

Realization of Citizens' Constitutional Rights to Freedom of Expression and Artistic Freedom

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Abstract—The fundamental principles of the Russian and international anti-extremism legislation are considered in the article which includes historical aspect. Legal gaps become apparent, and the lines of approach current problem are given. The problems of realization of citizens' constitutional rights to freedom of expression and artistic freedom in practice are also considered in the article. Right to freedom of expression and artistic freedom is regulated by considerable amount of international legal generality documents, for example, the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, the International Covenant on Civil and Political Rights 1966. The national anti-extremism legislation and praxis of recognition extremist materials are analyzed the weaknesses of different extremist materials recognition procedure become apparent, and solutions of the existing problems on the example of the Russian Federation current legislation analysis and judicial practice are given. The current legislation gaps in the area of extremist materials recognition are formulated in article. The value for society of extremist materials placement in the Federal list (further by the text – FLEM) which conducts the Ministry of Justice of the Russian Federation, adjudicated as extremist is determined.

Keywords—right to freedom of expression; right to artistic freedom; extremism; extremist materials

I. INTRODUCTION

The relevance of the citizens constitutional rights to freedom of expression and artistic freedom realization problem is what against the ever-increasing amount of extremist crimes, fight against extremism expression, very often top-of-mind community issues divergent opinions expressed in some form or other, as well as results of creative work, are recognized as extremist and forbidden to extension in all territory of Russia from Kaliningrad to Vladivostok. Against of violence cases in the case of various social groups opinions and creativity frequent expressions, from our point of view, having nothing in common with incitement of any hatred or enmity and furthermore not agitating for outrage the human rights regardless of their national, social or other identity, are captured by the Russian judicial system wheels.

Before proceeding to consideration of the merits of the article, we will turn to the Constitution of the Russian Federation [1]. Article 29, in particular, states:

1. Everyone shall be guaranteed the freedom of ideas and speech.
2. 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.
3. The freedom of mass communication shall be guaranteed. Censorship shall be banned.

Existence of socially dangerous public associations, such as religious sects, nationalist and terrorist organizations, does not allow one to do without any restriction of these rights.

The research question is problems of realization of constitutional rights to freedom of expression and artistic freedom in connection with extremism restriction.

The purpose of research is existence of constitutional rights to freedom of expression and artistic freedom restrictions in contemporary society.

II. METHODS AND RESULTS

In this research we used methods of the comparative, historical and legal analysis.

The Constitution of the Russian Federation confirms fundamental rights and freedoms of the individual according to generally accepted principles and norms of international law. According to the most common classification of law, human and civil rights and freedoms are subdivided into personal rights, political rights, socio-economic rights, and cultural rights.

In comparison with other types of rights the scope of cultural rights confirmed by the Constitution of the Russian Federation is insignificant. This is due to objective reasons such as the complexity of the cultural and spiritual sphere of

society and lack of need for a comprehensive legal regulation of such public relations.

Article 44 of the Constitution of the Russian Federation guarantees freedom of literary, artistic, scientific, technical and other types of creativity and teaching for everyone.

Proclaimed freedom in the conditions of globalization processes, development of information and other technologies taking place in modern society requires study, analysis and development of legal regulation. This issue is of particular relevance and significance in a multi-ethnic and multi-religious state with diverse and deep cultural traditions.

Ensuring the freedom of creativity the Constitution of the Russian Federation does not define it and does not provide a complete list of types of creativity. In addition to the Constitution of the Russian Federation, relations in the field of creativity and creative activity are currently governed by the Fundamentals of the Russian Federation legislation on culture (hereinafter - the Fundamentals).

The named legal act also does not clarify the issues of terminology. In article 3 of the Fundamentals, the concept of creative activity is defined as creation of cultural values and their interpretation. It also specifies that cultural values are moral and aesthetic ideals, norms and patterns of behavior, languages, dialects and speeches, national traditions and customs, historical toponyms, folklore, crafts, works of culture and art, results and methods of scientific research of cultural activities. They have historical and cultural significance, such as: buildings, structures, objects and technologies, unique in the historical and cultural meaning areas and objects.

Ozhegov's Dictionary of the Russian Language defines creativity as creation of cultural or material values new by design.

As for the types of creativity, no legal act provides and exhaustive list of them. On the one hand, it is necessary to recognize the fact that freedom of creativity of an individual is not amenable to legal regulation, meaning that it is revealed only in the inner experience. But on the other hand, the absence of the list of creativity types leads to uncertainty in the question of which kind of activity can be considered creative. The law does not define the limits of creative freedom. Such uncertainty often leads to abuse.

Thus, if the right or freedom is formulated unconditionally and the law does not specify the limits of what is permitted or any socially harmful consequences, such situation contributes to the law abuse.

Cases when a person in the process of exercising his right of creative freedom goes beyond its limits can be considered as abuse.

The Constitution of the Russian Federation confirms the principle that the implementation of human and civil rights and freedoms should not violate the rights and freedoms of others. But nowadays, more and more often the media covers situations when the realization of the freedom of creativity damages the public goods and interests of other people, contradicting moral and ethical values.

Conflicts arise because of the clash of the principle of freedom of creativity with the norms of morality, ethics, and religion. Moreover, it is not uncommon for such cultural and spiritual conflicts to be given a political connotation.

The Federal law of 25.07.2002, No. 114-FZ, adopted in development of the given constitutional provisions "About counteraction of extremist activity" (further – 114-FZ) determines legal and organizational bases of counteraction of extremist activity. It establishes responsibility for its implementation for protection of the human and citizen rights and freedoms, bases of the constitutional system, ensuring integrity and safety of the Russian Federation [2].

Ratified by USSR in 1973 the International Covenant on Civil and Political Rights in article 18 states that everyone shall have the right to freedom of thought, conscience and religion. And freedom to manifest one's religion or beliefs may be subject only to such limitations that are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others [3].

Contemporary extremism in many manifestations seeks for return of a transcendental basis of society in attempt to overcome uncertainty and instability of "the institutionalized risk environment" (E. Giddens) which is embodied itself by contemporary society, at the same time often being captured by intellectual fantasm and fictitious meanings (simulacra) [4].

114-FZ and the related norms in a number of laws, starting with the Criminal code, form the specific legislation which we will call anti-extremism. Inherently it is a sectoral legislation, which is calling to settle the relations in a certain sphere. The only thing is that this sphere has no distinct definition; the law does not contain any conceptual definition of extremist activity. In the law the concept "extremism" is defined as a synonym of such activity [2].

As Kushnir O.N. notes: "Extremism is one of the most high-frequency words in contemporary mass media, the main, as it is accepted to characterize it, "a global challenge to the contemporaneity" along with terrorism; the relevancy to struggle with extremism is obvious to all; struggle with extremism often finds lines of opposition to the hardly perceptible opponent" [5].

Arapova and Moskalenko consider that extremism is the commitment to radical views and extreme methods of their realization denying compromises, arrangements with ideological and political opponents, the aspiration to achieve goals by all means [6].

An essential fault of 114-FZ dispositions is the lack of definition "mass extension of extremist materials". It is obvious to rational people that in the case of a public statement the public danger is proportional to the width of extension of the statement and the orientation of this extension.

Resonant and mentioning the condition of society and influencing his views owing to its informational content, being such part of the anti-extremism legislation as suppression of extremist materials extension. In 114-FZ the definition "extremist materials" looks as follows: extremist materials –

the documents intended for publication or the information on other carriers calling for implementation of extremist activity or proving, justifying the need of implementation of such activity. That includes the works of heads of NSDAP, PNF, publications proving or justifying national and (or) racial superiority or justifying practice of commission of the military or other crimes directed to full or partial extermination of any ethnic, social, racial, national or religious group [2].

In the ruling of the Omsk regional court [7] published in "The bulletin of judicial practice of the Omsk regional court" in which the court considered that these cases are cases of establishment of the jural facts, the answer about not transparency, closeness of judicial acts in the matter of recognition of information materials extremist is actually put.

Inaccessibility of judicial acts to the public arouses more mistrust to courts, but their inaccessibility to the appeal and failure to provide their to interested persons, believing that the judgment affects their rights, does not deprive of interested persons of the right for appeals to the European Court of Justice at all [8].

Having studied the above described problem, we believe that inclusion of information materials in the Federal list of extremist materials [9] is always condemnation of the author and freedom restriction of distribution of opinions, and including right to review opinions, there is not and cannot be alternative for an adversary procedure with obligative bringing a defendant and all interested persons.

Also specifications surely demand the terms "mass expression of extremist materials", "social group". Uncertainty of provisions 114-FZ allows treating them arbitrarily.

The correct judgment of such category will be promoted by a specification of identifying criteria of materials extremist to such an extent that any citizen, without having special knowledge in law, linguistics and other fields of science, could establish whether materials that he creates, uses and extends, are extremist.

Nevertheless, even with all available shortcomings, this law makes a big difference to formation of civil society and the constitutional state in such difficult, multiethnic and multi-religious country as Russia. Therefore, all of us believe that existence of this law is necessary to assist peaceful co-existence of more than one and a half hundred nations of Russia connected by the general destiny on the earth; to preserve and enhance cultural heritage of the Fatherland; to provide the prosperous future for the future generations of Russians.

Existence of socially dangerous public associations, such as religious sects, nationalist and terrorist organizations, does not allow to dispense without any restriction of these rights [10]. To improve the provisions of the Constitution 25.07.2002 Federal law No. 114-FZ "About counteraction of extremist activity" (further in the text – 114-FZ) which defined legal and organizational bases of counteraction of extremist activity and established responsibility for its implementation was adopted [2].

Article 19 of the International Covenant on Civil and Political Rights specifies that everyone shall have the right to hold opinions without interference; everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice [3]. The Covenant was ratified by the Decree of the Supreme Soviet of the USSR on 18.09.1973.

The most important part of the anti-extremism legislation are measures for suppression of extension of extremist materials. In 114-FZ, the definition "extremist materials" looks as follows: extremist materials – the documents intended for publication or the information on other carriers calling for implementation of extremist activity or proving or justifying the need of implementation of such activity, including the works of heads of NSDAP, PNF, publications proving or justifying national and (or) racial superiority or justifying practice of commission of the war or other crimes directed to full or partial extermination of any ethnic, social, racial, national or religious group [2].

In article 13.114-FZ it is enshrined that information materials are recognized as extremist by federal court in the place of their detection, distribution or finding of the organization which carried out production of such materials on the basis of the statement of the prosecutor or by the corresponding civil, administrative or criminal case proceeding. [11].

In 1999 the leading American expert on terrorism Walter Lacker counted more than 100 definitions of extremism and terrorism and came to the conclusion that all of them contain common feature – extremism assumes violence and threat of violence [12].

All materials adjudicated by court as extremist are entered in the Federal list of extremist materials (further in the text – FSEM) of the Ministry of Justice of the Russian Federation [7]. For the first time it was published on the website of the Ministry of Justice on 14.07.2007 and consisted of 14 points. Since then the list is regularly updated and contains already about 3900 points. Some materials of the same name are recognized as extremist repeatedly demonstrating that even courts do not always investigate the material. For example, the popular song by Alexander Harchikov was recognized as extremist material four times and once under the guise of the song by Vladimir Vysotsky.

Resolatory parts of court judgments often contain a complete description of accidentally found leaflet or other information products. Thus, FSEM can serve not only as a "guide" to extremist materials, but it also advertizes these or those extremist materials better than their manufacturers, assuming that the complete list of contents of leaflets, texts and images on them is provided. Paragraph 326 of FSEM is an example of that. "The leaflets begins with the words "Soldiers and Officers!" and terminates in the words "Down with the Occupational Mode!". It was found during the period from 24.04.2008 till 25.04.2008 near the territory of military unit No. 6676. The address was Kirov, Truda St., 73, the check point of the Syzran VVAUL on R. Erdyakov St. of Kirov,

KPP No. 3 of military unit No. 81807 on st. of Bitter Kirov (the decision of October district court of Kirov of 29.12.2008)” [7].

Let us review the most striking examples of identifying various materials extremist.

Identification of an extremist by the Southern Sakhalin city court in the book “Entreaty (Duah) to God: its value and the place in Islam” became one of the most scandalous cases in August, 2015. Later this decision was overturned because of appeal by the Sakhalin regional court. After this, the case caused wide response amendments, according to which “The Bible, the Koran, the Tanakh and Gandzhur, their contents and quotes from them cannot be recognized as extremist materials” [2].

But not only religious texts are recognized as extremist in Russia. Creativity of various music bands also can be recognized as extremist. The famous rap group “25/17” in the creativity brings up acute social problems. Their song “Front line” released in 2009 in 2016 was recognized as extremist (para. 3780 FSEM) [7].

Unfortunately, even samples of the most national genre – jokes – can be recognized as extremist. The industrial court of Izhevsk city delivers a judgment on recognition of material containing a joke of extremist nature. This is an example of a classical Soviet joke about the person looking at the watch in public transport. However it is not possible to find out the decision on this case in view of the fact that it has been removed from the website of the court. This case in itself being a joke was widely reported in media [5] thanks to what we found out about this decision.

But it is not the only case of recognition of a joke extremist in Russia. Article 5 of the Declaration on freedom of a political debate in mass media specifies that the comic and satirical genre protected by the article 10 of the Convention on protection of human rights and fundamental freedoms allows big extent of exaggeration and even provocation. This happens provided that society is not misled [13]. Russia ratified the Declaration.

III. CONCLUSION

Considering the speed of declaration of various materials as extremist, examples can be given infinitely. Without going into detail, an executor of law, in our opinion, allows undue hurry during hearing on the merits about claiming some materials as extremist. It leads to the fact that even such insignificant things as the demotivators and separate phrases stated on personal pages on social networks can be banned.

In the Russian legislation on extremism and extremist activity there is a fundamental problem in interpretation of extremist activity. A.A. Smirnov, the leading expert of ANO Laboratory of Applied Linguistics, considers that a controversy at judicial and investigative workers is caused by not materials of examination that is not checked for extremism of a statement. Object of their disagreement – the extremist legislation by which extremist crime is estimated [14].

By implication of law the court has to estimate statements, that is not the copied text (the image or a video), but publications as whole. No less important at a research of such material has to be the subjective relation of the distributor expressed in the comment or lack of that and also a context – contents of the blog or the account in general. Concerning media the Supreme Court of the Russian Federation adheres to a position that the repost is a quote which always has to be estimated in a context [15]. Alas, this rule does not work for ordinary inhabitants of the World Wide Web, and courts do not estimate the publication completely. It follows that there is essential to adopt such Resolution of the Plenum of the Supreme Court of the Russian Federation which would concretize criteria of recognition of materials extremist to all-clearness degree.

We consider that in recognition of materials extremist courts have to be ruled by the general idea of controversial materials, intentions of manufacturers (distributors, users) and should not be afraid to take the responsibility for condemnation of these persons and for the ban of the corresponding materials that in the Russian Federation the rights and freedoms of the person and the citizen established by the universally recognized norms of international law were really observed.

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