

(Translated from Russian)

Permanent Mission of the Russian Federation
to the United Nations Office and other international
organizations in Geneva
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No. 2455

The Permanent Mission of the Russian Federation to the United Nations Office and other international organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to transmit herewith information from the Russian Federation in connection with the request by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the right to privacy (reference: AL RUS/2018).

The Permanent Mission of the Russian Federation takes this opportunity to convey to the Office of the United Nations High Commissioner for Human Rights the renewed assurances of its highest consideration.

Geneva, 5 June 2018

Office of the United Nations High Commissioner for Human Rights
Geneva

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Information from the Russian Federation in connection with the request by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the right to privacy concerning the situation of the global instant-messenger service “Telegram”.

Reference: AL RUS 7/2018

The Russian Federation has examined the request by the OHCHR Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the OHCHR Special Rapporteur on the right to privacy concerning the situation of the global instant-messenger service “Telegram” and submits the following information.

Under article 23 of the Constitution, everyone shall have the right to the inviolability of his (her) private life, personal and family privacy, and protection of his (her) honour and good name. Everyone shall have the right to privacy of correspondence, of telephone conversations and of postal, telegraph and other communications. This right may be limited only on the basis of a court order.

The instant-messenger service “Telegram” registered with the Federal Service for Supervision of Communications, Information Technologies and Mass Communications (hereinafter Roskomnadzor) as an organizer of the dissemination of information on the Internet in 2017. It is accordingly subject to Russian legislation, and specifically to Federal Law No. 149-FZ of 27 July 2006 on Information, Information Technologies and the Protection of Information (hereinafter referred to as Federal Law No. 149-FZ). In accordance with article 1, paragraph 10 of that law, information is disseminated freely in the Russian Federation, provided the requirements established by the legislation of the Russian Federation are met.

Administrative liability for breaches of this duty by organizers of the dissemination of information on the Internet is provided for by article 13.31, section 2.1 of the Code of Administrative Offences of the Russian Federation (hereinafter the Code).

Article 15.4 of Federal Law No. 149-FZ provides that, where it is established that an organizer of the dissemination of information on the Internet has not fulfilled its obligation to provide information to the Government authorities, the federal executive authority shall send to its address (or to the address of its subsidiary or representative office) a notice requiring fulfilment of such obligations within a period of not less than 15 days.

Where the organizer of the dissemination of information on the Internet does not fulfil the obligations under article 10.1 of Federal Act No. 149-FZ within the period specified in the notice, access to information systems and/or software that are intended and/or used for the reception, transfer, delivery and/or processing of Internet users’ electronic messages and whose functioning is ensured by that organizer shall be restricted by the Internet service provider, on the basis of an enforceable court order, until such obligations are fulfilled.

The procedure for interaction by the authorized federal executive body with the organizer of the dissemination of information on the Internet, the procedure for issuing the above-mentioned notice, the procedure for restricting and re-establishing access to the above-mentioned information systems and/or software, and the procedure for informing citizens (natural persons) of such a restriction are laid down in Decision of the Government of the Russian Federation No. 745 of 31 July 2014 on the Procedure for Joint Action by the Federal Service for Supervision of Communications, Information Technologies and Mass Communications and the Organizer of the Dissemination of Information on the Internet Information and Telecommunications Network.

In accordance with the legislation of the Russian Federation, by Decision No. 383 of the Meshchansky District Court of Moscow concerning the administrative offence committed on 16 October 2017, the company “Telegram Messenger Limited Liability Partnership” was convicted of an administrative offence provided for under part 2.1 of article 13.13 Code of Administrative Offences, and an administrative penalty in the form of an administrative fine of 800,000 roubles was imposed.

The Meshchansky District Court of Moscow (on 12 December 2017) and the Supreme Court of the Russian Federation (on 20 March 2018) upheld the decision imposing an administrative sanction and recognized the obligation imposed by the authorized federal executive body as lawful.

On 20 March 2018, Roskomnadzor, the communications, information technologies and mass communications regulator, sent the company “Telegram Messenger Limited Liability Partnership” a notice of non-fulfilment of obligations and set a period of 15 days for their fulfilment.

On 6 April 2018, upon expiry of the deadline set in connection with non-fulfilment by the company “Telegram Messenger Limited Liability Partnership” of its obligations as an organizer of the dissemination of information on the Internet, Roskomnadzor filed an application in the Tagansky District Court of Moscow to block access to “Telegram” messenger on the territory of the Russian Federation.

On 13 April 2018, the Tagansky District Court of Moscow issued a decision to restrict access to information systems and/or software that are intended and/or used for the reception, transfer, delivery and/or processing of Internet users’ electronic messages and whose functioning is ensured by the company “Telegram Messenger Limited Liability Partnership”, until the company fulfils its obligation to provide the authorized federal executive body with the information required to decipher electronic communications received, transmitted, delivered and/or processed. In accordance with article 212 of the Code of Civil Procedure of the Russian Federation, the Court considered it necessary to render its decision on that civil case for immediate enforcement.

It should also be noted that representatives of the company “Telegram Messenger Limited Liability Partnership”, having been duly informed of the day, time and place of the hearing, did not appear in court. The company did not provide the court with any evidence of the impossibility of fulfilling its obligations under article 10.1 of Federal Act No. 149-FZ.

On 16 April 2018, in accordance with the above-mentioned ruling, Roskomnadzor began blocking the messenger service on Russian territory.

On 14 June 2018, the Judicial Board on Civil Cases of the Moscow City Court upheld the 13 April 2018 decision of the Tagansky District Court of Moscow.

The representatives of the “Telegram” messenger service have the right to appeal the decision to the Supreme Court of the Russian Federation.

In this context, the assertions by the Special Rapporteurs highlighting the absolute nature of the right to freedom of opinion and expression are totally unacceptable.

This approach is in contravention of international norms, including the provisions of article 19 of the International Covenant on Civil and Political Rights concerning the right of everyone to “freedom of expression”, including “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”. Under this article of the International Covenant, the exercise of this right carries with it “special duties and responsibilities” and may be “subject to certain restrictions, but these shall only be such as are provided by law and are necessary” for the protection of national security or of public order, or of public health or morals.

Article 29 (2) of the Universal Declaration of Human Rights stipulates that, in the exercise of his rights and freedoms, everyone may be subject only to such limitations as are determined by law for the purpose of meeting the just requirements of morality, public order and the general welfare in a democratic society. It should also be borne in mind that article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms permits interference by a public authority in the exercise of certain individual rights if such interference is provided for by law and is necessary in the interests of national security, public order or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or the protection of the rights and freedoms of others. Article 9 of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data states that derogations from and restrictions on the

guarantees established for data subjects shall be allowed when such derogation is provided for by the law of States parties to the Convention and constitutes a necessary measure to protect State security, public safety and the monetary interests of the State or to suppress criminal offences, as well as to protect the data subject or the rights and freedoms of others.

In full consistency with the above-mentioned provisions of international instruments, article 55 (3) of the Constitution of the Russian Federation stipulates that any limitation of the rights and freedoms of citizens and their associations shall be based on the law, pursue a socially significant objective (protection of the basis of the constitutional order, morality, health, the rights and lawful interests of persons and citizens, and ensuring the defence of the country, the security of the State and public order) and be necessary in a democratic society (relevant and adequate, proportionate to the socially significant objective being pursued).

In view of the foregoing, the attempt by the Special Rapporteurs to base their enquiry a priori on the unfounded assertion that the competent Russian organs took no action is unacceptable and is not consonant with the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council, including the principles of objectivity, impartiality, transparency and even-handedness.
