

LOCAL MEDIA LEGISLATION IN RUSSIAN PROVINCES: AN OLD AND WINDING ROAD

by

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While Russia became a member of the Council of Europe in 1996 and ratified the European Convention on Human Rights this year, it does not mean – at least for now – that legislation of the Council has any impact on mass communication regulation in my country. The decisions of the European Court of Human Rights are insignificant if not irrelevant for the Russian judiciary. In fact, at a recent media law conference, sponsored by the Moscow Media Law and Policy Center together with the School of Journalism of Moscow State University, a judge of the Russian Supreme Court pointed out that the Court would never apply itself or recommend to the general courts to apply European legislation unless parliament makes relevant and specific changes in the national law. All this despite the fact that the Constitution sets the precedence of the international treaties ratified by the Russian Federation over the national law. Since the Constitution is the law of direct action we only have to wait and see what happens if someone challenges the national law in a court of justice.

Russian federal legislation on mass media is very democratic and at the same time liberal in its nature. Some Western authors have even noted that the Russian Mass Media Act of 1991 gives journalists rights unheard of in Western societies.

The peculiar fact though is that in addition to federal laws and decrees, there is an array of local legislation that governs the press in Russia. All 89 “subjects of the Federation” – that is provinces, national republics and cities of Moscow and St. Petersburg – have a constitutional right to issue laws regulating different spheres under their jurisdiction. How does it come about that the mass media is under their domain?

The current Constitution of the Russian Federation, hastily drafted and approved by a “popular polling” in December 1993, was basically intended to ensure that the Presidential Administration would gain extremely wide powers following the abolishment of the Supreme So-

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viet (the parliament) in late September of the same year. Therefore there are lapses in those parts of its text that do not necessarily have to do with the areas of power distribution in Russia. Division of authority of the media between the federal and regional governments is one of such problems.

Articles 72, 73 and 74 of the Constitution sets out lists of issues that come under the jurisdiction of the federal authorities, regional authorities, and those which fall into both categories. But none of the three articles mentions the mass media. This provides a certain leeway for different opinions on regulation possibilities for the regional and federal legislatures.

Article 72 puts under exclusive federal authority defense of the basic human rights and freedoms (including the right to seek, obtain, produce and distribute information) as well as the so-called “federal information” (and it is not at all clear what could be then “non-federal information”) and “federal communication”. In its turn, Article 73 states that issues of “education” (*vospitanie*) and “culture” are under the joint regulation of the national and regional authorities. So where exactly does the mass media fit into this?

We can find a precedent – though of a fairly limited nature due to the statutory nature of the Russian legal system – in the case law. The Constitutional Court of Russia has heard a case based on two appeals on the constitutionality of the Federal Statute “On Advertising” (adopted in 1995). One appeal stated that regulation of advertising is part of the regulation of culture and should be therefore under common jurisdiction of the Federation and its “subjects”. Another said that since advertising (like mass media for that matter) is not mentioned in the Constitution, it shall be strictly under the jurisdiction of the regional authorities. The Court decision stated that whenever advertising law regulates issues of business, competition, the right to access commercial information, it is under federal legislation alone. In regard to other issues in the sphere, subjects of the Federation are free to introduce acts of their own.

We might presume then that this decision of the Constitutional Court applies to the massmedia in general – but we cannot be sure. If we are right, then certain issues listed in the Constitution as exclusively under federal regulation apply to the media field. Those issues are:

- scope of citizens’ right to obtain information,
- legal status of organizations (e.g., news organizations of the federal media),
- federal taxation,

- criminal liability for violations in the mass media sphere.

Under joint jurisdiction then come the following issues:

- protection of citizens' right to obtain information,
- other than federal taxation,
- registration and licensing,
- administrative control of mass media and relationship with the state authorities and self-government bodies.

In fact this is not just my opinion, it is also the status quo – albeit a shaky one – that exists today.

Joint jurisdiction means that regional governments can adopt statutes and other acts to regulate these spheres. But such acts shall not contradict federal legislation. In this regard the following basic questions remain practically unresolved.

1. What happens if the regional laws contradict Russian law adopted **before** the Constitution, ie not “Federal statutes” but “statutes of the Federation”, or even still effective USSR statutes? A 1968 decree on the procedures to review citizens' petitions could serve as an example. In most cases the local authorities ignore such laws with silent approval of the federal government.
2. Can regional governments adopt their own acts while there is no federal legislation in the joint jurisdiction field? That is, can they adopt laws before the federal authorities do? For example, there is an array of local statutes that regulate broadcasting or issues of obscenity adopted in the last several years but there are no statutes of the federal parliament on these matters. Local authorities naturally answer positively when and if such a question confronts them.

In addition, the regional governments “widen” their scope of legal activity in the process of negotiating treaties on the delegation of power, that the Federation concludes with its most ambitious “subjects”. In such cases the treaties, while repeating the constitutional provisions on areas of exclusive competence of the federal government, provide more favorable for the interests of the regions explanation of the “gray areas” of the Constitution. Thus the local authorities get official federal approval of their ambition to rule the mass media.

Why do the local authorities strive to get more power here? One explanation lies in the basic drive – especially of the former autonomous republics such as Tatarstan and Bashkiria – to more independence from Moscow.

Another has to do with the principal motivation behind media legislation in Russia, or even in the former Soviet Union in general. As was rightfully pointed out in the book by Professor Monroe Price titled “Television: the Public Sphere and National Identity”¹, the media – and broadcasting in particular – regulation here is an effort within a society to maintain or adjust a cartel. But not just a cartel of businesses, but one involving a dominant mix of political views and cultural attitudes. This legislation has served to strengthen national identity of Russia, as opposed to say the Ukraine or Belarus – and vice versa. While Price referred to the media legislation of the newly independent states, the same motive and model can be applied to the regulation in the “stateless nations” such as those mentioned above.

The liberties provided to the regional governments started with the famous phrase with which Boris Yeltsin used to address them at the peak of his confrontation with the USSR president in 1991 (“Take as much sovereignty as you can swallow!”), and were reinforced in the 1993 constitutional right to adopt local constitutions and statutes which he – to put it cynically – served to them in exchange for loyalty during his stand off with the abolished parliament.

Thus regional laws too have been an important factor in strengthening these mini-national identities, to strengthen “mini-cartels” that serve as pillars of the existing power structures, more often than not uncontrollable by the federal authorities.

At the same time, regulation of the mass media in the regions of Russia is not so much about cultural peculiarities of the Ossetians or Yakuts, or how media should follow local traditions or, say, religions. Don’t get me wrong. It is rather drafted and adopted to show the journalists who are the real masters in their lands, who can give favors and impose penalties. It is no surprise in this context, e.g., that out of nine regional constitutions adopted by the “stateless nations” which generally repeat all the typical nice phrases on the freedom of speech and expression in the federal Constitution, only three prohibit censorship.²

¹ Monroe E. Price, *Television: the Public Sphere and National Identity* (1995).

² Aleksei Ye. Voinov, *Zakonodatelstvo o sredstvakh massovoi informatsii i praktika ego primeneniya v respublikakh – subjektakh Rossiyskoy Federatsii* (Law and Practice of Mass Media in the Republics – Subjects of the Russian Federation) (1997), p. 21. (Soon the book can be found on: www.medialaw.ru)

At least four subjects of the Federation have adopted their own mass media statutes. To a very large extent those acts mechanically repeat the Russian mass media statute of 1991, which puts under doubt the whole legal rationale of such law-making. Interestingly enough, the local statutes repeat many of the commonly recognized flaws and internal contradictions of the federal act. For example, like the federal statute, they mix in one article **criminal liability of a citizen** who abuses law with the use of mass media and **administrative responsibility of editorial offices**. They also leave open the gaps that have been noted in the federal statute in the last seven years.

A number of **new restrictions** are introduced in the regional statutes on mass media. For example at least four statutes prohibit creation and distribution within the territory of the particular subjects of the Federation of **any** mass media established by the entities, the address of which happens to be outside the boundaries of the particular region without the **prior permission** of the local authorities. Others demand a special accreditation of journalists from the outside regions if they want to have the same status as the local ones. Or, some statutes speak of an obligation to obtain permission for the correspondents' bureaus of "outside" media. We cannot but note that all this contradicts Article XIX of the Universal Declaration, Article X of the European Convention, the Russian Constitution, etc.

In addition to the regional mass media statutes, local regulation of the mass media consists of the groups of acts that regulate the following areas:

- additional subsidies to the local media: relief from local taxes, etc.,
- regulation of licenses' allocation for the local broadcasters,
- regulation of access to information and accreditation of journalists,
- regulation of obscenity, pornography, and erotic publications and programs.

It is hard to object to the first out of the four groups of acts. Since federal legislation provides federal benefits for the media, why cannot regional legislation do the same at its own level? At least we can say that if uniform relief is introduced, this only helps to develop and strengthen local media.

In the passing it can be observed here that the intensive law-making activity of the post-communist era can be also explained by the competition between the executive and legislative branches of the government over the influence of the press. The President and the parliament of Russia have been at odds or even in the state of open hostilities since early 1992. By provid-

ing different favors to journalists, one or the other has tried to prove their status as the guarantor of the freedom of press and speech in Russia, the protector of the press from the hardships of the transitional market economy. Definitely these are attempts to lure the press onto its side in the political duel. Incidentally, almost none of the numerous decrees and laws that provide the press with tax relief, reduced tariffs, and state subsidies work in full. The reason lies in the fact that the executive is never in a hurry to execute what the legislature adopts, and the parliament – with an almost single lever on economy at hand – in control of the budget, does not allocate funds for the programs envisioned by the executive power alone. A similar trend is evident in the provinces where regional governors typically compete with local legislatures.

While the three remaining groups are a result of the absence of federal law on the subjects, we can only hope that when such pending laws are finally adopted by the national legislature the probable contradictions between the two sets of acts will be removed.

It is also important to say that the legal grammar of the existing regional law is far from being perfect. Let us take for example the last group of regional statutes, those on indecency and obscenity. Some of them permit sexual programming on terrestrial TV only after 23 or 24 o'clock local time, but do not state till what time the permission lasts. Till 22:59? One of the statutes permits sale of pornographic magazines "away from streets with crowded pedestrian traffic". What does that mean from a legal point of view: "sell them in the woods"?

As is seen from the above local legislation in a number of cases contradicts federal legislation, thus creating an additional problem for establishing the rule of law in Russia. A natural question arises: how can that contradiction practically be resolved?

Legally there are two ways. The first is when a federal authority, be it the office of the Prosecutor General, or that of the Minister of Justice, complain to the regional legislature on the existing contradictions requesting them to amend certain pieces of regional legislation. The federal authorities have tried to do that with regard to the elections regulations but basically failed to achieve a positive result: local legislators disregarded these appeals. The federal authorities cannot really enforce a change in the local laws.

The second way is through the court system. If for example a local legislation violates someone's rights that person can petition the courts to have them restored, at least to the extent provided by the federal law. While the local courts being dependent on the local government will probably turn down such a petition, that alone can serve as grounds to appeal to the federal courts up to the Supreme Court or the Constitutional Court. We still have to wait until Russian

citizens or media outlets will find enough time and resources to go along that long road, which basically will satisfy the plaintiff alone, since the precedent will not necessarily bind other courts.

So, what we see today in the provinces of Russia is a Balkanization of media legislation, open or potential contradictions between federal and regional statutes with no clear way to resolve them under the current political climate. The violations of journalists' rights, restriction of freedom of speech and the press are more common the further you go from Moscow. Boundaries are becoming frontiers. Loyalty to regional czars are crucial for a career or even a life in journalism. While the national media are rather freely accessible in the regions, a reason for this is their relatively scarce coverage of the local affairs. At the local level, the media, at least the traditional ones (terrestrial broadcasting and daily press) are under legal control and sometimes oppression. We might witness a fresh circle of the creation of new independent states in familiar territory –a multiple birth of nations. And like in 1991 it does not necessarily bring new freedoms to the public. I believe that all this must be a cause for concern for the international community.