[RU] Supreme Court on Extremism and Terrorism-related Crimes in the Media

IRIS 2012-3:1/32

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The Russian Supreme Court has recently held two Plenary Meetings that resulted in similar resolutions that provide explanations to all judges in the country on the issues of court practice relating to crimes of terrorism and extremism.

The Resolution “On Judicial Practice Relating to Criminal Cases on Crimes of an Extremist Nature” of 28 June 2011 instructs judges that when adjudicating on such cases they should take into account both security of public interests (i.e., foundations of the constitutional regime, and integrity and security of the Russian Federation) and protection of human rights and liberties as defined in the Constitution (freedom of conscience and religion, freedom of expression, freedom of mass information, the right to seek, receive and impart information by legal means, etc.) (point 1).

The Resolution interprets what is to be considered as hate speech, the essential element of extremist speech. The crime of hate speech can take place only with actual malice and with the aim to cause hatred and enmity as well as to denigrate the dignity of a person or a group of persons if motivated by characteristics such as gender, race, ethnicity, language, origin, attitude to religion, or belonging to a social group.

The issue whether dissemination of extremist materials (see IRIS 2002-8/32 and IRIS 2007-9/27) presents a crime should be adjudicated based on the intention of such dissemination. In this regard the expression of opinions, arguments that use facts of interethnic, interdenominational and other social relations in the discussions and texts of scholarly or political nature that do not aim to denigrate human dignity of groups of persons does not present a crime of hate speech (point 8).

In point 7 the Resolution points to the fact that criticism of political organizations, ideological and religious associations, political, ideological or religious beliefs, ethnic or religious customs per se should not be considered as hate speech. When determining whether State officials (professional politicians) were subjected to denigration of human dignity or dignity of a group of people, the judges are directly referred to take into account points 3 and 4 of the Declaration on freedom of political debate in the media of the Council of Europe’s Committee of Ministers

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(2004) and the relevant case law of the European Court of Human Rights. In this regard the Supreme Court states that criticism in the mass media of such persons, of their actions and beliefs per se should not be considered in all cases as action aimed at denigrating the dignity of a person or a group of people as in relation to such persons the limits of admissible criticism are broader than those in relation to other people.

The Resolution "On Some Aspects of Judicial Practice Relating to Criminal Cases on Crimes of Terrorist Nature" of 9 February 2012 stipulates that judicial "measures to prevent and stop such crimes should be taken in compliance with the rule of law and democratic values, human rights and basic liberties, as well as other provisions of international law".

Both resolutions state that public calls to extremist activities (terrorism) include calls with the use of Internet, such as the posting of such calls on websites, in blogs or fora, dissemination via bulk e-mail, etc. The crimes are considered complete from the moment of promulgation (dissemination) of such calls no matter whether they indeed cause citizens to perform extremist activity (act of terrorism), e.g., from the moment of the start of a broadcast or providing access to Internet-media.

О судебной практике по уголовным делам о преступлениях экстремистской направленности

http://supcourt.ru/Show_pdf.php?Id=7315

Resolution "On Judicial Practice Relating to Criminal Cases on Crimes of Extremist Nature" No. 11 of 28 June 2011

О некоторых вопросах судебной практики по уголовным делам о преступлениях террористической направленности

http://supcourt.ru/Show_pdf.php?Id=7695

Resolution "On Some Aspects of Judicial Practice Relating to Criminal Cases on Crimes of Terrorist Nature No. 1 of 9 February 2012

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