

# Freedom of Expression Trends in Russia and Kazakhstan

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2016 Jurisprudence in Review

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## Kazakhstan

### Overview

In 2016, freedom of expression in Kazakhstan continued to decline. The number of detentions, arrests and imprisonment sentences related to the exercise of freedom of expression increased to 96 compared to 15 in 2015.<sup>1</sup> Online resources have been blocked without a lawful justification 42 times, compared to 19 in 2015.<sup>2</sup> Further, there were 90 criminal prosecutions of speech related crimes in 2016, compared to 73 in 2015 and 34 in 2014.<sup>3</sup> The criminalization surge in the number of speech related cases is likely related to massive public protests held in May 2016 against a land reform bill that aimed to extend lease terms for foreigners.

This analysis identified two developments concerning freedom of expression in Kazakhstan. First, the Kazakh authorities repeatedly applied Article 174 of the Kazakh Criminal Code to prosecute and convict government critics. Article 174 prohibits incitement to hatred on the grounds of ethnicity, nationality, religion, tribe or social status. In 2016, there had been 12 trials concerning incitement to social, national or religious hatred, which resulted in the conviction of seven persons.<sup>4</sup> In addition to the three men convicted of incitement to ethnic hatred in the two cases analyzed in this report, two known opposition figures, Serikzhan Mambetalin and Yermek Narymbaev, were also imprisoned for two and three years, respectively, on charges of incitement to national hatred against Kazakhs by sharing online excerpts from a banned book *“Wind from the Street.”*<sup>5</sup> The book was critical of Kazakhs, including their language and culture. It was written in 1994, but never published. The book’s author was also charged with incitement to national hatred in 2015.<sup>6</sup>

Second, the Kazakh courts began to mention the ICCPR in prominent cases - particularly Article 14 (fair trial) and Article 20 (hate speech). The word “mention” is most appropriate because Kazakh courts did not unpack the relevant tests outlined in those articles. For example, in *The Case of Max Kebenuly Bokaev and Talgat Tulepkalievich Ayanov* the reference to Article 20 was purely descriptive – the court simply repeated the text of Article 20 and said that it was violated. Similarly, in the two judgments where Article 14 was mentioned, courts replicated their assessment of the article: they briefly explained the right to fair trial, declared that they did not witness any violations to the fair trial, and concluded that Article 14 was not violated. One possible reason for the inclusion of international norms in

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<sup>1</sup> Adilsoz, Statistical Data: Violations of Freedom of Expression from January to December 2016, January 20, 2017 accessed on January 31, 2017 at <http://www.adilsoz.kz/politcor/show/id/198> (Russian)

Adilsoz, Statistical Data: Violations of Freedom of Expression from January to December 2015, January 20, 2016, accessed on January 31, 2017 <http://www.adilsoz.kz/politcor/show/id/171> (Russian)

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Adilsoz, Statistical Data: Violations of Freedom of Expression from January to December 2016, January 20, 2017 accessed on January 31, 2017 at <http://www.adilsoz.kz/politcor/show/id/198> (Russian)

<sup>5</sup> *“Wind from the Street”* (Ветер с улицы) discusses the mentality and political character of ethnic Kazakhs.

<sup>6</sup> Digital Report, *“In Kazakhstan, opposition figures were arrested for Facebook posts”*, October 19, 2015, available in Russian at <https://digital.report/v-kazahstane-oppozitsioneryi-arestovanyi-za-perepost-v-facebook/>

judgments that clearly violate such norms is to add a veneer of validity for decisions that in large part have violated international principles.

## Incitement to Ethnic Hatred

*The Case of Max Kebenuly Bokaev and Talgat Tulepkalievich Ayanov, No. 1-501/2016, November 28, 2016*<sup>7</sup>

*This is one of the more interesting cases concerning incitement to ethnic hatred in 2016 in Kazakhstan. It concerns two activists who organized protests against a land reform bill. The case received much international attention, although most of it focused on the violation of the activists' rights to public assembly.<sup>8</sup> The prosecution of the activists in this case is not particularly surprising as Kazakhstan is known for its intolerance of dissent. However, the case offers a glimpse of how anti-misinformation or anti "fake news" laws could be used to threaten legitimate criticism of government activities.*

*The activists in this case clearly misinformed their audience to a degree. They falsely claimed that the government aimed to sell Kazakh farmland to the Chinese. However, they did not incite anyone to violence and truth remained at the heart of their statement – the land reform bill permitted the sale of land to foreigners. The Court, however, focused solely on the activists' argument that the land would go to China, stretching the potential harm of the statements and the protests that it caused, concluding that the misinformation incited hatred towards ethnic Chinese. Such judicial gymnastics are not uncommon in Kazakhstan where the authorities have little tolerance for political dissent. However, the case should serve as a warning that penalizing speakers for uttering falsities, no matter how small, could be easily used for political censorship.*

On November 28, 2016, Court No. 2 of Atyrau City convicted Max Kebenuly Bokaev and Talgat Tulepkalievich Ayanov of disseminating false information during public events (article 274.4.2 of the Kazakh Criminal Code), inciting social discord (Article 174.2 of the Kazakh Criminal Code), and violating the rules regulating public assembly (Article 400 of the Kazakh Criminal Code). Both activists were sentenced to five years in prison, banned from civic activities for three years after their release, and fined \$1,500.

It was alleged Mr. Bokaev and Mr. Ayanov intentionally disseminated false information, largely through Facebook, VKontakte and WhatsApp that criticized the socio-economic and socio-political situation in Kazakhstan, government's actions, and ethnic Chinese. One such statement was a WhatsApp group message that stated "Ataryu residents! Assemble! As you know, the government will lease 1 million hectares of farmland to China for 25 years! It's time to come together and demand changes to the land

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<sup>7</sup> The analysis of this case is based on a review of the official court decision by Columbia Global Freedom of Expression Program Officer, Bach Avezdjanov.

<sup>8</sup> For example, Maina Kiai, the former UN Special Rapporteur on the rights to peaceful assembly and association, released a legal statement on the violations of the activists' arrests under international human rights norms. You could find the whole statement here: <http://freeassembly.net/wp-content/uploads/2016/10/UNSR-Maina-Kiai-letter-in-Kazakhstan-Max-Bokayev-case.pdf>

code! Otherwise it will be too late – we will lose our land and become slaves, and your children will need to learn Chinese! This is not the time to stay home! Our banned protest to demand the government to stop the give-away of our precious land to China will be on April 24...” There were other similarly worded statements posted on Facebook.

First, the Court focused on incitement to hatred towards a social group, which under Kazakh law, includes government and law enforcement officials. In its decision, the Ataryu court clarified that according to Article 4 of the Law No.527-IV “*On national security of the Republic of Kazakhstan*” national interests of the country encompass guarantees of the rights and freedoms of citizens, the protection of social cohesion and political stability, and unconditional implementation of laws. In assessing the activists’ violation of the national security law, the court considered not only the statements made by them, but also comments that the statements generated. Particularly, the Court concluded that the presence of comments that included outrage and indignation towards government and law enforcement officials proved that the statements formed negative attitudes towards these two social groups. Therefore, the Court reasoned that the activists disseminated information knowing that it would incite hatred towards the government and law enforcement officials.

On the issue of incitement to hatred towards ethnic Chinese, the Court ruled that the activists’ statements and actions undermined trust and respect towards foreigners, particularly ethnic Chinese, and incited hostility and hatred against their way of life, culture, tradition, and formed distrust towards the People’s Republic of China. The Court held that these statements violated both the Kazakh law on national security, as well as Article 20, Paragraph 2, of the ICCPR.

The activists argued that they simply shared publicly available or already published information on the sale or lease of farmland in Kazakhstan. However, the court dismissed that reasoning, stressing that although the government did plan on leasing farmland, there was no information that the land would go to China or Chinese people. Additionally, the court considered data from the Ministry of the Interior on the number of ethnic Chinese living in Kazakhstan to dismiss the activists’ claims about a mass relocation of ethnic Chinese to Kazakhstan.

#### ***The Case of Ruslan Gansanovich Ginatullin, No. 1141, December 14, 2016***

*The Case of Ruslan Ginatullin Gansanovich, decided on December 14, 2016, offers several interesting points. First, the Court equated speech that aimed to articulate racism of a particular ethnic group to incitement of hatred towards that group. Second, Court protected social media companies from intermediary liability, articulating that liability is imposed on the person who disseminates illicit information, rather than the platform that hosts it. Third, the Court expanded the definition of the Kazakh legal term of the “means of disseminating information” to include newsreel or “wall” functions of social media websites because such functions publicly and automatically share information with social media users. The legal term is generally applied to publications, such as blogs or newspapers. Lastly, the case highlights how the Kazakh judiciary misapplies international norms. In this case, the Court articulated that the International Convention on Civil and Political Rights demands that a person be*

*granted a fair trial, and then without going through a proper legal analysis concluded that it did everything required by Article 14.*

Ruslan Ginatullin Gansanovich, a two-time convict for belonging to *Hizb ut-Tahrir*<sup>9</sup>, was sentenced to six years in prison for inciting ethnic hatred and belonging to a criminal group. *Hizb ut-Tahrir* began operating in Kazakhstan in 2002 and Mr. Ginatullin allegedly became involved with it in 2003. It was claimed that he acted in various capacities within the organization, including recruitment of new followers and public dissemination of its ideology. In 2004, he was convicted of incitement to racial and religious hatred and sentenced to two years in prison. In 2010, he was once again imprisoned for two years for participating in an organization that was declared extremist.

In 2015, Mr. Ginatullin's posted two videos on the social media sites Facebook and VKontakte. The videos were not produced by him. He was subsequently prosecuted on the basis that the videos:

- advocated the superiority of Islam above other religions;
- incited to religious and national hatred; and
- supported the creation of a caliphate in Kazakhstan, and thus undermined the nation's constitutional regime.

The first video (hereinafter Video 1), titled "*Russia. Those who don't download are CHURKA!*" Churka is a Russian racial slur used against non-Europeans or persons with dark complexion. The video contained the following allegedly inciting statement "Those who don't download are CHURKA: 'Come on, let's do it, get them (expletive) out of here. Russia is for Russians! Moscow is for Muscovites! Those who do not jump-up are CHURKAs.'"

The second video (hereinafter Video 2) was titled "*Ukraine. War. Ramil – weight 200*" and included the following allegedly inciting statement "Tatars and Bashkirs, have you forgotten your history? How Russian occupiers insolently conquered our lands in the 16th and 17th centuries? How they conquered the Kazan Khanate, how they took Orenburg and killed tens of thousands of Bashkirs by burning their villages. Have you lost your mind and are now helping the occupiers? Wake-up! Do not listen to Kremlin's lies and propaganda! Do not turn into zombies. Those who have forgotten their past do not have a future!" Tatars and Bashkirs are Turkic people who live in Russia and regions that were historically under Russian influence.

In June 2016, The Pavlodar Ministry of Interior conducted an expert psycho-philological review of the videos, which determined that Video 1 contained elements of incitement of national hatred. The expert conclusion was that both videos aimed to form and strengthen negative stereotypes of ethnic Russians as well as to juxtapose people on the basis of nationality. Following the expert review, the Pavlodar Ministry of Interior requested "KazakhTelecom", a Kazakh telecommunications company, to pinpoint

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<sup>9</sup> *Hizb ut-Tahrir* was declared an extremist organization and banned in Kazakhstan in 2005 by order of the Astana City Court. The ban was on the grounds that the organization aimed to establish an Islamic caliphate, led by a caliph.

the location from where the two videos were uploaded. The location was Mr. Ginatullin's place of residence.

On the basis of the expert reviews, in July 2016, the Ministry of Interior searched Mr. Ginatullin's residence and discovered books titled "*Mohammed*", "*The General Idea of Islam*", "*Religious and Social-Social Issues*", "*The Way Marked*", "*Mohammed's Hadiths*", "*The Theory and Practice of Islam*". The law enforcement authorities also confiscated 13 CDs, Mr. Ginatullin's smartphone, and two laptops. The Ministry of Interior's technical experts reviewed the confiscated materials and determined that the videos in question were uploaded from Mr. Ginatullin's smartphone. He was subsequently charged under Criminal Code Article 174.1, which penalizes intentional incitement of hatred and Criminal Code Article 235.3, which prohibits involvement with a criminal group.

Mr. Ginatullin denied the charges. He also alleged that while in custody he was physically and psychologically threatened and abused. For example, the prosecutor allegedly threatened Mr. Ginatullin with making his detention "difficult" if he did not plead guilty. Also, one of the inmates with whom Mr. Ginatullin shared a cell attempted to compel him to plead guilty, called him an extremist, and on several occasions beat him. In September, Mr. Ginatullin was still detained and claimed that another investigator told him that he had to plead guilty if he wanted the abuse to stop. Mr. Ginatullin agreed to cooperate and was questioned in the presence of his lawyer and his mother. However, the investigator allegedly simply wrote down answers to his questions on Mr. Ginatullin's behalf. The fabricated testimony was signed by Mr. Ginatullin in the presence of his lawyer and his mother, but later recanted.

On the issue of Mr. Ginatullin belonging to a criminal group, penalized under Criminal Code Article 235.3, the Court looked to his prior convictions for involvement with *Hizb ut-Tahrir* as well as his admittance to be a member of *Hizb ut-Tahrir* to investigators working on the present case. The Court rejected Mr. Ginatullin's claim that his testimony was forced or fabricated, because his lawyer and mother did not corroborate the claim. A court psychologist also testified that Mr. Ginatullin never raised the issue of mistreatment during his examinations.

The Court went through a much through analysis of the crime of incitement of national, religious, or ethnic hatred. The Court listed the conclusions of psycho-philological experts that Video 1 portrayed ethnic Russians as racist, which formed and strengthened a negative stereotype of ethnic Russians. As for Video 2, the experts determined that it called on its viewers to discriminate on the basis of ethnicity and portrayed Russians and Bashkirs as ethnic groups opposing each other.

The defense argued that the expert findings were not acceptable because Rabilov D.T., who reviewed the videos, was not qualified to do so. However, the court dismissed this argument on the grounds that a June 2016 order by an unspecified investigator mandated psycho-philological reviews to be conducted by experts of the Central Institute of Judicial Expertise of Astana City, and Mr. Rabilov was its lead expert.

The court then reviewed testimonies of technical experts. Particularly, the court highlighted that the experts determined that Facebook's and VKontakte's newsfeeds were a means of disseminating information, since they allowed for public and automatic dissemination of information. Another technical expert testified that Mr. Ginatullin was the sole person who could have uploaded the videos. The expert also reported that Video 1 was viewed 42 times, while Video 2 had 790 views.

Mr. Ginatullin argued that the social networks carried the responsibility for the videos Article 25 of the *"Law on the means of mass information."* However, the Court specified that Article 174.1 of the Criminal Code imposed liability on the person who disseminated information with elements of ethnic hatred. Thus, Facebook and VKontakte were not liable.

The Court then highlighted conclusions of expert reviews of books and electronic devices found at Mr. Ginatullin's place of residence. Specifically, a psycho-philological expert concluded that the items found at Mr. Ginatullin's residence did not contain elements of incitement to hatred or advocacy for the superiority of one group over another on the basis of religion, ethnicity or language.

Lastly, the Court reviewed its compliance with Article 14 of the International Covenant on Civil and Political Rights, which outlines the right to a fair and a public hearing by an independent court. The Kazakh Court declared that it acted in accordance with the national law, objectively reviewed all evidence, and permitted all parties to present their arguments, thus its actions fulfilled Article 14 obligations.



## Russia

### Overview

#### Anti-Extremism

At the time of writing this report, there were 398 convictions related to crimes of incitement to extremism in Russia in 2016.<sup>10</sup> The number of such convictions was on the increase since 2011, when 149 persons were convicted of incitement to extremism.<sup>11</sup> By 2014, there were over 200 convictions, and in 2015, the figure doubled to 588, out of which 216 punished statements made online.<sup>12</sup>

A major development concerning cases related to extremist speech came from Russia's Supreme Court. In the *Statement No. 41 of the Plenary Session of the Supreme Court of the Russian Federation* issued on November 3, 2016, the Supreme Court recommended that persons should not be charged with extremist crimes simply for reposting or sharing information online. Instead, it was suggested that courts must look at the totality of circumstances when reviewing such cases, including the context, the format in which information was disseminated, the information itself, comments or reactions to the information.

Anti-extremism cases analyzed in this report portray how Russian courts penalized speech solely for its potential to incite hatred or violence. Russian courts do not demand a link between words and action to penalize incitement. The preventative aim of the decisions is reflective of the guidance of the 2006 Federal Law on Counteracting Terrorism that prioritized preventative anti-terrorism measures.

#### Religious Freedom

In 2016, Russian courts continued to punish statements that were deemed insulting to religious feelings, unless the feelings were of those belonging to non-traditional denominations. One of the more peculiar cases involved the arrest of a blogger, Ruslan Sokolovsky, for recording himself playing the popular mobile game PokemonGo in a church and publishing the videos online. He was charged under articles 148 and 282 of the Criminal Code, which prohibit incitement to hatred and acts that clearly exhibit contempt for society and aim to offend religious beliefs. The Kirov Court of Saint-Petersburg sentenced the blogger to two months in prison.<sup>13</sup>

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<sup>10</sup> Kommersant.ru, "The Supreme Court recommends not to prosecute allegations of extremism based on social media reposts," November 3, 2016, available in Russian at <http://kommersant.ru/doc/3134489>, accessed on February 22, 2017

<sup>11</sup> Roskomsvoboda, "Autumn internet – extremism", November 17, 2016, available in Russian, access on February 22, 2017 at <https://rublacklist.net/23067/>

<sup>12</sup> *Id.*

<sup>13</sup> Mediza.io, "Video-Blogger was sent to pre-detention for catching Pokemon in a Temple" September 3, 2016 <https://meduza.io/feature/2016/09/03/videoblogera-otpravili-v-sizo-za-lovlyu-pokemonov-v-hrame-glavnoe>

The two cases analyzed in this report offer a contrast in the way Russian law enforcement and prosecution approach religious freedom of Orthodox Christians and Muslims. First, in the case of *LLC SIBFM v Roskomnadzor*, analyzed below, clearly portrays the judicial intolerance in Russia for any speech that may offend the Russian Orthodox Church. The case is extremely worrying for its support of the argument that any caricature of an important religious figure is offensive and may be censored on public order grounds. The *Case of Khasavyurt Magomednabi Magomed*, a Salafist Imam from Dagestan, offers a counter perspective – common religious speech could be censored on national security grounds. The case concerned an Imam who used typical religious statements concerning divine intervention and punishment to rally his parishioners to peacefully resist the closure of Salafist mosques. His statements were interpreted as calls to incitement to religious hatred and he was sentenced to five years in prison.

### False Information

On December 5, 2016, President Vladimir Putin signed an executive order “*On the Approval of the Doctrine on Informational Security of the Russian Federation.*”<sup>14</sup> Paragraph 9 of the order declares that one of the national interests in the sphere of information security is the creation of a secure space for the dissemination of reliable information. Furthermore, Paragraph 12 labels the growth of information that portrays Russia’s government and its policies in a biased way as a threat to the nation’s information security. It is thus not surprising to see courts in 2016 penalizing persons and publications for disseminating information that paints Russia and its history in negative colors under anti-misinformation laws. The two cases analyzed in this report stress that the concept of truth is elusive and should serve as an example on how it could be easily abused by autocratic regimes.

### Media-Regulation

In 2016, there were two noteworthy cases on media regulation in Russia. The first, *The Case of Aleksandrov D.D.*, offered a judicial interpretation of Russian journalistic accreditation laws. In a mechanical review of the applicable law, a court in Saint-Petersburg, clarified that although journalists have a right to be accredited by relevant government bodies, they are not required to do so.

Another case was initiated by the website “7x7” challenging a fine levied on it for failing to include an age filter in a video that contained language inappropriate for children. The video was not created by the website and it had no capacity to edit it. The decision breaks with Russia’s general practice of shielding intermediaries from liability and may indicate a move towards greater intermediary liability.

### Other Notable Developments

This analysis identified instances of Russian Courts referencing Article 10 of the European Convention on Human Rights and jurisprudence of the European Court for Human Rights in adjudicating defamation

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<sup>14</sup> The order could be access in Russian here: <http://publication.pravo.gov.ru/Document/View/0001201612060002?index=0&rangeSize=1>

claims. However, the regional instruments were cited not to protect freedom of expression, but to justify the right of the judiciary to limit it.

Lastly, one Russian court reviewed a person's right to one's image and when such a public figure may lose this right. In the *Case of Krdzhonyan A.A. v. Newspaper "Nasha Irkutskaya Pravda"* the court held that the right is void if the image is used in public interest.

## Select Cases - Anti-Extremism

### *The Case of Ayupov R.N., No 2-1756/2016, February 16, 2016*<sup>15</sup>

*This case concerns the addition of a video of a speech given by a Russian nationalist in which he criticized the authorities to the Russian uniform list of extremist materials. The case illustrates that the authorities have little tolerance for criticism of its actions and equate it to incitement of hatred akin to that of ISIS or militant neo-Nazis. To the authorities, in the words of the court, even a partial dissemination of a video critical of regional law enforcement may exacerbate social tensions and lead to violence and other unlawful acts.*

The Prosecutor General requested the Khanty Surgut City Court to declare extremist a video of a speech by Mr. Ayupov R.N, the leader of "Sovest" (Honor), a civil society organization. The organization's mission is to nurture the development of a younger generation on the basis of traditional values. It rose to prominence for its nationalist messages and criticism of the government as well as law enforcement authorities. The video in question was shared on a social media page of Surgut City and in it Mr. Ayupov criticized the city's law enforcement. Subsequently, the Ministry of Interior of Surgut City requested the prosecutor general to review the video for presence of statements defaming the head of the city's police as well as any incitement to extremism.

The prosecutor general complied. The review was conducted by unnamed experts who concluded that the video contained statements that could aid in the incitement of hatred or enmity on the basis of ethnicity or working for the government; denigrated Surgut City's government and law enforcement; and incited viewers to violence against the city's government. Furthermore, the experts found that the criticism of the government could contribute to the exacerbation of social tensions. Thus, full or even partial dissemination of the video could incite violent and unlawful acts. On the basis of these expert conclusions, the Prosecutor General requested the video to be added to the uniform list of banned extremist materials. This uniform list includes videos of Isis and Nazi propaganda. In its request, the prosecutor alleged that the video aimed to create a negative attitude towards law enforcement, and thus could be used to incite hatred of a social group, which under Russian law includes law enforcement and government officials.

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<sup>15</sup> *The Case of Ayupov R.N.*, Khanty Surgut City Court, February 16, 2016, available in *Russian*, accessed on February 1, 2017 at <http://www.media-pravo.info/case-resolution/view/id/2037>

First, the Khanty Surgut City Court reviewed whether the video contained any information that could be deemed extremist. It relied on testimonies of the Prosecution's experts who concluded that the video contained statements that could aid in the incitement of hatred or enmity on the basis of ethnicity or working for the government; denigrated Surgut City's government and law enforcement; and incited viewers to violence against the city's government. The Court also agreed with these conclusions – particularly that criticism of the government could contribute to the exacerbation of unspecified social tensions. Thus, a full or even partial dissemination of the video could incite violent and unlawful acts.

The prosecutor alleged that the video aimed to create a negative attitude towards law enforcement, and thus could be used to incite hatred of a social group, which under Russian law includes law enforcement and government officials.

After reviewing the expert conclusions, the Court reiterated that freedom of expression is protected by the Russian Constitution, but also that Federal Law No. 114-FZ, Article 13, prohibited the dissemination of extremist speech. The Court then stated that expert findings clearly demonstrated the video's extremist aim and message. Thus, it approved the request to add the video to the uniform list of banned extremist materials.

#### ***The Case of Yevgeniy Kort, No.01-0354/2016, November 3, 2016***

*This case is the first of its kind. In it, a likely Nazi sympathizer was sentenced to a year in a penal colony for sharing a single image on his social media page. The case is concerning because the court imposed a very harsh sentence for a repost of a single image that did not generate any discussions or comments. The case might simply be an outlier or a sign of the Russian authorities' growing intolerance of hate speech online.*

The case below concerns Yevgeniy Kort, a likely Nazi sympathizer, who shared a single image on VKontakte. The image depicted Maxim Martsinkevich (a Russian nationalist) pushing Alexander Pushkin (a famous Russian poet of mixed race) against a wall and uttering a xenophobic remark. Mr. Kort was charged with incitement to national hatred<sup>16</sup> against non-ethnic Russians under Article 282 of the Russian Criminal Code, and sentenced to a year in a penal colony.

In making its ruling, the Zelenograd District Court of Moscow considered Mr. Kort's interest in Nazi imagery online, his negative opinions of Russia, and ownership of several books depicting the experiences of Nazi soldiers on the Eastern Front during World War II. He argued that he did not intend to share the image but accidentally saved it, which triggered an automatic sharing function of VKontakte. The court dismissed this line of reasoning and agreed with the prosecutor that Mr. Kort's sole access to the account was enough to establish his intent.

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<sup>16</sup> Russian Criminal Code, Article 282, Part 1 penalizes actions aimed at incitement of hatred or hostility, and denigration of human dignity, on the basis of sex, race, nationality, language, origins, religious beliefs, or belonging to a social group.

A court-appointed expert concluded that the image contained a set of derogatory psychological and linguistic signs aimed at non-ethnic Russians. The prosecution also sought to establish that Mr. Kort was a Nazi sympathizer. They reviewed his browser history, searched his home, and interviewed several witnesses. The browser searches revealed that he downloaded photos of Nazi soldiers. He also had several books at home depicting the experiences of Nazi soldiers on the Eastern Front during World War II. Witnesses, including Mr. Kort's brother, testified to his interest in Nazi ideology and enmity towards Russia. The court was satisfied with the prosecution's arguments and sentenced Mr. Kort to a year in prison.

## Select Cases - Religious Freedom

### *LLC SIBFM v Roskomnadzor, Case No 42a/5-5022/2016, June 6, 2016*<sup>17</sup>

*The case is a clear example of the Russian authorities' eagerness to protect the feelings of religious groups, particularly of the Russian Orthodox Church, at the expense of freedom of expression. In it, an artistic representation of Jesus Christ, Vladimir Putin, and Alexander Pushkin was deemed extremist, although there was no evidence of complaints from religious communities or any violent reactions because of the image. To justify its decision, the Court went as far as citing Article 10 of the European Convention on Human Rights for its allowance to restrict freedom of expression on the grounds of public order. Expectedly, the Court did not go through a proper three part test prescribed by Article 10, but selectively applied portions of the Article.*

On December 24, 2014, SIBFM, an online portal published an article entitled "Novosibirsk civil society assembled against the monopoly of the Orthodox Church on morality and spirituality." The article contained an image referred to as "Burn, burn, my candle."<sup>18</sup> The image placed cut-outs of the faces of Jesus Christ, Vladimir Putin, and Alexander Pushkin over bodies of three men in a typical Russian household setting.

On March 27, 2015, RoskomNadzor, Russia's media and information watchdog, sent a warning to SIBFM stating that under Article 8 of the Federal Law 114 "On prevention of extremist activities" the image had to be taken down within 10 days because it incited extremism. SIBFM contested the warning.

On September 21, 2015, the first instance Tagansk Regional Court dismissed SIBFM's complaint and declared that "[t]he image is nothing but a mockery of the sacred, and thus a mockery of the Christian faith and the feelings of every Christian." SIBFM appealed, arguing that there was no evidence that the image had been used by anyone for extremist purposes.

On March 2, 2016, the Judicial Collegiate for Administrative Cases of Moscow City Courts upheld the lower instance decision. The appellate body cited the Russian Supreme Court's Guidance No 16 "On the

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<sup>17</sup> *LLC SIBFM v Roskomnadzor, Case No 42a/5-5022/2016, June 6, 2016*, available in Russian, access at <sup>17</sup> <http://www.media-pravo.info/case/1415> on February 1, 2017

<sup>18</sup> The image is available here: [https://gdb.rferl.org/F47F8086-FCD0-45F7-8C92-32B5DAD4813B\\_w987\\_r0\\_s.jpg](https://gdb.rferl.org/F47F8086-FCD0-45F7-8C92-32B5DAD4813B_w987_r0_s.jpg)

*application of the 'Law on Mass Media' by courts"* from June 15, 2010, to consider the context in which information was published, including the purpose, the genre and the style of an article, and if the article could be considered a political opinion or a discussion of a public interest matter. It then proceeded to explain that:

1. Roskomnadzor's warning and request to remove the image was preventative and preclusive
2. The image mocked Christianity and could have been interpreted as religious hatred
3. An expert concluded that the image was degrading important religious figures, and thus offended and degraded religious groups
4. ECHR Article 10 permitted limitation to freedom of expression to protect public order, and "such protections are incompatible with activities that carry signs of extremism." The warning was also proportionate and was not censorship because the aim was to prevent more severe actions than the resulting limitations on speech
5. The warning did not stop SIBFM from performing any of its functions

SIBMF appealed once again, but the Moscow City Court (Moscow Court) upheld the previous two decisions. First, the Moscow Court outlined relevant national laws. It declared that Article 28 of the Russian Constitution guaranteed the right to freedom of religion and conscience to everyone. It also reiterated that Article 29 of the Constitution prohibited any propaganda or agitation inciting social, racial, national or religious hatred, or propaganda of social, racial, national, religious or linguistic supremacy.

The Court then listed definitions of extremist activities per the Federal Law No. 114-FZ "*On Combatting Extremism*":

- A violent overthrow of the Constitutional regime and the integrity of the Russian Federation;
- Public justification of terrorism;
- Incitement of social, racial, national or religious hatred;
- Propaganda of the exclusivity, superiority or inferiority of a person on the basis of his social, racial, national, religious or linguistic affiliation, or attitude towards religion;
- Violation of the rights, freedoms, and legitimate interests of persons and citizens on the basis of social, racial, national, religious or linguistic affiliation, or attitude towards religion;
- Impeding the exercise of the right to vote or participate in elections, or violating the secrecy of the vote, by using violence or threats of violence;
- Impeding legitimate activities of government authorities, local self-governing bodies, election commissions, social or religious organizations, or other organizations, by using violence or threats of violence;
- Propaganda or public demonstrations of Nazi symbols or of symbols of extremist organizations;
- Public calls to commit extremist activities or mass dissemination of evidently extremist materials, or their production;
- Publicly, knowingly and falsely accusing persons in government posts of committing crimes listed in this federal law during the performance of their official duties;

- Facilitating or preparing extremist acts, or inciting to implement them;
- Financing extremist activities or offering other material support to extremist organizations.

The Court then reviewed the decisions of the first two tribunals. The Moscow Court agreed that the caricature portrayal of Jesus Christ mocked Christianity, and offended the feelings of believers, which may incite religious hatred. It highlighted that the lower tribunals were correct in reaching their decisions based on the opinions of experts.

The Moscow Court also reviewed regional human rights instruments. First, it looked to Article 9 of the European Convention on Human Rights to conclude that limitations on freedom of religion must be prescribed by law and necessary in a democratic society to achieve a legitimate purpose. It was also articulated that Article 10 of the Convention allowed freedom of expression to be limited to protect national security, and morality, among other reasons. The Court observed that the Russian Constitution reflected the language of the regional instruments and also prohibited any propaganda or incitement of social, racial, national, or religious hatred.

The Moscow Court thus reasoned that the protection of public order was not compatible with permitting acts that contained elements of extremism. Furthermore, the Court stressed that the actions of Roskomnadzor were necessary and appropriate, and did not constitute censorship, but aimed to prevent more severe actions than the resulting limitations on speech.

***The Case of Khasavyurt Magomednabi Magomed, No. 213/05-25-16/734, October 24, 2016***

*In this case an Imam criticizing the government of Chechnya and Russia for the closure of Salafists mosques and calling for peaceful action was convicted of inciting extremism and sentenced to prison. The Imam's conviction is in stark contrast to the protection enjoyed by the Russian Orthodox Church and other approved religions in Russia. Unfortunately, the judgment was not accessible, and the analysis reviews the expert testimony, which was the basis for the conviction. It highlights the limitations of content analysis and its powerful ability to distort ordinary religious speech, particularly concerning divine punishment of those who disrespect particular religious practices and deities.*

Khasavyurt Magomednabi Magomed is a prominent Salafi imam who preaches in Dagestan. On February 5, 2016, he gave a sermon to roughly 8,000 parishioners in the presence of law enforcement. The sermon focused on the closure of Salafi mosques in Dagestan, criticized the government, and urged parishioners to unite and resist encroachments on their religious freedom. The sermon was eventually published on YouTube. Imam Magomed was charged and convicted of public incitement to terrorism or its glorification<sup>19</sup> and incitement to hatred.<sup>20</sup> He was sentenced to five years in prison. The Russian

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<sup>19</sup> The crime is punishable under the Russian Criminal Code, Article 205.2, Part 1

<sup>20</sup> The crime is punishable under the Russian Criminal Code, Article 282, Part 1

human rights NGO “Memorial” declared Imam Magomed a political prisoner who was arrested for exercising his freedom of speech.<sup>21</sup>

The sermon was analyzed by expert witnesses who answered four questions:

1. Whether Imam Magomed’s statements contained signs of justification or glorification of terrorist activities?
2. Whether Imam Magomed’s statements incited listeners to commit acts of terrorism?
3. Whether Imam Magomed’s statements contained speech elements that incited listeners to hatred or violence on the basis of nationality, religion, ethnicity, or belonging to a social group?
4. Whether Imam Magomed’s statements harshly criticized and expressed aversion or hatred of representatives of certain national, religious, ethnic, or social groups?

The Caucasus Regional Military Court heavily relied on analysis of a linguist expert to answer the following four questions:

1. Whether Imam Magomed’s statements contained signs of justification or glorification of terrorist activities?
2. Whether Imam Magomed’s statements incited listeners to commit acts of terrorism?
3. Whether Imam Magomed’s statements contained speech elements that incited listeners to hatred or violence on the basis of nationality, religion, ethnicity, or belonging to a social group?
4. Whether Imam Magomed’s statements harshly criticized and expressed aversion or hatred of representatives of certain national, religious, ethnic, or social groups?

The expert determined the following:

1. Whether Imam Magomed’s statements contained signs of justification or glorification of terrorist activities as necessary and needing to be mimicked?

In answering the first question, the linguist explained that he analyzed the structural components of the speech, the value judgments associated with certain objects, negative or positive associations of certain words, and whether words were used literally or in relation to the context in which they were spoken.

He then proceeded to look at a part of the Imam’s speech that discussed the closure of mosques in the 1970s in Uzbekistan. Imam Magomed said that God would punish those responsible for closing mosques and argued that the Soviet Union fell apart because Allah decided to punish communists for closing the mosques.

The linguist used this statement to conclude that the Imam’s speech labeled Muslims as a superior group in opposition with the inferior non-Muslims. First, the expert defined “Allah” as a term with positive characteristics, and by extension Muslims share these characteristics, while non-believers did

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<sup>21</sup> Memorial, “Memorial declares Dagestani Imam Magomednabi Magomedov to be a political prisoner,” July 25, 2016, available in Russian, accessed on February 3, 2016 at <http://memohrc.org/news/memorial-schitaet-politzaklyuchennym-dagestanskogo-imama-magomednabi-magomedova>



not share these positive traits. Therefore, the linguist concluded that when the Imam referred to Muslims, he referred to superior qualities of a certain group on the basis of their belief.

He continued by reviewing part of the Imam's speech that criticized those responsible for closing Salafist mosques in Dagestan. In his sermon, the Imam claimed that Allah would punish them, and urged his listeners to speak-up against the closures. He also alleged that practicing Muslims in Dagestan were being killed and threatened, forcing them to flee the country. The linguist concluded once again that the Imam used the term Muslims to refer to persons with positive characteristics, while those "who wished to close God's houses" were inferior. On the basis of these conclusions, the expert declared that Imam Magomed calls to action against the closure of mosques was glorification and justification of terrorist activities.

2. Whether Imam Magomed's statements incited listeners to commit acts of terrorism?

The linguist declared that there were no words in the Imam's speech that incited listeners to commit acts of terrorism. The expert did not provide an explanation for this conclusion.

3. Whether Imam Magomed's statements contained elements speech that incited listeners to hatred or violence on the basis of nationality, religion, ethnicity, or belonging to a social group?

The linguist focused on several parts of the Imam's speech to answer this question. In one, Imam Magomed said "The Prophet declared that the best *jihad* is to tell an idol-worshipper to his eyes that he us wrong, so that he could hear those words. Today we are here to say together, that together we do not want to commit any crimes or go against any systems. We are saying, leave us alone, only a few village representatives are here, leave us alone, Islam existed, exists, and will exist until Judgment day."

In another part of the speech, the Imam said "Allah tests us in many ways and today the test has come to the doors of His House. But we must say no, we will not allow it, we have nothing to lose. You can take our property, kill our relatives, take away our jobs, but you cannot close the House of God – it is the pride of all Muslims to protect it. We, the Council of Imams and our wise men, our grown men, decided to declare the following – mosques are being closed in Dagestan illegally."

In the last part of the speech analyzed for the purposes of answering the third question, the Imam alleged that some followers were framed by the government, arbitrarily detained, and that conflict was proliferated among Muslims believers to divide them and to satisfy the government in Moscow.

The linguist concluded that these statements urged listeners to fight against oppressors and to unite into a single group on the basis of religion to oppose idol worshipers, whom he equated with the Russian government. Thus, the expert declared that the speech contained elements that incited listeners to hatred or violence on the basis of nationality, religion, ethnicity, or belonging to a social group.

4. Whether Imam Magomed's statements contained strong criticism that expressed dislike or hatred of representatives of a certain national, religious, ethnic, or social group?

In reviewing this question, the linguist outlined his methodology:

1. Review of the audience and actions that are incited by the speech;
2. Review of the future actions of audience;
3. Determine the form of incitement speech and analyze its content; and
4. Identify elements of indirect incitement.

The linguist concluded that the following statements made by the Imam contained elements aimed to incite one group to undertake hostile actions against another group: “We have a problem. We are oppressed in a manner that does not allow us to remain silent. So we have come here today to discuss this... If the government is responsible, it is the beginning of its collapse; if a person is responsible, it is the beginning of his end – this is what happens when the House of Allah is touched.”

The following part of the Imam’s speech was interpreted by the linguist to be a rallying call to fight : “A person comes to an Imam and asks to review documents. He then annuls them and the next day says that there are problems with the documents because they are expired. So we go to our landlords but they are nowhere to be found because they are scared... In this short period 13 mosques have been shut down, or locked with a key that was taken away from us. We do not care, mosques that we built are ours and no one has the right to take them away from us.”

In another segment, the Imam said, “Every day we see blood flowing. Why? Because they need to report to [them], and they are fine with one or two persons dying as long as they can report that they completed their task. Whose task are they performing? ... If someone wants to see it, we will show how they arrest and extort to target a person. I was forced to assign bodyguards for imams. You ask why? Because in our city and district imams are studied, they are followed, photographed, their routes are recorded. Do you think this is done to help the imams? No! This is done to send the imams away. Is this legal? Can any government representative tell me if this is legal? If it is illegal, why does it continue to happen?”

After reviewing the three segments above, the linguist concluded that Imam Magomed’s statements included terms related to fighting, eradication, destruction, and incitement. Therefore, the linguist concluded that the Imam’s speech harshly criticized and expressed hatred towards representatives of a certain national, religious, ethnic, or social groups.

On the basis of these conclusions, the Court sentenced the Imam to five years in prison. He appealed, but in late January 2017, the Supreme Court of Russia upheld the conviction and slightly reduced his sentence to 4.5 years.

## Select Cases - Dissemination of False Information

### *The Case of Vladimir Luzgin, No. 2-17-16, June 30, 2016*

*The decision is problematic because Mr. Luzgin was penalized for attempting to participate in a historic discussion. The Court failed to attach value to the importance of historical debate to the right to freedom of expression, which may include questioning or challenging assumed historical facts. The shared article did not include any incitement to violence and reached a small audience. Furthermore, the Court made broad assumptions as to the truth of the State perspective about the historical fact in question.*

Mr. Luzgin was prosecuted in relation to an article that he shared on his personal VKontakte, Russia's major social media platform, page titled "*15 facts about Stepan Bandera's followers that the Kremlin is Silent About.*" Stepan Bandera was a leader of the Ukrainian nationalist and independence movement who was persecuted and assassinated by the USSR in 1959.

On June 30, 2016, the Perm Regional Court convicted Vladimir Luzgin under Article 354.1 of Russia's Criminal Code that penalizes denial of facts established by the Nuremberg Tribunal and intentionally disseminating false information about the USSR's involvement in World War 2. The court fined him RUB 200,000 (~\$3,400).

First, the Perm Regional Court (Court) established that the article was uploaded by Mr. Luzgin. It cited Mr. Luzgin's admittance that he was the one who uploaded the article as well as technical expert testimony that identified Mr. Luzgin to be behind the post. The Court then reviewed the public element of the post. It explained that Mr. Luzgin's page was public, and thus any of VKontakte's 90 million monthly users could access it. Although Mr. Luzgin did not target anyone in particular when he shared the article, the Court equated the act of sharing to public communication targeting persons who share Mr. Luzgin's anti-government opinions and nationalist ideologies.

Then the Court reviewed the content of the article. It relied on expert testimony that concluded that the article contained false information about the actions of the USSR during World War II. Particularly, the experts held that in referring to communists, the article meant the USSR, and that they cooperated with Nazi Germany to spark World War II.

Mr. Luzgin argued that he lacked knowledge and intent to disseminate false information, since he has never read the actual text of the Nuremberg Tribunal decisions. However, the Court explained that the experts whom reviewed the article in question did not need to review the actual text of the Nuremberg Tribunal to identify its falsity. Furthermore, the Court held that Mr. Luzgin was educated enough to understand that the article contained false information. Particularly, the Court determined that Mr. Luzgin took classes in history at secondary school and university, and received good grades. Therefore he had knowledge of the false nature of his article.

Additionally, the fact that only 20 persons accessed Luzgin's page did not matter, since in the eyes of the court the page was public and had the potential to reach an unlimited numbers of persons.

*Dmitriy Igorevich Chernomorchenko v RoskomNdzor, September 12, 2016*<sup>22</sup>

"Goloslama" (Voice of Islam) was an interactive news platform with a newsreel that changed according to the popularity of articles, which was determined by how many people read and commented on an article. The website was blocked per the request of the Prosecutor General in February 2015 on the

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<sup>22</sup> Dmitriy Igorevich Chernomorchenko v RoskomNdzor, September 12, 2016, available in *Russian*, accessed on <http://www.media-pravo.info/case/1670>

grounds that its newsreel exaggerated information and negatively presented social groups, including the leadership of the Russian Federation and law enforcement officials. The articles in question were:

- An article entitled *“Moscow will shelter terrorists again,”* discussed the opening of an office of the Syrian-Kurdish political party “Democratic Union.” Comments to the article included calls to protest in Moscow and to attack police stations.<sup>23</sup>
- An article entitled *“Russian air-force is leveling peaceful suburbs of Aleppo”* allegedly exaggerated Russia’s support for Bashar Al-Assad. The article also generated many negative comments about Russia.
- An interview with the editor of GolosIslama, a resident of Turkey, who discussed Islamophobia in Russia and the prosecution of Muslims, and urged Muslims to move to Turkey.
- An interview with the emir of *Jabhat al Nusra*, a terrorist organization, in which he called on listeners to offer financial and other support to terrorist organizations in Syria.

The decision to ban the website was appealed on three grounds:

1. The owner of the website was not notified about the ban so as to allow him to delete the allegedly unlawful information;
2. The website did not contain information or materials that incited hatred; and
3. The ban was in violation of Article 10 of the European Convention on Human Rights.

The court dismissed the first argument, highlighting that the website’s hosting provider received written notifications in English and Russian about the ban. On the second point, the court declared that it fully agreed with the prosecution’s judgment on the articles because it had no reason to question them, and rejected the plea that the website contained no extremist information.

In response to the argument that the website ban was in violation of Article 10, the court first explained that the Article permitted the government to limit freedom of expression on the basis of national security, among other reasons. In this case, the court held that ban was proportionate and necessary, and did not aim to censor speech, but to prevent consequences worse than the limitation on freedom of expression.

## Select Cases - Defamation

*Makarov A.N. v Artemov A.Y, Case No. 33-1765, April 19, 2016*<sup>24</sup>

On June 7, 2015, “Podosinovets-Info” published an article entitled *“Emergency! We are being raided.”* The author of the article was not identified. Makarov A.N. alleged that the article disseminated false

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<sup>23</sup> “We need to assemble and protest, and not simply talk without a purpose – all of the “umma” needs to rise-up – begin in Moscow and then in other cities. Destroy stores and city halls, take-over police stations and military offices, there are weapons there. Then we will overthrow the idol-worshipping government and put in place the laws on the caliphate.”

<sup>24</sup> *Makarov A.N. v Artemov A.Y, Case No. 33-1765, April 19, 2016*, available in Russian, accessed on February 2, 2017, at <http://media-pravo.info/case/1482>

information and denigrated his business reputation and dignity. Both the courts of first instance and appeals sided with the publication.

The appellate court stressed that the article must be reviewed within the full context of circumstances. Here, the court concluded that the article was simply a verbatim recollection of a witness who reported the alleged raid. Furthermore, the witness did not exaggerate the facts and had reason to believe that her company was being raided.

The court then referenced Article 10 of the ECHR to establish that in considering defamation complaints, the court must differentiate between opinions and affirmative statement of fact. In the eyes of the court, the article in question was not an affirmative statement of fact, but an opinion based on conjecture and past experiences.

*Kochetkov E.E. v. Vecherniy Krastnoturinsk, No. 2-279/2016 ~ M-228/2016, April 29, 2016*<sup>25</sup>

Mr. Kochetkov filed a civil complaint against the newspaper “*Vecherniy Krastnoturinsk*” and its editors, alleging that they had defamed him by referring to him as a monster that beat a person to death. The complaint originated from an article titled “*I know what you did this summer...*” that concerned a murder for which Mr. Kochetkov was tried, but eventually acquitted. Particularly, it was alleged that the article mentioned that Mr. Kochetkov and his relatives beat a person to death. The newspaper did not redact the article once the plaintiff was released. He complained that because of this publication he had been unable to find employment and his wife had been harassed.

On April 29, 2016, the Krasnoturinsk City Court dismissed Mr. Kochetkov’s complaint on several grounds. First, the court declared that the plaintiff failed to use his right of reply or comment to offer a different perspective of the relevant events. Second, the article referred to Mr. Kochetkov using initials, did not include his date or place of birth, residence, or other personal data. Thus, one could not relate the article to the plaintiff solely by reading the article.

Lastly, the court turned to ECHR Article 10 and the case law of the ECtHR to differentiate between statements of fact that can be verified and value judgments, opinions, and beliefs that are subjective and unverifiable. It concluded that subjective and unverifiable facts cannot serve as the basis of a defamation claim. In this case, the court pointed-out that it was the victim’s mother who made the claim that her son was beaten to death during an interview with the newspaper. The mother’s claims were considered subjective and unverifiable, and thus could not serve as the basis of Mr. Kochetkov’s defamation claim.

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<sup>25</sup> Kochetkov v. Vecherniy Krastnoturinsk, No. 2-279/2016 ~ M-228/2016, April 29, 2016, available in Russian, accessed on February 2, 2016 at <http://media-pravo.info/case/1525/>

## Select Cases - Media Regulation

### *The Case of Aleksandrov D.D., No. 5-590/2016-11, September 21, 2016*

Mr. Aleksandrov D.D. was a freelance journalist employed by *Meduza.io*, a Latvian based website that covers Russia. He was sent on an assignment to Northwest Russia to report on a story of a boat that capsized during a storm and caused 14 children to drown. On June 30, 2016, after exiting a government office where he interviewed an official, he was detained by the police. Under threats of having his equipment confiscated, the police forced Mr. Aleksandrov to sign a document stating that he committed an administrative offence and charged him with violating the Code of Administrative Rules, Section 19.2, Part I, which penalizes not-for-profit work without a license, when such a license is necessary. The police alleged that since *Meduza.io* was a foreign press agency, Mr. Aleksandrov was required to obtain accreditation from the Ministry of Foreign Affairs to perform any journalistic activities in Russia.

The court reviewed the relevant legal provisions and declared that:

1. Article 12 of the *Federal Law No. 99-FZ "On licensing various activities"* from May, 4, 2011, does not require persons to seek a license to work for mass media companies;
2. Article 48 of the *Russian Federal Law No. 2124-1 "On mass media companies"* from December 27, 1991, grants foreign mass media companies the right to request accreditation for their journalists from a government body. Additionally, Article 55 of the Law specifies that foreign media companies may seek such accreditation from the Ministry of Foreign Affairs.
3. Section 3 of the Government Order of the Russian Federation No. 1055 "On Rules of Accreditation and Stay of Foreign Media Entities on the Territory of the Russian Federation" refers back to the Law No. 2124-1 for guidelines on accreditation for foreign mass media companies and journalists who work for them.

On the basis of the above, the court held that there is no requirement for journalists to be accredited, although they have a right to do so if they wish.

### *LLC "7x7" v Roskomnadzor, No. 5-1098/2016, October 3, 2016*

On August 26, 2016, a video of a comedy sketch entitled "*We need to go on a vacation! (Lavrentiy Avsugovich uses public money to act outrageously at a villa)*" was uploaded to "7x7", an online magazine that creates its own content as well as hosts news, opinions, blogs, and videos created by its users. "7x7" does not edit content that its users post on the platform. The logo of "7x7" includes a "16+" sign.

The sketch video was about a fictional Russian member of parliament. Russia's media watchdog Roskomnadzor filed an administrative complaint against "7x7", alleging that the online resource violated the *Federal Law No. 436, "On Protection of Children from information that harms their health and development,"* which requires certain content to include age warnings.

First, the court defined the terms “media production” and “media dissemination” according to *Federal Law No. 2124-1 “On mass media.”* According to it, “media production” was defined as a partial or full circulation of a single periodical, a single broadcast of a TV program or a radio program, a single update of an online publication, or any other single mass media publication. “Media dissemination” was defined as the sale, subscription, delivery or circulation of any mass media production.

Then, the court clarified what constitutes “media production” for online publications. It did so by reviewing the *Ministry of Labor Order No. 332 “Approval of the technical standards for “Specialists for the development of production for online publications and information agencies”* from May 21, 2004. The order specified that activities that fall within the term of “media production” include the implementation of artistic and technical designs, and preparation and control over publications. The order clarified that the implementation of artistic and technical designs may include activities such as website layout development on the basis of user demands, development of the website look and aesthetic, development and approval of every publication on the basis of designs, proposals for assignments for full-time reporters, selection of images for publication, and making decisions on updating various elements of a website design. Thus, the court concluded that development and dissemination of mass media production may include activities related to creating publications and posting them online.

Second, the court defined what constitutes an editorial body of a publication. It relied on Article 2, Paragraph 9, of *the Federal Law on Mass Media*, which defined an “editorial body of a mass media” as a person, a group of persons, or an entity that develops and disseminates information. Moreover, the court indicated that Article 56 of the same law made founders, editorial bodies, publishers, distributors, government agencies, organizations, entities, businesses and public organizations, journalists, and authors of disseminated materials legally responsible for the content disseminated through mass media.

Third, the court specified that the *Federal Law No. 436-FZ “On the protection of children from information that causes harm to their health and development”* required creators or distributors of information to review and classify information to warn about potential harm to children.

After clarifying the applicable law, the court concluded that “7x7” violated the *Federal Law No. 436-FZ “On the protection of children from information that causes harm to their health and development”* because it permitted the dissemination of information that was banned among children. The court detailed that the charter of “7x7” online magazine identified the “7x7” editorial body to be LLC “7x7”. Furthermore, the charter specified that the editorial body enjoys full rights, and is responsible for the duties and responsibilities its actions in accordance with the laws of the Russian Federation.

After considering the relevant law and all of the circumstances of the case, the court ruled that “7x7” violated the law on the protection of children and fined it RUB 20,000 (~\$337).

## A Case of Interest - The Right to One's Image

*Krdzhonyan A.A. v. Newspaper "Nasha Irkutskaya Pravda", No. 2-4482/2016, September 21, 2016*<sup>26</sup>

"Nasha Irkutskaya Pravda" (Our Irkutsk Truth) is a regional newspaper that published an article entitled "Big Bribes for Big Money?" The article covered a trial in which Mr. Krdzhonyan was convicted of bribery and included his image. Mr. Krdzhonyan brought a civil complaint against the newspaper, alleging that it violated the right to one's own image and requested compensation of RUB 100,000 (~\$1,700) for moral damages.

The court of first instance satisfied Mr. Krdzhonyan's complaint, but lowered the compensation to RUB 10,000 (~\$170). The Appellate Division of Omsk's Regional Court overturned the first instance decision. The Appellate Division held that the image could not be considered to be personal data because:

- It was not a portrait used for identification purposes;
- The photo was taken at a public event where Mr. Krdzhonyan received a letter of gratitude from a school where his company fixed a gymnasium;
- The photo had two other persons in it;
- Mr. Krdzhonyan was convicted of a felony crime against the state just prior to the publication of the image;
- Mr. Krdzhonyan's criminal trial highlighted the important role that he played in the economic and education sectors of the region where his company operated;

Furthermore, the fact that the image was taken prior to Mr. Krdzhonyan's trial and conviction was irrelevant, since the newspaper acted in the public interest - to discover threats to democracy, rule of law, and national security.

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<sup>26</sup> *Krdzhonyan v. Newspaper "Nasha Irkutskaya Pravda", No. 2-4482/2016, September 21, 2016*, available in Russian, accessed on February 2, 2017, at <http://www.media-pravo.info/case-resolution/view/id/2091>