[RU] Supreme Court on Media Law

IRIS 2010-6:1/40

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On 15 June 2010 the plenary meeting of the Supreme Court of the Russian Federation adopted a Resolution *О практике применения судами Закона Российской Федерации «О средствах массовой информации»* (On Judicial Practice Related to the Statute of the Russian Federation “On the Mass Media”) (hereinafter - the Resolution). Such resolutions routinely explain the statutory norms to the courts that have general jurisdiction over particular topical issues of legal practice in Russia (see IRIS 2005-4:18/32). According to the Constitution of the Russian Federation (Art. 126) “The Supreme Court of the Russian Federation shall be the supreme judicial body for civil, criminal, administrative and other cases under the jurisdiction of common courts, shall carry out judicial supervision over their activities according to procedural forms envisaged by federal law and provide explanations on the issues of court practice.”

This is the first ever resolution of the national Supreme Court that directly interprets the media law. The Resolution reiterates the basic principles of Article 29 of the Constitution of the Russian Federation and Article 10 of the European Convention on Human Rights, on freedom of expression and freedom of the media. It also refers the Russian courts to the relevant provisions of the International Covenant on Civil and Political Rights and the Final Act of the Conference on Security and Cooperation in Europe (CSCE), as well as of the CIS Convention on Human Rights and Fundamental Freedoms (see IRIS 1995-6: Extra). It recalls that according to para. 3 of Art. 55 of the Russian Constitution “The rights and freedoms of man and citizen may be limited by the federal law only to such an extent to which it is necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring the defence of the country and security of the State.” In particular the Supreme Court directs the courts of law to find out if liability of persons engaged in the mass media sector is indeed provided by the federal statutes (as opposed to other sources of law).

The Resolution clarifies that since the obligatory state registration of the mass media outlets is dependent on the dissemination of the produce of the mass media, and since no such produce exists in dissemination of mass information via Internet, registration of Internet web sites as mass media outlets is not obligatory. As a result persons who disseminate mass information via Internet are not liable for production or dissemination of unregistered mass media. Those who violate the law by disseminating mass information via Internet sites that are not registered as mass media can be liable for the violations but without the peculiarities of liability envisioned by the statute “On the mass media”. At the same time the governmental registration authority may not deny an application of a web site to be registered as a mass media outlet.

As Art. 31 of the statute “On the mass media” requires licensing of terrestrial, wired or cable broadcasting, and as no such technical means are used in the dissemination of mass information via the Internet, no licence is required for persons who disseminate [audiovisual] mass information via Internet sites. Advertising regulations of broadcasting stipulated by the Federal Statute “On Advertising” (see IRIS 2006-4:19/34) are only applicable to the Internet sites that have voluntarily registered as mass media outlets, while general rules established by this statute can be enforced to the extent applicable to Internet sites (point 6 of the Resolution).

The Resolution allows the presentation in the courtroom of any notary certifications of civil law violations on the Internet if it is considered that the evidence might be destroyed or tampered with before the court proceedings begin. The judge (or court) may also review the evidence in real time in preparation for the hearings with the full respect of the Civil Procedure Code (point 7 of the Resolution).

The Resolution indicates that the title of a media outlet is not a statement as such, since “its function is essentially to identify the given media outlet for its actual and prospective audience”. Therefore the title may not be evaluated in the court as to whether it does or does not reflect the “real state of affairs”. Thus a denial of the registration of a media outlet because of the requirement that its title reflect the “real state of affairs” is illegal (point 10 of the Resolution). This clarification thereby closely follows the Judgment of the European Court of Human Rights in the case of Dzhavadov v. Russia (Application no. 30160/04, Strasbourg, 27 September 2007).

The Resolution explains that any “closed door session” of the court of law on grounds that are not directly stipulated by the federal statutes contradicts the constitutional provisions that examination of cases in all courts shall be open, and also presents a possible violation of the right to a fair and public hearing as stipulated by point 1 of Art. 6 of the European Convention on Human Rights and also point 1 of Art. 14 of the International Covenant on Civil and Political Rights (point 17 of the Resolution).

The Resolution explained that the so-called “obligatory information” (Art. 35 of the statute “On the mass media”) must include election campaigning statements of the candidates that the state-owned, municipal-owned, and/or private media outlets are obliged to disseminate, as well as information to be disseminated in accordance with 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” (see IRIS 2009-7:19/32). Thus these types of material fall under journalistic privileges as provided in Art. 57 of the statute “On the mass media” and make media outlets immune from liability in relation to their content (point 22 of the Resolution).

The Resolution further states that interviews with public officials, leaders of political parties, and their press officers, represent a form of reply to an editorial request for information and thus also make the mass media outlets immune from liability as stipulated in Art. 57 of the statute “On the mass media”.

Statements of the readers/viewers made on the fora and chat pages of an Internet site registered as a mass media outlet (where this section of the web site is not pre-moderated) shall make such an outlet liable only if it has received a complaint from a governmental watchdog that the communication is illegal in its content, and fails to correct (or delete) the communication, and the communication subsequently is determined by a court to be illegal. Here the Resolution draws a parallel between such fora and live broadcasts that do not make broadcasters liable in accordance with the aforementioned Art. 57 (point 23 of the Resolution).

The Resolution discusses at length the norms of the Russian statute “On the mass media” and the recently introduced Art. 1521 of the Civil Code that provides for a possibility to disseminate information about the private life of a person and his/her pictures in cases where “it is necessary to protect public interests”. The notion of necessity to protect such interests has not been widely used in courts and has never been explained in Russian law. The Supreme Court held that the courts should consider that a fundamental distinction needs to be made between reporting facts - even controversial ones - capable of contributing to debate in a democratic society relating to politicians in the exercise of their functions, for example, and reporting details of the private life of an individual who does not exercise official functions. While in the former case the press exercises its public duty by imparting information on matters of public interest, it does not do so in the latter case. Here the Supreme Court again closely followed the arguments of the European Court of Human Rights (see Observer and Guardian v. U.K., and von Hannover v. Germany) (point 25 of the Resolution).

The Supreme Court noted that part 2 of Art. 41 of the statute “On the mass media” demands that the editorial office protects the confidentiality of sources except in the case where a corresponding demand comes from the court of law in relation to a case that it is dealing with. The Resolution says that this type of information presents “a secret specifically protected by a federal statute”. A court of law may demand such a disclosure only when all other means of obtaining the necessary information have been exhausted and “there is an overriding public interest in the disclosure of the confidential source” (point 26 of the Resolution).

Point 28 of the Resolution deals with an interpretation of Art. 4 (“Inadmissibility of abuse of the freedom of mass information”) of the statute “On the mass media” which (together with Art. 16) make way for a forced closure of media outlets under certain circumstances. The Supreme Court explains here that while determining whether an offence was indeed an abuse of the freedom of mass information, the court of law should take into account the context such as “aim, genre and style of a publication, a programme or part therof”. In particular, the Resolution here directly quotes point 5 of the Declaration on freedom of political debate in the media of the Council of Europe’s Committee of Ministers (2004): “The humorous and satirical genre, as protected by Article 10 of the [European] Convention [on Human Rights], allows for a wider degree of exaggeration and even provocation, as long as the public is not misled about facts”.

The Supreme Court stipulates that a suspension of a media outlet or a ban on the coverage of certain events or persons represent extreme measures to support a claim, which should only be used by courts in cases when they hear a complaint on violation of Art. 4 (“Inadmissibility of abuse of the freedom of mass information”) of the statute “On the mass media” (point 30 of the Resolution).

A case on the closure of a media outlet should be dealt with only by the top court of law of the particular subject (region) of the Russian Federation where the dominant dissemination of the media outlet takes place (that is, the second instance court) (point 31 of the Resolution).

The Resolution was signed by the Chief Justice Vyacheslav Lebedev, with Vyacheslav Gorshkov serving as Judge-Rapporteur.

Постановление Пленума Верховного суда Российской Федерации “О практике применения судами Закона Российской Федерации «О средствах массовой информации»” No. 16.

http://www.rg.ru/2010/06/18/smi-vs-dok.html

Resolution of the Plenary of the Supreme Court of the Russian Federation “On Judicial Practice Related to the Statute of the Russian Federation ‘On the Mass Media’” No. 16.

Statute of the Russian Federation "On Mass Media" No. 2124-1 of 27 December 1991 as of 8 December 2003

http://medialaw.ru/e_pages/laws/russian/massmedia_eng/massmedia_eng.html