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Digital Sovereignty and Boundaries of the Scope of National Rules: What Impact on Russian-Speaking Media abroad and expatriate Journalists?

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The development of digital technology raises the question of the scope of national legislation in many areas because borders do not exist on the internet. Some legal problems in such situations come basically from the mismatch between the transnational space for societal interaction created by the Internet and the territorial jurisdictions of national governments (Mueller, 2018). National governments tend to extend Internet regulation by trying to align cyberspace with national borders, and to enlarge the scope and subjects of such regulation. To what extent can national laws regulating the Internet cross borders and reach expatriate citizens or non-citizens? Why should they be concerned?

Russian-speaking journalists, activists and other civil society actors expatriated for various reasons carry out activities that affect the political and social life in Russia in one way or another. They develop most of these activities on the Internet, which gives them an aspect of a complex cross-border social interaction. Indeed, the authors of the various contents act in a transnational Internet space by touching sensitive issues for the Russian authorities but they are physically outside Russian territorial jurisdictions, thus out of reach of national legislation.

Their personal status (employment contracts, etc.) is governed by the rules of the domestic law of the country where they are located or by the legislation of a third country. In our case, this is the Czech Republic. We interviewed several Russian-speaking journalists from “Radio Free Europe - Radio Liberty” and the Current Time project, the representatives of NGOs located in Prague. They organize training sessions and stays for Russian journalists, activists, lawyers and human rights advocates.

The Russian Labor Code and other laws do not affect the professional status of these persons. There are only some intergovernmental agreements such as the Convention for the Avoidance of Double Taxation, which may concern them. For the rest, the principle of territorial sovereignty is well respected insofar as the scope of application of national laws is limited to the material borders of States. Czech labor regulations are rather liberal and allow the application of the American legal regime to Russian Radio Liberty employees, giving them the status of American expatriates. Russian legislation does not affect the status of these persons as it only applies on the territory of the Russian Federation. The majority of Radio Liberty journalists are recruited through competitive examinations from Russia and are a priori Russian citizens. They can be considered as expatriates but subject to the legal regime of several foreign countries (United States and Czech Republic).

While everything seems standardized for the legal regime of persons, the same cannot be said for the professional activities of expatriates who cross national physical borders by using the Internet. This encourages governments to establish virtual borders or to align virtual and material borders providing them with a legal framework. Can we talk here about real digital sovereignty that the Russian government wants to establish in virtual space? What will be its impact on the activities of journalists on the Internet?

Journalists working for Russian-speaking media abroad can be held liable for violations of Russian laws in their publications. The possibilities for prosecution under the Russian Criminal Code and the Administrative Code are numerous. It goes ranges from hate speech and public calls to extremism till to the rehabilitation of Nazism, fake news and offense to a public authority. In addition, for the Russian authorities the Moscow office of the Radio Liberty is a Russian organization with the status of a foreign agent and must meet the requirements of Russian legislation.

Media such as Radio Liberty are therefore attentive during their editorial meetings to draft their texts in such a way as not to violate any particular rule. It is not a question of self-censorship. Journalists do not avoid subjects that may upset the Russian authorities. However, they are trying not to expose themselves to the multiplication of legal actions that would entail exorbitant costs for the media. Safety training is provided for journalists who learn not only rules to follow but also safety protocols to protect their sources. The journalists of Radio Liberty try to respect Russian legislation as much as possible because they appreciate the fact that they are not blocked.

Another factor that avoids problems with Russian legislation is the respect of Western journalism standards and journalistic ethics. The journalists present information without the qualifiers, which can sometimes be negative. They avoid axiological statements as much as possible. Their texts will therefore never include any insult to the Russian public authority or personal judgment. This should prevent Radio Liberty and journalists from being prosecuted, for instance, under article 20.1 of the Administrative Code (non-compliance with public authority). The facts are verified in a scrupulous manner to avoid exposing journalists oneself to accusations of broadcasting fake news (article 13.15 of the Administrative Code). Publications therefore generally take longer than in other media because they are subject to serious fact checking. In some very rare cases, Russian authorities have asked to correct a factual error without initiating any prosecution. This goes as far as prohibiting journalists from expressing themselves personally on social networks because the personal position could be confused with the editorial one. As journalists confess, they often do not respect such prohibition.

Nevertheless, as a legal entity, Radio Liberty is not a Russian media and some aspects not explicitly provided for by law-are not obviously respected in Prague contrary to the practice of the media located in Russia. It is a strategy to find a balance between what is legal and what is not. For example, they do not write in brackets that ISIS is a "terrorist organization banned in Russia" when they mention it in their articles, which is what all Russian media normally do. Instead, they call it an "extremist community" changing the meaning.

Journalists do not always comply with certain linguistic conventions or the choice of politically marked words imposed on Russian journalists. This area is not strictly regulated by national legislation. So they try to use neutral and balanced means of expression that are not used in the Russian or Ukrainian press when describing the conflict. This can range from words designating the parties to the conflict in Donbas or toponyms to the use of prepositions before the names of countries and territories (ополченцы, боевики, сепаратисты; так называемая ДНР). The editorial board defines the list of terms and conventions to be applied for such publications.

Anyhow, differences in expression and redaction way of writing can hardly become a reason to block a publication. These bans often have political rather than legal reasons, as is the case with the *Krym realii* project. However, this does not affect the broadcasting of information by Radio Liberty, which can publish content deemed interesting via other projects that are not blocked in Russia. As for criminal or administrative proceedings against Radio Liberty as an institution, they are almost impossible because the company is registered in the United States, the headquarters are in Prague, and a possible trial in the event of a conflict would not be held in a Russian court. It will therefore be difficult for the Russian authorities to win the case.

Despite this, Radio Liberty's legal department sometimes reviews articles on sensitive subjects to avoid legal action. On the other hand, individual proceedings may be brought against a journalist on Russian territory. If there are risks to the lives or freedom of journalists residing in Russia, they may be moved abroad more or less temporarily. In any case, no legal proceedings against Radio Liberty journalists in Russia has been reported to us. Moreover, according to Roskomsvoboda data, repression for online comments or content affects users of the V Kontakte social network in 90% of cases.

Instead of blocking the broadcast, the Russian authorities use the strategy trying to limit the dissemination of sensitive information in the Russian media, which ignore Radio Liberty's news and avoid mentioning them. This therefore reduces the scope of publications to sensitive topics. The strategy can be circumvented by broadcasting through Telegram channels, even if an independent channel is often drowned by hundreds of state-controlled channels. These channels create what is called "informational noise" that prevents a reluctant reader from finding "relevant information".

Sometimes, the information may even be politically useful for the Russian authorities. Some regional Radio Liberty projects, such as *Kavkaz realii*, sometimes produce publications that the authorities of the Caucasian republics (Chechnya, Dagestan) consider as an opportunity to close gaps in their governance that the local media do not dare to make public. Therefore, there is a sort of two-way relationship between the authorities and abroad-located media. The latter are difficult to reach through the courts, but in some cases, they allow the authorities to understand better the problems that may be solved easily, improving their image.

Several Radio Liberty journalists believe that the blocking of all Russian-speaking projects of this American media can be done only after negotiations at intergovernmental level. This could be a reciprocal measure, if the Russia Today channel is blocked in the United States.

Now the blocking procedures apply selectively to resources that various Russian institutions consider as subversive to state security. However, these procedures can become massive and have a more significant impact on Russian speaking media and expatriate journalists, with the new legislation on the so-called “sovereign Internet”.

The law on the sovereign Runet (sustainable, autonomous, stable) was signed by V. Putin on the 1st of May 2019. The draft of this law was prepared by Duma Deputy Andrey Lugovoy and the members of the Federation Council Ludmila Bokova and Andrey Klichas (known also by other legislative initiatives regulating the Internet). The law has come into force on the 1st of November 2019. The part of the law relating to the national domain name system will come into force on the 1st of January 2021.

More specifically, Law 90 FZ amends two laws already in force, “On Communications” and “On Information, Information Technologies and Protection of Information”. The main objective of Law 90 FZ is to set up a centralized governance of the "collective use networks" or simply the Internet network.

On May 15, 2019, Deputy Prime Minister Maxime Akimov signed the plan to develop 27 regulatory acts for the law. Since June 20, 2019, the drafting of these acts has been accompanied by online consultations with ISPs, communication experts and other actors involved in the functioning of the Russian Internet. More broadly, any Russian citizen may suggest proposals on law enforcement.

The State must also acquire the necessary equipment and have it installed by operators. Roskomnadzor's chief executive, A. Zharov, insisted that this equipment must be designed and manufactured in Russia. After a call for tenders from RKM, the Russian company RDP.ru (15% of which belongs to Rostelecom) was selected to supply the Deep Packet Inspection system for traffic filtering.

In October, new equipment tested the Runet isolation scenarios in the Urals. Experts have questions about the legality of the installation of such equipment and about the effectiveness of the test. However, more importantly, the application of the law raises the question of what will change overall for the Runet and for the activities of its expatriate users.

What does the law provide for?

The law enshrined a new concept into the legislation: "Regulation of the Russian segment of the Internet network". This means that public authorities must now take responsibility for regulating all Internet infrastructure in Russia. It may be traffic exchange points, all the autonomous systems of the Internet owned by legal entities and individuals, the state information system for ensuring the sustainability of the network, national .ru and .rf domains.

The law also implies the establishment of control over Internet traffic across the national borders. The owners of all autonomous systems exchanging traffic with foreign networks are obliged to establish technical means of controlling cross-border traffic by deep packet

inspection (DPI) equipment. These technical means will also be used to filter traffic and block access to prohibited Internet resources. Roskomnadzor is in charge of the centralized management of communication networks in case of threats to the stability and security of the Runet. It will define routing policies for telecom operators and coordinate their connections.

What will be the impact on the Russian Internet? How does the government justify the law and what are the critical arguments?

The main argument of law supporters is that Russia needs “to protect Runet from external shutdown by hostile actors”. The law is presented as a reaction to the National Cyber Strategy of the United States of America adopted in October 2018. The Strategy points Russia as an adversary state in cyberspace alongside with China and Iran and provides for preventive measures to “punish them” and “charge the costs of their actions against the US” by various means. The fact that most of the root servers are located in the United States and the general mistrust of various American actors like ICANN add to the perception of the Strategy as a threat to Russia's socio-economic stability.

The law provides for the creation of an infrastructure that will ensure the efficiency of Russian Internet resources when it is impossible to connect Russian telecom operators to foreign root servers. It may be online shops, accounting, tax reporting or other public services. The Internet is so tightly connected to almost all sectors of the economy and social life that any problem with the network can become critical for a huge number of citizens. It should be possible to retain a substantial portion of this segment of Internet and keep it in working order. So the supporters of the law consider this as national security issues.

The arguments proceed by comparisons. Internet sovereignty policies are in place around the world. All states, including those in Europe and the United States, are making efforts to impose restrictive measures on domestic Internet segments. Two important trends may be distinguished: the strengthening of online security measures, as well as greater attention to the Internet by the State. Both are not considered as Russian "know-how", they are global trends, and they seem completely objective.

The argument also proceeds by clarifying the terminology that can shed light on the authorities' intentions. The law on "sovereign Runet" frightens many with the word "sovereign" - people think it is about isolation. According to the law supporters, these words have another meaning - "able to work independently if necessary", "stable, regardless of external factors". The law is not about restrictions, it is about protecting the Runet. It will ensure the stability of the Russian segment of the Internet in the event of an external shutdown. So the objective is to ensure its smooth functioning within the country.

The critics of the law claim that throughout the history of the Internet, there have been no attempts to shut down the country and isolate it from the outside world. This seems simply impossible to them. On the other hand, the attempts to isolate the Internet from inside of the country will lead to very serious consequences, banks will stop working, planes will stop flying.

Then online cash registers, accounting and online tax reporting will stop working. It will also affect medical devices, navigation maps, emergency notification systems. So for the critics of the law it is the State that poses a threat to the Internet.

They notice some dissonance because the official objective of the law is "protection from external threat". But it becomes clear from the text that protection will still be provided against some things from within the country. In that case, this is not a question of improving safety and security, but of the possibility of blocking by decision of the authorities. Whatever are the reasons for blocking the Runet, they have the same purpose – censorship and shutdowns in case of internal threat.

Over the past year, there were two cases of internal Internet shutdown in Russia. The first one was in Ingushetia during the protests, the second one - on Tverskaya Street in Moscow during the July-August 2019 protest meetings. However, the authorities cannot shut down the Internet at once for everyone: there are about 3,500 telecom operators in Russia. They compete with each other. Many have their own channels of communication abroad. Therefore, technically it is difficult to disable the Internet. It will take a lot of time to give them instructions to shut down and to control the implementation of this order.

It seems impossible to start this system quickly, because the regulatory acts to fill executive gaps and the equipment are still not quite ready. Moreover, some believe that State bureaucracy, corruption and incompetence will slow down the application of the Law. The slowness in the application of this law was confirmed by the announcement by Dmitry Peskov, presidential adviser on information technologies, who recently said that Russia is not ready to implement the law on "sovereign Runet" after November 1, 2019. There was no sufficient equipment installed to test the DPI (Deep Packet Inspection) system.

Anyway, if the application of the law is only a matter of time, what will be the impact on Russian-speaking media, expatriate journalists and other actors?

All the interviewed journalists take seriously the threat that the implementation of Law 90FZ would pose. On the one hand, it is the threat to their activities with the risk of the closure of their services by the management of Radio Liberty. In general, the HR department does not guarantee them the sustainability of their jobs. Some Chechen journalists who have criticized the Kadyrov regime in their publications would then return to Chechnya where they would no longer be safe.

On the other hand, it concerns the threat to the dissemination of information both in Russia and in the part of the post-Soviet area linked to Russia by various cooperation treaties. These countries could therefore also align themselves with Russian legislation, adopt similar laws and have the same traffic filtering equipment installed. The practices of Internet sovereignization could therefore extend to countries that are part of the Eurasian Union such as Kyrgyzstan, Kazakhstan or Uzbekistan, where the number of operators is much smaller and cases of government shutdown are already quite frequent today.

The consequences and solutions to circumvent this law do not yet seem to be fully considered by the actors concerned.

Some believe that if the law blocks external traffic, Radio Liberty can open the websites of its projects in Russia on Russian servers. For journalists there is the possibility of putting certain publications on social networks such as Facebook that would be difficult to block quickly. There is hope that the authorities will not block YouTube, which is very popular among young people. The solution could come from Russian social networks such as VK where media content could be disseminated. The Current Time project proposes an application with an integrated automatic VPN - an existing technical solution that works successfully in Uzbekistan where Radio Liberty's publications are blocked. However, these solutions will not be of much use if the Runet is cut off from the global Internet.

Some solutions to the problem of isolation suggested by journalists have economic substance. In particular, external Internet connection offers could appear on the Russian market in parallel with the internal offer. This would necessarily be more expensive but would allow wealthier communities to have access to external information resources.

Similarly, satellite Internet access is already being developed, but this solution takes longer to implement and it will also be too expensive for a large number of users to access. This could have an impact on both the functioning of media or bloggers' video resources and their audiences. For example, the Current time project's audience is mainly young, used to viewing content on smartphones through the application or on YouTube. Satellite Internet will not offer the same streaming speed and its cost will be prohibitive for young people.

At the same time, expatriate journalists do not exclude the return of their activities to the format of FM radio broadcasts. In this case, it will be a matter of disseminating information in the Russian-speaking space in the old-fashioned way, as in the Soviet era. In this case, journalists would have to work without any support on the ground. Currently the Azeri service of Radio Liberty operates in this way, without having any contact with the Azerbaijani authorities.

Finally, some scenarios foresee the dissemination of information in the off-line regime. Meduza has already published the operating procedure that suggests preventive downloading of all resources from YouTube or other sites that may be of interest to users. This would make it possible to stay informed for a more or less long time. However, it is not a sustainable solution for the media dealing with current events. In this case, according to some journalists, it is possible to store some significant texts subject to Russian censorship on USB sticks and transport them to Russia by various means to circulate them on the internal network, bypassing new blocking procedure. To a certain extent, it would look like Samizdat from the Soviet era.

For NGOs such as CEELI Institute, the stakes are lower, although the isolation of the Runet will hinder communication between NGOs and other actors residing in Russia (activists, lawyers, journalists). On the one hand, their sites are hosted on servers outside Russia. If the law is put into practice blocking the external traffic, these sites will not be isolated and, even more, they would naturally be protected from DDOS attacks. On the other hand, information on the

activities of these organizations is already being disseminated through off-line channels. By the moment, the problems that could arise from the implementation of the law do not seem relevant to them.

When the effects of the new law will start to hamper journalists' activities, they rely on the adaptability of their technical specialists, especially those working on bypassing the Chinese firewall. Some of them mention famous Russian ingenuity, which would also help to find solutions. Their reasoning is in line with that of some Russian experts who believe that in this technological confrontation between the State and the Internet, the State bureaucracy will always be slower and less inventive than the network. Therefore, it will not have much chance unless it physically cuts the network by pushing the Russian economy far back.

From the analysis of these various opinions, we can conclude that Russian-speaking media abroad will not feel immediately the impact of the alignment of the Russian Internet segment at the state borders. The law does not directly target the content of these media regardless of their nature. As we have seen, Russian authorities can limit the scope of critical information from these media by other ways. Some legal tools, in addition to Law 90FZ, could stop or limit Radio Liberty's activities in Russia. For example, it is possible to close its Moscow office by considering it as an "undesirable organization" on Russian territory. Radio Liberty will therefore no longer be able to rely on freelance journalists and journalistic investigations.

Today, Roskomnadzor already has the necessary power to block materials that it considers illegal. The damage of the new law would only be collateral on Russian-speaking media abroad. The shutdown effects under the new law, in case the Russian authorities feel threatened, would be as unpredictable for the media as for other online services mentioned by critics of the law. Admittedly, it can be assumed that the conditions for putting the provisions of this law into practice will never be met. There may be various reasons for it. However, the law introduces new possibilities for traffic filtering that Russian authorities may use in different conflictual situations. If they use the law provisions, it will negatively affect the communications and information dissemination of Russian-speaking media and NGOs outside Russia.