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Russian Court upholds ban on access to LinkedIn from within Russia

Moscow Court of Appeal, 10 November 2016

The decision to ban access to LinkedIn from within Russia comes as part of early enforcement action regarding Russia's new Data Localisation Law, which entered into force on 1 September 2015, and which requires companies to store certain types of personal data of Russian citizens in Russia to be processed in Russia itself.

The Russian Localisation Law came into force on 1 September 2015. It requires that certain types of processing of personal data belonging to Russian nationals shall be performed in databases located in Russia. In addition to the aforesaid requirements, the Localisation Law introduced a new form of sanctions for non-compliance with Russian data protection laws that refer to restriction of access to the IT resource (website, app, etc.) for Russian users if such a resource processes Russian nationals' personal data in violation of Russian data privacy legislation.

The judgment in the *LinkedIn* case has become a significant judicial decision related to enforcement of the Localisation Law. On 10 November 2016 the Moscow Court of Appeal approved the decision of the court of first instance referring to restricting access to www.linkedin.com. The main reason for this decision was the fact that LinkedIn did not move its databases processing Russian nationals' personal data to within Russia. According to the position of the Russian data protection regulator (Roskomnadzor) and the Court, the requirements of the Russian Federal Law on Personal Data shall apply to LinkedIn Corporation, which does not have a presence in Russia via its branch, representative office or a legal entity.

The main argument for such conclusion was that the activity of LinkedIn Corporation targets Russian nationals, in particular, the LinkedIn website has a Russian-language version. This position corresponds to all previous clarifications of the Russian Ministry of Communications provided in respect of the scope of application of the Localisation Law. According to the regulator the Localisation Law does not have extraterritorial effect, but applies to those foreign companies that target Russian nationals even if such foreign companies have no presence in Russia.

The Court also agreed with Roskomnadzor that LinkedIn processes the personal data of third parties who are not users of LinkedIn without their consent and therefore violates their rights. Roskomnadzor has clarified that the personal data concerned are data processed by cookies and IP addresses. The decision of the Court came into force, but it may still be challenged by LinkedIn in the Supreme Court of Russia within six months.

The procedure used to shut down access to LinkedIn was as follows. Within three days of receiving the Court decision, Roskomnadzor notified the respective hosting provider of the violations of Russian laws by LinkedIn. After the hosting

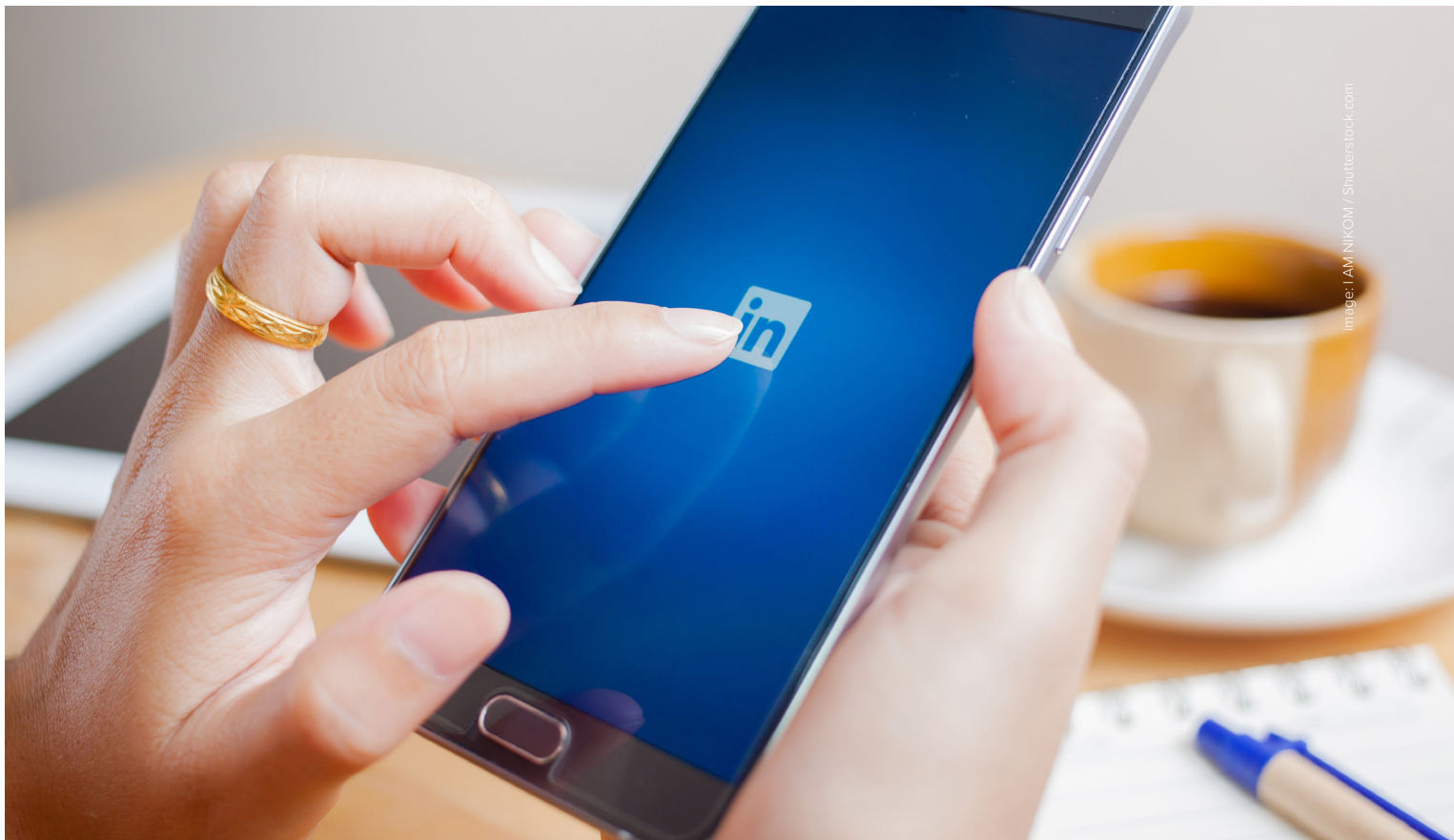


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provider notified the LinkedIn website owner within one day after receiving the notice from Roskomnadzor, the website owner was required to eliminate the revealed violations within one business day. As the violations were not eliminated, the hosting provider restricted access to the LinkedIn website. Links on the LinkedIn website were also included in the Register of personal data rights violators maintained by the regulator. As of 17 November 2016 the LinkedIn network is not available to users within the Russian territory. However LinkedIn remains available for Russian users located abroad.

The shutdown of access to LinkedIn in Russia has become quite a resonant event. This could be a wake-up call for other foreign companies that have not transferred the personal data of Russian nationals to Russia. It seems that through the ban of LinkedIn, Roskomnadzor hopes to strengthen its position before the new round of negotiations with foreign companies such as Facebook and Twitter, on the localisation of their servers that process Russian nationals' personal data in Russia.

Roskomnadzor has decided to 'break in' enforcement of the Localisation Law by acting against LinkedIn, which is a less popular social network in Russia than, for example, Facebook. Probably based on the reaction of LinkedIn representatives, Roskomnadzor will try to build a scheme of interaction with other foreign companies. Roskomnadzor expects that the LinkedIn case will encourage the previously mentioned companies to meet the requirements of the Localisation Law.

On the other hand, it seems that the strategy selected by Roskomnadzor is rather tricky: if the management of large foreign companies refuse to comply with the Localisation Law requirements, this may turn out to be a tough sell and shutdown of the global networks' websites may lead to active protest from Russian society. LinkedIn's Russian audience is approximately five million users and the shutdown of the LinkedIn website has created certain difficulties for recruiters in search of highly-qualified personnel. As at the moment there are no worthy alternative recruitment tools in Russia; recruiters may use

software and technical means, such as anonymisers allowing the location of the user to be hidden, which allow users to bypass the LinkedIn ban. Currently Russian laws do not provide for effective punishment mechanisms for use of technologies allowing website bans to be bypassed, and Russian regulators are keen to fix this legal loophole. There are certain legal initiatives aimed at the implementation of administrative fines for the use of technologies allowing website bans to be bypassed.

Lawyers also have certain concerns related to the information that was collected by the websites before their shutdown in Russia. The restriction of access to the LinkedIn website from Russia has led to the inability of enforcement of rights such as the right of access to personal data and the right to rectify data, the right to demand the ceasing of data processing and destruction of data. It is unclear how Russian users may ensure that their personal data are duly protected, remove their data from the website, update their data and protect their rights in circumstances where the website is not available within Russia. Apart from that, the problem of personal data leaks from abroad is still a real one, as the data is still not localised in Russia.

One positive fact is that the website shutdown by Roskomnadzor is not forever. If existing violations are removed, LinkedIn or the hosting provider should inform Roskomnadzor and provide confirmation of the elimination of such violations. Within three days as of the date of receipt of the message in regards to the elimination of violations and in case of confirmation of this fact, information about the website shall be excluded from the register of personal data rights violators and access to such website shall be reinstated from Russia. Currently LinkedIn is liaising with Roskomnadzor in order to improve the situation. Recently LinkedIn was acquired by Microsoft, which has a substantial presence in Russia, including data centres that could allocate data of Russian users and the Russian part of the LinkedIn website. It is expected that the Russian regulator and LinkedIn will eventually find a compromise solution or LinkedIn will transfer Russian users' data to Russia and access to the website will be reinstated for Russian users.