



LAW
OFFICES

EGOROV
PUGINSKY
AFANASIEV
& PARTNERS



NOVEMBER 2016

How Legislation on Handling Personal Data Will Be Enforced in Future: LinkedIn Case Study

The Tagansky District Court has published its exceptional decision in the case of Roskomnadzor (the Russian supervisory authority for telecommunications, information technology, and the media) vs the LinkedIn Corporation. The court ruled that the company's activity in Russia was in breach of Russian legislation on personal data. The Moscow City Court in its resolution as per November 10, 2016 did not overturn the decision: LinkedIn.com has been blocked in Russia.

LINKEDIN'S VIOLATION OF THE LAW

Russian Federal Law No. 242-FZ 'On Personal Data' came into force on 1 September 2015. Amendments were introduced requiring all companies to process personal data pertaining to Russian citizens primarily using databases located in the Russian Federation. The law caused great concern for foreign operators who store personal data on cheaper foreign servers. Of even greater significance was the fact that for many companies, these amendments meant there was a need to restructure their IT infrastructure and software.

LinkedIn was accused of breaching the requirements of the law and citizens' rights to privacy and to personal and family secrets. The domain names and index pages of the site linkedin.com and its network address on the Internet will be added to the register of personal data rights violators in the nearest time.

Although LinkedIn is an American company, the Russian court's decision directly affected its interests. It may give rise to the kinds of legal and administrative practices that foreign operators feared a year ago. The fact that LinkedIn is not legally represented in Russia could not stop it from being blocked in Russia.

LEGAL ISSUES STEMMING FROM THE CASE

Companies may not be given advance notice about inspections of their websites by the state authorities

Each year, Roskomnadzor conducts audits of various entities, in accordance with a schedule. For 2016 there is a checklist of 500 companies; 136 of which will be inspected for compliance with personal data processing requirements. Usually, the companies on the list are involved in the



media or banking sectors; it rarely includes other businesses. But even if your company is not mentioned on the checklist, it will not be possible to be confident that the company will not be subject to an unscheduled inspection.

In 2016 Roskomnadzor conducted 981 checkings 24% of which were unscheduled. Total amount of the imposed fines was more than 4.8 million rubles.

The LinkedIn Corporation was not included on the list of companies for which checks were planned in 2016. The checklist applies to Russian entities or the affiliates and representative offices of international companies. Thus, no foreign company that processes the personal data of Russian citizens can be sure in advance that there will not be an inspection of its activity. In addition, the Russian authorities' new risk-based policy means that it is not possible to predict how many audits will take place within specific companies or sectors.

Companies will not be able to protect their rights during an audit

During regular monitoring or checks conducted at the request of citizens, Roskomnadzor (at its own initiative) may monitor violations in the handling of personal data using public resources. In the event of any doubts about compliance, Roskomnadzor checks whether or not the company sent the authority an official notification about the processing of personal data. If no such notification was filed, Roskomnadzor has the right to request information regarding compliance with the legislation. If no response is received or if the response is unclear, Roskomnadzor could initiate a claim to protect the public's rights and will represent the public's interests in court.

In the LinkedIn case, Roskomnadzor argued that the reason for the monitoring was that citizens had claimed that their personal data had been leaked. It was found that access to the personal data of users had been given to non-users of the website.

In practice, the authority checks the information published on the websites of potential offenders without giving the company the opportunity to be present or to offer any explanations in its defence.

Potentially, this could be connected to the fact that all the necessary clarifications must be given by the company either in its notification, or in its subsequent responses to Roskomnadzor. Thus, ignoring such letters from the authority could lead to unfavourable consequences and mean that a company is not able to give all the necessary explanations until it appears in court.

Companies may not be duly informed about court proceedings

LinkedIn did not attend the court hearings in the Tagansky District Court and was not able to refute the arguments made by Roskomnadzor even with regard to procedural issues. According to the decision, the illegal processing of the personal data of non-users of LinkedIn was proved by Roskomnadzor using screenshots and data research materials from the company's website, which in itself did not amount to evidence of infringements of the LinkedIn user agreement. These arguments were not declined by LinkedIn in Moscow city court.



COMPANIES INVOLVED AND PUNISHMENT

Foreign companies cannot be held administratively liable or fined under Russian law. However, their activity on the Internet could be restricted.

The scale of the administrative fines is not very threatening at this stage – up to EUR 150. There is a legislative initiative aimed at increasing them significantly; however, they will not reach the level of standard European sanctions.

This case should concern all foreign companies operating via the Internet. The fact that a company does not have an official presence in Russia is irrelevant here. The most important factor is that the company's business is aimed at the Russian market. The company may have a Russian version of its website, use the domain names .ru and .рф, deliver goods to Russia, provide an option to pay in roubles and, most importantly, process the personal data of Russian citizens.

Roskomnadzor says that the blocking of the website of a non-Russian company in Russia shall not be deemed as a breach of the jurisdiction of the company's place of domicile.

Companies do not need to be concerned if personal data belonging to Russian citizens is not given to them deliberately, i.e. they take no action in respect of the personal data of Russian citizens that comes to them accidentally. Companies that stopped collecting and processing the personal data of Russians after 1 September 2015 are not required to place their servers in Russia.

As Roskomnadzor informs the most popular kinds of breaches are:

- ❑ Breaches in the procedure of transfer personal data abroad and/ or to outsourcing company;
- ❑ Lack of written consents on personal data processing;
- ❑ Lack of notifications to Roskomnadzor as per personal data processing;
- ❑ Processing of personal data after the declared purpose of its processing is reached;
- ❑ Confidentiality of personal data is not observed.

RECOMMENDATIONS

- ❑ Expedite an analysis of the procedures used to obtain personal data from Russian citizens.
- ❑ In cases where personal data is collected deliberately, check whether it is processed and stored in the required manner.
- ❑ Companies should assess the possibility of storing the data in Russia. This should be agreed with data centres in Russia. Cross-border transfer of personal data requires separate consent from the persons whose data is going to be processed.
- ❑ It might be useful for some companies to use an anonymized form which does not enable the person to be identified clearly.



- 1 In all other cases, companies must organize storage of personal data in Russia and notify Roskomnadzor about the location of their servers in Russia.
- 1 It is important to understand that the law does not prohibit the processing of personal data belonging to Russian citizens abroad. Personal data must be processed using a so-called 'primary' database in Russia, with the option of cross-border transfer.

*Authors: Pavel Sadovsky, Counsel, Head of Intellectual Property / TMT Practice,
Olga Tyangaeva, Associate, Employment Law Practice*

Key Contacts



Pavel SADOVSKY

Counsel, Head of
Intellectual Property / TMT Practice

pavel_sadovsky@epam.ru

+7 495 935 8010



Olga TYANGAEVA

Associate

olga_tyangaeva@epam.ru

+7 (495) 935 8010

This material has been prepared for informational and/or educational purposes only and should not be taken as legal advice or opinion. Egorov Puginsky Afanasiev & Partners, its management team, attorneys and employees cannot guarantee that such information is applicable for your purposes and shall not be responsible for your decisions and related eventual direct or consequential loss and/or damage resulting from the use of all or any information contained in the material.

Subscription

You have received this information because this topic may be of interest to you. If you have received this information in error, we would like to extend our apologies and ask that you send us an unsubscribe request.

To unsubscribe from Egorov Puginsky Afanasiev & Partners' mailing list, please reply to this email with [Unsubscribe](#) as email subject.

To subscribe to our legal alerts, please reply to this email with [Subscribe](#) as email subject.