



Overview of the Package of Changes into a Number of Laws of the Russian Federation Designed to Provide for Additional Measures to Counteract Terrorism

July 21, 2016

On July 6, 2016, Russian President signed two federal laws, which jointly introduce changes into 21 laws¹ and are officially designed to provide additional measures to counteract terrorism and ensure public safety (known as the “Yarovaya package,” hereinafter referred to as the “package”).² Most of the package’s provisions came into effect on July 20, 2016.³

A number of international organizations approached the International Center for Not-for-Profit Law (ICNL), requesting comments on the package, despite multiple articles and overviews about the package in print and online mass media.⁴

¹ Russian Federal Law # 375-Ф3 dated July 6, 2016 On Making Changes into the Criminal Code of the Russian Federation and into the Criminal Procedural Code of the Russian Federation in Part Establishing Additional Measures On Counteracting Terrorism and Ensuring Public Safety introduced changes to 1) the Criminal Code, 2) the Criminal Procedural Code of the Russian Federation and 3) the Federal Law dated July 27, 2006 # 153-Ф3 On Introducing Changes into Separate Legislative Acts of the Russian Federation in Relating to Adoption of the Federal Law On Ratification of Convention of the Council of Europe On Prevention of Terrorism and On Federal Law On Counteracting Terrorism.

Russian Federal Law # 374-Ф3 dated July 6, 2016 On Making Changes into the Federal Law on Counteracting Terrorism and Separate Legal Acts of the Russian Federation in Part Establishing Additional Measures On Counteracting Terrorism and Ensuring Public Safety introduced changes into 18 laws, including: 1) Federal Law On Counteracting Terrorism; 2) Federal Law On Federal Security Service; 3) Federal Law On Executive Investigative Activity; 4) Federal Law On External Intelligence; 5) Federal Law on Procedure of Exiting the Russian Federation and Entering into the Russian Federation; 6) Federal Law On Weapons; 7) Air Code of the Russian Federation; 8) Federal Law On Freedom of Conscience and on Religious Associations; 8) Federal Law On Post Communication; 10) Federal Law On Counteracting Legalization (Laundering) of Income, Received by Illegal Means, and of Financing of Terrorism; 11) Code of the Russian Federation On Administrative Offenses; 12) Federal Law On Transport-Expedition Activity; 13) Federal Law On Communication; 14) Housing Code of the Russian Federation; 15) Federal Law on Information, Informational Technologies, and On Protection of Information; 16) Federal Law On Transport Safety; 17) Federal Law On the Territorial Jurisdiction of District (Naval) Military Courts ; and 18) Federal Law On the Security of the Fuel and Energy Complex.

² Both laws were initiated by four members of the Russian lower parliament chamber (Duma) and the upper chamber (Federation Council): Ms. Yarovaya, Mr. Ozerov, Mr. Pushkov, and Ms. Gerasimova. The package is nicknamed after Ms. Yarovaya, who is also the Chairwomen of the Duma Committee on Security and Counteracting Corruption and Co-Chairwomen of the Committee on Considering Federal Budget Expenses, Related to Ensuring National Defense, National Security and Law Enforcement Activity. Ms. Yarovaya played the lead role in advocacy for the laws.

³ According to article 19 of the Russian Federal Law # 374-Ф3, provisions in regards to storing all content generated by users of internet and communications shall come into effect from July 1, 2018.

⁴ According to ICNL’s review, over 40 materials in Russian and in English related to the package were published and posted during June and July 2016.

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Many Russian and international CSOs expressed concern about this package, as it makes it easier to apply criminal and administrative penalties against a broad circle of people and at the government's discretion, while increasing penalties for many crimes and offenses, some of which are only loosely defined; requires operators of communications (such as mobile phone service providers) and internet service providers to record and store all communications and activities of all users, and make stored records available to authorized government bodies at their request; and imposes undue restrictions on the missionary activities of religious organizations and their members.

The purpose of this overview is to review the key provisions in the package, in which ICNL's partners expressed interest. Provisions will be reviewed under the following themes:

1. expansion of criminal penalties;
2. new requirements for communication and internet operators;
3. restrictions on freedom of conscience.

This paper provides an overview of the key legal provisions in the package.

Considering its recent adoption, it remains to be seen how the package will be implemented. On July 7, President Putin issued an order authorizing a number of Russian government agencies to take measures to ensure implementation of the package's legal provisions.⁵ Orders to some government agencies make it clear that certain provisions cannot be implemented beginning from July 20, 2016, or even from July 1, 2018. For example, the President authorized the Ministry of Industry and Trade and the Ministry of Communication to analyze and provide suggestions "relating to possibilities, terms, and volumes of financial expenditures with the purpose of organizing the local manufacturing of equipment and the production of software necessary to store and process voice information, written texts, images, audio, and video, or other electronic communications by internet users..." The authorized ministries in this case shall implement the order by September 1, 2016, and the requirement to store such information shall come into effect on July 1, 2018. According to Russian experts, however, the Russian government presently does not have the necessary equipment or software to enable the storage of such information, as required by the new law, and it is unlikely that such capacity will be developed even by 2018.⁶

Please note that the information provided in this paper does not constitute legal advice. A reader seeking legal advice should engage independent legal counsel certified to provide legal advice in Russia rather than act upon the information obtained from this paper.

⁵ <http://kremlin.ru/events/president/news/52486>.

⁶ Furthermore, on July 19, 2016, Federation Council deputy Belyakov already introduced changes into the freshly adopted package, proposing to change the timelines for certain provisions coming into effect relating to the obligation to store communication contents and users' activities by internet and communication operators to July 1, 2023 instead of July 1, 2018. [http://asozd.duma.gov.ru/main.nsf/\(Spravka\)?OpenAgent&RN=1129775-6](http://asozd.duma.gov.ru/main.nsf/(Spravka)?OpenAgent&RN=1129775-6).

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1. Expansion of criminal penalties

Changes into the Criminal Code of the Russian Federation⁷ are a major part of the package. The key issues with the package include: 1) expanding criminal liability for children starting from 14 years of age; 2) introducing the new crime of “not reporting on a crime;” and 3) substantially increasing penalties for a number of crimes; amongst others.

The greatest outcry amongst Russian and international organizations was caused by the expansion of criminal liability for children starting from 14 years of age. The rationale behind lowering the age of a person’s liability for certain crimes was that recruiters for terrorist groups work with children, and that from age 14, children understand their actions and therefore shall be liable. However, not all of the new crimes are about terrorism. Some crimes are vaguely defined and are difficult for any person (adults as well as children), to comprehend as crimes. For example, under art. 205.6, a person, including a child, must report on a crime, which has not been committed yet. Or, in cases of crimes such as participation in mass disorder (art. 212) or participation in a terrorist community (205.4), a child who is amongst others committing crimes defined under these articles (for example, following a relative), but not participating in other illegal activities, arguably could not be held liable under the criminal code, according to a number of Russian experts.⁸

A new addition to the Criminal Code, article 205.6 “Not Reporting on Crime,” also caused a lot of outcry. Under this article, a person is required to report on a non-committed crime, if there was information about a plotted crime from loosely-defined “reliable sources.” The person will not be punishable if the crime did not take place and also in case the information concerned a close relative. Persons are only required to report on “crimes of a terrorist direction.”⁹

The key issues relating to changes into the Criminal Code are:

⁷ The Criminal Code of the Russian Federation dated June 13, 1996 # 63-Φ3 (the Criminal Code).

⁸ According to Expert Opinion of the Human Rights Council with the President of the Russian Federation (see <http://www.president-soviet.ru/documents/read/456>).

⁹ The following crimes are recognized as “crimes of a terrorist direction:” committing an act of terrorism (art.205); participating in training with a purpose of committing terrorist activity (art. 205.3); organizing and participating in terror community (art. 205.4); organizing and participating in terrorist organization (art. 205.5); not reporting on a crime (art. 205.6); taking hostage (art. 206); organizing and participating in unlawful military unit (art. 208); hijacking of an air, water or railroad vehicle (art. 211); unlawful handling of nuclear or radioactive substances (art. 220); theft or extortion of nuclear or radioactive substances (art. 221); attempted killing of a state or public figure (art. 277); military cue (art. 279); attack on a person or institution under international protections (art. 360); and act of international terror (art. 361).

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1. The list of crimes for which children can be charged (starting from 14 years of age) is substantially expanded.¹⁰ New crimes (“crimes of a terrorist direction”) include:
 - Participating in training for the purpose of carrying out terrorist activity (art. 205.3).
 - Participation in the terrorist community (part 2 art. 205.4).
 - Participation in a terrorist organization (part 2 art. 205.5).
 - Not reporting on crime (art. 205.6).
 - Participation in an unlawful military unit (part 2 art. 208).
 - Hijacking an air or water or railroad vehicle (art. 211).
 - Participation in mass disorder (part 2 art. 212).
 - Attempting to kill a state or public official (art. 277).
 - Attack on persons or institutions, under international protections (art. 360).
 - Act of international terror (art. 361).
2. A new article 205.6 “Not Reporting on Crime” was introduced:

“Not reporting to the state authorities authorized to review reports on crimes, about a person (persons) who are committing or intend to commit a crime as defined under articles 205, 205.1, 205.2, 205.3, 205.4, 205.5, 206, 208, 211, 220, 221, 277, 278, 279, 360, and 361 of this Code, according to information from reliable sources,

Shall be penalized with a penalty up to 100,000 rubles or in the amount of up to six months’ worth of the convicted person’s monthly salary, or by mandatory work for a term up to one year, or by imprisonment for the same term.

Note: A person is not subject to criminal penalty for the non-committed crime or for a crime committed by his/her spouse or close relative.”
3. Penalties are substantially increased for the following crimes:
 - Terrorist act: the minimal sentence is increased from 8 years to 10 years imprisonment (part 1 art. 205)
 - Terrorist act committed by a group: the minimal sentence is increased from 10 years to 12 years imprisonment (part 2 art. 205).
 - Public calls to carry out terrorist activity or public justification of terrorism: the minimal penalty is 100,000 rubles (the possibility of mandatory work is excluded) (part 1 of art. 205.2); similarly, mandatory work is excluded as a minimum punishment in cases of public calls to carry out terrorist activity or public justification of terrorism via mass media (part 2 of art. 205.2).
 - Participation in the activity of an organization, which is recognized as a terrorist organization under Russian law: the sentence is increased to 10 to 20 years imprisonment (previously it was 5 to 10 years) (part 2 art. 205.5).

¹⁰ Previously, children were liable for crimes under the following articles: Committing murder (art.105); Intentional cause of harsh damage to health (art. 111); Intentional cause of medium damage to health (art. 112); Kidnapping a person (art. 126); Rape (art. 131); Violent actions of a sexual nature (132); Theft (art. 158); Burglary (art. 161); Robbery (art.162); Extortion (art. 163); Unlawful obtaining of a vehicle into possession without a purpose of a theft (art.166); Intentionally destroying or damaging of a property under aggravating circumstances (art.167.2).

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- Organization of a military unit: the sentence is increased to 10 to 20 years imprisonment (previously, it was 8 to 15 years) (part 1 art. 208).
 - Participation in an unlawful military unit: the sentence is increased to 8 to 15 years imprisonment (previously it was 5 to 10 years) (part 2 art. 208).
 - Incitement of hatred or hostility or diminishing human dignity (all penalties are increased, mandatory works as a penalty is eliminated) (art. 282).
 - Organization of extremist community (all penalties are increased) (art. 282.1).
 - Organization of extremist organization (all penalties are increased) (art. 282.2).
 - Financing of extremist activity (all penalties are increased) (art. 282.3).
 - Organization of unlawful migration (only one type of penalty is left: imprisonment up to 5 years) (art. 322.1).
4. The scope of the crime under art. 205.1 “Assistance to Terrorist Activity” is expanded: the term “financing terrorist activity” now applies to financing and other material support of a person to commit a crime of a terrorist direction (previously it only applied to financing of an organized group, unlawful military unit, or a criminal community.) (For the list of crimes of terrorist direction, see footnote 9.)
5. A new part 1 was introduced to article 212.1 “Mass Disorder:”

“1(1) Convincing, recruiting or other engaging of a person into committing activity envisioned by part 1 of this article,

Shall be punished with a penalty from 300,000 to 700,000 rubles or in the amount of salary or other income of the convict for a period of 2 to 4 years, with or without the latter, or by mandatory work from 2 to 5 years, or by imprisonment of 5 to 10 years.”

According to part 1 of article 212.1 of the Criminal Code, it is a crime to violate the established order of organizing and conducting meetings, protests, demonstrations, and picketing, if such a violation takes place more than once. The Criminal Code recognizes that the established order of organizing and conducting meetings is violated more than once, if a violator has previously faced administrative penalty for a similar offense (more than twice within 180 days).

6. A new article 361 on “Act of International Terrorism” was introduced:

“Article 361. Act of International Terrorism.

- 1) The commission outside the territory of the Russian Federation of an explosion, arson or other acts endangering the life, health, freedom or integrity of citizens of the Russian Federation and intended to violate the peaceful coexistence of nations and peoples or against the interests of the Russian Federation, as well as a threat to commit such acts,

Shall be punished with imprisonment from ten to twenty years or life imprisonment.

- 2) The funding of actions specified in the first part of this Article, or involving [other person or persons] in their commission,

Shall be punished by imprisonment for a term of five to ten years with or without a

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fine up to 500,000 rubles or in the amount of the convict's salary or other income for a period of up to three years.

- 3) Actions provided for by the first part of this Article that have caused the death of a person,

Shall be punished with imprisonment for fifteen to twenty years with the restraint of liberty for a term of one to two years, or imprisonment for life.”

According to Russian experts, the new article 361 does not change much compared to existing provisions in the criminal code.¹¹

2. New requirements for communication and internet operators

The package imposes new obligations on operators of communication (such as phone and mobile phone service providers) and organizers of distribution of information via the internet (internet operators),¹² which are required to start storing data on all communications and other user's activities, both data about such communications and other activities taking place and the communications'/activities' content. Operators shall start storing information regarding communications/activities data from July 20, 2016. Such information shall be stored for three years (for operators of communication) and for one year (for internet operators). Operators will be required to store content starting from July 1, 2018. The content must be stored for six months. Internet operators are also required to provide the means to decrypt encrypted data to the government bodies per their request and to only use decryption devices certified by the government. The operators of communication are required to have information about users. The package introduces a requirement to provide information to authorized government bodies, including without a court order. It also establishes administrative penalties for non-compliance with the mentioned requirements. Below are the key provisions:

1. An operator of communication (for example, a phone and mobile phone service provider) is required to stop service to a user, in case of a request for information from a law enforcement agency, if the user does not confirm their contact information within 15 days of the request being made.¹³

¹¹ According to the Expert Opinion of the Human Rights Council with the President of the Russian Federation, the previously existing articles 205 and part 3 of article 12 of the Criminal Code, if combined (see <http://www.president-soviet.ru/documents/read/456>).

¹² The definition of who can be considered “organizer of distribution of information via the internet” is not very clear in the Federal Law dated July 27 2006, N 149-Φ3 on Information, Informational Technologies and on Protection of Information (Law on Internet.) It is our understanding that, at the least, operators of informational systems, owners of websites, and hosting providers can be recognized as such operators.

¹³ New paragraph in section 1 of article 46 of the Federal Law on Communication dated July 7, 2003, N 126-Φ3 (Law on Communication).

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2. An operator of communication¹⁴ or internet operators¹⁵ are required to store the following:
 - a. Information about details of receipt, transfer, delivery and/or processing of voice, information, text messages, images, audio, video, electronic communications and other activities by users of communication services for three years from the date of completion of these actions; and by users of internet services, for one year (for internet operators); in addition, internet operators shall store information about the users for one year.
 - b. All content of communication and activities of users of communication and of the internet shall be stored: text messages, voice information, images, audio, video, electronic communications and other activities by users of communication and internet services, up to six months from the moment of the end of their receipt, transfer, delivery and/or processing. The procedure, terms, and volume of storage of such data shall be established by the Russian Government.
3. Operators of communication¹⁶ and internet operators¹⁷ are required to provide to authorized government bodies, conducting executive or investigative activity or providing national security, the information listed in sections 2a) and 2b) above, as well as other information about the users to assist them with carrying out their work.
4. Internet operators are also required¹⁸ when using special encrypting devices during receipt, transfer, delivery and/or processing of electronic communications of Internet users, or when providing users with opportunity for additional encryption of electronic messages, to provide to government bodies information necessary to decrypt encrypted messages.
5. The following government bodies are granted new authority to request information listed above from operators of communication and internet operators: Federal Security Service (FSB); Foreign Intelligence Service; and investigators within executive investigative authorities. These authorities are also authorized to solicit databases and informational systems from other government bodies.
6. Administrative penalties are established for the following new offenses:
 - a. Penalties under article 13.6 of the Code of Administrative Offenses (“Use of communication assets which did not pass a test of compliance with established requirements”) will now apply for the use of non-certified equipment for encryption.
 - b. The definition of offense under article 13.30 is expanded under the Code of Administrative Offenses. In addition to previous offenses, the penalty will apply to operators of communication failing to identify their users.

¹⁴ Section 1 of article 64 of the Law on Communication.

¹⁵ Section 3 of article 10.1 of the Law on Internet.

¹⁶ Section 1.1 of article 64 of the Law on Communication.

¹⁷ Section 3.1 of article 10.1 of the Law on Internet.

¹⁸ Section 4.1 of article 10.1 of the Law on Internet.

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- c. A new administrative offense was introduced in part 2(1) of article 13.31 of the Code of Administrative Offenses: Failure by the organizer of distribution of information via the internet to fulfill the obligations to provide to government authorities with information required for decrypting information, is punishable with a penalty from 3,000 to 5,000 rubles; for managers of organizations; 30,000-1,000,000 rubles; and for legal entities, 800,000-1,000,000 rubles.

3. Restrictions on freedom of conscience

The package introduced a number of changes into several laws, primarily defining and restricting missionary activities by religious organizations and their members, and activities of foreign religious organizations. Interestingly, these amendments appeared in the package at the last moment (they were not included into the original package registered in the Duma). The religious community and even the Duma Committee on Affairs of Public Associations and on Religious Organizations were not consulted about this part of the package.¹⁹ The United States Commission on International Religious Freedom strongly condemned these measures: “Under the guise of confronting terrorism, they would grant authorities sweeping powers to curtail civil liberties, including setting broad restrictions on religious practices that would make it very difficult for religious groups to operate.”²⁰

The key changes into laws include:

1. A prohibition for representative offices of foreign religious organizations, registered in the Russian Federation, to carry out missionary activities in the Russian Federation.²¹
2. A requirement to label all literature, and printed, audio, or video materials produced by a religious organization with the full name of such organization.²²
3. A requirement for religious organizations to have a labor or civil contract with a foreign person in order to invite him or her to visit the Russian Federation for the purpose to carrying out religious activity, including missionary activity (previously no such contract was required).²³
4. The introduction of the new definition of and new restrictions on missionary activity.
 - a. Missionary activity is defined as “activity of a religious association aimed at disseminating information about its doctrine among persons who are not

¹⁹ According to Yaroslav Nilov, the head of the Duma Committee on Affairs of Public Associations and on Religious Organizations in interview to newspaper *Gazeta.Ru*.

²⁰ <http://www.uscirf.gov/news-room/press-releases/russia-uscirf-condemns-enactment-anti-terrorism-laws>.

²¹ Section 2 article 13 of the Federal Law dated September 26 1997 # 125-Ф3 On Freedom of Conscience and on Religious Associations (Law on Religious Associations.)

²² Section 3 article 17 of the Law on Religious Associations.

²³ Section 2 article 20 of the Law on Religious Associations.

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- participants (members, followers) of that religious association, in order to involve these people as participants (members, followers) of that religious association, as conducted directly by the religious association or by citizens and/or legal entities it has authorized to do so publicly, with the help of the mass media and the internet information and telecommunication network, or by other lawful means.”²⁴
- b. Missionary activity can only be carried out in places identified in the law, such as premises or land in the ownership of a religious organization or at cemeteries.²⁵ The list is very limited. It is now not permitted to perform missionary activities in public places, for example. It is specifically prohibited to perform missionary activity in living premises²⁶ or at the premises or land owned by another religious organization, without the prior written approval of the latter.
 - c. Before performing missionary activity, a person is required to carry with him/her a decision by the meeting of members of a particular religious organization, authorizing such a person to conduct missionary activity.²⁷ Such a decision shall state information about the registration of this particular religious organization with the government. All persons performing missionary activities shall comply with strict requirements.
 - d. There is list of vaguely defined purposes, for which a person cannot conduct missionary activity:²⁸
 - i. Violation of public safety and public order;
 - ii. Carrying out extremist activity;
 - iii. Enforcing breaking a family;
 - iv. Infringement on a person, or the rights and freedoms of citizens;
 - v. Causing damage to the morality and health of citizens, including with the use of drugs, or other;
 - vi. Prompting citizens to deny implementation of obligations established under the law; and
 - vii. Other.
5. Foreigners planning to carry out religious activity in Russia are now no longer eligible to receive a humanitarian visa for entry to the Russian Federation.²⁹
6. A new administrative offense was introduced into the Code of Administrative Offenses: carrying out activities by a religious organization without identifying its full name, including the production and dissemination of literature, and printed, audio, and video

²⁴ Section 1 article 24 (1) of the Law on Religious Associations.

²⁵ Section 2 article 24(1) of the Law on Religious Associations.

²⁶ This prohibition is re-enforced in section 3 article 17 of the Housing Code of the Russian Federation.

²⁷ Sections 1-4 article 24(2) of the Law on Religious Associations.

²⁸ Section 6 article 24(2) of the Law on Religious Associations.

²⁹ Section 8 article 25(6) of the Federal Law dated August 15 1996 # 114-Φ3 on Procedure of Exiting from the Russian Federation and Entering into the Russian Federation.

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materials, including within missionary activity, is punishable by an administrative penalty of 30,000-50,000 rubles with the confiscation of materials.

7. Another new administrative offense was introduced into the Code of Administrative Offenses: carrying out missionary activity with a violation of the legal requirements regarding freedom of consciousness, freedom of religion, and on religious associations, is punishable by an administrative penalty of 5,000-50,000 rubles for citizens and 100,000-1,000,000 for legal entities; or 30,000-50,000 rubles with administrative expulsion from the Russian Federation (for foreigners and people without citizenship).