

The fake news ‘infodemic’: the fight against coronavirus as a threat to freedom of speech

*“Panic-mongers and cowards must be exterminated on the spot”
Order of the People’s Commissar of Defence of the USSR J.V. Stalin
No. 227 of 28/07/1942*

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The present report by **Agora International Human Rights Group** gives an overview of the practice of the implementation of Russian legislation addressing the spread of inaccurate or false information, which includes parts 9-11 of Article 13.15 of the Code of Administrative Offences of the Russian Federation (RF), Articles 207.1 and 207.2 of the Criminal Code of the RF, as well as Article 15.3 of the Federal Law “On information, information technologies and the protection of information”, and the application of these norms in the context of the coronavirus pandemic. We believe that the law enforcement practice in the so-called “fake news cases” differs significantly from previous campaigns of mass persecution for speech acts.

Over the course of 450 days of continuous monitoring, we recorded more than 200 cases of prosecution of citizens and organisations for disseminating information that deviates from official press releases. Of these, only 2 cases concern the prosecution of officials for dissemination of information that was subsequently disproved.

More than 1,100,000 roubles in fines have been imposed by the courts as part of administrative proceedings in connection with allegations of spreading disinformation. At least half of the sentences in these cases were passed after citizens pleaded guilty.

The article criminalising “fake news” has become a convenient tool for punishing public critics of the government – 17 of the 42 cases of criminal prosecution are connected to statements made by activists, journalists, bloggers, and politicians.

Over the two months that Article 207.1 of the Criminal Code of the RF has been in force, criminal proceedings under this article have been initiated more often than every two days, including weekends and holidays.

Report by Agora International Human Rights Group

The present report is composed of three main parts that describe the current situation and conditions that gave rise to the “fake news” norms in Russian law, provide an overview of the most noteworthy cases, and examine the relevant global context.

The report is based on the results of our own continuous monitoring, as well as the publications of state media and communications watchdog Roskomnadzor (Federal Service for Supervision of Communications, Information Technology and Mass Media), the Prosecutor General’s Office, the Investigative Committee, the Ministry of Internal Affairs, and other departments, data from the State Automated System (GAS) “Justice”, as well as the materials of two dozen cases currently being litigated by lawyers of Agora International.

The appendix sets out the results of the monitoring in table format, which includes the date, region and source of information for each known episode.

Laws against spreading rumours

The Russian authorities drew attention to the need to control rumours and fake news in 2008, when member of the Federation Council Grigory Naginsky [proposed](#) the introduction of criminal liability for “disseminating false information about accidents and emergency situations”. This was brought about by several incidents of panic following reports of accidents at nuclear facilities.

In 2004 the emergency protection system at the Balakovo nuclear power plant in Saratov Region was [triggered](#) by a ruptured water pipe. In May 2007 the south of Russia was [gripped](#) by panic following reports of accidents at the Zaporizhzhya and Volgodonsk NPPs. A year later, there was [talk](#) in St. Petersburg of an “explosion and release of radioactive substances” at the Leningrad nuclear power plant. In the absence of reliable information and convincing explanations from the authorities, local residents began to bulk buy iodine and move as far away as possible from the plant, fearing radiation contamination.

In December 2009 rumours [circulated](#) in Saratov about the spread of “pulmonary plague” in the region, and the impending closure of the entire city for disinfection from helicopters. In the context of the memory of the Sverdlovsk anthrax [outbreak](#) cover-up by the government in 1979, the residents of Saratov can hardly be accused of excessive distrust towards the authorities.

The spread of rumours concerning incidents at nuclear power plants sometimes did result in dangerous consequences. For example, in Balakovo cases of iodine

poisoning and burns of the larynx were recorded in people who ingested an iodine alcohol solution intended for external use, in the hope of protecting themselves against radiation. However, the formal reason for the adoption of the first package of “fake news” laws in Russia was most likely a prank that had no dangerous consequences, but clearly angered officials.

On 25 March 2018, as a major fire was being extinguished at the Kemerovo shopping and entertainment complex Zimnyaya Vishnya (Winter Cherry), an unknown person made a prank call to the morgue asking if there is space for 300 bodies of those who died in the blaze - the conversation was then posted on YouTube. Soon after, the Investigative Committee of Russia filed [charges](#) in absentia against Ukrainian prankster Nikita Kuvikov (who called himself “Evgeny Volnov”), accusing him of “calls for terrorism” and “incitement to enmity”. The discrepancy between the offences described in Article 205.2 and Article 282 of the Criminal Code of the RF and the actual act committed is apparent, and the forced nature of the charges conspicuous. A few years earlier, a similar contradiction in the Pussy Riot case triggered the enactment of the law on “offending the feelings of religious believers”.

The first version of the [bill](#) to control the spread of socially significant rumours was put before the State Duma in July 2017. Among other things, the law stipulated the obligation of online service providers with an audience of more than two million to delete “false information” or face a fine of up to 50 million roubles. However, the draft law did not progress beyond the first reading.

The partial decriminalisation of Article 282 of the Criminal Code of the RF (incitement to hatred or enmity, and the denigration of human dignity) became a reason for renewed discussions on differentiation of responsibility for disseminating information online.

The aforementioned case of prankster Nikita Kuvikov demonstrates that the authorities, who are extremely sensitive to any comments that could cast doubt on their effectiveness, needed a more suitable tool for responding to such publications - and not one of a criminal-law nature. Such an instrument [was](#) the package of draft laws on “fake news” and “disrespect for the authorities”, introduced in December 2018 by member of the Federation Council Andrei Klishas.

The legislation on administrative offences was accompanied by new provisions of the Federal Law “On information, information technologies and the protection of information”, establishing additional grounds for extrajudicial blocking of content by Roskomnadzor on the instructions of the Prosecutor General’s Office.

Nevertheless, [unlike](#) the law on “disrespect for the authorities”, the “fake news” law was hardly applied at all until spring 2020: during the first year we were only able to track 13 cases, connected with a wide variety of issues - [announcement](#) of a rally, a [report](#) about a sinkhole collapse, [rumours](#) of soil contamination, [criticism](#) of municipal authorities, a [publication](#) about torture, etc. There was no green light for the mass application of the new legal norm, therefore, it was very obviously used by local authorities exclusively to resolve local issues. Everything changed in March 2020 when Russian authorities recognised that the country was under threat from an epidemic.

On 23 March 2020 the Investigative Committee of Russia published a press release on an [inquiry](#) into the “dissemination of false information on the number of patients infected with COVID-19 in Russia” under part 1 of Article 237 of the Criminal Code of the RF (distortion of information about events, facts or phenomena endangering human life or health). This was surprising, since Article 237 of the Criminal Code of the RF is one of the most rarely applied norms of criminal law: for example, in 2019 only 2 sentences were passed under this article.

It is obvious that, in the absence of a suitable article in criminal law, the authorities had to make use of what was available. However, Article 237 is intended for authorised persons, and thus not suited for implementation en masse in respect of ordinary citizens. Three days later, the Chairman of the Investigative Committee of Russia, Alexander Bastrykin, [created](#) a special working group to identify “facts of dissemination, including over the Internet and instant messengers, of knowingly false or unverified information about the number of coronavirus (COVID-19) cases in Russia, as well as other false information conducive to panic”.

The next day, on 27 March 2020, the Russian Government [created](#) a special Communication Centre. One of its main tasks was “to identify and refute false information about the coronavirus infection, the dissemination of which can pose a threat to human life and health, lead to an increase of tension in society, and destabilise the socio-economic and political situation in the country”. Control over information about the epidemic had become a political issue.

On 31 March — over the course of one day — the State Duma adopted in three readings at once, and the Federation Council approved, a package of “anti-virus” laws on upgraded penalties for knowingly disseminating false or inaccurate information. The very next day the new amendments were signed into law by Russian President Vladimir Putin, swiftly published and immediately [entered](#) into force.

The existing Article 207 of the Criminal Code RF (knowingly making a false communication about an act of terrorism) was joined by two norms on the public dissemination of knowingly false information about circumstances that pose a threat to the life and safety of citizens. Simple dissemination of information (Article 207.1) is punishable with a fine of up to 700 thousand roubles, compulsory or correctional labour, and restriction of liberty for up to three years. If such actions result in actual harm to health or death (Article 207.2), then the penalty increases to a fine of up to 2 million roubles or imprisonment for up to five years.

At the same time, Article 13.15 of the Code of Administrative Offences of the RF was supplemented with provisions introducing liability for legal entities for knowingly disseminating false or inaccurate information - fines for organisations reach 3 million roubles on formal grounds, or 5 million roubles in the event of actual dangerous consequences.

The boundaries of the criminal and administrative offences as defined in the new legislation are extremely vague, and current practice shows that the same act can be unpredictably classified as falling under the Russian Criminal Code or the Code of Administrative Offences.

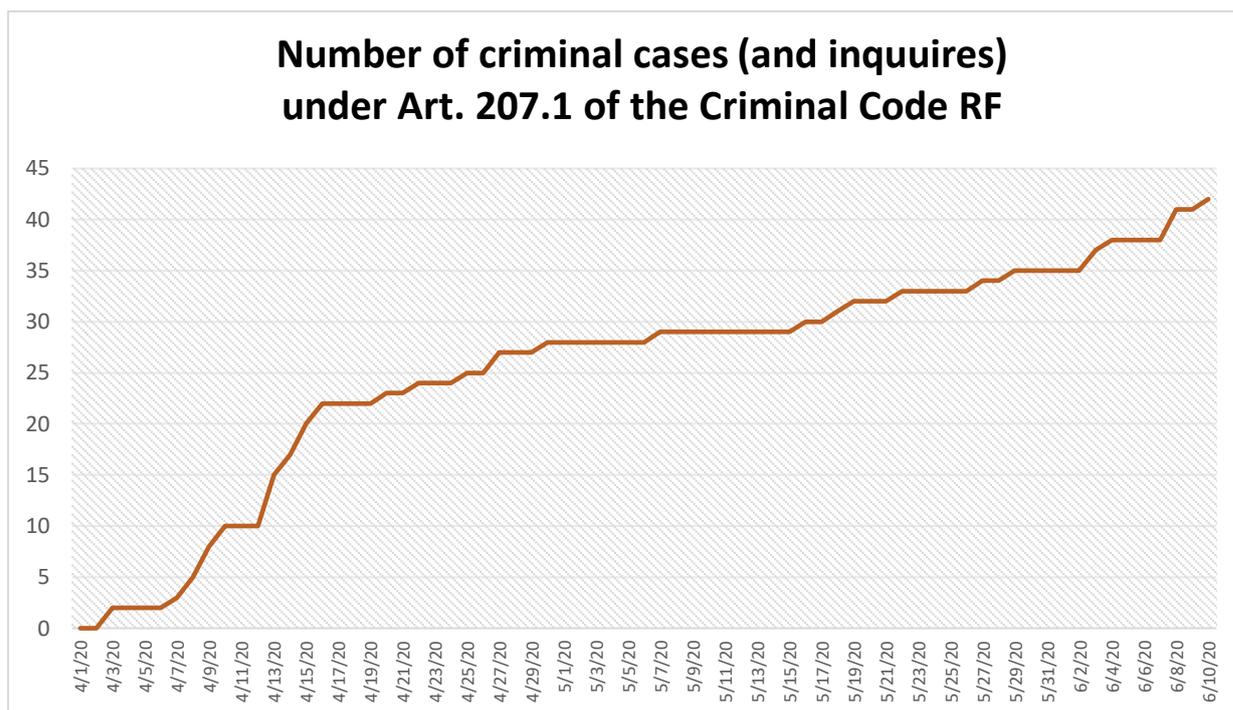
In addition, independent experts have noted that the new norms [run counter](#) to the right to freedom of expression, and do not provide for any checks, time limits, or public control.

The shortcomings of the legislation are evidenced by the fact that, in the very first month of the existence of the laws, the Supreme Court of Russia has twice made attempts to clarify issues with their implementation. In the [first](#) review of “coronavirus jurisprudence”, the court limited itself to reformulating the texts of the new norms, clarifying previously known provisions on the effect of laws in time, and noted the criminal nature of disseminating disinformation about COVID-19. In the [second](#) review, the Supreme Court separately noted the existence and importance of proving the subjective side of the act in the form of direct intent, and also established the public nature of correspondence over instant messengers.

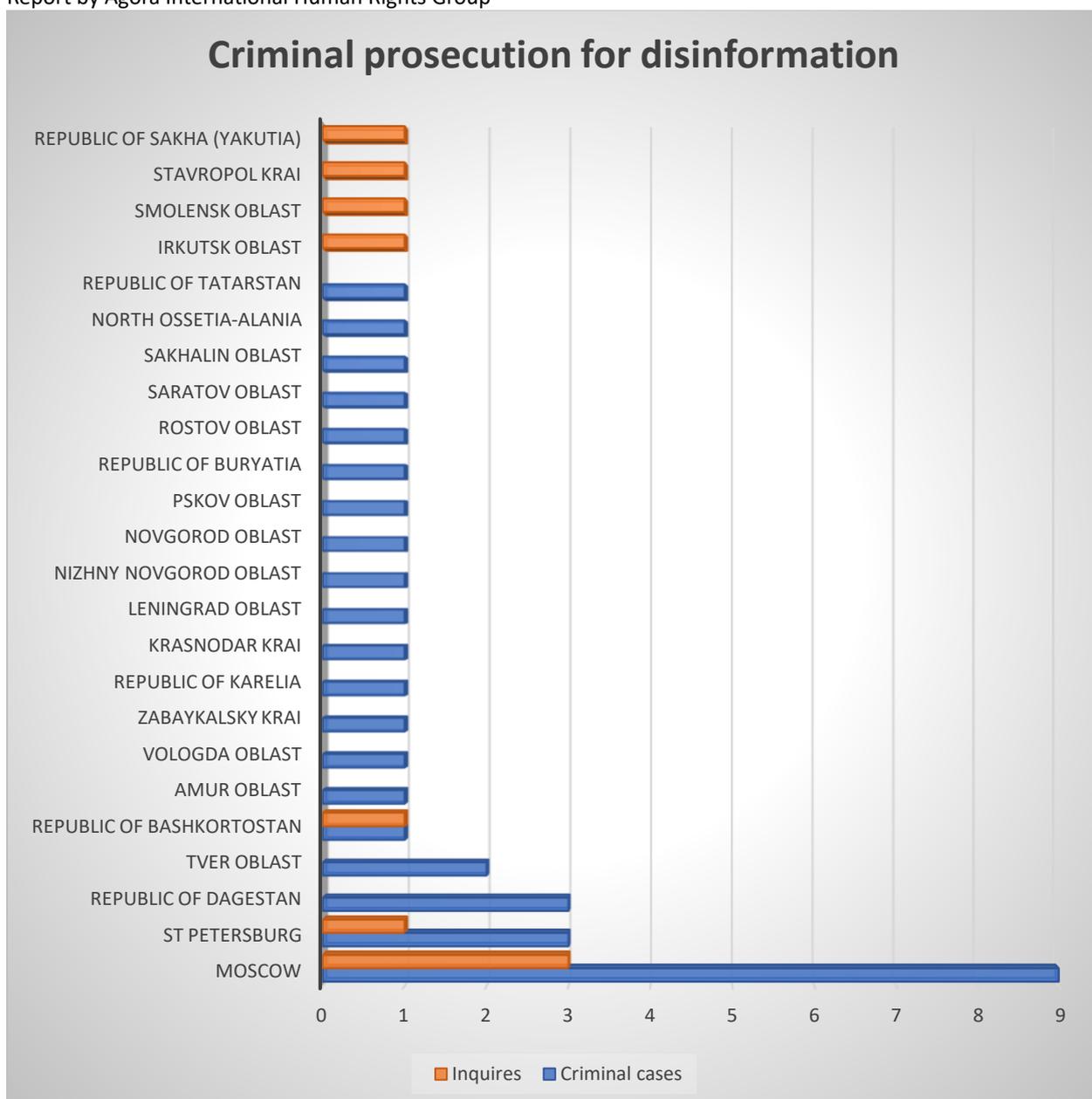
Application of the new legislative norms

Criminal prosecution

The first criminal case under the new Article 207.1 of the Criminal Code of the RF was [filed](#) two days after its enactment, in connection with the publication of a post in a VKontakte group called “Sestroretsk News” (Sestroretsk is a small municipality in St Petersburg’s Kurortny district) claiming that a patient diagnosed with COVID-19 was sent home from a local clinic by public transport.



In total, as of 9 June 2020, our monitoring has identified 38 cases of criminal prosecution under article 207.1 of the Criminal Code of the RF in 21 regions of Russia. One of the criminal cases, in which the suspect immediately pleaded guilty and waived his right to defend himself, has already resulted in [sentencing](#) and the imposition of the minimum penalty of a fine of 300,000 roubles.



The article criminalising dissemination of fake news has become a convenient tool for punishing public critics of the authorities – 17 of the 42 cases of criminal prosecution are connected to statements made by activists, journalists, bloggers, and deputies.

The first criminal case filed under the new Article 207.1 of the Criminal Code of the RF also demonstrated the political nature of the prosecution. The Investigative Committee launched an investigation into Anna Shushpanova, an activist of the doctors’ union Doctors’ Alliance backed by Russian opposition politician Alexei Navalny, in connection with the above-mentioned “Sestroretk News” post, for disseminating information about insufficient measures to prevent the spread of the COVID-19.

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Journalist Yulia Latynina became a subject of inquiries by the Investigative Committee of Russia in connection with her professional activities - she is accused of reading letters from doctors provided by the head of Doctors' Alliance, Anastasia Vasilyeva, during a broadcast on Moscow radio station Ekho Moskv.

It was later revealed that the complaint against Doctors' Alliance activists and its head Anastasia Vasilyeva originated from the Federal News Agency (FAN). Reports by the FAN also served as grounds for inquiries under Article 207.1 of the Criminal Code of the RF into deputy Valery Rashkin, political scientist Boris Vishnevsky, and opposition politician Leonid Volkov - all for criticising government measures to combat coronavirus, or official statistics.

Criminal proceedings have also been initiated in connection with publications by the human rights project Rus Sidyashaya ("Russia Behind Bars") and human rights activist Grigory Vinter claiming that current measures to prevent the spread of coronavirus in prisons are insufficient. Activist Pavel Glushchenko, a long-time critic of the Federal Penitentiary Service of Russia (FSIN), also faced criminal proceedings after publishing reports of abuses during the suppression of a riot in the Angara penal colony by the special forces of the Federal Penitentiary Service of Russia, which resulted in grievous bodily harm and the death of a prisoner.

Criminal proceedings against bloggers Alexander Thorn and Alexander Pichugin were opened following the publication of what were clearly satirical posts about the origin of the coronavirus infection and disregard for its dangers during religious events.

Ruslan Nurtdinov, a prominent opposition activist in Bashkortostan, became a victim of criminal prosecution following a statement made by State Duma deputy Bator Aduchiye.

The Investigative Committee is currently conducting an inquiry into journalist Tatyana Voltskaya for publishing an interview with a St Petersburg doctor who raised concerns about the lack of adequate medical equipment in hospitals.

Popular blogger Andrei Tyunyaev became a defendant in a criminal case after expressing the opinion that COVID-19 originated in Russia.

Criminal proceedings in connection with disinformation were filed against Nikolai Platoshkin, leader of the political opposition movement New Socialism, shortly after he announced his intention to register the party for the next elections.

Comments on the adequacy of the authorities' response to the coronavirus epidemic led to the initiation of criminal proceedings against opposition blogger

Vadim Cheldiev, and his arrest in St Petersburg triggered a protest in Vladikavkaz, which subsequently resulted in further criminal cases against him. In trying to control freedom of expression, the authorities have provoked discontent among residents of North Ossetia, which took the form of public protests.



The possibility of criminal prosecution for dissemination of officially unconfirmed information was realised in respect of popular blogger Vladimir Vorontsov (“Police Ombudsman”). Mr Vorontsov has for several years attracted the open discontent of the leadership of the Ministry of Internal Affairs of Russia in connection with the publication of socially significant information from sources within the department.

Administrative prosecution

As previously noted, during the first year of its existence, the article of the Code of Administrative Offences of the RF that establishes administrative sanctions for dissemination of false information was applied spontaneously for various reasons, mainly those of local importance. Of the 13 known cases, 8 were terminated by the courts or police. However, after the outbreak of the epidemic, the fight against unofficial information turned into a nationwide political campaign - from that moment on, coronavirus became the only topic that interested law enforcement agencies.

Official statistics on the number of cases filed under individual parts of Article 13.15 of the Code of Administrative Offences of the RF have not been published,

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however, our monitoring covered 170 cases from 53 regions of Russia. Notably, 157 cases were recorded during the three “epidemic” months. Cases that attracted public attention have been analysed, as well as all cases examined by the federal courts of general jurisdiction, either as courts of first instance or during the consideration of appeals against decisions of magistrates.

Of the cases considered, 46 resulted in sentencing and the imposition of fines totalling more than 1 million roubles.

Particularly conspicuous are 9 fines imposed by the courts in an amount below the minimum penalty (15-20 thousand roubles), as well as the largest fines: 75 thousand roubles for Vadim Cheldiev for a video recording giving a negative assessment of the danger of COVID-19, 60 thousand roubles for Yevgeny Gneushev, editor-in-chief of the Moment Istiny (Moment of Truth) news agency, for uploading a video on YouTube of a speech by publicist Andrei Karaulov, 60 thousand roubles for Timur Almaev, editor-in-chief of the news website ProUfu, for publishing a commentary by a spokesman of the Ufa City Administration, who subsequently pointed to the unofficial nature of his opinion, and 60 thousand roubles for a man from the Altai Republic for reporting the arrival in his village of a woman from Barnaul infected with COVID-19.

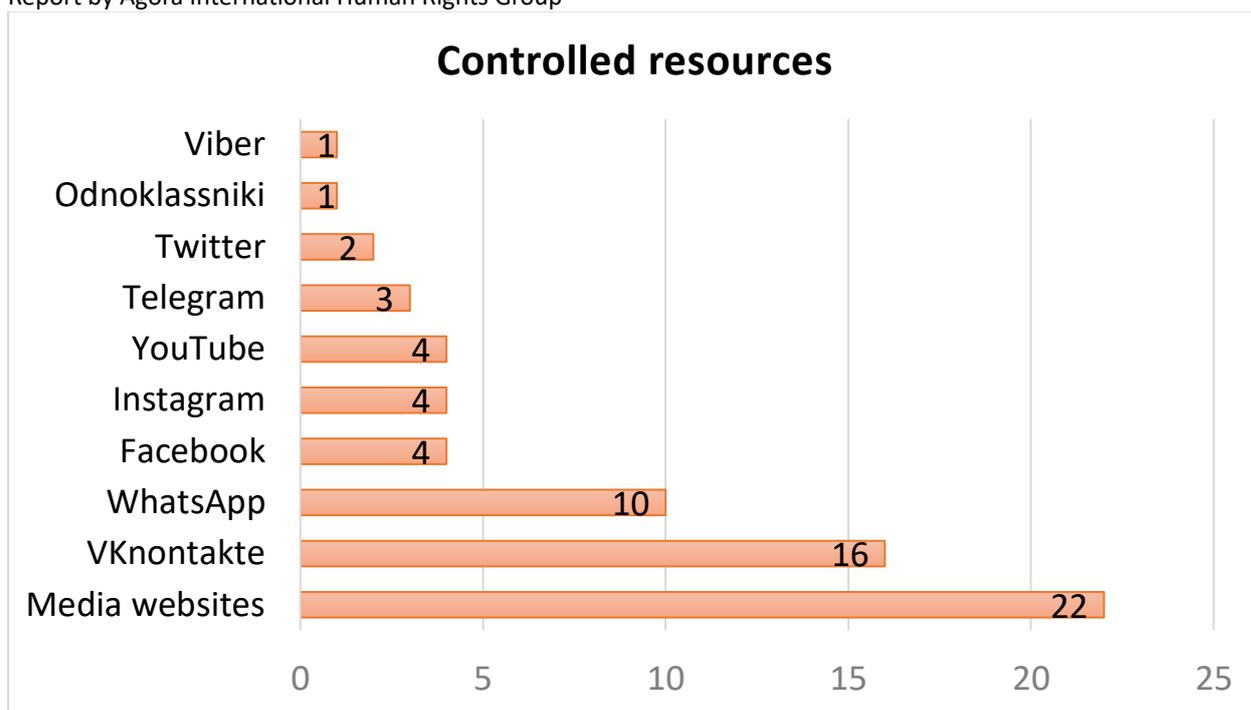
Proceedings in 12 of the cases were terminated by the courts in connection with the absence of corpus delicti.

In 8 cases, after launching inquiries into suspicious messages on social networks or media websites, the police or Roskomnadzor themselves decided not to prosecute. One case of a false report claiming that a patient of a local hospital in North Ossetia has been diagnosed with coronavirus ended with a verbal warning.

In the remaining cases, the proceedings and appeals continue.

Of particular interest are at least 12 cases connected with monitoring by employees of Centres for Combating Extremism of voice messages in parent and district instant messenger groups.

A planned increase in control by law enforcement agencies over publications on media websites warrants a critical assessment.



Description of cases

At the time of writing of the present report, Agora lawyers were working on 14 cases of administrative prosecution on charges of dissemination of false information.

The case of activist Sergey Belogorokhov of the Chelyabinsk Stop GOK movement opposed to the construction of a copper mining complex has been ongoing since October 2019. The ground for the administrative proceedings was a social media post expressing the opinion that asphalt collapses in the village of Roza were caused by explosions carried out by the Tominsky GOK (copper mining and processing plant) enterprise. The case is currently at the appeal stage.

The publication of a statement by doctor Vsevolod Shurkhai about the lack of PPE and preventive measures at a large Moscow clinic resulted in his prosecution. Proceedings against him were subsequently terminated.

Mikhail Matveev, a deputy of the Samara Regional Parliament, who contacted the governor and the regional police leadership via Twitter calling for an inquiry into reports of inappropriate responses to confirmed cases of COVID-19, became a defendant in two “fake news” cases at once following complaints from officials. One of the cases was dropped with legal assistance from the author of the present report, the second case is at the appeal stage.

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An activist of the Yabloko party in the city of Pskov, Nikolai Kuzmin, posted on social media that he had learned from doctors about the lack of ventilators and specialists at a local infectious diseases hospital. A disinformation case has been opened against Mr Kuzmin. Subsequently, a similar case was also [initiated](#) against the region's leadership on suspicion of disseminating false information.

Activist Vyacheslav Yegorov from Kolomna district, who has spoken out against the construction of the Volovichi domestic waste landfill, is facing [charges](#) for disseminating fake news for publishing a post in which he only supposed that many citizens have already had coronavirus.

Roskomnadzor [dropped](#) charges against Krasnoyarsk television channel TVK and its chief editor Maria Bukhtueva, accused of disseminating false information in connection with a news story about citizens denying the existence of coronavirus. In the city of Zheleznogorsk, Krasnoyarsk Territory, Roskomnadzor is conducting inquiries into television company Channel-12 and its chief editor in relation to a broadcast in which the journalist discussed whether the coronavirus infection can spread through house ventilation systems.

Kursk animal rights activist Yekaterina Bilbao has been [convicted](#) on disinformation charges for offering to help a local hospital. The court decision is being appealed.

The largest fine in the country of 75,000 roubles was [imposed](#) on North Ossetian opposition blogger Vadim Cheldiev, for disseminating information on the need to participate in protests and calling for a critical attitude towards coronavirus. The court decision is being appealed.

Nizhny Novgorod journalist Irina Slavina is facing prosecution for publishing information on a media website about a confirmed case of COVID-19.

Court decisions not to prosecute

An interesting case is the [termination](#) of administrative proceedings on dissemination of fake news in connection with the insignificance of the act committed. The court took into account that the message in question called for compliance with self-isolation requirements, and found that the actions to disseminate the message, despite the presence of the formal elements of the administrative offence in question, did not harm protected public interests.

An analysis of cases discontinued by the courts has made it possible to assess the grounds for such judicial decisions. In particular, in refusing police applications to prosecute citizens for “fake news”, the courts pointed to:

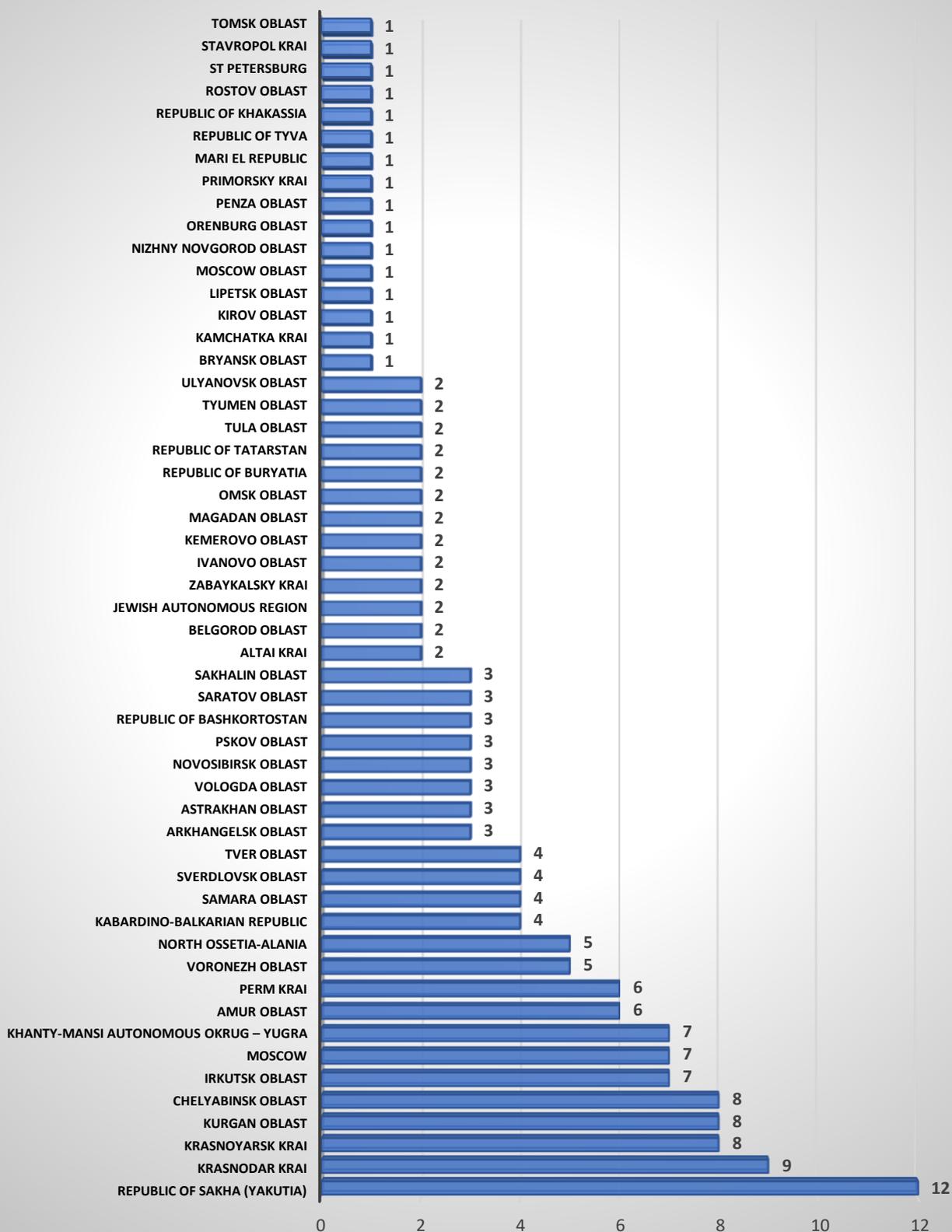
- absence of an indication of what constitutes a threat of socially harmful consequences;
- lack of evidence of the social significance of the information disseminated;
- lack of evidence indicating that the person in question knew the information to be false;
- lack of evidence of a direct intent to knowingly disseminate unreliable socially significant information.

In particular, the courts used the following wording: *“If a citizen is confident that the information that he or she disseminates contains truthful information, although it is in fact inaccurate, he or she cannot be held liable under part 9 of Article 13.15 of the Code of Administrative Offences of the Russian Federation”*.

In terminating proceedings on fake news cases, the courts have also indicated that *“any person has the right to hold an opinion on any events occurring in his life, even if such an opinion objectively does not correspond to reality, or such an opinion does not correspond to any other point of view on the events in question, including the point of view of authorities and their officials on such events. Moreover, any person has the right to disseminate his opinion and ideas among other persons, while observing the established restrictions that are prescribed by law and are necessary in a democratic society in the interests of national security, territorial integrity or public order, in order to prevent disorder and crime, to protect health and morals, the reputation or rights of others, prevent the disclosure of information obtained in confidence, or ensure the authority and impartiality of justice”*.

It has separately been noted that *“a person’s calls for non-compliance with orders of state authorities, addressed to the officials of these authorities, do not constitute an administrative offence under part 9 of Article 13.15 of the Code of Administrative Offences of the Russian Federation”*.

Cases under part 9 of Art. 13.15 of the Code of Administrative Offences RF



Internet censorship

On 29 November 2019 Roskomnadzor for the first time published a list of online resources that have been mentioned at least twice in decisions of the Prosecutor General's Office, submitted to Roskomnadzor, ordering the removal of false information. The initial publication of the list was fraught with scandal, during which the news portal RBK, under threat of legal action, [demanded](#) that Roskomnadzor itself remove from its website inaccurate information about alleged decisions of the Prosecutor General's Office against the portal. Updates to the list quickly ceased. The last changes made to the "blacklist" on Roskomnadzor's [website](#) were on 20 January 2020. Since then, it lists 27 resources: both private pages on social networks, and popular public pages.

On 18 March 2020 Roskomnadzor [warned](#) the mass media of its intention to apply "the most stringent measures, up to complete and immediate restriction of access to the information resources in question, and revocation of licenses" for publishing false information, and two weeks later [reported](#) the deletion of 405 Internet pages on the orders of the Prosecutor General's Office, noting also that the agency requires YouTube to expedite the removal of "false information".

Issues with implementation of the legal norms

Despite the fact that the wording of part 9 of Article 13.15 of the Code of Administrative Offences of the RF contains concepts that have no legal definition, but require specialist linguistic expertise, the courts often disregard this and refrain from involving linguistics experts in cases, and assume the role of experts themselves.

In particular, in assessing such concepts as "knowingly" and "unreliable" the courts, without consulting a linguistics expert, claim the right to determine whether a given pronouncement aims to disseminate unreliable information under the guise of truthful communication (the [case](#) of Mikhail Matveev, deputy of the Samara Regional Duma, is just one example).

Clearly, for a full and comprehensive examination of cases related to the dissemination of information to be conducted, linguistic expertise is required, which can only be performed as part of an administrative investigation. Thus, by virtue of the provisions of Article 23.1 of the Code of Administrative Offences of the RF, such materials should be submitted to the federal courts of general jurisdiction (district courts). However, the statistics of district courts show a mass transfer of materials on "fake news" cases, without the performance of linguistic

expert examinations, to magistrate courts (34 cases). This may also be an indication of the lack of adequate training of employees of the Ministry of Internal Affairs, including supervisors, responsible for approving the material obtained prior to referral to court.

When issuing decisions, the courts often refrain from assessing such elements of an administrative offence as **prior knowledge** of the unreliability of the information disseminated by the person responsible, as well as the **presence of direct intent** to mislead others. Even the Supreme Court has separately drawn attention to the importance of a proper assessment of these elements.

Of the 46 guilty verdicts examined, at least 23 are based on admissions of guilt as *regina probationum* (“queen of evidence”). Thus, in the presence of a guilty plea, the courts refrain from establishing and assessing other elements of the offence, only formally listing them in the decision.

Of particular concern is the practice in police departments of making video recordings of apologies of persons who authored the offending statements. While in the power of police officers, without a qualified defence counsel, outside the framework of the stipulated procedure for familiarising themselves with their legal rights to defence, citizens create evidence against themselves. Clearly, Articles 29 (the right to remain silent) and 51 (the right not to incriminate oneself) of the Constitution of the Russian Federation are flagrantly violated in the process. Moreover, law enforcement officers officially disseminate the unlawfully obtained videos, causing damage, which is not limited in time, to the reputation of the entire family or public organisation of the individual who has succumbed to the proposal to make a video confession.

The courts of first instance often pay no attention to assessments of the social significance of the information, and the availability of evidence of a real threat of socially harmful consequences. For example, the courts indicate: *“Comments on the publication indicate that its content was perceived by many to be reliable information, has provoked both a negative assessment of the activities of police officers, and individual calls for unauthorised mass protests, that is, mass violation of public order”*.

Global context

In 2017 the Collins English dictionary [declared](#) *fake news* the word of the year, defined as follows: “false, often sensational, information disseminated under the guise of news reporting”.

At the same time, it can't be said that lies as an instrument of global politics hasn't been used before - it's enough to recall the statements of the American administration about the development of weapons of mass destruction by the regime of Saddam Hussein as a [pretext](#) for the invasion of Iraq in 2003, or numerous [publications](#) in the pro-Russian media about the MH17 Ukraine plane crash.

However, the topic of fake news entered the global agenda in connection with accusations of Russia's interference in the US elections in 2016, when it was unexpectedly revealed that countries with high standards of freedom of speech and centuries-old traditions of freedom of political expression are precisely those that are most vulnerable to mass disinformation campaigns. It was then that many countries adopted the first laws on fake news, and since then the topic of misinformation has never completely left public discourse.

Thanks to the pandemic, the discussion has been renewed, and many governments [began](#) to promptly introduce or tighten responsibility for dissemination of false information. Despite the threat posed by disinformation, the extreme nature of the measures has caused mixed reactions and protests.

"Coronavirus" lawmaking has not escaped the attention of international institutions and non-governmental human rights organisations. Among those who have raised concerns about possible restrictions of freedom of speech in connection with the dissemination of "false information" are the UN High Commissioner for Human Rights, Michelle Bachelet, UN Special Rapporteur on Freedom of Expression and Opinion, David Kaye, UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Clément Voule, Council of Europe Commissioner for Human Rights, Dunja Mijatović, OSCE Representative on Freedom of the Media, Harlem Désir, and the British NGO Article 19.

The current global health crisis requires effective measures to protect human life and health. Such measures may include countering disinformation that provokes panic and social unrest. However, these measures must be lawful, proportionate, and effective, not violate freedom of the press and the right to freedom of expression. Meanwhile, some governments are using the pandemic as a pretext for imposing disproportionate restrictions on fundamental human rights and suppressing opposition, while the measures introduced give officials a monopoly on assessing the truthfulness of the information disseminated.

IT versus disinformation

Over the past few years, social networks have had to implement various protocols to combat disinformation. For example, back in 2015 Facebook [announced](#) an update to its news feed aimed at reducing the number of hoaxes.

On 16 March 2020 Facebook, Google, LinkedIn, Microsoft, Reddit, Twitter and YouTube announced a joint endeavour to combat coronavirus disinformation. The strategy boils down to removing clearly dangerous information that contradicts authoritative sources, as well as labelling unverified content.

Facebook soon [announced](#) that it would promptly remove COVID-19-related misinformation that could cause “imminent physical harm”. Other unverified claims that don’t directly result in physical harm, including conspiracy theories, will be examined by a team of fact-checkers. As a result, in March-April, 90 million messages were marked with warning labels, and 95% of users who saw the labels did not follow the links.

Similar measures have been adopted by Twitter, which has [updated](#) its policy for dealing with complaints about inappropriate content, expanded the use of automated technologies and machine learning to evaluate potentially dangerous information, broadened its definition of “harm” and misinformation to address content that goes directly against guidance from authoritative sources of global and local public health information, and introduced new labels and warning messages for Tweets containing misleading or disputed information related to COVID-19.

Russian social networking service VKontakte (VK) has launched a special section with official information about COVID-19, but has not made any changes to its rules of use. Nevertheless, judging by the company’s reports, it is actively moderating news feeds - in March-April, the social network deleted 800 thousand messages, and announced the start of constant monitoring of dangerous content. However, in the absence of comprehensive and regular transparency reports, it is impossible to verify the validity and proportionality of the intervention.

Summary

In 2019 Russian authorities could not resist the [temptation](#) to try to take control over online information and the media, punishing users for criticising the actions or statements of officials under the pretext of combating fake news, taking

advantage of the fast turnover of cases and low standards of evidence that are typical of administrative proceedings.

The tandem of Roskomnadzor and the Prosecutor General's Office, which is in charge of the conveyor-belt censorship system, has claimed the powers of extrajudicial and non-public assessment of the reliability of materials published both by private individuals and the media. At best, the "Ministry of Truth" informs the public about the measures taken *post factum* - a fine, initiation of proceedings or blocking of an online resource, in the absence of any real mechanisms to promptly verify the lawfulness and validity of decisions to ban information.

Any information that does not coincide with the current official position, which, in turn, can change rapidly, is declared false. Even if the disseminated information is subsequently confirmed, this does not guarantee that the one disseminating it is safe: the Ministry of Internal Affairs of Kemerovo Region declared as fake news a message announcing penalties for failing to wear a mask in public, just a few days before the [introduction](#) of compulsory face coverings in some areas of the region. At the request of the Prosecutor General's Office, Roskomnadzor [blocked](#) messages about a pass-based access control system in Moscow a day before Moscow mayor Sergei Sobyanin [signed](#) a decree on the introduction of digital passes.

The internet has attracted particular attention, mostly directed at social networks, the level of trust in which, [according](#) to Russian independent sociological research organisation Levada Centre, has increased five-fold in the last 10 years. By comparison, the level of trust in television, as a government-controlled information channel, has, on the contrary, decreased by one-and-a-half times.

Moreover, for the first time the focus of the largest mass persecution campaign for speech acts since the peak of Russia's anti-extremism laws are not representatives of subcultures and civic activists, but the so-called *glubiny narod* ("deep people") – a term coined by long-time Kremlin aide Vladislav Surkov in an [article](#) published in Nezavisimaya Gazeta. According to Surkov, the ability to hear and understand the people, to see through them in all their depth, is the unique and main virtue of Putin's state.

A number of widely-held stereotypes about official information provide fertile ground for the mass spread of rumours: firstly, "the worst can be expected from the authorities", secondly, "the authorities always conceal the worst", and thirdly, "what the authorities vehemently deny and is clearly true".

The Soviet and Russian states have a rich history of falsification and disinformation. Famous examples include concealment of the circumstances of the [Chernobyl](#) accident, [inconsistencies](#) in the results of the investigation of the Kursk submarine disaster, officials' references to the "[Dulles Plan](#)" - the central document of a conspiracy theory, [evidence](#) of the heroic feat of "Panfilov's Twenty-Eight Guardsmen", the broadcast by state-owned Channel One of the news story about a "[crucified boy](#) in Slavyansk" - a report containing unconfirmed allegations of the crucifixion of a young boy by Ukrainian soldiers, and the official [position](#) on the explosion at the Nyonoksa naval testing range in Arkhangelsk Region. All this serves as a constant reminder to citizens to maintain a highly critical attitude towards any officially-disseminated information.

Unable to overcome mistrust, the authorities are trying to intimidate those who publicly voice doubts about government practices with the threat of heavy fines and criminal prosecution.

It is conspicuous that the new criminal articles on dissemination of fake news (Articles 207.1 and 207.2) are located between those on terrorism (Article 205), hostage taking (Article 206), and organisation of an illegal armed group or participation in it (Article 208). Their placement in the Criminal Code indirectly confirms the sensitive nature of these acts, creating the impression that they pose a great public danger, where a message in a WhatsApp chat is viewed as a threat to national security.

With the outbreak of the epidemic, the state openly proclaimed a monopoly on the truth (which it had enjoyed before, but not so explicitly). From now on, information coming from authorised officials is presumed to be reliable and lawful. On the contrary, any unofficial socially significant information is considered unlawful until it has been confirmed by the state. And the more significant this information, the greater the risks for those who disseminate it.

As regards officials themselves, the possibility of their being held liable under the new legislation is virtually zero because, firstly, they cannot *ex officio* disseminate knowingly false information on socially significant issues. And secondly, in the event of abuse of office, special legislative norms for officials have to be applied - Articles 285 and 286 of the Criminal Code of the RF. It is notable that the number of acquittals under Article 286 of the Criminal Code of the RF is almost ten times [higher](#) than the average. Despite numerous cases of dissemination of false information by the authorities, there have been only two known inquiries against officials ([Yugra](#) and [Pskov](#)). There are no reports of officials being held liable for disseminating false information.

On 14 May, speaking on a federal television channel, Moscow Mayor Sergei Sobyenin expressed [doubts](#) as to the reliability of official statistics on the number of Moscow residents infected with COVID-19 - according to the mayor, the actual figure may be significantly higher than official data suggests.

On 16 May Dagestan's health minister Dzhmaludin Gadzhiibragimov openly [criticised](#) official data on the incidence of COVID-19.

On 21 May Eva Merkacheva, a member of the Moscow Public Monitoring Commission, stated that, according to her data, Moscow pre-trial detention centres "number at least 50 prisoners infected with coronavirus", a figure that is eight times higher than official statistics. On the same day, the Moscow directorate of the Federal Penitentiary Service of Russia [issued](#) an official refutation, however - as in the other cases listed above - no reaction followed from law enforcement agencies.

Thus, having in their hands a tool for persecuting citizens for spreading fake news, and immunity from such accusations against them, the authorities have a legal monopoly on information. It is all the more dangerous because, even according to official data, one in two Russian residents is unable to distinguish reliable information from fake news, as per an [announcement](#) made by Russian Public Opinion Centre (VCIOM) general director Valery Fedorov in the summer of 2019.

The explosion in the number of "fake news" cases, and our analysis of the materials of available cases, attests to the political nature of the campaign as a whole. And, if the intentions proclaimed by the government to combat false information disseminated by wrongdoers and prevent panic are, on the whole, legitimate concerns for the public good, then the way these ends are achieved in practice resembles the old anecdote that, no matter what random parts he is working with, a Soviet engineer always ends up making a Kalashnikov.

The regime of "increased responsibility" for disseminating false information should be limited both in time and scope (for example, when a state of emergency is declared, but even in this case should form part of administrative rather than criminal procedure). Even Stalin's famous order No. 227 on "extermination of panic-mongers" was in force during wartime - in contrast to the article of the Russian Criminal Code on fake news, which is being applied in "peacetime", without proclaiming an emergency situation, despite the fact that victory over the infection has been officially declared and restrictions lifted.

Dissemination of false and dangerous information ("speech acts" that threaten the life and safety of citizens, or carry the risk of onset of other grave

consequences) has already been repeatedly and excessively criminalised in Russia. Thus, significant sanctions have already been provided for, which often including imprisonment, for calls for mass disorder (part 3 of Article 212 of the Criminal Code of the RF), a deliberately false communication about an act of terrorism (Article 207 of the Criminal Code of the RF), knowingly disseminating false information defaming the honour and dignity of another person or undermining his reputation (Article 128.1 of the Criminal Code of the RF), justification of terrorism (Article 205.2 of the Criminal Code of the RF), public calls for extremist activity (Article 280 of the Criminal Code of the RF) and performance of actions aimed at violating the territorial integrity of Russia (Article 280.1 of the Criminal Code of the RF), incitement to hatred or enmity (Article 282 of the Criminal Code of the RF), and the rehabilitation of Nazism (Article 354.1 of the Criminal Code of the RF).

Therefore, the grounds for criminal prosecution for expressing an opinion are already more than sufficient, and the creation of a new legislative norm with such a broad scope of application appears to be clearly redundant.

In essence, a general norm prescribing criminal liability for dissemination of any false information has been introduced into the legislation, which creates numerous opportunities for misuse.

The problem of disinformation can be solved much more effectively at the level of internet services, by blocking and labelling messages containing such information using modern technologies, including artificial intelligence. Prosecuting users of parent group chats in the social networking era appears to be a blatant anachronism.

From the point of view of global standards of freedom of expression, dissemination of false information should be completely decriminalised. However, in current conditions, it is evident that Russian society can't count on such a radical step. Therefore, at present we recommend that criminal sanctions for dissemination of false information be directly restricted to states of emergency, specified in the note to Article 207.1 of the Criminal Code of the RF.

A reasonable compromise would be the introduction of administrative prejudice in such cases - similarly to cases of incitement to hatred or enmity, petty theft, etc. A single offence of knowingly disseminating false information of social significance should entail administrative responsibility under parts 9-10 of Article 13.15 of the Code of Administrative Offences of the RF, and only in the event of a repeat offence should the relevant articles of the Criminal Code RF be applied.

Judging by the text of paragraphs 8–11 of Article 33.5 of the [draft](#) new version of the Code of Administrative Offences, no exceptions or significant changes to the wording of the norm establishing administrative responsibility for disseminating unverified socially significant information can be expected. However, the problems identified in the course of our analysis of the application of the “fake news” laws are not fatal, and can be promptly resolved if certain measures are taken. The minimum set of recommendations is as follows.

Recommendations

- Formulate criteria for assessing the reliability and social significance of information, ensuring that opinions and value judgments are excluded from any checks for veracity.
- Move away from the presumption of reliability of official information, and acknowledge that government bodies and officials are capable of making errors.
- Exclude liability for unintentional dissemination of unreliable information.
- Encourage the efforts of internet companies aimed at the “soft” prevention of misinformation based on clearly formulated and accessible rules, including by means of labelling unverified content, and providing access to data from authoritative sources recognised by the scientific and academic community.
- Soften sanctions by reducing fines, and exclude imprisonment as a punishment for disseminating unreliable information.
- Exclude formal offences from the Criminal Code and the Code of Administrative Offences (parts 9 and 10.1 of Article 13.15 of the Code of Administrative Offences, Article 207.1 of the Criminal Code), further explaining to the courts the need to establish a causal link between the publication of unreliable information and the ensuing dangerous consequences.
- In the future, completely exclude criminal responsibility for public dissemination of unreliable information outside states of emergency, or introduce administrative prejudice for such offences.

Appendix: Table

Page 1. Cases of criminal prosecution connected with disinformation charges.

Page 2. Cases of administrative prosecution connected with disinformation charges.



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