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# The Role of Media in Russian Transition Towards Democracy

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# Summary

Russia is a country in transition towards democracy. However, the transition is very slow and many would say that Vladimir Putin's politics is pushing the country back to an authoritarian stage. One of the prerequisites of democracy is the possibility for the people to choose the leader. Nevertheless, democracy is much more than just being able to vote. The people of Russia are led by the man they have chosen. However, the question is whether the people were able to make a well-informed choice. One of the corner stones of democracy is the media. Traditionally, journalism has been regarded as the 'fourth estate', a central component of democracy, if necessary, a tool for the monitoring of state power and its limitation. In order for the citizens to be able to participate in the public debate and make decisions, they need to have an access to adequate information. The media must act as a public watchdog, to scrutiny governmental actions and to guarantee the rights of the opposition.

In Russia the media is being far from free and independent. The government in one way or another is trying to secure a firm control over the media. Threats, killings and unfounded lawsuits are a part of every day life of journalists. Journalists cannot work freely, owners of the media outlets are either economically dependent on the government or have to comply with the governmental requirements in order to survive. Historically, the public has never learned to trust the media and in today's profit-minded-by-any-means reality the press is not very trustworthy either. In this hard situation there is a need for change. However, most of the changes are impossible if the government will not loosen its grip over the media. The government must not only limit its interference in the work of the media, the state must as well ensure protection of the free and pluralistic media. This protection can be economical, *e.g.* subsidies from the state to small newspapers, or judicial, with clear and easily accessible legal provisions. Moreover, not only the printed law must be changed. The state must also guarantee foreseeable and fair judgments. The present government has not shown any attempts to improve the situation for the media. On the contrary, there are signs that the state is trying to tighten the grip justifying it with the war on terrorism. Therefore, only one conclusion can be made: if the present Russian government will not change its standing towards the media, there will be a desperate need for a change of the government. Russia is a country in transition and if it wants to become a fully developed democracy there is a need for dramatic changes for a freer and more independent media.

# Abbreviations

ADACS	Activities for the Development and Consolidation of Democratic Stability
CoE	Council of Europe
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
EU	European Union
HRW	Human Rights Watch
ICCPR	International Convention on Civil and Political Rights
GDF	Glasnost Defence Foundation
NGO	Non-governmental Organisation
NITs	New Information Technologies
OSCE	Organisation for Security and Co-operation in Europe
USSR	Union of Soviet Socialist Republics

# 1 Introduction

Today's Russia is in a contradictory period. One part of the country striving for freedom and democracy, hoping that these changes will bring a better and more honouring existence in this world, the other afraid and hysterical about the notion of democracy. How can democracy be blamed when Russia has never been democratic?<sup>1</sup> However, democracy is the only possibility to achieve full fulfilment of human rights that are required by the international society.<sup>2</sup>

Many things must be changed in Russia before the country can be considered a democracy. The changes required for Russia to become a democracy and to reach a successful democratization of public communication, are not limited only to institutional changes.<sup>3</sup> During the transition process, other factors are also important, *e.g.* civil participation and equal representation. However, the media has a crucial role as an underlying connector. On its own, the press is not that powerful.<sup>4</sup> The necessary changes must happen in the media's performance, especially in its ability to provide the people with reliable information. In addition, changes in individual behaviour are required among the journalists who actually produce the news.<sup>5</sup>

In a democratic society, the government must be separated from the media. The right of the press to hold those in power accountable to the public may and even should be considered as a 'duty and responsibility'.<sup>6</sup> In other words, the function of the government is to rule the ship of the state, the function of the media is to appraise the quality of the ruling and create stability among the waves.<sup>7</sup> Instead, the government in Russia today is trying to use the press as a base for state construction. The result is that the possibilities of the press to act freely and fulfil its function as a public watchdog are restricted. This results in the 'loss of hope' for the media and the reduction of informative and civil activity. Moreover, this transforms the

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<sup>1</sup> B. Timoshenko, 'Konflikty zafiksirovannye sluzhboy monitoringa Fonda zachity glasnosti na territorii Rossiyskoy Federacii v techenii 2004 goda', *Vzglyad: Yezhekvartalnyy analiticheskiy byulleten' Fonda zachity glasnosti* (May 2004)

<sup>2</sup> Russia has ratified the two main international documents that protect freedom of expression and are applicable in this region. International Covenant on Civil and Political Rights was ratified in 1973 without reservations and the European Convention on Human Rights was ratified in 1998.

<sup>3</sup> K. Voltmer, 'Constructing Political Reality in Russia', 15:4 *European Journal of Communication* (2000) p. 470.

<sup>4</sup> K. Rogerson, 'The Role of the Media in Transitions from Authoritarian Political Systems: Russia and Poland since the fall of Communism', 31:3 *East European Quarterly* (1997) pp. 330 *et seq.*

<sup>5</sup> K. Voltmer, 'Constructing Political Reality in Russia', p. 470.

<sup>6</sup> *Lingens v. Austria*, Commission's report, 11 October 1984, Series A, No.103, para. 74.

<sup>7</sup> A. Simonov, 'Pamyatnaya zapiska Komissii po pravam cheloveka pri Prezidente Rossiyskoy Federacii o svobode sredstv massovoj informacii', *Vzglyad: Yezhekvartalnyy analiticheskiy byulleten' Fonda zachity glasnosti* (March 2004) (my translation from Russian).

thinking from ‘service to the people’ to ‘survival’.<sup>8</sup> Instead of carrying about its reputation and protection of public interests, the press is ready to take on every well-paid story just to survive. In the end, the press becomes the opposite of what we are expecting it to be – instead of being public informer and public watchdog, it becomes a puppet in the hands of people with money. Moreover, society develops in the wrong direction, when the media does not take social responsibility. The issue of human rights gets pushed to the background and becomes less important in politics and in people’s life.<sup>9</sup>

It is a common assumption that the media has the power to change the situation in the country and affect the public opinion. However, the interesting question is who controls this power. Is it the journalist who actually writes the article or is it the owner of the media outlet or the government? Are there any other pressures on the content of the information? Alternatively, is the government so closely connected with the owners that it is impossible to draw a clear line between these two driving forces? What is the media situation in Russia today, more than a decade after the fall of the Soviet Union? What has changed and is it for the better? Is the legislation on media sufficient and does the Russian law comply with the international human rights standards? These are some of the questions that I will discuss and will try to answer in my thesis.

## 1.1 Objective

The objective of this thesis is to look at Russian media from four different perspectives: journalistic, ownership, consumer and legal. Moreover, based on these perspectives, I will suggest the desirable changes to be done in Russia in order the country to promote free media. The main question of the thesis is what role Russian media can play in the state’s transition towards democracy.

## 1.2 Delimitations

I have focused my study of the Russian media on four perspectives. I chose to look at the four main factors that influence the Russian media. These factors are journalists, media owners, consumers and legislation, both national and international. However, the situation in the country is much more complex and there are many other factors that affect it. For example, education, demographical situation, living conditions and geographical situation all affect the work of the media. Due to the lack of space, these factors are outside the scope of this work.

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<sup>8</sup> A. Simonov, ‘Pamyatnaya zapiska Komissii po pravam cheloveka pri Prezidente Rossiyskoy Federacii o svobode sredstv massovoj informacii’.

<sup>9</sup> *Ibid.*

## 1.3 Theory

No extensive research has been done recently on the media's situation in modern Russia. It seems that the turbulent development of Russian media immediately after the fall of the Soviet Union attracted much more attention than the later more stable period. Therefore, I have used the academic materials like Linda Jensen's article 'The press and power in the Russian Federation' and Katrin Voltmer's article 'Constructing Political Reality in Russia' mostly for the historical overview of the media development. These sources present the analysis of the development during the last years of the Soviet Union and the early 1990s. The main conclusion is that the government was not really sure how to handle the more independent media. Moreover, the government was dependent on good relationships with the media and did not dare to limit the media's freedom during that period.

For the analysis of recent situation, I was relying on country reports made by different non-governmental organisations (NGOs) monitoring the situation in Russia. I have used many of their reports, especially the reports of well-established NGOs like Human Rights Watch and Article 19. However, it was very hard to find reliable statistics in Russian sources. One of the reasons is that the adequate information from many Russian regions is missing. People are afraid to tell the truth and the authorities do everything possible to prevent information to come out. Nevertheless, the information that has come to the knowledge of human rights organisations tends to be accurate.

All country reports, *e.g.* World Reports by Human Rights Watch and Annual Reports by Reporters without Borders and by other international NGOs, show the frightening picture of conditions in which journalist have to work. All the materials point out the threats and the pressure from different directions that are parts of the media's every day life. These materials focus mainly on presenting the actual situation rather than giving any analysis. The reports give the information mostly on the different kinds of pressure and threats that occur.

In my attempt to analyse as current information as possible, I often had to rely on the information from newspapers. As this is not an academic source but merely general information, I have critically considered the newspaper articles referred in this work.

In order to get an overview, I had to broaden my research to other areas than only the judicial literature. I have looked a lot at the publications by journalists and for journalists. As most of the organisations and the writers are advocating the rights of journalists and freedom of the media, these publications are usually biased to some degree. However, in a country like Russia it is impossible to struggle for the free media and not to be critical of the government, so this bias must be accepted. Mainly, these materials are focused on the professional journalists' discussion of the present situation and what can be changed to safeguard the freedom of the media and how to



protect journalists. Anew, the main conclusion was that the situation is terrible and something must be changed, but there is now consensus in how and what should be changed. International organisations like Council of Europe have a more broad perspective on the changes compared to national NGOs like Glasnost Defence Foundation.

When discussing the legislation I have used comments to Russian law on the media published by Glasnost Defence Foundation and the case-law of the European Court on Human Rights. The main conclusion from this material is that the Russian legal system does not comply with international standards of protection of freedom within the media.

I could find no reliable information supporting an alternative view. Both Western and Russian authors agree that the media in Russia is far from being free. In general, all writers, as *e.g.* Herdis Thorgeirsdóttir in her PhD thesis, agree that the media plays a very important role in a democratic society, therefore the media must be granted more rights than an ordinary person and these rights must be fully protected. The main international bodies, *e.g.* United Nations, declared that the freedom of expression is one of the basic rights and could be restricted only in very few situations for the public good. However, there are different opinions on what changes should be done to promote the development of Russian media into the really free media.

## 2 Democracy, Human Rights and Media

Democracy (literally ‘the common people rule’) is a system where the majority of the society members control the authorities. Democratic government aspires to serve under ‘the people’ rather than ruling over them. Democracy implies individual liberty and individual responsibility of the citizens. It extends the concept of distributed power all the way to individuals. There are several international treaties that protect political rights. Article 21 of the Universal Declaration of Human Rights grants everyone “the right to take part in the government of his country”. Moreover, article 21 paragraph 3 states that “[t]he will of the people shall be the basis of the authority of government” and the will should be expressed in elections.<sup>10</sup> In *Gauthier v. Canada*, the Human Rights Committee declared that “citizens, in particular through the media, should have wide access to information and the opportunity to disseminate information and opinions about the activities of elected bodies and their members”.<sup>11</sup> Obligations declared by the International Covenant on Civil and Political Rights not only grant the rights to citizens,<sup>12</sup> but through positive measures the state has the duty to ensure the actual opportunity to exercise political rights.<sup>13</sup> Under article 10 of the European Convention on Human Rights, the political debate enjoys the highest protection.<sup>14</sup> The European Court for Human Rights stated that the freedom of expression constitutes one of the essential foundations of a democratic society.<sup>15</sup> Hence, exercising of rights and the possibility to have accurate information is a basis for a democratic society. The citizens cannot be afraid to express their opinions and to participate in a public debate. However, one should not forget that democracy is not a panacea for all types of the society. We have a vague understanding of how democratic developments affect non-Western, non-liberal societies.

Democracy ascribes the ultimate responsibility to the public, but a precondition for this is the presumption that people have adequate information. Information and communication have crucial importance for the development of the society and the individuals. The media contributes in a very important way to the public debate. Therefore, the freedom and the pluralism within the press are a precondition for democratic accountability and responsibility. The journalists must operate as the ultimate source of

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<sup>10</sup> *Universal Declaration of Human Rights*, UN General Assembly Res. 217(A), 10 december 1948, UN GAOR, 3<sup>rd</sup> Sess., UN Doc. A/RES/3/217.

<sup>11</sup> *Gauthier v. Canada*, Communication No 633/1995, U.N. Doc. CCPR/C/65/D/633/1995 (5 May 1999) para.13.4.

<sup>12</sup> *International Covenant on Civil and Political Rights*, UN General Assembly Res. 2200, 16 December 1966, 999 UNTS 171.

<sup>13</sup> M. Nowak, *U.N. Covenant on Civil and Political Rights, CCPR Commentary* (Norbert Paul Engel Verlag, Germany, 2005) p. 569.

<sup>14</sup> See Supplement B.

<sup>15</sup> See also below Chapter 7.3.

information. In order to fulfil their task, the media deserves a high standard of protection. There is a need for reinforcement of the safeguards of the journalist's freedom of expression. However, the media is only liable in terms of contestable content, but does not have to answer to any standards whether it measures up to the role of public watchdog.

From the other side, democracy is a necessity for human rights. There can be different governments that can promote human rights, but at least in today's world, only democratic government can ensure fulfilment of requirements, which international human rights obligations put on a state. The role of the government is crucial for implementing human rights. International human rights norms are not self-enforcing and require a lot of action in order to bring them to the domestic level. Therefore, it is possible to say that democracy is a necessity for human rights.

Freedom of expression and the right to information are fundamental rights.<sup>16</sup> The owners of these rights are the people, who also have the right to demand truthfulness and honesty from journalists. Neither public authorities nor the private sector should interfere. Liberal society is characterized by *e.g.* freedom of thought for individuals, limitations on the power of government and religion and a market economy that supports private enterprise. In liberal society, freedom of opinion and freedom of expression serve both the personal autonomy and self-realization of the individual and guarantee the democratic development of the society.

Human rights are also dependable on the media. Not only do people have to know what rights they have and how they can ensure their rights, but people also have to know their responsibilities that come with the rights. Education plays an important role in this aspect. However, the role of the media is as important. Moreover, the media acts as one of the guarantors that human rights are ensured. If there is a violation, the media has the means to make the information widely spread and create a debate, which puts pressure on the authorities to change the situation. The media must act as a public watchdog.

Both democratic governance and human rights are crucial for the media. In a totalitarian state, the media is a part of the propaganda machine. In such a state human rights, *e.g.* freedom of expression and freedom of assembly are usually not ensured and the media cannot fulfil its objective as a public watchdog. Journalists cannot work freely and write independently. The media loses its credibility and people's trust.

Many international bodies are to some degree promoting democracy and human rights. The first time human rights were accepted officially and internationally in 1948 through Universal Declaration of Human Rights. Both United Nations and other international entities are active in human rights questions, however, in this thesis, the main perspective will be on the

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<sup>16</sup> Parliamentary Assembly Resolution 1003 (1993) *On the Ethics of Journalism*, Text adopted by the Assembly on 1 July 1993 (42nd Sitting) (Doc. 6854).

Council of Europe (CoE) and the European Convention on Human Rights (ECHR). The European Court of Human Rights (ECtHR) emphasised the need to protect the press as an institution in society.<sup>17</sup> Any measures that are taken against the media must be regarded in the light of the essential role played by the press as a public watchdog.<sup>18</sup> The ECtHR has held that the state must guarantee pluralism for the press to be successful in its role as a public watchdog.<sup>19</sup> Moreover, article 10 taken in conjunction with article 1 states that the state must secure the right of public to pluralism of views and content. The Committee of Ministers recommended to member states to secure adequate means for promoting the pluralist, free and independent media.<sup>20</sup> Conclusively, a member state of the Council of Europe has an obligation to ensure diversity of views. A member state could meet ECtHR's requirements of having the legitimate aim of securing the rights of others to a responsible press can be fulfilled with a legislation based on the article 10 § 2.<sup>21</sup> The free market and the regulation of property interests are not enough to secure the responsible media that is so essential for a democratic society. The ECHR does not allow that property interests would prevent the public watchdog in its purpose of enlightening the public.

Both printed press and broadcasting are expected to act as the public watchdog and influence the process of democratic opinion-formation.<sup>22</sup> Hence, that is why both are worthy of the safeguards that ECtHR's interpretation of article 10 gives them.

However, irrespective of what international society requires from a state and regardless how the media works, there can be a problem with the lack of interest among the public. One has to ask: how we can make people write and tell the truth when no one has a need for it?<sup>23</sup> Democracy implies that the public has the ultimate responsibility, but there is a presumption that people have adequate information.<sup>24</sup> However, what can one do when the public is not interested in the political debate and instead choose mind-dulling entertainment in the media? Consequently, democratically determined speech may not result in a pluralistic political agenda. The media must please those who run the show in order to survive. For example, the people in Russia are led by a man they have chosen. However, the

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<sup>17</sup> *Autronic AG v. Switzerland*, 22 May 1990, Series A no. 178, para. 47.

<sup>18</sup> *Ösgur Gundem v. Turkey*, 16 March 2000 RJD 2000-III, para.58.

<sup>19</sup> *Informationsverein Lentia and Others v. Austria*, 24 November 1993, Series A no. 276, para. 38.

<sup>20</sup> Recommendation No. R (2000)7 *On the right of Journalists not to Disclose Their Sources of Information*, Text adopted by the Committee of Ministers on 8 March 2000 (701<sup>st</sup> meeting of the Ministers' Deputies).

<sup>21</sup> H. Thorgeirsdóttir, *Journalism Worthy of the Name, Freedom within the press and the Affirmative side of Article 10 of the European Convention on Human Rights*, (Martinus Nijhoff Publishers, Leiden/Boston, 2005) p. 391.

<sup>22</sup> *Ibid.*, p. 393.

<sup>23</sup> L. Sigal, 'Zhizn ne po "piaru"! U SMI mnogo zaschitnikov, a kto zaschitit chitatelej?' *Vzglyad: Yezhekvartalnyy analiticheskiy byulleten' Fonda zachity glasnosti* (March 2004).

<sup>24</sup> H. Thorgeirsdóttir, *Journalism Worthy of the Name, Freedom within the press and the Affirmative side of Article 10 of the European Convention on Human Rights*, p. 349.

question is whether the people were able to make a well-informed choice.<sup>25</sup> When the people are not interested in the public debate, there is not much one can do right away. However, there is a possibility to change the public interests with time, both through education and through more professional and reliable media.

Moreover, some argue that in order to secure a free, independent and pluralistic media it is enough to have a well functioning economic market and maybe, at most, a competition law to break up monopolies.<sup>26</sup> However, the question remains whether the market is able to regulate the situation of the press. It took centuries for the western media to come to the relatively civilized level as it has reached today. The process cannot go too fast, but there is a possibility for slow changes of the situation bettering in the proper direction. There is an intimate interconnection between the quality of the press, people's reliability on it and the press' influence on the people. Whenever any of the factors changes, it affects crucially the price and hence the income of the media.<sup>27</sup> Therefore, competition and market economy is a necessary but far from sufficient component for the independent media. When meeting media mogul Rupert Murdoch, surprisingly, Putin has said that there might be a room for competition between the media outlets after all.<sup>28</sup> For Murdoch, the increasingly lucrative Russian television market is very attractive and is the one of the few, which is still beyond his global reach.<sup>29</sup>

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<sup>25</sup> A. Nivat, 'Russian Presidential Campaign Coverage', 5:1 *Harvard International Journal of Press/Politics* (2000) p. 92.

<sup>26</sup> Cf. C. R. Sunstein, *Democracy and the Problem of Free Speech*, (The Free Press, New York, 1993) p. 3.

<sup>27</sup> L. Sigal, 'Zhizn ne po "piaru"! U SMI mnogo zaschitnikov, a kto zaschitit chitatelej?'

<sup>28</sup> Keith Rupert Murdoch is generally regarded as the single most politically influential media proprietor in the world and is regularly courted by politicians in the United States, Britain and Australia.

<sup>29</sup> C. Belton, 'To Russia, with Longing', *Business Week*, 22 August 2005, p. 27.

### 3 History

In order to understand the current situation it is necessary to know and understand the past of Russia. First, past and present are closely linked together. Second, the decades of oppression have left deep traces in the life of people. Therefore, it is important to have a historical perspective for putting the thesis into context.

The table below gives an overview over the changes in the media during the last 35 years. It shows the main tendencies in the media system and the main opposition to every particular system. Moreover, the table gives a general idea how the role of journalists has changed. As will be discussed below, the early 1990s were the years when the media had the most freedom and independence. After 1996, the situation started to change towards governmental control of the media. The role of journalists followed the same tendency, the independency after the fall of the Soviet Union, was progressively restricted after 1996.

Tab.1. *Russia's media changes through last 35 years.*<sup>30</sup>

Period	1970-85	1986-90	1991-95	1996-2000	2000-
<b>Media system</b>	Propaganda machine.	Propaganda machine supporting reforms.	'Fourth Estate': independent corporation of journalists.	Media-political system, viewer society.	Mixed: enhanced role of state-controlled media and internet.
<b>Role of journalist</b>	Auxiliary.	Important, especially in the press.	Extremely important (in alliance with authorities).	In practice, auxiliary.	Auxiliary on TV, slightly more significant in press and internet.
<b>Changes in mass media</b>	As a result of its 70-year evolution under communism, the media is only a tool of propaganda.	Unprecedented growth in newspaper circulation, first live coverage of political events and news.	Media become fully independent of original state sponsors. Circulation falls because of high price of paper and delivery.	Sophisticated PR techniques. Mass media discredited by information wars. Satellite TV and internet. Segmentation of spheres of consumption.	State becomes dominant power centre, totally controlling symbolic reality. Partly compensated for by rapid growth of internet and growth of power of mass media.
<b>Opposition</b>	<i>Samizdat</i> , political jokes, foreign radio and press in Russian.	Radical <i>samizdat</i> and conservative communists versus radical democrats.	Communist newspapers, nationalist publications, publications of anarchist, <i>etc.</i>	Communist, nationalist and alternative publications, publications of human rights organisations, <i>etc.</i>	NTV and other mass media owned by Gusinsky until 2001. Alternative press and counter-culture on internet. Tendency to abandon politics.

<sup>30</sup> 31:2 *Index on Censorship* (April 2002) pp. 22 *et seq.*

### 3.1 The Communist Era

In the beginning of the communist era, the media's role was not only to be collective 'propagandist, organizer and agitator', as Lenin put it, but also to have a purpose of education and information spreader between the different layers of the party.<sup>31</sup> The media, as everything else in the country, had to do what it was assigned to do by the leaders. The journalistic way of working in the Soviet Union differed a lot from the western ways. In Russia journalists lay emphasis on writing more like in essays, characterized by an in-depth discussion of a particular subject. The author aims at the emotional attitude of the reader and to reach it, he would express his personal thoughts and emotions. Therefore, after many years of suppression, the freedom of the press meant the freedom to express thoughts and emotions openly, rather than the audience's right to information.<sup>32</sup>

During the communist era, people started to use unofficial channels of communication. It was both word-of-mouth communication and academic and religious publications, as well as *samizdat* 'self-publishing' (typing out copies on private typewriters and circulating them among friends) that started to develop. In these *samizdat* publications, authors told the 'unacceptable' side of the situation and parodied the system through metaphors and allegory, even though they ran the risk of being banned by the state. Therefore, in many ways, writers took the role of journalists of enlightening the public and the line between journalist and writer was blurred. Still, the Russian understanding of writer and journalist differs from the western definition. Writers enjoy more social and political influence, than journalists do. Among the public, literature enjoyed considerable prestige.<sup>33</sup> In the 70's, the party left almost the entire policing of literature to writers themselves. It even started to be possible to protest against the suppression of free speech. These protests could lead to some unpleasant sanctions, but was no longer a threat to life.

### 3.2 The Time of Gorbachev

Transformation of society and, in particular, the press was started in the early 1980s by Michail Gorbachev.<sup>34</sup> In January 1986 on the Twenty-Seventh Party Congress, he introduced the notion of *glasnost* (openness, voiceness, transparency or publicity).<sup>35</sup> This notion was embedded in a comprehensive programme of political, economical and social reforms. It affected both the situation in respect to civil society and the media. However, Gorbachev never intended to grant the press a truly independent

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<sup>31</sup> A. Inkeles, *Public Opinion in Soviet Russia: A Study in Mass Persuasion*, (Harvard University Press, Cambridge, 1950) p. 135.

<sup>32</sup> F. H. Foster, 'Izvestiia as a Mirror of Russian Legal Reform: Press, Law, and Crisis in the Post-Soviet Era', 26 *Vanderbilt Journal of Transnational Law* (1993) p. 742.

<sup>33</sup> G. Hosking, 'Thirty Years on', 31:2 *Index on Censorship* (April 2002) p. 10.

<sup>34</sup> K. Voltmer, 'Constructing Political Reality in Russia', pp. 471.

<sup>35</sup> L. Jensen, 'The press and power in the Russian Federation', 47:1 *Journal of International Affairs* (Summer 1993) p. 100.

status. He considered the press as an instrument for propaganda, but in his case, propaganda for more liberal goals of perestroika (restructuring of the Soviet's economy and bureaucracy). Through this, the media got a chance to reflect on a new plurality of questions emerging outside of the party-state structures.<sup>36</sup> Larisa Bogoraz, a dissident in the Soviet times and a human rights defender, writes in her article: "I've no idea if he knew he'd started a process that was unstoppable and that must lead to complete freedom of information or end up in a return to the past..."<sup>37</sup>

However, nobody knew how much openness was too much. Journalists started to use the method of 'trial and error' and cautiously feel where the line of *glasnost* went. One of the largest changes was the transition from official, governmental to unofficial, 'people on the street' commentaries in the news. It allowed criticism without hard sanctions towards the journalists. This change made a noticeable contribution to the blossoming of *glasnost*.<sup>38</sup>

From 1988, the media, especially the central press, started to develop a more independent way with less loyalty to Gorbachev.<sup>39</sup> Television was easier to regulate than the printed media, but by mid-1989, even television was clearly out of the state control.<sup>40</sup> However, already from the beginning, the freedom of the press was threatened by both political and economic forces. The control over the media was needed for getting advantages from competitors in the struggle for influence and power.<sup>41</sup> The struggle was intense and media became just a tool in the political play.

Legally, there was no right to freedom of speech in the country until 1990. This right was established first in 1990 with the law 'On Printed and Other Means of Mass Communication'.<sup>42</sup>

### 3.3 Development of Russian Press in the Post-Soviet Period

During the 1990s the development of the media in Russia can be described mainly as chaotic. However, there were some general tendencies. The development started with the media becoming independent from the government. The journalists did not know what they were expected to do and the leaders did not know how they should handle the media. After the economic collapse in 1992 the financial issues appeared very clearly and many media outlets became dependent on non-governmental economical sources. By the end of the 1990s the state started making attempts to retain

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<sup>36</sup> R. Simon, 'Media, Myth and Reality in Russia's State-Managed Democracy', 57:1 *Parliamentary Affairs* (2004) p.170.

<sup>37</sup> L. Bogoraz, 'Living in the Movies', 31:2 *Index on Censorship* (April 2002) p. 16.

<sup>38</sup> L. Jensen, 'The press and power in the Russian Federation', p. 101.

<sup>39</sup> K. Voltmer, 'Constructing Political Reality in Russia', p. 472.

<sup>40</sup> L. Jensen, 'The press and power in the Russian Federation', p. 103.

<sup>41</sup> K. Voltmer, 'Constructing Political Reality in Russia', p. 472.

<sup>42</sup> Law of the USSR *On Printed and Other Means of Mass Communication* of 12 June 1990.



the power over the media and with Putin coming to power, the media were put more and more under governmental control.

### 3.3.1 Early 1990s

Russia's transition from the communist time has not been easy and smooth. Besides the difficulties of the transition itself, the development of the market and the political and economic transformation had three different historical problems:<sup>43</sup>

- Russia has historically been a semi-peripheral state to the Western economies and usually was behind the advanced capitalist countries in economic and social developments.
- The dependence on the central power as a mechanism for pushing the development forward.
- The weakness of civil society.

The notion of civil society in this context means a system of groups independent from government. These groups are organized as a source of political or social power and give the people possibility to participate in "social life that takes a person beyond that which is merely selfish and to a recognition of what promotes the common good".<sup>44</sup> The development of an active pluralistic associational life in Russia was never encouraged.<sup>45</sup> The absence of a strong civil society is especially tough on the media. In such a situation, the media becomes too governmental bounded or is under constant pressure to stabilise and reinforce the state.<sup>46</sup>

Freedom of expression in the media was a relatively new concept for Russia. At the time of the fall of the Soviet Union, journalists did not know what it meant. During the Soviet era, the media outlets had only one purpose: to spread the Kremlin propaganda. The government had control of the media through ownership or subsidization of the papers, financing the printing and the supervision of distribution. The newspaper-readers had learned to read the newspapers back to front, because in the beginning the paper consisted of the propaganda and all the interesting events and hints of either political or social nonconformity were to be found in a couple of lines at the back.<sup>47</sup>

The official end of the Communist Party's censorship and informational monopoly came in early 1990s with Gorbachev's sign of an all-Union law

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<sup>43</sup> R. Simon, 'Media, Myth and Reality in Russia's State-Managed Democracy', p.169.

<sup>44</sup> G. E. Hudson, 'Civil Society in Russia: Models and Prospects for Development', 62:2 *The Russian Review* (April 2003) p. 213.

<sup>45</sup> S. Mohsin Hashim, 'Putin's *Etatization* Project and Limits to Democratic reforms in Russia', 38:1 *Communist and Post-Communist Studies* (2005) p. 40.

<sup>46</sup> R. Simon, 'Media, Myth and Reality in Russia's State-Managed Democracy', p. 169.

<sup>47</sup> L. Jensen, 'The press and power in the Russian Federation', p. 99.

on the press.<sup>48</sup> In 1991, it almost seemed like the transition from state owned and controlled media to the freedom of expression and information happened in a matter of days. It was time to define the freedom of the press. In 1993, even though the censorship no longer existed, the government was still intolerant towards ‘unwanted news’. Once fully in control, the government now had to find other techniques to influence and pressure the media and, through it, the public. In December 1992, Boris Yeltsin issued a decree forming a Federal Information Center for the Russian Federation. The Center’s purpose was to provide information about reforms to the press. From the start, journalists were suspicious to the formation of the Center. They believed that the information that was coming from there would be reported according to the Yeltsin political line and in that way limit the freedoms of the press.<sup>49</sup> In 1993, the government adopted two decrees on the mass media.<sup>50</sup> The first, ‘On Defence of the Freedom of the Mass Media’ stated that the laws and the president himself would defend the independence of the mass media.<sup>51</sup> Even though Yeltsin’s intentions might have been purely defensive against probable actions by the Parliament, in reality, the decree hardly respected the independence of media. The second decree, ‘On the Guarantee of Informational Stability and Requirements for Television and Radio Broadcasting’ went even a step further. It laid out the necessary ‘minimal standards’ of ‘informational objectivity’ and ‘professional responsibility’ in order to make television and radio broadcasts acceptable.<sup>52</sup>

The governmental view on the press was in itself a restriction of the freedoms. The control of media outlets was still considered as a vital tool for manipulating public opinion. The government believed that, based on historical precedent and financial quasi-independence of the press, it was its duty to control the media.<sup>53</sup> Although neither of the two decrees was immediately implemented, Yeltsin’s action confirmed only what the journalist already realized: they were just a vital tool in the crossfire between the president and Parliament. Later in 1993, the Parliament passed a resolution ‘On Measures to Ensure Freedom of Speech on State Television and Radio’.<sup>54</sup> Among other things, it abolished the Federal Information Center. Many journalists protested against the effort by the president and the Parliament to control the media, some were against only one side, but most

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<sup>48</sup> J. K. Chalaby, ‘The media and the formation of the public sphere in the New Independent States’, 11:1 *Innovation: The European Journal of Social Sciences* (1998) p. 76.

<sup>49</sup> G. Rosenkrans, ‘Since the end of the state-run press Evolution of Russian newspapers from Perestroika to 1998’, 28 *Journal of Government Information* (2001) p. 550.

<sup>50</sup> L. Jensen, ‘The press and power in the Russian Federation’, p. 120.

<sup>51</sup> Decree of the President of the Russian Federation *On Defence of the Freedom of the Mass Media* No. 376, of 20 March 1993.

<sup>52</sup> Decree of the President of the Russian Federation *On the Guarantee of Informational Stability and Requirements for television and radio Broadcasting* No. 377, of 20 March 1993.

<sup>53</sup> G. Rosenkrans, ‘Since the end of the state-run press Evolution of Russian newspapers from Perestroika to 1998’, p. 552.

<sup>54</sup> L. Jensen, ‘The press and power in the Russian Federation’, p. 121.

were against both sides. However, as many other laws in Russia, the resolution was never implemented.

In the time of Yeltsin, there were no serious attempts to obstruct or close down the more independent or oppositional media for three reasons.<sup>55</sup> Firstly, Yeltsin had very liberal views on the freedom of the press during the perestroika period. Secondly, the weakness of the Russian state immediately after the fall of Soviet Union affected the states possibilities to act. Thirdly, Yeltsin depended a lot on the support from the media, which were very powerful during the perestroika years. Therefore, Yeltsin did not dare to diminish the power of two major media owners: Vladimir Gusinsky, the owner of the first private national channel NTV, and Boris Berezosky, the owner of the first independent broadcast television station TV6.

The Constitution of the Russian Federation was ratified on December 12, 1993. In article 29, which follows the language of article 19 of UDHR, there is a guarantee for the freedom of expression. This article also guarantees free access to information, right to receive, seek, produce, and disseminate information and prohibition of censorship. However, even though the rights stated in the Constitution are important, they are not decisive for the situation in practice. There are other important factors as well.<sup>56</sup> Firstly, in the Constitution is unclear about what authority must regulate the media within Russia's 89 federal regions. Secondly, the economic climate in today's Russia allows the pressure on the non-friendly media through economic means.

Therefore, especially on paper, the governmental censorship no longer exists. However, the journalists also had also to face new obstacles. In order to survive, people working in the media had to change their views along with the wind.<sup>57</sup> A new, unknown, era of non-governmental censorship started. Without the financial support from the state, the media outlets had little choice but to start searching for other sources of income than sales. Many *oligarchs* saw their chance and invested in several newspapers.<sup>58</sup> With their income flowing from other sources, they were not so much interested in making profits out of the press. Instead, they were using the media to promote their own financial and political agendas.<sup>59</sup> Some journalists even expressed the concern that now the media was less free than it was before 1991. However, in order to limit the owner-dictated policy, some news publications made the step towards diversifying their source of income. In any case, the majority of news consisted of owner opinions, rumours and scandals that are driven by money instead of seeking for the reliable information and fair presentation of the ongoing events. All this resulted in public scepticism to everything that is presented in the media

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<sup>55</sup> R. Simon, 'Media, Myth and Reality in Russia's State-Managed Democracy', p.172.

<sup>56</sup> *Ibid.*

<sup>57</sup> Cf. C. O'Clery, 'Hold the Presses', 204:13 *New Republic* (1991) p. 16.

<sup>58</sup> See also below Chapter 3.3.2.

<sup>59</sup> G. Rosenkrans, 'Since the end of the state-run press Evolution of Russian newspapers from Perestroika to 1998', p. 552.

growing stronger and people starting to look more for entertainment than news.

### 3.3.2 Market Survival

After the fall of the Soviet Union, there were considerable changes in the role of literature in general and the press in particular. Literature was no longer a unique and prestigious cultural product. It became a commodity, a part of the market.<sup>60</sup> During so many years, the habit of being subsidised by the state created a false sense of security among the media.<sup>61</sup> Soon after the fall of the Soviet Union, the media discovered that independence meant a greater difficulty of surviving. In the beginning of the 'new era', the monopoly on the publication services and the effects of economic price liberalization nearly led to a collapse of large print media.<sup>62</sup>

Yeltsin's easygoing attitude to public life had also benefited the media – the media was relatively free.<sup>63</sup> Until 1992, journalists could experience more freedom in their choice of subjects. However, in 1992 an economic collapse in the country forced newspapers to raise prices in an attempt to compensate for the dramatic increase of the production costs. However, a newspaper could not simply increase the price without automatically increasing the production costs as the printer establish printing costs depending on the income of the newspaper.<sup>64</sup> For example, printing plants took 30% of a newspaper's cover price, independently of the amount of actual prints. Neither could advertising revenues provide a sufficient income for the survival of the media because of the underdeveloped production of consumer goods.

The country also did not have any good general schemes of allocation of financial resources and therefore all subsidies were granted very subjectively. The system was more as securement or a reward for the media's support. In this economically unstable situation, many networks needed to look for financial support and sponsors. The Russian press market attracted only a few western investors; instead, the *oligarchs* discovered the power of public opinion. *Oligarchs* are a group of post-Soviet tycoons, who initially gained their wealth through the exploitation of the legal grey area created by the liberalisation of the planned economy.<sup>65</sup> In return for political support, Yeltsin sold them large parts of the state economy for very low prices.<sup>66</sup> *Oligarchs* began to realise that media can be a very good supplement to their financial empires.<sup>67</sup>

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<sup>60</sup> G. Hosking, 'Thirty Years on', 31:2 *Index on Censorship* (April 2002) p. 12.

<sup>61</sup> K. Rogerson, 'The Role of the Media in Transitions from Authoritarian Political Systems: Russia and Poland since the fall of Communism', p. 5.

<sup>62</sup> *Ibid.*, p. 5.

<sup>63</sup> G. Hosking, 'Thirty Years on', p. 12.

<sup>64</sup> J. Morton, 'Building a Free Press in the Ex-USSR', 14 *Washington Journalism Review* (May 1992) p. 52.

<sup>65</sup> R. Simon, 'Media, Myth and Reality in Russia's State-Managed Democracy', p.170.

<sup>66</sup> G. Hosking, 'Thirty Years on', p. 12.

<sup>67</sup> K. Voltmer, 'Constructing Political Reality in Russia', p. 473

However, with the economic stability, the ownership by *oligarchs* brought many other problems. It affected both independence and the quality of newspapers. Most of the media made, and still make, no profit, so their ownership cannot be made on a profit-making motive and the *oligarchs* did not need the economic profit. For them the media was and still is a tool for control and to influence the public opinion and the political situation in the country in general.<sup>68</sup>

Despite the media's dependence in general on the financial empires, all of these big concerns usually have similar standpoints: they are against demonopolization and nationalization. It means that they will support the politics, which are favouring their interests and will not give the media a possibility to be fair to all politicians.<sup>69</sup>

### 3.3.3 Late 1990s

In order to keep Yeltsin in power and communists away from power during the presidential elections in 1996 the same tactics were used as were used during Soviet time.<sup>70</sup> Despite Yeltsin's easygoing attitude, it was he who restricted the rights of the media in 1999 by a decree where he established Mikhail Lesin as head of the special Press Ministry, which was responsible for licensing the media outlets. Lesin was criticised for his unfair approach to the stations with pro- and anti-Kremlin views.<sup>71</sup> At the press conference, when Yeltsin announced the establishment of the new Press Ministry, he said that it would not be a propaganda organ. However, many of its functions were the same as a propaganda organ.<sup>72</sup>

During the communist era, *Pravda* and *Izvestiya* were the two major national dailies, dominating the scene of printed media. However, local and regional newspapers also had large numbers of readers, but not in comparison to the national ones. After the fall of the Soviet Union, the situation has changed. The domination of national newspapers declined to the benefit of regional publications, which now hold around 80 % of the market.

The changes of market shares between the regional and national print media must be viewed in the context of the rise of national television networks. Television has become the main source of information for the majority of the population. Disregarding the expansion, the number of TV channels and newspapers varied a lot since 1995, affected by the financial circumstances and state approval.<sup>73</sup> During the Soviet time, more specific in 1980, two main TV channels started operating. Only in 1991, the Russian Republic

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<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

<sup>70</sup> A. Nivat, 'Russian Presidential Campaign Coverage', p. 92.

<sup>71</sup> R. Simon, 'Media, Myth and Reality in Russia's State-Managed Democracy', p.172.

<sup>72</sup> A. Nivat, 'Russian Presidential Campaign Coverage', p. 96.

<sup>73</sup> R. Simon, 'Media, Myth and Reality in Russia's State-Managed Democracy', p.171.

was granted its first channel – RTR. After the communist era, several new channels emerged: ORT, in which the majority of the shares were owned by the state, and NTV, the first private channel, owned by *oligarch* Vladimir Gusinsky. Another *oligarch*, Boris Berezovsky, owned 49 % of the ORT in the beginning, but he was forced to sell his shares to Roman Abramovich, who apparently had close ties to the Kremlin. One of the ORT journalists said that the station was “being handed to Putin like a gift”.<sup>74</sup>

### 3.4 The Era of Putin

Vladimir Putin came to power with the will to restore the power of the state. The strengthening of the Russian state was certainly needed. However, Putin’s action put the independence of Russia’s media more at risk than a decade before.<sup>75</sup> Some commentators even suggest that the transition to a democratic state has been reversed during the last years. Civil-rights groups argued that the country is moving fast back to the Soviet era. Some even say that Putin is introducing ‘modernised Stalinism.’<sup>76</sup>

When Putin came to power, he quickly showed that he would be less tolerant than Yeltsin to the decentralized power structure, composed by oligarchs with regional and municipal leaders.<sup>77</sup> To control the state and to centralize political power, Putin needed to control the media. The president’s attacks on the media with anti governmental views indicate clearly the direction of the political development in ‘new’ Russia.<sup>78</sup> In January 2001, Putin signed a law that facilitates further governmental control, especially in the provinces, where papers and broadcasts stations depend financially and in other ways on local administrations.<sup>79</sup>

The Kremlin argues that in order to stabilize the country there is a need for a firmer grip, especially after the chaotic time during the fall of communism and under the rule of Yeltsin. According to the government, it is most important to establish a sense of order and authority among the people, rather than to continue with a gradual prevention of chaos and with establishing respect for the law.<sup>80</sup> They mean that democracy is fine in itself, but in Russia, it must be controlled. Therefore, the media cannot be let free and must be heavily supervised by the state.

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<sup>74</sup> ‘Berezovsky Affirms Sale Of 49% Stake in ORT’, *The Moscow Times*, 12 January 200.

<sup>75</sup> K. Voltmer, ‘Constructing Political Reality in Russia’, p. 495; *See also* Reporters without Borders, *Russia – 2004 Annual report*.

<sup>76</sup> ‘A Reconditioned Model’, 360:8231 *The Economist*, (2001) p. 7.

<sup>77</sup> A. Jones, ‘The Russian Press in the Post-Soviet Era: a case study of *Izvestia*’, 3:3 *Journalism Studies* (2002) p. 370.

<sup>78</sup> S. Ricchiardi, ‘Out of the Past’, 23:4 *American Journalism Review* (2001) p. 48.

<sup>79</sup> *Ibid.*; *See also* International Helsinki Federation for Human Rights, *Human Rights in the OSCE Region: the Balkans, the Caucasus, Europe, Central Asia and North America, Report 2002 (Events of 2001)* (Agens-Werk, Geyer + Reisser, Vienna, 2002) p. 267.

<sup>80</sup> ‘A Reconditioned Model’, 360:8231 *The Economist*, (2001) p. 9.

## 4 Journalist Perspective

In this chapter, the situation for journalists in present Russia will be discussed. First, there is a discussion on who is to be considered as a journalist. Second, there is an overview of their situation in Russia and what difficulties they face. The chapter will discuss also the possible future changes in the journalist role, especially when the fast development of New Information Technologies (NITs) takes place. Finally, there is a discussion in what direction the journalists would like to change the development and whether they are able to achieve it.

### 4.1 Who Can be Called a Journalist?

Article 2 § 9 of the Mass Media Act states the definition of ‘journalist’ as follows: “the journalist shall be understood to mean a person who edits, creates, collects or prepares messages and materials for the editor's office of a mass medium and is connected with it with labour and other contractual relations or engaged in such activity, being authorized by it”.<sup>81</sup> Accordingly, the notion of journalist contains two criteria. The first one is very broad. It includes not only reporters, but also the staff who is engaged in the production of the material. Professional status of journalist encompasses even the regular staff of the editor's office.<sup>82</sup> The second condition states the relationship between the editor's office and the employee. This relationship is required, but it is not necessary to mean a permanent employment. The Media Act does not require the journalist to be a member of any union or to have any specific education.<sup>83</sup> However, the media should be registered at the Ministry of the Russian Federation on Affairs of Press, Tele-Radio Broadcasting and Means of Mass Communications or at its representatives in the regions in order for the staff to be regarded as journalist in terms of law.<sup>84</sup> Accordingly, the absence of the specific education, work experience in this particular field, membership in a professional union and other personal or professional delineations cannot be a reason for the awarding of rights that are specific for a journalist or the recognition of a person as a journalist.<sup>85</sup>

On the other hand, journalism is also an exacting, full-time profession, demanding skills, special qualifications and devotion.<sup>86</sup> Moreover, journalists have a vast responsibility towards the society as a public

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<sup>81</sup> Law of the Russian Federation *On Mass Media* No. 2124-1 of 27 December 1991; *See also* below Chapter 7.2.

<sup>82</sup> G. Yu. Arapova *et al*, *Kommentarii k Zakonu RF o SMI*, Chapter V, article 47; *See also* article 52.

<sup>83</sup> *Ibid.* Chapter I, article 2.

<sup>84</sup> Regulation *On the Ministry of the Russian Federation on Affairs of Press, Tele-Radio Broadcasting and Means of Mass Communications* (my translation from Russian).

<sup>85</sup> G. Yu. Arapova *et al*, *Kommentarii k Zakonu RF o SMI*, V. N. Monahov (ed.), (Izdatelstvo “Galleriya”, Moscow, 2001) Chapter V, article 47.

<sup>86</sup> <sup>86</sup> H. Thorgeirsdóttir, *Journalism Worthy of the Name, Freedom within the press and the Affirmative side of Article 10 of the European Convention on Human Rights*, p. 215.

watchdog. Consequently, journalists are still debating whether they do constitute a 'profession', or not.<sup>87</sup>

## 4.2 Situation Today

Journalists in Russia today face many obstacles to properly performing their duty. They are essentially being persecuted and there is little protection for them in law or in practice.<sup>88</sup> These pressures lead to a climate of self-censorship.

### 4.2.1 Actions That are Taken Against Journalists

Russia is one of the most dangerous places in the world for reporters.<sup>89</sup> All methods are used, inside and outside the law, and with powerful effects in order to control the media.<sup>90</sup> It was no secret that, during the communist time, phones were bugged, reporters were trailed and KGB imprisoned reporters that could present a 'danger to the state.' Today journalists are persecuted in a different way.<sup>91</sup> The 'tax police' has the power to go through documents, confiscate equipment and make arrests. These invasions by tax-enforcement authorities have become a common punishment for those who are criticizing the government. Computer espionage is another and a relatively new way, to punish and frighten the media. Professional hackers break into the computer systems to spy on a story, they delete 'offensive' and harmful material and spread viruses designed to wipe out hard drives. In order to monitor internet use and email correspondence, the state has created seven law-enforcement bodies. There is twenty-four-hour surveillance potential because the service providers are required to link their computers to the Federal Security Service.<sup>92</sup> People even have to pay for their own surveillance because they have to buy a box that is required if you want to have access to the internet.

There is also more and more interference in the work of foreign journalists. In 2000, it was claimed that Russia must defend the informational market from foreign media and should restrict their access to information on the Russian territory.<sup>93</sup>

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<sup>87</sup> M. Foley, 'Lies, Lies & Damned PR', 33:2 *Index on Censorship* (April 2004) pp.76 f.

<sup>88</sup> See also below Chapter 7.

<sup>89</sup> W. Baldwin, 'The Precarious Right to speak the Truth', 173:16 *Forbes*, 16 August 200, p. 18; See also International Helsinki Federation for Human Rights, *Human Rights in the OSCE Region: the Balkans, the Caucasus, Europe, Central Asia and North America, Report 2003 (Events of 2002), Report 2004 (Events of 2003), Report 2005 (Events of 2004)*.

<sup>90</sup> *Ibid.*

<sup>91</sup> S. Ricchiardi, 'Out of the Past', p. 43.

<sup>92</sup> *Ibid.*

<sup>93</sup> R. Gorevoy, 'Doklad o narusheniyah prav SMI v Rossiyskoy Federacii s marta 2000 po mart 2004 goda', *Vzglyad: Yezhekvaralnyy analiticheskiy byulleten' Fonda zachity glasnosti* (March 2004).



Glasnost Defence Foundation, a well-known Russian NGO, has one of the best statistics about the disturbance of the rights of journalists. However, their statistics cannot be seen as absolute.<sup>94</sup> There are several reasons for that. First, one fifth of the country consists of informational blank regions. Information about actions against journalists are coming very seldom from these places, not because nothing is happening there, but because the authorities hold their media very tightened and are actually blocking the information. Journalists in these regions are often too scared to fight for their rights. Second, the journalists are in some situations silent about the cases of refusals to information and censorship because it can damage their reputation.

When an independent-minded journalist cannot be outlawed, they can be bankrupted.<sup>95</sup> A new way to silence the critics in Russia is to take them to court. There are approximately 8,000-10,000 lawsuits a year.<sup>96</sup> Both, the ECHR in article 6 and the Constitution in article 19, stipulate an independent judiciary. However, the executive branch appeared to drive judicial decisions in accordance with the Kremlin's line, although in the non-politicized cases the judiciary showed greater independence.<sup>97</sup> The vast majority of judges appear to be unwilling to challenge powerful local and federal officials who prosecute journalists, so these lawsuits often result in large fines for the journalists.<sup>98</sup> Selective criminal prosecutions and libel suits are often aimed at draining resources of a certain media network through heavy fines and lawyer's fees.<sup>99</sup> In several cases, the oligarchs got compensation in millions of dollars for moral damages.<sup>100</sup> For most media, that led to the bankruptcy or at least economic problems. Libel is still a criminal offence and is mentioned in the Russian Criminal Code.<sup>101</sup> The situation is completely different as compared to other European states and the Russian law seems to be in contradiction with the European practice.<sup>102</sup> It is also doubtful whether the Russian law is compatible with the article 10 of the European Convention on Human Rights. Moreover, domestic courts ignore the ECtHR's case-law.<sup>103</sup>

However, the economic aspect is not only important when considering lawsuits against the media. The judicial system in the country in general is corrupted and unreliable. What could be done when the courts cannot

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<sup>94</sup> *Ibid.*

<sup>95</sup> W. Baldwin, 'The Precarious Right to speak the Truth', 173:16 *Forbes*, 16 August 200.

<sup>96</sup> Parliamentary Assembly, Council of Europe, *Honouring of obligations and commitments by the Russian Federation*, 3 June 2005 (Doc 10568), p. 75.

<sup>97</sup> *Country Reports on Human Rights Practices - 2004; Russia*, Released by the Bureau of Democracy, Human Rights, and Labor; U.S. Department of State, 28 February 2005, p. 1.

<sup>98</sup> *Ibid.*, Section 2.

<sup>99</sup> S. Ricchiardi, 'Out of the Past', p. 43.

<sup>100</sup> L. Sigal, 'Zhizn ne po "piaru"! U SMI mnogo zaschitnikov, a kto zaschitit chitatelej?'

<sup>101</sup> *Russian Criminal Code*, No. 63-FZ, of 13 June 1996, Article 129 and 130. In article 298 there is a special protection against criticism for judicial officials.

<sup>102</sup> Parliamentary Assembly, Council of Europe, *Honouring of obligations and commitments by the Russian Federation*, p. 76. para. 391.

<sup>103</sup> A. Simonov, 'Pamyatnaya zapiska Komissii po pravam cheloveka pri Prezidente Rossiyskoy Federacii o svobode sredstv massovoj informacii'.

guarantee a fair decision?<sup>104</sup> There must be a way to keep journalists responsible and favouring good journalism. However, when one cannot rely on judicial decisions there should be alternative means to regulate the situation. Could it be a half-governmental organisation? Will it have enough credibility and power?<sup>105</sup>

## 4.2.2 The Existent Protection

There is very little protection for journalists today neither from the government in practical and legal terms, nor from the journalists themselves. A union for journalists exists, but in practise, it is totally meaningless. All the attempts to get a professional code of ethics and to create an authority for self-regulation have failed. The media has no social responsibility and there are no forms and methods to introduce it.<sup>106</sup> In the attempt to come to a solution to the problem, journalists wrote and distributed 'Journalists' instructions' among the deputies of the Duma, Russia's lower house of parliament, in November of 2003.<sup>107</sup> The objective of this document was to tell the People's Deputies that journalists' society would support those candidates who promised to follow a certain political agenda. Among other demands, there was a requirement to protect the Mass Media Act, in particular its parts on the protection of the freedom of expression and protection from censorship; to continue with privatization of governmental editor's offices, radio broadcasters etc; to exclude from the criminal law arrests and detention as punishment for slander, insult or libel. Unfortunately, this attempt did not change the situation.

However, the most hideous forms of attacks are carried out by hit men.<sup>108</sup> Journalists who write about corruption or penetrate the network of crime lords and autocrats are always targets. The worst situations have been recorded in the regions, for example, Vladivostok, Smolensk, Ufa, etc. The Russian government takes no action when journalists go missing or are killed.<sup>109</sup> For example, in Ukraine, the disappearance of journalist Gyorgi Gongadze in 2003 set off an outbreak of political crisis.<sup>110</sup> Vanishing of a cameraman Dmitry Zavadskii in Belarus resulted in the resignation of several politicians.<sup>111</sup>

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<sup>104</sup> L. Sigal, 'Zhizn ne po "piaru"! U SMI mnogo zaschitnikov, a kto zaschitit chitatelej?'

<sup>105</sup> *Ibid.*

<sup>106</sup> A. Simonov, 'Pamyatnaya zapiska Komissii po pravam cheloveka pri Prezidente Rossiyskoy Federacii o svobode sredstv massovoy informacii'.

<sup>107</sup> *Ibid.*

<sup>108</sup> S. Ricchiardi, 'Out of the Past', p. 45; *See also* Reporters without Borders, *Russia – 2004 Annual report and Russia – 2005 Annual report*.

<sup>109</sup> N. Nim, 'Zhurnalist i pravozachitnik: takoy dushevnyy i tvorcheskyy soyuz mozhet vernut v obchestvo cennost' grazhdanskoy otvetstvennosti', *Vzglyad: Yezhekvartalnyy analiticheskiy byulleten' Fonda zachity glasnosti* (April 2004).

<sup>110</sup> Media Unions, *Practicing Journalism is Lethal in Ukraine, The Terrible Truth*.

<sup>111</sup> Radio Free Europe Radio Liberty, *Belarus Prosecutor Reopens Probe into Russian Cameraman's Disappearance*, 12 April 2005.

When there is no one who brings perpetrators to justice, all actions against journalists should be approved at least tacitly, at the higher echelons of the state bureaucracy.<sup>112</sup> The unwillingness of authorities to protect the media, as well as Putin's inaction sends a clear message to the media outlets not to be critical of the government.<sup>113</sup>

### 4.2.3 Journalistic Self-Censorship

The level of both self-censorship and censorship is rising. One of the most famous journalists critical of the government, Anna Politkovskaya, has called the media situation in Russia an 'information vacuum' in which journalists must pledge 'total servility to Putin'.<sup>114</sup>

In Russia, there is indeed an absence of a strong culture of independent and investigative journalism. However, the willingness of the journalists to work for very restrictive employers cannot be reduced only to the legacy of self-censorship during the communist era.<sup>115</sup>

There is pressure on journalists from various directions. Not only their life and health are at risk. There is also more direct guidance from the state: every week, top editors gather in Kremlin for a 'briefing' that can be viewed more as an instruction session.<sup>116</sup> As have been discussed above, there is financial and legal pressure.<sup>117</sup> Even situations where crimes or debts have been found or even invented are often used as pressure on the journalists. Besides that, there are several other important facts that influence the journalists.<sup>118</sup> First, there is a problem with the private ownership. It permits criticism within certain limits when it is suitable for the owner, but this criticism is curtailed if it threatens the foundations of the ownership. Second, the media is squeezed between the wills of oligarchs as they are fighting for the control and ownership of the parts of the media industry. Thirdly, the owner's possibility to control the editorial opinion of their outlets indicates that social interests are still unable to influence the press.

The media today is much more diverse than it was during the communist era. However, the expansion of the number of national networks did not affect the extension of the subjects and opinions in the media. The Soviet tradition of self-censorship continued.<sup>119</sup> There are plenty of good and intelligent journalists in the country, but only few of them go against the official line on the big issues. The main part of journalists avoids a clutch of taboo topics such as the war in Chechnya, human rights abuses, corruption

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<sup>112</sup> B. Timoshenko, 'Pressu "mochat"'. *Pravohraniteli besdeystvuyut*, *Vzglyad: Yezhekvartalnyy analiticheskiy byulleten' Fonda zachity glasnosti* (April 2004).

<sup>113</sup> S. Ricchiardi, 'Out of the Past', p. 48.

<sup>114</sup> R. Segonds, 'Beslan – A bad day for Russia & its media', *Index on Censorship*.

<sup>115</sup> R. Simon, 'Media, Myth and Reality in Russia's State-Managed Democracy', p.183.

<sup>116</sup> 'A Reconditioned Model', 360:8231 *The Economist*, (2001) p. 7.

<sup>117</sup> See also above Chapter 4.2.1.

<sup>118</sup> R. Simon, 'Media, Myth and Reality in Russia's State-Managed Democracy', p.183.

<sup>119</sup> *Ibid.*, p.171.

in the Kremlin, criticism of Putin and his retinue.<sup>120</sup> There is a vast selection of topics to write about and “[w]ith so many interesting things to cover, why risk trouble by going for the controversial ones?”<sup>121</sup>

In the West, investigative journalism has, for example, been recognized as one of the tools in fighting corruption, even though everywhere the corruption can infiltrate the media like any other institution in society.<sup>122</sup> In Russia’s corrupt society, even if there are journalists who actually search for the truth, no one takes them seriously and no one takes seriously the expression ‘journalistic investigation’.<sup>123</sup> Unfortunately, the situation is not getting much better soon and the loss of credibility of the media will continue.<sup>124</sup> All the journalists in Russia are considered to be corrupted. People’s respect for journalism as a profession disappears fast. However, there are some attempts to change the situation. For the last five years there has been a fight with the journalists who sell themselves and their word.<sup>125</sup> This fight is made by the media itself, within itself. Nevertheless, the cause is not to protect the reader and give accurate information, but it is to safeguard financial support and loyalty to the owners. The pressure of writing the right thing is put both on the editor and the journalist and often the decisions are made under pressure of punishment of firing.

However, experience had shown that when the news is of intimate concern to the audience, the controversial mass media is capable to mobilise public opinion. A good example is the *Kursk* accident.<sup>126</sup> After the *Kursk* people were critical of the government’s action of not doing everything possible to save the crew. This shows that self-censorship can be lifted not only by removing pressure of the government, but also by a change of climate amongst journalists themselves. This raises the question about professionalisation of the media.<sup>127</sup> What should be considered as good news and should journalists establish code of ethics?

The journalistic self-censorship is ubiquitous. Even in the most developed democracies, there are some taboos. A good example of the discussion of self-censorship is the recent scandal started when a Danish newspaper *Jyllands-Posten* published an article about self-censorship in the Western world, which contained a caricature presenting Prophet Muhammad as a stereotypical fundamentalist.<sup>128</sup> Certainly, some degree of self-censorship is desirable. A lot of ‘scum’ is stopped by such filter. However, a lot of other relevant information is prevented from becoming public as well. Especially

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<sup>120</sup> ‘A Reconditioned Model’, 360:8231 *The Economist*, (2001) p. 7.

<sup>121</sup> *Ibid.*

<sup>122</sup> H. Thorgeirsdóttir, *Journalism Worthy of the Name, Freedom within the press and the Affirmative side of Article 10 of the European Convention on Human Rights*, p. 233.

<sup>123</sup> L. Sigal, ‘Zhizn ne po ”piaru”! U SMI mnogo zaschitnikov, a kto zaschitit chitatelej?’

<sup>124</sup> A. Nivat, ‘Russian Presidential Campaign Coverage’, p. 96.

<sup>125</sup> L. Sigal, ‘Zhizn ne po ”piaru”! U SMI mnogo zaschitnikov, a kto zaschitit chitatelej?’

<sup>126</sup> I. Zasurskii, ‘Control by Other Means’, 31:2 *Index on Censorship* (April 2002) p. 19.

<sup>127</sup> See also below Chapter 4.4.

<sup>128</sup> BBC News, *Muslim anger at Danish cartoons*, 20 October 2005; See also *Jyllands-Posten* <[www.jp.dk/](http://www.jp.dk/)>

the self-censorship plays a crucial role in the countries with limited freedom of expression like Russia.

### 4.3 The Effects of New Information Technologies

In addition to this traditionally difficult climate to operate in, journalists also have to deal with new developments in the field of information. The changes in the media and the new development of alternative sources have changed the profession of journalists. Some assert that new development will make the journalists superfluous as an intermediary force in democracy.<sup>129</sup> An alternative view is that with the advent of NITs journalism has become more important than ever.<sup>130</sup> The journalists' task is to select 'newsworthy' information of the endless and chaotic online information flow and to put this selected information in context. However, the traditional media is still the main producer of news. The internet today is still a new 'distribution channel'.<sup>131</sup>

The development of the internet in Russia is still in its beginning. Enormous investments are required in order to bring Russia's telecommunications and cable infrastructure to the level of Western Europe. There has been a discussion about whether and to what extent the state should control the internet. Recently in China, Google agreed to block access to politically sensitive websites arguing that the company have to comply with local laws.<sup>132</sup> This act was heavily criticised by many human rights advocates.<sup>133</sup> However, Google argues that the restricted online access despite not ideal is still very valuable for the people of China. In Russia, the state has not yet tried to close down or diminish the activity of the more critical websites, at least in general. Instead, the state preferred encouraging the creation of websites with links to the government, thus providing 'good publicity' for the state.<sup>134</sup> The opposition to the internet resembles the opposition in *samizdat* during the Soviet era.<sup>135</sup> However, *Samizdat* promoted a single, coherent ideology, namely the western ideology. On the contrary, the internet presents not a single, but thousands of ideologies. It serves as a forum for interaction of different social models.

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<sup>129</sup> M. Dueze, 'Journalism and the Net: Thinking about global standards'. Napier University Journalism conference in Edinburgh, 4-5 September 1998, quoted in H. Thorgeirsdóttir, *Journalism Worthy of the Name, Freedom within the press and the Affirmative side of Article 10 of the European Convention on Human Rights*, p. 220.

<sup>130</sup> Cf. E. De Bens and G. Mazzoleni, 'The Media in the Age of Digital Communication' in D. McQuail and K. Siune (eds.), *Media Policy: convergence, concentration and commerce* (Sage Publications, California, 1998) p. 177.

<sup>131</sup> 'What is the Point?; Media giants', 363:8274 *The Economist*, (2002) p. 12.

<sup>132</sup> BBC News, *Google defends China search site*, 21 February 2006.

<sup>133</sup> BBC News, *Net firms criticised over China*, 15 February 2006.

<sup>134</sup> R. Simon, 'Media, Myth and Reality in Russia's State-Managed Democracy', p.171.

<sup>135</sup> I. Zasurskii, 'Control by Other Means', p. 21.

In summer 2002, the Duma approved a law proposal to ban ‘all forms of extremist activity’.<sup>136</sup> This law gives the notion of ‘extremist activities’ a broad definition. Many online freedom advocates fear that this law might give more power to police and increase the means to target the minority parties. Moreover, the law forces internet Service Providers to censor materials on their servers and remove or block ‘extremist sites’.<sup>137</sup> Too broad definition of extremism in this law might threaten for example, a perfectly legitimate activity, such as websites that oppose the war in Chechnya.<sup>138</sup>

The government continues to require internet service providers to make available dedicated lines to security establishment with the purpose of giving the police possibility to track private internet activities and communication.<sup>139</sup>

However, it is very hard for the government to control the internet and the internet serves as a guarantee that the liberalisation changes are irreversible.<sup>140</sup> The development of the Web together with the development of satellite television may in the future reduce the importance of national television. However, more and more often the question arises on the status of the internet. On its own internet is not a mass media, it does not have an intrusive character<sup>141</sup>. Instead, it is more a system of receiving and sending signals. It is not a scarce resource and neither a public good. Moreover, it is not publicly financed. On the other hand, the messages on the internet formally can be classified as mass communication and programs for distribution can be seen as mass media.<sup>142</sup>

## 4.4 Outlook from the Journalistic Perspective

The journalists should have larger freedom when they are writing. However, can Russian journalists handle it? The problem with many journalists is that they really do not know what is expected from them and what crucial role they play in a democratic society. In conclusion, there is a necessity to educate the journalists about their work as the Public Watchdog. This requires that journalism should become a profession with some requirements that a person must fulfil to become a journalist.

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<sup>136</sup> Law of the Russian Federation *On Counteraction Extremist Activity* No. 114-FZ, of 25 July 2002.

<sup>137</sup> Privacy International, *The Russian Federation*, 16 November 2004.

<sup>138</sup> Reporters without Borders, *Russia, The Internet under Surveillance*.

<sup>139</sup> *Country Reports on Human Rights Practices - 2004; Russia*, Released by the Bureau of Democracy, Human Rights, and Labor; U.S. Department of State, 28 February 2005.

<sup>140</sup> I. Zasurskii, ‘Control by Other Means’, p. 19.

<sup>141</sup> H. Thorgeirsdóttir, *Journalism Worthy of the Name, Freedom within the press and the Affirmative side of Article 10 of the European Convention on Human Rights*, p. 145.

<sup>142</sup> G. Yu. Arapova *et al*, *Kommentarii k Zakonu RF o SMI*, Chapter I, article 2.

In many other countries the majority of journalists would be fighting for their rights and freedoms, but in Russia, a country with traditional suppression of journalistic freedom, only a few have the courage and the will of fighting. There are journalists, like Anna Politkovskaya, who dare to fight for the truth and to be critical, disregarding the danger it brings to them and their family. Unfortunately, it is not enough for a fast development for the better, but at least these people are preventing a fast decline to the total governmental control of the past.

In the middle of the 90s, the development among Russian journalists clearly indicated the growing professionalisation. News became more factual, more timely and broader in the selections of topics.<sup>143</sup> Today, some of the newspapers have become more professional in a western sense, for example *Izvestiya*.<sup>144</sup> Other newspapers adjust their contents for the mass taste by exploiting sensationalism and presenting mainly soft news. Some argue that it is wrong to ask the question whether journalism has become more professional. The whole situation has changed. The preferences of the audience have become more westernized. New constraints of the media performance have emerged. For example, the ownership has shifted from the openly governmental to more private with less obvious official ties to the government. Therefore, it is very difficult to compare the level of professionalisation of journalists today and during the communist era. In addition, a change of the criteria for identifying good news is needed.<sup>145</sup>

In conclusion, there is a need of both internal and external changes. Internally, more professionalism is desirable from journalists as well as their awareness of their role as a public watchdog. Moreover, there is a need for a closer cooperation between journalists so they are able to claim their rights as a strong professional group. Externally, there is a need to stop the harassment by the government and to provide journalists with an active protection both legally through legislation and judicial system and administratively, for example, during the registration process.

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<sup>143</sup> K. Voltmer, 'Constructing Political Reality in Russia', p. 469.

<sup>144</sup> *Ibid.*, p. 494.

<sup>145</sup> *Ibid.*

## 5 Media Owner Perspective

One could say that the media owners are the actors with the most power over the content of the news, especially in a country with limited protection of freedom of expression. Therefore, it would be easy to say that the owners bear the most responsibility for a free media. However, the situation in Russia is not that simple. The owners are pressed from different directions and the most difficult burden is the economical pressure.<sup>146</sup> The logic is straightforward: to survive one needs money. Where does the money come from? There is a question to what extent media can be free when it has a demanding sponsor.

### 5.1 Situation Today

It is hard to talk about the free media in Russia. It is estimated that 80 % of the newspapers are under state control and remaining 20 % devoted to specialties, such as sports and advertisement.<sup>147</sup> Almost all printing houses are under governmental control. In addition, only around 10 % of TV and radio transmitters are more or less free from it.

A lot of the media cannot survive economically or are shut down and when there is a reduction among the distribution channels, the programs and their contents become more unified. For example, on the central TV stations the programs are made by a specific pattern.<sup>148</sup> The regional news has been shortened, which gives the regional authorities the possibility for a better control of the contents. More and more political debates and analytical programs are first recorded, before they are released on air. It makes the regulation of the content easier.

#### 5.1.1 Competition

There is no fair competition on the press market today due to the biased governmental support to the certain media outlets in the form of economical benefits and even 'free' newspapers.<sup>149</sup> This governmental support is usually realised not through the direct funding by the government, but through the ownership by companies like Gazprom, where the government is the major shareholder, or through the ownership by *oligarchs* close to the Kremlin like Roman Abramovich.<sup>150</sup> Despite different ownership, the pressure to present 'right views' remains the same.

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<sup>146</sup> Cf. *Country Reports on Human Rights Practices - 2003; Russia*, Released by the Bureau of Democracy, Human Rights, and Labor; U.S. Department of State, 25 February 2004, Section 2.

<sup>147</sup> S. Ricchiardi, 'Out of the Past', p. 46.

<sup>148</sup> A. Simonov, 'Pamyatnaya zapiska Komissii po pravam cheloveka pri Prezidente Rossiyskoy Federacii o svobode sredstv massovoj informacii'.

<sup>149</sup> Y. Vdovin, 'Sovmestimy li gosudarstvennye SMI s demokratiey?', *Vzglyad: Yezhekvartalnyy analiticheskiy byulleten' Fonda zachity glasnosti* (April 2004).

<sup>150</sup> *World Report 2001, World Report 2002 and World Report 2003, Russian Federation*, Human Rights Watch; See also above Chapter 3.3.3.



Governmental and non-governmental media have different prerequisites. Everyone wants to beat its competitor, but the starting points are different. When NTV, TV-6 and TV-S were still functioning, even governmental channels like RTR and ORT tried to correspond with them.<sup>151</sup> Today, the quality has changed for the worse. It is very hard to get the current news about events in the country. Still, the public can get all the news about for example the situation in Iraq. If the situation will not change, the governmental media will push the private media out of the market, because of their different prerequisites. Journalists, especially in small regions, will not have any other opportunity than to work for the government.<sup>152</sup> In the state with purely governmental media, there can be neither a democracy nor any fair competition between different media outlets. Moreover, there will be no possibility for the public to have preferences. Instead the choice is controlled by the government.<sup>153</sup> This affects the democratic demand for pluralism within the media not only as the range of views presented but also as a variety of different media outlets.

### 5.1.2 Requirement of Profit-making

Everywhere in the world, in order to survive economically on the market, the media must be making a profit. There is a rule that not less than 40 % of the space of a printed media, which is not specialized in advertising, must be commercials, but it cannot be more than 50 %.<sup>154</sup> If the newspaper works according to this rule, the newspaper can be seen as quite independent. However, in Russia, instead of selling space for commercials, many media outlets has sponsors *i.e.* owners that the media must be loyal to. There is hatred among both journalists and editors toward advertisement in the press.<sup>155</sup> Journalists claim that it is not their job, and in a way, they are right. It is not their job to collect advertisement. Nevertheless, it is a necessity in order to survive and to be relatively free.

However, in a country where everyone has become very business-minded, some media outlets without a rich sponsor have ambitions to make fast money with minimal moral responsibility.<sup>156</sup> This approach impairs the quality of news and devaluates the public trust in the media.<sup>157</sup>

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<sup>151</sup> Y. Vdovin, 'Sovmestimy li gosudarstvennyye SMI s demokratiey?'

<sup>152</sup> *Ibid.*

<sup>153</sup> *Ibid.*

<sup>154</sup> V. Radzinovich, 'Monolog o Rossiyskoy Presse', 2 *Vzglyad: Yezhekvartalnyy analiticheskiy byulleten' Fonda zachity glasnosti* (2004).

<sup>155</sup> *Ibid.*

<sup>156</sup> L. Sigal, 'Zhizn ne po "piaru"! U SMI mnogo zaschitnikov, a kto zaschitit chitatelej?'

<sup>157</sup> *See also* below Chapter 6.1.

## 5.2 Outlook from the Owner Perspective

The analysed information sources allow for media owners to be divided into rich oligarchs whose aim is to promote favourable for them views and ‘profit-making-by-any-means’ owners with usually very low moral standards. Certainly, there are some exceptions but they simply confirm the rule.

Is it a good situation for the owners or should it be changed? In today’s Russia, the media owners depend on the government, both economically and administratively. Nevertheless, the government depends on the media as well. The media’s reputation and influence on the people is important for the future development of the media, but it is also indirectly very important for the government. Hence, it should be possible for both parties to reach a win-win situation. In case the economical situation of the media becomes more stable, *e.g.* through the unbiased governmental funding, the media would have a chance to be more objective.<sup>158</sup> This will give the media the public respect. With more public support the media becomes more influential.

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<sup>158</sup> See also below Chapter 9.3.

## 6 Consumer Perspective

The economic situation of the majority of Russian population is getting worse. People cannot afford getting information from different media outlets, especially expensive ones like internet and some newspapers. In this situation, the power of television is increasing dramatically as it is the cheapest media outlet that reaches all social groups in all regions. Moreover, with the declining quality of news in the media, the public is getting more and more sceptical and chooses to turn to the light entertainment. Furthermore, Russian people had never the real possibility to change their social situation and in general, they are not used to fight for their political and economic rights.

### 6.1 Situation Today

During the last years economic growth stagnated and inflation remained high, despite a favourable foreign trade situation. Many Russians found it extremely difficult to get by because the real monthly average wage grew only 11 %, while prices on necessities increased by 15-31 %.<sup>159</sup> In this, for the public, hard economical situation the media has to survive. Nevertheless, when people do not have money to buy the necessities, how can they afford newspapers?

However, not only the difficult economical situation of the buyers affects the media. In today's Russia, the press is losing not only governmental trust but also the people's trust.<sup>160</sup> The level of credibility is at the lowest level from the time of the beginning of perestroika. OSCE Representative on Freedom of the Media Miklos Haraszti concluded in his report that:

“[a] triple credibility gap [has arisen], between the government and the media, between the media and the citizens, and between the government and the people”.<sup>161</sup>

He calls this situation ‘a serious drawback for a democracy’. Nevertheless, why is it that the people do not trust the media? Looking from the historical perspective, the public never really trusted the media. During the communist era people knew that the newspaper should be read from behind, where the most important news could be mentioned in the press items, while in the beginning of the paper was only the state-propaganda. Unfortunately, today the media is not doing so well either. In those cases where the media outlets do not have a wealthy owner whose aim is to promote his own views, the media's aim is to make as much profit as possible, despite that this aim

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<sup>159</sup> International Helsinki federation for Human Rights, *Human Rights in the OSCE Region: the Balkans, the Caucasus, Europe, Central Asia and North America, Report 2005 (Events of 2004)* p. 346.

<sup>160</sup> A. Simonov, ‘Pamyatnaya zapiska Komissii po pravam cheloveka pri Prezidente Rossiyskoy Federacii o svobode sredstv massovoj informacii’.

<sup>161</sup> M. Haraszti, *Report on Russian media coverage of the Beslan tragedy: Access to information and journalists' working conditions*, 16 September 2004, p. 2.

damages the news quality.<sup>162</sup> This changed the media's reputation from the public watchdog to the 'profit making by any means' organisation. Consequently, the public responded with distrust.

Moreover, there has been very little public outcry about the governmental repressing of independent media.<sup>163</sup> One can ask why, especially when the people have actually seen the more free media during time of perestroika and glasnost. Some researchers turn into the history of USSR to explain public's passivity. Russia never had a tradition of a free press, and the short period of time of relative freedom is not enough. According to Yury Vdovin, vice president of Citizen's Watch<sup>164</sup>, a human rights organisation in St. Petersburg, some politicians and journalist still accept and even consider reporting as a propaganda tool for the state.<sup>165</sup> Moreover, the public has never been taught of what the freedom of expression is and does not understand the role of this right. A survey showed that 38 % of Russians believe that state control of the media is a good thing for Russia.<sup>166</sup> Moreover, this poll was taken right after the *Kursk* disaster.<sup>167</sup> A more expected outcome would have been a very negative attitude to censorship. Another explanation is that in Russia, the freedoms have never been recognized as the necessity for democratic reforms. People are tired to see corruption in society and tired of rich oligarchs who amassed their fortunes illegally, so when Putin put pressure on them, there was no public resistance. Moreover, the public even supported the actions.<sup>168</sup>

However, one of the most frightening things is that the public in Russia wants censorship back.<sup>169</sup> One thousand five hundred people above eighteen were asked whether they trust the media.<sup>170</sup> Only 9% of them said yes. A majority of 76% was positive about the censorship. In another poll in hundred population centres throughout the Russian Federation one thousand six hundred people were asked about their opinion on the governmental censorship. It was found that 62% of Russians think that television should be subject to governmental censorship.<sup>171</sup> In this survey it was clear that the youngest generation was more against governmental censorship, 'only' 49% was in favour, but in the group of 60 years and up 71% was in favour. These frightening numbers, among other things, show the need of education for people of their rights and freedoms and the need for the media to be more responsible and reliable.

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<sup>162</sup> See also above Chapter 5.1.2.

<sup>163</sup> S. Ricchiardi, 'Out of the Past', p. 47.

<sup>164</sup> Citizen's Watch's homepage, <[www.wplus.net/pp/citwatch/](http://www.wplus.net/pp/citwatch/)>.

<sup>165</sup> S. Ricchiardi, 'Out of the Past', p. 47.

<sup>166</sup> *Ibid.*

<sup>167</sup> See also above Chapter 4.2.3.

<sup>168</sup> S. Ricchiardi, 'Out of the Past', p. 47.

<sup>169</sup> R. Gorevoy, 'Doklad o narusheniyah prav SMI v Rossiyskoy Federacii s marta 2000 po mart 2004 goda'.

<sup>170</sup> *Ibid.*

<sup>171</sup> '62% in poll favor censorship for TV', *Pravda.ru*, 30 April 2004.

In the West consumers have access to a wide range of information through the internet and they are able to get a more objective picture of different events. To some extent, the internet can give Russian consumers a more complete picture. There is however a problem with NITs for Russian consumers.<sup>172</sup> The majority of people cannot afford these new technologies and also communication possibilities are very bad. For example, to provide internet access it is necessary to put out new lines, because the telephone lines are very old and can hardly be used for their main purpose. It would be too expensive to provide new lines in the whole Russia.

## 6.2 Outlook from the Consumer Perspective

In order for Russia to continue the transition towards a strong democracy, people must assume responsibility and show their political will. However, Russian people seem to be politically indifferent. From one point of view, it is hard to blame them. People never experienced democratic responsibilities either during the communist era, when the Communist Party took all the decisions, or before, when all the power was concentrated in the hands of the Tsar. This is one of the reasons, why consumers are not used to fight for their rights in Russia. The other reason is that people do not know what rights they have.

It is not difficult to notice that the quality of news presented vary between different newspapers. Some newspapers have become more professional and more Western-like. Other newspapers adjust their content to the mass taste by exploiting sensationalism and presenting mainly soft news.<sup>173</sup> The development in different directions contributes to a growing segmentation of the press market. Whereas the educated elite gets more extensive, accurate and updated information, the masses get only entertaining and soft news.

In case the media starts to be more objective and accessible for a broad public, it might get the consumers more interested and educate them about their rights. It is possible for the media to influence the public and to change the public opinion.<sup>174</sup> The more people trust the media, the more people are willing to struggle for the objective media.

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<sup>172</sup> See also below Chapter 9.1.

<sup>173</sup> See also above Chapter 4.4.

<sup>174</sup> See also above Chapter 4.2.3.

## 7 Legal Perspective

After the fall of the Soviet Union, Russian legislation had to be changed. The former legislation did not address the regulation of many aspects, e. g. private ownership and contract law. Especially, the international conventions to which Russia (and previously USSR ) was bound to, had to be implemented in the national legislation. Today, Russia has taken a large step towards an internationally acceptable legislation. This chapter will give an overview of the Russian media legislation and discuss whether the present situation meets the requirements of the Council of Europe.

### 7.1 Protection of Freedom of Speech: Individual versus Media

The special protection in the law that is afforded to the media indicates that different principles govern it compared to the protection of the individual freedom of speech.<sup>175</sup> The media's role as public watchdog must be viewed with cautiousness, because a Watchdog might in fact be watching over the interests of the establishment and not of the public.<sup>176</sup> In every state, power holders can use the press as a weapon in order to preserve their power and perpetuate their authority. One can say that the media has an instrumental value. It can work both for and against the objectives of democracy. Moreover, the media is able to prevent massive outbursts, functioning as a safety valve for letting out the steam of frustration and discontent.<sup>177</sup> These are the reasons why the freedom of the media should be legislated in a different way than the freedom of expression in general. These aspects are important to consider in already developed democracies, but even more important in the states, where the transition to democracy is not complete, as in Russia.

### 7.2 Russian Legislation

The freedom of the media is controlled in Russia by different laws. The most important source is the 1993 Constitution. It places human rights as a foundation of the legal system. The Constitution sees freedom of mass communication as one of the guarantors of the freedom of expression and right to information. Freedom given in the Constitution can be restricted by federal law only for purposes mentioned in the Constitution, article 55, sub paragraph 3.<sup>178</sup> The main article for protection of the freedom of expression is article 29.<sup>179</sup> The wording of the article is as follows:

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<sup>175</sup> H. Thorgeirsdóttir, *Journalism Worthy of the Name, Freedom within the press and the Affirmative side of Article 10 of the European Convention on Human Rights*, p. 206.

<sup>176</sup> *Ibid.*, p. 210.

<sup>177</sup> *Ibid.*

<sup>178</sup> *The Constitution of the Russian Federation of 1993* in G. H. Flanz (ed.), *Constitutions of the Countries of the World, The Russian Federation* (Oceana Publications, Inc, Dobbs ferry, New York, 2002); See Supplement B.

<sup>179</sup> *Ibid.*

1. Everyone is guaranteed the freedom of thought and speech.
2. Inadmissible are propaganda or agitation, inciting social racial, national hatred and strife. Forbidden are propaganda of social, racial, national, religious or racial superiority.
3. No one can be coerced to express his (her) views and convictions or to renouncing them.
4. Everyone has the right to seek, receive, transfer, produce and disseminate information by any lawful means. The list of information constituting the state secrets is established by federal law.
5. The freedom of mass information is guaranteed. Censorship is prohibited.

The most important law regulating the freedom of the press is the Mass Media Act, originally from 1991. From article 1 follows that the restrictions on the mass media and mass communication are exclusively prescribed by the Media Act.

The Russian formal legal framework gives the impression that the foundations for democratic reform are laid. However, there are several problems with Russian legislation. First, the legislation that regulates freedom of expression and the media is very scattered. There are parts in the civil code, in the criminal code and in other legislations. Still, the new regulations are made in different parts of the legal system, without being gathered in specific part of the law.<sup>180</sup> Second, the recurrent changes in the legislation constitute a big problem.<sup>181</sup> Different ministers and offices have been established, renamed, combined or abolished. This unclear situation makes it impossible not only for the public, but even for the experts, to be informed of and to keep track of actual provisions. This allows authorities free play and arbitrary implementation of the unclear legislation.

## 7.2.1 Governmental Attempts for Legal Control

On September 9<sup>th</sup> 2000, Putin signed the Information Security Doctrine. According to the government, the doctrine is “an extension of the National Security Concept as it pertains to information, and is designed to enhance state policy on information security. Its aim is to help formulate the legal, methodological, technical and organizational provisions for information security in Russia and to help develop specific programs for this purpose”.<sup>182</sup> The Glasnost Defence Foundation (GDF) has been monitoring the execution of this doctrine and came to the conclusion that the doctrine allowed for circumventing the Mass Media Act.

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<sup>180</sup> R. Gorevoy, 'Doklad o narusheniyah prav SMI v Rossiyskoy Federacii s marta 2000 po mart 2004 goda'.

<sup>181</sup> D. Schmidt, *Controlled Democracy in Russia? Civil Society and Internet Communication – New Opportunities and Restraints*, p. 6.

<sup>182</sup> President of Russia, Official Web Portal; The Security Council <[www.kremlin.ru/eng/articles/institut04.shtml](http://www.kremlin.ru/eng/articles/institut04.shtml)>.

Moreover, Russia is one of the few countries that require registration and licensing of mass media, including even the internet providers.<sup>183</sup> This gives the state larger control possibilities through extending the rights of the state to interfere and withhold information.

## 7.2.2 Who Can Legislate in Questions Concerning the Media?

There are several provisions in the Constitution's third chapter about the competence of the legislator. The media is not mentioned in any of the provisions. It gives the possibility of a free interpretation of the Constitution.<sup>184</sup> Regional authorities can view that legislation of the media is a question of education, in this way the legislation must be combined on regional and federal levels, or it can be a question of federal information, than the legislation must be done on federal level. The problem is that in practice, many authorities ignore the legislative competence between regional and federal levels and many rules have different standards that are not in coherence with the Constitution.<sup>185</sup>

## 7.2.3 Fight Against Terrorism

The government started to sacrifice democratic principals in its fight against terrorism. The Moscow Helsinki Group expressed strong disapproval of the government's actions and concluded that the government is reinforcing the trend of moving power away from the people.<sup>186</sup> In 2002, the government proposed an anti-terrorist law<sup>187</sup> that allows the authorities to prosecute any journalist, who is reporting on matters related to the war in Chechnya or to terrorism.<sup>188</sup> Even before the approval of the upper house of parliament and the president's signature, the governmental action during the hostage crisis<sup>189</sup> was based on this law-proposal.<sup>190</sup> However, Putin vetoed the bill at the last minute and asked the parliament to revise it. Any way, there are other provisions that can imprison a journalist who is writing about e.g. Chechnya. Stanislav Dmitrievsky, the editor of the newspaper *Pravo-Zachita* (Legal Defence) was recently sentenced to two years in prison for publishing interviews with Chechen separatist leaders. He was convicted for

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<sup>183</sup> D. Schmidt, *Controlled Democracy in Russia? Civil Society and Internet Communication – New Opportunities and Restraints*, p. 7.

<sup>184</sup> G. Yu. Arapova et al, *Kommentarii k Zakonu RF o SMI*, Chapter I, article 3.

<sup>185</sup> *Ibid.*, Chapter I, article 5.

<sup>186</sup> International Helsinki federation for Human Rights, *Human Rights in the OSCE Region: the Balkans, the Caucasus, Europe, Central Asia and North America, Report 2005 (Events of 2004)* p. 345.

<sup>187</sup> The law *On Battling Propoganda of Terrorism in Mass Media*.

<sup>188</sup> Reporters without Borders, *Russia, The Internet under Surveillance*.

<sup>189</sup> On October 23, 2002, a group of Chechen terrorists captured about 800 hostages in one of Moscow theatres. Their demand to the Russian government was to withdraw their troops from the territory of Chechnya. The terrorist attack ended up with the death of all terrorists and 129 of the hostages.

<sup>190</sup> International Freedom of Expression Exchange, *Russia, New Anti-terrorism law Tightens Grip on Media*.



‘inciting inter-ethnic hatred and offending human dignity’ under article 282 of the Russian Criminal Code.<sup>191</sup>

## 7.2.4 Censorship and Interference

There are several different legislations on prohibition of censorship. Article 29 of the Constitution in subparagraph 4 prohibits censorship. The Charter for a Free Press from 1987 in article 11 confirms that censorship is unacceptable. The question then rises what can be considered as censorship. For any demand or pressure to be regarded as censorship it must meet three criteria:<sup>192</sup>

- The demand must be either to control material and communication or to prohibit further distribution of it.
- This demand must be addressed to the editor's office. Accordingly, if the journalists are obliged to coordinate their material and reports within the editor's office, it is not censorship in the meaning of the law.
- This demand must come from authorities, governmental institutions, organizations, institutions or public associations. When the prohibition on dissemination of material about specific facts, or particular individual is based on the protection of honour, this prohibition should be viewed as unlawful.

It is very easy to see that not nearly all interference can be considered censorship. There are different factors of influence that do not necessarily fall under the definition of censorship.<sup>193</sup> These factors are divided into two groups: external and internal. External factors for example can be legal arrangements, which determine the scope of legitimate action or different individuals and groups who interfere in the process of news production while seeking access to the public. Professional values of journalists, view on what is regarded as good and qualitative news and specific operative goals that are set by editorial policy of the owner or editor are examples of the internal interference.

## 7.3 Article 10 of European Convention on Human Rights

Part two of article 5 in the Mass Media Act states that international treaties and agreements have priority above domestic Russian legislation. Among other international conventions, Russia is a party to European Convention on Human Rights (ECHR). The Russian Federation joined the Council of Europe (CoE) on February 28<sup>th</sup> 1996 so it has to comply with CoE's

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<sup>191</sup> Reporters Without Borders, *Journalist gets suspended prison sentence for publishing statements by Chechen leaders*, 3 February 2006.

<sup>192</sup> G. Yu. Arapova *et al*, *Kommentarii k Zakonu RF o SMI*, Chapter I, article 3.

<sup>193</sup> P. J. Shoemaker and S.D. Reese *Mediating the Message: Theories of Influences on Mass Media Content*.

standards. Article 10 of the ECHR protects the freedom of expression and information.<sup>194</sup> The Convention entered into force for Russia in 1998 without any reservations for article 10.<sup>195</sup> Protection of the freedom of expression is a positive obligation for the state.<sup>196</sup> It alludes to the role of a state as not only a passive spectator, but as an active protector.

The ECtHR is considered the most sophisticated and practically advanced human rights system.<sup>197</sup> In its case-law, the ECtHR laid down several principles that apply in cases concerning the media and journalists. Many cases were brought before the former European Commission and the ECtHR. The majority of them deal with the rights of newspapers to freedom of expression, the licensing of broadcasting facilities; the rights to freedom of expression of public employees; and the right to receive information. In cases like these, the ECtHR must balance the rights of others or the general interest against the rights and freedoms of the journalists. In the majority of cases, ECtHR decided in favour of the press due to its unique position as the public watchdog.<sup>198</sup> ECtHR stated that the freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment.<sup>199</sup> Protection of article 10 is applicable not only to 'information' or to 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broad-mindedness without which there is no 'democratic society'.<sup>200</sup>

The ECtHR takes a broad view on the definition of 'interference'.<sup>201</sup> Both actions that are preventing publication<sup>202</sup> and confiscation of already published material<sup>203</sup> as well as post-publication measures can be considered as 'interference'. Moreover, article 10 does not make any distinction between different media outlets.<sup>204</sup>

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<sup>194</sup> See Supplement B.

<sup>195</sup> Council of Europe's homepage, status of ratification and entry into force of the European Convention for the Protection of Human Rights and Fundamental Freedoms: <<http://conventions.coe.int/treaty/Commun/ChercheSig.asp?NT=005&CM=&DF=&CL=ENG>>.

<sup>196</sup> *Özgür Gündem v. Turkey*, 16 March 2000.

<sup>197</sup> P. Malanczuk, *Akehurst's Modern Introduction to International Law* (Routledge, London and New York, 1997) p. 219.

<sup>198</sup> H. Thorgeirsdóttir, *Journalism Worthy of the Name, Freedom within the press and the Affirmative side of Article 10 of the European Convention on Human Rights*, p. 235.

<sup>199</sup> *Handyside v. United Kingdom*, Judgment of 7 December 1976, Series A, No. 24, (1979-80)1 EHRR 737, p. 23, paras. 48-49.

<sup>200</sup> *Gerger v. Turkey* [GC], appl. 24919/94, 8 July 1999, unreported, para. 46.

<sup>201</sup> C. Ovey, R. C. A. White, Jacobs & White, *European Convention on Human Rights*, p. 277.

<sup>202</sup> *The Observer and Guardian Newspapers LTD v United Kingdom*, Judgment of 26 November 1991, Series A, No. 217 and *Sunday Times v. United Kingdom* (No 2) Judgment of 26 November 1991, Series A, No. 217.

<sup>203</sup> *Vereniging Weekblad Bluf! V. Netherlands*, Judgment of 9 February 1995, Series A, No. 306-A.

<sup>204</sup> H. Thorgeirsdóttir, *Journalism Worthy of the Name, Freedom within the press and the Affirmative side of Article 10 of the European Convention on Human Rights*, p. 206.

The Court ascribed to journalists the task of imparting matters of public interest. It includes open governmental<sup>205</sup> and political<sup>206</sup> criticism and criticism over other areas of life that deserve scrutiny to retain public control over officials.<sup>207</sup> In particular, political debate enjoys the highest protection under article 10.<sup>208</sup> ECtHR stated that even if in a debate wounding or offensive language is used, a public debate could outweigh the legitimate aim of protecting the reputation of others.<sup>209</sup> In the *Lingens* case, the Court stated that a politician must be able to accept more criticism than a private individual must, because politicians knowingly lay themselves open to the scrutiny of the press and public.<sup>210</sup> ECtHR stated that article 10 protects also the form in which the ideas are conveyed, not only their substance.<sup>211</sup> Moreover, the Court declared that news is a perishable commodity and its value may disappear if delayed.<sup>212</sup> However, article 10 does not guarantee wholly unrestricted freedom of expression, even with respect to coverage of matters of serious public concern.<sup>213</sup>

### 7.3.1 Privatization of the Media Freedom

It seems as primarily those who control and own the press enjoy freedom of the press. Financial concerns are present in the media business, but it is necessary that the owner or editor does not compromise the rights of others to information. In the Parliamentary Assembly Resolution 1003 it is stated that “[n]either publishers and proprietors or journalists should consider that they own the news”.<sup>214</sup> In ECtHR’s case-law it is clear that the right to make profit enjoys lesser protection than the right to impart matters of serious concern. Article 10 gives protection to the profit-motive for the purpose to satisfy the needs of the Public Watchdog.<sup>215</sup> The state has a wider margin if the motives underlying expression are commercial, on the other hand, if the motive is to influence political debate, the interference must be restricted.<sup>216</sup>

From ECtHR’s case-law it is clear that information is a fundamental right. As follows from article 10 § 2 that those who exercise the right stated in the

<sup>205</sup> *Castells v. Spain*, 23 April 1992, Series A no.236.

<sup>206</sup> *Lingens v. Austria*, para. 42.

<sup>207</sup> *Thorgeirson v. Iceland*, 25 June 1992, Series A no. 239.

<sup>208</sup> H. Thorgeirsdóttir, *Journalism Worthy of the Name, Freedom within the press and the Affirmative side of Article 10 of the European Convention on Human Rights*, p. 233.

<sup>209</sup> *De Haes and Gijssels v. Belgium*, 24 February 1997, RJD 1997-I, para. 63.

<sup>210</sup> *Lingens v. Austria*, paras. 41-42.

<sup>211</sup> *Oberschlick v. Austria*, 23 May 1991, Series A No. 204, para. 67 and *Jersild v. Denmark*, 23 September 1994, Series A no. 298, para. 31.

<sup>212</sup> *Observer and Guardian v. United Kingdom*, 29 November 1991, Series A No. 216, para. 59.

<sup>213</sup> *Bergens Tidende and Others v. Norway*, 2 May 2000, RJD 200-IV, para.53.

<sup>214</sup> Parliamentary Assembly Resolution 1003 (1993) *On the Ethics of Journalism*, para. 15.

<sup>215</sup> H. Thorgeirsdóttir, *Journalism Worthy of the Name, Freedom within the press and the Affirmative side of Article 10 of the European Convention on Human Rights*, p. 365.

<sup>216</sup> Application no. 5178/71, *De Geillustreerde Pers N.V v. the Netherlands*, Commission’s report, 6 July 1976, DR 8, p. 5.

paragraph 1 also undertake ‘duties and responsibilities’. In some situations, there can be a necessity to restrict the freedom of expression. However, it is difficult to affirm the owners’ obligations towards society, when it is a private business without any of the state’s help.<sup>217</sup> Article 10 gives protection to those who are motivated by a desire to make a profit, but this protection does not give them unlimited right to use the medium for making profit or quench their own thirst for power.<sup>218</sup>

### **7.3.2 The New Information Technology**

When discussing the NIT<sup>219</sup> ECtHR stated that article 10 applies to not only the content of information, but also ‘to the means of transmission or reception’.<sup>220</sup> Prior to this judgment, the Commission stated that “without such equipment the right under article 10 of the Convention to receive such programmes could not be effectively enjoyed”.<sup>221</sup>

The situation in Russia contradicts article 10. Not only the NITs are restricted, but even the ‘old’ media outlets suffer interference. The Committee of Ministers adopted in 1999 a Declaration on a European Policy for New Information Technologies.<sup>222</sup> The Declaration stressed the fundamental importance of freedom of expression and information for democracy, the need for the free flow of information and ideas and media freedoms. In addition, the Declaration pointed out the need to define the common principles in the area of media law.

### **7.3.3 The Actual Protection that Article 10 Provides in Russia**

Russia has recognised the right of individual petition and the compulsory jurisdiction of the ECtHR. Hence, on the paper, the obligations on the ground of article 10 and the possibility for individuals to go to the ECtHR creates a good protection of freedom of expression in Russia. However, in practice this protection is far from efficient. Here comes the problem of effective remedy and fair trial in article 6. The judicial system, as have been explained earlier, is far from fair and effective.<sup>223</sup> The whole system is corrupt and judges do not dare to go against the will of higher authorities. Moreover, unfortunately, all the proceedings take a very long time. Therefore, even if there is a theoretical possibility to go to the ECtHR, the eventual justice will be very delayed.

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<sup>217</sup> H. Thorgeirsdóttir, *Journalism Worthy of the Name, Freedom within the press and the Affirmative side of Article 10 of the European Convention on Human Rights*, p. 367.

<sup>218</sup> *Ibid.*, p. 378.

<sup>219</sup> *Ibid.*, p. 138.

<sup>220</sup> *Autronic AG v. Switzerland*, para. 47.

<sup>221</sup> *Ibid.*

<sup>222</sup> Declaration of the Committee of Ministers *On a European Policy for New Information Technologies*, Adopted by the Committee of Ministers on 7 May, at its 104<sup>th</sup> Session.

<sup>223</sup> See also above Chapter 4.2.1.

## 8 Conclusion

Four main actors are affecting the media's future in Russia: journalistic situation, consumer's interests, owner's position and the legislation. As has been discussed above, three of these actors have their own interests and possibilities to change the situation. This reminds of a well-known Russian fable 'The Swan, the Pike, and the Crawfish' written by Ivan A. Krylov from 1814.<sup>224</sup> The journalists, the owners and the customers are all trying to change the situation and everyone is pulling in a different direction. Even when all actors are trying to improve the situation, they cannot achieve this objective without cooperation and understanding each other. The law can be the entity that will hold them together and direct these different striving forces in one direction. Without this common direction, the 'cart' will not move but will stick in the mud.

There is a triangle correlation between media's role as a public watchdog, a democratic society and human rights as a basis for human well-being. To achieve the ultimate aim – a democratic state where all people's rights are protected, all of the three sides of the triangle must be promoted. Therefore, in order for the media to work freely and act as a public watchdog the rights of journalists, consumers and owners must be protected. Without this protection the media is invalid and cannot contribute to the democratic development. The law, as a base for a society must be a tool for this protection, but at the same time the law must develop in conformity with international human rights standards.

The media must be free, independent and pluralistic in order to play an important role in a state's transition toward a democracy. Today in Russia, the media does not meet the above-mentioned criteria. Therefore, the role of the media in the democratic transition is very limited. As it has been shown above, the Russian government is involved in every aspect of today's media situation in Russia. Not only the government plays a crucial legislative role, but it also acts as a pressure when the media tries to fulfil its purpose as a public watchdog. In order for Russia to continue the transition towards democracy with guaranteed human rights, there is a need for a change of the governmental perspective. The government must change its view on journalism as a tool for power and instead view the media as a helping hand in maintaining the public calm and in scrutinizing the authorities. There are many differences between a *good* and a *bad* government, but one difference is particularly important for a state in transition. Errors made by the government are equally bad, but what distinguishes a good government from a bad one is the ability to perceive and to correct the errors, to accept criticism and to change.<sup>225</sup> In my view, there is still a chance that the present Russian government will realize the importance of the media and will act as a good government. It will be able to accept criticism, to correct errors and

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<sup>224</sup> See Supplement A.

<sup>225</sup> J. Milton, *Areopagitica and of Education*, G. H. Sabine (ed.) (Harlan Davidson, Arlington Heights, 1987) p. 1.

to provide the means for the media for developing as a real public watchdog. However, if the present government will not take these steps, there will be an urgent need for a more liberal and democracy-oriented rule.

## 9 Discussion: The way of Improvement

The media in Russia has still a long way to go to reach the level of how an independent media in a democratic society should behave. Today's situation must improve and do it fast in order for Russia to continue its transition to democracy. However, as we have seen, there are many aspects that influence the situation and all of these aspects must interact to improve the situation. There are different views on what aspects should prevail and how they can cooperate. Several actions should be carried out for improvement of freedom of expression in Russia. Some actions will take more time than others and will be more difficult to implement, but the development must continue for the country to become a democracy.

### 9.1 New Information Technologies

As was discussed above, the internet gives the public a chance to get information that is more accurate.<sup>226</sup> The internet also prevents the state to impose the same amount of censorship as on the other media. However, the advantages with the internet must be seen in a whole picture of the present situation in the country. Several factors must be kept in mind when discussing the internet. There is a huge imbalance between the remote regions and the metropolitan cities. In many big cities, the internet is getting more and more common, but for the distant part of Russia, it is still something new. In the countryside, the telecommunication systems are inadequate and expensive. In order to get a good connection or to get a connection at all, the communication systems must be changed almost throughout the whole country and that will be very expensive for the state. Another problem is the low income-level of the population and the impossibility and unwillingness to acquire a computer.<sup>227</sup> For example, in 2001, 97% of people who live in Moscow had telephone and 20% of them had computers. Whereas in the rest of the country, only 43% had telephone and 5% were computer owners.<sup>228</sup> In Western countries, the majority of computer owners usually are the middle class. In Russia, the middle class is much poorer. In 2003, it was estimated that two-thirds of the entire population were low-income people.<sup>229</sup> Moreover, there is a problem with the lack of computer managing skills among the public. Because of all these factors, the internet can be regarded as more important for organisations for gathering of information, than for distributing information to a broad public. Without first dealing with the factors mentioned above, the internet will not

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<sup>226</sup> See also above Chapter 4.3.

<sup>227</sup> Centre of Community Networking and Information Policy Studies, *ICTs in Russian Civil Society Sector Organisations. Analytical Review* (2003) pp. 3 et seq.

<sup>228</sup> Y. Perfiliev, 'Territorialnaia organizatsiia rossiiskogo internet-prostranstva', in I. Semenov (ed.), *Internet i rossiiskoe obshchestvo* (Moskovskii Tsentri Karnegi, Gendal'f, Moscow, 2002) p. 23.

<sup>229</sup> D. Schmidt, *Controlled Democracy in Russia? Civil Society and Internet Communication – New Opportunities and Restraints*, p.14.

be able to reach its full potential. However, the internet has a certain democratising potential.<sup>230</sup> It provides an access to alternative information beyond the state controlled media and gives the possibility to interact with international civil societies.

## 9.2 Legal Protection

The more concrete changes can start with giving the notion of *journalist* a legal status as for example lawyers have.<sup>231</sup> This could be made through licensing, requirement of specific education, working experience. Maybe it would help to organize a Journalistic Association, like a Bar Association. There is a possibility to just wait and let the development continue on its own, meanwhile encouraging all the initiatives of internal responsible organisations.<sup>232</sup> However, the lifetime of these organisations happens to be very short because they usually run out of money in a couple of years.

Beside the establishment of the legal status for the profession, there is a need for a more clear legislation. As have been discussed above, Russian legislation controlling the media is very divided.<sup>233</sup> There are not only different levels, federal and regional, but also numerous provisions in different areas of the legislation. These provisions are often changed and renewed without any clear structure and coordination with each other. As a result, it is very hard or even almost impossible, to know what rule should be applied. Therefore, there is a need to 'clean up' Russian media legislation. Provisions must be clear and organised in a logical structure. Moreover, all provisions must comply with the Russian Constitution. There must be clear rules on the competence of legislating authorities in order to avoid a messy legislation on a regional level.

The law's content must be reconsidered as well. Journalist's responsibilities should not be regulated as a criminal offence.<sup>234</sup> The accountability should be regulated in a specific law with a consideration of the media's role as a public watchdog. Moreover, when the courts are reluctant to prescribe reasonable compensation, the state should present some guidelines in this question. It is an untenable situation when the media outlet is risking a bankruptcy only because of a single lawsuit.

However, a lot of new legal issues are appearing with the advent of the worldwide computer network. With the internet, the global distribution of information is inevitable. Especially public international law must be changed in many contents, like freedom of expression, discriminatory protection, pornography, paedophilia, racism, violence, crime, protection of privacy and personal data security and not least intellectual property and fair

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<sup>230</sup> *Ibid.*, p. 19.

<sup>231</sup> L. Sigal, 'Zhizn ne po "piaru"! U SMI mnogo zaschitnikov, a kto zaschitit chitatelej?'

<sup>232</sup> *Ibid.*

<sup>233</sup> See also above Chapter 7.2.

<sup>234</sup> See also above Chapter 4.2.



use.<sup>235</sup> However overall, the objectives of article 10 of ECHR must be kept in mind.

Some argue that the internet should not be regulated at all, for example, this principle guides US jurisprudence.<sup>236</sup> In the case of the Council of Europe, there is a need for harmonization of laws regulating the use of NITs because different legal protection opens the possibilities for the perpetrators to choose to operate from the country with the lowest level of sanctions.<sup>237</sup> Debates about an international agreement within the Council of Europe on the regulation of the internet are taking place. However, there is a strong opposition to such regulation. Instead, a general approach seems to be that regulation should be made through self-censorship and criminal law.<sup>238</sup> An international harmonisation of legal rules for the internet activities, instead of national, will at the best cover illegal activities.<sup>239</sup> However, the vital interests of a democratic society will be left to self-regulation. The law regulating NITs cannot differ from regulations of conventional media as long as NITs either promote or inhibit the information flow.<sup>240</sup> However, the creation of harmonizing law will be a difficult path in itself. The consensus should be reached on first, whether internet will have positive media obligations; second, what kind of law would be needed to fulfil several requirements. The law must be 'technology neutral' due to a rapid technological development. On the other hand, the law cannot be too general because then it would not cover many of the problems posed by the internet at present.

### 9.3 Economic Protection

The media should be mostly economically independent from the owner and, as Yury Vdovin claims, in order for the media to serve the people, it has to be the main source of income for the owner.<sup>241</sup> If the owner has other, better, income sources, there will be a conflict of interests. The medium that is taken out of the competition market by sponsorship of one or just a few owners present a risk for the society and for the democracy. For that reason, it is very important that there must be a fight via democratic process for the independence of the media. According to Vdovin the society must come together in its decision to boycott the governmental media. For example, people could stop buying and prescribing newspapers or stop watching governmental TV. Journalists must restrain from publishing in governmental printed media and from appearing in such TV programs regardless of how big honoraries they would be paid. It should be seen as

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<sup>235</sup> H. Thorgeirsdóttir, *Journalism Worthy of the Name, Freedom within the press and the Affirmative side of Article 10 of the European Convention on Human Rights*, p. 139.

<sup>236</sup> *Ibid.*, p. 143

<sup>237</sup> P. R. Rodrigues, 'Cross-border Discrimination: Private International Law, the Denial of the Holocaust on the Internet', p. 407.

<sup>238</sup> *Ibid.*, p. 404.

<sup>239</sup> H. Thorgeirsdóttir, *Journalism Worthy of the Name, Freedom within the press and the Affirmative side of Article 10 of the European Convention on Human Rights*, p. 146.

<sup>240</sup> *Ibid.*, p. 146.

<sup>241</sup> Y. Vdovin, 'Sovmestimy li gosudarstvennye SMI s demokratyey?'

less prestigious among journalists to work in a governmental media. Advertisers should refrain from advertising in the governmental press. Vdovin takes the example of Poland, when the Polish people relinquished from watching communistic propaganda. There is no strong opposition to the governmental media and pressure in Russia in general, but it should to have to start somewhere.

However, it is also necessary to protect the media-market from excessive 'profit-by any means' development and to protect the diversity of media. Hence, it is necessary to provide economic help to the media with small circulation. It can be done with legally recognized and adequate compensation. It seems fair and reasonable to use taxpayers' money as an investment on behalf of the public.<sup>242</sup> Another safeguard that is in conformity with the ECHR, is subsidies. It is a well-known form of public support that is used in many European countries.<sup>243</sup> For example, in Sweden there is the Swedish Council for Support to the Press (Presstödsnämnden) that gives subsidies to newspapers in order to protect multitude of the press market and to promote comprehensive news distribution and opinion building.<sup>244</sup>

There could be a special tax on advertisements, a value added tax, for example, of 10 % of the amount of the advertisement revenue.<sup>245</sup> This money would go into a common fund and would be distributed to the news medium that is in need of an economic support, e.g. 'secondary' papers with less than 50 % household coverage of their home market. The requirements that the medium must fulfil must be very strict and defined in the law in order to avoid misuse of the fund. However, such relocation of advertising revenues is against a free market thinking. Advertisers may see this tax as a restriction of their freedom of choice and of their economic activities. On the other hand, the tax does not affect advertisers' choice directly, they still can decide on where to put their advertisement and thus express their preferences. This system works effectively in Sweden under the Press Subsidies Act and Advertising Tax Act, which redirects the revenue from tax to the industry in the form of production subsidiaries.<sup>246</sup>

## 9.4 Human Rights Standards

As has been discussed above, Russia is bound by different human rights treaties and has to comply with the agreed standards.<sup>247</sup> One way to promote these rights is to allow NGOs acting within the state. The second way is to put pressure on the government through different international organisations

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<sup>242</sup> H. Thorgeirsdóttir, *Journalism Worthy of the Name, Freedom within the press and the Affirmative side of Article 10 of the European Convention on Human Rights*, p. 395.

<sup>243</sup> *Ibid.*, p. 395.

<sup>244</sup> Swedish Council for Support to the Press's homepage: <[www.presstodsnamnden.se/](http://www.presstodsnamnden.se/)>.

<sup>245</sup> H. Thorgeirsdóttir, *Journalism Worthy of the Name, Freedom within the press and the Affirmative side of Article 10 of the European Convention on Human Rights*, pp. 395 *et seq.*

<sup>246</sup> Lag (1972:266) om skatt på annonser och reklam.

<sup>247</sup> See also footnote 2 and Chapter 7.3.

that cooperate with the state. The third way is to emphasise the need for a better human rights protection and highlight violations both publicly and in private discussions between heads of states.

### 9.4.1 Domestic Human Rights Organisations

There are several NGOs that are already working for protection and strengthening of media independence. To give more power to organisations like these and give them possibility to grow around the whole country will be a positive way to create stability and protection for the journalists. Professional media associations and other non-profit organisations, which are independent of the state and funded by sponsors and membership fees, are the ones that can make a difference and are important for the development of informational infrastructure.

However, on January 17<sup>th</sup> 2006 Putin signed quietly the proposal of the 'Amendments to some Federal Laws of the Russian Federation'.<sup>248</sup> This law will come into force in April 2006. Now the state will have a more strict control over both foreign and domestic NGOs.<sup>249</sup> Especially it will affect the situation of foreign NGOs, because the law prohibits NGOs whose founders are foreigners or foreign organisations.<sup>250</sup> Foreigners without a permanent resident status will not be allowed to be founder members or ordinary members of organisations. The new rules might paralyse the work of NGOs and in many cases force them to shut down. Governmental authorities will have a legal opportunity to, at any time and without limitations, request different internal documents, for example, operational and financial papers.<sup>251</sup> Supporters of this law are claiming that the aim is to prevent money-laundering and improve financial oversight. The opponents claim that the insight in the activities was already sufficient, and all organisations were already economically accountable.

Beside the legislation, all non-profit organisations are confronted with other obstacles in terms of financing, acceptance, personnel, equipment and internet access. These hindrances must be overcome, but as the adoption of the 'Amendments to some Federal Laws of the Russian Federation' have shown, that the government does not intend to protect the NGOs.

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<sup>248</sup> Networking Human Rights Defenders, *Russia, Putin Approval of a New Restrictive Law on Freedom of Association*, 20 January 2006.

<sup>249</sup> Glasnost Defence Foundation, 'Gosudarstvennaya Duma RF prinyala zakonopoeht o nekomercheskih obchetvennyh organizaciakh', 260 *Dajzhest Fonda Zachity Glasnosti*, 26 December 2005; See also Y. Koshkina, *Prezident obechaet zachichat' obizhennyh*, 26 November 2005.

<sup>250</sup> Networking Human Rights Defenders, *Amendments to Federal Laws on civil society*, 19 January 2006.

<sup>251</sup> Article 19, *Russian President must honour promise not to harm Russian civil society*, 9 December 2005.

## 9.4.2 International Pressure

The West has to put a pressure on Russia and require higher human rights standards in general and a better protection of the freedom of expression in particular. The Council of Europe and European Union are already taking some steps, but they are not sufficient.

The international community can direct public awareness to the problems of the press by granting prizes to those who try to make a difference. For example in 2003, the Prize for Journalism and Democracy was granted to Anna Politkovskaya, reporter for the *Novaya Gazeta*.<sup>252</sup> Another way of pinpointing some problems is for individual heads of states to highlight issues of violation of human rights. For example as German Chancellor Angela Merkel did when meeting Putin in January when she pointed out that the newly adopted NGO law is very dangerous in a democratic society if it will be applied word for word.<sup>253</sup>

Alternatively, large regional organisation like Council of Europe (CoE) should be able to pressure Russia to work towards better human rights standard. Lately, the CoE has been concerned by the new defamation legislation and its application by the judiciary and the executive powers.<sup>254</sup> The Parliamentary Assembly continues with the view that large financial penalties inhibit the free flow of information and have a negative effect on the freedom of expression. For that reason, the Assembly believes that imposing excessive and unproportional monetary damages should be discouraged.

Since 1989, CoE offers programmes of assistance in order to promote the free and pluralist media. These programmes are addressed to representatives of official circles concerned with media related questions such as the rights and responsibilities of journalists, access to information etc. These programmes take place within the broader framework of the Activities for the Development and Consolidation of Democratic Stability (ADACS).

During the years, the Assembly adopted several recommendations for Russia. For example, the Recommendation 1506 (2001) makes a point that free and independent media is an essential indicator of the democratic maturity of the society.<sup>255</sup> In the earlier recommendation 1407 (1999) the

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<sup>252</sup> The Organization for Security and Co-operation in Europe, *Russian journalist wins OSCE Prize for Journalism and Democracy*.

<sup>253</sup> S. Boykewich and C. Schreck, 'Merkel Discusses Gas and Meets With NGOs', *The Moscow Times*, 17 January 2006; See also J. Abramsohn, 'Europe Trains Watchful Eye on Putin's NGO Plans', *Deutsche Welle* (January 2006).

<sup>254</sup> Parliamentary Assembly, Council of Europe, *Honouring of obligations and commitments by the Russian Federation*, 3 June 2005, p. 75.

<sup>255</sup> Recommendation 1506 (2001) *Freedom of expression and information in the media in Europe*, Text adopted by the Assembly on 24 April 2001 (10<sup>th</sup> Sitting) (Doc. 9000).

Assembly restated that the CoE should “exert moral and political pressure upon governments which violate freedom of expression”.<sup>256</sup>

The European Union (EU) has a lot of cooperation with Russia and has a lot of power to pressure the Russian government to comply with the international human rights standards. However, there is much more that could be done than it is actually done. Lotte Leicht, Brussels Office Director said: “It’s time for the E.U. to decide what it stands for and what its relationship with Russia is all about. Otherwise, Europe’s ‘common values’ will ring absolutely hollow”.<sup>257</sup>

Human Rights Watch (HRW) urges the EU to reconsider its current policy toward Russia.<sup>258</sup> The EU cooperates a lot with Russia, but it must determine on what terms the relationship with Russia will continue. In particular, the decision must be made on what role human rights will play in the engagement. In the HRW’s view, it is very important for the EU to stand firm on human rights principles and the rule of law, especially today. HRW calls to set up concrete benchmarks for Russia’s actions and conditions for further enhancing the relationship with the EU. Among others, these benchmarks should include: restoring political pluralism according to 1990 OSCE Copenhagen Agreement; allowing creation of truly independent television channels; a meaningful accountability process must be established for the abuses in Chechnya; Russia must cooperate fully with European Court of Human Rights and follow its rulings.

There are many large international NGOs, which work with promotion of human rights, especially freedom of expression. For example, several big ones are Article 19, Human Rights Watch and Reporters Without Borders.<sup>259</sup> However, it never has been easy for NGOs to survive in states like Russia where there is a lot of resistance from the authorities. Moreover, as have been discussed above, the situation of NGOs can change dramatically when the newly signed law will enter into force in April 2006.<sup>260</sup> One can only wait and see how authorities will interpret the law in practice.

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<sup>256</sup> Recommendation 1407 (1999) *Media and democratic culture*, Text adopted by the Assembly on 29 April 1999 (15<sup>th</sup> Sitting) (Doc. 8355).

<sup>257</sup> L. Leicht, *EU-Russia Summit: A Time for Change*, HRW Letter to the European Union, 6 October 2004.

<sup>258</sup> *Ibid.*

<sup>259</sup> See e.g. World Reports issued by the Human Rights Watch and Annual reports issued by the Reporters without Borders.

<sup>260</sup> See also above Chapter 9.4.1.

# Supplement A

Ivan A. Krylov 'The Swan, the Pike, and the Crawfish' from 1814.<sup>261</sup>

When partners can't agree  
Their dealings come to naught  
And trouble is their labor's only fruit.

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Once Crawfish, Swan and Pike  
Set out to pull a loaded cart,  
And all together settled in the traces;  
They pulled with all their might, but still the cart refused to budge!  
The load it seemed was not too much for them:  
Yet Crawfish scrambled backwards,  
Swan strained up skywards, Pike pulled toward the sea.  
Who's guilty here and who is right is  
not for us to say-  
But anyway the cart's still there today.

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<sup>261</sup> <[http://max.mmlc.northwestern.edu/~mdenner/Demo/texts/swan\\_pike\\_crawfish.htm](http://max.mmlc.northwestern.edu/~mdenner/Demo/texts/swan_pike_crawfish.htm)>

# Supplement B

Article 55 of the Russian Constitution:<sup>262</sup>

1. The listing of the basic rights and freedoms in the Constitution of the Russian Federation shall not be interpreted as a denial or diminution of the other commonly recognized rights and freedoms of man and citizens.
2. In the Russian Federation no laws may be enacted which deny or diminish the rights of man and citizen.
3. The rights and freedoms of man and citizen can be restricted by the federal law only to the extent required for the protection of a fundamentals of the constitutional system, morality, health, rights and lawful interests of other persons, for ensuring the defence of the country and the security of the state.

Article 10 of European Convention on Human Rights:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

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<sup>262</sup> *The Constitution of the Russian Federation* of 1993 in G. H. Flanz (ed.), *Constitutions of the Countries of the World, The Russian Federation*.

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