Freedom of Expression Online

Ban of Political Expression on the Internet in Russia

Renat Fakhrtdinov
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1. Introduction

1.1 Background

The Internet has a great impact on all spheres of life. It has changed the way people communicate, interact, trade and study. Since 1991, the Internet has arguably become the main medium of communication in the World. Currently, more than a half of the whole World’s population, 56.8% to be exact, are users of the Internet. According to Q4 Global Digital Statshot report, the amount of the Internet’s active users has been increasing annually. Indeed, the Internet has changed the way people live. At the same time, the birth of the virtual environment has triggered the issues concerning human rights implications of the Internet. Freedom of expression is not an exception. On the one hand, the Internet provides people with a great opportunity to express their views as well as to gain information. It is seen as a vital resource as it allows people to receive, seek and share information instantly and inexpensively across national borders. Unlike radio, television and printed publications, which are based on unilateral communication, the Internet has made a breakthrough by becoming an interactive medium. On the other hand, free flow of information has triggered public authorities to interfere in the cyberspace. For example, during the last seven years Russia has been practicing aggressive policy towards online speech. Since 2012, numerous amendments were provided to the Criminal Code of Russia. These newly established provisions de facto criminalized and restricted political expression on the Internet. Later, Russian authorities blocked LinkedIn and Telegram (online messenger), in 2016 and 2018 respectively.

In May 2019, the Russian law on Internet sovereignty was signed. According to explanatory memorandum to the law, it aims to protect Russian cyberspace from foreign attacks. However, in practice, this law provides Russian authorities with a statutory power to regulate the content on the Internet, especially those of a political nature. It should not be left unmentioned that along with the law on Internet sovereignty, the President had signed another legal document that established administrative fines on citizens and media resources for disrespectful online expressions towards authorities in power. In most cases Russian authorities – while establishing new restrictions on online speech – hind behind Article 55 of the Constitution, which in turn allows to restrict freedom of expression on the basis for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defence of the country and security of the State. However, in practice, current legislation pursues none of these grounds. Quite contrary, it can be argued that it aims to take control over the Internet and to threat political activists and human rights defenders on the Internet. The problem therefore resides in a systematic and target-oriented policy of Russian authorities towards regulation of freedom of political expression on the Internet.

1.2 Purpose

The aim of this master thesis is to examine states’ possibility to limit political freedom of speech in cyberspace according to international documents from the United Nations (UN) and the Council of Europe (CoE), as well as to analyse if Russian legislation on regulation of the Internet could be seen as legitimate or if this legislation is in fact an unlawful interference into freedom of political expression online. In order to accomplish the main goal of the master thesis, the following questions must be examined:

• What are the origins of freedom of expression?

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1 Internet World Stats statistics.
2 Q4 Global Digital Statshot Report.
4 Ibid.
5 See Administrative Code of Russia, Art. 20.1 (3).
• Is freedom of expression on the Internet recognized as a human right under UN and CoE jurisdictions?
• Under what circumstances can the European Court of Human Rights (ECtHR) justify states’ interference into freedom of expression online?
• What challenges does the right to political expression on the Internet face in Russia? Is there Internet censorship in Russia?

1.3 Method
I have chosen traditional legal method in this master thesis in order to accomplish identified goals.

Firstly, I have given a brief history about the right to freedom of expression as a fundamental human right by focusing on its progressive development from ancient times to present time. In doing so, I have examined the predecessors of modern international human rights instruments, such as the British Bill of Rights (1689), French Declaration of the Rights of Man and Citizen (1789) and First Amendment to the US Constitution (1791). This is, however, not enough. Therefore, I have also examined such soft and hard human rights instruments as Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR) and European Convention on Human Rights (ECHR). By that, I have come to a conclusion that the right to freedom of expression is a typical first generation right and being recognized both on universal and regional levels. Though I have used both international and regional instruments, the freedom of expression has been protected greater under the CoE jurisdictions. Thus, in this master thesis I have mainly focused on freedom of expression issues in the context of wordings of Article 10 of the ECHR.

Then, I have made the connection between the freedom of expression and the Internet. By that, I have placed the major emphasis on the examination of how the freedom of expression on the Internet has become universally recognized under UN and CoE jurisdictions. I analysed Frank La Rue’s report on the promotion and protection of the right to freedom of opinion and expression. This document is of great importance, as it provides the fundamental principle – what applies offline, also applies online. This principle formed the basis for the subsequent adoption of the UN key resolution on the promotion, protection and enjoyment of human rights on the Internet in 2012. In order to make the link between freedom of expression and the Internet within the CoE’s framework, I have examined several legal acts adopted by the Committee of Ministers of the CoE.

Secondly, I have examined under what circumstances state’s interference into cyberspace can be justified as well as what restrictions can be put on online speech. By doing this, various approaches of the ECtHR towards limitations on freedom of expression on the Internet have been analysed. I have focused on the notion that the right to freedom of expression online is not absolute in the context of Article 10 of the ECHR and the body of case law of the ECtHR. In order to show that, I have chosen the most important cases, such as Mouvement Raelien v. Switzerland, Yildirim v. Turkey, Times Newspaper Ltd. v. UK and others. The principles elaborated in these judgments have been constantly applying by the ECtHR in other cases related to the freedom of expression on the Internet. The issue of under what circumstances state’s interference into cyberspace can be justified is a question with philosophical implications, therefore I have used the legal literature which is written by legal scholars with an exceptional knowledge of Strasbourg’s case law. I have concluded with the notion that in order to justify interference into freedom of expression online, the states must comply with the three-part cumulative test of legality, legitimacy, necessity and proportionality.

Finally, I have examined authorities’ approach towards regulation of the content on the Internet and freedom of political expressions online in Russia. I have chosen this country because, since 2012, there have been legally established censorship on the Internet as well as
the institution of the criminal prosecutions for the enjoyment of the freedom of political expression online. I have examined the censorship legislation on conformity with the general provisions of the Constitution of the Russian Federation. Guided by the Presidential Council’s and human rights centres’ legal assessments, I have concluded that Russian censorship legislation is nothing but unlawful state’s interference into freedom of expression on the Internet. Moreover, I have examined the practice of domestic courts on the implementation of the Criminal Code provisions related to the freedom of political expression on the Internet and various reports made by human rights organizations on such implementation. By doing that, I have found that broad and vague grounds upon which a person can be prosecuted allow the national enforcement agencies to initiate criminal prosecution selectively and arbitrarily against citizens expressing their political views on the Internet. I have also examined statistics and studies made by independent organizations, such as Freedom House and Reporters Without Borders.

2. The right to freedom of expression and the Internet

2.1 Freedom of expression on the Internet as a human right

Freedom of expression is the fundamental principal of democracy, which provides individuals and collectives with a right to articulate, impart, seek and receive any information regardless of the medium they use. The history of this right goes back to ancient times and predates modern international and national human rights instruments. It is generally believed that ancient Greeks were the first nation who exercised the right to freedom of expression. Politicians, philosophers, performing artists and even regular folks were free to express their views about politics, religion and government. This argument is supported by the fact that famous Greek philosopher Socrates was convicted by an Athenian jury for rejecting the gods of the city and corrupting the young. He disdained and mocked Athenian gods by claiming them immoral and, at the same time, arguing that every individual should not be taught on religious basis, but rather on good knowledge, principles of justice, honesty and personal integrity. He also opposed Sparta to democratic politics of Athens. Even though Socrates was sentenced to death by the jury not because of the physical harm or actions he made, but because of the things he said, this was perhaps the first and one of the most famous evidence of the existence of relationships between freedom of expression and the state.

The origin of the modern vision to freedom of expression, especially one’s of a political nature, can be found in early human rights legal documents, for instance in the British Bill of Rights 1689. One of the preconditions for the enactment of this document was a lack of the right of the members of the British Parliament to express their political opinion without fear of possible criminal proceedings against them. As a result, after the Glorious Revolution in 1688, this right was ensured in Article 9 of the Bill of Rights, which constituted that the freedom of speech in parliament ‘ought not to be impeached or questioned in any court or place out of parliament’. However it should be borne in mind that their right to freedom of speech in the Parliament was not seen as a civil right, but rather some sort of immunity, so-called Parliamentary Privilege. Not to mention the Declaration of the Rights of Man and Citizen as a key human rights document not only in the history of France, but also in the World’s history. It was adopted during the French Revolution in 1789, and as opposed to the Bill of Rights, the French Declaration provided all French citizens with the right to exercise the freedom of expression, not just for the members of the Parliament.

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7 Ibid.
8 Ibid.
9 Bogen 1983, p. 431.
10 Ibid., p. 433.
11 Ibid., see generally Chapter I.
Pursuant to Article 11 of the Declaration, ‘the free communication of ideas and opinions is one of the most precious rights of man. Any citizen may therefore speak, write and publish freely, except what is tantamount to the abuse of this liberty in the cases determined by Law’. In other words, the French Declaration indeed recognized the freedom of expression as a civil right, but also recognized the possibility to limit this right. Finally, it should be mentioned that both the British Bill of Rights and the Declaration of the Rights of Man and Citizen were ancestors of the First Amendment to the United States Constitution, which was adopted in 1791. According to the First Amendment, ‘Congress shall make no law… abridging the freedom of speech, or of the press’. Even though the First Amendment prohibits government’s ability to constrain the speech of citizens, freedom of expression is not absolute, which means that certain types of expressions and information can be prohibited outright as well as some types of speech may be more easily restricted than others. However, in this case, the Supreme Court requires the government to provide substantial justification for such interference.

To summarize above mentioned information, I would like to point out the fact that long before the well-known international human rights instruments came into force, the right to freedom of expression had been already recognized on a national level in various parts of the World. No wonder that in these particular countries the right to speech is being respected and protected on a very high level.

Nowadays freedom of expression along with the freedom of assembly and association, the right to life, the right to be free from torture and ill-treatment, the right to liberty and security of a person, the right to a fair trial as well as the freedom of thought, conscience and religion constitute fundamental civil and political rights. Freedom of expression serves as an essential element of democracy providing individuals and society as a whole with a possibility to have an impact on various social, political and cultural issues. Indeed, this right is crucial for modern democracies as freedom of speech prerequisites it. Not to mention the fact that freedom of expression serves as an enabler of other economic, social and cultural as well as civil and political rights, such as freedom of thought, conscience and religion. Indeed, to express personal beliefs and ideas is for many people an essential part of the holding these beliefs and ideas.

Freedom of expression is also connected to freedom of assembly and association, the right to privacy and sometimes even to the right to a fair trial. Thus, the right to freedom of expression has been recognized in all key international treaties both universal and regional. It should also be mentioned that the very fact of the existence of provisions about the right to freedom of expression in Constitutions is a signature feature of states’ commitment to ensure and protect democracy and pluralism of ideas and opinions.

Following Article 19 of the UDHR and Article 10 of the ECHR, freedom of expression as a human right is comprised of three elements: freedom of opinion, freedom to express someone’s opinion, and freedom of information. At the same time, freedom of expression implies that people can seek, receive and impart information regardless of a particular type of expression, whether oral or written. In this context, the right to freedom of expression covers any kind of expression, including political, commercial and artistic, whether that expression is in print or online. The same notion can be found in Article 19 paragraph 2 of ICCPR, pursuant to which ‘everyone shall have the right to freedom of expression; this right shall

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12 French Declaration of the Rights of Man and Citizen, Article 11.
13 First Amendment to the US Constitution.
17 Bantekas and Oette 2016, p. 390.
18 Rainey, Wicks and Ovey 2014, p. 435.
19 UDHR (Article 19), ICCPR (Article 19), ECHR (Article 10), African Charter on Human and Peoples’ Rights (Article 9), American Convention on Human Rights (Article 13).
20 Benedek and Kettemann 2014, p. 23.
21 Ibid.
include 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’. 22

The Strasbourg Court, in its judgment in the Handyside Case, has reaffirmed that freedom of expression includes any kind of information. The Court has held that, taking into account that freedom of expression is one of the basic conditions for society’s progress and for development of every man, Article 10 of the ECHR protects not only information and ideas that are favourably received or regarded as inoffensive, but also those that offend and even shock the state or society. 23 However, taking into account an extensive body of jurisprudence concerning Article 10 of the ECHR, the most protected type of expression is political expression ‘as the Court considers that such expression is essential for the creation and effective operation of pluralistic democracies, which are necessary to ensure respect for fundamental human rights’. 24 It should be mentioned that while Article 19 of the UDHR recognizes the right to freedom of expression as an absolute right, ICCPR and ECHR allows the possibility to limit it if such restriction is necessary and pursues legitimate aim. Notwithstanding the foregoing, possible limitations on freedom of expression online will be examined in Chapter 2.2 of the master thesis.

Freedom of expression has gained much importance with the growth of the Internet as an interactive and global medium. 25 Attempts towards regulation human rights on the Internet on a global scale were first made during the World Summit on the Information Society in 2003 and 2005, in Geneva and Tunis respectively. The Summit pointed out the issue of the proper role of human rights in Internet governance. 26 As a result, in 2005, the UN has established the Internet Governance Forum in order to monitor and solve problems related, among others, to implementation of human rights on the Internet, in particular freedom of expression, through discussions on public policy issues relating to the Internet both with the public and private sector. 27

At the same time, in 2003, the CoE adopted the Declaration on Freedom of Communication on the Internet. The document consists of seven general principles and commentaries on them. 28 Among these foundations the following are of great importance for freedom of political expression online: absence of prior state control, removal of barriers to the participation of individuals in the information society and anonymity.

Later in 2005, the Committee of Ministers of the CoE adopted Declaration on Human Rights and the Rule of Law in the Information Society, which reaffirmed that ‘freedom of expression, information and communication should be respected in a digital as well as in a non-digital environment, and should not be subject to restrictions other than those provided for in Article 10 of the ECHR, simply because communication is carried in digital form’. 29 Furthermore, the CoE has adopted numerous legal documents which contain principles, guidelines and recommendations in order to ensure respect for human rights on the Internet, in particular for freedom of expression. 30

At universal level, the strong link between cyberspace and human rights was made at the 17th session of the UN Human Rights Council in June 2011. 31 Among other issues,
the UN Human Rights Council focused on issues related to the right to freedom of expression on the Internet. Frank La Rue, the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, pointed out that with the development of the Internet ‘individuals are no longer passive recipients, but also active publishers of information’.

In July 2012, the UN Human Rights Council adopted its key resolution on the promotion, protection and enjoyment of human rights on the Internet. HRC noted that ‘the exercise of human rights, in particular the right to freedom of expression, on the Internet is an issue of increasing interest and importance as the rapid pace of technological development enables individuals all over the world to use new information and communications technologies’.

The Council has also reaffirmed the notion of Frank La Rue that the same rights people enjoy offline must also be protected online, especially freedom of expression.

2.2. Restrictions on freedom of expression on the Internet

The right to freedom of expression online is not absolute. That means that it can be subject to certain restrictions. Some types of expression may be prohibited outright. At the same time, some types can be restricted more easily than others depending on a particular content of expression as well as the form of political governance in the country. Not to mention the fact that the exercise of freedom of expression on the Internet can come into a conflict with other human rights, such as the right to privacy and freedom of religion. In that case, finding a balance between the right to freedom of expression and other rights may be very hard. Some countries favour unlimited liberty, such as the USA, whereas CoE members have an obligation to ban extremely offensive speech, such as hate speech or denial of genocide and Holocaust, or expressions glorifying totalitarian regimes, such as Nazi Germany. Thus, the degree to what extent freedom of expression online may be restricted is the subject of intense debates.

Pursuant to Article 19 paragraph 3 of ICCPR, the exercise of the freedom of expression carries with its special duties and responsibilities, and therefore can be restricted by law in order to respect the rights and reputations of other people as well as to protect national security, public order, public health or morals. In this sense the principle what applies offline, also applies online is also applicable in case of putting limitations on freedom of expression. Frank La Rue, in his report on the promotion and protection of the right to freedom of opinion and expression, stated that in order to restrict freedom of expression online the three-part cumulative test must be applied:

- Restriction must be provided by law, which is clear and accessible to everyone; moreover, the governmental body which applies such legislation must be independent of any political, commercial or other unwarranted influences;
- It must pursue one of the purposes mentioned in Article 19 paragraph 3 of ICCPR;
- It should be in compliance with the principles of necessity and proportionality, which means that restriction must be proven as necessary and the least restrictive means required to achieve the purported aim.

Above mentioned criteria correspond to Article 10 (2) of the ECHR. Pursuant to paragraph 2 of Article 10, the exercise of freedom to hold opinions and to receive and impart information and ideas without state’s interference may be subject to restrictions

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33 Ibid., p. 6.
34 UN HRC Resolution 20/8, 16 July 2002, Preamble.
35 Ibid., para. 1.
36 Bantekas and Oette 2016, p. 391.
37 Ibid.
38 ICCPR, Article 19 (3).
40 See Benedek and Kettemann 2014, p. 46.
in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. However, following the Article 10 (2), restrictions as well as the subsequent penalties must be justified. In doing so, the following criteria must be met: the measure must be provided by law (legality), it also needs to pursue one or more legitimate aims, named in Article 10 (2) (legitimacy), as well as the measure must be necessary in a democratic society (necessity and proportionality).

2.2.1 Margin of appreciation at work: the denial of the Armenian genocide and Holocaust example

Strasbourg provided member states with a margin of appreciation, as states are different in a cultural and legal sense. Moreover, the Court sees national authorities as specialists who better understand and assess the current social environment in the country. Thus, restrictions on freedom of expression will vary from state to state, depending on purpose and nature of the measure and of the content of expression as well as of the form of the expression.

An example of this is the denial of the Armenian genocide of 1915 – an issue that CoE’s member states approach differently. While such countries as United Kingdom, Sweden and Denmark have laws against racism and hate speech, without punishing expressions on denial of historical facts, Switzerland prohibited outright the denial of the Armenian genocide through making the link between the denial with racial discrimination. However, the ECtHR, in its Perinçek v. Switzerland judgment, held differently than Swiss court in Lausanne. The fact of the matter is that Doğu Perinçek, Turkish politician and Chairman of the Turkish Workers’ Party, during his visits to various Swiss cities, had repeatedly propagated the notion that the Armenian genocide of 1915 is a big lie of the western part of the World. Not to mention the fact that he had based his ideas, among others, on Lenin’s and Stalin’s reports, which stated that no genocide of the Armenians had been carried out by Turkey. By that, Mr. Perinçek had violated Article 261 bis § 4 of the Swiss Criminal Code and therefore had been sentenced to 90 days imprisonment and fined 3000 CHF in compensation to the Switzerland-Armenia Association for non-pecuniary damage.

Mr. Perinçek, alleged that ‘his criminal conviction and sentence in Switzerland on account of public statements that he had made there in 2005 had been in breach of his right to freedom of expression’. The ECtHR held that the applicant’s statements had been more of political, legal and historical nature than racially offensive. Moreover, the Court stated that these statements cannot be seen as a call for hatred, violence or intolerance towards the Armenians. Following the paragraph 241 of the judgment, the applicant’s statements ‘were entitled to heightened protection under Article 10 of the Convention’ and therefore ‘the Swiss authorities only had a limited margin of appreciation to interfere with them’. By providing such a decision, the ECtHR affirmed that the denial of historical facts, even if it

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41 Article 10 (2) of the ECHR.
42 See Rainey, Wicks and Ovey 2014, p. 436.
43 See Benedek and Kettemann 2014, p. 47.
44 The term refers to the space of manoeuvre that the ECtHR is willing to grant national authorities in order fulfil their obligations under the ECHR.
46 Rainey, Wicks and Ovey 2014, p. 437.
47 Shahnazarova 2013, p. 327.
48 See generally Perinçek v. Switzerland (no. 27510/08), Chapter I.
49 Ibid., para. 16.
50 Ibid., para. 22.
51 Ibid., para. 2.
52 Ibid., para. 231.
53 Ibid., para. 239.
54 Ibid., para. 241.
offensive for the victims of Armenian genocide, cannot constitute racial hatred or violation of non-discrimination principle.

Contrary to the denial of Armenian genocide, the denial of Holocaust is more protected by the Convention. In 1986, Israel was the first country which prohibited Holocaust negation. Nowadays, slightly more than twenty member states of the CoE to one degree or another have criminalised the denial of Holocaust. Moreover, Strasbourg’s approach under Article 10 can be described as a solid body of case law on the supporting criminalisation of the Holocaust denial on a national level. In its very first judgment on criminalisation of the Holocaust, which originated in 1982 in case X. v Federal Republic of Germany, the European Commission of Human Rights stated that the sanction, which had been applied towards the applicant, was necessary and that Holocaust denial was undermining such democratic principles and values as tolerance and broadmindedness. Not to mention the fact that in order to assess the necessity of state interference under Article 10, Commission has been constantly applying Article 17 of the Convention. Pursuant to Article 17, actions which aim consciously to undermine rights of others cannot be protected by the ECHR, so-called abuse clause. However, after the abolition of the Commission, the Court began to apply the abuse clause directly. Consequently, statements concerning the Holocaust denial are no longer considered under the scope of Article 10 of the ECHR.

Such different approach, both of the Court and member states, towards seemingly the same notorious historical events can be described by several reasons. Firstly, Armenian genocide had taken place long time before the term genocide was coined. Thus, in order to find criminalization of the denial of the Armenian genocide compatible with Article 10 of the Convention, the ECtHR should apply the term retrospectively. Secondly, the denial of the Holocaust is always being linked with hatred and racial discrimination, whereas the deniers of the Armenian genocide do not pursue the same goal. Last but not least, the deniers of the Armenian genocide do not justify the regime responsible for the atrocities, whereas the Holocaust deniers see eye-to-eye with barbarous policy towards Jewish ethnicity.

2.2.2 What applies offline, also applies online
The key case law relating to the right to freedom of expression do not, specifically, relate to the online sphere. However, we should keep in mind the general approach that ‘the principles established by the Court in offline instances are, mutatis mutandis, applied online as well’. The ECtHR pointed out that audio-visual media, in particular the Internet, has more impact than print media, because the Internet serves billions of users worldwide and the potential for damage is therefore greater. As a result, more restrictive measures can be applied towards the regulation of the freedom of expression online.

In case Mouvement Raelien Suisse v. Switzerland the ECtHR examined the Swiss’ authorities refusal to allow a billboard campaign by the applicants organization. In 2001, the Raelien Movement applied for the authorisation of their poster campaign.

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55 See Shahnazarova 2013, p. 325.
56 Ibid., p. 328.
57 Ibid., p. 329.
58 Ibid.
59 Ibid.
60 See Ibid.
61 Ibid.
62 Shahnazarova 2013 cited Fraser, p. 323.
63 Shahnazarova 2013 cited Pech, p. 323.
64 Ibid., p. 323.
65 See Enarsson and Naartijärvi 2016, p. 129.
66 Ibid., p. 127.
68 See Mouvement Raelien Suisse v. Switzerland (no. 16354/06).
69 Ibid., para. 14.
The poster contained the pictures of extraterrestrials, the phrase ‘The Message from Extraterrestrials’, the phone number of the Movement as well as the link on their website. The Swiss authorities refused to allow this campaign on the basis that the organization was involved in activities that were immoral and dangerous for the public order. Even though the poster itself did not contain offensive information for the society, it nevertheless contained the invitation to visit the Movement’s website. The fact of the matter is that through their webpage the organization promoted the geniocracy theory, which was based on the notion that the World must be governed by the most intelligent people. Moreover, they believed that almost all religions, including Christianity, Judaism and Islam, were created by extraterrestrials. From their point of view, scientific and technical progress are of great importance and cloning will enable human being to become immortal.

In 2011, Strasbourg held that there was no violation of Article 10 of the Convention as well as the ban was in accordance with law and pursued legitimate aim. The Court noted that the poster’s advertisement of the organization’s webpage would have increased greatly the impact of the poster campaign. Therefore, the Court agreed that the Swiss authorities’ examination of the website’s content was legitimate, since the billboard clearly aimed to promote the webpage. At the same time, in his dissenting opinion the judge Pinto de Albuquerque noted that ‘the Internet being a public forum par excellence, the State has a narrow margin of appreciation with regard to information disseminated through this medium’.

Strasbourg has also examined restrictions of access to Internet. In the case of Ahmet Yildirim v. Turkey, the Court held that the wholesale blocking of websites violates the right to freedom of expression. The domestic court in Turkey blocked the access to the Google Sites service because of the criminal proceedings against one webpage, which had insulted the memory of the former president of Turkey. Because of this, the applicant, Ahmet Yildirim, could not have access to his own website, although it had no connection with the illegal content. He also stated that blocking of Google Sites service constitute indirect censorship.

In its judgment the Court recognized that the Internet had become ‘one of the principal means by which individuals exercise their right to freedom of expression and information, providing as it does essential tools for participation in activities and discussions concerning political issues and issues of general interest’. The Court held that the restriction was disproportionately excessive, as it resulted in blocking the access to the whole Google Sites service, and national authorities should have taken into consideration that such measure could affect the right to freedom of expression of other Internet users. Consequently, the issue of Internet access engaged the responsibility of the state under Article 10 of the Convention.

At the same time, the Court once noted that the risk of violation posed by content on Internet to the exercise and enjoyment of other fundamental rights, in particular the right to respect for private and family life, is higher than that posed by the print media.
For example, in case *Ovchinnikov v. Russia*, the Court did not find violation of freedom of expression.\(^{86}\) In 2002, the applicant published an article in a newspaper, where he wrote about cruelties and sexual abuses towards a nine-year old boy made by his mates in a summer camp.\(^{87}\) One of the perpetrators was a child of the Russian Federal Judge, another was a police officer’s child.\(^{88}\) The applicant did mention neither the names of the children, nor the parents’ names.\(^{89}\) Later, based on the applicant’s journalistic investigation, several news agencies published on their websites the names and the titles of the parents and their relatives.\(^{90}\) Then, the applicant wrote another article, where he also disclosed the names.\(^{91}\) The parents filed a suit against the applicant insisting on refutation of the published information as well as on a non-pecuniary damage award.\(^{92}\) The domestic court held that by his article the applicant violated among others the right to respect for private life and family as well as breached the parents’ honor, dignity and professional reputation.\(^{93}\) Pursuant to paragraph 42 of the judgment, the right of the press on dissemination of information on issues of general public interest is protected by Article 10 of the ECHR, but only in case there the journalists are acting in good faith and providing information in accordance with the ethics of journalism.\(^{94}\) The Court found that the publication of the names of the juvenile offenders and official positions and entitlements of their relatives ‘did not make any contribution to a discussion of a matter of legitimate public concern’.\(^{95}\) Moreover, the Court held that despite the fact the confidential information had been previously published by other newspapers online, the measure of national authorities was justified in circumstances by the need to prevent ‘further airing in the press of the details of the claimants’ private lives’.\(^{96}\)

Worth mentioning is also the case of *Times Newspapers Ltd v. The United Kingdom*, where the Court also held that there was no violation of Article 10 of the ECHR.\(^{97}\) The applicant alleged that the British law, which stipulates that each time material is downloaded from the Internet a new cause of action in libel proceedings accrued, is nothing more or less than interference into freedom of expression.\(^{98}\)

According to the facts of the case, the applicant published several articles in the printed newspaper, where the Russian money laundering actions were revealed.\(^{99}\) The applicant also revealed the names of persons involved in the money laundering process in these reports.\(^{100}\) All articles were also uploaded onto the applicant’s website.\(^{101}\) Later, one of the persons, G.L., mentioned in the reports brought proceedings for defamation in respect of the two articles printed in the newspaper.\(^{102}\) While the proceedings were pending, the reports remained on the applicant’s accessible archive of past issues on the applicant’s website.\(^{103}\) Then, G.L. filed another suit for defamation resulting from the continuing publication of the articles on the website.\(^{104}\) The British court took the side of the claimant and held to pay damages.\(^{105}\)
Strasbourg held that the state’s interference in the applicant’s freedom of expression
was prescribed by law. At the same time, in this judgment the Court made a note of the
importance of the Internet as an enhancer of the right to freedom of expression. C’est-a-dire it
has emphasized that ‘in light of its accessibility and its capacity to store and
communicate vast amounts of information, the Internet plays an important role in
enhancing the public’s access to news and facilitating the dissemination of information
generally’.

2.2.3 Balancing Articles 9 and 10 of the ECHR: Mariya Alekhina and others v. Russia
The question of the balance between Articles 9 and 10 of the ECHR is a burning issue in various
countries within CoE’s jurisdiction. The Russian Federation is not an exception.

The case of Mariya Alekhina and others v. Russia is of great importance. The case is also
known as the Pussy Riot Case. In this case, applicants Mariya Alekhina, Nadezhda
Tolokonnikova and Yekaterina Samutsevich, members of a Russian feminist punk band, Pussy
Riot, alleged that the institution of criminal proceedings against them, entailing their detention
and conviction, for the performance in Moscow’s Christ the Saviour Cathedral had amounted
to a gross, unjustifiable and disproportionate interference with their freedom of expression.
They complained that Russian courts, by declaring that the video-recordings of their
performance available on the Internet were extremist and by placing a ban on access to that
material, had violated their right to freedom of expression.

In February 2012, the band tried to perform their songs Punk Prayer – Virgin Mary
and Drive Putin Away from the altar of Moscow’s Christ the Saviour Cathedral (the main
cathedral of Orthodox Church in Russia). Through this performance, they wanted to draw
attention of citizen on ongoing political process in Russia, as well as they were also protesting
against the participation of Vladimir Putin in the presidential elections. They also had invited
journalists to gain publicity and point out the current problems in the country. The attempt
was unsuccessful as cathedral guards forced the band out just one minute after the performance
had been started. During the performance the members of the band put on colored balaclavas.
They also shouted out strong language about Putin, regime and the Orthodox Church of Russia.
The video of this performance had been recorded by one of the members and further uploaded
on the band’s website and on YouTube.

In July 2012, the applicants were committed to stand trial before the district court.
The court held ‘that the applicants’ choice of venue (the Cathedral) and their apparent disregard
for the cathedral’s rules of conduct had demonstrated their enmity towards the feelings
of Orthodox believers, and that the religious feelings of those present (6 people) in the cathedral
had therefore been offended’. At the same time the court rejected the arguments that
the performance was rather politically than religiously motivated. The applicants tried to appeal
that they had chosen the Cathedral for the performance because the Patriarch had used the venue
for the political agitation. However, the district court found the applicants guilty of hooliganism

106 Ibid., para. 38.
107 Ibid., para. 39.
109 Times Newspapers Ltd. v. The United Kingdom (no. 3002/03 and no. 23676/03), para. 27.
110 Mariya Alekhina and others v. Russia (no. 38004/12), para. 3.
111 Ibid.
112 Ibid., para. 11.
113 Ibid., para. 13.
114 Ibid., para. 16.
115 Ibid., para. 48.
for reasons of religious hatred and enmity and for reasons of hatred towards a particular social
group and sentenced them to two years imprisonment.\textsuperscript{116}

The Strasbourg court stated that Article 10 of the ECHR ‘protects not only the substance
of the ideas and information expressed but also the form in which they are conveyed’.\textsuperscript{117}
The ECtHR emphasized that the band wished to draw the attention of the citizen and Russian
Orthodox Church to their disagreement of the political situation in Russia, rather than to offend
the orthodox people.\textsuperscript{118} It also stated that the national court did not examine the lyrics
of the songs, but based the conviction primarily on the applicants’ particular conduct
(e.g. colored dresses and balaclavas, strong language, live streaming on YouTube etc.).
Moreover, the ECtHR held that neither analyses was made of the context of the band’s
performance by the domestic courts nor ‘relevant and sufficient reasons to justify the criminal
conviction and prison sentence imposed on the applicants’.\textsuperscript{119} From the ECtHR’s view,
the sanctions were not proportionate to the legitimate aim pursued.\textsuperscript{120} It should be also
mentioned that the band had already performed the punk prayer before in another cathedral.
However, no punishment was invoked. Finally, the Strasbourg’s court held that the interference
was not necessary in democratic society.\textsuperscript{121}

Indeed, the national court did not examine the lyrics of the songs, but rather examined
the venue and actions made by the band. Moreover, restrictions towards freedom of expression
can only be justified if it is prescribed by law.\textsuperscript{122} However, there were not any provisions
in 2012, which could prohibit such performances. The Pussy Riot’s performance triggered
an enactment of subsequent amendments to the Criminal Code of Russia. The newly established
provisions of the Criminal Code virtually prohibit any criticism towards the Russian Orthodox
Church and current political situation in the country. The analyses of these amendments as well
as their implementation will be examined in chapter 4 of the master thesis.

2.3 Executive summary
I absolutely agree with Frank La Rue that the Internet plays a great role in promotion
and protecting human rights especially in the countries where is no independent media. Internet
there serves as a resource of the last resort in order to pay attention on political instability,
corruption and anti-democratic values in society. Thus, freedom of political expression online
should be protected at the same level as offline and in some cases it needs even better protection.
International human rights treaties were drafted with a foresight to include future technological
development, such as the Internet, where people would exercise their rights.\textsuperscript{123}

I would also like to point out that the right to freedom of expression online is the fundamental element of sustainable development of the state, society and individuals,
which has been universally recognized. It serves as an essential enabler of other fundamental
rights, including economic, social and cultural as wells civil and political rights.\textsuperscript{124}
Thus, nowadays there is a strong commitment both on a global and regional scale to ensure
freedom of speech online. But as the Internet has greater impact on society than any other
medium, the right to freedom of expression online has at the same time intensified the violations
of human rights and increased their potential harm.\textsuperscript{125} Following the general principle ‘what
is allowed offline, is allowed online’ and vice versa ‘what is prohibited offline, is not protected

\begin{itemize}
\item \textsuperscript{116} Ibid.
\item \textsuperscript{117} Ibid.
\item \textsuperscript{118} Ibid., para. 211.
\item \textsuperscript{119} Ibid., para. 228.
\item \textsuperscript{120} Ibid.
\item \textsuperscript{121} Ibid., para. 229.
\item \textsuperscript{122} Bantekas and Oette 2016, p. 392.
\item \textsuperscript{123} Report of Frank La Rue, 16 May 2011, p.7.
\item \textsuperscript{124} Benedek and Kettemann 2014, p. 54.
\item \textsuperscript{125} Ibid.
\end{itemize}
online’, the ECtHR also applies the above mentioned three-part test (legality, legitimacy, necessity and proportionality) to cases with online elements. On a national level, the state members have also developed the legislation and practice of restrictions on the right to freedom of expression online accordingly. However, even though states have signed fundamental international and regional treaties and even provided provisions about the right to freedom of expression directly either in their Constitutions or laws, there is still a tendency towards unjustifiable interference. An open nature of the Internet has triggered the state’s concern to monitor and control what kind of information, ideas and beliefs can be shared and accessed by citizens. Unfortunately, new technologies allow the countries to do it easily. At the same time, with the invention of the anonymizers and Virtual Private Net (VPN), the Internet as the platform for the exercise and enjoyment of the freedom of expression has become even more powerful medium. The usage of these new technologies makes it basically impossible for the governmental agencies to track the author of expression. Thus, it is quite common practice to ban VPN. For example, since 2017, the following ban has been existing in Russia. In light of this, the ECtHR has to meet new challenges: ‘upholding its standards developed in its jurisprudence on freedom of expression and applying them to the Internet – taking its special characteristics, including its ubiquity and asynchronicity and amplifying nature, into account and carefully considering its empowering potential’.

3. Internet censorship in the Russian Federation
3.1 Controversial Russian legislation aims to ban political expressions on the Internet
In 1996, Russia joined the Council of Europe. Two years later, the country ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms. Through this process, Russia confirmed its commitment to fundamental principles of humanism and democracy, as well as, readiness to bring certain laws in conformity with the ECHR. In spite of reforms, both within internal legislation and the political system, the violation of human rights still remains a contentious issue in Russia. According to the Annual Report of the ECtHR, Russia is the country with the highest number of judgments in 2018, to be exact 238, finding at least one violation of the ECHR. Moreover, almost 21% (over 11 700) of all pending cases concern Russia. In 2018, domestic authorities were engaged in violations of the freedom of expression 14 times. According to the annual Press Freedom Index made by non-governmental organization, Reporters Without Borders, Russia ranks 149th place, trailing behind Eswatini and Venezuela. Pursuant to the Freedom on the Net report, Russia is one of the worst countries in respect to freedom of the Internet.

Since 2012, there has not been a year when new laws increasing the state’s control over the freedom of expression online were not introduced in Russia. The legislation enacted since 2012 imposed severe restrictions on the Internet and freedom of political expression in general. New definitions and grounds were added, among them are: rehabilitation of the Nazism, separatism incitement, violation of the sanctity of religion. However, the following legal

126 Ibid.
127 Ibid.
129 Federal Law no. 149, newly established Article 15.8.
130 Benedek and Kettemann 2014, p. 54.
131 Jonsson 2005, p. 100.
133 Ibid., p. 7.
134 Ibid., p. 177.
grounds, upon which a person can be convicted, are not clearly defined. Thus, the broad and indefinite wordings of legal provisions allow the law enforcement agencies to apply them selectively and arbitrarily.\cite{137}

For example, the law which criminalized *separatism incitement* is often used to prosecute a person for online expressions which contain the denial of Ukrainian Crimea as a part of Russia.\cite{138} For someone to be put into Russian prison for three years, it will be enough to write and publish an article on your Facebook profile about the agreement between Hitler and Stalin, by which Lithuania, Latvia and Estonia were annexed by USSR and Poland by Hitler, or to place in doubt the heroism of dead soviet soldiers.\cite{139} In order to insult someone’s religious beliefs, the repost of a satirical meme on Jesus shaking hands with Putin will be enough.

Since 2012, numerous legal acts were enacted which clearly aim to control the cyberspace and to restrain citizens from expressing their political views on the Internet. Everything started in July 2012 with the creation of the *federal register of domains containing forbidden information* (Blacklist). The Blacklist was created by amendments which were made to the Federal Law ‘On Information, Information Technology and Data Protection’ (Federal Law no. 149). According to newly established law, the access to the websites should be blocked if they contain child pornography, suicide guidelines and information about drug production.\cite{140} Though the law aimed to protect children and society, Pavel Durov, the founder of social networking sites VK (Russian prototype of Facebook) and Telegram, stated that the law would result in an absolute censorship of the Internet in Russia.\cite{141} It is almost like Durov saw this whole thing coming.

In February 2014, the Federal Law no. 149 was expanded by the new list of forbidden information on the Internet. The law provided the Federal Service for Supervision of Communications (Roskomnadzor) with a right upon the request of the public prosecutor’s office to block immediately out of court’s decision websites containing extremist information and calls for non-authorized public meetings.\cite{142} One month since the new provision came into force, Roskomnadzor blocked the access to three political online media: Grani.ru, Kasparov.ru and EJ.ru.\cite{143} The agency also blocked Alexey Navalny’s webpage on LiveJournal website.\cite{144} Navalny, member of the Russian political opposition, posted several articles where he emphasized issues about corruption in the country and called for a meeting in Moscow, he also criticized Russian authorities for aggressive policy towards Ukraine in these articles.

It should be mentioned, that the law offers no clear criteria for evaluating the legality of content as well as authorities do not provide a detailed explanation on blocking decisions in most cases.\cite{145} On the basis of *combating extremism*, Roskomnadzor censors a wide range of issues online. These issues subject to removal and blocking include: LGBTI expressions, materials related to political opposition and corruption on a state level, articles criticizing Orthodox church as well as expressions on the conflict in Ukraine.\cite{146} For example, representatives of Grani.ru filed an appeal before the district court.\cite{147} They stated that Roskomnadzor did not provide any explanation on blocking their website as well as did not say which one of the articles on the website had been considered as extremist.\cite{148}

\begin{itemize}
  \item \cite{137} See Report of Human Rights Centre Memorial, 22 March 2018.
  \item \cite{138} Ibid.
  \item \cite{139} Ibid.
  \item \cite{140} Federal Law no. 149, Article 15.1 (5).
  \item \cite{141} Meduza, Pavel Merzlikin, ‘In a perfect world, we just wouldn’t exist’, 18 April 2019.
  \item \cite{142} Federal Law no. 149, Article 15.1 (5).
  \item \cite{143} See OOO Flavus v. Russia and 4 other applications (no. 12468/15).
  \item \cite{144} The Moscow Times, Access Blocked to Major Opposition Sites and Navalny’s Blog, 13 March 2014.
  \item \cite{145} See Freedom on the Net 2018, Report on Russia, Limits on Content, para. 4.
  \item \cite{146} Ibid., para. 1.
  \item \cite{147} See OOO Flavus v. Russia and 4 other applications (no. 12468/15), para. 5.
  \item \cite{148} Ibid.
\end{itemize}
Instead, the prosecutor replied generally that almost all the content on the applicant’s website fell under criteria of forbidden information.149 At the same time Grani.ru is the online media which does not only criticize authorities, but also covers international politics issues, sports and cultural news. The law requires authorities responsible for blocking website to provide detailed explanation about the ban. However, the court did not find prosecutor’s decision illegal and held that Roskomnadzor’s ban was justified.150

In Kasparov.ru case, the prosecutor held that the access to the applicant’s website was blocked because of the articles about Crimea crisis.151 The prosecutor found that these articles call to illegal actions as well as undermine the notion of the territorial integrity of the Russian Federation. 152 However again, the explanation was not provided to the representative of Kasparov.ru.

Newly established Federal Law no. 149 has been criticized by various NGOs and national institutions.153 It has also triggered the creation of movement for independent Internet in Russia which is called Roskomsvoboda. The movement was created by unregistered Pirate Party. They provide the full register of blocked domains, information about how to bypass the blockings and review on Russian Internet censorship legislation. According to their website, more than 385 000 webpages were blocked by various state agencies since 2012.154 The vast majority of these resources were blocked on the basis of political expressions towards Vladimir Putin, the ruling party, corruption and Orthodox church.155 More than 1 100 000 IP addresses, including Google’s and Amazon’s IP addresses, are in the Black List.156

Federal Law no. 149 is contrary to the Constitution of the Russian Federation. Pursuant to Article 29 (1) of the Constitution, everyone shall be guaranteed the freedom of ideas and speech.157 Moreover, ‘everyone shall have the right to freely look for, receive, transmit, produce and distribute information by any legal way’.158 Last but not least, censorship in mass communications, including the Internet, should be banned under Article 29 (5) of the Constitution.159 Presidential Council for Promoting the Development of Civil Society Institutions and Human Rights criticized the law by stating that the procedure of blocking content online constitutes the violation of the right to freedom of expression, expressed in Article 29 of the Constitution.160 The Council also noted that the very existence of authorities’ rights to block websites without any court’s decision undermines the right to a fair trial.161 Moreover, from the Council’s point of view, the lack of a direct appeal procedure to the state body, which made a decision, undermines the principles of governance and democracy.162 Indeed, the law provides various agencies, including Roskomnadzor, with a statutory power to block the content in the Internet without judicial proceedings, at the same time the only way to try to prove the legality of the content is to bring the appeal before the court.

149 Ibid., see generally para. 3.
150 Ibid., para. 7.
151 Ibid., see generally para. 3.
152 Ibid.
153 Amnesty International supported Grani.ru and other blocked online media by establishing a campaign against Internet censorship in Russia. 154 See Roskomsvoboda tables and graphics.
155 Ibid.
156 Ibid.
157 Constitution of the Russian Federation, Art. 29 (1).
158 Ibid., Article 29 (4).
159 Ibid., Article 29 (5).
160 Legal Opinion of the Presidential Council, 2 July 2012, preamble.
161 Ibid.
162 Ibid.
3.2 Foreign agents law

In 2012 the State Duma, the lower chamber of the Parliament, also enacted another law which circumstantially poses a serious threat on freedom of press and expression online. So-called Federal Law on foreign agents (Federal Law no. 121) provides that any non-commercial organization (NCO) and NGO involved in political activities in Russia and financed by foreign investments must be recognized as a foreign agent in Russia.\(^{163}\) Pursuant to the law, NCOS and NGOs must to register their organizations as foreign agents in the Ministry of Justice of Russia, annually report on disbursements to the Ministry as well as to indicate the status of a foreign agent in the articles they publish.\(^{164}\) Otherwise, for failing to perform the latter criteria, an organization can be fined in amount of 300 000 RUR (slightly more than 4 000 EUR). It should be mentioned that literally the phrase foreign agents can be translated as a spy.\(^{165}\) In 2017, the law was extended to media outlets, at the same time the definition of media outlets provided by the law is very broad to be applied to not just media, but also to individual bloggers and academic organizations.\(^{166}\) For example, in August 2018, the district court held that the owner of the Facebook profile ‘Chelovek i Zakon’ violated the Federal Law no. 121 criteria on foreign agents by publishing political articles without indicating spy status on Facebook.\(^{167}\) More than 170 NCOS and NGOs, including Human Rights Watch and Amnesty International, have been designated as foreign agents since 2012.

Nowadays, the ECtHR examines more than 73 applications against Russia in respect to the Federal Law no. 121.\(^{168}\) In its report the CoE Commissioner for Human Rights has criticized the law.\(^{169}\) The Commissioner stated that that ‘the provisions on the Law on Foreign Agents introduced unjustified discriminatory treatment for a particular set of organizations, and interfered with the free exercise of the rights to freedom of association and freedom of expression’.\(^{170}\) In June 2013 the European Parliament adopted its resolution where reminded Russia ‘of the importance of full compliance with its international legal obligations, as a member of the Council of Europe, and with the fundamental human rights and the rule of law enshrined in the European Convention on Human Rights’ as well as expressed its ‘serious concerns about the recent repressive laws and their arbitrary enforcement by the Russian authorities, often leading to harassment of NGOs, civil society activists, human rights defenders and minorities’.\(^{171}\)

3.3 Anti-terrorism agenda as a blind for interference into cyberspace

In 2016, a package of laws was enacted by the State Duma in respect of anti-terrorism agenda.\(^{172}\) The package is known as Yarovaya Law, named after the member of the Parliament, Irina Yarovaya. Except for adding greater punitive measures for terrorism, the Yarovaya Law obliges Russian telecom operators to collect and keep in archive: phone calls and messages of the telephone subscribers for three years.\(^{173}\) Internet providers, social networks, search engines, such as Google, must collect and store online users’ text messages, voice messages, audio and video materials, photos and personal data of the users for one year.\(^{174}\) The Ministry of Digital Development, Communications and Mass Media (Minkomsvyazi) was entitled

\(^{163}\) Federal Law no. 121, Article 2 (6).
\(^{164}\) Ibid., Articles 24 (1), 32 (3)
\(^{165}\) Third party intervention, 5 July 2017, para. 8.
\(^{166}\) Report of Human Rights Centre Memorial, 22 March 2018.
\(^{167}\) See Выписан первый штраф за отсутствие маркировки «иностранных агента» в Facebook [First penalty charge for the absence of ‘foreign agents’ markings on Facebook], 13 August 2018.
\(^{168}\) See ЕСПЧ коммуницировал жалобы 15 российских НКО [ECtHR communicated 15 Russian NCOs’ complaints], 29 June 2018.
\(^{169}\) Third party intervention, 5 July 2017, para. 12.
\(^{170}\) Ibid.
\(^{171}\) European Parliament resolution on the rule of law in Russia, 13 June 2013, para. 1, 2.
\(^{172}\) The package consists of Federal Law no. 374 and Federal Law no. 375.
\(^{173}\) Federal Law no. 126, newly established Article 64 (1).
\(^{174}\) Federal Law no. 149, newly established Article 10.1 (3).
to monitor the implementation of the *Yarovaya package*. Pursuant to the draft of Minkomsvyazi’s directive, Internet providers must retain and provide to the Federal Security Service (FSB) the following information about the Internet users: the date and time of the registration on social network or other website, date of birth, address, first and last names, passport data, languages the user mentioned he or she speaks, and pseudonym on his or her personal profile. Following the law, above mentioned information must be provided to FSB without a court order. Moreover, according to amendments made to the Administrative Code of Russia, social networks and messengers are obliged to decrypt the user’s messages. Upon the request of FSB, encryption codes must be provided by Internet providers and social networks websites.

As a result, in October 2017, popular online messenger Telegram was penalized in respect of refusal to provide encryption codes to FSB. Telegram is very popular messenger and social network among political bloggers and ordinary people. Telegram is the only online platform in Russia, where citizens can receive and share information about the current political situation in the country without any fear. The number of subscribers is more than 200 million people worldwide. Not to mention the fact that top 10 Russian Telegram channels are focused on corruption in Russia, Putin’s aggressive policy on international arena, state’s propaganda and other political issues. It is no wonder that, of all others, the *Yarovaya Law* targeted Telegram. In April 2018, the district court held to block the access to Telegram in Russia. This was possibly one of the most obvious manifestations of the Russian authorities’ repressive approach to the Internet.

Presidential Council for Promoting the Development of Civil Society Institutions and Human Rights provided legal opinion on *Yarovaya Law*. Among others, the Council found violation of Articles 29 (freedom of expression) and 23 of the Constitution. Pursuant to the latter, ‘everyone shall have the right to privacy of correspondence, of telephone conversations, postal, telegraph and other messages; limitations of this right shall be allowed only by court decision’. However, as it was mentioned above, the law provides FSB to receive personal data without any court decision. The Council also stated that the initial conception of the law, combating terrorism, failed to correspond with reality as the law mainly aimed to control the content in the Internet than to protect the society from terrorist attacks. Thus, the argument that Article 55 of the Constitution allows to limit rights and freedoms of man and citizens in order to ensure defence and security of the state cannot be taken into account in this case.

### 3.4 The iron curtain

In Spring 2019, new restrictions on the Internet came into force in Russia. Vladimir Putin signed the law introducing amendments to the Administrative Code. Newly established Article 20.1 (3) prohibits to speak disrespectfully online about official Russian national symbols, Constitution and authorities, such as the President, MPs, judges and other officials. Several cases have been already examined since the adoption of this restrictive measure. First case originated in April, when Yuriy Kartizhev posted on his VK profile a negative phrase

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175 Appendix no. 1 to Minkomsvyazi’s draft directive on information about the Internet users, para. 1.
176 Administrative Code of Russia, newly established Article 13.31 (2.1).
177 Ibid.
179 Telegram analytics, 29 December 2018.
181 Ibid.
182 Legal Opinion of the Presidential Council, 18 April 2016, para. 7.
183 Constitution of the Russian Federation, Article 23 (2).
184 Legal Opinion of the Presidential Council, 18 April 2016, para. 7.
185 Ibid.
186 Administrative Code of Russia, Article 20.1 (3).
about Vladimir Putin. He was later penalized in amount of 30,000 RUR. However, it should be mentioned that the phrase did not pursue to offend the President, but rather to draw attention to political instability in Russia. Later, the district court penalized Kirill Poputnikov for posting on his Facebook profile a photo with a graffiti ‘Putin is homosexual’, which had been drawn on the wall of Police Department’s building. However, the court did not consider the arguments that Kirill neither painted this graffiti nor pursued to insult the President by posting a photo.

In its report to Vladimir Putin, the Council notes that the bill is contrary to Article 55 (3) of the Constitution, because there is no ground for restricting freedom of political expression online for disrespect and criticism towards authorities. Moreover, the Council recommended to refrain from signing the bill because it is contrary to Article 10 of the ECHR and to the case law of Strasbourg. For example, the ECtHR has constantly held that ‘the limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual’. ‘Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance’. One must agree with the Council’s opinion that the law provides no clear explanation about what the court should consider as a disrespectful expression. That makes it seem like anecdotes, satirical memes and photos with captions will also fall under the scope of the law.

In the beginning of May, the Kremlin irrevocably tightened control over the Internet and political expression online by signing Federal Law no. 90 on Russian Internet Sovereignty (Federal Law no. 90). According to memorandum to the bill, the law must be enacted in respect of possible US sanctions towards Russian cyberspace. To support the argument, MPs in their memorandum cited National Cyber Strategy of the United States of America, where it was stated that ‘Russia, Iran, and North Korea conducted reckless cyber-attacks that harmed American and international businesses and our allies and partners without paying costs likely to deter future cyber aggression’. Hiding behind Article 55 of the Constitution, which allows to restrict rights and freedoms of citizens in order to ensure security and protection of the state, the Parliament virtually pursues to isolate Russian population from the rest of the World Wide Web content. In this sense, building the iron curtain, Russia follows their colleagues from China.

Human Rights Watch along with other human rights organizations are concerned about the implementation of the Federal Law no. 90, as it will lead to the subsequent restrictions of already limited Internet and freedom of political expression in Russia. Indeed, the law provides that traffic exchange will be carried out through pre-approved by Roskomnadzor exchange points. Which means that the law provides authorities with a capacity to regulate the flow and content of incoming and outgoing data. Moreover, the law creates a system which allows to block access to ‘parts of the Internet in Russia, potentially ranging from cutting access to particular Internet service providers, through to cutting all access to the Internet throughout Russia’. Pursuant to the law, Internet service providers are obliged to install special devices

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188 Ibid.
189 The Moscow Times, Vulgar Putin Graffiti, 8 May 2019.
190 Ibid.
192 Ibid.
193 Cheltsova v. Russia (no. 44294/06), para. 95.
194 Ibid.
196 See Memorandum to the draft of the Federal Law no. 90.
199 Federal Law no. 90, Article 1, para. 5.
200 Human Rights Watch, Joint Statement on Russia’s ‘Sovereign Internet Bill’, 24 April 2019, para. 3.
capable of blocking Internet traffic. In case of threat to Russian Internet access detection, Roskomnadzor would guide Internet service providers through these devices how to counter the threats. It is clear that blocking would result from direct interaction between authorities and Internet providers and ‘that it will be extrajudicial and nontransparent’. Human Rights Watch believes that society ‘would not know what has been blocked and why’. Moreover, the law can be applied only in case of Russian’s Internet security threat. However, it neither provides the grounds which constitute security threat, nor what particular measures authorities and Internet providers must take to address a threat. Therefore, the law contradicts to the ECHR, which in turn allows to limit rights and freedoms of citizens in case of state security, but only if limitations provided by law are clear and accessible to everyone. The law poses serious risk ‘to the security and safety of commercial and private users and undermines the rights to freedom of expression, access to information and media freedom’.

3.5 Executive summary
Current legislation establishes censorship in the Internet in Russia. Though the prior essence of the legislation is to protect constitutional order of the country, virtually it aims to block undesirable content, such as corruption and officials’ unlawful enrichment issues, criticism towards aggressive external policy and the ruling party and the President. Providing unrealistic conditions for NGOs activity, it aims to hide notorious present-day human rights situation in the country. Moreover, legislation on censorship on the Internet generally contradicts the Constitution of the Russian Federation. Because of online censorship’s recent nature, the strong body of case law has not been established yet. However, Strasbourg has already received numerous applications relating to Russian legislation on the Internet censorship.

4. Criminalizing political expressions on the Internet in Russia
Today, Russian Internet users may be prosecuted under the vast variety of grounds in the Criminal Code of Russia that can be also applied to online political speech. Legislation establishes criminal sanctions for: defamation (Art.128.1), defamation against officials (Art. 298.1), insulting the authorities in power (Art. 319), calls for terrorism (Art. 205.1), insulting religious beliefs (Art. 148), extremism (Art. 280), separatism incitement (Art. 280.1), incitement of hatred (Art. 282), rehabilitation of Nazism (Art. 354.1).

However, most of criminal proceedings fall under Article 282 (calls for hatred and enmity), Article 280 (extremism) and Article 280.1 (separatism incitement). According to Agora International Human Rights Group’s report, more than 115 000 violations of freedom of expression online were committed in 2017 in Russia. Besides, 214 acts of violence against political Internet activists and bloggers were committed over the past 10 years. Since 2007, there have also been 1449 criminal cases with respect to online expressions, including 98 verdicts requiring imprisonment.

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201 Federal Law no. 90, Article 1, para. 3 (a).
202 Ibid., Article 1 (8).
203 Human Rights Watch, Joint Statement on Russia’s ‘Sovereign Internet Bill’, 24 April 2019, para. 5.
204 Ibid.
205 Ibid., para. 6.
206 Ibid., para. 10.
207 Ibid., para. 9.
208 See for example applications: Ecodefence and others v. Russia and 48 other applications (no. 9988/13), Vladimir Vladimirovich Kharitonov v. Russia (no. 10795/14), Levade Centre v. Russia and 14 other applications (no. 16094/17), Rudomakha and North Caucasus Environmental Watch v. Russia (no. 7995/18).
210 Ibid., para. 7
212 Ibid., p. 1.
213 Ibid.
The most controversial ground for prosecuting online political expression is *extremism*. Almost 96% of sentences for extremism related to expressions posted online. This proves that current legislation is nothing but authorities’ target-oriented policy against freedom of political expression on the Internet in Russia. Moreover, the Criminal Code’s definition of extremism is extremely broad and allows to penalize almost every expression criticizing the state for its actions, even if this expression not necessarily abusive or discriminatory in nature. For example, in July 2015, a journalist Alexander Sokolov was detained for alleged involvement in a banned left-wing movement ‘People’s Will Army’. The prosecutor’s office stated that the organization was trying to commit coercive change of power in Russia. In particular, the movement criticized the government and called for the enactment of laws in order to establish the institute of direct liability of the Parliament and President for decisions they took. The organization also called to sign the petition in order to put this initiative to a referendum. In August 2017, the district court held to sentence Sokolov to three and a half years of imprisonment for extremism. However, the journalist denies the accusations, stating that he is being prosecuted for his investigative reports about corruption published on his website. Moreover, he claims that the case was originated soon after he successfully defended his PhD thesis about corruption within Russian state corporations.

Like extremism, separatism incitement is not clearly identified. Pursuant to Article 280.1 (2) of the Criminal Code, public calls on the Internet to action for the violation of the territorial integrity of the Russian Federation shall be punished by a term of imprisonment of up to five years. From the wording of Article 280.1 (2) it is clear that it does not contain any criteria of separatism incitement. However, following the practice of domestic courts, most cases were originated in respect of denials of Crimea as a part of Russia. For instance, in May 2016, the district court sentenced Andrei Bubeev for two years and three months of imprisonment. The reasons for the criminal prosecutions were reposting of negative statements in relation to Russian-Ukrainian conflict: ‘an article ‘Crimea is Ukraine!’… and a drawing of a hand squeezing toothpaste out of a tube, with the words: ‘Squeeze Russia out of yourself’.’ Memorial Human Rights Centre later recognized Andrey as a political prisoner as he ‘has been deprived of his liberty for the sole reason that he expressed an opinion, and that this is in no way proportionate to the degree of danger presented to the public by the publications, albeit not always in temperate language, of which he is accused’.

In case of Savva Terentyev v. Russia, Strasbourg recently examined the implementation of Article 282 (calls for hatred and enmity) towards freedom of expression online. In 2007, during local legislatures’ elections in the Komi Republic, police visited the office of local newspaper with an unplanned inspection. The officers searched the office and confiscated hard disks. The fact of the matter is that the newspaper had published materials in the context of the election campaign, and that it was in opposition to the ruling authorities of the Republic. Later, the Memorial (human rights organization), issued and published a press release on LiveJournal. The Memorial criticized police by calling them ‘the regime’s faithful dogs’. The applicant, who was the subscriber to the Memorial’s LiveJournal blog,
later posted a comment to the press release, where he expressed his civic stance about the police officers describing their actions with strong language. Following the results of a detailed analyses of the language of the applicant’s comment, the applicant ‘had expressed a distinctly negative opinion about all police officers, their personal and professional qualities, in a gross, indecent, aggressive and insulting form, widely using slang and, indirectly, obscene vocabulary typical of young users of the Internet’. In July 2008, the town court found the applicant guilty and sentenced him to one year of conditional imprisonment. Along with the violation of Article 10 of the ECHR, the Court held that criminal law provisions directed against hatred and enmity incitement should ‘clearly and precisely define the scope of relevant offences’, as well as such provisions should be ‘strictly construed in order to avoid a situation where the State’s discretion to prosecute for such offences becomes too broad and potentially subject to abuse through selective enforcement’. 

According to the expert opinion, made by the Presidential Council, the implementation of the extremism package established in the Criminal Code grossly restricts the right to freedom of political expression online, hampers political discourse in society, results in a disproportionate punishment. The Council recommends to decriminalize these provisions by transposing them to the Administrative Code of the Russian Federation.

### 5. Conclusion

The current status of protection of the right to freedom of political expression on the Internet is complex and involves positive and negative tendencies. On the positive side, the focus on the freedom of speech’s protection in the Internet has been significantly increased both on universal and regional levels since 2011. Important moments include the endorsement by the United Nations Human Rights Council of Frank La Rue’s report and the adoption of the resolution on the promotion, protection and enjoyment of human rights on the Internet. The fundamental principle, what applies offline, also applies online, elaborated in these documents has increased the level of human rights protection, in particular freedom of expression on the Internet.

The analyses of restrictions on freedom of expression on the Internet has shown that the principle is largely followed by Strasbourg. Considering the specificities of the Internet as the new media, the Court applies its rich practice also to cases originating in cyberspace. Though the strong body of case law with respect to freedom of expression on the Internet has not been yet established by the Court, a limited number of judgments allow to see general principles and lines of action of the ECtHR. Among these principles the most important is that restrictions of freedom of expression online are only allowed when they comply with the requirements for interference under Article 10 of the ECHR. Thus, the three-part cumulative test of legality, legitimacy, necessity and proportionality must be applied in the light of the online context.

On a negative note, the right to freedom of expression on the Internet and free flow of information have triggered public authorities to interfere into cyberspace. Nowadays states censor and monitor the content, collect and retain data about the users. Though enjoyment of freedom of expression carries also responsibilities to respect the rights of others, in most cases the Internet regulation poses a serious threat not only to the freedom of expression, but essentially to the very essence of free and open societies.

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228 Ibid., para. 13.
229 Ibid., para. 16.
230 Ibid., para. 21.
231 Ibid., para. 85.
232 See generally Recommendations of the Presidential Council on the improvement of legislation on combating extremism activity, 22 August 2018.
233 Ibid., para. 1.
While the Constitution stipulates that everyone shall be guaranteed the freedom of ideas and speech as well as censorship shall be banned, Russian authorities managed to establish the institute of criminal prosecution for political expressions on the Internet and censorship of the content. Though the prior essence of the Russian legislation on the Internet is to protect the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people as well as to ensure defence and security of the country, its real implementation shows that it aims to ban political expressions which are greatly at variance with official view. The broad and vague definitions used in the laws allow enforcement agencies to use them selectively and arbitrarily. The legally established criminal sanctions for enjoyment of free speech on the Internet do not correspond to the principles of humanism and democracy. Considering that there is no free media in Russia, the legislation on regulation of the Internet poses a serious threat for the development of pluralism of political opinion which is essential for a democratic society. Bearing in mind the consecutiveness of the laws’ adoption, Russian approach towards Internet regulation is nothing but intentional and unlawful state interference into freedom of political expression online. The legislation on the Internet comply neither with UN standards on the protection and enjoyment of the freedom of expression online, nor with the Article 10 of the ECHR. Therefore, the legally established censorship of the Internet in Russia should be abolished, provisions which imply inhuman penalties for expressing political views on the Internet must be decriminalized.
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