

The Structure of Russian Anti-Extremist Legislation

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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 offenses 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. This definition is quoted in the Appendix.

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. 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 offenses, 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 Supervision Agency for Information Technologies and Communications (Roskomnadzor). 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).

A warning which has not been canceled 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 offense under art 20.2.1 of the Code of Administrative Offenses 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.

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 Offenses or the Criminal Code. Punishable, in particular, are public appeals to extremist activity (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 offenses 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 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.

The notion of extremism was used 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 Offenses), also mention that the organization has been liquidated or banned.

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.

Extremist activity (extremism):

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

public justification of terrorism and other terrorist activity;

incitement to social, racial, ethnic or religious hatred;

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 subject to his/her social, racial, ethnic, religious or linguistic identity or attitude to religion;

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, public and religious associations or other organizations, combined with violence or threats to use violence;

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;

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;

publicized, knowingly false accusation against a federal or regional official, in their official capacity, alleging that they have committed acts listed in this article as illegal and criminalized;

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

financing the above acts or any other support with their organization, preparation and exercise, inter alia, by providing the following educational, printing, material and technical facilities, phone, and other types of communication or providing informational services.