recognised the ‘very sensitive nature of the debate given the difficult situation prevailing in the Chechen Republic at the time,’ but nevertheless confirmed that the ‘outlaw’ status of the authors of the articles was in itself not sufficient to justify an interference with the right to freedom of expression. It found that the views expressed in the articles did not constitute an incitement to violence or instigation of ‘hatred or intolerance liable to result in any violence.’ In particular, the European Court found that the domestic courts’ decisions were ‘profoundly deficient’ for three main reasons:

- The domestic courts failed to base their decision on an assessment of all relevant facts and to provide ‘relevant and sufficient’ reasons for the conviction, but rather, simply endorsed the linguistic expert’s reports. Thus, the legal finding as to the presence in the impugned statements of the elements of the crime was in fact made by the linguistic expert, when it is the case that all legal matters must be resolved exclusively by the courts;
- By not providing reasons for their decisions and by summarily dismissing all of Dmitriyevskiy’s arguments in his defence, the domestic courts stripped him of the procedural protection to which he was entitled by virtue of his right to freedom of expression; and
- The conviction and the severe sanction ‘were capable of producing a chilling effect on the exercise of journalistic freedom of expression in Russia and dissuading the press from openly discussing matters of public concern.’

These findings led the European Court to conclude that the domestic authorities overstepped their margin of appreciation vis-à-vis restrictions on debates on matters of public interest: Dmitriyevskiy’s conviction did not meet a ‘pressing social need’ and was disproportionate to the legitimate aims invoked. Thus, it held that the interference was not necessary in a democratic society.

**Stomakhin v Russia**

The case concerned Boris Stomakhin, owner and editor of monthly newsletter Radical Politics (Radikalnaya Politika), who was charged for public calls to extremist activity in mass media and incitement of hatred against Russians, Orthodox believers, soldiers of the Russian army, and law enforcement agents (Article 280, Part 2 and Article 282, Part 1 of the Criminal Code). He was sentenced to five years’ imprisonment with a three-year ban on practicing journalism, for publications concerning the conflict in the Chechen Republic. At the time, Stomakhin was not a well-known or influential public figure and the newsletter was self-published, with insignificant circulation.

In its analysis of whether the interference with the right to freedom of expression was necessary in a democratic society, the European Court distinguished between three types of statements by Stomakhin:

- A first type, in the European Court’s view, served to promote, justify, and glorify terrorism, ‘going far beyond the acceptable limits of criticism.’ Although the European Court noted that the accusations made against members of the Russian army ‘may not have been without foundation,’ these statements sought ‘to stigmatise and dehumanize the other party to the conflict’ and thus incited hatred against the members of the federal armed and security forces and exposed them to a possible risk of physical violence;

- A second type of statement, despite being ‘quite virulent in their language and contain[ing] strongly worded statements,’ were found to constitute mere criticism of the Russian government and their actions during the armed conflict in the Chechen Republic, without going beyond the acceptable limits ‘given the fact that those limits are particularly wide with regard to the government.’ The European Court also highlighted that some of these statements were made during an electoral campaign, ‘a period where it was particularly important opinions and information of all kinds were permitted to circulate freely;’ and
The last type of statement, as also observed by the domestic courts, concerned isolated cases of alleged abuses committed by certain ethnic Russians and Orthodox believers that were used to make generalised negative statements about all Russians and all Orthodox believers. The European Court found the considerations of the domestic courts 'relevant and sufficient' in part, noting at the same time that the domestic courts' reasoning was insufficient in so far as they referred to unspecified texts only.

Having thus concluded that, with regard to some of the statements, the need for a restriction was convincingly demonstrated, the European Court examined the proportionality of Stomakhin's conviction. The European Court noted that the domestic courts limited their justification of the sanctions with reference to the applicant's personality and the social danger posed by the offence, which it points out 'may be “relevant” but “cannot be regarded as “sufficient” to justify the exceptional severity of the penalty.”

The European Court also reiterated 'that the potential impact of the medium of expression concerned is an important factor in the consideration of the proportionality of an interference.' Given the fact that 'the circulation of the newsletter at issue was insignificant' and that 'it cannot be said that the incriminated statements were disseminated in a form that was impossible to ignore or in any other way that enhanced the message,' the European Court concluded that the punishment was not proportionate to the stated aims and that, thus, the interference with Stomakhin's right to freedom of expression was not necessary in a democratic society.

Alekhina and Others v Russia

This case concerned the convictions of three applicants, members of the band Pussy Riot, under the provisions of the Criminal Code on 'hooliganism motivated by religious hatred' (Article 213, Part 2), for their performance of a song, 'Mother of God, Drive Putin away,' in the Cathedral of Christ the Saviour and the dissemination of a video recording of the performance online. The applicants were effectively sentenced to a two-year prison sentence.

The European Court observed that it was unable to discern any element in the domestic courts' analysis that would provide for a description of the conduct of the applicants as incitement to religious hatred. Furthermore, it noted that 'certain reactions to the applicants' actions might have been warranted by the demand of protecting the rights of others on account of the breach of the rules of conduct in a religious institution,' but that the domestic courts failed to adduce 'relevant and sufficient' reasons to justify the criminal conviction and prison sentences imposed. The European Court also found that the sanctions were disproportionate to the legitimate aims pursued.

Savva Terentyev v Russia

This case concerned blogger Savva Terentyev, who was convicted in 2008 for publicly committing actions aimed at inciting hatred and enmity and humiliating the dignity of a group of persons on the grounds of their membership in a social group (under Article 282, Part 1 of the Criminal Code), and sentenced to a one-year suspended sentence. Terentyev left a comment on a local journalist's blog, in which he sharply criticised the police and called for installing ovens in town squares in which to burn the 'infidel cops.'

The key issue for the European Court, in this case, was whether Terentyev's statement – when read as a whole and in its context – could be seen as promoting the violence, hatred, or intolerance for which he was convicted. For a number of reasons, the European Court found that Terentyev's conviction did not meet a 'pressing social need' and was disproportionate to the legitimate aim invoked. Notably, the European Court:

- Highlighted that the domestic courts 'made no attempt to assess the potential of the statements at hand to provoke any harmful consequences, with due regard to the political and social background against which they were made, and to the scope of their reach.'
- Thus, the reasoning of the domestic courts 'could not be regarded as “relevant and sufficient” to justify the interference with Terentyev's right to freedom of expression;” and
- Noted that the imposition of a prison sentence – even if it should be observed that in this case the sentence was suspended – would only be compatible with freedom of expression in exceptional circumstances. Importantly, the European Court noted that the statements could not be assessed in isolation but rather 'the interplay between the various factors' should be considered. It concluded that while 'the wording of the impugned statements was, indeed, offensive, insulting and virulent ... they cannot be seen as stirring up base emotions or embedded prejudices in an attempt to incite hatred or violence against the Russian police officers.'

Ilfragim Ibragimov and Others v Russia

This case combined a number of applications stemming from a ban on specific editions of the works of Turkish theologian Said Nursi for being 'extremist.' As the European Court observed, Said Nursi is a well-known Turkish Muslim theologian and commentator on the Qur'an. Muslim authorities and Islamic studies scholars, both in Russia and abroad, characterise his texts as moderate, belonging to mainstream Islam, advocating for open and tolerant relationships and cooperation between religions, and opposing any use of violence.

In the decision, the European Court stressed that the mere fact, as was emphasised by the domestic courts, that the author’s intention was to convince the reader to adopt his religion, is insufficient to justify the banning of a religious book. It found that the decisions of the domestic courts were deficient for a number of reasons:
Expert conclusions regarding the extremist nature of the texts at issue were endorsed by the domestic court without any meaningful assessment of them. The European Court stressed that all legal matters must be resolved exclusively by the courts.

The summary rejection of all evidence submitted by the interested party stripped them of the procedural protection enjoyed by virtue of the right to freedom of expression under the European Convention; and

While in theory the ban on Said Nursi’s works concerned only specific editions of the Risale-I Nur Collection and not Said Nursi’s teachings as such, the fact that the domestic courts did not indicate which passages were considered as ‘extremist’ makes it impossible to republish the books after editing out the problematic passages, thus amounting to an absolute ban.

The European Court emphasised that it is key to consider statements as a whole and in their context, and whether those could be seen as promoting violence, hatred, or intolerance. Thus, with regard to one of the books, the Court pointed out that ‘it is unable to discern any element in the domestic courts’ analysis which would allow it to conclude that the book in question incited violence, religious hatred or intolerance, that the context in which it had been published was marked by heightened tensions or special social or historical background in Russia or that its circulation had led or could lead to harmful consequences.’ Accordingly, the Court concluded that it was not necessary in a democratic society to ban the books in question.

Analysis of Russian courts’ recent jurisprudence

The negative impact of the various legal provisions’ shortcomings (set out in the previous chapter) is exacerbated by a number of problems in the adjudication of ‘extremism’ cases by the Russian domestic courts. This section analyses selected cases against the international standards and with respect to some best practices from other countries.

Cases concerning restrictions imposed on grounds of national security

Nail Abilov case

In September 2014, the Central District Court of Khabarovsk imposed a suspended sentence of three years of imprisonment under Article 205.2, Part 1 of the Criminal Code (public justifying terrorism) on Nail Abilov, a native of Azerbaijan, for posting three statements on his page on the ‘Moi mir’ social media service in 2011. These contained statements: ‘Blow up infidels,’ ‘Terrorism is cool,’ and ‘Terrorism is classic and I don’t give a shit what is said.’ During the court proceedings, Abilov declared that he had shared the views of a Caucasian youth group united by radical Islamist views and who approved of armed struggle at that time, adding however that his views had been erroneous and that he deplored his publications. Moreover, he pleaded guilty and expressed remorse. However, witnesses’ testimonies showed that Abilov continued posting xenophobic, offensive, and inflammatory content targeting ethnic and religious groups other than his own after 2011.

The Court noted that Abilov had previously been sentenced for hooliganism after an attack on two Russian youths, which was filmed and circulated on the web: this was, however, not considered an aggravating circumstance since the term of the criminal record had expired. In the decision, the Court thus thoroughly examined the defendant’s personal background and came to the conclusion that his actions were intentional; however, the fact that he pleaded guilty and repented allowed him to avoid a real prison term.

ARTICLE 19 and SOVA Center note with concern that, in its decision, the Court did not consider whether the postings intended to incite imminent violence were likely to incite such violence and whether there was a direct and immediate connection between the expression and the likelihood or occurrence of such violence, as required by international standards on restrictions on freedom of expression on the basis of national security.

Convictions under Article 205.2 (Public calls for terrorist activity and public justification or propaganda of terrorism)

DATA FROM THE JUDICIAL DEPARTMENT OF THE SUPREME COURT OF THE RUSSIAN FEDERATION

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Evgeny Novozhilov case

In February 2014, the Sovetsky District Court of Krasnodar fined local resident Evgeny Novozhilov with 150,000 roubles (under Article 205.2, Part 1 and Article 282, Part 1 of the Criminal Code) and sentenced him to compulsory psychiatric treatment for two posts he made on his page on Blogspot.com. These texts targeted ‘Russians’ (in general terms) whom he criticised for military operations in the North Caucasus. Novozhilov used aggressive and insulting language – referring to Russians as ‘bastards, cattle, pigs’ and called for terrorist attacks against Russians, approving of activities of Caucasian mujahids.

ARTICLE 19 and SOVA Center consider that the Court’s judgment in the case falls short of international standards. In its assessment of the facts of the case, and deliberation on the sentence, the Court did not take into account the very limited readership of his blog (11 followers), or the fact that Novozhilov was diagnosed with a mental disorder. A psychiatric assessment found him competent to take part in the proceedings, but indicated he was not fully aware of the effect of his actions in the period in which he made the posts. It is unclear whether Novozhilov actually intended for his posts to result in criminal activity, and that, given his limited audience, it does not seem likely that it would have resulted in criminal action.

Instead, the Court merely indicated that the posts were incendiary in nature, and assumed that intent was proven. No due assessment was undertaken as to whether the restriction was necessary in a democratic society, in particular whether the restriction was necessary and sufficient, or whether the imposed sentence was proportionate to the impugned offence.

Alexei Kungurov case

In December 2016, the visiting session of Privolzhsky Regional Military Court in Tyumen sentenced Alexei Kungurov, a conservative blogger and active supporter of the Novorossiya separatist movement in Ukraine, to two years and six months in a settlement colony for his publishing activity. He was found guilty of justifying terrorism under Article 205.2, Part 1 of the Criminal Code. In the article, Whom Putin’s Falcons Are Really Bombing, on his personal blog on LiveJournal, Kungurov analysed the political situation in the Middle East. He alleged that the Russian state was actually assisting the Islamic State in Syria, rather than bombing it. He argued that ISIS was not only a terrorist organisation but also a state with its own ideology, aims, and interests, seeking support of the population. Kungurov, in support of this claim, pointed out that ISIS operated like a state through its building of schools and hospitals, repairing of roads, preserving order, and so on. The article did not contain any statements in support of ISIS.

In finding that the actions of Kungurov amounted to justification of terrorism, the Court, based on a claim by the intelligence services, interpreted the text of the article to constitute approval of ISIS activities and ipso facto a deliberate justification of terrorism, since ISIS is considered a terrorist organisation in Russia. In its assessment, the Court took into account the fact that Kungurov was one of LiveJournal’s top bloggers, and his potential influence on the public. It did not, however, consider whether a restriction of Kungurov’s right to freedom of expression was necessary in a democratic society. In particular, his intent to provoke terrorist violence or action, and whether this was indeed promoted in the text, or whether there was a likelihood of such actions happening, were not considered.

Vladimir Egorov case

In June 2018, the Toropets District Court of the Tver region sentenced Vladimir Egorov, a local opposition activist, to a suspended sentence of two years and a three-year ban on moderating websites for calls to extremist activity, for his posts on the “Toropets Citizens” group on VKontakte (the most popular Russian social media platform), which he moderated. He was found guilty of public incitement to extremist activities via the internet under Article 280, Part 2 of the Criminal Code. The post contained a photo of President Putin and the text stated that ‘propaganda directed by intelligence services was aimed at exonerating the Head of State, while shifting the blame for all Government blunders to other officials.’ He urged the group ‘not to be led astray’ by such propaganda tricks, and declared that ‘the main Kremlin rat with its friends and partners in crime should be brought down.’ The experts, law enforcement agencies, and the Court interpreted this phrase as a call to murder, not just removal of the government.

ARTICLE 19 and SOVA Center note that the Court did not take into account the fact that such abstract, albeit aggressive, anti-government statements made by a small-town activist pose no significant danger, since they can hardly be implemented in reality. Accordingly, there was no assessment of whether there was the intent to incite imminent violence or that such violence was likely to occur as the direct and immediate consequence of the impugned expression.

Convictions under Article 280 (Public calls for extremist activity)

DATA FROM THE JUDICIAL DEPARTMENT OF THE SUPREME COURT OF THE RUSSIAN FEDERATION

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Vladimir Zavarkin case

In November 2015, the Petrozavodsk City Court sentenced Vladimir Zavarkin, a deputy of the Suojärvi Urban Settlement Council (Republic of Karelia), for public incitement to separatism (Article 280.1, Part 1 of the Criminal Code) to a fine of 30,000 roubles for statements he made at a public gathering, which were interpreted as calls to separatism. In May 2015, Zavarkin addressed a meeting in Petrozavodsk, which gathered some 1,000 participants. The meeting called for the resignation of the head of the Republic of Karelia, blaming him for the rapid deterioration of the socioeconomic situation in the region. In his speech, Zavarkin, who had battled unsuccessfully for the improvement of dismal housing conditions in Suojärvi, proposed a referendum on the secession of Karelia from Russia in response to the inaction of the authorities. Zavarkin pleaded not guilty and argued that he only intended to attract the federal authorities’ attention to the local disaster.

In its decision, the City Court merely stated that Zavarkin’s address was public and that it called for secession. It did not take into account the fact that Zavarkin did not call for any illegal actions and mentioned a democratic procedure. In addition to the absence of intent, ARTICLE 19 and SOVA Center observe that it is prima facie clear that Zavarkin’s statements were unlikely to cause immediate violence.

Comment on the courts’ decisions

The review of these cases illustrates that the Russian courts do not take into consideration international freedom of expression standards. In particular:

- The courts provide no specifications on how to interpret an overly broad definition of extremism set out in the legislation. The respective provisions are applied to a broad spectrum of speech, beyond expression that incites or aims to incite conduct that is truly terrorist in nature or incites other dangerous acts, and much of which would, under international standards, be considered to constitute protected speech;
- The courts do not attach appropriate weight to the (lack of) intent to directly incite violent or other illegal actions, or the likelihood that the impugned speech would indeed result in those actions;
- The courts do not always adequately consider whether the impugned speech is intended to result in the commission of a terrorist act, and whether this is likely to happen as a consequence of the expression; and
- The sanctions imposed appear to be disproportionate to the impugned behaviour. In particular, in the case of Vladimir Egorov, the prohibition to moderate websites further exacerbates the chilling effect of the conviction on political speech.

In contrast, the European Court has, in its jurisprudence, repeatedly protected a very broad spectrum of political speech, even when it may be considered as ‘separatist’ and the expression occurs in politically sensitive circumstances. Additionally, the European Court emphasised that, even in the context of the particular problems linked to terrorism, views that cannot be interpreted as calling for the use of violence, armed resistance, or insurrection (and that do not constitute incitement to hatred) are covered by the right to freedom of expression. For instance:

- In Başkaya and Ökçuoğlu v Turkey, the European Court found a violation of the freedom of expression of the applicants, who had been convicted to prison sentences under a provision of the Prevention of Terrorism Act 1991 that prohibited propaganda ‘aimed at undermining the territorial integrity of the Republic of Turkey or the indivisible unity of the nation.’ The applicants were the author and the publisher of an academic essay, which involved a description of the socioeconomic evolution of Turkey since the 1920s, and an analysis and criticism of the official ideology of the state, including with regard to the so-called ‘Kurdish problem.’ Copies of the book were seized and Başkaya was dismissed from his post as a university lecturer. The Turkish government argued that a chapter of the book that described Turkey as a colonialist power oppressing Kurdistan incited violence and that the conviction was necessary to protect the public against the actions of armed groups.

The European Court recalled that there is little scope for restrictions on political speech or matters of public interest. It found that although the material in question ‘could be seen as an expression of support for Kurdish separatism,’ the views expressed ‘could not be said to incite violence; nor could they be construed as liable to incite violence.’ It also said it was ‘struck by the severity of the penalty,’ which included prison sentences of one year and eight months and of five months, and substantial fines. The European Court found that the conviction and sentencing was disproportionate to the aims pursued and, accordingly, not necessary in a democratic society.

- In Belek and Velioğlu v Turkey, the European Court examined the conviction of the owner and editor-in-chief of a daily newspaper, Günlük Evrensel, on charges of publishing declarations of terrorist organisations, following the publication of an article containing a statement by imprisoned members of the PKK (Kurdistan Workers’ Party), in which they called for a democratic solution for the Kurdish community. The declaration also criticised the detention conditions of Kurdish leader Abdullah Öcalan and called for his amnesty. In its decision, the European Court considered the terms used in the text and the context of the declaration’s publication, taking into account in particular the difficulties linked to the fight against terrorism. Taken as a whole, it deemed the text did not call for the use of violence, armed resistance, or insurrection, and that it did not constitute hate speech. Furthermore, the European Court found that the domestic court’s reasoning, which relied solely on the fact that the declaration emanated from the PKK, was insufficient to justify the interference with the right to freedom of expression.
Cases concerning incitement to hatred

Konstantin Gerasimov case

In September 2015, the Pravoberezhny District Court of Magnitogorsk sentenced Konstantin Gerasimov, resident of Magnitogorsk (Chelyabinsk region) under Article 280, Part 2 (calls for extremist activity) and Article 282, Part 1 (incitement to hatred) of the Criminal Code, to a suspended sentence of two and a half years of imprisonment for his online activities. In 2013-2014, Gerasimov posted and shared xenophobic images and texts targeting natives of the Caucasus and Central Asia; a provocative video of a brawl between Russian and Caucasian youth; anti-Semitic texts justifying Hitler’s politics; as well as statements promoting the overthrow of the authorities and establishment of ‘white power.’ The Court found that these posts amounted to inciting hatred and calling for violence. It pointed out that Gerasimov was inspired by the radical nationalist ideology that he espoused during that period. The coverage of his posts was not indicated: the Court merely stated that they were public. There was no assessment of the criteria for incitement, as outlined in the Rabat Plan of Action.

Dmitry Dyomushkin

In April 2017, the Nagatinsky District Court of Moscow sentenced Dmitry Dyomushkin, a prominent Russian nationalist, under Article 282, Part 2 of the Criminal Code, to two and a half years of imprisonment for posting two images on his VKontakte page in 2014. One image was a banner with the slogan ‘November 4, Russian March, Russian Rule in Russia’ overlaying an imperial flag. The second was a picture of a child with the slogan ‘November 4, Russian March, only pure white children... and adults.’ In the decision, the District Court considered Dyomushkin’s personal background – including his prior criminal record, adherence to nationalist ideology, leadership of several ultra-right organisations banned as extremist, and his active role in organising Russian marches (main nationalist events held annually) – as evidence of his intent to incite racial hatred. However, the Court did not assess other factors outlined in the six-part test contained in the Rabat Plan of Action.

ARTICLE 19 and SOVA Center also observe that while Dyomushkin’s popularity among nationalists is a relevant element in the consideration of the impact of his speech, the expression in its content and form can hardly be considered to incite harmful action. And in fact, the expression did not have this consequence of inciting harmful action, i.e. the comments were posted before the 2014 Russian March, which was peaceful.
Vladimir Borisov case

In December 2016, the Vyazniki City Court of Vladimir Region sentenced Vladimir Borisov to a fine of 1,000 roubles, under Article 20.29 of the Code of Administrative Offences, for sharing three banned racist music videos by well-known Russian ultra-right bands Kolovrat and Grot. Borisov told the court that he was not aware of the ban, pleaded guilty, and expressed remorse. The Court deemed that the impugned act constituted mass distribution of extremist materials solely on the basis that the post was public. It did not assess other factors outlined in the six-part test contained in the Rabat Plan of Action, such as the number of followers of Borisov’s page or the actual views of his post or the likelihood of the criminal activity resulting from the post.

Dinis Khakimov case

In April 2016, the Sernur District Court sentenced Dinis Khakimov, resident of Paranga (Mari El Republic), to a fine of 1,500 roubles for online distribution of the banned video ‘Miracles of Quran’ under Article 20.29 of the Code of Administrative Offences (promoting religious hatred). Khakimov had shared this video on his VKontakte page. The video contained no calls for violence; it was included in the list of banned materials for allegedly promoting the superiority of Islam. During the proceedings, Khakimov argued that he was not aware of the ban and promised that he would not post other extremist materials. The Court did not consider the actual reach of Khakimov’s post, the number of followers of his page, or even whether or not the post’s status was public or private, and did not make any assessment of whether it was likely that criminal activity would occur as a result of sharing the video.

Artyom Plotnikov case

In March 2015, the Leninsky District Court of Novosibirsk found Artyom Plotnikov guilty under Article 20.3 of the Code of Administrative Offences and sentenced him to ten days of administrative detention. Plotnikov shared photos and pictures showing the SS emblem and Nazi swastika on his VKontakte page. In its decision, the Court stated that it took into account Plotnikov’s background and derived his intent from the fact that Plotnikov reportedly followed national-socialist communities online, and that, during the Court hearing, Plotnikov stated that he reposted the images because he shared national-socialist ideas. The Court did not consider any other criteria delineated in the Rabat Plan of Action.
In March 2015, the Promyshlenny District Court of Smolensk fined Polina Petruseva, local journalist, 1,000 roubles under Article 20.3 of the Code of Administrative Offences for sharing a historical photo of her building’s courtyard during the Nazi occupation of Smolensk in 1941-43. It showed a Nazi flag and a group of German soldiers in uniform, including depiction of the swastika. The image came from a site of historical photos. Petruseva argued that she was unaware that sharing this historical photo was against the law. However, in its decision, the Court merely referred to the law and did not consider whether Petruseva intended to incite violence or discrimination with dissemination of her post. The Court also did not indicate whether her actions posed any risk of harmful consequences.

Comments on the courts’ decisions

ARTICLE 19 and SOVA Center find that the Russian courts’ decisions in these cases fall short of international standards on incitement. The decisions do not indicate that the courts considered whether the impugned speech reached the threshold of severity of incitement that would warrant – and indeed, necessitate – its prohibition. Although some courts considered some aspects of the six-part test of incitement outlined in the Rabat Plan of Action (such as the speaker’s intent and the extent or magnitude of the impugned statement), the thorough and complex assessment of other aspects is lacking. Furthermore, the severe custodial sentences applied appear to be disproportionate to the alleged crimes.

In contrast to these decisions, ARTICLE 19 and SOVA Center highlight the approach of the Court of First Instance of The Hague (the Netherlands) that, in December 2016, convicted well-known politician and public figure Geert Wilders for inter alia inciting discrimination. 

Wilders had led an anti-Moroccan chant during a political rally, broadcast on TV, during which he asked a series of questions designed to elicit anti-Moroccan responses from the audience. A coordinator of Wilders’ political party had been asked to instruct the public in advance and Wilders had emphasised that the reaction of the crowd should be as strong as possible, so that the rally would be picked up by the press. The Court found that the statements amounted to inciting discrimination. In its analysis, the Court of First Instance balanced the content of the statement, which it noted served to ‘dismiss’ the entire Moroccan population and present them as inferior to the Dutch, with the context of the comments. Regarding the latter, the Court referred to the European Convention and the case law of the European Court, observing that freedom of expression of politicians is especially well-protected, but that due to their important social function, they should avoid public utterances that feed intolerance. In this context, it noted the importance of looking at the platform through which the statement is disseminated. In the case at hand, the Court found that the questions posed to the audience were seditious and inciting, and that no contribution was made to the public debate concerning integration and immigration. Finding that Wilders, through his statements, had contributed to the polarisation in Dutch society, the Court found him guilty of inciting discrimination. Noting the unusual fact that the defendant was also a democratically elected Member of Parliament and the founder of a political party, the Court found it sufficient to declare guilt and did not impose a punishment.

As for the cases on dissemination of banned symbols, we note that the European Court has previously considered cases concerning the display of totalitarian symbols, and has said that while the display of a symbol that was ubiquitous during the reign of a totalitarian regime may create uneasiness among past victims and their relatives who may consider such displays disrespectful, such sentiments alone cannot set the limits to freedom of speech. The European Court also stated that only in certain circumstances is there a wider margin of appreciation for states to restrict their use, in light of a state’s particular historical role and experience. At the same time, it emphasised the importance of safeguards to ensure protection of freedom of expression.

For instance, in Nix v Germany, the European Court considered an application concerning a criminal conviction for the offence of using the symbols of unconstitutional organisations (swastika). The European Court observed that there is little scope for restrictions on political expression or on debate on questions of public interest, while also reiterating its sensitivity to the specific historical context of the state at hand. It noted that ‘states which have experienced the Nazi horrors may be regarded as having a special moral responsibility to distance themselves from the mass atrocities perpetrated by the Nazis.’ However, it also stated that no criminal liability arises where the use of such symbols is meant to serve civil education, to combat unconstitutional movements, to promote art or science, to report on current or historical events or serve similar purposes. In the case at hand, the domestic court had found that Nix had used the Nazi symbols as gratuitous ‘eye-catching’ devices, which is what the provision intended to prevent, and found that Nix’s clear and obvious opposition to Nazi ideology was not evident in the blog post. The European Court found that the domestic authorities adduced relevant and sufficient reasons and did not overstep their margin of appreciation in this case.

However, in the Plotnikov and Petruseva cases, the courts did not consider the safeguards for the right to freedom of expression. The Russian Constitutional Court has repeatedly rejected appeals against Article 20.3 filed on other occasions and argued that ‘the use of Nazi attributes (symbols) in and of itself ... respects regardless of its genesis ... may cause suffering to people, whose relatives were killed during the Great Patriotic War.’ ARTICLE 19 and SOVA Center note, in this regard, that the European Court has explicitly ruled that such sentiments alone cannot constitute sufficient reasoning for restricting the right to free speech. Additionally, provisions of Article 20.3 of the Code of Administrative Offences are applied to penalise public display of banned symbols irrespective of the intent of the individuals.

Case concerning historical debates and rehabilitation of Nazism

Case of Vladimir Luzgin

In June 2016, the Perm Regional Court found Vladimir Luzgin guilty under Article 354.1, Part 1 of the Criminal Code (denial of facts established by the verdict of the Nuremberg Tribunal, approval of the crimes specified by judgment, and the distribution of false information on the activities of the Soviet Union during World War II) for reposting on his Vkontakte page a text entitled ‘Fifteen facts on Banderites or what the Kremlin is silent of.’ The article criticized
Nazis and communists, and approved of the position taken by the Ukrainian Insurgent Army that the Ukrainian Bandereites (right-wing nationalists) had not collaborated with the Third Reich. The Court also considered that the interpretation of the Molotov-Ribbentrop Pact, to the effect that World War II was the result of close collaboration between communists and Nazi Germany, was false information.

In the decision, the Court referred to Luzgin’s nationalist views and assumed that this proved his intention to rehabilitate Nazism, though it did not elaborate further on this conclusion. Although the post was viewed by only 20 users, and Luzgin was not a public figure, the Court noted that the status of the post was public and could have been seen by 90 million users who visit VKontakte each month. It stated that Luzgin studied history in school and was aware of the dangers of the rehabilitation of Nazism, and that he could have foreseen the threat to society stemming from his post, which may have contributed to the formation of negative views about the role of the USSR during World War II, including among minors. The Court did not, however, specify any concrete danger to a democratic society caused by the post. At present, the case is pending before the European Court.120

ARTICLE 19 and SOVA Center consider that Luzgin’s conviction did not meet the requirements for restrictions under international human rights standards. It also demonstrates the negative impact of the lack of safeguards for the protection of the right to freedom of expression in the relevant legislation. In comparison and testing the same principle, the Grand Chamber of the European Court, in Perinçek v Switzerland,121 considered the criminal conviction of the chairperson of the Turkish Workers’ Party on charges of denying a genocide or other crimes against humanity, based on three separate public statements in Switzerland concerning the Armenian genocide which he called ‘an international lie.’ In its decision, the European Court highlighted the need to balance protection of freedom of expression (Article 10 of the European Convention) and the right to respect for identity and the reputation of ancestors (Article 8 of the European Convention), and accordingly found that the Swiss courts had not paid proper attention to the balancing exercise between the two rights at play, mostly ignoring arguments related to Perinçek’s right to freedom of expression.122 It found that Perinçek’s statements: a) bore on a matter of public interest; b) did not amount to a call for hatred or intolerance; c) were not made in a context marked by heightened tensions or special historical overtones in Switzerland; and d) cannot be regarded as affecting the dignity of the members of the Armenian community to the point of requiring a criminal law response. Furthermore, given that there were no international legal obligations for Switzerland to criminalise such statements, the Swiss courts appear to have censured Perinçek for having voiced an opinion that diverged from the established one in Switzerland.123

Blasphemy/defamation of religion case
Case of Viktor Nochevnov124

In August 2017, a Sochi magistrate sentenced Viktor Nochevnov to a fine of 50,000 roubles under Article 148, Part 1 of the Criminal Code, for sharing a series of cartoon images of Jesus Christ on VKontakte (Christ as a rock star, Christ in a gym, Christ wearing a Nazi uniform, and so on) with ironic or obscene captions. Nochevnov is not a prominent public figure or a popular blogger. In the trial, prosecution presented testimonies from the rector of the local Orthodox monastery, the imam of the Sochi Muslim community, the head of the city’s Jewish community, and the rector of one of the city’s Orthodox churches. The latter testified, inter alia, that the images shared by Nochevnov were not only blasphemous and offensive to believers but also provocative ‘in view of the disrespectful use of the sacred image,’ and thus ‘express contempt for public morality and the society in general, as well as social values.’ In support of his statement, the priest cited the dogma of icon worship, adopted by the Second Council of Nicaea in 787.

The Court found that Nochevnov expressed ‘extreme intolerance towards adherents of Christianity – Christians; as a result, he began to antagonize social norms and values and show aggression against the abovementioned group of believers as well as believers in general.’ The Court also pointed out that, in the days of Orthodox holidays, Nochevnov shared images from VKontakte atheist communities, ‘intending to commit actions aimed at insulting feelings of believers, fostering religious tension, religious prejudices and superstition, while foreseeing socially dangerous consequences in the form of disruption of human and civil rights and freedoms guaranteed by the Constitution.’ After extensive publicity, the case was sent for a re-trial and was discontinued.

ARTICLE 19 and SOVA Center reiterate that restriction of freedom of expression on the basis of being offensive to religious feelings of believers can never constitute a legitimate interference with the right to freedom of expression.

As noted earlier, the Rabat Plan of Action – as well as recommendations of other international and regional human rights bodies – provide clear and unequivocal guidance that laws prohibiting the defamation of religion should be repealed. ‘Offensiveness’ of expression should not be considered as a determinative factor in assessing either the legitimate aim of restrictions, or their necessity in a democratic society. Instead, the focus should be on whether the expression intentionally advocated religious hatred constituting incitement to hostility, discrimination, or violence, and was likely to be successful in doing so.125
Comments on the practice of the Russian courts

In addition to comments on specific cases, ARTICLE 19 and SOVA Center observe that, in general, the practice of courts in assessing ‘extremism cases’ suffers from the following problems:

- Over-reliance on expert opinions: Since the 2000s, all ‘extremism’ cases almost indispensably involve academic expert opinion. Typically, law enforcement and courts seek linguistic expertise or may also consider reports from social psychologists and other experts. In practice, however, the experts do not only clarify certain linguistic or other aspects of the evidence that require specialist expertise but also answer questions concerning the legality of the impugned materials. These questions are sometimes formulated indirectly and/or using alternative wording, in order to circumvent the legal provision that limits experts’ input to matters within their specific competence. Thus, in practice experts determine the criminality of the impugned speech in place of judges, who merely refer to the experts’ conclusions and let those substitute their own assessment.

- Formalistic approach to the law: Russian courts mostly limit their assessment to checking whether the impugned statements meet the definition of the offence as set out in the law. If the act is found to meet such criteria, the necessity of imposing a restriction on freedom of expression is automatically assumed. There is no assessment whether impugned acts present a risk to a democratic society, or if there is an actual danger posed by the expression under consideration.

- Disproportionate sanctions: Sanctions for ‘extremist speech,’ under the Criminal Code, include large fines (from 100,000 to 500,000 roubles, i.e. around 1,300 to 6,700 euros), community service or compulsory labour, and prison terms of up to seven years. In practice, the absence of aggravating factors seems to have little effect on the determination of the punishment, although pleading guilty and expressing repentance may mitigate the punishment. Offences under the Code of Administrative Offences entail moderate fines, administrative arrest, or community service for individuals; for legal entities fines can reach one million roubles, and a repeated offence can result in a ban of the organisation. Courts often also order forfeiture of the ‘instruments of offence,’ i.e. computers, laptops, tablets, smart phones, etc., the value of which can exceed the fines. It should be noted that disproportionate severity of imposed sanctions is a common feature of the Russian judicial system, as repeatedly found by the European Court also in its decisions on cases concerning ‘extremist speech.’

Convictions for “extremist” speech under articles of the Criminal Code

Based on the main and additional charges. Data from the Judicial Department of the Supreme Court of the Russian Federation


572

354.1

380

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ARTICLE 19 and SOVA Center propose that, at a minimum, the Russian government should achieve the purported aim of the legislation at issue: to provide protection from genuine so-called scientific ‘expertise,’ in which experts’ assessments concerning the criminality of disproportionate to the alleged offences. The judicial practice is tainted by an overreliance on very low likelihood of resulting in criminal activity and impose sanctions that are often problematic from the point of social cohesion, should be protected, or speech with a certain acts substitute the courts’ own consideration.

ARTICLE 19 and SOVA Center believe that legislation and law enforcement practice in Russia should be guided by the country’s international legal obligations, which would also help to achieve the purported aim of the legislation at issue: to provide protection from genuine national security concerns and to counter incitement to violence and hatred.

ARTICLE 19 and SOVA Center propose that, at a minimum, the Russian government should take the following measures to improve the current situation:

- All relevant legislation should be revised to ensure its compliance with the international human rights standards. In particular:
  - The definition of extremist activity (in Article 1 of the Federal Law on Combating Extremist Activities, and referred to in Article 280 of the Criminal Code) and terrorist speech-related offences (in the Law on Counteraction to Terrorism and in Article 205.2 of the Criminal Code) should be amended. Only the threat, use, call for, or other explicit support of violence should be criminalised;
  - Narrow the scope of Article 280.1 of the Criminal Code, so that it only pertains to calls to violent separatism;
  - The provisions of Article 282 of the Criminal Code on incitement should be amended. The advocacy of discriminatory hatred, which constitutes incitement to hostility, discrimination, or violence, should be prohibited in line with Article 19, para 3 and Article 20, para 2 of the ICCPR, establishing a high threshold for limitations on free expression (as set out in the Rabat Plan of Action). The prohibitions of ‘abasement of dignity’ should be removed from Article 282;
  - The provision concerning the public display of banned symbols in Article 20.3 of the Code of Administrative Offences should be amended; the intent to propagate violent extremist views should be an essential element of the offence;
  - The provision concerning rehabilitation of Nazism (Article 354.1 of the Criminal Code) should be amended. Unless another illegal purpose is pursued through the impugned expression (such as incitement to hatred, violence, or discrimination), it should not be criminalised. The prohibition on ‘dissemination of intentionally false information about the activities of the USSR during the Second World War’ should be excluded;
  - The provisions of the Criminal Code, the Code of Administrative Offences, and other legislation that are not compatible with international freedom of expression standards should be abolished entirely, in particular:
    - Article 148, Parts 1 and 2 of the Criminal Code that prohibits ‘insulting the feelings of believers’ and Article 5.26, Part 2 of the Code of Administrative Offences on public desecration of religious objects;
    - The mechanism of banning ‘information materials,’ including the Federal List of Extremist Materials and Article 20.29 of the Code of Administrative Offences, which prohibits distribution of materials included in the list;
    - Restrictions for people ‘with respect to whom a court decision that has entered into legal force, established that their actions show evidence of extremist activity’ set out in Article 9, Part 3 of the Law On Freedom of Conscience and on Religious Associations, and Article 19 of the Law On Public Associations and Article 15 of the Law On Non-profit Organizations;
    - Article 4, Part 3-2, para C of the Law On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation (one-year prohibition to run for elected office as a consequence of having been punished under one of the ‘anti-extremist’ articles of the Code of Administrative Offences (Articles 20.3 or 20.29); and
    - Restrictions on access to banking services imposed on suspects as well as convicted offenders in anti-extremism and antiterrorism prosecutions, except for those suspected or convicted of the most serious crimes, or crimes specifically related to financial activities.

    - The Russian judiciary, law enforcement authorities, and public bodies should be provided with comprehensive and regular training on relevant international human rights standards applicable to ‘hate speech,’ ‘terrorism’ and ‘extremism,’ and freedom of expression in general;
• The Supreme Court should compile consolidated guidelines on the application of anti-
  extremism and counterterrorism regulations restricting public statements. These should
  be detailed and easy-to-use instructions for courts based on the international standards;
  and

• In collaboration with experts and civil society, law enforcement authorities should
  develop investigative guidelines on the prosecution of incitement cases, based on
  international human rights law; the existing guidelines should be brought in line with
  the international standards. The government should ensure that all law enforcement
  authorities are made aware of the guidelines during their trainings and in the course of
  their work.

Additionally, the Russian judiciary should:

• Apply domestic law in a manner that complies with Russia’s international human rights
  obligations. In particular, in incitement to hatred cases, they should apply the six-
  part test, set out in the Rabat Plan of Action, and the pertinent recommendation of the
  Supreme Court of the Russian Federation, thus only imposing sanctions that are in line
  with the gravity of the impugned offences;

• Make use of scientific experts only when their specialist knowledge is needed to interpret
  or assess particular evidence, as opposed to having this specialist knowledge substitute
  the court’s own assessment of the legality of the actions at issue.

About ARTICLE 19 and SOVA Center

ARTICLE 19: Global Campaign for Free Expression (ARTICLE 19) is an independent human
rights organisation that works around the world to protect and promote the rights to
freedom of expression and information. It takes its name and mandate from Article 19
of the Universal Declaration of Human Rights which guarantees the right to freedom of
expression. ARTICLE 19 has produced a number of standard-setting documents and policy
briefs based on international and comparative law and best practice on issues concerning
the right to freedom of expression and has intervened in domestic and regional human rights
court cases. This work frequently leads to substantial improvements to proposed domestic
legislation.

SOVA Center for Information and Analysis is a Moscow-based non-profit organisation
founded in 2002. SOVA Center focuses on monitoring and analysis in the field of nationalism
and racism, hate crime and hate speech, relations between religious organisations, the state
and secular society, and misuse of counter-extremism policies by the authorities. SOVA
Center releases daily news, periodical reports, and thematic papers. SOVA Center contributes
to promoting human rights standards in the sphere of anti-extremism and counterterrorism
policies. On December 30, 2016, the Ministry of Justice forcibly included SOVA Center on the
list of “non-profit organizations performing the functions of a foreign agent.” SOVA Center
disagrees with this decision and has filed an appeal against it.
Federal Law No. 35-FZ on Counteraction to Terrorism

Article 3. Basic concepts

The following basic concepts are used in this Federal Law:

1. Terrorism is the ideology of violence and the practice of influencing the adoption of a decision by state power bodies, local self-government bodies or international organizations connected with intimidation of the population and (or) other forms of illegal violent actions;

2. Terrorist activity is the activity which comprises:

   f) promotion of terrorist ideas, dissemination of materials or information calling for terrorist activities, substantiating or justifying the necessity of such activities.

Federal Law No. 114-FZ on Combating Extremist Activity

Article 1. Basic concepts

For the purposes of the present Federal Law the following basic concepts are used:

1. Extremist activity/extremism:

   • forcible change of the foundations of the constitutional system and violation of the integrity of the Russian Federation;
   • public justification of terrorism and other terrorist activity;
   • stirring up of social, racial, ethnic or religious discord;
   • propaganda of the exceptional nature, superiority or deficiency of persons on the basis of their social, racial, ethnic, religious or linguistic affiliation or attitude to religion;
   • violation of human and civil rights and freedoms and lawful interests in connection with a person's social, racial, ethnic, religious or linguistic affiliation or attitude to religion;
   • obstruction of the exercise by citizens of their electoral rights and rights to participate in a referendum or violation of voting secrecy, combined with violence or threat of the use thereof;

   • committing of crimes with the motives set out in indent ‘f’ [e in the original Russian] of paragraph 1 of article 63 of the Criminal Code of the Russian Federation [i.e. violent crimes aggravated by motive of hatred];
   • propaganda and public show of Nazi emblems or symbols or of emblems or symbols similar to Nazi emblems or symbols to the point of confusion between the two; or public show of attributes or symbols of extremist organizations;
   • public calls inciting the carrying out of the aforementioned actions or mass dissemination of knowingly extremist material, and likewise the production or storage thereof with the aim of mass dissemination;
   • 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; organisation and preparation of the aforementioned actions and also incitement of others to commit them;
   • funding of the aforementioned actions or any assistance for their organisation, preparation and carrying out, including by providing training, printing and material/technical support, telephony or other types of communications links or information services.

2. Extremist organisation: a public or religious association or other organisation in respect of which and on grounds provided for in the present Federal law, a court has made a ruling having entered into legal force that it be wound up or its activity be banned in connection with the carrying out of extremist activity;

3. Extremist materials: documents intended for publication or information on other media calling for extremist activity to be carried out or substantiating or justifying the necessity of carrying out such activity, including works by leaders of the National Socialist worker party of Germany, the Fascist party of Italy, publications substantiating or justifying ethnic and/or racial superiority or justifying the practice of committing war crimes or other crimes aimed at the full or partial destruction of any ethnic, social, racial, national or religious group;

4. Symbols of an extremist organization: the officially registered symbols of the organization in respect of which on the grounds specified by the present Federal law the court made an effective ruling on liquidation or prohibition of activities in connection with the extremist activity.
Article 13. Liability for the dissemination of extremist materials

The dissemination of extremist materials and also the production or storage of such materials with the aim of dissemination shall be prohibited on the territory of the Russian Federation. In the cases provided for in Russian Federation legislation, the production, storage or dissemination of extremist materials is an infringement of the law incurring liability.

Information materials shall be declared as extremist by the federal court with jurisdiction over the location where they are discovered or disseminated or the location of the organisation having produced such materials, on the basis of a submission by the prosecutor or in proceedings in a corresponding administrative infringement, civil or criminal case.

A decision concerning confiscation shall be taken at the same time as the decision of the court declaring information material as extremist.

A copy of the court decision declaring information materials extremist which has entered into legal force shall be sent to the federal state registration authority. A federal list of extremist materials shall be posted on the 'Internet' worldwide computer network on the site of the federal state registration authority.

That list shall also be published in the media.

A decision to include information materials in the federal list of extremist materials may be appealed against in court under the procedure established by Russian Federation legislation.

The Criminal Code

Article 148. Violation of the Right to Freedom of Conscience and Freedom of Belief

1. Public actions expressing obvious disrespect for society and committed in order to insult religious feelings of believers, shall be punishable with a fine of up to three hundred thousand roubles or in the amount of a wage/salary or any other income of the convicted for a period of up to two years; or, with community service of up to 240 hours; or, with compulsory labour of up to one year; or, with up to one year of prison.

2. Actions referred to in Part 1 of the present article committed in the places intended for worship or other religious rites and ceremonies, shall be punishable with a fine of up to five hundred thousand roubles or in the amount of a wage/salary or any other income of the convicted for a period of up to three years; or, with community service of up to 480 hours; or, with compulsory labour of up to three years; or, with up to three years of prison.

Article 205.2. Public Calls for Terrorist Activity and Public Justification or Propaganda of Terrorism

1. Public calls for terrorist activity, public justification or propaganda of terrorism, shall be punishable with a fine of one hundred thousand to five hundred thousand roubles or in the amount of a wage/salary or any other income of the convicted for a period of up to three years; or, with deprivation of liberty for a term of two to five years.

2. The same acts committed through the use of the mass media or information and telecommunication networks including the Internet, shall be punishable with a fine of three hundred thousand roubles to one million roubles or in the amount of the convict’s wage/salary or any other income for a period of three to five years; or, deprivation of liberty for a term of five to seven years with deprivation of the right to hold specified offices or to engage in specified activities for a term of up to five years.

Notes

1. In the present article the public justification of terrorism means a public statement on the recognition of the ideology or practices of terrorism as correct, and in need of support and a following.

1.1 In the present article propaganda of terrorism means distribution of materials and/or information aimed at forming the ideology of terrorism, convincing of its attractiveness or creating the sense of permissibility with respect to terrorist activities.

2. In the present article terrorist activity means committing of at least one of the crimes liable under articles 205 - 206, 208, 220, 221, 277, 278, 279, 360, 361 of the present Code.

Article 280. Public Calls for Extremist Activity

1. Public calls for extremist activity, shall be punishable with a fine of one hundred thousand to three hundred thousand roubles or in the amount of a wage/salary or any other income of the convicted for a period of one to two years; or, with compulsory labour of up to three years; or, with arrest of four to six months or deprivation of liberty for a term of up to four years with deprivation of the right to hold specified offices or to engage in specified activities for the same term.

2. The same acts committed through the use of the mass media or information and telecommunication networks including the Internet, shall be punishable with compulsory labour of up to five years with deprivation of the right to hold specified offices or to engage in specified activities for a term of up to three years or without it; or, with deprivation of liberty for a term of up to five years with deprivation of the right to hold specified offices or to engage in specified activities for a term of up to three years.
Article 280.1. Public calls for actions aimed at violating the territorial integrity of the Russian Federation

1. Public calls for actions aimed at violating the territorial integrity of the Russian Federation, shall be punishable with a fine of one hundred thousand to three hundred thousand roubles or in the amount of a wage/salary or any other income of the convicted for a period of one to two years; or, compulsory labour for a term of up to three years; or, with arrest for a term of four to six months; or, with deprivation of liberty for a term of up to four years with deprivation of the right to hold specified offices or to engage in specified activities during the same term.

2. The same acts committed through the use of the mass media or information and telecommunication networks including the Internet, shall be punishable with community service of up to 480 hours with deprivation of the right to hold specified offices or to engage in specified activities for a term of up to three years; or, with deprivation of liberty for a term of up to five years with deprivation of the right to hold specified offices or to engage in specified activities for a term of up to three years.

Article 282. Incitement of hatred or enmity as well as abasement of human dignity

1. Actions aimed at incitement of hatred or enmity, as well as abasement of dignity of a person or a group of persons on the basis of sex, race, nationality, language, origin, attitude to religion, as well as affiliation to any social group, committed in public or with the use of mass media or information and telecommunication networks including the Internet, by a person who faced administrative responsibility for a similar act during the same year, shall be punishable with a fine of three hundred thousand to five hundred thousand roubles or in the amount of a wage/salary or any other income of the convicted for a period of two to three years; or, with compulsory labour for a term of one to four years with deprivation of the right to hold specified offices or to engage in specified activities for a term of up to three years; or, with deprivation of liberty for a term of two to five years.

2. Actions aimed at incitement of hatred or enmity, as well as abasement of dignity of a person or a group of persons on the basis of sex, race, nationality, language, origin, attitude to religion, as well as affiliation to any social group, committed in public or with the use of mass media or information and telecommunication networks including the Internet:
   a. with the use of violence or with the threat of its use;
   b. by a person through their official position;
   c. by an organised group,

shall be punishable with a fine of three hundred thousand to six hundred thousand roubles, or in the amount of a wage/salary or any other income of the convicted person for a period of two to three years; or, with compulsory labour for a term of two to five years with deprivation of the right to hold specified offices or to engage in specified activities for a term of up to three years; or, with deprivation of liberty for a term of three to six years.

Article 354.1. Rehabilitation of Nazism

1. Denial of facts, established by the verdict of the International Military Tribunal for the trial and punishment of the major war criminals of the European Axis countries, approval of the crimes, specified by the said verdict, as well as distribution of knowingly false information on the activities of the Soviet Union during World War II, committed publicly, shall be punishable with a fine of up to three hundred thousand roubles, or in the amount of a wage/salary or any other income of the convicted person for a period of up to two years; or, with compulsory labour for a term of up to three years; or, with deprivation of liberty for the same term.

2. Same acts committed by a person through their official position or via mass media or with artificial creation of evidence, shall be punishable with a fine of one hundred thousand to five hundred thousand roubles, or in the amount of a wage/salary or any other income of the convicted person for a period of one to three years; or, with compulsory labour for a term of up to five years; or, with deprivation of liberty for the same term with deprivation of the right to hold specified offices or to engage in specified activities for a term of up to three years.

3. Distribution of information expressing obvious disrespect to society with regard to the days of military glory and the memorable dates of Russia associated with defending the Fatherland as well as desecration of symbols of Russia's military glory, committed publicly, shall be punishable with a fine of up to three hundred thousand roubles, or in the amount of a wage/salary or any other income of the convicted person for a period of up to two years; or, with community service of up to 360 hours; or, with up to one year of corrective labour.

Code of Administrative Offences

Article 5.26. Violation of the Laws on Freedom of Conscience and Freedom of Belief, as Well as on Religious Associations

2. Deliberate public desecration of religious and liturgical literature, objects of worship, worldview symbols, emblems and attributes, damaging or destroying them, shall entail the imposition of an administrative fine upon individuals in the amount of thirty thousand to fifty thousand roubles or up to 120 hours of community service; the imposition of an administrative fine upon officials in the amount of one hundred to two thousand roubles.
Article 13.15. Abuse of Freedom of Mass Information

2. Dissemination of information about a public association or other organisation included into a published list of social and religious associations in respect of which a court of law has rendered an effective decision to liquidate it or to prohibit the activities thereof for the reasons provided for by Federal Law No. 114-FZ of July 25, 2002 on Opposition to Extremist Activities without specifying that an appropriate public association or other organisation are liquidated or that their activities are prohibited, shall entail the imposition of an administrative fine on individuals in the amount of two thousand to two thousand five hundred roubles with confiscation of the object of the administrative offence; on officials in the amount of four thousand to five thousand roubles with confiscation of the object of the administrative offence; and on legal entities in the amount of forty thousand to fifty thousand roubles with confiscation of the object of the administrative offence.

4. Public dissemination of information expressing obvious disrespect to society with regard to the days of military glory and the memorable dates of Russia associated with defending the Fatherland; or desecration of symbols of Russia's military glory, including via mass media or information and telecommunication networks (including the Internet), shall entail the imposition of an administrative fine upon legal entities in the amount of four hundred thousand to one million roubles.

5. Distribution via mass media or information and telecommunication networks of information containing manuals on manufacturing improvised explosives and explosive devices, if this act does not constitute a criminal offence; shall entail the imposition of an administrative fine upon individuals in the amount of four thousand to five thousand roubles accompanied by confiscation of the object of the administrative offence or equipment used for commission thereof; upon officials - in the amount of forty thousand to fifty thousand roubles; upon individual entrepreneurs - in the amount of forty thousand to fifty thousand roubles with confiscation of the object of the administrative offence or equipment used for commission thereof, or an administrative suspension of their activities for a term up to ninety days with confiscation of the object of the administrative offence or equipment used for commission thereof; upon legal entities - in the amount of eight hundred thousand to one million roubles with confiscation of the object of the administrative offence or equipment used for commission thereof, or an administrative suspension of their activities for a term up to ninety days with confiscation of the object of the administrative offence or equipment used for commission thereof.

6. Production and distribution of mass media output containing public calls to terrorist activity as well as materials that publicly justify terrorism or other materials which incite to extremist activity or justify the need for such activity except for cases liable under Articles 20.3, 20.3.1 and 20.29 of the present Code, shall entail the imposition of an administrative fine upon legal entities in the amount of one hundred thousand to one million roubles with confiscation of the object of the administrative offence.

Article 20.3. Propaganda or public display of Nazi paraphernalia or symbols, or paraphernalia or symbols of extremist organizations, or other paraphernalia or symbols, propaganda or public display of which is banned by federal laws

1. Propaganda or public display of Nazi paraphernalia or symbols, or paraphernalia or symbols similar to Nazi paraphernalia or symbols up to the degree of mixing, or paraphernalia or symbols of extremist organizations, or other paraphernalia or symbols, propaganda or public display of which is banned by federal laws, shall entail the imposition of an administrative fine upon individuals in the amount of one thousand to two thousand roubles with confiscation of the object of the administrative offence; upon legal entities in the amount of forty thousand to one hundred thousand roubles with confiscation of the object of the administrative offence; on officials in the amount of four thousand to five thousand roubles with confiscation of the object of the administrative offence, or administrative arrest for a term of up to fifteen days with confiscation of the object of the administrative offence; the imposition of an administrative fine upon officials from one thousand to four thousand roubles accompanied by confiscation of the object of the offence and upon legal entities from ten thousand to fifty thousand roubles with confiscation of the object of the administrative offence.

2. The manufacture, marketing or the acquisition for sale or propaganda of Nazi paraphernalia or symbols, or paraphernalia or symbols similar to Nazi paraphernalia or symbols up to the degree of mixing or paraphernalia or symbols of extremist organizations, or other paraphernalia or symbols, propaganda or public display of which is banned by federal laws, shall entail the imposition of the administrative fine upon individuals in the amount of one thousand to two thousand five hundred roubles with confiscation of the object of the administrative offence; the imposition of the administrative fine upon officials from two thousand to five thousand roubles with confiscation of the object of the administrative offence and upon legal entities - from twenty thousand to one hundred thousand roubles with confiscation of the object of the administrative offence.

Article 20.3.1. Incitement of hatred or enmity as well as abasement of human dignity

Actions aimed at incitement of hatred or enmity, as well as abasement of dignity of a person or a group of persons on the basis of sex, race, nationality, language, origin, attitude to religion, as well as affiliation to any social group, if these acts have been committed in public or with the use of mass media or information and telecommunication networks including the Internet, if they do not constitute a criminal act, shall entail imposition of an administrative fine upon individuals in the amount of ten thousand to twenty thousand roubles, or up to 100 hours of community service, or up to fifteen days of administrative arrest; imposition of an administrative fine upon legal entities in the amount of two hundred fifty thousand to five hundred thousand roubles.

Article 20.29. Production and Dissemination of Extremist Materials

Mass dissemination of extremist materials included into a published federal list of extremist materials, as well as their production or keeping for the purpose of mass dissemination, shall entail imposition of an administrative fine upon individuals in the amount of one thousand
to three thousand roubles or an administrative arrest for a term up to fifteen days with confiscation of the said materials and equipment used for their production; imposition of an administrative fine upon officials from two thousand to five thousand roubles with confiscation of the said material and equipment used for production thereof and upon legal entities from one hundred thousand to one million roubles or an administrative suspension of their activities for a term up to ninety days with confiscation of the said materials and equipment used for production thereof.

1 In this report, ARTICLE 19 and SOVA Center do not endorse this problematic concept of ‘extremism.’ The term is only used in reference to the practice adopted by the Russian government, law enforcement authorities, and judiciary.

2 Adopted by the UN General Assembly on 10 December 1948, Resolution 217(A)(III).


4 Adopted 4 November 1950, in force 3 September 1953.


6 HR Committee, General Comment No. 34 on Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011, para 11.


8 The Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, A/HRC/22/17/Add.4, Appendix, adopted 5 October 2012. The Rabat Plan has been positively referenced in the UN Human Rights Council’s recurring resolutions; see e.g. Resolution on combating intolerance, negative stereotyping and stigmatisation of, and discrimination, incitement to violence and violence against, persons based on religion or belief, UN Doc. A/HRC/RES/22/31, 15 April 2013, para 4. It has also been endorsed by a wide range of the UN special procedures; e.g. Report of the Special Rapporteur on protecting and promoting the right to freedom of opinion and expression (Special Rapporteur on FoE), 7 September 2012, A/67/357; Report of the Special Rapporteur on freedom of religion or belief, 26 December 2013, A/HRC/25/58; Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (Special Rapporteur on racism), 6 May 2014, A/HRC/26/49; and the contribution of the UN Special Advisor on the Prevention of Genocide to the expert seminar on ways to curb incitement to violence on ethnic, religious, or racial grounds in situations with imminent risk of atrocity crimes, Geneva, 22 February 2013.


10 General Comment 34, op.cit., para 46.

11 See, e.g. the Joint Declaration on Freedom of Expression and Countering Violent Extremism, adopted by the UN Special Rapporteur on FoE, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR Special Rapporteur on Freedom of Expression and Access to Information, 4 May 2016; or Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 22 February 2016, A/HRC/31/65A/HRC/31/65, para 38.

12 Ibid.

13 A model offence of incitement to terrorism was also provided in the Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 22
ARTICLE 19, Hate Speech Explained: A definition of ‘hate speech,’ in this report
Given there is no universally accepted


The protection of human rights and
terrorism, Report of the Secretary-General,

24. There is no universally accepted
definition of ‘hate speech,’ or incites to violence, hatred or
abusive, insulting, intimidating, harassing and/or that incites to violence, hatred or
discrimination.

25. The Criminal Code of the Russian Federation,
Article 5; and OSCE, Preventing Terrorism on the public
provocation to commit acts of terrorism,
Article 5; and OSCE, Preventing Terrorism and
Countering Violent Extremism and Radicalization that lead to terrorism, p. 42.

26. HR Committee, Fairrisson v France,
Comm. No. 550/1993, UN Doc CCPR/

27. See, e.g. European Court, Garaudy v France,

28. European Court, Schimanek v Austria, App.
No. 32307/96, 1 February 2000; Witsch v
Germany (No. 1), App. No. 41448/98, 20 April
1999; Gollnisch v France, App. No. 48135/08,
7 June 2011.

29. European Court, Garaudy v France, op. cit.;
Witsch v Germany (No. 2), App. No. 7485/03,
13 December 2005.

30. These included assessment of whether the
statement could be read as a justification of
pro-Nazi policies (Lehideux & Isorni v France, op. cit., para 53); whether fierce
nationalist statements contain an element of
exaggeration in order to attract attention
(Stankov & the United Macedonian
Organisation Ilinden v Bulgaria, App. No.
29221/95 and 29225/95, 2 October 2001,
aparas 102 and 106); whether statements are
marked by their categorical tone (Radio France & others v France, App. No.
53984/00, 30 March 2004, para 38); or whether the statement concerning a war
was a witness account by a participant, and
not a justification of torture or glorification of
its perpetrators (Orban & others v France,
App. No. 20985/05, 15 January 2009, paras
46, 49 and 51).

31. These included assessment of whether a
statement concerns a national symbol
(Stankov & the UMIO v Bulgaria, op. cit., para 106); a country’s leaders during World
War II (Monnat v Switzerland, op. cit., para 60);
national and ethnic identity (Association of
Citizens “Radiok” & Paunkovski v the former
Yugoslav Republic of Macedonia, App. No.
74651/01, paras 69 and 74); the reputations
of living persons, accused of serious
wrongdoing (Chauvy v France, op. cit., para
52 and 69; Radio France and others v France,
op. cit., paras 31 and 34-39); or when a
statement is capable of reviving the painful
memories of the victims of torture (Orban
and Others v France, op. cit., para 52).

32. These included assessment of the fact that
the group making the statements had no real
influence, and that its rallies were unlikely
to become a platform for the propagation of
intolerance and violence (Stankov & the
UMIO v Bulgaria, op. cit., paras 102-103 and
110); or conversely the fact that a statement
containing serious defamatory allegations
against a living person had been broadcast
on national radio 62 times (Radio France and
others v France, op. cit., paras 35 and 39).

33. European Court, Lehideux & Isorni v France,
op. cit., para 55; Monnat v Switzerland, op. cit.,
para 64; Orban & others v France, op. cit., para
52.

34. General Comment 34, op. cit., paras 48-49.

35. Resolution 16/18 on Combating intolerance,
negative stereotyping and stigmatization of,
and discrimination, incitement to violence,
and violence against persons based on
religion or belief, 12 April 2011.

36. See, e.g. Report of the Special Rapporteur on
FoE, A/HRC/7/14, 28 February 2008, para 85;
Joint statement of freedom of expression
mandates from 10 December 2008; Report
of the Special Rapporteur on freedom of
religion or belief, and the Special Rapporteur
on racism, UN Doc. A/HRC/2/3, September
2006; UN Working Group on Arbitrary
Detention, Opinion No 35/2008 (Egypt), 6
December 2008, para 38.

37. C.F. Council of Europe Recommendation
1805 (2007), op.cit.; and Venice Commission,
2018 Report, op.cit.


39. The Constitution of the Russian Federation,
adopted by referendum in December 1993,
Article 15(4).

40. Ibid., Article 13, Parts 1, 2 and 5.

41. Ibid., Article 55, Part 3.

42. Federal Law No. 35-FZ of 6 March 2006,
On Counteraction of Terrorism.

43. Ibid., Article 3.

44. Federal Law No. 114-FZ of 25 June 2002,
On Combating Extremist Activity.

45. Ibid., Article 1. The list is regularly subject
to modifications, and was significantly amended twice (in 2006 and in 2007).

46. The Criminal Code of the Russian Federation,
Federal Law No. 63-FZ of 13 June 1996 (ed.
27 December 2018).

The full text of this provision, and others in
this chapter, can be found in the Annex to
this report.

47. See SOVA Center, Annual reports on
inappropriate enforcement of anti-extremist
legislation in Russia.

48. See SOVA Center, Annual reports on racism
and xenophobia in Russia.

49. The Supreme Court of the Russian Federation
(Supreme Court), Resolution No. 41 of the
plenary meeting of the Supreme Court, 3
November 2016, para 62.

50. The Code of Administrative Offences of the
Russian Federation, Federal Law No. 195-FZ
of 30 December 2001 (ed. 6 February 2019).

51. See SOVA Center, Annual reports on
Inappropriate Enforcement of Anti-Extremist

52. See, e.g., Maria Kravchenko, Inappropriate
Enforcement of Anti-Extremist Legislation in
Russia in 2017, SOVA Center, 24 April 2018.

53. C.F. HR Committee, Concluding observations
on Canada, 2 November 2005, UN Doc.
CCPR/C/CA/CO/5, para 12; on Norway, 24
March 2006, UN Doc. CCPR/C/NOR/CO/5,
para 9; on Iceland, 25 April 2005, UN Doc.
CCPR/C/ISL/CO/5, para 10; on Peru, 1997,
UN Doc. A/51/40. See also Conclusions and
Recommendations of the Committee
against Torture, Bahrain, 21 June 2005, UN
Doc. CAT/C/CR/34/BHR, para 6(i).

54. In 2014, the provisions of the Criminal
Code Articles 282 and 280 were formally
extended to include Internet publications;

55. However, this regulation just put into law
the long-standing law enforcement practice
that already applied both articles to online
statements.

56. See, e.g., Natalia Yudina, Countering or
Imitation: The state against the promotion of
hate and the political activity of nationalists
in Russia in 2017, SOVA Center, 19 March
2018.
See SOVA Center’s Annual reports on racism and xenophobia in Russia.

It is noted that relevant commentary and clarifications by the Supreme Court which restrict the scope of the provisions have not been consolidated into one document.

Ibid. See also ARTICLE 19, Camden Principles on Freedom of Expression and Equality, 2009, Principle 12; and ARTICLE 19, Prohibiting incitement to discrimination, hostility or violence, December 2012, p. 19.

The Supreme Court, Resolution No. 11 of the plenary meeting of the Supreme Court “Concerning Judicial Practice in Criminal Cases Regarding Crimes of Extremism,” 28 June 2011.

The Supreme Court, Resolution No. 32 of the plenary meeting of the Supreme Court, 20 September 2018.

In particular, most lower courts have ignored the Supreme Court’s 2011 clarification that statements justifying or affirming the need for ‘genocide, mass repressions, deportations, and other unlawful actions, such as the use of violence, against members of an ethnicity, race, adherents of a particular religion and other groups of persons’ should be regarded as incitement to hatred, and not as ‘criticism of political, religious and ideological associations and beliefs, as well as national and religious customs.’ See, Supreme Court, Resolution No. 11, op.cit., para 7.

See SOVA Center, Investigation closed against a resident of Saratov who posted videos about local judges, 8 October 2018; Yevgeny Kort’s case sent for retrial, 25 December 2018; and Krasnoyarsk, Case under Article 282 terminated, 28 December 2018.


See Summary statistics on activities of the courts of general jurisdiction and magistrate’s courts for the year of 2017, Judicial Department of the Supreme Court of the Russian Federation, 2018.

The bill would merely supplement Article 20.3 with a note that these provisions ‘do not apply to cases, in which Nazi attributes or symbols, or attributes or symbols similar to Nazi attributes or symbols to the degree of confusion, or attributes or symbols of extremist organizations, or other attributes or symbols, propaganda of which is prohibited by federal laws, are used in works of science, literature, or art, in mass media output as well as for teaching and educational purposes by educational institutions, on condition of condemnation of Nazism and extremism and promoting negative attitude towards Nazism and extremism, in the absence of signs of propaganda and (or) justification of any Nazi or extremist ideology.’ See Draft Law No. 606698-7, System for Promoting Legislative Activity, December 2018, and Draft Law No. 606648-7, System for Promoting Legislative Activity, 2018.


See, e.g., Kravchenko, Inappropriate Enforcement of Anti-Extremist Legislation in Russia, op.cit.

Ramat Plan of Action, op. cit.

General Comment No. 34, op. cit., para 48.


See, e.g. Council of Europe Recommendation 1805 (2007), Blasphemy, religious insults and hate speech against persons on grounds of their religion, 29 June 2017, para 15; or Venice Commission, Report on the relationship between freedom of expression and freedom of religion: the issue of regulation and prosecution of blasphemy, religious insult and incitement to religious hatred, 23 October 2008, para 89.


European Court, Dmitriyevskiy v Russia, App. No. 42168/06, 3 October 2017.

Ibid., para 109.

Ibid., paras 112-119.

European Court, Stomakhin v Russia, App. No. 52273/07, 9 May 2018.

Ibid., paras 98-109.

Ibid., paras 110-118.

Ibid., paras 119-123.

European Court, Mariya Alekhina and Others v Russia, App. No. 38004/12, 17 July 2018, paras 225-228.


Pravoberezhny District Court of Magnitogorsk, Case No. 1-273/2015.

European Court, Savva Terentyev v Russia, App. No. 10692/09, 28 August 2018.

Ibid., para 69.

Ibid., para 82.

Ibid., para 84.

European Court, Ibragim Ibragimov & Others v Russia, App. No. 1413/08 and 28621/11, 28 August 2018.

Ibid., paras 100-123.

Ibid., para 106.

Ibid., para 123.

Central District Court of Khabarovsk, Case No. 1-367/2014, 19 September 2014.

Sovetsky District Court of Krasnodar, Case No. 1-63/14, 27 February 2014.

Privolzhsky Regional Military Court in Tyumen, Case No. 1-21/2016.

Toropets District Court, Case No. 1-20/2018.

Petrozavodsk City Court of Republic of Karelia, case No. 1-808/2015, 27 November 2015.

European Court, Başkaya and Okcuoğlu v Turkey, App. No. 23536/94 and 24408/94, 8 July 1999.

Ibid., para 59.

Ibid., paras 62-67.

European Court, Belek and Velioğlu v Turkey, App. No. 44227/04, 6 October 2015.

Ibid., the applicants were fined sums corresponding to 575 and 285 euro; the newspaper’s publication was suspended for three days.


Pravoberezhny District Court of Magnitogorsk, Case No. 1-273/2015.

Nagatinsky District Court of Moscow, Case No. 01-0178/2017.
Ibid., paras 275-277.

Ibid., paras 280-282.

Magistrate’s Court of Precinct No. 101 of the Central District Court, City of Sochi, Case No. 1-9/102-2017, 2 August 2017.

General Comment No. 34, op. cit., para 48.


C.f. Article 8 of the Law No. 73-FZ On State Forensic Expertise in Russian Federation, 31 May 2001, which stipulates that experts should make their conclusions ‘within the corresponding competence;’ or Article 57, Part 3, para 6 of the Criminal Procedure Code which states that an expert has the right ‘to refuse to submit a conclusion on issues outside the limits of special knowledge as well as in the cases when the materials supplied to him, are insufficient for giving out the conclusion.’ The Supreme Court’s Resolution No. 11, op.cit., summarises these provisions and stipulates that ‘when a court examination is being assigned in extremist cases, the expert should not be questioned on legal issues concerning the assessment of an offence, which is outside their competence and within the competence of the court only. In particular, experts cannot be asked whether a text contains calls for extremist activity or whether informational materials are aimed at incitement of hatred or enmity.’
Rights in extremis:
Russia’s anti-extremism practices from an international perspective.