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Putin Has More Free Speech Than All Media

By Michael Bohm

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State Duma Deputy Alexei Mitrofanov, who heads the Duma committee regulating the media, came up with a new idea two weeks ago to fight the Kremlin's battle against "insulting speech" aimed at politicians: increase the fines against media outlets to 45 million rubles ($1.4 million) for such offenses. What's more, Mitrofanov wants to establish a government "regulator" (read: censor) who will decide outside of a court of law exactly what constitutes "offensive speech."

It would seem that Mitrofanov's understanding of free-speech rights were shaped by his high school and university studies of Vladimir Lenin and Andrei Vyshinsky, Josef Stalin's prosecutor general and legal force behind the political purges in the 1930s. It is safe to say that Edmund Burke, John Locke or J.S. Mill were never part of Mitrofanov's curriculum, nor did they make it onto his weekend reading list after the Soviet collapse.

The straw that broke Mitrofanov's back was a recent commentary in Moskovsky Komsomolets titled "Political Prostitution Changes Its Gender," which created an uproar

after the article's targets, three United Russia deputies, said they were offended. Fellow United Russia members and the three other factions in the Duma were also indignant and threatened to put an end to the "abuse of free speech" in Russia.

Deputies want to shield themselves from legitimat e media criticism. They want the privileges of public office without the public scrutiny.

Unfortunately, Mitrofanov and his supporters don't understand the fundamental difference between libel and slander, which is a civil offense in most Western countries and subject to punitive fines, and "offensive speech," which is largely protected in the West (with a few narrow exclusions in several European countries that ban "hate speech," including denying or justifying the Holocaust).

For Mitrofanov and many other Duma deputies, here is a simple illustration of the difference between defamation (libel and slander) and "offensive speech" aimed at politicians: During Vladimir Putin's televised, annual call-in show in December 2010, he said opposition leaders Vladimir Ryzhkov and Boris Nemtsov "stole several billion dollars together with [Boris] Berezovsky in the 1990s."

This is a classic defamation case because it centers on a contentious issue of fact: Did Nemtsov and Ryzhkov, indeed, steal billions of dollars, or was Putin's public statement made with reckless disregard of the truth? Not surprisingly, Putin won the 2011 defamation case that Nemtsov and Ryzhkov brought against him in a Moscow court, showing that Putin has more "freedom of speech" than all Russian newspapers, radio and television stations combined.

The Moskovsky Komsomolets "political prostitution" headline, however, would clearly be protected speech in the Western legal tradition because it fits into the category of opinion, fair comment and criticism — all the more since "political prostitution" is a widely accepted political term. Lenin is considered to have coined the phrase 90 years ago, which he directed at Leon Trotsky; since then, it has been used thousands of times by the media to criticize politicians. In this case, Moskovsky Komsomolets wrote that the three United Russia deputies were engaged in "political prostitution" because they had repeatedly changed their political positions based on self-interest and servility to the Kremlin — an assertion that was backed up by facts cited in the op-ed.

In a similar sense, when Deputy Prime Minister Dmitry Rogozin suggested last year in a Twitter message that Madonna was a prostitute, this was also protected speech, regardless of how tasteless and insulting the comment might have been. (Needless to say, Madonna did

not sue Rogozin for his "offensive speech.")

Behind Mitrofanov's patently false argument that Moskovsky Komsomolets "abused" its free speech rights is a cynical, cowardly attempt to shield deputies from legitimate criticism. Deputies want to have their cake and eat it, too. They want to have all of the privileges of public office without the public scrutiny that necessarily comes with the job. In open and democratic societies, politicians' decisions, behavior and background are placed under a huge public microscope. In Russia, the people have a right to know if their deputies plagiarized their dissertations, have undeclared luxury real estate abroad, or, yes, engaged in political prostitution by selling out their political principles to the highest bidder.

What Mitrofanov doesn't seem to understand is that the media's scrutiny of politicians is a central part of the public debate in democratic societies, where an independent media serves as the Fourth Estate against government abuse. If deputies disagree with the media's criticism, they should answer publicly with counter-arguments, not with arbitrary, retaliatory fines.

In their criticism of the Moskovsky Komsomolets' headline, United Russia and other pro-Kremlin deputies said the newspaper discredited the Duma. Notably, they said the same thing several months ago when television journalist Vladimir Pozner called the Duma "Dura," which means "fool" in Russian. Deputies also tried to place limits on Pozner and other foreign journalists from voicing their critical opinions on state-controlled television.

Of course, the deputies' tarnished reputation has little to do with the media and everything to do with their own corruption, the repressive laws they have passed and, perhaps above all, the widespread vote-rigging in the December 2011 elections that got them into the Duma in the first place. It is no surprise that in a March 28 Levada poll, only 8 percent of Russians said they were satisfied with the deputies' work.

The problem with legislation trying to govern offensive speech always centers on who will decide what is "offensive," an inherently subjective, arbitrary concept. If Mitrofanov is successful in establishing a state "media regulator," it is clear that harsh criticism against Putin and Kremlin-friendly politicians would be considered offensive, while similarly harsh criticism against opposition leaders Alexei Navalny, Nemtsov or Ryzhkov would not.

This is how freedom of speech is suppressed in most autocracies. Take, for example, the recent criminal case that the Egyptian government brought against a popular satirist for "insulting" the country's president. But Mitrofanov is trying to go even further, extending insulting speech protection to deputies as well. Outdoing Egypt's Muslim Brotherhood or Iranian ayatollahs in terms of anti-democratic legislation is a dubious accomplishment.

If Mitrofanov's bill ever becomes law, it will clearly lead to self-censorship. Faced with fines of $1.4 million for offending Kremlin-friendly politicians and top officials, what Russian-based media outlet could possibly afford to exercise their rights under Article 29 of the Constitution, which guarantees freedom of speech and specifically forbids censorship?

Mitrofanov's initiative is only the latest attack on the media. According to Pavel Gusev, editor-in-chief of Moskovsky Komsomolets, there have been 150 attempts in the Duma to crack down the media in the past 18 months alone, helping make Russia No. 148 out of 179

on the Reporters Without Borders' 2013 Press Freedom Index.

As U.S. Supreme Court Justice Louis Brandeis said more than 100 years ago, "Sunlight is the best disinfectant." Considering Mitrofanov's record on free-speech rights, it is clear he and his supporters are living in a legal cave and haven't seen the sunlight for decades.

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