



Anti-Extremist Legislation and Its Enforcement

This report seeks to give the reader an understanding of how the set of legal norms known as “anti-extremist legislation” is organized and how it works. It will analyze amendments introduced in 2006 and 2007 and review the enforcement practices observed over the five years since the law was adopted.

The Law on Combating Extremist Activity and subsequent amendments introduced through other laws were all adopted in response to actual problems, even though there was a suspicion from the very start that this legislation could be used to impose excessive restrictions on civil liberties for political and other motives. Initially, there were just a few cases where the new provisions were applied and enforced, but recently such cases have become notably more common. Unfortunately, reported incidents of abuse of anti-extremist provisions have also increased, often at an increasing pace, caused largely by the problems in the Law on Combating Extremist Activity itself.

This report is based on data presented on SOVA Center’s website (<http://sova-center.ru>) under the section ‘Excessive Anti-Extremism.’

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The Structure of Anti-Extremist Legislation

The Federal Law on Combating Extremist Activity was adopted in July 2002. It defines extremist activity (synonymous to *extremism*, as set out by this law) and provides for specific punishment guidelines applicable to all types of non-governmental groups and mass media outlets found guilty of extremism (political parties are excluded because they are still subject to the previous guidelines which existed before the introduction of this law). The main targets of the anti-extremist law are organizations (whether registered or not) and mass media.

At the same time, a number of other laws have also been amended, primarily in order to coordinate them with the Law on Combating Extremist Activity. Among others, the Criminal Code and the Code of Administrative Offenses have been changed to provide definitions of new crimes and offences related to extremist activity. We should emphasize that for an individual, extremism as such is not punishable, unless his or her actions can be described in terms of the Criminal Code or the Code of Administrative Offenses; however, an organization or a mass media outlet may be punished for extremism per se.

Throughout the report, the Law on Combating Extremist Activity together with relevant amendments of other laws will be referred to as “the 2002 Law,” even though more amendments have been introduced in subsequent years.

The definition of *extremism* in the 2002 Law does not refer to the meaning attached to this term in common or political usage. This definition gives no indication of general characteristics, but instead describes extremism through certain acts. The list of such acts may be changed at will and has in fact been changed twice already. This definition is quoted in the Appendix (different fonts are used to highlight changes made at different times).

The original definition of extremism provided in this law included fairly diverse acts. The list was expanded in 2006 and then substantially shortened in 2007, but it has remained extremely heterogeneous. Unless stated otherwise, we will refer to the most recent definition here.

The current definition of extremism includes very dangerous acts, such as attempts to overthrow the constitutional government and “terrorist activities” (these acts of terrorism are defined in a separate law; in fact, terrorism is already a crime, and its suppression does not rely on anti-extremist law).

The definition of extremism in the 2002 Law also includes acts described as certain criminal offences, but given the broader interpretation in the 2002 Law than in the Criminal Code, they do not necessarily have to cause serious public danger – a key characteristic of a crime in the Criminal Code. This is true, for example, with regards to such an important element of the definition as *kindling of social, racial, ethnic or religious discord*. This phrase relates to crimes described in art. 282 of the Criminal Code (incitement to hatred or animosity based on a certain group characteristic, including the above four), but also to similar behaviors which are not really crimes. As a result, a paper may now be closed for a certain publication, although the author of the publication will not face criminal charges (e.g. this is how *Generalnaya Liniya* paper, the mouthpiece of the National Bolshevik Party, was closed in 2005).

Some types of acts included in the list may vary significantly - from fairly high to very low - in their intensity and danger to public. This includes, e.g. *preventing the legitimate activities of government authorities and other organizations, combined with violence or threats of violence, etc.* Violence as defined in the law may vary from serious to insignificant, whereas threats considered may in actuality be unrealistic. Moreover, the incident itself may have other motives than *preventing legitimate activities*, for example in the form of an interpersonal conflict.

Sanctions for some other acts mentioned in the law are questionable: for example, “extremism” includes claims of religious supremacy – a sentiment shared by many religious believers and presenting no danger to society.

According to the definition in the 2002 Law, any - even merely technical - assistance to extremist activity is also qualified as extremism. Therefore, the finding of extremism with respect to

a certain group or even a certain type of conduct may lead to similar findings against a wide range of organizations or mass media involved in any way with those found to be extremists. Given that assistance to extremism is included in the definition of extremism, technically, liability for extremism on such grounds may be extended to an indefinite range of persons.

Liquidation of a group or mass media for extremist activity is the main sanction for extremism. Such liquidation may be preceded by one or more warnings against extremist conduct. Such warnings are issued to organizations by registering authorities, i.e. now by the Federal Registration Service (FRS) or by the Ministry of Justice before 2004. Mass media outlets are warned by the Federal Service for Supervision over Mass Communications and Preservation of Cultural Heritage (Ros-svyaz-okhran-kultura), whereas before 2004 it was the responsibility of the Ministry of the Press. At that time the function was delegated to an agency with a shorter name Rosokhrancultura, which was then merged with another agency in the spring of 2007 to form Ros-svyaz-okhran-kultura. Prosecutor's offices may also issue warnings both to organizations and mass media.

A warning means that the above authorities have found the group to have engaged in extremist activity. However, a prior warning is not mandatory if the extremist activity is found particularly dangerous, because in such cases the organization or media may face liquidation without warning. The same authorities may request a court to liquidate organizations or mass media for alleged extremism.

A warning may be appealed in court. If such an appeal is lost or if a warned group fails to appeal the warning in court, liquidation may follow. This rather bizarre rule has never been applied independently as a sufficient ground for liquidation, but it was mentioned, inter alia, in the judgment of 19 April 2007 banning the National Bolshevik Party (NBP) (see below).

A warning which has not been cancelled has the same effect as a judgment of extremism in court, even though a warning may never have come before a judge. It means that the warned group will not be allowed to nominate candidates to the Public Chamber (which makes no practical sense anyway, because the Chamber members are appointed, rather than elected, but the rule implies that a warning effectively means an official finding of extremist conduct).

An organization must officially disown its leaders and distance itself from their actions if such actions are found extremist.

An organization may be suspended in an out-of-court procedure for up to six months either under an indictment pending liquidation, or to allow for the correction of the extremist violation. It is an administrative offence under art 20.2.1 of the Code of Administrative Offences to continue operation following suspension.

Any organization, whether registered or not, may be banned for extremist activity. Then it is a crime under art 282-2 of the Criminal Code to continue operations, for which the organizers face up to 3 years, and members up to 2 years of prison.

Under the 2007 amendments, authorities must publish the names of organizations officially found to be extremist, but so far none have been published.

An individual may be *cautioned* (as opposed to *warned*) by the Prosecutor's Office for allegedly extremist activity, and may appeal such a caution in court. An individual cannot be punished for extremism per se, unless his/her conduct falls under the Code of Administrative Offences or the Criminal Code. Punishable, in particular, are public appeals to extremist activity (see art. 280 of the Criminal Code). Notably, extremist activity, as already mentioned, is not always a punishable criminal offense, but urging someone to engage in such activity may result in a prison term of up to 3 years under art. 280 of the Criminal Code, or up to 5 years if an appeal is made through mass media. (Comparing art. 280 with the legal definition of extremism we will find, for example, that a public invitation to draw swastikas may be punished by years of prison, even though the actual drawing of swastikas in public places is punishable by a maximum of ten days of administrative arrest).

Also punishable is incitement to hatred and animosity (art. 282 of the Criminal Code) – up to 2 years of prison or even up to 5 years, if aggravated by the use or threat of violence, abuse of official position, or committed by an organized group. Punishable administrative offences include demonstration and dissemination of Nazi symbols (art. 20.3 of the Code of Administrative Offenses) and massive dissemination of extremist materials (art. 20.29 of the Code of Administrative Offenses).

Any material (in print or some other format) may be found extremist by a court in a specific judgment; the only materials presumed extremist without judgment are “works by the leaders of the National-Socialist Workers Party of Germany and the Fascist Party of Italy.” A list of materials legally found to be extremist must be published; the first published list in July 2007 appears to be incomplete.

The 2002 Law did not contain an inventory of crimes which should be considered extremist. Such an inventory containing “crimes of extremist nature” was provided in art. 282-1 of the Criminal Code punishing for the establishment of an “extremist community” - i. e. for setting up a group with an intention of committing such crimes. However, the inventory was clearly incomplete and far from matched the broad definition of extremism (therefore the Prosecutor General's Office came up with their own inventory for the purposes of collecting relevant statistics).

The 2007 amendments established that “extremist-oriented crimes shall mean in this Code (i.e. the Criminal Code) any crimes motivated by political, ideological, racial, ethnic or religious hatred or animosity, or by hatred or animosity towards any social group, stipulated in relevant articles of the Special Part of this Code and par. ‘e’, part one, article 63 of this Code.” All such crimes are also regarded as extremist activity.

Par. ‘e’, part 1, art. 63 of the Criminal Code stipulates that the above are considered as aggravating circumstances with respect to any crime, warranting a tougher punishment. The said motives are also considered as qualifying characteristics, i.e. they always warrant tougher punishments under 11 other articles of the Criminal Code – from murder to vandalism.

Recently, the notion of extremism has been increasingly used in the Russian legislation. It was used, in particular, in early 2006 as part of the restrictive amendments of legislation regulating non-profit organizations (NGO). An individual convicted for extremist activity is not allowed to participate in an NGO. The law treats “participation” as any involvement in any activity carried out by the organization - it is broader than just membership and potentially imposes an extremely strong limitation.

Since reform of the electoral law in the autumn of 2006, a court may ban a candidate (or a political party list) from elections for extremist conduct during the election campaign. Most importantly, candidates may be banned for prior statements made over a period equal to their potential term in office (usually four years), if such statements included calls to extremist activity, justification of such activity, or incitement to ethnic, etc. hatred (art. 76 p. 7 ‘g’ of the Federal Law on Main Guarantees of Election Rights and the Right to Referendum in the Russian Federation - the foundation of electoral legislation in Russia; this provision does not apply to any statements made before December 2006).

All mass media, whenever they mention an organization liquidated or banned for extremist activity, must, under threat of a fine (art. 13.15 of the Code of Administrative Offences), also mention that the organization has been liquidated or baned.

Analysis of 2006 Amendments

In July 2006, the definition of extremism was substantially expanded. Some added provisions were clearly designed to remove inconsistencies in other legislation relevant to extremism, but a hasty adoption of the amendments resulted in even more inconsistencies. Overall, the amendments made the already imperfect 2002 Law notably worse.

Fundamental changes in the definition of extremism concern the prohibition of any attempts to hinder the operation of government establishments (and also voluntary and other associations) accompanied by violence or threats of violence. A paragraph was added concerning “an attempt on the life of a statesperson or public figure” (the Russian law fails to clarify who should be considered a public figure), even though this provision is essentially already included under “terrorist activity.”

The definition of extremism even included violent acts targeting individual civil servants, regardless of motivation, context, and degree of public danger of such attacks. Under the 2006 definition, a drunk man who threatens a policeman for stopping him was an extremist offender. Should an NGO leader pronounce a threat against any civil servant, the NGO could face sanctions.

Any public justification of terrorism or extremism was also recognized as extremism. (To remind the reader, terrorism is already included in the definition of extremism, so the wording is redundant). At the same time, the notion of “justification” was included in the anti-terrorist article of the Criminal Code (art. 205-2): a note explaining this article says that “public justification of terrorism shall be understood as public statements which recognize the terrorist ideology and practice as legitimate and deserving to be supported and emulated.” It appears inappropriate that such an interpretation should be applied to a much broader - and not necessarily criminalized - object of the Law on Combating Extremist Activity, and in fact, the meaning of “justification” in the Russian language is not limited to the definition above.

As long as “justification of extremism” was included in the definition of extremism, it was technically possible to prosecute “justification of justification of extremism” ad infinitum, just as in the case of “assistance to extremism.”

The definition of extremism was amended to include knowingly false accusation of extremism aimed against “anyone holding an official position in the Russian Federation, or in a subject of the Russian Federation, while on official duty or in connection with his/her official duties.” Of course, slander is an offence, but this provision raised public concerns over a potential source of official abuse. People “holding official positions” include bureaucrats of almost all levels in the administrative hierarchy, and MPs (federal and regional).

And finally, it is unclear why the amended definition of extremism included an almost verbatim description of discrimination based on race, language, etc., which is already a crime (art. 136 of the Criminal Code). It clearly does not fit in the definition of extremism, however diverse its characteristics may be. By including discrimination, the legislators may have intended to encourage the enforcement of art. 136, which is hardly ever enforced today; if so, they missed the mark.

Overall, it seems that the amendments were targeted against any type of street protest, because protesters often do things which may be interpreted – in good faith or otherwise – as violence or threats of violence against authorities or specific officials. Should a protest or any episode thereof be found extremist, all groups involved (whether registered or not) could face bans and other sanctions.

Analysis of 2007 Amendments

Amendments adopted in July 2007 (published on 1 August and effective after 10 days) are too diverse and complex to be assessed as rather positive or rather negative.

A few amendments are likely to have a negative impact on civil liberties in Russia. Firstly, they include the above requirement of mentioning that a group has been banned or liquidated.

Secondly, it is problematic that authorities will be allowed to tap phone conversations of people suspected of not-so-serious crimes – in fact, most criminal offences, including extremist offences, fall under this “medium seriousness” category. Formerly, wire tapping was only authorized in respect to people suspected or accused of serious and very serious crimes. Notably, a similar provision in art. 8 of the Law on Detective Operations also allows tapping the phones of “persons who may possess information on the said crimes” - i. e. a very broad range of people.

The amendments substantially expanded the definition of “hate crime” in the Russian Criminal Code, and this innovation is highly controversial.

Formerly, art. 63 of the Criminal Code contained a very brief list of hate motives taken into account as aggravating circumstances for whatever the crime: “racial, ethnic or religious hatred or animosity.” The recent amendments added “political,” “ideological,” and also “hatred against a certain social group.”

It had been felt for a long time that other types of motives should be added: for example, neo-Nazi murders of anti-fascists were clearly motivated by political or ideological hatred, but there was no possibility to take it into account in meting out the punishment; the same applies to “ideologically-motivated” killings of homeless people or attacks against gay men.

On the other hand, making political and ideological hatred an aggravating circumstance will result in tougher punishments even for minor offences committed during any political or other public events, because virtually any event has an opponent strongly disliked by the participants. We see no need for the option of tougher punishments: it is extremely rare for judges to mete out maximum possible sentences for hate crimes, so even the former provisions of the Criminal Code left ample room for punishing hate offenders even stronger. On the contrary, in Russia today, the public and political spheres are not so much affected by politically motivated offences, riots and vandalism - deplorable as such incidents are - but rather by excessive administrative pressure and over-regulation.

The motive of “hatred against a social group” does not seem operational, because the Russian law lacks a definition of “a social group,” giving too much discretion to enforcers. It has already been demonstrated in cases under art. 282 of the Criminal Code, where the additional hate motives have been included since end-2003. As of today, there have been only two effective sentences where incitement to hatred against a social group was taken into account - the social groups in question were the Russian Army and the Government of Marii El Republic, respectively.

The hate motive has been reformulated not only in art. 63, but in all the six articles where this qualifying characteristic is present. It has also been added as a qualifying characteristic to five more articles: intentional infliction of minor bodily harm, beating, threat of death or causing serious damage to health, involvement of minors in crimes, and “hooliganism” (art. 213 of the Criminal Code). In the latter case, due to a poorly drafted new version of the “hooliganism” article, even a small misdemeanor (treated under the Code of Administrative Offenses), where it is hate-motivated, is punishable by up to five years of prison. No doubt, this amendment of the Criminal Code may result in numerous, excessively tough sanctions against political and ideological protesters, whether racist or not, because the conduct of protesters can often be described (and sometimes rightly so) as “hooliganism.”

Besides, the hate motives were not added to art. 282 of the Criminal Code, meaning that political and ideological hate propaganda is still not a crime.

Some of the recent amendments are definitely positive, though. For example, provocation is expressly forbidden in criminal investigation of extremist or any other cases.

Most importantly, the amendments have substantially changed the definition of extremist activity for the better.

Firstly, this definition now includes all hate crimes.

Secondly, a few elements have been deleted. We can assume that some of them have been found too vague, some others redundant, and still others related to other spheres of regulation. Here are the components deleted from the definition of extremism (some of them were added just a year before):

- undermining the security of the Russian Federation;
- seizure or usurpation of power;
- establishment of illegal armed formations;
- debasement of national dignity;
- incitement to social strife involving violence or encouragement of violence;

- massive disturbances, hooliganism and vandalism motivated by ideological, political, racial, ethnic or religious hatred or animosity, and also motivated by hatred or animosity towards any social group;

- use of violence against a representative of government authority, or threats to use violence against a representative of government authority or his family in connection with his exercise of official duties;

- attempt at the life of a government official or public figure with the purpose of terminating this person's official or political activity, or as revenge for such activity.

It is also of high importance that “justification or excuse of extremist activity” is no longer interpreted as extremism.

There have been some other improvements:

- the provision against unequal treatment has been aligned even more with art. 136 of the Criminal Code (“discrimination”), even though it remains clearly redundant in the anti-extremist law;

- the provision on “hindering legitimate activity of government authorities” was extended to include “local self-government, ... voluntary and religious associations, and other organizations”;

- extremism during elections is not limited to interference with the election committees, but also interference with what citizens do.

On the other hand, one of the vaguest elements of the definition – the incitement to hatred against members of certain groups - has been stripped of the reservation concerning violence or encouragement of violence. The excessive vagueness of the latter term may result in official abuse in the absence of this reservation.

Generally speaking, the 2007 amendments have resulted in the qualitative improvement of the “extremist activity” definition. Even though many inconsistencies and defects remain, now the law is much more applicable and contains fewer provisions likely to impose inappropriate restrictions on civil rights and liberties.

New types of hate motives added to the Criminal Code create a potential for both appropriate and inappropriate enforcement. It is premature to assess this particular amendment before some enforcement practices have emerged, even though the trends we have observed recently in the enforcement of anti-extremist laws (see below) give us every reason to be concerned that this reform of the Criminal Code may have more negative than positive consequences. To reiterate, this particularly concerns the article on “hooliganism.”

Criminal Sanctions

Here, in accordance with the new definition of extremism, we will consider offences under art. 282 of the Criminal Code (incitement to hatred) and all hate offences as extremist crimes.

Since the 2002 Law was adopted five years ago, its enforcement of such offences has been growing from the initial level of zero, even though enforcement still lags far behind the number of crimes. On the other hand, the adoption of the 2002 Law does not directly explain the progress made so far in combating hate crimes, because the 2000 Law does not necessarily warrant criminal prosecution.

The SOVA Center knows of four guilty verdicts in 2003 for violent crimes where the hate motive was recognized, nine such verdicts in 2004, 17 in 2005, 33 in 2006, and 11 in the first half of 2007. The number of convicted offenders has also grown. Around 55 persons were convicted in 2005, approximately 110 in 2006, and 22 in the first half of 2007. Of course, the convictions are few in comparison with the number of hate offences committed in Russia, but there is visible progress in terms of enforcement.

All these sentences either took into account the qualifying characteristics (i.e. aggravating circumstances) in relevant articles of the Criminal Code or applied par. ‘a’ part 2 of art. 282 of

Criminal Code (which, we believe, was the wrong qualification in most cases). The hate motive as an aggravating circumstance (par. 'e' art. 63 of the Criminal Code) was not taken into account in any sentences known to us.

The failure to take into account the hate motive even in obviously racist crimes remains a widespread practice, even though some positive progress has been made; the same is true of probational sentences which serious and repeat hate offenders often get away with.

Courts have been very slow in applying art. 282-1 of the Criminal Code ("establishment of an extremist community") adopted in 2002. In 2005, two offenders were sentenced under this article (no sentences before 2005); in 2006 – three, and in the first half of 2007, one person was sentenced. We believe, however, that many neo-Nazi and similar groups could easily fall under art.282-1 of the Criminal Code.

However, art.282-2 of the Criminal Code has often been enforced, for some reason, against members (actual or assumed) of just one banned group, namely *Hizb ut-Tahrir*. This radical Islamist organization was banned in Russia by the Supreme Court on 14 February 2003 (alongside fourteen other groups) for terrorism, rather than for "propaganda" (which would have been understandable in principle), even though Hizb ut-Tahrir does not practice violence. This obvious judicial error has not been corrected and has resulted in a number of questionable trials ending in convictions of Hizb ut-Tahrir members under art. 282-2 and even art. 205-1 ("involvement in criminal activity"). Members of other organizations banned for extremism - e.g. some regional chapters of the Russian National Unity (RNE) – have never been convicted under the same article. Only recently a few convictions of RNE activists under this article were reported in Tatarstan.

In an increasing number of cases, art. 282 of the Criminal Code has been enforced against offenders charged with incitement to hatred, beyond its enforcement against violent crimes. In some cases, we are not aware of the circumstances, so it is not always possible to tell whether or not the sentence was justified. We are aware, though, of at least three well-founded sentences in 2004, 12 in 2005, 17 in 2006, and 13 in the first half of 2007. With some rare exceptions, the sentences did not involve incarceration, and we believe this was appropriate. Another positive development has been the gradual shift from probational to real penalties, such as fines, correctional labor and temporary bans on journalism and publishing.

Unwarranted Enforcement of the Criminal Code

From the public perspective, the main anti-extremist article remains art. 282 of the Criminal Code ("incitement to hatred and animosity, as well as denial of human dignity"). The term "extremism" is often associated with this article, even though it is not correct. Instead, art. 280 of the Criminal Code ("public calls to extremist activity") should be considered the main anti-extremist article.

The first clearly ill-founded verdict under art. 282 involved the organizers of *Beware: Religion!* exhibition on 28 March 2005. The exhibition displayed items of modern art using Christian symbolism, and many believers found it offensive. No one raised the issue of banning the exhibition - perhaps because it was promptly raided and destroyed by radical Orthodox activists. Instead, the organizers faced charges of incitement to religious and for some reason ethnic hatred against Orthodox Christians and ethnic Russians, respectively. The verdict was based on expert opinions - extremely ideologized and rather remote from the principle of secularity.¹ Yuri Samodurov and Lyudmila Vasilovskaya were sentenced to fines of 100 thousand rubles each. It could be argued to what extent the exhibits were offensive and whether banning the exhibition would have been justified, but offending religious sentiments is not a crime under art. 282 of the Criminal Code. Consequently, the verdict raised a suspicion that in addition to protecting religious

¹ The full text of this verdict is notable. See SOVA Centre's website: http://religion.sova-center.ru/events/13B74CE/13DC3A3/533A18D?pub_copy=on

sensitivities, it effectively targeted the Sakharov Center and Museum headed by Yuri Samodurov for their human rights activity.

In June 2007, a similar case was opened under art.282 against another exhibition, *Banned Art – 2006*, also organized by the Sakharov Museum.

Still another, even less appropriate sentence was meted out to the Director of the Russian-Chechen Friendship Society (RCFS), human rights defender Stanislav Dmitrievsky on 3 February 2006 for publishing statements by Aslan Maskhadov and Akhmed Zakayev in his paper *Pravo-Zaschita*. Understandably, both texts were biased and strongly critical of Russia's policy-makers, but the texts did not contain anything that could be interpreted as incitement to ethnic hatred; bringing charges against the publisher was totally inappropriate. However, Dmitrievsky was sentenced to two years of probation.

The third sentence of this type dated 25 December 2006 targeted Vitali Tanakov, activist of the ethnic Mari movement and hereditary priest of the Mari heathen faith. In his brochure *The Priest Speaks*, Tanakov criticized the authorities of Marii El Republic, affirmed his religion as superior to other religions and "civilizations," but did not incite hatred against people of other faiths or origins. In addition to unwarranted charges for incitement to ethnic or religious hatred, Tanakov was also found guilty of incitement to hatred against a certain social group, meaning the Government of Marii El.

This excessively broad definition of "social group" raises even more doubts as to the legitimacy of his conviction. A similar case under art. 282 of the Criminal Code was opened in the Komi Republic against rock musician Savva Terentyev who made a rude comment in his Live Journal against police corruption. Even though the reason for the prosecution was unsubstantial, and in spite of strong public protests, Terentyev faced charges on 9 August 2007 for incitement to hatred against the entire police force as a social group.

A less dramatic example of inappropriate punishment was the conviction of Boris Stomakhin on 20 November 2006 in Moscow.² Stomakhin was found guilty of incitement to hatred against the Russian Army as a social group. We believe that the fact of incitement to hatred against the army and against Russians as an ethnic group was proven in court, even though Stomakhin's pronouncements to this effect did not appear to pose any public danger. Stomakhin's indictment under art. 280 of the Criminal Code was more appropriate, because he had made public appeals to the Chechen separatists to conduct new terrorist attacks, and approved of those already committed. However, the punishment meted out to Stomakhin – 5 years of prison – is unprecedentedly tough under art. 280 and 282, and it is particularly strange in view of the low popularity of the newsletter and the website which carried Stomakhin's publications. It raises suspicions that Stomakhin's sentence was so severe due to its content - different from the pronouncements of other offenders convicted under these articles, i.e. neo-Nazi, racists, etc.

Whereas Stomakhin's conviction under art. 280 of the Criminal Code was appropriate, in some other cases the enforcement of this article raises serious doubts. Two oppositional activists from Bashkortostan, Airat Dilmukhametov and Victor Shmakov, face charges under art. 280, part 2, and art. 212, part 1 ("organization of riots") for their publications in *Provintsialnye Vesty* perceived by Bashkortostan authorities as provocative. But there were no riots, and the assessment of their publications as provocative is so unconvincing that even an expert review of the materials has not been completed yet, even though the events took place back in 2005.

On 4 May 2007, a city court in Rybinsk committed Andrei Novikov, a journalist who was popular in the 90s, to involuntary psychiatric treatment. Novikov faced charges under art. 280, but as far as we know, only two of his articles mentioned in the indictment were available in the Internet and did not contain any appeals to violence; such appeals could have been found in other texts linked to Novikov, but apparently, they have never been published.

² See the full text of the verdict on SOVA Center's website: <http://xeno.sova-center.ru/4DF39C9/85671E4>

Sanctions against Organizations

Since mid-2002 in Russia, many organizations found extremist, inter alia nationalist groups, have been liquidated, i.e. stripped of their registration, but in most cases, the formal reason for their liquidation was not a violation of the 2002 Law, but other, merely formal violations (such as failure to file required activity reports, etc.). This is true, in particular, with regard to the high-profile liquidation of the National Imperial Party of Russia (NDPR) in 2003: they were liquidated for having failed to register a sufficient number of regional branches before the deadline. Charges of non-compliance with formal requirements have not been sufficiently convincing in many cases (the NDPR case was also arguable), and very often the practice has been quite selective. Sanctions taken under formal pretexts may hinder the activity of dangerous groups, but also undermine the government policies in this area.

Earlier we mentioned the Supreme Court judgment of 2003 banning 15 organizations as terrorist. The judgment was effectively made behind closed doors, and has not been officially published since. Therefore the public cannot adequately discuss the judgment and form an opinion whether it was well-founded in respect of all banned groups.

There have been a number of verdicts banning organizations for a single “extremist” offence, namely the use of a symbol resembling a swastika. In particular, courts referred to swastika-like symbols when they banned certain RNE organizations. This application of the Russian law appears dubious, because even though it looks like a Nazi swastika and this resemblance certainly has something to do with their ideological kinship, we cannot say that the RNE's “spiked wheel” resembles a swastika to the extent of being confused with it - while this is the standard established by law.

However, there have been a few cases of well-founded liquidations for extremism, such as the liquidation of certain neo-heathen organizations affiliated with the so-called Inglings-Old Believers in Omsk in 2004 and of two small groups in Krasnodar Krai in 2006.

Unwarranted Sanctions against Organizations

In a high-profile case of the Russian Chechen Friendship Society, the 2002 Law was enforced to liquidate a group which was clearly not extremist, even though the liquidation was consistent with the law. The RCFS was liquidated by a court order on 13 October 2006 (the judgment came into force after it was upheld by the Supreme Court on 23 January 2007), because RCFS leader S.Dmitrievsky had been found guilty of an extremist crime. However, the organization did not disown him, as they were required to do by the 2002 Law, and refused to remove him from the governing bodies, as required by the law on non-governmental associations since 2006. The formally lawful judgment ordering the RCFD liquidation was based on the unlawful verdict against Dmitrievsky.

There was public controversy with regard to the Moscow City Court judgment of 19 April 2007 banning the National Bolshevik Party (NBP) as extremist. On 7 August, the Supreme Court upheld the judgment, and it came into force.

Some NBP's actions may be described as petty political hooliganism (we believe that the courts were excessively tough on them by qualifying NBP's intrusion in some government offices as criminal offences, which resulted in prison terms for more of 30 National Bolsheviks). NBP activists have been caught committing even more serious offences, including the storage of weapons. In the past, NBP carried out all sorts of propaganda which could be described as inciting to violence or racist. In this sense, the judgment warranting a closure of the party paper, *Limonka*, in 2002, was well-founded; partially legitimate was the judicial order to close *Limonka's* successor, *Genegalnaya Liniya*, in 2005. In fact, recently there have been progressively fewer cases of violence or ethnic and racial hate propaganda in NBP's actions (even though ethnic Russian nationalism, in a milder form, is still a feature of NBP's rhetoric). We should also note that its role in the oppositional Other Russia coalition has been increasingly visible.

The judgment banning NBP (the organization was not officially registered anyway) was based on three former warnings. Two of them were for interference with the St. Petersburg Legislative Assembly (ZAKS) sessions and an election committee in Moscow Oblast. Members of the party hindered the work of ZAKS and the election committee, but they only used minimal violence. A third warning was triggered by truly dangerous publications in one of NBP's regional papers, but the people responsible for the publications had long before left NBP, alongside other hardcore nationalists unhappy with NBP's new political course. It appears obvious that the three episodes were not sufficient to ban such a large organization (not to mention the substantial procedural violations associated with the ban).³

On 21 March 2007, NBP was suspended by the Moscow Prosecutor's Office pending the court's judgment. NBP continued their activity anyway, but administrative penalties (provided by 20.2.1 of the Code of Administrative Offences) were hardly ever imposed.

We should emphasize that NBP is now banned, rather than liquidated, meaning that as soon as the judgment comes into force, any action taken on behalf of NBP will fall under art. 282-2 of the Criminal Code. Any assistance to NBP (or anything which may be regarded as assistance) may also be considered extremist activity and trigger sanctions against other organizations and mass media.

An example of how such sanctions may be imposed was a case of extremist charges against the Memorial Human Rights Society. In February 2006, Memorial received a warning against extremist activity for a publication on their website containing Mufti Nafigulla Ashirov's comment on four brochures of Hizb ut-Tahrir Islamic Party. Ashirov failed to see in them any appeals to violence or incitement to religious and ethnic hatred. In fact, Ashirov never expressed support for Hizb ut-Tahrir and never quoted any of their texts. Even if his opinion was wrong, the comment as such never incited to any actions, nor did it justify any extremist behavior. What the Moscow Prosecutor's Office found extremist was a mere expression of disagreement with the Supreme Court. Ashirov and Memorial appealed the warning, but lost the appeal.

Even before the NBP ban came into force, a few organizers of mass events were warned for cooperation with NBP, and such warnings did not refer to the suspension of NBP, but to the ban - or, in some cases, to the former judgment warranting liquidation of NBP on formal grounds (but incapable of restricting the group's operation de facto). Anyway, a warning issued to an individual, rather than a group, does not have any legal consequences.

For some reason, NBP's flag - found to resemble the Nazi flag - seems to play a major role in all these episodes. Indeed, the only difference between NDP's flag and that of Hitler's National-Socialist Party is that a hammer and sickle emblem, rather than a swastika, is depicted in the circle, and this similarity is not accidental, of course. It is also true that the said distinction does not make the two flags similar "to the degree of confusion," as provided by the definition of extremist activity and by art. 20.3 of the Code of Administrative Offences. On two occasions, courts confirmed the difference between NBP and Hitler's National-Socialist Party flags and cancelled sanctions imposed on the group for the use of their flag (in Nizhny Novgorod in 2003 and in Arzamas in 2007).

It is important to mention a warning issued by the Prosecutor's Office in May 2007 to the Krasnodar Regional Chapter of Yabloko Party for the distribution of books authored by political scientist Andrei Piontkovsky. At first, a court cancelled the warning - perhaps because Piontkovsky's books were freely sold in Russia, and their author had never been challenged for publishing them. But then prosecutorial officials did their homework, and on 14 August the same court upheld the warning. A day later a judicial hearing started in Moscow which found two of Piontkovsky's books extremist. It is possible that the case is somehow related to the launch of election campaigning for the Krasnodar Krai legislative assembly.

In one instance, registration was denied to a group on a clearly false pretext of allegedly extremist activity. In Tyumen Oblast, the local office of the Federal Registration Service denied registration to an LGBT (i.e. sexual minority) group, explaining that their proposed activities "may

³ See detailed comments on this judgment in A. Verkhovsky. Why the decision to ban NBP should be revoked // SOVA Center. Nationalism and Xenophobia. 2007. 4 August (<http://xeno.sova-center.ru/29481C8/99C0ACC>).

undermine the security of the Russian society and state,” because they “undermine the sovereignty and territorial integrity of the Russian Federation due to reduction of its population.” On 18 April 2007, the Federal Registration Service upheld this absurd judgment at the federal level, and now it is being appealed in court (however, the outcome of this dispute is pre-determined by the recent removal of the phrase about “undermining security” from the definition of extremism).

Sanctions against Mass Media

The 2002 Law made it very easy to close mass media outlets. It was facilitated by the vague definition of extremism: due to a lack of political correctness in the Russian mass media, one can easily find a couple of materials, among a multitude published in many issues of any Russian paper, corresponding, for example, to the provision on “offending ethnic dignity.”

A newspaper may even be closed for such offenses without prior warning, but Rosokhrancultura has voluntarily decided to issue at least two warnings before seeking a closure of the publication,⁴ and they usually comply with this self-imposed restriction.

Apparently due to uncertainty about applying the definition of extremism, the average number of publications closed for extremism was lower after the adoption of the law than it was before the law (for similar motives). We know of just two publications closed under the 2002 Law for incitement to ethnic hatred and calls to extremist activity – *Russkaya Sibir* (a well-founded sanction) and *Generalnaya Liniya* (controversially imposed), even though many more complaints seeking closures of publications have been filed.

The main form of pressure used by Rosokhrancultura (now renamed Rossvyazokhrancultura) against mass media is a warning. Some editorial boards challenge such warnings in court, and sometimes win. Generally speaking, warnings do not make a substantial difference for the editorial policy. Rather, such warnings (particularly in cases of more than one warning) are signals and instruments of informal pressure against a publication. In some cases, publications have been stopped or forced to switch to their web-based versions as a result of such pressure.

The overall number of warnings against extremist activity is unknown, because such warnings are issued both by Rossvyazokhrancultura and the Prosecutor's Office, and the latter's data lack transparency. According to their report, Rosokhrancultura issued 39 warnings in 2006 which were not cancelled by court.⁵

Unwarranted Sanctions against Mass Media

So far, there have not been any cases of clearly ill-founded closure of publications, but there have been quite a few inappropriate warnings. At least 6 of the mentioned 39 Rosokhrancultura's warnings issued over 2006 were unfounded (moreover, we do not know enough about some of the 39 cases to be able to assess them). It is worth mentioning a recent warning of *Izvestia* paper dated at the end of August 2007: the article authored by D. Sokolov-Mitrich about ethnic problems in Yakutia is hardly objective or capable of promoting tolerance in the republic, but at the same time it can hardly be described as extremist.⁶

Unfounded warnings often result from a formalistic approach to the law. Two of the six inappropriate warnings were issued for the use of swastika to illustrate clearly anti-fascist materials,

⁴ Boris Boyarskov: We are not happy with unclear criteria. Changes are expected in the operation of the Federal Review Board // *Nezavisimaya Gazeta*. 2005. 29 November (<http://www.rosokhrancult.ru/publications/17/>).

⁵ Which is not accurate, because litigation often takes time; at least one of the warnings was successfully appealed in 2007.

⁶ See a detailed comment in: *Izvestia* warned about extremism // SOVA Center. Nationalism and Xenophobia. 2007. 27 August (<http://xeno.sova-center.ru/89CCE27/89CD1C9/9BAAB62>).

and such use is culturally acceptable and not prosecuted. It is true, however, that the law makes no reservation about it.

In many cases, pressure against mass media was a result of excessive efforts to protect ethnic and religious sensitivities. The definition of extremism in this respect is open to a broad interpretation.

The most significant series of episodes in February 2006 was linked to the so-called cartoon scandal. Danish cartoons depicting Prophet Mohammad were reprinted in a few publications to illustrate the debates around the scandal. Two papers were then warned by Rosokhrancultura, and the editor of still another paper – *Nash Region* + (Vologda) faced criminal charges. The owner closed the paper, and editor-in-chief Anna Smirnova was sentenced under art. 282 of the Criminal Code to a fine of 100,000 rubles. Fortunately, a higher court acquitted Smirnova, but the paper (notably, a paper independent of the Oblast governor) never came out again.

At about the same time, the *Gorodskye Vesti* paper in Volgograd was warned by the Prosecutor's Office and closed by its owner - the municipal administration. The reason was a cartoon designed by the paper which depicted the founders of four world religions; neither independent experts, nor even religious figures found the cartoon offensive. Nevertheless, the cartoon offended the local United Russia Party chapter, and then the Prosecutor's Office. Shortly afterwards, the paper was restored by the municipality. This story is an example - unfortunately, just one of the many examples - of politicians seeking publicity in inappropriate and harmful ways by exploiting “the fight against extremism.”

There was a parallel attempt to liquidate, without prior warning, the *Bankfax* news agency in Altai just for one intolerant comment posted on their web forum (and promptly removed by the editors). After a long litigation, *Bankfax* scored a final victory in the Supreme Court on 12 September 2006. Criminal prosecution of the news agency staff and the author of the posting also failed. But this high-profile case affected the media and the internet community as the first attempted criminal prosecution for a posting on a web forum (see Savva Terentyev's case above), and especially prosecution against owners of web forums for guest postings (later there were some criminal prosecutions triggered by postings on web forums and blogs, but the charges in those cases cannot be described as unfounded).

Even a neutral media report depicting the activity of nationalist groups may be found extremist. In 2006, Rosokhrancultura warned *Zyryanskaya Zhizn* paper against publication of extremist materials; the warning was triggered by a series of reports and an interview with local nationalist leader Yuri Ekishev, where the reporter exposed the demagogical nature of nationalist slogans. The publishers lost their funding sources and were forced to close their paper-based version. Then the authorities attempted to close the paper altogether just for quoting some politically incorrect statements made by the local ombudsman in an interview. Fortunately, Rosokhrancultura's action was dismissed on 5 June 2007 in the appeal proceedings before the Supreme Court of the Komi Republic.

And finally, speaking about unwarranted pressure against mass media, we should mention a new and rather strange practice that emerged in the spring of 2007. Under established practice, publications suspected of extremism are reviewed by experts (linguists, social psychologists, etc.). There have been a few cases with regard to the Other Russia's publications, where the authorities used the pretext of expert review to confiscate dozens of copies, and even the entire print-run.

Other Sanctions

In this subsection, we do not describe unwarranted enforcement separately, because relatively few applications of the sanctions detailed below have been reported so far.

Finding Materials Extremist

The 2002 Law allows authorities to ban certain texts, films, and other materials. A court judgment finding a text extremist results in a prohibition of its mass dissemination (art. 20.29 of the Code of Administrative Offences). In reality, it is easy to get around this restriction, because it only affects a specific publication, not the text (film, etc.) per se.

There have been few judgments of this sort: we know of just about twenty of them. Apparently, courts simply forget to find *extremist* those materials which they refer to in convicting individuals or banishing organizations.

A federal list of extremist materials required by the 2002 Law was published for the first time on 14 July 2007, but even then it was incomplete (it included just 14 materials). Technically, it had been impossible to enforce art. 20.29 of the Code of Administrative Offenses before the list was published.

The banned materials vary widely as to the degree of public danger they pose. In many cases, such danger is questionable. Among other things, the *Fundamentals of Tawheed* by Al-Wahhab, founder of Wahhabism, was banned in Russia in April 2004, even though it seems strange to ban an 18th century religious treatise.

Even greater concerns are raised by the 21 May 2007 judgment of the Koptevsky Court in Moscow banning the Russian translations of 14 books by the 20th century Turkish theologian and philosopher Said Nursi. Of course, Nursi is an anti-secular author, but he is a widely recognized Moslem theologian, his books are not banned in Turkey, and we have no reasons to believe that his followers in Russia are members of extremist communities. Since on 18 September 2007 the Moscow city court approved this decision, these groups would face a ban just because they distribute books written by their religious teacher.

Bans in the Context of Election Campaigns

In Russia, hardly any political candidates or party lists have been banned for extremism, even though some candidates have engaged in radical racist campaigning in recent years. For example, during the 2003 Moscow mayor elections, the Moscow City Court refused to ban German Sterligov, even though the candidate, while campaigning on television, insisted that Azeri and other “foreigners” should be ousted from Moscow and killed.

The single widely known and, indeed, the most significant case was the removal of the Rodina Party from the Moscow City Duma elections in the fall of 2005. The party was not allowed to stand for elections after they televised a campaign video titled “Let us clean our city of garbage,” where a court, quite understandably, found incitement to ethnic hatred and animosity. We may argue whether a single episode is sufficient for a party to be banished from elections; the law leaves it to the court’s discretion.

We have no doubt, however, that the decision was selective and political. Firstly, LDPR was not removed from the same elections, even though its campaigning was also xenophobic (and most importantly, very similar in principle to Rodina’s) - in fact, this type of campaigning has never caused LDPR to be removed from elections. Secondly, within a few months of 2006, Rodina was banned from elections in all but one region where they attempted to stand for local legislatures; some of the bans were triggered by their xenophobic campaigning, while others were based on merely formal grounds.

Election campaigns are a peak period for abusive enforcement of anti-extremist provisions and anti-fascist rhetoric, although of course, such abuse often takes place outside elections (the best known example is the Nashi Movement that labels all of its political opponents as “fascist allies”). At the time of the mentioned 2005 Moscow Duma elections Rodina and LDPR sued each other in court, and their case is not unique.

Administrative Bans and Interference

On many occasions, police have referred to art. 20.3 of the Code of Administrative Offenses when they confiscated newspapers and books with swastikas or similar-looking symbols depicted on them. Administrative sanctions have been enforced for public displays of a Nazi salutation. The enforcement has been sporadic, but nevertheless it has made some impact on ultra-nationalist groups.

In some cases, the use of administrative sanctions was questionable. In addition to the above examples of entire print-runs being confiscated “for expert review” and warnings to various activists in connection with their use of NBP’s flag, we should mention the arbitrary use of the term “extremist” by government officials. Only a court can find an organization *extremist*; however, there have been cases where prosecutorial officials, in their writing, placed the label *extremist* on merely oppositional (e.g. extreme right or extreme left) organizations.

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Appendix. Definition of Extremism (draft translation)

Below we provide a definition of extremist activity as it is worded in par.1 art. 1 of the Federal Law on Combating Extremist Activity.

More specifically, we attempt to show the evolution of this definition with each subsequent amendment:

- effective provisions are in bold;
- parts deleted by the 2007 amendments are in regular, strikethrough font,
- and parts added by the same amendments are underlined;
- parts added by the 2006 amendments are in italics (some of them were subsequently deleted in 2007).

Some of the changes were merely editorial, which is indicated in the notes.

Extremist activity (extremism):

forcible change of the foundations of the constitutional system and violation of integrity of the Russian Federation;

~~undermining the security of the Russian Federation;~~

~~seizure or usurpation of power;~~

~~establishment of illegal armed formations;~~

public justification of terrorism and other terrorist activity⁷;

incitement to social, associated with violence or with calls to violence⁸; racial, ethnic or religious hatred;

~~debasement of national dignity;~~

~~implementation of riots, hooliganism and vandalism motivated by ideological, political, racial, ethnic or religious hatred or animosity, and also motivated by hatred or animosity towards any social group;~~

propaganda of exclusiveness, superiority or inferiority of an individual based on his/her social, racial, ethnic, religious or linguistic identity, or his/her attitude to religion;

~~violation of rights, liberties and legitimate interests of an individual and citizen; ~~affliction of harm on health and property of citizens in connection with their convictions, subject to his/her social, racial, ethnic, religious or linguistic identity or attitude to religion⁹ or social background;~~~~

preventing citizens from the exercise of their electoral rights and the right to participate in a referendum, or violating the secrecy of the vote, combined with violence or threats to use violence;

~~preventing legitimate activities of government authorities, local self-government, election commissions, and also legitimate activities of officials affiliated with the above authorities and commissions, public and religious associations or other organizations, combined with violence or threats to use violence;~~

~~use of violence against a representative of government authority, or threats to use violence against a representative of government authority or his family in connection with his exercise of official duties;~~

~~attempt at the life of a government official or public figure with the purpose of terminating this person's official or political activity, or as revenge for such activity;~~

committing crimes based on motives indicated in article 63, part 1 “e” of the Russian Criminal Code;

propaganda and public demonstration of Nazi attributes or symbols, or attributes and symbols similar to Nazi attributes and symbols to the point of confusion;

⁷ Minor edits made in 2007.

⁸ This clause related only to the incitement to social hatred.

⁹ Before 2007, “faith” was mentioned instead of “religious identity” and “attitude to religion.”

public appeals to the exercise of the said acts or mass dissemination materials known to be extremist, as well as their production and possession for the purposes of mass dissemination,¹⁰ and also public calls and pronouncements which encourage the above activity, justify or excuse the exercise of activities listed in this article;

publicized, knowingly false accusation¹¹ against a federal or regional official, in their official capacity, alleging that they have committed acts listed in this article as illegal and criminalized, provided that the fact of slander has been determined in judicial proceedings;

organization and preparation of the said acts, as well as incitement to committing them¹²;

financing the above acts or any other support with their ~~planning,~~ organization, preparation and exercise, inter alia, by providing the following for carrying out the above activity: ~~financial means; real estate; educational, printing, material and technical facilities, phone, fax and other types of communication or providing informational services, and other material and technical means.~~

¹⁰ Before the 2007 amendments, the phrase about “materials” read as follows: “production and/or dissemination of print, audio, audiovisual and other materials (products) designed for public use and containing at least one characteristic listed in this article.”

¹¹ Before the 2007 amendments, it read simply “public slander” - which is synonymous in the criminal law.

¹² Before the 2007 amendments, the definition began with a phrase related to all of the following: “the activity of public and religious associations or other organizations, or of mass media, or natural persons to plan, organize, prepare and perform acts aimed at...”