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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

COMMENTS

**OF THE INSTITUTE OF LEGISLATION AND COMPARATIVE LAW
UNDER THE RUSSIAN FEDERATION GOVERNMENT**

ON

**THE FEDERAL LAW OF THE RUSSIAN FEDERATION
ON COMBATING EXTREMIST ACTIVITY**

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**Comments of the Institute of Legislation and Comparative Law
under the Russian Federation Government
on legal regulation of extremist activities**

1. What is the difference between a caution (*предупреждение*) (art.7, 8) and a warning (*предостережение*) (art.6) about the unacceptability of conducting extremist activities?

A warning is a prophylactic measure aimed at preventing extremist manifestations in Russian society. It is pronounced on the basis of sufficient and preliminarily confirmed evidence testifying that certain unlawful activities bearing the marks of extremism are being prepared. A warning is pronounced if there are no sufficient grounds for criminal prosecution that is if there is no crime proper and before the actions which may later be considered extremist have been committed. Should there exist sufficient grounds for prosecution different steps are to be taken. Let us point out that the possibility of pronouncing a warning about the unacceptability of breaking the law is provided in art.25.1 of the federal law of 17.01.1992 №2202-1 "On the Public Procurator's Service in the Russian Federation".

A warning is pronounced if there are sufficient reasons to define the actions in question as extremist. At the same time the specific nature of the concept of "extremism" makes it possible to conclude that the public prosecutor has to resort to the aid of narrow specialists and experts who possess the skills and knowledge in the fields of literature, fine arts, crafts, history, sociology, psychology etc.

A warning can be addressed to:

- The head of a public or religious organization;
- The head of any different organization;
- Other respective person.
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A caution is pronounced if there are discovered facts testifying that the activities of the above-mentioned organizations, including those of at least one of their regional or other structural branches, bear the marks of extremism. A caution is pronounced if the committed violations can be corrected. Actually a caution is in itself a kind of notice telling that committing certain actions is unacceptable. Therefore a pronounced caution can be accompanied by a period given to the addressee of the caution during which the committed violations should be corrected.

Although both the warning and the caution have certain similar features, e.g. both should be in writing, both can be appealed against in court etc., they have important differences:

1. A warning about the unacceptability of conducting extremist activities can be pronounced by the Prosecutor-General of the Russian Federation or his deputy or his subordinate public prosecutor or the latter's deputy. At the same time a caution cannot be pronounced by a deputy of the Prosecutor-General or a deputy of his subordinate public prosecutor. However a caution addressed to a public or religious organization can also be pronounced by the Ministry of Justice or its territorial branches.

2. A warning is pronounced if there is sufficient and preliminarily confirmed evidence testifying that certain unlawful activities bearing the marks of extremism are being prepared without sufficient grounds for prosecution. A caution is pronounced if there are discovered facts that the activities of a public or religious organization or any other organization, including those of at least one of their regional or other structural branches, bear the marks of extremism.

3. A warning is addressed to the head of a public or religious organization or the head of a different organization. A caution is addressed exclusively to organizations. Besides, a warning can also be addressed to other "respective" persons.

2. What does the following formulation mean: “preliminarily confirmed evidence testifying about unlawful action in preparation” (art.6), which cannot be prosecuted, but can lead to pronouncing a warning?

The formulation of art.6 about “preliminarily confirmed evidence testifying that certain unlawful activities bearing the marks of extremism are being prepared”, which cannot be prosecuted, but can lead to pronouncing a warning, means that a warning is pronounced in the absence of sufficient grounds for criminal prosecution that is before a crime proper is committed: actions which can be considered extremist. That is why this measure may be treated as prophylactic for it is aimed at preventing the manifestations of extremism. But if there are sufficient grounds for prosecution other steps are to be taken different from a warning.

3. Which is the prescribed manner for the appeals against a warning and a caution (art.6, 7, 8)?

The federal law “On counteraction to extremist activities” provides for the possibility of appealing against a warning in court in prescribed manner. According to the law “On the public prosecutor’s service in the Russian Federation” a warning about the unacceptability of breaking the law can be appealed against not only in court but also to a superior public prosecutor. This can also be inferred from the warning form itself and art.254 of the Code of Civil Procedure of the Russian federation. Therefore a warning can be appealed against not only in court but also to a superior prosecutor.

A warning is appealed against in court according to the rules of chapter 25 of the Code of Civil Procedure as an appeal against decisions and actions of organs of government and state officials. An appeal can be lodged both at the court of the appellant’s residence and the location of the prosecutor’s office. An appeal can be lodged within 3 months of the day he/she came to know that his/her rights were violated.

The appeal must be considered by the court within 10 days or by the Supreme Court of the Russian Federation – within 2 months. If the appeal is sustained the warning is overruled which decision is reported to the organ that pronounced it. Let us note that such disputes are not decided by arbitration courts.

A caution can also be appealed against in court in the above-mentioned manner.

4. What is the prescribed manner for appeals against the suspension of the work of a religious or public organization (according to art.10)?

Under art.10 a decision to suspend the work of a public or religious organization for as long as it takes the court to hear the case of its liquidation or banning can be appealed against in court in prescribed manner that is according to the rules of chapter 25 of the Code of Civil Procedure.

5. Regarding the suspension of the work or the liability of a public organization does the law on non-governmental and non-profit-making organizations provide for the same order which is regulated by articles 9 and 10? Does the prosecutor have the same right to pronounce a warning or a caution? Can an organization be dissolved under the NGO law for non-observance of a caution (as it is provided for in the law on extremism)?

The prescribed order of suspension applies to any organization whose activities bear the marks of extremism. The law does not provide for any peculiarities or exemptions in this case.

6. What is understood by “the violation of the territorial integrity of the Russian Federation”? Can appeals for autonomy or self-determination of the people of a region fall under this definition?

The territorial integrity of the Russian Federation is one of the main foundations of the existence of the Russian state and its sovereignty. The foundations of the constitutional order of the Russian Federation are defined in chapter 1 of the Constitution of the Russian Federation. The Constitution does not provide for any other bearer of the sovereignty and source of state power but for the multinational people of Russia and, consequently, does not provide for any other sovereignty but the sovereignty of the Russian Federation. The undermining of statehood entails a complete change of the existing order, including the system of rights and freedoms, the relations between the subjects of the Russian Federation, the people, the organs of government etc.

Violation of the territorial integrity of the Russian Federation means an intention to create an enclave or for a part of the territory of the Russian Federation to secede from the Russian Federation with a subsequent declaration of independence or association with a foreign state. The aforementioned actions without doubt undermine the sovereignty of the Russian Federation.

It is well known that federations often face the problem of **equality and self-determination of peoples**. In the Russian Federation any discrimination is unacceptable including that on national or racial grounds. Although this declaration does not always work and conflicts on national grounds occur, this rule remains significant and forms the basis inter alia of the definition of extremism.

At the same time it is important to keep in mind that according to the “Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations” passed by the General Assembly of the United Nations on 24.11.1970 the right of self-determination includes the following forms: the establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status.

Let us note that these rights are frequently misunderstood by national minorities and various religious groups who claim that they can at any time secede from the Russian Federation, obtain their own territory, demarcate their own borders etc. It is noteworthy that according to the aforementioned Declaration these forms of the realization of the right of self-determination: “shall not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of the equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour”.

It should be noted however that “the forcible changing of the foundations of the constitutional order and the violation of the unity of the Russian Federation” the lawmaker is speaking about forcible and violent changes. In other words **the means of changing the constitutional order which are provided for in the legislation should not be treated as extremist activities (extremism)**. Besides, resorting to such means which are not directly mentioned in this law but which do not involve violence must not be considered as extremism. We suppose that it is very important because the expression of a different point of view on the one hand and the forcible changing of the foundations of the constitutional order on the other are quite distinct.

7. What does “the public, purposely false accusation” of a person holding a post in the civil service mean? Where is the line between the criticism of an official, slander, defamation and extremism? Why should persons holding positions in the civil service enjoy special protection under this law?

Publicity means reference to a wide, undefined number of strangers, e.g. at a rally, demonstration, picket.

A purposely false accusation of a person holding a post in the civil service means a plausible accusation which is untrue.

The criticism of state officials is admissible within the limits and forms prescribed in the law. Under Russian legislation slander is an administrative offence (previously it used to be a crime).

8. “Public justification of terrorism and other terrorist activities” is considered to be extremism. Does the law contain the definition of terrorism? What does “public justification” mean?

Extremism also includes **public justification of terrorism and other terrorist activities**. It is explained by the fact that terrorism is one of the forms of extremism, to be more precise its extreme form. It follows not only from the provisions of the federal laws “On counteraction to extremist activities” and “On counteraction to terrorism”, but also from the works of many Russian and foreign researchers.

The federal law “On counteraction to extremist activities” does not contain the definition of terrorism. It is defined in the federal law “On counteraction to terrorism”. This law also provides the definition of “terrorist activities” and “an act of terrorism”.

According to art.3 of the federal law “On counteraction to terrorism” **terrorism** is ideology of violence and practice of influencing the decision-making process of organs of government or international organizations through intimidation of people and (or) other forms of unlawful violent actions.

Terrorist activities are such activities that include:

- a) Preparing, organizing, planning, funding and committing an act of terrorism;
- b) Abetting an act of terrorism;
- c) Organizing an unlawful armed group, a criminal community (criminal organization), an organized group created with the purpose of committing an act of terrorism, as well as participation in it;
- d) Recruiting, arming, training and using terrorists;
- e) Information support and other aid to the planning, preparing or committing of an act of terrorism;
- f) Propaganda of ideas of terrorism, distribution of information and materials calling for the carrying out of terrorist activities or explaining or justifying the need for them.

An act of terrorism is an explosion, arson or other action aimed at intimidating people and posing a threat to human lives, causing material damage or any other grave consequences in order to influence the decision-making process of organs of government or international organizations as well as a threat to commit the aforementioned actions to the same end.

Public justification of terrorism means a public statement recognizing the ideology and practice of terrorism as right and needing support and imitation (footnote to art.205.2 of the Criminal Code).

9. What does the “propaganda of exclusivity” mean? When does propaganda begin (and not just an expression of views)? How is “exclusivity” defined?

Under art.1 of the federal law “On counteraction to extremist activities” extremist activities (extremism) includes inter alia propaganda of exclusivity, superiority or inferiority of a person on social, racial, national, religious, linguistic and other grounds.

Propaganda is a means of affecting human reason which helps to form the mind-set of a person under the influence of disseminated ideas. Propaganda of exclusivity, superiority or inferiority leads to social stratification, negative changes in the attitude of people to each other, social inequality whereas inequality based on social, racial, national, religious or linguistic grounds is unacceptable according to the constitutional foundations of the Russian state. The formation of ideas of inequality leads to attempts to subdue one group of citizens to another, causes conflicts, poses danger both to individuals and to the state.

The Constitution of the Russian Federation guarantees the equality of rights and freedoms irrespective of gender, race, nationality, language, place of origin, occupation, place of residence, religion, beliefs and other circumstances. Any forms of restriction of civil rights on the above-mentioned grounds are forbidden (art.19 of the Constitution).

It ought to be noted however that the formulation of art.1 of the federal law “On counteraction to extremist activities”, according to extremist activities (extremism) also includes “propaganda of exclusivity”, needs to be further clarified because this term is often interpreted in many different ways which creates a difficulty in its practical application.

10. The federal list of extremist literature contains 68 religious publications of Jehovah’s Witnesses. What are the reasons why the publications of this religious group known for its pacifist views are considered extremist?

While it is quite possible that the teaching of the religious group Jehovah’s Witnesses is not radical some of its publications are questionable as regards their contents and include certain elements of extremism. The activities of this religious group in Russia have often been aimed at provoking religious animosity which included among other things a public dissemination of views and beliefs degrading the dignity of members of other religions and propaganda of exclusivity and superiority of the beliefs preached by the religious group Jehovah’s Witnesses. For instance, more often than not members of the said group offered and distributed printed materials that contained extremist publications, including those from the federal list of extremist literature.

Besides, this church has always preached abstinence from certain forms of medical care and military service. There have often been discovered numerous facts of breaking family ties on the grounds of religious disagreement.

11. The Quran contains several appeals to Muslims to wage war against infidels: can the Quran as a religious book be considered to belong to extremist literature?

It is not a secret that radical religious groups often resort to extremist forms of struggle in support of their views and beliefs. For example, in the recent time jihad has on many occasions been declared against the non-Muslim community especially by the Wahhabis. The term “jihad” has become identified with the sacred war against infidels whereas in Islam jihad means personal struggle against passions, as well as spiritual growth and zeal in the faith. Although Islam does not exclude physical action and fight it means resistance to attack, not aggression or annihilation of all infidels. It is this position that is voiced by the overwhelming majority of Muslims. But the frequent use of the term “jihad” in connection with attacks on civilians, acts of terrorism and extremist activities has caused Islam itself to be considered an aggressive religion although the Muslim teaching of the Quran and Muslims themselves are peaceful. Here we do not deal with the extremist contents of the Quran, but with the extremist misinterpretation of certain passages of the Quran made by some radical groups and organizations.