



Resolution of the Plenum of the Supreme Court of the Russian Federation

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On practice of application by the courts of the Law of the Russian Federation *On mass media*

According to the Article 29 of the Constitution of the Russian Federation each person shall have the right to search, receive, transmit, produce and distribute information by any legal way. No one may be forced to express his or her views and convictions or to reject them. Everyone shall be guaranteed to have freedom of ideas and speech, freedom of mass communication. Censorship is prohibited.

According to paragraph 1 Article 10 of the *Convention on protection of human rights and basic freedoms* everyone has the right to freely express his or her opinion. This right includes freedom of keeping one's opinion and freedom of receiving and distributing information and ideas without any kind of interference from the part of public authorities and regardless from any state borders.

The freedom of expressing opinions and views, mass media freedom are the basis of developing a modern society and democratic state.

At the same time realizing these rights and freedoms can face certain limitations foreseen by the law and required in a democratic society.

The Constitution of the Russian Federation imposes a prohibition on propaganda and agitation that raise social, racial, national, and religious hate and enmity as well as on propaganda of social, racial, national, religious, and language superiority (Article 29). The Law of the Russian Federation *On mass media* imposes a prohibition on abusing the freedom of mass media.

While applying the legislation that regulates issues of freedom of speech and freedom of mass media, the courts shall keep the balance between rights and liberties guaranteed by the Article 29 of the Constitution of the Russian Federation on one hand and other rights and freedoms of person

and citizen as well as the values protected by the Constitution of the Russian Federation on the other.

In order to provide correct and uniform application of the legislation concerning freedom of mass media information and solving the issues arising in the courts when applying the Law of the Russian Federation *On mass media* The Plenum of the Supreme Court of the Russian Federation following the Article 126 of the Constitution of the Russian Federation resolves to give the courts the following explanations:

1. The legal regulation of the relationships concerning freedom of speech and freedom of mass information is conducted by the federal laws including *On mass media, On providing access to the information on state and local self-government bodies activities, On providing access to the information on the activities of the Courts of the Russian Federation, On guarantees of equality of parliament parties activities reports made by the State generally accessible TV and radio channels, On order of reporting of the State Bodies in the State Mass Media, On advertisements, On state of emergency, On martial law, On counteracting terrorism, On counteracting extremist activities, On main guarantees of electoral rights and the right of the citizens of the Russian Federation to participate in Referendum, On Referendum of the Russian Federation, On elections of the President of the Russian Federation, On elections of the State Duma of the Federal Council of the Russian Federation* as well as other regulatory legal acts adopted according to the established order.

2. International acts that regulate matters of freedom of speech and mass information and are mandatory for the Russian Federation due to the part 4 Article 15 of the Constitution of the Russian Federation include *International Covenant on civil and political rights, Convention on protection of human rights and main freedoms, Final Act of the Conference on security and cooperation in Europe, Convention of the Commonwealth of Independent States on rights and main liberties of a person.*

3. While viewing cases related to the mass media it is necessary to understand that using the freedom of opinion and the freedom of mass information implies special duties, special responsibility and goes together with limitations imposed by the law and necessary in a democratic society in order to respect the rights and reputation of other people, the protection of the State security and public order, prevention of unrests and crimes, protection of health and morality, prevention of confidential information disclosure, securing the authority and impartiality of justice (Article 29 of the *Universal Declaration of Human Rights*, paragraph 3 Article 19 and article 20 of the *International Covenant on Civil and Political Rights*,

paragraph 2 Article 10 of *the Convention for the Protection of Human Rights and Fundamental Freedoms*, Articles 29 and 55 of the Constitution of the Russian Federation).

Regulations of the part 3 Article 55 of the Constitution of the Russian Federation foresee that rights and freedoms of a person and citizen can be limited by the federal law only in the amount necessary to protect the basis of constitutional system, morality, health, rights and legal interests of other people, to maintain the defense of the country and security of the State.

Based on that while previewing the issue of keeping limitations regarding people producing and distributing mass information as well as when deciding the matter of bringing such people to responsibility it is necessary to define whether these limitations were imposed by the federal law.

4. When applying the Law of the Russian Federation *On mass media* the courts shall take into account the changes that took place after the law entered into force on February 8, 1992. Particularly the acknowledgements and guarantees to a self-government in the Russian Federation that provide autonomous decisions of local importance and whose bodies are not included in the system of State power bodies (Article 12, part 1, Article 130 of the Constitution of the Russian Federation, Article 1 of the Federal Law *On general principles of organization of legislative (representative) and executive bodies of the State power of the Subjects of the Russian Federation*, Article 1 of the Federal Law *On general principles of organization of the local self-government in the Russian Federation*).

Thus the regulations of the paragraph of the Law of the Russian Federation *On mass media* which indicates the State bodies (for example, part 1 Article 3, part 1 Article 7, part 4 Article 18, part 5 Article 19, part 1 Article 25, part 2 Article 35, paragraph 2 part 1 Article 47, Article 56, paragraphs 3 and 4 part 1 Article 57, part 1 Article 58, paragraph 3 part 1 Article 61) are to be considered related not only to the State power bodies and other State bodies but also to the local self-government bodies.

Applying the regulations of paragraph 2 part 1 Article 57 of the mentioned Law the courts shall particularly consider that these regulations cover literal reproduction of fragments of speeches of the members of elective State power bodies and local self-government.

5. Based on the regulations of the Article 2 of the Law of the Russian Federation *On mass media* periodic information distribution is a distribution more than 1 time per year of the amount of messages and materials meant for an unlimited number of recipients. Mass media is a

periodic mass information distribution form including periodic printed publications, radio and TV programs.

Considering this the mass media itself can't have any rights and responsibilities and is not a part in the proceedings (Article 34 of the Civil Procedural Code of the Russian Federation).

Due to the paragraph 9 part 1 Article 2 and part 1 Article 8 of the Law of the Russian Federation *On mass media* in order to perform by the editorial the production and issuing of the mass media a State registration is needed. An exception would be the enumerated in the Article 12 of this Law cases of exemption of the mass media from the State registration.

If when solving the case on citizen rights and freedoms protection will be established that these rights and freedoms are violated when distributing messages and materials in a mass media which against the Law of the Russian Federation is not registered then the court has the right to make the defendant at his or her own expenses make a refutation and pay for the publication of the plaintiff's response in another media.

6. Periodical mass information distribution can be conducted through telecommunication networks (information and telecommunication networks) including via the Internet. When viewing cases on distribution of the mass information through such networks the court shall consider the following.

According to the part 2 Article 24 of the Law of the Russian Federation *On mass media* the rules established by this Law for radio and TV programs are applied to the periodical mass information distribution via teletext and videotext systems, as well as other telecommunication networks if the legislation of the Russian Federation does not establish other regulations.

The regulations of the Law of the Russian Federation *On mass media* can be applied to these relationships only considering the special features of distributing information through such networks (for example, the lack of mass media product, indicated in the paragraph 6 part 1 Article 2 of this Law, circulation or part of the circulation of a specific number of periodic print edition, specific radio or TV edition, circulation or part of the circulation of audio and video recorded program). It is needed to consider that messages and images that are part of the website content on the web any person can have access from any part and any time upon one's choice under the condition of having corresponding devices and network connection.

Due to the Articles 8, 10, and 11 of the mentioned Law the issues of the State registration of the mass media depend on the distribution of the mass media product. As when distributing mass information through Internet websites there is a lack of mass media product then according to the current legislation Internet websites shall not perform mandatory registration as mass media. That means it is impossible to bring to account for product production or distribution as the mass media is not registered.

People that committed the infringements of the legislation when distributing mass information through Internet websites and not registered as mass media shall carry penal, administrative, civil, and other responsibility according to the legislation of the Russian Federation without taking into account the particularities foreseen by the legislation on mass media.

According to the Article 1 of the Law of the Russian Federation *On mass media* the mass media freedom as well includes the right of any person to found a mean of mass communication in any form not banned by the law. Creating Internet websites and using them to periodically distribute mass information is not banned by the law. Considering this and based on the imposed by the part 1 Article 13 of the mentioned Law a comprehensive list of grounds to refuse to the State registration of a mass media the Registrar has the right to refuse the registration of an Internet website as a mass media if its founder would express the wish to receive such registration.

Article 27 of the Law of the Russian Federation *On mass media* foresees the mandatory indication of imprint. Considering the peculiarities of information distribution imprint of a registered as mass media Internet website should indicate the registration body and the registration number. The lack of such information can be a fundament for bringing people that perform periodical mass information distribution through registered as mass media Internet Websites into account for breaking the order of indicating the imprint of a mass media.

Receiving license for broadcasting is needed if on-air, wire, and cable TV and radio broadcasting technical devices are used (Article 31 Law of the Russian Federation *On mass media*). As such technical devices are not used for distributing mass information through Internet websites then receiving single person license that distributes mass information though an Internet website is not needed.

When viewing cases related to the mass information distribution through telecommunication network (including Internet websites) the court shall

take into account that regulations indicated in part 2 Article 24 of the Law of the Russian Federation *On mass media* cover these cases with the established by the Law rules regarding radio and TV programs. Particularly it means that Internet websites are not covered by the regulations regarding advertisement on TV and radio programs established in the Federal Law *On advertisements*. At the same time general rules on advertisement distribution in mass media established by the Law should be applied to Internet websites registered as mass media considering such networks information distribution peculiarities.

7. Federal Laws do not foresee any kind of limitations in the ways of proving the fact of information distribution through telecommunication networks (including via Internet websites). That is why when solving the issue on whether the fact took place the court according to the articles 55 and 60 of the Civil Code of the Russian Federation has the right to accept any type of proofs foreseen by the Civil Procedural Legislation.

Civil Procedural Code of the Russian Federation and part 2 of the Article 102 of *the Bases of the Russian Federation legislation on notarial system* do not allow the possibility for the notary to provide evidence on cases in legal proceedings. However, due to the part 1 Article 102 of *the Bases of the Russian Federation legislation on notarial system* before initiating a civil case the notary may provide the proofs necessary for the case (including by testifying the content of an Internet website at a specific period of time) if there are fundamentals to consider that in the future providing proofs will be impossible or difficult.

On cases related to the telecommunication network information distribution it is not excluded the possibility for the proofs to be provided by the judges as the number of proofs that can be provided is not limited (Articles 64-66 Civil Procedural Code of the Russian Federation). The issue on the necessity of providing proofs is solved based on the information included in the proofs application including information on case content, on circumstances that require such proofs to be confirmed as well as on reasons that made the applicant providing proofs (part 1 Article 65 Civil Procedural Code of the Russian Federation).

In pressing cases when preparing the court examination and during the examination itself according to the paragraph 10 part 1 Article 150 and Article 184 of the Civil Procedural Code of the Russian Federation the court (the judge) has the right to examine the proofs on the spot (particularly can view online the information uploaded to a specific resource of a telecommunication network). Proofs' examination and research is conducted in the order previewed by the Articles 58, 184 of the

Civil Procedural Code of the Russian Federation informing people that take part in the case, indicating the result of the examination in a protocol, calling witnesses and experts if needed, etc.

If additional questions appear related for example to the particularities of the information distribution process through telecommunication networks that require special knowledge in this field the judge according to the Article 79 of the Civil Procedural Code of the Russian Federation has the right to initiate an examination.

When needed to receive a consultation, an explanation or a direct technical support is required for examining the proofs, reproducing the recordings, initiating an examination, imposing measures for the proofs to participate in the cases an expert can be invited (part 1 Article 188 of the Civil Procedural Code of the Russian Federation).

8. Based on the regulation of the Law of the Russian Federation *On mass media* producing and distributing information includes founding of the mass media, performing the production and starting the mass media, producing the product of mass media as well as distributing it.

Considering this, the issue on the number of people taking part in the case on mass information production and distribution the courts shall solve depending on which level of mass information production and distribution questionable legal relationship appeared and which persons according to the Law mentioned above, the editorial Chart and/or Contracts made according to the Articles 20 and 22 of the mentioned Law have the right to perform the corresponding types of activities.

At the same time it is necessary to consider that regulations of the Law of the Russian Federation *On mass media* allow the possibility of participating of one person in different levels of mass information production and distribution. Thus the founder of a mass media can represent its editorial, its publisher, its distributor; the editorial can represent its founder, its publisher, its distributor; the publisher can represent its editorial, its founder, its distributor (part 5 Article 18, part 4 Article 19, and part 2 Article 21 of the mentioned Law).

When clearing the issues on founder (co-founders) of a periodical printed edition, on its editor in chief, on editorial address, on publisher, on printing establishment it is necessary to take into account the imprint of a mass media which according to the Article 27 of the Law of the Russian Federation *On mass media* should carry such information.

9. Due to the regulations of Articles 8, 11, and 18 of the Law of the Russian Federation *On mass media* founder (co-founders) makes the decision of creating mass media as well as participates in organizing the editorial activity (particularly by establishing the Chart of the Editorial and/or making an Agreement with the editorial of mass media (its editor in chief)). Based on that when viewing claims resulted because of such legal relationships founder (co-founders) of mass media can be invited to participate in the case.

According to the part 2 Article 18 of the mentioned Law the founder has the right to obligate the editorial to place a message or material on behalf of him (founder's statement). Considering this, in suits related to the founder's statement distribution the proper defendant if the founder (co-founders) and when there are no indications that this message or material is related to the founder the mass media editorial acts as a defendant too.

In case the legal entity is being liquidated or reorganized or the mass media founding State power body, other State body or local self-government body are being liquidated according to the part 4 Article 18 of the Law of the Russian Federation *On mass media* instead of the founder the editorial can be invited to participate in the proceedings of the mass media editorial Chart does not foresee something else.

In case of founder's death (being him or her a physical person) according to the paragraph 1 Article 6 of the Civil Code of the Russian Federation part 4 of the Article 18 of the Law are being applied and to participate in the proceedings the mass media editorial can be invited if the Chart of the editorial does not indicate the person (people) that in case of founder's death should take his or her rights and duties regarding this mass media.

10. When solving the cases on contestation of the refusal for registering a mass media it is important to consider that part 1 Article 13 of the Law of the Russian Federation *On mass media* imposes an exhaustive list of bases for such refusal. A refusal for registering a mass media can't be made on the basis that this mass media is exempted from State registration according to the Article 12 of the mentioned Law (for example, when the founder of the periodical printed edition with a circulation of less than one thousand copies expressed his or her wish to register this mass media).

When applying the regulations of points 2 and 3 part 1 of the Article 13 of the mentioned Law it is necessary to consider the following. The main function of the name of mass media is to identify the mass media for its audience and potential customers on the mass media market. Thus the name of mass media can't be evaluated from the point of view of

correspondence or non correspondence to the reality. A refusal for registering a mass media based on the fact that its name does not correspond to the reality is illegal.

The name of a mass media can be evaluated from the point of view of presence of abuse of the mass media freedom in terms of part 1 Article 4 of the Law of the Russian Federation *On mass media* or the lack of such abuse. For example, the name of a mass media can't contain appeals for performing terrorist activity; promote pornography, cult of violence and cruelty.

When solving cases on challenging the refusal for mass media registration upon the basis indicated in the paragraph 4 part 1 Article 13 of the Law of the Russian Federation *On mass media* (when the registration body registered early a mass media with the same name and form of information distribution) it is important to consider the following.

The Law of the Russian Federation *On mass media* proceeds from the fact that under the same mass media name is understood a name that literally coincides with the previously registered one. A refusal for registration upon the basis that the mass media under registration name coincides so much that it can be confused with the name of a mass media registered before cannot be acknowledged as legal.

As the name of the mass media is aimed in the first place for differentiating it from other mass media the use of names that coincide so much that they can be confused may mislead the customers (audience) regarding the mass media products. In that case the protection of the rights of the people that have the right to name the mass media is performed using the ways foreseen by the acting legislation.

When comparing the forms of distribution of the mass information it is important to consider that a periodical printed edition, a radio, TV, video program and a news film program represent different forms of mass information distribution. At the same time a newspaper, a magazine, a collection of stories, a literary miscellany, a bulletin are different types of one single information distribution form, of a periodical printed edition (paragraph 3 and 4 of part 1 Article 2 of the Law of the Russian Federation *On mass media*).

11. When solving the cases on acknowledging invalid the mass media registration certificate it is necessary to consider that the exhaustive list of fundamentals for such case of defined in Article 15 of the Law of the Russian Federation *On mass media*. Indicated fundament in the part 5 Article 8 of the present Law (the founder didn't start the mass media production one

year after the certificate was issued) is a particular case of the fundament foreseen in the paragraph 2 part 1 of the Article 15 of this Law (the mass media is not published (on air) for more than a year).

12. According to the paragraph 9 part 1 Article 2 of the Law of the Russian Federation *On mass media* mass media production and distribution is done by the mass media editorial which can be an organization, a citizen or an association of citizens. The editorial is performing its activity on the professional independence basis (part 1 Article 19 of the Law of the Russian Federation *On mass media*). Considering this if the existing legal relationships are related to the production and distribution of mass media information (including that with content of the distributed messages and materials) then the editorial can be invited to take part in court proceedings. In case when the editorial of mass media is neither a physical person nor a legal entity the founder and the editor in chief can be invited to take part in court proceedings.

As the stopping of a mass media activity leads to invalidity of the certificate of its registration and of the editorial Chart (part 6 Article 16 of the Law of the Russian Federation *On mass media*) the decision of stopping its activity affects the rights and interests of not only the founder (co-founders) but also of the editorial that according to the part 1 Article 8 of the mentioned Law has the right to perform the production and distribution of the mass media since its registration. Considering this both founder (co-founders) and the editorial are invited to take part in court proceedings on mass media activity stopping.

When checking the authority of the editorial representatives it is necessary to consider that the editor in chief represents the editorial in court without any special permits regarding his or her authorities as such right of the Editor in Chief is based on the regulations of part 5 Article 19 of the Law of the Russian Federation *On mass media*. The editor in chief is the person that heads the editorial (regardless the name of the position) and that makes final decision regarding mass information production and distribution (paragraph 10 part 1 Article 2 of the Law of the Russian Federation *On mass media*).

13. When questionable legal relationships have to do with mass media information production the proper defendant according to the paragraph 12 part 1 Article 2 of the Law of the Russian Federation *On mass media* is the publishing house which performs material and technical provisions for producing such products or an equal to the editorial legal entity, self entrepreneur or a citizen for whom this activity is not the main or is not the main source of income.

If the stated requirements have to do with mass products distribution the proper defendant according to the paragraph 13 part 1 Article 2 of the Law of the Russian Federation *On mass media* is the distributor or a person that performs the distribution of products upon an agreement with the editorial, publisher or upon any other legal bases.

At the same time in cases built upon the content of the distributed information neither the publisher nor the mass media information distributor are not the proper defendants as according to the regulations of the Law of the Russian Federation *On mass media* these people cannot interfere in the editorial activity that defines the content of messages and materials.

14. Bring to courts' attention that according to the content of part 1 Article 3 of the Law of the Russian Federation *On mass media* censorship is a claim directed towards mass media editorial or its representatives (in particular, editor in chief, his or her deputy) from officials, State power bodies, other State body or local self-government body, organizations or public associations to previously coordinate messages and materials (except for cases when the official is the author or the interviewed) as well as banning distribution of the messages and materials, its specific parts.

The request for mandatory previous materials and messages coordination can be legal if it is made by the editor in chief as the person responsible for the distributed materials to correspond to the law requirement. The same request made by the founder of the mass media is legal depending on whether such possibility in the editorial Chart or in an agreement that replaces it. When there is no corresponding regulations any interference of the founder in the sphere of professional independence of editorial and the rights of a journalist is illegal.

It is not a censorship when the request directed to the journalist to previously coordinate the initial text of the interview (script) is made by this person (part 1 Article 3 of the Law of the Russian Federation *On mass media*). At the same time the courts should take into account that making such request is the interviewed person's right. The obligatoriness of such request is not indicated.

If the author of the article, item, etc. made upon the interview is the journalist and not the interviewed person the mass media may edit the initial text of the interview to create the above mentioned works not allowing at the same time its meaning distortion and the words of the interviewed.

In cases when an official is the author of the article, note, etc. then the request on the name of the editorial or the editor in chief to previously coordinate indicated materials cannot be considered as censorship as such request is a form of exercising the author's right to the inviolability of the work and protection of the work from distortion foreseen by the Article 1266 of the Civil Code of the Russian Federation.

According to the subparagraph 4 paragraph 6 Article 1259 of the Civil Code of the Russian Federation are not considered copyright objects those messages on events and facts that have to do with exclusively informational nature (for example, daily news messages). A request for coordination of such messages is inadmissible except for the cases indicated in federal laws.

A primary provision of messages and materials by the mass media editorial to the State power bodies, other State body or local self-government body, organizations or public associations, officials is not an act of censorship if it was the editorial (editor in chief) who offered to express one's stand on the message or material and has the goal of checking the trustworthiness information received from the source (author), collecting additional information, getting comments.

It is not censorship when authorized bodies and officials make written notices to the founder, editorial (editor in chief), in case of mass media freedom abuse (for example, according to the Article 16 of the Law of the Russian Federation *On mass media*, Article 8 of the Federal Law *On counteracting terrorist activity*) as well as when the court imposes a prohibition for producing and distributing mass media information in cases indicated by Federal Laws aiming to impede abuse of mass media freedom (for example, according to the Articles 16 and 16¹ of the Law of the Russian Federation *On mass media*, Article 11 of the Federal Law *On counteracting terrorist activity*).

Courts should take into account that in spite there is a general censorship banning foreseen by the Article 29 of the Constitution of the Russian Federation its Articles' 56 and 87 regulations allow a possibility of limiting mass media freedom as a temporary measure in case of state of emergency or martial law. In that case censorship can be imposed and executed according to the order established by federal constitutional laws *On state of emergency* and *On martial law*.

15. When solving cases that have to do with information collection it is important to take into account that the selection of a legal way of searching information done by the journalist and the editorial is made by themselves

except for the cases when it is explicitly stated by federal laws (for example, part 4 Article 4 of the Law of the Russian Federation *On mass media*, paragraph b Article 12 of the Federal Constitutional Law *On state of emergency*, subparagraph 14 paragraph 2 Article 7 of the Federal Constitutional Law *On martial law*).

One of the legal ways of searching information on the activity of State power bodies, other State bodies, bodies of local self-government, State and municipal organizations (profit and non profit), public associations, its officials is the editorial request of such information (Article 39 of the Law of the Russian Federation *On mass media*).

A refusal or delay in providing the information requested can be appealed or disputed in court (paragraph 3 part 1 Article 61 of the Law of the Russian Federation *On mass media*).

When applying the regulations of the Articles 38 - 42 of the Law in cases on appeal (dispute) of refusal or delay in information provision the courts should take into account that the matters of providing information on the activity of bodies, organizations, public associations (including on mass media editorials requests) can be solved by other federal laws and regulations if such acts adoption is foreseen by the acting legislation (for example, parts 2 and 3 Article 2 of the Federal Law *On providing access to the information on State and local self-government bodies activities*, part 2 Article 2 of the Federal Law *On providing access to the information on courts of the Russian Federation activities*).

The regulations of the Law of the Russian Federation *On mass media* does not oblige the editorial of mass media to indicate in request for what purposes this information is requested or justify the necessity of getting such information.

The request for information can concern any part of the activity of corresponding body, organization, public association, or official. The object of the request can include information on income, property, property related obligations of the State and municipal employees; the particularities of providing such information are defined by regulations of the Russian Federation (part 5 Article 8 of the Federal Law of the Russian Federation *On counteracting corruption*). For example, the order of providing to the editorials of all-Russia mass media information-to-be-published regarding incomes, property and property related obligations of State employees of the Russian Federation, Federal State employees and their family members is imposed by the Decree of the President of the Russian Federation made May 18, 2009 number 561 (with the subsequent changes).

If the requested information contains data that is part of State, commercial or other protected by the law secret refusal to provide such information is lawful according to the part 1 Article 40 of the mentioned Law.

Special protection of the secretes is indicated, for example, in the following federal laws: *On secrets of State*, *On personal data*, *On commercial secrets*, *On counteracting the terrorism* (paragraph 10 Article 2), *On records administration in the Russian Federation* (Article 25), *On bases of the citizens health protection in the Russian Federation* (Article 61), *On psychiatric help and citizens rights guarantees during its provision* (Article 9), *On preventing of spreading of tuberculosis in the Russian Federation* (paragraph 1 Article 12), *On advocatory and legal profession in the Russian Federation* (Article 8), *On banks and banks activity* (Article 26), *On the Family Code of the Russian Federation* (Article 139), *On the Tax Code of the Russian Federation* (Article 102).

Other fundaments that exclude the possibilities to provide information on the activity of bodies, organizations, public associations, and officials (including upon mass media editorials' requests) can be foreseen by other federal laws (for example, Article 20 of the Federal Law *On providing access to the information on courts of the Russian Federation activities*, Article 20 of the Federal Law *On providing access to the information on State and local self-government bodies activities*).

According to the part 2 Article 40 of the Law of the Russian Federation *On mass media* the requested information shall be provided in a 7 day term. In cases these data cannot be provided in this term the requested entity sends to the mass media editorial a notification indicating the date when the information will be provided. At the same time the maximum term of delay is not foreseen. Also the court should take into account that such term is imposed in particular by the Federal Law *On providing access to the information on State and local self-government bodies activities*. According to part 6 Article 18 of this Law a delay in providing information of the activity of State and cal self-government bodies cannot exceed a 15 day term apart from the initial term previously established.

The terms of examining and solving the cases on acknowledging illegal a refusal or delay in providing data requested by the mass media are defined in the regulations of the Article 154 and part 1 Article 257 of the Civil Procedural Code of the Russian Federation. At the same time considering in the Article 38 of the Law of the Russian Federation *On mass media* providing data requested by the mass media editorial is one of the forms of fulfillment of citizens' rights to promptly receive information via mass media data on the State power bodies, bodies of local self-government,

State and municipal organizations, public associations, its officials as well as the fact that after a long period of time the requested information may lose its currency the courts shall take measures to evaluate and solve such cases as quickly as possible.

16. The courts should also take into account that according to the part 1 of the Article 20 of the Federal Law *On providing access to the information on courts of the Russian Federation activities* there are fundamentals that in case they are present the information on courts activities requested by the user (including by mass media editorial request) may not be provided.

Apart from that based on the fundamentals of the part 2 Article 20 of the present Law a request on providing information on courts activities can be denied if such information is published in mass media or published on official websites of the courts, the Judicial Department under the Supreme Court of the Russian Federation, departments (sections) of the Judicial Department in the regions.

The information that may not be provided according to the paragraph 5 part 1 Article 20 of the present Federal Law (the requested information is an obstruction to justice) includes such information that after being distributed can create obstacles for execution of a fair trial guaranteed by Article 6 of *the Convention on protection of human rights and basic freedoms* (for example, it may lead to the lack of equality, adversary nature of the trial, presumption of innocence, reasonable case viewing terms).

17. The court (the judge) cannot impede mass media representatives to be present at trial (part 1 Article 12 of the Federal Law *On providing access to the information on courts of the Russian Federation activities*) and to cover the trial on a specific case excluding cases foreseen by the law (for example, if the case is viewed in a closed court hearing, if mass media representatives are moved away from the court room for breaking the order in the trial (Article 159 Civil Procedural Code of the Russian Federation, Article 258 of the Penal Procedural Code of the Russian Federation)).

At the same time the order of accessing of citizens (individuals), including organization (legal entities) representatives, public associations, State power and local self-government bodies into the courtrooms or other court facilities is imposed by courts' rules and/or other decrees that regulate the court' internal activity (part 1 Article 12 of the Federal Law *On providing access to the information on courts of the Russian Federation activities*).

A closed case hearing (all or a specific part) is allowed only upon a motivated definition or decision of court (judge) in cases foreseen by the federal law (Articles 10, 182 Civil Procedural Code of the Russian

Federation, parts 1, 2 Articles 24.3 Code on Administrative Infringements of the Russian Federation, Article 241 of the Penal Procedural Code of the Russian Federation).

At the same time when administrating justice the courts have to remember that a closed case hearing with no fundaments in the Federal Laws contradicts the constitutional principle of openness of justice (part 1 Article 123 of the Constitution of the Russian Federation). It could also be considered as a violation of the right to a fair and public court examination foreseen by paragraph 1 Article 6 of the Convention on protection of human rights and basic freedoms, paragraph 1 Article 14 of the International pact on civil and political rights.

18. Based on the regulations of part 7 of the Article 10 of the Civil Procedural Code of the Russian Federation, part 3 Article 24.3 of the Code on Administrative Infringements of the Russian Federation, Part 5 Article 241 of the Penal Procedural Code of the Russian Federation mass media representatives present in the court hearing have the right make records in writing or using audio recording equipment. At the same time these regulations do not make the person that performs the audio recording to inform the court or to notify the court on performance of such record as well as to receive permission to do so.

At the same time as cinema and photo shooting or video recording as well as TV or radio broadcasting of the case hearing are allowed only upon court's (judge's) permission (part 7 Article 10 of the Civil Procedural Code of the Russian Federation, part 3 Article 24.3 of the Code on Administrative Infringements of the Russian Federation, Part 5 Article 241 of the Penal Procedural Code of the Russian Federation) a mass media representative present at an open court hearing in order to obtain a corresponding permit is obliged to make cinema and/or photo shootings, video recording, trials TV and radio broadcasting.

When solving the case on the possibility and order to make cinema and/or photo shootings, video recording, trials TV and radio broadcasting court (judge) should take into account corresponding procedural norms (part 7 Article 10, part 5 Article 158 of the Civil Procedural Code of the Russian Federation, part 3 Article 24.3 of the Code on Administrative Infringements of the Russian Federation, Part 5 Article 241 of the Penal Procedural Code of the Russian Federation) as well as to keep balance of each individual to freely search, transfer, produce, and distribute information using any legal mean (part 4 Article 29 of the Constitution of the Russian Federation, Article 1 of the Law of the Russian Federation *On mass media*) and the law of each individual to inviolability of private life,

personal and family secrets, protection of one's honor and good name, secrecy of correspondence, phone conversations, mail, telegraph and other messages (Article 23 of the Constitution of the Russian Federation), protection of one's image (Article 152¹ Civil Code of the Russian Federation).

19. Considering that openness of the justice supposes the necessity of a broad informational coverage of court's activity, the courts should seek to use more the mass media potential in order to inform users of this information in a more objective, reliable and operational way.

Court's official representative that interact with the mass media editorials is the chairman of the court or the person authorized by the chairman (part 1 Article 22 of the Federal Law *On providing access to the information on courts of the Russian Federation activities*). Apart from that to that in order to interact with the mass media editorials courts (except for district courts, garrison martial courts, peace judges) can define in their staff specific structural units (part 3 Article 22 of the mentioned Federal Law).

Court when providing information on their activity should observe the requirements of the acting legislation in order, form and terms of providing the information. At the same time it is important to remember that according to the paragraph 2 Article 10 of the Law of the Russian Federation *On judges' status in the Russian Federation* the judges doesn't have to give any explanations (including to the mass media representatives) on the essence of the cases being or already viewed or to present them for study to anyone otherwise than in cases and in the order foreseen by the procedural law.

20. According to the Article 23 of the Federal Law *On providing access to the information on courts of the Russian Federation activities* disputes on courts' activities coverage in the mass media are settled by the court following a pre-established order. Disputes related to the courts' activities coverage in the mass media can be settled following an extrajudicial procedure by bodies or organizations that are competent to settle informational disputes.

Considering this in case there is a dispute it is possible to present a claim to the Public board on claim against the press (hereinafter referred to as *Board*) that according to the paragraph 4.1 of its Chart adopted on July 14, 2005 views informational disputes in the first place of moral and ethical type arising in the mass media field including the break of principles and norms of professional journalistic ethics. Inside the Boards competence

there are informational disputes that affect human rights in the mass media field.

21. Legal ways of searching and getting information for its further production and distribution for an unlimited number of individuals include the institute of accreditation of journalists (correspondents) foreseen by the 48 Law of the Russian Federation *On mass media* that provides them with additional possibilities of searching and getting information.

When viewing claims on acknowledging illegal the imposed by the State power bodies, other State bodies, local self-government, State and municipal organizations rules of accreditation for journalists, on acknowledging illegal decisions on accreditation refusal for journalists, on accreditation deprivation or on rights violation of an accredited journalist it is important to remember the following.

According to the regulations of the part 3 of the Article 55 of the Constitution of the Russian Federation rights and freedoms limitations cannot be accepted legal (including the freedom of speech) imposed by not federal but other regulations and legal acts.

The rules of accreditation made by the State power bodies, other State bodies, local self-government, State and municipal organizations cannot impose other rules than those ways of limiting journalists rights and freedoms imposed in the federal laws (for example, in terms of accreditation suspension) as well as the conditions for their application. It is also not possible to add new fundamentals to refuse to issue or to make a deprivation of accreditation other than included in Article 48 of the Law of the Russian Federation *On mass media*. At the same time it is important to remember that in case the mass media terminates its activity then the journalists accreditation is terminates as well because due to the part 1 of the mentioned article the right to accreditation of the journalist depends directly on whether the mass media performs its activity.

In order to fulfill the foreseen by the part 3 Article 48 of the Law of Russian Federation *On mass media* responsibilities on preliminary information of journalists on meetings and other events accreditation bodies, organizations, public associations have to dispose of certain personal data regarding each of accredited journalists (in particular, address, phone number). Considering this the accreditation rules for journalists that require to provide such information match the regulations of the Law of the Russian Federation *On mass media* according to which the accreditation of the journalist is only possible based on his or her will and

therefore it is understood the journalist is ready to give his or her consent for the editorial to provide certain personal data on him.

22. According to the regulations of the Article 35 of the Law of the Russian Federation *On mass media* mandatory messages include messages that the editorial of the mass media is obliged to publish according to the Law or by the order of the court.

According to the first part of the mentioned Article the editorial of mass media has to publish the entered into force court's decision if this decisions requires such publishing in this particular mass media.

Cases when editorials of mass media indicated in part 2 Article 35 of the Law of the Russian Federation *On mass media* are obliged to publish materials according to the legislation of the Russian Federation include, among others, the following. Mandatory publishing is done in mass media whose founders include Federal State power bodies according to Federal Laws *On political parties* (paragraph two clause 1 Article 14), *On technical regulation* (paragraph two clause 9 Article 9). The requirement to give airtime, printing space to run a election campaign, referendum agitation is fulfilled by State and/or municipal TV and periodic printed editions that are included in the list provided in the paragraph 7 Article 47 of the Federal Law *On the basic guarantees of electoral rights and rights to participate in a referendum of citizens of the Russian Federation* as well as by nongovernmental TV and radio organizations indicated in paragraph 8 Article 51 of this Federal Law.

When applying part 3 Article 35 of the Law of the Russian Federation *On mass media* it is important to consider the entrance into force of the Federal Law *On guarantees of equality of parliament parties activities reports made by the State generally accessible TV and radio channels* that regulates relationships related to parliament parties activities coverage by the State generally accessible TV and radio channels i.e. providing information about their activity, bodies, structural units as well as people and fractions of political parties indicated in paragraphs 2-6 part 2 Article 4 of this Law.

According to the regulations of Federal Constitutional Laws *On state of emergency* (paragraph z, part 2 Article 18, Article 23) and *On martial law* (subparagraph 2 paragraph 1 Article 14, subparagraph 4 paragraph 1 Article 15) the information on declaring state of emergency, on the order of separate measures accomplishment, taken in state of emergency or martial law is given through mass media. As in the mentioned laws there is no indication on which mass media should fulfill this obligation the

information should be published in the mass media that received a corresponding requirement from the President of the Russian Federation, commandant of the territory with state of emergency declared, federal body of executive power in the framework of its competence in the area of martial law provision.

23. When solving the issue about the presence of fundamentals for exemption from responsibility of editorial, editor in chief, journalist for spreading information that infringes rights and legal interests of citizens or that are an abuse of the freedom of mass media and/or rights of journalist it is important to consider the fact that in the Article 57 of the Law of the Russian Federation *On mass media* there is an exhaustive list of responsibilities that release the editorial, editor in chief, journalist from the responsibility to check the trustworthiness of the information provided and thus from its distribution. Distribution does not include the acquaintance of the editor in chief or other editorial staff workers with the material before publishing (putting it on air).

According to the paragraph 2 part 1 Article 57 of the Law of the Russian Federation *On mass media* the editorial, editor in chief, journalist are exempt from responsibility in case the information is received via a news agency. Part 3 Article 23 of the mentioned Law foresees that when a mass media is distributing information of a news agency it is mandatory to indicate the source. The editorial, editor in chief, journalist can be exempt from the responsibility according to the paragraph 2 part 1 Article 57 of the Law of the Russian Federation *On mass media* also in case they prove that the distributed information comes via a news agency.

When applying paragraph 3 part 1 Article 57 of the Law of the Russian Federation *On mass media* the courts have to consider that the information contained in the interview of officials of State power and local self-government bodies, State and municipal organizations, bureaus, companies, public associations bodies, official representatives of their press offices are considered a response to request of information.

When applying paragraph 4 part 1 Article 57 of the Law of the Russian Federation *On mass media* the courts have to consider whether the official has the authority to speak in the name of the represented body, organization, public association, and is this speech can be considered official according to the its time, place and topic. Official speeches include, for example, speeches of an official at a pre-organized meeting with journalists in a specially dedicated room in a building of corresponding body, organization, public association and according to a pre-established agenda. If the court will establish that this official was not authorized to

make a public statement and was expressing this own opinion (and the editorial, editor in chief, journalist knew that), then the editorial of a mass media, editor in chief, journalist cannot be exempt from responsibility based on paragraph 4 part 1 Article 57 of the Law of the Russian Federation *On mass media* for literally reproducing such statement.

Literal reproduction of statements, messages, materials and their fragments (paragraphs 4 and 6 part 1, part 2 Article 57 of the Law of the Russian Federation *On mass media* supposes such way of quoting that does not change the meaning of statements, messages, materials and their fragments as well as authors words are quoted without any change. At the same time it is important to consider that sometimes exact fragment of statements, messages, materials that contradict the context can change the meaning to the opposite of the initial one. Of when reproducing statements, messages, materials and their fragments in mass media some changes or comments that twist the meaning have been made then the editorial of mass media, editor in chief, journalist can be exempt from responsibility based on paragraphs 4 and 6 part 1 Article 57 of the mentioned Law. The burden of proof of the fact of quotation accuracy after reproducing statements, messages, materials and their fragments according to the part 1 Article 56 of the Civil Procedural Code of the Russian Federation is carried by the editorial of mass media, editor in chief, journalist that refer to such circumstance. Proof of accuracy when reproducing materials in this case can be an audiotape, written proofs (including fax message), testimonies, and other proofs that can be examined according to Article 67 of the Civil Procedural Code of the Russian Federation.

If an Internet website registered as mass media the comments of readers are published without prior moderation (at readers' web-forum of such website) then to the content of these comments it is necessary to apply the rules imposed in part 2 Article 24 and paragraph 5 part 1 Article 57 of the Law of the Russian Federation *On mass media* for author works that go on air without previous recording. In case there is a claim from an official that established the comment is abusing mass media freedom the editorial of this media has the right to edit or delete it according to the regulations of Article 42 of the Law of the Russian Federation *On mass media*. If these abusing mass media freedom comments are still accessible for the website users the paragraph 5 part 1 Article 57 of the Law of the Russian Federation *On mass media* are not applied. Considering this when solving the issue on whether to bring the editorial into account the courts should find out where there any claims from officials regarding this information on forum, as well as whether the editorial deleted or edited the comments that initiated the issue on bringing the editorial into account.

When applying paragraph 6 part 1 Article 57 of the Law of the Russian Federation *On mass media* it is important to consider that another mass media includes not only a mass media registered in the Russian Federation but also according to regulations of parts 2 and 3 of the Article 402 of the Civil Procedural Code of the Russian Federation a foreign mass media, if the defendant organization, its administrative body, branch or representative office are in the Russian Federation or its citizen-defendant live in the Russian Federation or has property in the Russian Federation, or in cases of defense of honor, dignity and business reputation the plaintiff lives in the Russian Federation.

24. When solving the claim to acknowledge illegal a refusal to place a response (comment, remark) in mass media it is necessary to consider the following.

Based on the regulations of paragraphs 3 and 7 of the Article 152 of the Civil Code of the Russian Federation and Article 46 of the Law of the Russian Federation *On mass media* in cases not related to defense of honor, dignity of citizens and business reputation of citizens and legal entities, a right to a response in a mass media is given to a citizen or legal entity whose rights and legal interest were infringed by the information distributed by mass media (in case they are true or not true).

Information that contains local inaccuracy (for example, slips) can be acknowledged not true only in case these slips led to statements on facts, events that didn't happen at the moment described in the information.

If the mass media made partial or one-sided information that leads to distorted perception of the event happened, a fact or a sequence of events and such publication infringes rights, liberties and protected by the law interests of a citizen or organization then the indicated persons have the right to publish their response in the same mass media in the order foreseen by Article 46 of the Law of the Russian Federation *On mass media*.

25. Paragraph 5 part 1 Article 49 of the Law of the Russian Federation *On mass media* specifies the prohibition on spreading the information concerning the facts of private lives of citizens in the mass media unless they or their representatives have given their consent to do so with the exception of the cases when it's necessary for the protection of public interests. Paragraph 2 part 1 Article 50 of the above mentioned Law accepts the spreading of information obtained with the help of hidden audio- and video recording, cinema recording and photography if it is necessary for the protection of public interests and the measures against the possible identification of irrelevant persons have been taken.

Article 152 of the civil code of the Russian Federation specifies that the publication and further use of the image of a citizen is allowed only with consent from the citizen. Such consent is not needed in particular when the image is used in state, social or other public interests.

The term public interest should not refer to any interest of the public but rather to the need of the society to reveal and expose the threat posed to the democratic state governed by the rule of the law, civil society, public safety and environment.

The courts should distinguish between the information on facts (even the disputable ones) that positively influence the discussion of the matters concerning for example the execution of the duty of the officials and public figures in the society and the information on the details of the private life of a person not engaged in any public activity. Whilst in the former case the mass media perform the civil duty informing the citizens on the matters of public interest, in the latter case, however, they play no such role.

26. If during the deliberations on a case one of the parties puts the question of disclosing the source of information on which the publication in the mass media was based, the court should follow part 2 Article 41 of the Law of the Russian Federation *On mass media* under which the editorial staff is obliged to keep the source of information a secret and has no right to name the person who has provided the information on condition of non-disclosure of his name, unless the court has demanded the opposite in connection with the case being tried. Therefore, the personal information of the person who has provided the information on condition of the non-disclosure of his name comprises the secrecy, specially protected by the federal law. During any stage of the deliberations the court has the right to demand from the corresponding editorial staff to disclose the information on the source of the information obtained if all other means of finding the circumstances vital for the settlement of the case are exhausted and the public interest in disclosure of the source of information outweighs the public interest in keeping it a secret. The claim of disclosure of the source of information can be sent to the editorial staff by the court in relation to the case on trial.

27. The abuse of the freedom of mass information (Article 4 of the Law of the Russian Federation *On mass media*) leads to the issue by the authorized body or official of a notification to the founder (co-founders) of the printed/electronic medium, its editorial staff (the editor in chief) as well as the termination of its activity by the court (Article 16 of the Law of the Russian Federation *On mass media*, Articles 8 and 11 of the Federal Law *On counteracting extremist activity*).

Taking into consideration the fact that the notifications issued by the public authority or an official contain authoritative will, generating legal consequences for the founder/cofounders of the media and/or his editorial staff (the editor in chief), the cases on litigation of suchlike notifications are liable to consideration in accordance with the procedure specified in chapters 23 and 25 of the Civil Procedural Code of the Russian Federation.

Inspecting the authority of the person having delivered the notification in litigation, the courts should take into account the fact that the recording body has the right to issue notifications on violation of the demands of the Article 4 of the Law of the Russian Federation *On mass media* (Article 16 of the mentioned law), and on violation of the demands of the Federal law *On counteraction against the extremist activity* not only the recording body but also the federal body of executive power in the field of press, broadcasting and mass media, Prosecutor General of the Russian Federation or the corresponding prosecutor subordinate to him (Article 8 of the mentioned Federal law). When solving the matter on which federal body of the executive power is entrusted with execution of the previously mentioned duties it is important to consider the regulations of the normative legal acts, specifying the structure of the federal bodies of the executive power and their duties.

28. When solving the cases on the abuse of the freedom of mass information, the regulations of Article 4 of the Law of the Russian Federation *On mass media* should be used together with other federal laws, specifying the defined public relations: *On counteracting terrorism*, *On counteracting the extremist activity*, *On narcotic drugs and psychotropic substances* and others.

According to part 1 Article 4 of the Law of the Russian Federation *On mass media* it is inadmissible to use the mass media for committing penal offences in particular . Since the justice on criminal cases in the Russian Federation is exercised only by the court (part 1 Article 8 of the Code of criminal procedure of the Russian Federation) the matter whether the use of the mass media for committing a penal offence has occurred should be determined with consideration of the sentence having come into legal force or any other judicial decision on the criminal case.

When considering the question of abuse of the freedom of mass information, the court should consider not only the use in the article, TV or radio program of a word or expression (the wording) but also the context in which they were put (particularly the aim, genre and the style of the article, program or their specific part, if it is possible to view them as an opinion in the sphere of political discussion or a drawing of attention to the discussion

of socially important matters, and what the attitude of the interviewer and/or the representatives of the editorial staff of the mass media towards the expressed opinions, judgments, statements is) as well as the social and political situation in the country as such or in its specific part (depending on the area of distribution of the mass media).

The courts should take into consideration the fact that according to Article 5 of the Declaration of freedom of political discussion in the mass media humorous and satirical genre, protected by Article 10 of the Convention of protection of human rights and fundamental freedoms, allows a greater scale of exaggeration and even provocation on condition that the society is not being misled as far as the factual aspects of the case go.

The courts should take into account the peculiarities of broadcasting which limit the opportunities of journalists and editors to correct, clarify, interpret and comment on statements made by the participants of the live broadcast.

29. According to the Law of the Russian Federation *On mass media* the suspension of media activity is a temporal prohibition of production and issue of media, of making and/or distributing the output of media.

The suspension of media activity is possible by the media founder's (cofounders') decision (in cases and in accordance with the articles of the editorial staff or with the contract made between the cofounder and the editorial staff or the editor in chief), on the grounds of the court determination made on application for security for a claim on suspension of media activity (Article 16 of the Law of the Russian Federation *On mass media*, part 3 Article 11 of the Federal law *On counteracting the extremist activity*), on the grounds of the court decision (Article 16 of the Law of the Russian Federation *On mass media*).

30. The issue of the measures applied to secure the claims on civil cases concerning the mass media is solved according to the rules specified in chapter 13 of the Civil Procedural Code of the Russian Federation.

Part 1 Article 140 of the Civil Procedural Code of the Russian Federation contains an approximate list of measures on securing the claim and specifies the right of the judge or the court to take different measures if necessary on securing the claim which correspond to the purposes specified in Article 139 of the hereby mentioned Code.

The suspension of media activity is the last sanction of the law on securing the claim and can be exercised only in the cases on termination of the media activity since in such cases this measure corresponds to the purposes mentioned in Article 139 of the Civil Procedural Code of the Russian

Federation and is specified in part 5 Article 16 of the Law of the Russian Federation *On mass media* and part 3 Article 11 of the Federal law *On counteracting the extremist activity*.

In other civil cases concerning the media activity suspension of the media activity cannot be exercised as a measure of securing the claim as well as prohibition to prepare and distribute new information on the mentioned topic since in such cases the hereby mentioned measures will not correspond to the purposes mentioned in Article 139 of the Civil Procedural Code of the Russian Federation and will not be necessary in securing the authority and impartiality of justice.

In order to comply with the requirements of part 3 Article 140 of the Civil Procedural Code of the Russian Federation on adequacy of the measures of securing the claim it is important to consider the nature of the violation (particularly if they can be regarded as cases of abuse of the freedom of mass information or other violations of the legislation on mass media) as well as assess the negative consequences for the freedom of mass media which can be caused by exercising of such measures.

31. According to paragraph 3 part 1 Article 26 of the Civil Procedural Code of the Russian Federation the cases on termination of media activity distributed mainly on one constituent territory of the Russian Federation are under the jurisdiction of the Supreme court of the republic, territorial, regional court, the court of the city of federal importance, the autonomous region and the autonomous district court

If the media is distributed on the territory of more than two constituent territories of the Russian Federation the case on termination of activity of the media is to be considered by the court (from the list specified in Article 26 of the Civil Procedural Code of the Russian Federation) whose jurisdiction is extended to the territory of primary distribution of the media.

If the actual territory of the media distribution does not match the territory specified in the registration data, the jurisdiction of cases on termination the media activity should be determined according to the media registration data since the change of the media distribution territory with respect to the stated during the registration is possible only on condition of re-registration of the media (paragraph 6 part 1 Article 10 and paragraph 1 Article 11 of the Law of the Russian Federation *On mass media*).

32. On account of the regulations of the Law of the Russian Federation *On mass media* the termination of the media activity is a prohibition of production and issue of media as well as of making and distributing the output of media.

When solving the cases on termination of the media activity it is important to take into consideration the fact that this liability measure can be exercised only in accordance with the procedure and on the grounds specified by the federal laws particularly by Article 16 of the Law of the Russian Federation *On mass media*, Articles 8 and 11 of the Federal law *On counteracting the extremist activity*.

When solving the cases on termination of the media activity it is important to take into consideration the fact that this liability measure can be exercised only in accordance with the procedure and on the grounds specified by the federal laws particularly by Article 16 of the Law of the Russian Federation *On mass media*, Articles 8 and 11 of the Federal law *On counteracting the extremist activity*

33. When considering the cases on termination the media activity it is important to take into account the fact that the recording body has the right to take legal action with a claim to terminate the media activity, while in case of claiming to terminate the activity on the grounds specified in the Federal law *On counteracting the extremist activity* not only the recording body but also the federal body of executive power in the field of press, broadcasting and mass media, Prosecutor General of the Russian Federation or the corresponding prosecutor subordinate to him (part 1 Article 16 of the Law of the Russian Federation *On mass media*, part 2 Article 11 of the Federal law *On counteracting the extremist activity*)

When considering which body is authorized with execution of the previously mentioned duties it is important to consider the regulations of the normative legal acts, specifying the structure of the federal bodies of the executive power and their duties.

34. The courts should distinguish between the grounds for terminating the media activity specified in part 3 Article 16 of the Law of the Russian Federation *On mass media* and part 3 Article 8 of the Federal law *On counteracting the extremist activity*.

According to part 3 Article 16 of the Law of the Russian Federation *On mass media* only the violations of Article 4 of the hereby mentioned Law committed by the media editorial staff which served as a ground for the recording body to issue a notification to the founder and/or the editorial staff (the editor in chief) are taken into consideration.

The regulations of part 3 Article 8 of the Federal law *On counteracting the extremist activity* do not require the issue of notification concerning new facts confirming the indications to extremism in the activity of the mass media which served as a ground for the authorized body (official) to take

legal action. As follows from the regulations of the mentioned Federal law the violations discovered after the notification being issued but found in published materials distributed before the above mentioned notification cannot be considered as new.

35. The courts must pay attention to the differences in calculation of the period during which the law violations when distributing the mass media were made and the notifications issued in connection with them, contained in part 3 Article 16 of the Law of the Russian Federation *On mass media* and part 3 Article 8 of the Federal law *On counteracting the extremist activity*.

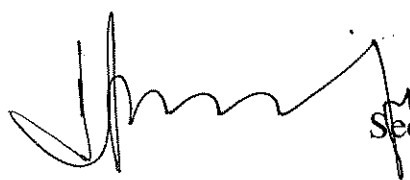
As specified in part 3 Article 16 of the Law of the Russian Federation *On mass media* the activity of the mass media can be terminated in the case when repeated violations which caused the recording body to issue notification to the founder and/or the editorial staff (the editor in chief) appeared during the twelve months preceding the legal action.

According to part 3 Article 8 of the Federal law *On counteracting the extremist activity* the activity of the mass media can be terminated in the case if during the twelve months since the notification was issued new facts have been revealed, confirming the existence of extremist indications in the activity of the mass media.

36. When considering the cases on terminating the activity of the mass media on the grounds specified in part 3 Article 16 of the Law of the Russian Federation *On mass media* and part 3 Article 8 of the Federal law *On counteracting the extremist activity* the notifications found illegal by the court cannot be taken into account.

The court has the right to allow the claims on terminating the activity of the mass media after assessing the legitimacy of the issued notification.

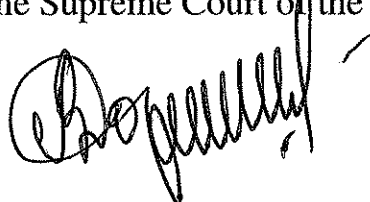
Chief Justice of the Russian Federation



V.M. Lebedev

Secretary of the Plenum,

Justice of the Supreme Court of the Russian Federation



V.V. Doroshkov



RESOLUTION OF THE PLENUM OF THE SUPREME COURT OF THE RUSSIAN FEDERATION

No. 21

September 16, 2010

Regarding introduction of changes into resolution of the Plenum of the Supreme Court of the Russian Federation No. 16 “On practice of application by the courts of the Law of the Russian Federation “On Mass Media” dated June 15-th 2010

Plenum of Supreme Court of the Russian Federation decrees that decree of Plenum of Supreme Court of the Russian Federation No. 16 “Regarding application of the Law of the Russian Federation “About Mass Media” by courts of the Russian Federation” dated June 15-th 2010 should be added with clauses 37 and 38 containing the following:

«37. If personal non-property rights or other nonmaterial benefits of a person were breached through circulation in mass media and moral damage (corporal or ethic hurt) was inflicted on a person than the person will be entitled to claim damages (articles 151, 1099 of Civil Code of the Russian Federation). Herewith according to article 1099, clause 3 of Civil Code of the Russian Federation compensation of moral damage will be paid regardless of payable material damage compensation.

38. Amount of compensation of moral damage is defined by court in monetary terms and is subject to collecting in favor of plaintiff (article 1101, clause 1 of Civil Code of the Russian Federation).

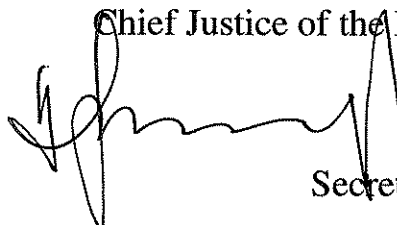
Compensation of moral damage should serve the purpose it was established by the law for – to compensate complainant’s corporal or ethic hurt (article 151 of Civil Code of the Russian Federation). Exercise of the right of compensation of moral damage for other purposes namely establishment of situation, where common right to freely express opinion including freedom to adhere to opinion, freedom to obtain and to spread information and ideas without any interference of public authorities will be

virtually limited, is not allowed (article 29 of the Constitution of the Russian Federation, article 10 of Convention for the Protection of Human Rights and Fundamental Freedoms, article 10 of Civil Code of the Russian Federation).

Courts should take into consideration that amount of compensation of moral damage should be reasonable and justified (article 1101, clause 2 of Civil Code of the Russian Federation) and should not lead to violation of mass media freedom.

Reasonableness and justness should also be applied when amount of compensation of moral damage subject to collection from politicians, public figures and functionaries is defined.

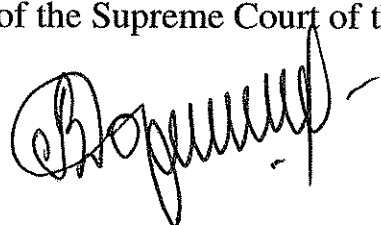
Chief Justice of the Russian Federation



V.M. Lebedev

Secretary of the Plenum,

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V.V. Doroshkov