

A COMMENTARY: FREEDOM OF INFORMATION AND PRESS FREEDOM IN RUSSIA - THE GUISE OF FREEDOM¹



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Introduction

Freedom of information and the freedom of the press is one of the most important human rights, generally seen as sub-rights of the freedom of expression. These rights allow the public access to information such as national news, national conversation and matters of public importance. Russia, one of the largest countries in the world, has a painful lack of said freedoms for a federal republic. Draconian laws permitting the blacklisting of Internet websites have been enacted and many harassment cases against journalists in Russia have been reported in the news, especially during the lead up to the recent Winter Olympics 2014, hosted in Russia. This is a great concern as the lack of these freedoms means that the same people who are being denied access to accurate and independent information are making crucial decisions about the government of the country. This may very well lead to corruption, misuse of power, erosion of rights and other major problems that could severely impede the development of the country. This paper sets out the position and regressions of the Russian Federation concerning the preserving of these freedoms.

¹ This draft was presented on 18 October 2013 as a position paper in the ALSA Mock United Nations General Assembly. It won the best position paper in the Mock Assembly.

Importance of Press Freedom and Freedom of Expression

Before addressing the recent developments in Russia, it is essential to make a case for the importance of press freedom and the freedom of information as being vital to any nation and society as a whole. The strongest arguments concerning the freedom of the press generally stems from the liberal theory of press freedom which is inspired by the writings of the famous authors Milton,² Locke³ and Mill.⁴ Viewed as a campaigner for press freedom and freedom of expression, Milton in the 15th century proffered that if intelligent people are able to freely express and exchange ideas, they will be able to distinguish the bad from the good.⁵ In such a theory, it is vital to have a discussion and debate in order for the truth to emerge. However, the importance of discussion and the need to debate public affairs is generally attributed to the Millian principle. In his writings, Mill supported that open discussion is extremely essential to the discovery of the truth as the opinion of every person contributing to the discussion will allow others to evaluate the truth of the statement, eventually resulting in the emergence of truth.⁶ His work acted as the premise for the development of the *marketplace of ideas* theory by Justice Holmes, which has been judicially recognized by judges in the United States. Justice Holmes advocated that where there is free trade of ideas or intellectual competition, the truth would emerge - the best test of truth being the 'power of the thought to get itself accepted in the competition of the market'.⁷ In this theory, any regulation or interference from the state would distort the workings of the system which is why judges are often

² John Milton, *Areopagitica: A Speech for the liberty of Unlicensed Printing* (1644).

³ John Locke, *Second Treatise of Government* (1689); *A Letter about Toleration* (1689).

⁴ John Stuart Mill, *Of Liberty of Thought and Discussion* (1859).

⁵ Martin Conboy, *Journalism: A Critical History* (SAGE 2004).

⁶ *ibid* (n 4).

⁷ *Abrams v. US* 250 US 616 [1919].

hesitant to allow state interference in these affairs, even when it is meant to improve press freedom or freedom of information.⁸

Stemming from these theories are four observable arguments as Keane observed and elaborated on in his book. The four arguments comprise of the theological defence, the rights of individuals, the utilitarian theory and the attainment of truth.⁹ The theological defence argues that free press is essential to allow the love of God to flourish. This is largely based on the writings of Milton, where he argued that restrictions would prevent individuals from opting for a Christian life as they no longer had the freedom to think or exercise discretion.¹⁰ The second argument, based on the writings of Locke, protects the fact that all individuals should have the right to freely express their views, even those that do not accord with the government.¹¹ The utilitarian theory promotes that the free press is an ally of the people, increasing their happiness by publishing public opinion and checking on the government.¹² Finally, the attainment of truth argument advocates that the truth would emerge from unrestricted discussion which clearly premises on the Millian principle.¹³ Apart from these cornerstone theories and strong arguments, there is also the function of the media as the Fourth Estate. The Fourth Estate refers to the informative press playing a crucial role as a democratic press, checking on the government, political decisions and political activities.¹⁴ As for the 19th century, this role of the press has become increasingly important till it is now considered a vital element to any

⁸ *ibid.*

⁹ John Keane, *The Media and Democracy* (Polity 1991)

¹⁰ *ibid* (n 2).

¹¹ *ibid* (n 9).

¹² *ibid.*

¹³ *ibid* (n 4).

¹⁴ Jaspal Kaur Sadhu Singh, 'Legal Recognition of Citizen Journalism on the Internet: Development of Rights and Responsibilities' (PhD thesis, University of Aberystwyth 2013).

liberal democracy.¹⁵ The press serves as an extra legal check on the government, a watchdog over the workings of democracy, and a vigilant observer reporting arbitrary or authoritarian practices.¹⁶ However, in order for the press to properly perform their duties, it is important for them to remain independent from control or domination by the government or other parties. An inspiring example of this is the breaking of alliances between the American press and political parties in order to provide objective and balanced views to the public.¹⁷

Freedom of Information and Press Freedom in Russia

The Union of Soviet Socialist Republics (USSR), the then Russian Federation from 1917 to 1991, in the year of 1948, attended the United Nations conference on the topic of freedom of information, during which a convention on the freedom of information was drafted.¹⁸ The said freedom is provided under Article 29 of the Russian Constitution.¹⁹ However, the Russian Federation has taken six decades and a year to pass their first Freedom of Information (FOI) law - the *Federal Law "On providing access to information on the activities of government bodies and bodies of local self-government"*.²⁰ The federal law provides for openness of government

¹⁵ Brain McNair, *Journalism and Democracy: An Evaluation of the Political Public Sphere* (Routledge 2000).

¹⁶ Frederick S Siebert, Theodore Peterson, Wilbur Schramm, *Four theories of the Press: The Authoritarian, Libertarian, Social Responsibility and Soviet Communist Concepts of what the Press Should be and Do* (University of Illinois Press 1963).

¹⁷ *ibid* (n 14).

¹⁸ Zechariah Chafee Jr, 'Legal Problems of Freedom of Information in the United Nations' [1949] 14 *Law and Contemporary Problems* 4, 545.

¹⁹ Konstitutsiia RF [Russian Constitution] art 29.

²⁰ UCL, 'Russian Federation, International Focus' (*UCL Constitution Unit*, 30 September 2011) <www.ucl.ac.uk/constitution-unit/research/foi/countries/russia> accessed on 11 October 2013.

business, with the exception of information classified as state secrets.²¹ This finally bridges the gap between Article 23, which provides for the right to seek and obtain information about the activities of organs of state and of local administration, and actual administrative practice.²² The federal law is unique, not just in that it is Russia's first FOI law, but also in that it does not set out in detail the circumstances under which access to information may be refused and that there exists no public interest override in regards to the exemptions.²³

The government first seemed hesitant about passing the federal law in view of the considerable time taken for the law to be passed.²⁴ In September 2008, the Institute of Freedom of Information Development published the *National Report on Freedom of Information in Russia* which became the catalyst to the final passage of the Bill.²⁵ The Institution reported that the right guaranteed under Article 23 of the Russian Constitution, which is the right to freely seek and obtain information about the activities of state organs and organs of local administration, was inconsistently applied. The report concluded that actual access to the information concerning the operations of governmental bodies required a large amount of time, effort, nerves and money.²⁶ According to the report, Russian citizens believed that their right to have access to the information had to be "proved" or that the information

²¹ *ibid.*

²² *ibid.*; See also FreedomInfo, 'Russian Government Heeds Civil Society's Call for Access to Information Law' (*freedominfo.org*, 27 January 2009) <www.freedominfo.org/2009/01/moscow-russia/> accessed on 11 October 2013; See also Konstitutsiia RF [Russian Constitution] art 23.

²³ *ibid.* (n 20).

²⁴ FreedomInfo, 'Russian Government Heeds Civil Society's Call for Access to Information Law' (*freedominfo.org*, 27 January 2009) <www.freedominfo.org/2009/01/moscow-russia/> accessed on 11 October 2013.

²⁵ Institute of Freedom of Information Development, 'National Report on Freedom of Information in Russia' 2009.

²⁶ *ibid.*

needed can be received only through personal relations or with a lot of money, in other words, only through alternative, not necessarily legal, means of influence on the officials.²⁷ The Institute's report received attention from various other NGOs and the media. Further, the citizens of Russia wrote letters to the President and lobbied the legislators. The government therefore was pressured to a certain extent to pass the Bill.

Regressions

After the progressive initiative above, it is regretful to state that since the passing of this law, Russia has passed other media laws which have restricted press freedom as well as freedom of information.²⁸ Bill No. 142303-6, designed to criminalize "insults to citizens' religious beliefs and feelings", provides for amendments to Article 148 of the criminal code and several articles of the code of administrative offences.²⁹ Penalties for 'public acts that demonstrate clear disrespect for society and are carried deliberately to insult the religious feelings of believers' range from a fine of 300,000 roubles (more than 7,000 euros) to a year's imprisonment.³⁰ The press have therefore become unable to report on various religious issues which occur not just in Russia but around the world. The reasons given for the passing of Bill No. 142303-6, is the protection of citizens from insults to religious beliefs and feelings. Russian human rights organizations point out

²⁷ *ibid.*

²⁸ Reporters Without Borders, 'Setback for Freedom of Information as Duma Passes Restrictive New Laws' (*Reporters Without Borders*, 14 June 2013) <en.rsf.org/russia-setback-for-freedom-of-information-14-06-2013,44788.html> accessed on 9 October 2013.

²⁹ *ibid.*

³⁰ *ibid.*

that the terms “public acts”, “intention to insult” and “religious feelings” can be interpreted in many ways.³¹

Further, Bill No. 44554-6, approved by the lower chamber of Russia’s Parliament at its second reading, is designed to ‘protect children from information that is harmful for their health and development’.³² It is specifically aimed at shielding minors from ‘propaganda that undermines traditional family values’.³³ Those guilty of ‘propaganda of non-traditional sexual relations among minors’ will be liable to fines of up to 5,000 roubles (about 120 euros) for individuals and a maximum of 1 million roubles (24,000 euros) for organizations.³⁴ The latter may also have their activities suspended for 90 days.³⁵ If the crime is committed through media or Internet, the fines may be increased. Bill No. 44554-6 is aimed at shielding minors from propaganda that undermines traditional family values by amending a previous law to punish those who spread propaganda of non-traditional sexual relations among minors.³⁶ The law effectively makes it illegal to equate heterosexual and homosexual relationships, distribute material on gay rights, or hold gay demonstrations.³⁷ Public discussions of homosexuality are also covered under the broad reach of the Bill as shown

³¹ *ibid.*

³² *ibid.*

³³ *ibid.*

³⁴ *ibid.*

³⁵ *ibid.*

³⁶ *ibid.*

³⁷ ‘Russia passes law banning gay “propaganda”’ (*The Guardian*, 11 June 2013) <www.theguardian.com/world/2013/jun/11/russia-law-banning-gay-propaganda> accessed 16 January 2014; RT News, ‘Gay rights in Russia: Facts and Myths’ (*RT News*, 2 August 2013) <rt.com/news/russia-gay-law-myths-951/> accessed 16 January 2014.

when four Dutchmen filming a documentary in Russia were arrested when tapes of such discussions were discovered.³⁸

Further strongholds have been enacted with the passing of a new law establishing age-labelling criteria, with exceptions, for newspapers and other publications.³⁹ This presents a difficulty to the press as they will not be able to freely cover general issues that may be deemed as propaganda or harmful to minors, such as protests in other nations against sensitive issues or even wars. Further, despite exceptions, newspapers may still be affected as they will be forced to employ self-censorship for fear of facing consequences due to coverage of such material. Many websites may label their material as harmful to minors as a precaution, even though this may affect their readership and result in their websites being blocked by public Wi-Fi networks and schools. The law allows the government to compile a website blacklist and the government has justified this premised on the need to protect children. The government's justification for their strict control of press freedom is generally the protection of the public and efforts to curb defamation.

Of course, the Government has wasted no time in creating a blacklist of blocked websites publishing content which may be harmful to minors.⁴⁰ This has led to a serious risk of over-blocking. By January 2014, a jaw-dropping 3300 sites had been blocked "by mistake" because they had the

³⁸ Andrew Katz, 'Russia's Anti-Gay Laws: How a Dutch Activist Got Caught in the Crosshairs' (*World Time*, 5 August 2013) <world.time.com/2013/08/05/russia-faults-in-first-test-of-anti-gay-propaganda-law-but-future-remains-bleak/> accessed 16 January 2014.

³⁹ Reporters Without Borders, 'Major Threat to News Coverage from Law "Protecting Minors" Online' (*Reporters Without Borders*, 1 Spetember 2012) <en.rsf.org/russie-major-threat-to-news-coverage-from-01-09-2012,43314.html> accessed on 10 October 2013.

⁴⁰ *ibid.*

same IP addresses as others containing harmful content.⁴¹ Various blogspots of journalists and sites of independent newspapers have also been taken down which acts as a further blow to press freedom. Moreover, the Ministry of Communications has prepared amendments to the media law allowing a person to be convicted with crimes against public security, the constitutional order and state security if it is to be discovered that they have published articles on a variety of topics, which include *inter alia* "terrorist acts", "riots", "hooliganism", "public calls to extremist activity" or articles "inciting hatred or enmity, and humiliating human dignity" which naturally act as restrictive measures of reporting on issues which are of public importance.⁴² From mere observation of these laws, Russia has taken a hard position against the freedom of information and press freedom.

A more recent reason for the blacklist is the "violation of intellectual property rights." In addition to the controls mentioned above, a law which makes amendments to certain legislative Acts of the Russian Federation in order to stop violations of intellectual property rights in the information and telecommunications networks, including the Internet, will also grant the Government this power.⁴³

⁴¹ *ibid* (n 28).

⁴² "The Ministry of Communications will prevent the media recordings of "extremists and hooligans"" (*Lenta.RU*, 27 May 2013) <<http://lenta.ru/news/2013/05/27/dannie/>> accessed on 11 October 2013.

⁴³ *ibid* (n 39). The title of the legislation is title is the *Federal Law of the Russian Federation No. 187-FZ on amendments to a number of legislative acts of the Russian Federation on the protection of intellectual property rights in information and telecommunication networks (the Law)*. The law came into force on 1 August 2013. See "Russia: Federal law on amendments of several acts on the protection of intellectual property rights in information and telecommunication networks: A Legal Analysis" (*Article 19*)

<<http://www.article19.org/data/files/medialibrary/37202/Russia%E2%80%99s-new-legislation-on-online-copyright-enforcement-.pdf>>.

Taking the right approach

The writer strongly feels that amendments should be made to the current law. Laws allowing the government to block websites should be abolished. The removal of those laws would allow the press to perform their function as the Fourth Estate and scrutinise persons and institutions in power, and generally, allowing the public to make informed choices regarding decisions in voting, in debating issues and shaping public opinion. The state would also benefit from protective legislation shielding the press from oppression and discouraging concentration of ownership. It is also suggested that Bill No. 44554-6 which shields minors from propaganda of non-traditional sexual relations should be abolished as it acts as an impediment in dealing with issues such as AIDS, homophobic prejudice and a general education of children. Further, it would provide more freedom to the press, to report on issues, in general or those that address topics that are viewed as sensitive, to the public free from the fear that such reporting would be labelled as propaganda or corruption of minors. Further, Bill No. 142303-6, which protects citizens from insults to religious beliefs and such, should also be abolished as it is unnecessary. The current existing criminal code already provides for the punishment of incitement to hatred and affronts to human dignity on religious grounds.⁴⁴ Moreover, the broad and vague nature of the legislation may lead to blasphemy being punishable by imprisonment in Russia.⁴⁵ Such a prospect is at odds with Article 14 of the constitution and is unacceptable in a secular state.⁴⁶ The writer also greatly encourages the courts to carefully scrutinize any form of government intervention in the

⁴⁴ *ibid* (n 20).

⁴⁵ 'Putin Signs "Blasphemy" and "Gay Propaganda" Bills' (*The Moscow Times*, 2 July 2013) <www.themoscowtimes.com/news/article/putin-signs-blasphemy-and-gay-propaganda-bills/482516.html> accessed on 16 January 2014.

⁴⁶ Konstitutsiia RF [Russian Constitution] art 14.

workings of the press in order to protect and foster the growth of press freedom and freedom of information.

In conclusion, while the Russian FOI law is reason for celebration, the implementation of the law has left much to be desired. It has been criticized for a variety of reasons since it was enacted in 2010 and the Institute for Information Freedom Development Freedom of Information Foundation (IIFD) has continued to campaign for improvements such as provision of researchers with the access to archive materials and provision of access to information that has been groundlessly classified as a state or official secret.⁴⁷ Further, many problems persist in the application of the law. Governmental agencies continue to avoid disclosure of information concerning their operations.⁴⁸ Even the courts have refused to preserve the right of Russian citizens to get access to information even though it is guaranteed by law.⁴⁹ The fact that so few citizens are aware of the FOI regime also weakens its operation.⁵⁰ Therefore, it seems that in this case, raising awareness and improvement of the justice system would be equally effective as amending the law.

⁴⁷ Institute of Freedom of Information Development, 'National Report on Freedom of Information in Russia' 2009.

⁴⁸ *ibid.*

⁴⁹ *ibid.*

⁵⁰ *ibid.*