RUSSIAN SUPREME COURT'S VISION OF MEDIA FREEDOM[11]

СВОБОДА СМИ ГЛАЗАМИ ВЕРХОВНОГО СУДА РФ

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The article explains and illustrates what can be called the most important milestone in Russian media law since 20 years: the adoption by the Supreme Court of the Russian Federation of the Resolution "On the Judicial Practice Related to the Statute of the Russian Federation 'On the Mass Media'". The author argues that it brings Russia closer to a modern and coherent legal framework for the media sector. The adoption of this Resolution is a unique, long-awaited and important event in the regulation of Russian mass media. The Resolution instructs how to interpret and apply the Statute on the Mass Media of 1991 to digital and Internet based services in today's market. With its Resolution the Supreme Court fills in the gaps in the overall legal framework applicable to mass media and shows how Russian Media Law may be adapted to the case law of the European Court of Human Rights.

Key words: *media law; censorship; privileges of journalists; access to information; freedom of the media.*

[11] This chapter is based on the abridged version of the author's article "Russia's Modern Approach to Media Law" (Richter, 2011). The author was one of the five external experts appointed to the working group of the Supreme Court of the Russian Federation, which elaborated the text of this resolution.

В статье объясняется и иллюстрируется, пожалуй, наиболее важное событие в российском праве СМИ за последние 20 лет: принятие пленумом Верховного суда РФ Постановления «О практике применения судами Закона Российской Федерации «О средствах массовой информации». Автор утверждает, что оно делает правовые рамки СМИ в России более современными и разумными. Постановление инструктирует судей в отношении применения Закона «О СМИ» 1991 г. к цифровым и Интернет-услугам, существующим на медиа-рынке. Своим Постановлением Верховный суд заполняет прорехи, существовавшие в системе правового регулирования СМИ, показывая, как Закон «О СМИ» приспособить к практике Европейского суда по правам человека.

Ключевые слова: *право СМИ; цензура; права журналистов; доступ к информации; свобода массовой информации.*

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

In June 2010, Russia's highest court adopted for the first time in its history a coherent interpretation of relevant case law in relation to the mass media, editors and journalists.

To recall some of the background, according to the Constitution of the Russian Federation (Article 126)[12] the supreme judicial body for civil, criminal, administrative and other cases under the jurisdiction of common courts is the Supreme Court of the Russian Federation (hereinafter "the Supreme Court"), which among other duties shall "provide explanations on the issues of court practice". According to the Statute "On

[12] The Constitution was adopted by popular vote on 12 December 1993. See URL: http://constitution.ru/ for the official translations of the Constitution into English, German and French.

the Judicial System of the RSFSR"[13], which is still in force, explanations introduced by the Plenary Meeting of the Supreme Court are binding for both the courts of law and other state bodies, as well as for state officials who apply the law.

The Resolution "On Judicial Practice Related to the Statute of the Russian Federation "On the Mass Media" (hereinafter – the Resolution) was unanimously adopted at the Plenary Meeting on 15 June 2010 by all 78 judges of the Supreme Court, who were present[14].

Foundations of the Media Regulation

The Resolution sets out the important political and legal principle that the "freedom to express opinions and views and the freedom of mass information are the foundations for developing a modern society and a democratic state", thus underlining the place and role of the free media in the system of institutions and values of the Russian Federation. Courts should take this principle into consideration in all cases in which this freedom is challenged in the name of values that are not exactly the foundations for developing democracy in the Russian Federation, such as public morals or the reputation of citizens and companies.

Limitations on the freedom of mass information, as the Resolution reminds, are admissible exclusively if imposed by a federal statute of Rus-

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[13] RSFSR stands for *Russian Soviet Federative Socialist Republic*.

[14] Resolution of the Plenary of the Supreme Court of the Russian Federation "On the Judicial Practice Related to the Statute of the Russian Federation 'On the Mass Media'" No. 16. The author was one of the five external experts appointed to the working group of the Supreme Court of the Russian Federation, which elaborated the text of this resolution. See the Russian text at URL: http://www.rg.ru/2010/06/18/smi-vs-dok.html. An official English translation is available on the website of the Supreme Court at URL: http://www.vsrf.ru/vscourt_detale.php?id=6786 and URL: http://www.vsrf.ru/vscourt_detale.php?id=6787. An unofficial (but more reliable) translation was published in Richter, 2011, see URL: http://www.obs.coe.int/oea_publ/iris/iris_plus/2011-1.html.

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

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

Censorship

An important place in the Resolution is taken by the Supreme Court's commentary on the provisions in the Statute of the Russian Federation "On the Mass Media"[15] (hereafter – Statute on the Mass Media) that refer to the ban on censorship (point 14[16]). Although in general the Resolution's statement is trivial the text provides some curious nuances.

[15] Statute of the Russian Federation "On the Mass Media" No. 2124-1 of 27 December 1991 as of 8 December 2003 (in English): URL: http://merlin.obs.coe.int/redirect.php?id=12475

[16] Point numbers in brackets hereinafter refer to the points of the Resolution.

The courts are reminded that according to Article 3 paragraph 1 of the Statute on the Mass Media censorship is the demand made by officials, state bodies, or local self-government bodies, organizations or public associations that the editorial office of a mass medium or its representatives (in particular the editor-in-chief or his/her deputy) obtain from them prior approval for the publication of messages and materials (except for cases when the official is an author or interviewee), as well as for the suppression of the dissemination of messages and materials[17] or separable parts thereof.

The Supreme Court notes that officials have indeed the right to demand that their prior approval be given, when the subject matter to be disseminated consists of their own materials or interviews given to journalists. By contrast, the law does not foresee a corresponding obligation of the journalist to obtain prior approval for disseminating this type of information. Therefore, the Supreme Court's message is that while such a demand is not an act of censorship, a journalist's refusal to provide the transcript for an advance agreement on it is not punishable. This is important for court cases on the content of media materials disseminated on the basis of interviews because the Supreme Court's reading of the provision allows the editorial offices to edit interviews independently (under the condition that they do not violate copyright law). This rule is even more evident if a journalist makes his own story based on the interview without "distortion of its meaning and the words of the interviewee" (point 14).

According to the Supreme Court, it is a different question under what conditions the founders of the mass medium (whose status resembles in many ways that of owners of the media outlet) may lawfully demand that its editorial office or its editor ask for their prior approval on messages and materials that they intend to disseminate. The answer depends on whether or not the editorial charter or a separate agreement between the

[17] The law does not define what it understands by "messages" and "materials". It appears, however, that messages are meant to be texts or speeches while materials can be visual and therefore refer to videos, photos, etc.

founder and the editorial office (that under certain circumstances replaces the editorial charter) foresees this possibility. The Supreme Court concludes that, in the absence of such a provision, any interference by the founder with the professional independence of the editorial office and the rights of a journalist is illegal.

The Resolution explains that despite a general ban on censorship stipulated by Article 29 of the Constitution of the Russian Federation, Articles 56 and 87 of the Constitution allow for a possibility of limiting freedom of mass information as a temporary measure in case of a state of emergency or the martial law (although these articles do not specify that censorship is indeed such a measure). In these cases censorship can be imposed and enforced following the procedure established by the Federal Constitutional Statutes[18] "On the State of Emergency" and "On the Martial Law".

Regulation of online media

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

[18] Federal Constitutional Statutes have a higher status than Federal Statutes, they are adopted following a more complex procedure and may not be vetoed by the President.

A logical construction based on Article 24 paragraph 2 of the Statute on the Mass Media led the Supreme Court to important legal conclusions. The main one was that websites were not subject to mandatory registration as they would be if they were to be considered mass media outlets. Thus the Resolution (point 6) confirmed the legal tradition that has emerged in Russia in the absence of clear rules, namely that the registration of websites can be done on a voluntary basis only (Richter, 2010). In 2011 Article 24 of the Statute on the Mass Media was abolished, and a new notion of the media was introduced into the law. One of the types of the mass media is now a "network publication", or in fact an online media.

If the registration takes place, continues the Resolution, then the authors of online services acquire the status of journalists with all the rights and privileges foreseen by the Statute on the Mass Media. Many websites seek such registration, because they want to receive accreditation with state bodies for their reporters. Now registration will become easier because point 6 of the Resolution stipulates as follows:

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

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

On the other hand, if a website is registered as a mass media its staff bears the same responsibilities as journalists. The site itself is subject to the system of warnings from Roskomnadzor[19] or a public prosecutor in

[19] Roskomnadzor is a Russian abbreviation for the Federal Service for Supervision of Communications, Information Technologies and Mass Media under the Ministry of Communications and Mass Communications.

cases of abuse of the freedom of mass information. Such warnings may eventually lead to the site being forced to close down as a media outlet, although in such a case it would probably be able to continue to operate as a regular website. These consequences deter many website operators who therefore refrain from requesting registration. The Resolution acknowledges that those who violate the law when disseminating information through Internet websites not registered as mass media outlets shall be subject to penal, administrative, civil, and other liability under the legislation of the Russian Federation. However, they may not be subjected to the specific provisions foreseen by the legislation on the mass media among which are stricter penalties for dissemination in the mass media of extremist calls.

The Resolution provided a vital clarification on the issue whether there was a need to obtain a broadcasting licence to disseminate audiovisual programming online. The Supreme Court recalled that a broadcasting licence was necessary if technical means for over-the-air, wire, or cable television and radio broadcasting are used to distribute the mass media output (Article 31 of the Statute on the Mass Media). It then considered that such technical devices were not used for disseminating mass information through websites. As a consequence, the Supreme Court concluded, a person who disseminated mass information online did not need to acquire a broadcasting licence. This explanation removed the threat for online broadcasters that performing online commercial or non-profit activities without a licence might lead to administrative liability, which would have been the case had a licence been deemed obligatory by law. Alas the relief did not last for long. In 2011 amendments adopted to Article 31 of the Statute on the Mass Media eliminated the condition to use over-the-air, wire, or cable means for broadcasting to be considered as such and thus made it clear that a licence is necessary to be obtained in dissemination programmes online, if the broadcasts are based on a schedule.

Further on the Resolution reiterated that the provisions of Article 24 paragraph 2 of the Statute on the Mass Media referred to the applicabil-

ity of the rules established for radio and television, but only where such rules were established by the Statute on the Mass Media. As the latter refrains from the regulation of advertising, the rules established by the Federal Statute "On Advertising" in relation to commercials in television and radio broadcasting did not apply to the Internet. This had been open to question with regard to the norms relating to the amount and time of advertising and bans or restrictions on advertising of certain types of goods and services (such as tobacco, alcohol or medical services). At the same time the Resolution mentioned that general rules on dissemination of advertisements in the mass media established by the Statute on Advertising should be applied to those websites registered as mass media outlets. Because there were no such general rules (with a minor exception for advertising to raise funds for shared construction of real estate), the Supreme Court probably referred to such basic principles of advertising as fairness and credibility of information. A year later, in 2012, the parliament amended the Statute on Advertising to include a ban on advertising of alcohol products in Internet. That move made a strong blow on the financial sustainability of online news media.

An issue dealt with in the Resolution that enjoyed intense attention by the media is the liability of the "editorial offices" of registered Internet sites for statements made by readers/viewers on the website's fora and chat pages. If this section of the website is not pre-moderated, the editorial office of such an outlet can become liable only if it receives a complaint from Roskomnadzor or a public prosecutor that the content of a communication presents an abuse of the freedom of the mass media (Article 4 of the Statute on the Mass Media) and subsequently fails to amend (or delete) the communication and the communication has been judged to be illegal by a court. Here the Resolution draws a parallel between such fora and live broadcasts that do not make broadcasters liable in accordance with Article 57 ("Absolution from Responsibility") of the Statute on the Mass Media.

At the stage of editing the draft resolution representatives of Roskomnadzor strongly objected to this reasoning. Their position was based on

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

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

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

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

rial office is issued. The Rules have already been used on a number of occasions.

One may doubt the legality of some of the provisions of the Rules. To begin with, the 24-hour deadline is set neither in the Statute on the Mass Media, nor in the Resolution. The absence of any time reference in the law made it impossible for the Resolution to find a requirement for the mass media outlet to act "immediately" or "as soon as possible". Moreover, there is no obligation for a mass media outlet to indicate its e-mail address on its website, to check its e-mails every day, or to have a facsimile device. In response to this criticism raised by this author in an interview to the *Deutsche Welle* radio, the broadcaster received an inquiry from an assistant to the head of Roskomnadzor as to the time limits that exist in Germany for reacting to official complaints. In reply the station provided Roskomnadzor with a memo published on the website of both *Deutsche Welle* and Roskomnadzor[20]. It indicated in particular that the normal practice in Germany for website operators was to have a grace period of a week in controversial situations when consulting lawyers might be necessary to come to a conclusion.

The Resolution abstains from giving guidelines on situations in which the editorial office of an online media are addressed not by public bodies and officials but by individuals who believe that their rights and legal interests were violated in comments disseminated via Internet forums and chats. Will the media outlet that ignores such a complaint be still exempt from responsibility? The discussion in the editorial group showed that the majority believed that the persons defamed should make use of their right to a refutation of the defamatory statements in the same fora and chats. As a research shows the case law on civil lawsuits in relation to defamatory comments in the forums became very controversial and requires additional explanations from the top courts (Richter, 2013).

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

Guarantees for access to information

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

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

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

1. Accreditation provides journalists with additional possibilities of seeking and obtaining information in comparison with those who are not accredited;
2. Rules concerning accreditation by state bodies, bodies of local self-government, state and municipal organizations may not impose limitations on the rights and freedoms of accredited journalists other than those foreseen in the federal statutes (for example,

the suspension of an accreditation would not be a permissible measure as it is not stipulated by a federal statute);

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

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

Protection of journalists' privileges

Like elsewhere in the world Russian journalists, editors and media outlets enjoy certain privileges that under particular circumstances protect them from the need to check the truthfulness of the information that they disseminate and from related accusations of violating the law. They are all listed in Article 57 of the Statute on the Mass Media, and each of them is discussed in the Resolution.

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

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

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

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

Because the media are exempt from liability only if they reproduce the words of the officials "literally", the Supreme Court explains that the Statute on the Mass Media does not necessarily require verbatim reproduction as the courts believed was the case. The Resolution states that literal reproduction is "a form of quotation that does not change the meaning of the statements, reports, materials and their fragments while and where the author's words are quoted without distortion". At the same time, the Supreme Court notes that it is important to consider that every so often exact fragments of statements, reports or materials, when quoted out of context, can appear to have a different meaning to the original meaning of the statement, report or material. Thus the Resolution's interpretation of literal reproduction becomes very favourable for responsible media outlets.

Article 57 of the Statute on the Mass Media also makes media outlets immune from liability for literal reproduction of materials taken from other mass media "which can be ascertained and called to account for a breach of the legislation of the Russian Federation on mass media". When considering the norm, the Supreme Court recalls that the "other mass media" do not need to be necessarily outlets registered in Russia. According to the provisions contained in paragraphs 2 and 3 of Article 402 of the Civil Procedural Code of the Russian Federation, a foreign outlet can be held liable in Russia, if the defendant organisation, its administrative body, branch or representative office are on the Russian territory or if the defendant citizen resides in Russia or if the defendant has property on Russian territory, or (even more importantly) – in defamation cases – if the plaintiff resides in Russia.

Public interest

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

1. Article 49 paragraph 1, sub-paragraph 5 of the Statute on the Mass Media stipulates a ban on the dissemination of information

concerning the private life of citizens in the mass media without their prior consent or the prior consent of their legal representatives unless disseminating the information is necessary for the protection of public interests;

2. Article 50 paragraph 1 sub-paragraph 2 of the same statute allows for dissemination of reports and materials produced with the assistance of hidden audio- and video recording, film recording and photography if this is necessary for the protection of public interests and provided that measures against possible identification of outsiders have been taken;
3. Article 152 of the Civil Code of the Russian Federation specifies that the divulging and further use of the image of a citizen is allowed only with the consent of the citizen. His consent is not needed, however, if the use of the image is in state, social or other public interests.

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

The Resolution notes that "public interest shall be understood not as any interest expressed by the audience but as, for example, the need of the public to reveal and expose a threat to the democratic state governed by the rule of law and to civil society, to public safety, or to the environment". The Supreme Court does not limit the notion to clear-cut examples but goes further by instructing the courts to "make a distinction between reporting facts (even controversial ones) capable of contributing in a positive way to a debate in society, concerning, for example, officials and public figures in the exercise of their functions, and reporting details of the private life of an individual who does not exercise any public functions. While in the former case the mass media exercises its public duty by contributing to imparting information on matters of public interest, it does not do so in the latter case" (point 25).

With this reasoning the Russian Supreme Court clearly follows the arguments of the European Court of Human Rights in its famous judgments concerning the cases of *Observer and Guardian v. the United Kingdom* and *von Hannover v. Germany*. If the media disclose aspects of private life with the aim to uncover corruption or other offences of politicians and officials such an endeavour establishes circumstances that grant the editorial office immunity from lawsuits aimed at protection of private and family life. This needs to be distinguished from cases when the disclosure of private information is done for the sake of sensation or seeks to cater to lowbrow interests of the audience. In these cases the law shall not grant protection.

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

Protection of confidential sources

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

By providing this explanation the Supreme Court confirms that there is no contradiction between Article 41 of the Statute on the Mass Media quoted above and Article 56 of the Criminal Procedure Code of the Rus-

sian Federation adopted after the Statute on the Mass Media. Article 56 provides a list of persons who may not be called to testify in court as witnesses (attorneys, clergymen, etc.). The list does not mention journalists or editorial workers, which does not exclude in principle that there may be other groups enjoying relief from the duty to witness in court. This is confirmed by the Constitution (Article 51 paragraph 2) which declares: "A federal statute may envisage other cases of absolution from the obligation to testify". The importance of the explanation of the Supreme Court lies in reminding prosecutors and investigation bodies that are more accustomed to work with the Criminal Procedure Code than the Statute on the Mass Media which norm to apply – and that is the norm of the Statute on the Mass Media on confidentiality of sources.

And even though a court of law may still demand such a disclosure at any stage of the case deliberations, the Supreme Court makes an important clarification for the freedom of the media in this regard. The Resolution stipulates that such a demand is allowed only after "all other means to learn about relevant circumstances, which are important for the just examination and adjudication of the case, are exhausted and the public interest in disclosure of the source of information overrides the public interest in keeping it a secret" (point 26). Here again the Supreme Court follows the case law of the European Court of Human Rights[21]. It is clear that the Resolution obliges the courts from now on to provide reasons for why the public interest in disclosure would outweigh the necessity to keep the source secret.

Conclusion

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

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

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

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

Unfortunately more recent amendments to the Statute on the Mass Media and the pieces of legislation attempt to reverse this positive trend set by the Supreme Court. By Constitution the Supreme Court cannot change the law, but it can and it does continue to interpret it in the best possible way for democracy and freedom of the media in Russia.

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