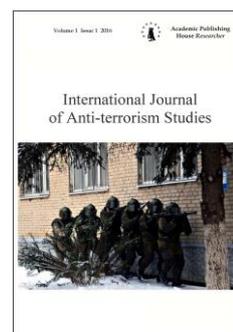


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Articles and Statements

Russian Hate Speech Legislation in the International Context

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Abstract

The subject of article is hate speech regulation. This paper analyses Russian hate speech regulation and anti-extremism legislation in the context of international debates. The authors review the initiatives of international organizations to fight racism, and Russia's position in this sphere of collaboration from the Cold War to the present day. Indeed, hate speech became an international security issue after World War II and the spread of human rights. Hate speech regulation is thought as a prophylactic tool to prevent hate crimes and racist violence. This article also compares Russian legislation with foreign, namely European and American, legislations to underline the individual path chosen by Russia in its fight against racism and nationalism, and the stumbling blocks of international anti-extremism cooperation. The authors observe that Russia follows its own path, followed by CIS countries, on regulating hate speech and extreme nationalism focusing on constitutional stability and public order, while Europe and USA have a more individualistic approach.

Keywords: Russia, hate speech, racism, extremism, nationalism, International Law, Russian Law.

1. Introduction

After the trauma of World War II and the Holocaust, extreme nationalism and hate speech became a matter of concern and a crucial topic of international debate. Article 2 of the Universal Declaration of Human Rights guarantees all rights “*without distinction of any kind, such as race (...) national or social origins*”. In the post-war period, governments initiated talks about criminalizing hate speech. Germany was one of the first states to do so because of a surge of anti-semitic incidents that swept the country at the end of 50s. In January 1959, Germany passed a bill rewriting article 130 of the Criminal Code to punish “incitement to hatred against segments of the population”.

Hate speech is commonly defined as a harmful message intended to insult, offend or intimidate a given category of the population. The term was first used in the late 80s by American legal scholars to describe “*the way different legal systems tackled certain sorts of harmful racist speech*” (Brown, 2017). However, despite semantic resemblances, there is no clear definition of

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hate speech: some legal systems focus only on race or religion, while others have a broader definition including for instance gender. Moreover, hate speech has become a common concept used by media, militants and ordinary people. Hence, this concept has become very polarized on the political level, the term being mainly used by progressives, while conservatives tend to reject it. Legal systems refer to democracy, Human Rights and human dignity to support the prosecution of hate speech. They also perceive it as a threat to public safety linked to extremism. Undeniably, racism can lead to aggressions, and even to terrorism, as in the case of Breivik in 2011. In extreme cases, it can trigger armed conflicts and genocide. Hence, for the purpose of preventing hate crimes, authorities around the world have sought to criminalize hate speech. Hate speech is still a hot topic today related to the challenge of managing multiculturalism, Islamism, islamophobia and the rise of groups, parties or even governments deemed xenophobic or racist.

Russia faces the same challenges. Since the 90s, experts and scholars have observed a surge of racism with the rise of extreme nationalist groups that gained momentary political popularity, fueled by anti-Caucasian and anti-immigrant feelings (Laruelle, 2010). The economic crunch of the 90s and the war in Chechnya set the background of racist and nationalist tendencies in Russia. Beyond speeches, the post-Soviet racist climate led to violent actions like skinhead groups attacking “non-Russians” (Caucasians, Asians, Blacks) on the streets, ethnic riots such as Birioulevo in 2006, and even racist terrorism with the bombing of Cherkizovsky market by ultra nationalist Nikolai Korolyov and his group called “Spas” in 2006. In response to this state of affairs, the Russian government implemented strong measures to fight extremism and racism. For example, the Federal Law on extremism, signed in 2003, criminalizes hate speech while the so-called Yarovaya Law, signed in 2014, prohibits the rehabilitation of Nazism and punishes the denial of the crimes committed by Nazis. Russia is therefore addressing the threats of racism and extremism as most countries in the world, especially the West, and is adopting similar legal measures against hate speech. However, how does the Russian viewpoint fit into the big picture of international debates on racism?

In this paper we will analyze, on the one hand, international initiatives to tackle racism and the tensions surrounding them. On the other hand, we will compare Russian federal laws on racism and extremism with foreign Western legal systems to underscore the different approaches adopted. This study is based on the analysis of legal and official documents such as reports of international organizations, expert reports and interviews with Russian experts, namely SOVA, a Russian NGO based in Moscow monitoring racism and nationalism in Russia.

International law on racism and hate speech

UNESCO is the first international organization to have engaged in initiatives to tackle racism. In 1949, scientists including Claude Levy-Strauss issued a program to fight racism: the “Race question”. This program targeted cultural, educational, scientific spheres aspects of the “race question” and denied all scientific grounds to racism. UNESCO pushed forward its educational efforts against racism by financing studies, organizing conferences, and exhibitions. In 2003, UNESCO issued an “Integrated Strategy to Combat Racism, Discrimination, Xenophobia, and related Intolerance” that strengthens cooperation with local actors and institutions and adds new guidelines to its scientific and pedagogical agenda (UNESCO, 2003).

UNESCO stays away from the legal and coercion sphere, it prefers a “soft power” approach that aims at yielding change in peoples’ mind and behavior with regard to racism. Other international organizations embrace a much tougher stance to outlaw racist expressions. For instance, the UN adopted a regulatory approach in the 60s, following the so-called “swastika epidemic”. It started at the end of 1959 in Cologne where a synagogue was vandalized with swastikas and anti-Semitic slogans, and later spread to London, Paris, Antwerp, Hong-Kong and Australia (Loeffler, 2018: 230-233). Following these incidents, the UN General Assembly adopted the International Convention on The Elimination of All Forms of Racial Discrimination (ICERD) on 21 December 1965. This convention calls on signatory states to fight discrimination and obliges them to penalize racial crimes. While Western countries like the United Kingdom and the US tried to lessen the obligations of the convention to protect freedom of speech, the Soviet Union, Poland and African countries pushed for more resolute action to ban all propaganda of racial “superiority” and criminalize participation in any organization embracing such “superiority” (Mariager and al, 2015: 65-66). In 1977, the new Soviet Constitution contained provisions on racial equality, racial

discrimination and punished racial and national hostility. UNESCO can be considered a “soft power” international organization but this has not neutralized the tensions which have long obstructed its actions against racism. During the Cold War, UNESCO avoided to criticize racism in the US and colonialism, as Western countries were its most powerful State Members. As a result, the USSR and Third World countries criticized UNESCO for being too weak (Maurel, 2007).

Extending the Universal Declaration of Human Rights of 1945, the International Covenant on Civil and Political Rights (ICCPR), signed in 1966, provided new provisions against racism and racial discrimination. It included limitations to freedom of speech to protect individuals and national security and compelled States to penalize hate speech. However, this covenant created confusion: on the one hand, it guarantees freedom of speech and allows limitations (art 19); on the other hand, it imposes an obligation to restrict speech (art 20) (Ghanea, 2010). The jurisprudence of the Human Rights Committee (HRC) clarified this ambiguity: the restriction to freedom of speech must conform to the principles of necessity and proportionality. This means that such restrictions are the only means to achieve the safeguard of one’s rights while restrictive measures “*must be the least intrusive instrument amongst those which might achieve their protective function.*” (HCR, 11/09/2011) For instance, in *Ross v Canada*, a school teacher was fired because of an anti-Semitic statement. In 2000, the HRC rejected Ross's appeal stating that there was no violation of freedom of speech and that “*the removal of the author from a teaching position can be considered a restriction necessary to protect the right and freedom of Jewish children to have a school system free from bias, prejudice and intolerance*” (HCR, 1997).

In the last few decades, the new challenge to tackle racism primarily concerns the spread of hate speech throughout the Internet. Unquestionably, Internet offers a convenient means to express racial hatred anonymously and for extreme nationalist groups to build international ties and disseminate their propaganda. For instance, the Russian skinhead group “Format 14” shared videos showing aggressions performed on alleged “non-Russians”. The fact that Internet is an international network lacking common regulation is also challenging. In this regard, the lesson gained from the Yahoo case is illustrative: in 2000, a French court condemned Yahoo for the display of Nazi objects on its auction website. Yet in 2001, a Californian court stated that Yahoo was not bound by the French decision (Massit-Folléa, 2002). The spread of racism on the Internet was one of the main concerns of the World Conference against Racism (WCAR), also known as Durban I, in 2001. The Program of Action focused on education, cooperation between tech companies and civil society, but not on regulation. It is worth noting that international debates on Internet mostly focus on freedom of speech online (surveillance matters and defending internet neutrality), rather than on regulatory approaches to security issues. By reading the reports of the Internet Governance Forum, we can see that multi-stakeholder approaches, self-regulation and codes of conduct are generally preferred to regulation. There are however exceptions to this general rule. For example, the Council of Europe has stepped up its efforts to tackle cybercrime at state and regulation levels by adopting the first international treaty to address Internet regulation: the Budapest Convention on Cybercrime in 2001. Its aims are to harmonize domestic laws and to increase state cooperation on issues like child pornography and copyright infringements. An additional protocol “Concerning the criminalization of acts of a racist and xenophobic nature committed through computer system” was added to the Budapest Convention. It required signatory States to criminalize the dissemination of racist and xenophobic materials and strengthen international cooperation.

Russia’s stance reveals international tensions

Fighting extremism and racism could seem consensual yet this issue is closely related to international politics and global tensions. During the Cold War, the debate opposing freedom of speech and the fight against racism was an international political issue between the US and the USSR. While the West, especially the US and the UK, invoked freedom of speech and were reluctant to take measures against racism, the USSR recognized this issue as a focal point of its confrontation against the West. Indeed, the USSR criticized racism in the US and colonialism, whereas socialism was portrayed as an integrative system in Soviet propaganda (Rose, 2016). During the drafting of the Universal Declaration of Human Rights, the Soviets pushed for provisions condemning racism and racial superiority. These were however rejected by the US and the UK on the grounds of freedom of speech. When the West criticized the USSR for human rights

violations, the Soviets, in turn, pointed the finger at racial problems in the US. Later, international debates on racism focused on Israel. In 1975, the UN General Assembly adopted Resolution 3379 which declares that “Zionism is racism” with the support of the Soviet Bloc.

Nowadays, debates on racism and hate speech still reflect international tensions. Concerned about the rise of neo-Nazism in Latvia and Estonia, where Soviet army memorials are degraded and Waffen SS nostalgic rallies are held, Russia supports every year, since 2005, a resolution condemning the glorification of Nazism at the UN General Assembly; and every year, the US vote against this resolution expressing worries about freedom of speech and criticizing the Russian geopolitical motives behind the resolution. Harry Kamian, American chargé d'affaires at the OSCE stated: *“However, due to the UN resolution’s overly narrow scope and politicized nature, and because it calls for unacceptable limits on the fundamental freedom of expression, the United States could not support it. (...) We were also concerned that Russia continues to use this resolution to carry out political attacks against its neighbors”* (OSCE, 23/11/2017).

Criticizing the rise of neo-Nazi groups is also key to Russia’s confrontation with Ukraine. Since the beginning of the Ukrainian crisis in 2014, Kiev voted against the above-mentioned Russian resolution. For its part, Russia is oftentimes criticized within international organizations for not fully respecting minorities’ rights. For instance, the CERD expressed concerns about the situation of Tatars in Crimea at the 93^e session (July-August 2017) (CERD, 2017).

Another concern for Russia is the threat of international initiatives to national sovereignty. This is why Russia is the only country of the Council of Europe not to have signed the Budapest Convention in 2001: The Kremlin was worried about article 32 of the Convention jeopardizing its national sovereignty as it allows trans-border access to stored computer data during cybercrime investigations. An alternative to the Budapest Convention is a convention on cybercrime within the UN supported by Russia. The Russian delegation presented a first draft “On cooperation in countering informational crime” in 2011 which was, however, criticized by the US. Concerns were raised about a tightened control on Internet in Russia. A new draft of the convention was presented at a conference of UN experts in Vienna in April 2017. Its aim was to enhance international cooperation, in particular, by facilitating extraditions.

Russian anti-extremism laws: criticism from the West, cooperation with the East

Despite international efforts, there is no consensus on how to tackle hate speech and racism. States only agree on the need to fight it. Beyond international and geopolitical rivalries, disagreements reflect different legal approaches to hate speech and racism. With regard to hate speech regulation, we can underscore two main legal systems: the American system, and the European one, Germany being the example most referred to. American laws do not punish hate speech, as free speech is guaranteed by Article 1 of the Constitution. Conversely, Germany punishes hate speech by fines and up to five years in prison (Haupt, 2005). Both legal systems refer to democracy and liberal values: the US defend freedom of expression without exception, whereas Germany defends human dignity and its democratic constitution inherited by the fall of Nazism, thus prohibiting hate speech. Moreover, the US give more trust to private initiatives to fight hate speech like codes of conduit on campus and websites.

Russia is one of the countries in the world with the toughest laws against hate speech and extremism. In response to the escalating problem of ethnic and nationalist violence, such as riots by football fans following Russia's defeat against Japan in the 2002 World Cup, the Russian government enacted the Federal Law on countering Extremist Activities in 2003. The new articles 280 and 282 of the Criminal Law address specifically extreme nationalism: they provide fines and jail time for hate speech and public calls for extremist actions. Anti-extremism legislation was further strengthened in 2014 through the adoption of a law enabling The Federal Service for Supervision of Communications, Information Technology and Mass Media (Roskomnadzor) to block extremist sites at the request of the State prosecutor without the need of court decisions. There is also a police division, the General Direction for Countering Extremism of the Ministry of Internal Affairs, created in 2008, which fights all forms of extremism: hate speech, fundamentalism, terrorism and more.

After the endorsement of Russia’s new anti-extremism legislation, a significant drop in racist aggressions has been observed: in the past 2 years, convictions for violent crimes motivated by hate fell by almost half (24 persons were found guilty in 2017 vs 43 in 2016) (Yudina, 2018).

Paradoxically, prosecutions for extremist expressions have increased steadily during the same period. In an interview, an expert at SOVA explained this drop by systematic jailing of extreme nationalists and by some of them fleeing to foreign countries, especially to Ukraine, where they participated in the conflict¹. Moreover, this expert underlined that the blacklist of extremist contents (books, websites, symbols, etc) run by Roskomnadzor is very specific to Russia, no other country has taken such measures. In 2017, there were 4 345 items in the Russian blacklist, including racist propaganda and fundamentalist materials (Yudina, 2017).

NGOs express concerns about the large scope and blurriness of Russian anti-extremism laws. Indeed, Russian legislators tried to codify the term “extremism”. Its definition in common language is already questionable, not to mention its legal implications. In 1993, the Constitutional Court of the Russian Federation declared: *“The words ‘extremist elements’ (...) have no legal value, as the term has no specific legal content, while ambiguities may lead to a violation of the constitutional rights of citizens.”* (Kondrashev, 2015) Another ambiguous term is the notion of “social group” used in article 282. This article prohibits *“actions directed to incite hatred or enmity, as well as to humiliate the dignity of a person or a group of persons on grounds of sex, race (...) or to any social group.”* In common language, the definition of social group is broad and blurred. In accordance with judicial practice, the notion of “social group” under article 282 can be understood as a structural part of society, as well as an unchangeable feature of an individual such as race, language, nationality (Parshin, 2017).

The West shares the very same concerns: it fears that anti-extremism laws in Russia may be used against political opponents. In 2010, Vassily Kriukov, one of the leaders of the far-right group RONS and municipal councilor of Izhevsk, organized a demonstration to support the riots on Manege Square in Moscow. During this demonstration, he allegedly expressed extremist words and was later prosecuted under article 282 and fled to Germany. Due to suspicions about anti-extremism laws being used to prosecute opponents, Interpol refused requests from Russia to arrest and extradite him. In 2014, Germany granted Vassily Kriukov political asylum as it believed he was prosecuted for political reasons (RONSSLAV, 2014). On 23 October 2017, ECHR issued for the first time a decision against article 282: it ruled in favor of Stanislav Dmitrievski, a journalist who shared appeals of Chechen rebels Ahmed Zakaryev and Aslan Mashkadov on his blog and was condemned to 2 years in jail for hate speech. ECHR ruled that the Russian sentence violated Dmitrievski's right to freedom of speech and found no threat to national security (ECHR, 2017). Other Russian nationals condemned under anti-extremism laws, such as far-right leaders Alexandre Belov or Tesak, have appealed to the ECHR and are waiting for the Court to decide on the lawfulness of their sentences. Submitting a complaint to ECHR is more than a legal tactic, it is also a militant move: it aims at drawing the attention of news media and triggering international reactions to pressure the Russian government. Further, the West is concerned about Russia not fighting racism efficiently. This criticism is based on the situation in Russia in the 90s. During this period, nationalist groups committed many racist aggressions. An example is 1999, when an African-American employee of the US Embassy was attacked by skinheads causing international outcry.

Beyond the coercive approach, Russia has also adopted a cultural and educational approach to the fight against racism and extremism that meets UNESCO's recommendations and focuses on interethnic relations. In Russia it bears the name “Politics of nationalities”. According to the Russian report for the 93^e session of the CERD, *“Vladimir Putin stressed that young people must understand the full significance of the nationalities policy, and of ethnic and cultural diversity. He pointed out that, with the necessary awareness and a sufficiently broad outlook on life, a properly informed person will be immune from the virus of nationalism and intolerance”* (Russian Delegation at CERD, 2016). In this report, Russia promoted its efforts in the education field: it sponsors courses on religions to promote interethnic dialogue and tolerance, organizes folk festivals and gives subventions to TV programs like Diaspora or the channel Mir.

Ahead of the World Cup in Russia, racism among Russian supporters was a matter of concern (especially in the West), as nationalists are numerous among football fans. In the past, they have repeatedly sparked scandals linked to violent actions and racist chants in stadiums (Arnold, Veth, 2018). Hence, the UK for example issued warnings to its citizens travelling to Russia for the World Cup. Yet the World Cup did not give rise to any racist or violent incidents thanks to preventive

¹ Interview with a SOVA expert, 16/02/2018, Moscow

measures, both coercive and educational. Among other things, Russia passed a law on supporters in 2014. Russian authorities put hooligan leaders under survey, issued a black list of supporters and prohibited access to stadiums to 467 supporters (RT, 10/06/2018). Furthermore, the Russian Federation of football and Ministry of Sports, in collaboration with the High Commissar for Human Rights, organized a seminar in summer 2015 on preventing discrimination in sports (Sivkova, 03/06/2015). Also, seminars on the prevention of racism and intolerance were held in the 11 Russian regions where the World Cup took place in cooperation with the UN.

In its fight against extremism and hate speech, Russia is not isolated as it can count upon the support of CIS countries and the Shanghai Cooperation Organization. Interestingly enough, the anti-extremism law adopted in 2003, was drafted according to the Shanghai Convention of 15 June 2001 on combatting terrorism, separatism and extremism. Paragraph 3 of Article 1 of this convention defines extremism as an act aiming at the seizure or retention of power via violent methods or changes in the constitutional order by force. Most of CIS countries have similar anti-extremism laws based on Russian legislation (Verskhovsky, 2016). They also actively collaborate in the fight against extremism and have signed a convention on judicial cooperation. As a consequence, Belarus blocked the Russian nationalist website Sputnik i Pogrom in January 2017 and Russia followed in July 2017. Moreover, Belov-Potkin, former leader of the nationalist organization “Movement against illegal immigration”, was accused of preparing a coup in Kazakhstan with Russian Cossacks. The case was opened in Kazakhstan in May 2014 and was then handed over to the Prosecutor General’s Office of the Russian Federation. The leader of the nationalist organization was arrested in Moscow in October 2014, where he was judged and sentenced to 7,5 years in prison for this alleged coup, embezzlement and incitement to hatred.

Conclusion: Russian hate speech regulation, a third way?

Fighting racism and hate speech can seem consensual, yet as we have seen, there are deep divides on the international level based on geopolitical rivalries and different legal traditions. During the Cold War, racism was a matter of criticism for the USSR against the West, and more recently, a matter of criticism for the West against Russia being whether too soft on racism, whether too tough on the application of its anti-extremism legislation. As mentioned above, there is a wedge between the American legal tradition which first and foremost defends freedom of expression, and the European hate speech regulations stemming from the traumas of Nazism and Fascism.

In this context, Russia seems closer to Europe. Its measures to counter hate speech are quite similar to European ones, in particular, in the light of its efforts to tackle extremism since the 2000s. Nevertheless, the Russian philosophy and application of national anti-extremism legislation differ from the European approach. Indeed, while European legislations on hate speech place emphasis on individual rights, Russia rather focuses on protecting stability and public order. For instance, legal scholars at the Moscow General Academy of the Prosecutor General of the Russian Federation refer to “color revolutions” and events in Ukraine to clarify the Russian anti-extremism legislation (Agapov, 2016). According to them, the aim of the anti-extremism legislation in Russia is to protect the constitutional order and to prevent a violent overthrow of the government. The threats which must be eradicated in this context are “color revolutions” and destabilizing elements such as the Ukrainian extreme nationalists of the Maidan Revolution. To enhance peace and security, Russia, which is considered a multi-ethnic country, often refers to interethnic relations in its national initiatives against extremism and racism. Promoting peaceful relations between Russia’s multiple nationalities is indeed a way of containing the threat of separatism and conflicts, especially after the wars in Chechnya. With its Member States’ interests in mind, it thus comes as little surprise that the Shanghai Cooperation Organization links the concepts of extremism, terrorism and separatism in its doctrine of “the three evils”. The application of Russian legislation can, of course, seem harsh compared to Western European standards: swift blocking of websites without court decisions, frequent jail time for individuals accused of hate speech, namely for far-right leaders. Conversely, European countries prefer to sentence fines, whereas the US refuse governmental measures and trust private initiatives.

Russian legislation on hate speech and extremism, supported and followed by CIS countries, can be considered a third legal tradition to combat racism. Contrary to Western legislations on hate speech, which refer to liberal and Human Rights values and adopt a more individualistic approach, Russian anti-extremism laws rest upon the safeguard of public and constitutional order, and

defend peaceful relations between nationalities in a multi-ethnic country which fears conflicts and separatism. Hence, given these three different approaches to hate speech, international cooperation in the field of countering extremism and racism proves very difficult.

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