[RU] Resolution of the Constitutional Court on the ban on “discrediting the Army”

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Andrei Richter
Comenius University (Bratislava)

On 30 May 2023, the Constitutional Court of the Russian Federation adopted thirteen resolutions to formally reject the admissibility of complaints on the unconstitutionality of Article 20.3.3 of the national Code on Administrative Offences from different complainants. The resolutions, published on 20 June 2023, are largely identical in their content and arguments.

The article itself was introduced on 4 April 2022 to provide penalties for “public actions aimed at discrediting the use of the Armed Forces of the Russian Federation for the purpose of protecting the interests of the Russian Federation and its citizens, maintaining international peace and security, or exercising their powers by state bodies of the Russian Federation for the particular purposes, assisting volunteer formations, organizations or individuals in the performance of tasks, assigned to the Armed Forces of the Russian Federation”. The disputed part 1 of the article prescribes that such actions shall be punishable with an administrative fine of 30,000 to 50,000 rubles (or about 300 to 500 EURO). A further violation of the norm puts the offender under the regulation of Article 280.3 of the Criminal Code (see IRIS 2022-3/1).

The complainants, who were earlier fined for the violation, claimed that Article 20.3.3 of the Code on Administrative Offences contravenes a number of human rights guaranteed by the Russian Constitution, including the right to freedom of expression, as well as the right to equality and non-discrimination, as only statements critical of the use of the Armed Forces and the activity of the public bodies “for the purpose of protecting the interests of the Russian Federation” are outlawed.

The Constitutional Court found no grounds for the complaints’ formal review. Its logic is as follows:

The disputed legal provisions were introduced following the start of Russia’s “special military operation” in Ukraine, and it is “clear” that the lawmaker adopted the new norms “taking into consideration these circumstances”. For the Constitutional Court, departing from these circumstances, would lead to “an abstract control of the law”, and it would not be led there.

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The Constitutional Court reminded that it earlier acknowledged the absorption into Russia of the territories of Luhansk, Donetsk, Kherson and Zaporizhya as constitutional. According to the Court, raising “subjective” “arbitrary” doubts as to whether the relevant actions of the State serve the purpose of protecting the interests of the Russian Federation and its citizens, maintaining international peace and security would deny the rule of law in the country, the supreme nature of the Constitution and the necessity to follow its norms. This will be “impermissible”.

The Constitution, including the norm on freedom of expression, does not presuppose or allow that the human rights and freedoms guaranteed therein are used to deny the constitutional order of the Russian Federation, under which “the state, formed by the multinational people of the Russian Federation in the parameters determined by it” is a constitutional value, subject to respect and protection by the Russian citizens and anyone else on the territory of Russia, while “defence of the Fatherland” is recognized as the duty of a Russian citizen.

For the actions aimed at protecting the interests of the Russian Federation and its citizens, and maintaining international peace and security to be “effective”, it is important to have public support. Critical statements, on the contrary, may have “a cumulative effect” and thus be detrimental to the morals of the military and success of the actions, while de facto assisting the forces that counter Russia’s efforts to maintain international peace and security. This can happen even if public criticism is not aimed to undermine the military actions.

The content of the disputed norm “may not” be considered as directed to enable propaganda for war, which is prohibited by the Russian law. Neither would it introduce an obligatory ideology, nor discriminate people because of their opinion. Freedom of thought “does not envision committing offences.”

The Constitutional Court concluded by saying that “[t]he ability to express one’s own opinion on the activities of the Armed Forces of the Russian Federation, those assisting them, and public bodies of the Russian Federation, including pointing out certain shortcomings therein, if this is not associated with an arbitrary denial of the constitutionally predetermined nature, goals and objectives of this activity, and is based on open reliable information, is not called into question by the disputed Article, which does not exclude the identification of facts of the direction of the actions of citizens, that are given the appearance of a constructive expression of their position, to discredit the relevant decisions, measures and activities.” As to whether the public statements were indeed aimed to discredit the activities is the prerogative of general courts, not the Constitutional Court of Russia.

As the disputed article of the Code is directed to preserve “public and constitutional law and order”, and does not violate the constitutional rights of the

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complainants, their complaints were not found admissible.

According to Mediazona, an online news media that focuses on Russia's penal system, since the start of the full-scale aggression in Ukraine, Russian courts have reviewed more than 7 000 administrative cases on "discrediting" the Russian army.

On 5 March 2022, in response to the procedure for voting on the withdrawal of the Constitutional Court of the Russian Federation from the Conference of European Constitutional Courts, the Russian Constitutional Court informed that it was withdrawing from the Conference on its own will.

КОДЕКС РОССИЙСКОЙ ФЕДЕРАЦИИ ОБ АДМИНИСТРАТИВНЫХ ПРАВОНАРУШЕНИЯХ

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Code of the Russian Federation on administrative offences

Об отказе в принятии к рассмотрению жалобы гражданки Маркус Кристины на нарушение ее конституционных прав частью 1 статьи 20.3.3 Кодекса Российской Федерации об административных правонарушениях

http://www.consultant.ru/cons/cgi/online.cgi?req=doc;base=ARB;n=766007#hwaUzhT4kAVDgtUI4

Resolution of the Constitutional Court of the Russian Federation, № 1387-O, Saint-Petersburg, On the refusal to accept for consideration the complaint of citizen Markus Kristina about the violation of her constitutional rights by part 1 of Article 20.3.3 of the Code of the Russian Federation on Administrative Offences), Saint-Petersburg, 30 May 2023

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