

THE STATE OF THE MEDIA LAW IN THE RUSSIAN FEDERATION:
A DIFFICULT PAST, AN INTERESTING PRESENT, AN UNCERTAIN FUTURE

Yelena Sheftelevich*

INTRODUCTION

The story of the development of media law in the Russian Federation reads a great deal like the plot of a soap opera. Much like the rest of Russia's post-Communist legislative efforts, the laws concerning the regulation of mass media have a tumultuous history and an uncertain future.

This paper is not intended to be a comprehensive examination of mass media law in Russia, nor does it stake a normative position on this subject. Instead, this paper seeks to draw, in broad strokes, the legislative landscape surrounding mass media law in Russia, both historically and at the present.

This topic is of greater significance than ever before. As Russia's political and economic environment continues to change, the quality and independence of its press becomes of ever more paramount importance. Indeed, while in recent times Russia has come under heavy criticism for what appears to be a regression from its promise of a democratic model of government, how functionality and independence of Russia's media will go a long way to affirming or disputing such criticism.

To that effect, Part I of the paper will examine the most relevant law in Russia on this subject, namely the Mass Media Law of 1991. This section will briefly discuss the historical context leading up to this legislation. It will also consider the legal ramifications that followed the statute's passage.

The paper will then continue this examination by considering in Part II other relevant legislations and other legal sources of importance. In particular, at this juncture the paper will

discuss the importance of the civil defamation law and its consequences for freedom of the press in Russia. To that effect, the paper will consider the 1995 Russian Civil Code, as well as the Russian Criminal Code, the Russian Constitution, the 2005 Supreme Court Explanation, and the relevance of the European Convention on Human Rights.

In Part III, the paper will consider some of the practical consequences of the Mass Media Law of 1991 and the realities that exist for a “free” press in Russia today. Finally, Part IV will serve as the conclusion to the paper, providing a final summation on this topic as well as offering some parting commentary.

I. THE MASS MEDIA LAW OF 1991

The media in Russia has been in a state of transition largely since 1986. This fundamental transition from an “administrative bureaucratic” model toward the market and democratization model has a close connection to a similar, more general transition in the political environment in Russia, namely the transition from Soviet authoritarianism to the country’s newly established democratic pluralism¹.

Changes in Russia’s political power structures, coupled with the hardship that Russia encountered in developing its civil society, was reflected in the changing roles that the media in Russia has played².

Out of such a history, the Mass Media Law of 1991 was born. One commentator has described the situation in these rather allegorical terms: “Looking at the development of mass

* Columbia University School of Law

¹ MONROE E. PRICE, ANDREI RICHTER, AND PETER K. YU, *RUSSIAN MEDIA LAW AND POLICY IN THE YELTSIN DECADE: ESSAYS AND DOCUMENTS* 89 (2002).

² *Id.* at 94.

media law in post-Soviet Russia is like examining the wrists of a recently freed prisoner where the marks of the chains are still present.”³

The Russian Media Law of 1991 was signed by President Yeltsin only two short days after the official break-up of the Soviet Union in December of 1991. In practical terms, it was essentially the first effort by any of the former Soviet states to develop a modern framework for a media and communication policy⁴.

Because it was drafted during a period of dramatic change in Russia, the statute comes across as “an awkward version of an ideal, a sometimes apolitical formulation of the proper relationship between the media and the state”⁵. To that effect, the basic idea behind the Mass Media Law is to ensure information providers a degree of independence from the state, one of the basic tenets of the Western tradition in media law⁶. As such, the Mass Media Law can be viewed as “an emblem of democratization” rather than an actual means of implementation of the ideals that it embodies⁷.

At its root, the Mass Media Law, as its opening chapter heralds, is a basic guarantee against media censorship. At the same time, however, the statute accompanies this guarantee with certain enumerated exceptions to it. In that vein, Article 4 of the law provides for a prohibition on calling for a change in the existing constitutional order by force and a prohibition on “fermenting social, class, or national intolerance”, to name but two examples⁸.

It is worth noting that these exceptions to the anti-censorship guarantee in the Mass Media Law are reminiscent of similar exceptions found in Article 10(2) of the European

³ Monroe E. Price, *Law, Force, and the Russian Media*, 13 CARDOZO ARTS & ENT. L.J. 795 (1995).

⁴ *Id.* at 798.

⁵ *Id.*

⁶ *Id.* at 799.

⁷ *Id.*

⁸ *Id.*

Convention for the Protection of Human Rights and Fundamental Freedoms, as well as Articles 19)3) and 20 of the International Covenant on Civil and Political Rights⁹.

These exceptions aside, other aspects of the Mass Media Law are also noteworthy. For example, Article 3 of the statute attempts to ease the registration requirements that media outlets must undertake, as well as to limit the extent of discretionary approval by the state. However, Article 13(3) does allow the state to deny an applicant's registration when "the registering authority claims to know in advance that the content of a new publication would violate the law"¹⁰.

Similarly worrisome is the state's ability under the Mass Media Law to de-register a media outlet and to thereby actually close it down. Article 16 allows for closure of a publication if in the state's view it continued to violate any of the enumerated statutory prohibitions, such as the prohibition against promoting conflict. Indeed, in the post-Soviet era, particularly in the years immediately following the statute's passage, the state has often invoked this article when actually shutting down certain media outlets in Russia¹¹.

Also of importance is Article 7, which permitted any "state organ" to own mass media outlets. This concession in the legislation seems to be part of the larger legacy of Russia's mixed system of private and state-owned mass media, a legacy that reaches far back into Soviet history¹². However, following the eruption of conflict in 1993 between the presidency and the legislative branch, Russian legislators approved a new draft law entitled "On Amendments and

⁹ See Price, *supra* note 3, at 799.

¹⁰ *Id.* at 801.

¹¹ *Id.*

¹² *Id.* at 802.

Additions to the Existing Law on Mass Media”, which prevents governmental bodies from being “founders” of mass media outlets except for those that publish only official documents¹³.

With respect to what a “founder” is, the Mass Media Law reinvented the term, creating essentially a new kind of sponsor, one that acted as an intermediary between the government and the media organization¹⁴. Moreover, in contrast to its Western counterparts, Russia’s mass media law also exhibits a preoccupation even with respect to a media outlet’s inner workings, addressing even the internal hierarchy of these organizations. In particular, the statute contains provisions that are intended to protect so-called “internal editorial freedom” by regulating the relationships between founders, editorials collectives, and publishers¹⁵.

While this is similar to other transitional (i.e. former Soviet) countries, this aspect of Russia’s media law differs from the law in the United States, where a particular design for the internal structure of media organizations is not legally mandated. Instead, in the United States and many other Western nations, there is no legal guarantee of independence between the editor and the publisher, however desirable that may be¹⁶.

However, Russia’s Mass Media Law is not without its loopholes in this area. In particular, the statute says practically nothing about media owners and it has also been observed that “the restrictions on editorial interference by the founders (which are often registered as editorial collectives) does not necessarily cover a media outlet’s financiers (whether formal shareholders or informal sponsors).” Consequently, most of these provisions in reality turn out to be “dead letters”¹⁷.

¹³ *Id.*

¹⁴ *Id.* at 803.

¹⁵ Laura Belin, *The Rise and Fall of Russia’s NTV*, 38 STAN. J. INT’L L. 19, 23 (2002).

¹⁶ See Price, *supra* note 3, at 804.

¹⁷ See Belin, *supra* note 15, at 24.

Another important point of departure from the U.S. model is the rights that Russia's Mass Media Law affords to journalists. For example, under Article 20 of the statute, journalists in Russia have the collective right to approve the editorial charter, which covers such matters as the appointment of the editor-in-chief and the manner for ceasing operations. This provision can be contrasted to the United States where it is unusual for journalists, as a body, to have any independent rights outside of their collective bargaining agreements¹⁸.

However, the provision for collective journalistic rights is not given without a price. Article 49 of the Mass Media Law outlines a code of behavior for journalists in Russia, such as an obligation to obtain prior permission when it appears that a report might be an invasion of privacy. While arguably such guidelines for professional ethics might be desirable, one commentator has suggested that "the imposition of such government standards suggests a relationship between journalist and government that is reminiscent of the sometimes velvet, sometimes steel, prison of the past"¹⁹. Indeed, it is worth noting that under Article 48, if journalists fail to meet their responsibilities, they can be stripped of their accreditation²⁰.

Even though the Mass Media Law has been heralded as a "breakthrough", a piece of legislation that was seen as "a shining example of the move toward law as a means of assuring an altered public sphere and a more pluralistic national identity", what followed its passage in fact made this dream just that, a dream impossible of immediate realization²¹.

Much of the hardship stemmed from the dearth of provisions in the Mass Media Law that deal explicitly with the allocation of power between the branches of government, in particular as between the President and Parliament. As a consequence, rather than the development of an

¹⁸ See Price, *supra* note 3, at 804.

¹⁹ *Id.* at 805.

²⁰ *Id.*

²¹ *Id.* at 806.

independent media in Russia, what came to dominate the years after the passage of the Mass Media Law was the vying of control over the media, especially broadcast television, as a lever of political power²².

This battle for control of the media between President Yeltsin and the Russian Parliament increasingly escalated in 1992 and 1993. When on September 21, 1993 President Yeltsin suspended and later dismantled altogether the Parliament, the onset of media censorship immediately followed, with newspapers being forced to submit their material to the government for review before publication²³.

The peak of this crisis occurred on October 23 of that year, when a bloody battle at Ostankino (the Russian state television channel) resulted in at least sixty-two deaths and many more injuries, including members of the television staff and foreign journalists. Additionally, following this deadly event, at least ten Moscow newspapers were closed²⁴.

Ironically, during this difficult period for the media in Russia, all sides of the conflict invoked the duty to protect the freedom of the press as justification for whatever measures they were taking²⁵.

Following this period of conflict, the strengthening of the rule of law was once again at the forefront. In December 1993 and January 1994, President Yeltsin and other government officials issued various decrees concerning the mass media, the primary focus of which was to create the legal framework for a free press in Russia. For example, a January 10 decree on “Issues Ensuring Publication and Dissemination of the Mass Media and Printed Matter” initiated

²² *Id.* at 807.

²³ *Id.* at 810.

²⁴ *See* Price, *supra* note 3, at 810-11.

²⁵ *Id.* at 809.

preferential tax treatment and provided for a system of state subsidies, among other benefits to the media²⁶.

Another important step toward autonomous mass media in Russia was the order by President Yeltsin to grant a television broadcasting license to a private entity, NTV²⁷.

Subsequently, NTV declared itself to be the first truly independent media entity in Russia with significant news programming²⁸.

In 1994, President Yeltsin also put forward “A Treaty of Civic Accord”. Although it was largely seen as “more of a public relations device than a binding agreement among its signatories”, it did attempt to “render clearer the relationship of the press to the process of establishing a consensual social order” by providing that “a special role in all of this belongs to the mass media...the efforts of which should be supported by the state and society.”²⁹

The summer of 1994 witnessed another important development for mass media in Russia when the state Duma developed a draft statute on radio and television broadcasting. The law, which came to be known as the Federal Law on Television and Radio Broadcasting passed on its first reading on October 26, 1994. It resembled the Mass Media Law in many respects, with many of its provisions similar except as applied to radio and television specifically rather than to the “mass media” generally³⁰.

²⁶ *Id.* at 813.

²⁷ *Id.* at 814.

²⁸ *Id.* at 797.

²⁹ *Id.* at 814.

³⁰ Daniel E. Rosen, *Television Satellite Broadcasting in Russia After the Financial Crash of 1998: The Allure and Adversity for Western Companies*, 8 *CARDOZO J. INT'L & COMP. L.* 347, 372 (2000).

However, additionally the broadcasting law also obligated the state to use the media for “the defense of public morals and morality, the strengthening of the family, and the confirmation of a healthy lifestyle”, a rather distinct provision³¹.

Like the Mass Media Law before it, the broadcasting statute attempted to create a legal environment that would make it attractive for Western broadcasters to enter the Russian market. However, the statute is riddled with ambiguous provisions. Moreover, it also provides the state with broad powers over Western broadcasters, for instance by allowing the Russian government, acting through the Television/Radio Broadcasting Commission, to make legal determinations without offering any clear precedent or standards³².

President Yeltsin’s decree on November 30, 1994 was an important step in coming to a resolution over the control of state television. Namely, the decree approved the privatization of Ostankino to allow it to compete more effectively with private broadcasters while at the same time leaving some control in government hands in the form of about 50-percent state ownership in the company³³.

While the new independent media entrants grew in importance, a systematic discouragement of this growth continued to persist in Russia, even five years after the collapse of the Soviet Union and the enactment of the Mass Media Law³⁴. Out of this environment grew the perceived need by Western agencies to step in and help develop greater media independence in Russia. Consequently, in the fall of 1994 the United States began to implement its Russian

³¹ See Price, *supra* note 3, at 815 (quoting Draft Russian Statute on Radio and Television Broadcasting, Post-Soviet Media L. & Pol’y Newsl., Dec. 10, 1994, at 1).

³² See Rosen, *supra* note 30, at 372-74.

³³ See Price, *supra* note 3, at 816-17.

³⁴ *Id.* at 817.

American Media Partnership, which sought to help non-government media institutions in Russia³⁵.

At the time, the United States gave three primary justifications for its involvement and aid to the internal media of another country:

First, a financially viable and politically independent non-government media sector is a mechanism crucial to government accountability; second, such a sector is useful in ensuring that the existing state media remains honest; and third, such a sector safeguards freedom of the press.³⁶

Notwithstanding Russia's commitment, at least rhetorical, to freedom of the press and independent media, and despite the additional support of Western agencies to effectuate that goal, the situation in Russia took a turn for the worse in the late 1990s and early 2000s. Beginning in 1998, the Russian government began enacting various policies with the intention of re-asserting state power over the media³⁷. This coincided with the end of President Yeltsin's term and the desire of his advisors to ensure that an acceptable successor would be elected. To that end, it became important to gain the support of the media outlets that had turned hostile to the government during President Yeltsin's last term³⁸.

What followed were various extra-legal tactics by the government, such as backdoor deals, financial pressure, and police force³⁹. All of this culminated in the takeover of NTV, once the emblem of independent media in Russia. The NTV takeover has been termed "a cautionary tale" for other media companies in Russia⁴⁰.

It is a tale of two storylines. On the one hand, Russia's Mass Media Law includes provisions aimed at protecting private media outlets from most forms of direct state interference.

³⁵ *Id.*

³⁶ *Id.* at 818.

³⁷ See Belin, *supra* note 15, at 32.

³⁸ *Id.*

³⁹ *Id.* at 33-35.

⁴⁰ *Id.* at 41.

On the other hand, however, the government still has a great deal of power over the media in Russia because of the media's financial dependence on corporations, which are themselves dependent on the state⁴¹.

Such a foundation is hardly conducive to media independence in Russia, as the stark reality of the situation on the ground proves.

II. CIVIL DEFAMATION LAW

As central as the Mass Media Law may be to the legal framework around mass media in Russia, it is not the only legislation of importance in this area. In particular, Russia's civil defamation law has been a source of concern both in the international community and internally to Russia as well. Indeed, when Russia first joined the Council of Europe in 1996, a great deal of skepticism surrounded Russia's ability to meet its obligations under the European Convention of Human Rights (ECHR), especially the rights relating to freedom of the press as found under Article 10 of the ECHR⁴².

The fundamental legislative base for civil defamation claims is found in Articles 150-152 and 1099-1101 of the 1995 Civil Code of the Russian Federation. Although Article 150 sets out a number of protectable interests, such as dignity of personality and privacy, only reputation (honor and good name, and business reputation) are afforded detailed codification under the statute⁴³.

Article 152(1) establishes the necessary elements of a successful civil defamation claim in Russia, namely: (1) dissemination of a communication concerning the plaintiff; (2) that is

⁴¹ *Id.* at 42.

⁴² Peter Krug, *Internalizing European Court of Human Rights Interpretations: Russia's Courts of General Jurisdiction and New Directions in Civil Defamation Law*, 32 BROOK. J. INT'L L. 1, 2-3 (2006).

⁴³ *Id.* at 16-17.

defamatory; and (3) is false⁴⁴. Moreover, as interpreted by the Russian Supreme Court, falsity is presumed, with the burden of proof on the defendant to make a showing to the contrary.

Additionally, liability in civil defamation cases in Russia is strict, rather than fault-based⁴⁵.

To make matters worse, among the remedies available to a prevailing plaintiff in a civil defamation suit is compensation for non-economic harm (moral damages), the amount of which is left for the court to determine. Additional remedies provided for by Article 152 of the Civil Code include retraction, right of reply if the defendant is a mass media organization, and monetary compensation⁴⁶. Since the introduction in the early 1990s of monetary compensation into the statutory scheme for civil defamation (the other remedies had been available since the Soviet legislation of the 1960s), the number of civil defamation lawsuits in Russia has increased substantially⁴⁷.

It is not infrequent for lawsuits based on civil defamation claims to also include other related claims, namely insult and invasion of privacy. However, since neither of these claims is outlined in the Civil Code, Russian courts look to the Criminal Code when considering these claims⁴⁸.

Under Article 130 of the Criminal Code, the offense of insult is described as “the demeaning of the honor and dignity of another person, expressed in an indecent form.” So understood, truth is of no avail as a defense to insult⁴⁹.

The definition of invasion of privacy can be found in Article 137 of the Criminal Code. It describes the offense in the following terms:

⁴⁴ *Id.* at 17.

⁴⁵ *Id.*

⁴⁶ *Id.* at 17-18.

⁴⁷ *Id.*

⁴⁸ See Krug, *supra* note 42, at 17-18.

⁴⁹ *Id.* at 19.

The illegal gathering or dissemination of information about the personal life of a person without that person's permission which information constitutes a personal or family confidence, or the dissemination of such information...by means of the mass media, if such actions are undertaken for reasons of financial gain or personal benefit and cause harm to the rights and legal interests of citizens.⁵⁰

In addition to the Civil Code and the Criminal Code, the Mass Media Law discussed in Part I also has relevance to civil defamation cases. In particular, under Article 46 of the Mass Media Law, someone identified in a defamatory statement has a right of reply, even if that statement is factually correct. Furthermore, the Mass Media Law reaffirms the availability of monetary compensation for moral damages even in lawsuits defended by journalists and media organizations⁵¹.

Based on the foregoing, it becomes apparent that the various legislative sources that concern civil defamation in Russia represent a particular policy determination for the proper balance as between reputational interests and the interests in free speech and expression. Because the balance was struck in such a way as to favor plaintiffs in these types of cases, civil defamation lawsuits have grown popular in Russia⁵².

It was not until rather recently, with the promulgation of the Russian Supreme Court's 2005 Explanation, that the civil defamation law began to embrace the plurality principle, accepting multiple sources of law for consideration⁵³. Prior to that time, the Supreme Court did not deviate from the autonomy principle with respect to civil defamation and ordinary courts did not recognize external norms as applicable to such cases either⁵⁴.

⁵⁰ *Id.*

⁵¹ *Id.* at 19-20.

⁵² *Id.* at 20-21.

⁵³ See Krug, *supra* note 42, at 21 (Supreme Court explanations help ordinary courts in Russia interpret legislation by, among other things, eliminating judicial uncertainty with respect to unclear or ambiguous terms in a statute).

⁵⁴ *Id.* at 24.

In addition to accepting the plurality principle, the 2005 Supreme Court Explanation is also significant in its specific mandate to ordinary courts to internalize the European Court of Human Rights interpretations of Article 10 of the ECHR⁵⁵. Prior to 2005, one of the most criticized aspects of Russia's civil defamation law was its approach to the fact/opinion distinction, namely the treatment by Russian courts of all "communication" as subject to Article 152 of the Civil Code⁵⁶.

The 2005 Supreme Court Explanation marked a change in approach to this issue. Significantly, the Supreme Court took the position that going forward Russian courts must distinguish between allegations of fact from statements of opinion, with opinion being excluded entirely from the scope of Article 152⁵⁷.

However, one caveat to this broad exclusion should be noted. Although statements of opinion are no longer subject to Article 152 defamation claims, the Supreme Court left open the possibility for an opinion to be the basis for a claim resting on insult⁵⁸. Also important to the 2005 Supreme Court Explanation's statements concerning the fact/opinion issue is the proclamation, set forth for the first time, that defamation plaintiffs must bear the burden of proof with respect to showing that the communication at issue is defamatory⁵⁹.

Another significant aspect of the 2005 Supreme Court Explanation is the clarification that it provides in terms of distinguishing defamation claims from claims of invasion of privacy, a distinction often lacking in the practice of the courts until then⁶⁰.

⁵⁵ *Id.* at 32.

⁵⁶ *Id.* at 36.

⁵⁷ *Id.* at 37-38.

⁵⁸ *Id.* at 38.

⁵⁹ See Krug, *supra* note 42, at 39.

⁶⁰ *Id.*

Finally, in the 2005 Explanation the Supreme Court also placed two new criteria for ordinary courts to consider in their determination of monetary awards for moral harm. In particular, the Supreme Court indicated that the amount should be “proportionate” to the harm itself. Secondly, the amount must not “encroach on the freedom of mass information”⁶¹. Although these are rather vague as far as standards go, it does show the Russian Supreme Court taking into account that unduly high damages might overburden the mass media⁶².

As the above description of the 2005 Supreme Court Explanation might suggest, this statement by Russia’s Supreme Court has in various ways influenced the practice of defamation law in Russia. That being said, there are still many questions in this area of the law that were not addressed by the 2005 Supreme Court Explanation, with quite a few issues left unresolved until future consideration⁶³.

By embracing the plurality principle in its 2005 Explanation, the Supreme Court has thereby also embraced another source of law to be taken under consideration in adjudicating civil defamation cases, namely the 1993 Russian Constitution⁶⁴. Article 29 of the Constitution explicitly provides for freedom of expression and freedom of press⁶⁵. These guarantees, however, are not absolute. For one thing, certain categorical exceptions, such as hate speech and communication carried out in an unlawful manner, are found in the terms of Article 29 itself⁶⁶.

More ambiguously, additional constitutional provisions outside of Article 29 may also act to limit these guarantees. For example, Article 21 and 23 protect individual dignity and privacy,

⁶¹ *Id.* at 40.

⁶² *Id.*

⁶³ *Id.* at 41.

⁶⁴ *Id.* at 21.

⁶⁵ Peter Krug, *Civil Defamation Law and the Press in Russia: Private and Public Interests, the 1995 Civil Code, and the Constitution*, 14 CARDOZO ARTS & ENT. L.J. 297, 322 (1996) (“Each person is guaranteed freedom of thought and speech, and freely to seek, receive, transmit, produce, and disseminate information. No one may be compelled to express one’s opinions and convictions or to renounce them. Finally, freedom of the mass information media is guaranteed, with censorship prohibited.”).

⁶⁶ *Id.* at 323.

and reputation. The protection of these rights must not be inhibited by the exercise of other rights⁶⁷. This construction of the Russian Constitution has led certain Russian scholars to conclude that intrusion on personality rights is implicitly among the abuses of freedom of expression that are outside the ambit of Article 29's protection⁶⁸. On the other hand, other Russian scholars draw the opposite conclusion, suggesting that only the explicit restrictions set out in the text of Article 29 represent the bounds of constitutional protection⁶⁹.

A leading American scholar writing on this subject, in noting the divergence of interpretation among Russian scholars, suggests that ultimately "literal examination of the constitutional text does not dictate categorical exclusion of all defamatory expression from constitutional protection."⁷⁰ Therefore, one might need to go beyond a literal textual analysis of the Russian Constitution for any meaningful answers to this issue.

It has been observed that the current practice of the Russian Parliament with respect to defamation law is to at least implicitly accept the so-called "Civil Society Model", a conception of freedom of expression as an individual right and as such, on balance, one that must sometimes give way to protection of personality interests.⁷¹

However, an alternative model is the "Democratic Model", which recognizes freedom of expression as encompassing dual elements, one private and one public. Because of this additional public dimension, which rests on the value of information to pluralism and democracy, under this model protection of personality rights must sometimes be sacrificed for protection of free expression⁷².

⁶⁷ *Id.*

⁶⁸ *Id.* at 324.

⁶⁹ *Id.*

⁷⁰ *Id.* at 327.

⁷¹ See Krug, *supra* note 65, at 329.

⁷² *Id.*

Thus, it has been suggested that if Russia were to shift over to the Democratic Model in its approach to defamation law, the result might be that “for perhaps the first time in Russian history, the notion of ‘public interest’ might not be synonymous with ‘state interest’, and the ideology underlying application of public values would not be discredited communal ethos, but pluralistic democracy.”⁷³

III. PRACTICAL IMPLICATIONS AND CONSEQUENCES

It has been said that the Mass Media Law is “one of Russia’s most liberal laws and one of the world’s most advanced laws regulating the field.”⁷⁴ Nevertheless, in practice the legislation has made little headway in the development of a strong, independent fourth state in Russia. Indeed, Dr. Andrei Richter, Director of the Moscow Media Law and Policy Institute, has observed that “the liberties provided by the law have been taken away by harsh economic conditions under which the press operates, and by mounting political pressure from the government.”⁷⁵

The extent of such political pressure has only grown under the watchful administration of President Putin. The government has a greater and greater hand in the doings of the press, as evidenced, for example, by the increased number of official warnings to media outlets.⁷⁶ Another example of the type of political hurdles faced by the Mass Media Law is in regards to the guarantee to information that at least the letter of the law purports to provide. In practice,

⁷³ *Id.* at 330.

⁷⁴ Andrei Richter, *Publicity for the Owners*, MOSCOW MEDIA LAW AND POLICY INSTITUTE 2004, available at http://www.medialaw.ru/e_pages/publications/publicity.htm (March 2, 2005).

⁷⁵ *Id.*

⁷⁶ *Law, Judiciary and Media Freedom in the Russian Federation*, MOSCOW MEDIA LAW AND POLICY INSTITUTE 2004, available at http://www.medialaw.ru/e_pages/publications/ljmf.htm.

however, access to information is frequently barred by government officials without any legal consequences for doing so.⁷⁷

Perhaps the most striking example of the operational difficulties that the Mass Media Law faces today is the economic dependence that the media has on the government. Indeed, it has been noted:

The overwhelming majority of press outlets are not economically viable because low incomes in the country mean advertising revenues are insufficient. Nonetheless, in 2004 the State Duma withdrew a uniform system of wide-scale mass-media subsidies. As a result, editors and reporters are now more dependent on direct handouts from the government and big business than ever before.⁷⁸

It should come as no surprise then that much of the hope that was pinned on the Mass Media Law and subsequent legislation in this field has “largely failed to materialize.”⁷⁹ The result—in 2006, Reporters Without Borders placed Russia in 147th place out of a list of 168 countries on the World Press Freedom Index.⁸⁰ Along the same lines, the draft version of the 2007 Freedom House report “Freedom of the Press” in Russia stated that “authorities continued to exert influence on media outlets and determine news content in 2006.”⁸¹

These are the unfortunate realities of the limited effects that the Mass Media Law and its kin legislation has had in practice on press freedom in Russia. Quite accurately given the circumstances, it has been observed that “establishing the legal foundations for a free press by passing new laws cannot itself guarantee more freedom. The quality and enforcement of the laws are both vital.”⁸²

⁷⁷ Andrei Richter, *Opportunities Lost*, THE MOSCOW TIMES, June 5, 2006, available at http://www.medialaw.ru/e_pages/publications/opportunities.htm.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Worldwide Press Freedom Index 2006, available at http://www.rsf.org/article.php3?id_article=19388.

⁸¹ *Freedom of the Press 2007*, DRAFT COUNTRY REPORTS AND RATINGS, Freedom House (May 2007).

⁸² See Richter, *supra* note 77.

CONCLUSION

Mass media law in Russia has witnessed a number of significant transformations over the last decade or so. Many of these changes mirrored the broader political and economic transitions that the country was undergoing in the wake of the dissolution of the Soviet Union and the period that followed it. The Russian Mass Media Law of 1991 was born out of this turbulent environment. Although its enactment was seen by many observers as an important sign of progress toward independence of the mass media in Russia, the reality since then has often departed from the optimistic letter of the law. Indeed, the dream of a truly independent press in Russia has yet to be realized even to this day.

Another source of difficulty for media outlets in Russia stems from other legislative sources, most significant of which is the civil defamation law and ancillary claims. Until very recently, defamation lawsuits were being brought in Russia with increasing frequency, due largely to the favorable aspects of the defamation law for plaintiffs. Although the 2005 Explanation by the Russian Supreme Court took a number of important steps toward giving greater consideration to countervailing interests, particularly the interest in freedom of expression, many questions remain unresolved in this area.

Taken together, the legislative foundation on which the mass media in Russia stands is far from a solid one. Indeed, relative to the Western tradition Russia's mass media legal framework might appear flimsy at best. Yet one would be wise to remember that this is a country whose mass media was controlled entirely by the Communist Party until its collapse. From such a perspective, the last ten years can start to look a lot more like a significant evolution forward for the mass media in Russia. One can only hope that further progress continues in the future.