Venice Commission opinion on Russian extremism law

Comment of Human Rights Without Frontiers

HRWF (21.06.2012) - On June 20, 2012, the Council of Europe's advisory body of experts on legislation, the European Commission for Democracy through Law, better known as the Venice Commission, published its Opinion on the Russian Federation Federal Law on Combating Extremist Activity ("the Extremism Law") as to whether the Law, as applied, violates international human rights standards.\[1\]

In the first section, the Venice Commission notes why the Chair of the Council of Europe's Parliamentary Assembly's Monitoring Committee requested the Venice Commission to review the law:

"7. The broad interpretation of the notion of "extremism" by the enforcement authorities, the increasing application of the Law in recent years and the pressure it exerts on various circles within civil society, as well as alleged human rights violations reported in this connection have raised concerns and drawn criticism both in Russia and on the international level."

Definitions

The Venice Commission notes that the definitions in Article 1 of the Extremism Law, viz. "extremism," "extremist activity, "extremist organization' and "extremist materials are too broad, lack clarity and invite arbitrary application through different interpretations in contravention of international human rights standards.

In addition, while the definition of "extremism" provided by the Shanghai Convention, as well as the definitions of "terrorism" and "separatism", all require violence as an essential element, certain of the activities defined as "extremist" in the Extremism Law does not require an element of violence. \[2\]

Extremism Law Article 1.1 point 4: "propaganda of the exceptional nature, superiority or deficiency of persons on the basis of their social, racial, ethnic, religious or linguistic affiliation or attitude to religion"

The Venice Commission analyzes this section of the Law and determines that if it must be limited to advocacy of violence, otherwise the Law would infringe on the rights to freedom of religion and freedom of expression guaranteed by Articles 9 and 10 of the European Human Rights Convention.

"38. In the view of the Venice Commission, to proclaim as extremist any religious teaching or proselytizing activity aimed at proving that a certain worldview is a superior explanation of the universe, may affect the freedom of conscience or religion of many persons and could easily be abused in an effort to suppress a certain church thereby affecting not only the freedom of conscience or religion but also the freedom of association. The ECtHR protects proselytism and the freedom of the members of any religious community or church to "try to convince "other people through "teachings". The freedom of conscience and religion is of an intimate nature and is therefore subject to fewer possible limitations in comparison to other human rights: only manifestations of this freedom can be limited, but not the teachings themselves."
39. It therefore appears that under the extremist activity in point 4, not only religious extremism involving violence but also the protected expressions of freedom of conscience and religion may lead to the application of preventive and corrective measures. This seems to be confirmed by worrying reports of extensive scrutiny measures of religious literature having led, in recent years, to the qualification of numerous religious texts as "extremist material" (see below point (b)).

40. In the Commission's view, the authorities should review the definition under article 1.1 point 4 so as to ensure/provide additional guarantees that peaceful conduct aiming to convince other people to adhere to a specific religion or conception of life, as well as related teachings, in the absence of any direct intent or purpose of inciting enmity or strife19, are not seen as extremist activities and therefore not unduly included in the scope of anti-extremism measures."

**Extremism Law Article 1.1 point 5: "violation of human and civil rights and freedoms and lawful interests in connection with a person's social, racial, ethnic, religious or linguistic affiliation or attitude to religion"**

Likewise, the Venice Commission finds that such activity may not be deemed "extremist" consistent with international human rights standards if there is no element of violence.

"41. Extremist activity under point 5 brings together a collection of criteria, the combination of which may or may not be required before establishing that the Law applies to them. Clarification is required of what is intended here. If violating rights and freedoms "in connection with a personal's social, racial, ethnic, religious or linguistic affiliation or attitude to religion", in the absence of any violent element is an extremist activity, it is clearly a too broad category."

**Extremism Law Article 1.1 point 10: "public calls inciting the carrying out of the aforementioned actions or mass dissemination of knowingly extremist material, and likewise the production or storage thereof with the aim of mass dissemination"**

The Commission finds that the same deficiencies - overbroad and vague definitions not fused to the concept of violence - also exist in this section of the Extremism Law.

"42. Similarly, under point 10 incitement to extremist activity is in itself an extremist activity. This provision is problematic to the extent that certain of the activities listed, as pointed out above, should not fall into the category of extremist activities at all."

**Judicial Proceedings Regarding "Extremist Documents"**

The Commission also finds that the manner in which information is determined to be "extremist" in judicial proceedings offends human rights standards as there is no clear definition, standards and criteria regarding how documents are categorized as "extremist", inviting arbitrary decisions and abuse.

"48. According to Article 13 of the Law, information materials shall be declared as extremist by court decision, on the basis of a submission by the prosecutor or in proceedings in a corresponding administrative infringement, civil or criminal case. The relevant court decision shall be sent to the federal state registration authority, with a view to the inclusion of the material at issue in a Federal List of Extremist Materials, which is made public on the internet and in the media."
49. Considering the broad and rather imprecise definition of "extremist documents" (Article 1.3), the Venice Commission is concerned about the absence of any criteria and any indication in the Law on how documents may be classified as extremist and believes that this has the potential to open the way to arbitrariness and abuse. The Commission is aware from official sources, that the court decision is systematically based on prior expert review of the material under consideration and may be appealed against in court. It nonetheless considers that, in the absence of clear criteria in the Law, too wide a margin of appreciation and subjectivity is left both in terms of the assessment of the material and in relation to the corresponding judicial procedure. According to non-governmental sources, the Federal List of Extremist Materials has in recent years led to the adoption, in the Russian Federation, of disproportionate anti-extremist measures. Information on how this list is composed and amended would be necessary for the Commission to comment fully.

Venice Commission Conclusions
In its Conclusions, the Venice Commission summarizes the main shortcomings of the Extremism Law which violate international human rights standards: broad and vague definitions that are not fused with the concept of violence and therefore invite abuse and arbitrary application; arbitrary procedures and harsh sanctions that offend the right to freedom of religion or belief and freedom of expression; and the lack of a precise, proportionate and consistent approach required by the European Convention on Human Rights. The Commission calls for adequate amendments of the Law to remedy all these shortcomings:

"74. However, the manner in which this aim is pursued in the Extremism Law is problematic. In the Commission's view, the Extremism Law, on account of its broad and imprecise wording, particularly insofar as the "basic notions" defined by the Law - such as the definition of "extremism", "extremist actions", "extremist organizations" or "extremist materials" - are concerned, gives too wide discretion in its interpretation and application, thus leading to arbitrariness.

75. In the view of the Venice Commission, the activities defined by the Law as extremist and enabling the authorities to issue preventive and corrective measures do not all contain an element of violence and are not all defined with sufficient precision to allow an individual to regulate his or her conduct or the activities of an organization so as to avoid the application of such measures. Where definitions are lacking the necessary precision, a law such as the Extremism Law dealing with very sensitive rights and carrying potential dangers to individuals and NGOs can be interpreted in harmful ways. The assurances of the authorities that the negative effects would be avoided thanks to the guidelines of the Supreme Court, the interpretation of the Russian Institute for Legislation and Comparative Law or good faith are not sufficient to satisfy the relevant international requirements.

76. The specific instruments that the Law provides for in order to counter extremism - the written warnings and notices - and the related punitive measures (liquidation and/or ban on the activities of public religious or other organizations, closure of media outlets) raise problems in the light of the freedom of association and the freedom of expression as protected by the ECHR and need to be adequately amended.

77. The Venice Commission recalls that it is of crucial importance that, in a law such as the Extremism Law, which has the capacity of imposing severe restrictions on fundamental freedoms, a consistent and proportionate approach that avoids all arbitrariness be taken. As such, the Extremism Law has the capacity of imposing disproportionate restrictions of fundamental rights and
freedoms as enshrined in the European Convention on Human Rights (in particular Articles 6, 9, 10 and 11) and infringe the principles of legality, necessity and proportionality. In the light of the above comments, the Venice Commission recommends that this fundamental shortcoming be addressed in relation to each of the definitions and instruments provided by the Law in order to bring them in line with the European Convention on Human Rights."

The Extremism Law Violates International Standards

International and legal standards mandate that religious minorities be treated fairly and without discrimination in the same way as other religions. Yet, Russia has contravened these standards through misapplication of the Extremism Law to censor religious materials, to arrest and detain believers for reading or disseminating Scriptures and to liquidate and close down places of worship for targeted religious faiths.

The arbitrary application of the Extremism Law by Russian authorities against religious literature of, for example, Scientologists, Jehovah's Witnesses, devotees of Hare Krishna, Falun Gong practitioners and readers of the Muslim philosopher Said Nursi amounts to religious censorship and suppression in contravention of Articles 9 and 10 of the European Convention on Human Rights and Articles 18 and 19 of the Covenant on Civil and Political Rights (ICCPR).

The Venice Commission findings and recommendations are consistent with other international human rights opinions regarding the Extremism Law. In its Concluding Observations Report Regarding Russia's Compliance with the ICCPR, the Human Rights Committee expressed concern regarding the way the Law was being enforced and made the following recommendation regarding the Extremism Law in 2009:

[T]he State party should revise the Federal Law on Combating Extremist Activity with a view to making the definition of "extremist activity" more precise so as to exclude any possibility of arbitrary application...Moreover, in determining whether written material constitutes "extremist literature", the State party should take all measures to ensure the independence of experts upon whose opinion court decisions are based and guarantee the right of the defendant to counter-expertise by an alternative expert.[3]

Russia should heed these findings and recommendations and 1) amend the Extremism Law accordingly; and 2) cease and desist filing arbitrary actions to label non-violent materials "Extremist" and subject organizations and individuals to harsh sanctions for possession and distribution of such materials.


[1] The Opinion was adopted by the Venice Commission at its 91st Plenary Session (Venice, 15-16 June 2012).
[2] The element of violence or incitement to violence is also the standard and definition of "extremism" articulated in the Shanghai Convention on Combating Terrorism, Separatism and Extremism, which Russia has signed and ratified.