

SECURITY AS A JUSTIFICATION OF STATE'S STRUGGLE WITH A CIVIL SOCIETY IN CONTEMPORARY RUSSIA

I. Introduction

Presented article is aimed to analyze usage of term «security» as justification for introduction of laws, which under such cover of struggle with real, but mostly with artificial, threats, are implemented in Russia to limit freedom of civil society and hinder activity of over 220000 NGOs, opposite to the course of the government. In the first part some basic remarks on potential sources of such threats and on nature of instrumentalisation of law will be made. In the second part most clear examples of such will be presented and analyzed through their impact on the Russian opposition and their capability to exercise rights granted by the Constitution.

II. General remarks

Talking about Russian readiness to ensure security of the state and its citizens we can understand that term in 2 ways and found two potential sources of danger as well.

First can be taken from the Russian history and describe as a mentality of the «besieged stronghold». The role of besieger is commonly given to the West as eastern borders were mainly linked with Russian colonies. Russia – according to that concept – considers itself as deserted and lonely actor in the international policy. As one of the tsars said: «Russia has only two allies – army and navy». That attitude plus anti-Catholic orthodox church is one of the visible features of *Ruskij* character as once written by Michail Heller.

Second attitude is associated with more real threat linked with traditional Chechen and Islamic terrorism. Russia through all years after the collapse of Soviet Union experienced it not only during Chechen wars, but through terror attacks e.g. on Dubrovka, Nevskij Express, Domodedowo airport, in Volgograd and Moscow metro. We can also additionally mention ongoing struggle with Caucasian Emirate and millions of immigrants coming to work in Russian cities, their attitude and share in the whole population. Fertility rate in Muslim

families is 6 times bigger than in Russian families. Even now 15% of citizens are Muslims and it's estimated that in 2050 conscription 50% of Russian soldiers will be of Islamic faith [1]. Looking into statistics we can be easily seen that necessity to struggle with that threat is more real as they are more visible and dangerous for ordinary people's life than in e.g. United States. Not only because radical movements are becoming more popular within younger generation on the Caucasus [2], but also due to victims of ongoing war in the region. Only in 2012 fights in Dagestan between guerilla and security forces left 400 fighters and 200 policemen dead. Besides that, 120 «terroristic crimes» were committed in that area [1]. Basing on such facts we can agree, that there is a need to take special measures to guarantee that to Russian citizens. But remains the question: are all their aimed to save them or are also used as an instrument of limitation of people political rights?

Key word to answer that question is instrumentalisation. It's a legal phrase, which doctrine commonly understand as a: *usage of law to achieve own political goals regardless real needs of society* [3]. Good example can be «the Dima Jakowlew Act», which supposed to be part of Russian foreign policy as an reply for American «Magnitskij List», but in fact its biggest victims were Russian orphans. In USA such movement against rights of society are also introduced, but they are loudly criticized by the public opinion, while Russians in same situation remain silent. Why?

The answer can be found in mentality of the society with burden of Soviet Union, which gave felling of security and took sense of freedom. During the survey made in course of the second Chechen War only 19 percent of respondents consistently said that there were no such goal or threat which justify violating rights, in other words 80 % can justify that in course of e.g. maintaining public order and safety. On the top of the list were fighting crime, terrorism, and/or corruption. In the same

survey only 1.3 percent of the adults chose «Limitation of civil rights» as one off the 5-6 biggest concerns [4]. Such attitude didn't change even now, while according to the Levada Center, only 4% of citizens are afraid of human rights limitations. What is interesting in context of other Levada Center surveys, results of some polls through years showed that even in 1997, as well as in 2007, 2011, 2012 and in 2013 observance of human rights was marked by less people than order in a county as a matter which should be a priority for the government [5].

Starting date of instrumentalisation of law under cover of security can be generally set for years 2006/2007, where first laws on NGOs' control were introduced, but that process was accelerated mainly after 2011 protest against parliamentary Putin reelection, which were claimed to be falsified. After that many new law or amendments to existing ones were introduced. Of course due to risk of terrorism. Now, some of them will be presented.

II. Security vs. political rights in Russia

a.) *Law on extremism*

One of the first acts aimed to be a weapon both against terrorists and civil society was amendment of the criminal code from 2007 which added a new type of crime «committed due to extremist reasons» under the provisions of the law «On counteracting against extremist activities». In accordance to new law extremism was understood as: «Exercise of riots, acts of hooliganism and vandalism motivated by ideological, political, racial, national or religious hatred or enmity, or by hatred or hostility toward any social group». Additionally, inciting for such crime was implemented into criminal code under provision of article 280. As many human right activist said, such vague definition can lead to accusation of any inconvenient activist, based on critical internet posts, comments or actions in real life, which will be treated as an element of political debate in democratic countries. Interpretation of that provision rely on the discretion of the enforcement and juridical organs. There are no limitation or catalogue of sample events, which can be called extremist and decision can be made on the contemporary policy basis.

As was stated above, that law was introduced in 2007 and in December 2007 there

were planed parliamentary elections and in March 2008 presidential one. Newly implemented law was important due to granting automatically right to investigative organs to have access to phone call or other means of communication and use other methods of surveillance against any citizen just accused of extremism. What's more, just being a person suspected of committing that crime caused loss of civil rights till the end of the investigation. When organization will be found as a conducting extremist activity every time, when its name is called it should be used with prefix «extremist».

As an effect of unclear definition, in 2012 for the first time in the post-Soviet period, there were more people sentenced for hate speech (as an inciting for extremism action from art. 280 of CC) than for hate crimes [6]. Human rights activist Stanislav Dimitrevskij, author of 1200-pages monography on violation of human rights in Chechnya and was accused of promoting extremism in it [7]. In Novorosijsk court forbade to publish Russian translation of Koran due to its extremist content [8]. Famous, Memorial was also accused of extremism for publishing scientific opinion on one of the Islamic groups on Caucasus. There attempts to ban Jehovah Witnesses society in some cities as their prophecy about upcoming end of the world were considered as inciting to religious violence [9]. From 29 November 2012 movies of Pussy Riot «concert» is also described as extremist and its publication is forbidden. The latest news announced that warning was to Crimean Tatars was issued by Head Prosecutor of Crimea Natalia Poklonskaya, who said that hanging Ukrainian flag in from of the Medzlis seat is an extremisms well as all actions attempted by Tatars to welcome their leader Mustafa Dzhemilev on Crimean land [10].

Amendments mentioned gave authorities a right not only to control but also to block pages with content including extremism, harming public good, unmoral or dangerous for the security, which impose liability for the whole (even uploaded by the user) content on the owner. That provisions gave basis for threatening Facebook or Wikipedia as well as closure of opposition TV Rain for one day before local elections in 2013 (when available again, it was also attacked by DDos attacks).

Decisions to block certain sites is made by state organ of Cyberspace and Communication Regulation/Control – Roskomnadzor, which enrolls pages on black list on discretionary decision as well as can decide to close or delete a site. On Roskomnadzor decision – it was explain as a mistake – for 30 minutes was closed access to Yandex, the Russian Google and pride of a country.

The maximum term served in a prison for public call to extremism is now raised to four years. The minimum fine for the same crime is set at 100,000 rubles (about \$2,850) while the maximum fine was left at the level 300,000 rubles (about \$8,550).

The maximum punishment for inciting ethnic, religious or other types of hatred changes from two to four years, and the minimum fine was tripled and is now 300,000 rubles (about \$8,550). The maximum fine again remains the same at the level of 500,000 rubles (about \$14,280).

b.) Freedom of Assemblies

After the events and riots on Bolotnaya Square, where in May 2012 protest against inauguration of Vladimir Putin took place, new regulations on public assemblies were introduced. They enlarged responsibility of the organizer, regardless of all security and organizational measures taken. Russian law now holds organizers and participants liable for actions that lead to the «creation of impediments to pedestrian traffic,» the «involvement of additional police personnel and equipment,» or that «exceed the norms of occupancy of a territory.» Whole liability for losses and harm caused by the participant is put on the organizer in case of failure to satisfy legal obligations. Local authorities can described specified places as places, where mass protest actions can be taken. Some areas under new law are excluded from the freedom of assemblies, e.g. state Duma or court buildings. The most severe amendments were introduced in terms of fines for breaching a law on assemblies, which were increased 150 times (to 9 000 dollars, for individuals) and 300 times (to 32 000 dollars, for organizers) [11]. There were also established minimum fines at the level of 10 000 rubles for individuals and 50 000 rubles for organizers, but they were

found unconstitutional, with some other provisions too, by the Constitutional Court in Saint Petersburg.

c.) Freedom of the Internet

Independent internet in general now is the biggest threat to Putin authoritarianism, as growing numbers of its users show. In 2011 Russians were called second nation (after Israeli) for time spent on social networking. 82% of internet users also visit social networks, which for the age range 18-24 is «near-universal». VKontakte had nearly equal number of daily visitors with Russia 1, state most popular TV channel [12]. In 2014 founder and main shareholder, Pavel Durov, in disputable conditions declared his withdrawal from the business, sold his shares to government friendly subjects and emigrated from Russia.

On the atmosphere of Ukrainian crisis and launching once again «besieged fortress» narration Internet was called by Vladimir Putin a CIA invention. To avoid alleged control of the traffic inside Russia an potential espionage or leaks of state secrets there were proposed idea of establishing internal Russian internet called Cheburashka. According to that idea access to the internet should be provided through system of 3-levels of connecting servers – local, regional and nationwide, where access for the global resources can be obtained only through the nationwide level servers. According to Putin administration's plan on each level should be system of filters (for safety of information and for preserving children for the inappropriate content) and all servers should be kept in Russia as even now Yandex servers are situated abroad [13].

Furthermore, from the beginning of September 2014 all bloggers, whose site has more than 3000 views per day will be required to be register as mass media. It means that they will be full responsible for information provided, comments on their site, compliance with legislation and cannot be anonymous any more. Internet providers should keep data from such sources for 6 months on servers located «on the Russian soil» and will be obliged to disclose them to the state organs even without notifying it to the blogger. Fines for different breaches can reach 142 000\$. Additionally,

human right activist rise in that context restoration of the defamation (of the public servant) crime into criminal code, which will be also covered by new legislation on bloggers. In many opinions it can deter, especially anticorruption bloggers like A. Navalnyj (his blog was closed under previously mentioned provision too), from writing about politicians, corruption etc [14].

d.) SORM and Surveillance Systems

One of the term which was very popular before Sochi in terms was SORM. It stands for: System for Operative Investigative Activities. It's Russian system of interception of communication by all electronic means, conducted on the legal basis. It's equivalent version of American Echelon system and as the American brother is a real «big brother» foreseen by Orwell in «1984», which jeopardizes right to privacy and gives authorities to control potential organizers of the antigovernment actions. According to people responsible for its creation it was made to ensure that Sochi Olympic Games will be safe and to allow security organs with fighting the terrorism. But, instead of sense of safety, it caused concerns about safety of data stored on any electronic device brought to Russia by foreigners. According to warning issued by US State Department and some cyber safety NGOs such data can be copied from the hard drive without user's consent and conscious.

As Andrei Soldatov and Irina Borogan say: *over the last two years, the Kremlin has transformed Russia into a surveillance state – at a level that would have made the Soviet KGB (Committee for State Security) envious* [15]. According to their legislation analyze now seven Russian agencies can legally intercept phone calls and e-mails on the Russian territory. The most powerful in that range is the Federal Security Service (FSB), which has unlimited direct access to internet providers and phone operators servers through computers in every FSB local headquarters. There are three level of SORM, according to Soldatov and Borogan: SORM-1 which intercepts phone (mobile and land line) communication, SORM-2 which intercepts Internet traffic, and back up SORM-3 which gathers information from all forms of communication and store for a long-term all

information obtained with their accurate location.

e.) NGOs as «Foreign Agents»

Under Federal Law No. 121-FZ «On Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-commercial Organizations, Performing the Functions of Foreign Agents,» voted on 20th July 2012 all NGOs prior to receipt of funding from any foreign sources, if they intend to conduct political activities, have to register in the special registry of NGOs, maintained by the Ministry of Justice. NGO listed in that registered should obligatory use description «NGO carrying functions of a foreign agent», which bring clear associations with espionage, in all their publication and public statements and actions.

According to the Kremlin that law should prevent country politics from interferences from foreign actors. Many critics waved that it's misleading as government is not making distinctions between political and social advocacy activities, stressing that political activity is not defined in the law. Under the 2012 law Ministry of Justice has discretionary power to judge whether NGO is or is not a foreign agent, without clear legal guideline. Being registered as a foreign agent brings not only PR consequences as term *innostrannyj agent* still is associated with espionage, but also cause many additional administrative obligations like: running separate accounting of funds and other property obtained from local and foreign sources; submission of activity reports twice a year and expenditure report quarterly, while domestic NGOs are requested to do so once a year and are not subject of annual independent audit in the surroundings of Russian traditional unfriendly bureaucracy [16]. From February 2014 state organs have right to unannounced controls in the «foreign agent» seat.

Amendments to NGO law also requested foreign or international organization to register on a list of NGOs approved by the Russian Government, if they were willing to transfer tax-free donations to Russia.

Most of the NGOs protested against that law and refused to register under such «label». As Arseny Roginsky form Memorial, soviet time

rooted human right advocacy NGO, said: «The point is not only that it is a lie, this requirement has nothing to do with law. We are Memorial, and we know how many people and which year confessed under torture to being spies and foreign agents» [7]. Despite such declaration on the court decisions from April and May 2014 Memorial was requested by court to register as an foreign agent. As an effect board of the NGO, which was praised for documentation of the soviet crimes, declares that they are considering terminating activity of the organization [17]. What can be interesting law was prepared in a big rush, which could end by imposing an obligation to register as a foreign agent on Russian Orthodox Church and Foreign Affairs sponsored TV channel Russia Today. Regardless in April 2014 Constitutional Court of Russian Federation declared that law is compliant with Russian constitution and such «label» can be justified by «important public interest» [11].

Other famous organizations fined for not adhering to the regulation were election-monitor NGO Golos, Amnesty International Russia, Transparency International or foundation representing accused in so-called Bolotnaya Case. Most of them, as well as case of Center for Social Policy and Gender Studies requested on 27th November 2013 to enlist as first NGO under the new law conditions. It should be said that not complying with request can cause not only fines, but also prison sentences for the organization boards.

Most of the trials and administrative proceedings were effects of mass controls rallies which took place in March 2013 in many Russian cities (mainly with companion of pro-government channel NTV). In that time early 2000 NGOs were controlled. As a result in 2013 24 NGO were declared as a foreign agent and 215 were suspected and investigated for obtaining finance from abroad while conducting political activity. During control procedures some organizations were obliged to present so detailed documentation that, for example whole papers requested by controllers from Institute for the Development of Freedom of Information weighted 23 kilos and covered 4506 pages.

To defend themselves from sever regulations 11 main Russians NGOs called an European Court of Human Rights to investigate case of

that law and its compliance with articles 10 and 11 of European Convention on Human Rights, which provision in their opinion are violated by the introduced strict legislation [7].

f.) State Treason

At the end 2012 new definition of treason was implemented into Russian criminal code. FSB stated that NGOs are commonly used by foreign intelligence services to harm Russia security. The term «treason» was newly defined as: «a deed, carried out by a citizen of the Russian Federation, damaging to the security of the Russian Federation, including espionage or passing to a foreign state, international or foreign organization or their representatives information that contains a state secret that has been entrusted and became known to the person through service, work or studies or other cases determined by Russian legislation, or providing financial material, technical, consultative or other assistance directed against security of the Russian Federation» [11].

Most doubts rose on the basis of vagueness of that definition, which in fact can cover any type of activity outside Russia, even contacts between NGOs or private persons as «harming Russian security».

Amendments to criminal code were controversial even within state authorities organ. Advisory board of president stressed that such provision can be even applied to sharing information with intergovernmental organizations, which Russia is a member. Additionally it highlighted that such measures can be taken also against a one for sharing information obtained from the open source just if it will be considered as a consultancy harming Russian security [18].

Ending:

By introducing all laws according to the Constitution and justifying all limitations by referring state obligations risen from the constitution and necessity to ensure state security Russia is pretending to be a country of rule of law. In fact, despite formal compliance with all regulations concerning introducing new laws, it cannot be called so due to lack of substantial compliance with the «spirit of law», which is breached by each of the presented examples. Russian rule of law is only a façade,

which hide real attempts to hinder activity of society opposing the government with other ideas for contemporary Russia. But their state will apply another measures to take care of them and to of course to maintain they security from the external and internal enemy.

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Добовіч Матеуш *Безпека як виправдання боротьби держави з громадянським суспільством у сучасній Росії*

Інструменталізація права є процесом, який можна знайти у більшості країн, як демократичних, так і авторитарних. Оскільки Росія претендує бути сучасною правовою державою, то вона намагається використувувати висловлювання «загрози / потреби національної безпеки», щоб виправдати введення нових законів, які забезпечують зростання рівня компетенцій державних органів для контролю суспільства. Дійсно, якщо проаналізувати нові регулятивні акти глибше, то можна побачити, що вони в основному використовуються, щоб перешкодити діяльності громадянського суспільства. Акти про екстремізм, блогерів, збори, спостереження і – так звані – іноземні агенти дають державні інструменти боротьби з неурядовими організаціями та іншими незалежними від держави громадами та групами у Росії. Реалізація цих регуляторних актів вже довела, як вони можуть бути використані на користь держави, щоб перешкодити антиурядовій діяльності та стримувати активістів від проведення нових ініціатив. З іншого боку ці регулятивні акти хоча і викликали масові протести, але огляди російської громадської думки показують, що для громадян вагомість безпеки та громадського порядку більша, ніж власні політичні права.

У таких умовах навряд чи можна очікувати, що дані процеси припиняться, і ми повинні очікувати продовження такої діяльності та суспільної згоди на дії, аналогічні перерахованим у статті.

Ключові слова: Росія, безпека, права людини, інструменталізація, закон

Добовіч Матеуш *Безопасность как оправдание борьбы государства с гражданским обществом в современной России*

Инструментализация права является процессом, который можно найти в большинстве стран, как демократических, так и авторитарных. Поскольку Россия претендует быть современным правовым государством, то она пытается использовать выражения «угрозы / потребности национальной безопасности», чтобы оправдать введение новых законов, которые обеспечивают рост уровня компетенций государственных органов для контроля общества. Действительно, если проанализировать новые регулятивные акты глубже, то можно увидеть, что они в основном используются, чтобы препятствовать деятельности гражданского общества. Акты об экстремизме, блоггеров, сборы, наблюдения и – так называемые – иностранные агенты дают государственные инструменты борьбы с неправительствен-

ными организациями и другими независимыми от государства обществами и группами в России. Реализация этих регуляторных актов уже доказала, как они могут быть использованы в интересах государства, чтобы воспрепятствовать антиправительственной деятельности и сдерживать активистов от проведения новых инициатив. С другой стороны эти регулятивные акты хотя и вызвали массовые протесты, но обзоры российского общественного мнения показывают, что для граждан значимость безопасности и общественного порядка больше, чем собственные политические права.

В таких условиях вряд ли можно ожидать, что данные процессы прекратятся, и мы должны ожидать продолжения такой деятельности и общественного согласия на действия, аналогичные перечисленным в статье.

Ключевые слова: Россия, безопасность, права человека, инструментализация, закон

Dębowicz Mateusz Security as a justification of state's struggle with a civil society in contemporary Russia

Instrumentalisation of law is a process, which can be found in most of the countries, in democratic and in authoritarian ones. As Russia is pretending to be a contemporary rule of law state, it tries to use phrases «threats/needs of national security» to justify introductions of new laws rising level of state organ competences in range of control of society. In fact, when analyze new regulations deeper it can be easily seen that they are mainly used to hinder activity of the civil society. Acts on extremism, bloggers, assemblies, surveillance and – so called – foreign agents gives a government instruments to struggle with NGOs and other independent from government societies and groups within Russia. Implementation of those regulations already proved how they can be used in favor of the state to hinder antigovernment activities and deter activists from undertaking new initiatives. On the other hand non of those regulations caused mass protests as surveys of Russian public opinion show that citizens value security and public order more than own political rights.

In such conditions it can be hardly expected that process to terminate and we should expect continuance of such activities and consent for actions similar to listed in the article.

Keywords: Russia, security, human rights, instrumentalisation, law

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