EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
issued by the Registrar of the Court

ECHR 192 (2022)
14.06.2022

Russian Foreign Agents Act 2012 not necessary in a democratic society

In today's **Chamber** judgment[1] in the case of Ecodefence and Others v. Russia (nos. 9988/13 and 60 others) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 11 (freedom of assembly and association) interpreted in the light of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned the measures imposed by virtue of the Foreign Agents Act 2012 on the 73 applicant non-governmental organisations involved in civil-society issues, human rights, protection of the environment and cultural heritage, education, social security, and migration in Russia. The measures included their registration as "foreign agents", which entailed extraordinary auditing, reporting and labelling requirements, and heavy fines. Many of the organisations had been either forced to dissolve or had been wound up as a result.

The Court found in particular that under the Act:

- classification of organisations as engaging in "political activity" and receiving "foreign funding" had been based on an overbroad and unforeseeable interpretation of those terms;

- the creation of a new category of "foreign-agent" organisations, the burdensome auditing and reporting requirements, the excessive and capriciously imposed fines had meant that the measures taken against the applicant organisations under the Foreign Agents Act had not been "necessary in a democratic society".

A legal summary of this case will be available in the Court's database HUDOC (link)

Principal facts

The applicants are 73 Russian non-Governmental organisations (NGOs) and, in some cases, their directors, in a total of 61 applications (the details are set out in the judgment). They are involved in the areas of civil-society issues, human rights, protection of the environment and cultural heritage, education, social security, and migration. They include some of the oldest and most established Russian organisations such as the Memorial Human Rights Centre, the Moscow Helsinki Group, LGBT organisation Coming Out, the Agora Association and the Committee against Torture.

In 2012 the new Foreign Agents Act came into force. Until that time the applicant organisations had been under the same legal regime as other NGOs; following that they had to register as "foreign agents" owing to their alleged "political activity" and receipt of "foreign funding"; they also, among other things, had to visibly label this status in their publications and had more strenuous audit requirements. The law contained both administrative and criminal sanctions for non-compliance.

All the applicant organisations challenged the decisions to register them as "foreign agents" before the prosecutorial service and before the courts, with no success. Many fines have been issued as a result of the law; some of the applicants have been forced into voluntary liquidation because of the fines; in other cases liquidation of the organisation was ordered by the authorities.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In two decisions in December 2021 the liquidation of two of the applicant organisations, International Memorial and the Memorial Human Rights Centre, was ordered for "gross and repetitive" violations of "foreign-agent" labelling requirements. The European Court indicated to the Russian Government that enforcement of those decisions should be suspended until it had examined the present case. Nevertheless, the Russian authorities proceeded with the enforcement of the liquidation orders.

Complaints, procedure and composition of the Court

Relying on Articles 10 (freedom of expression) and 11 (freedom of assembly and association), the applicants complained about the statutory requirements introduced by the "foreign-agent" legislation.

Relying on Articles 14 and 18 taken in conjunction with Articles 10 and 11, they complained of discrimination on account of their political views, and that their rights had been restricted for purposes other than those allowed by the Convention.

The applications were lodged with the European Court of Human Rights between 6 February 2013 and 29 March 2018.

The following organisations were given leave to make written submissions as third parties:

The Institute for Law and Public Policy (ILPP); the United Nations Special Rapporteur on the situation of human rights defenders; the International Service for Human Rights (ISHR); the International Commission of Jurists (ICJ); Amnesty International; a group of Hungarian non-governmental organisations including the Hungarian Helsinki Committee, the Hungarian Civil Liberties Union, Transparency International Hungary, Atlatszo.hu, and the Eötvös Károly Policy Institute; the Helsinki Foundation for Human Rights (Poland); and the Media Legal Defence Initiative.

Judge G.A. Serghides was appointed to sit as an *ad hoc* judge following the withdrawal from sitting in the case of Mr Mikhail Lobov, the judge elected in respect of Russia, with none of three individuals designated by the Government as eligible to serve as *ad hoc* judges making themselves available to the Court.

Judgment was given by a Chamber of seven judges, composed as follows:

Georges **Ravarani** (Luxembourg), *President*,
Georgios A. **Serghides** (Cyprus), *ad hoc* judge,
Darian **Pavli** (Albania),
Anja **Seibert-Fohr** (Germany),
Peeter **Roosma** (Estonia),
Andreas **Zünd** (Switzerland),
Frédéric **Krenc** (Belgium),

and also Milan **Blaško**, *Section Registrar.*

Decision of the Court

Article 10 and Article 11

The Court started its examination of the case by considering whether the "foreign-agent" legislation offered sufficient protection against arbitrary interpretation of its key concepts, "political activities" and "foreign funding".

Foreseeability of the definition of "political activities"

The Court reiterated that while conduct which may entail involvement in political activities cannot be defined with absolute precision, a norm cannot be regarded as a "law" unless it is formulated in such a manner as to enable individuals to foresee that certain conduct would lead to specific legal consequences or sanctions. Even though certain fields of activity were explicitly excluded from the scope of "political activities" in the Foreign Agents Act, Russian authorities and courts had interpreted the term "political activities" so widely that the usual activities of civil society organisations had been included, in particular those in environmental, cultural or social fields. The authorities could label any activities which were in some way related to the normal functioning of a democratic society as "political", and accordingly order the relevant organisations to register as "foreign agents" or pay fines.

In addition, any statements or positions by the directors of the applicant organisations had been routinely attributed to the organisations themselves, without establishing whether they had been made in a personal capacity or on behalf of the organisation.

Furthermore, although the Foreign Agents Act stated that the ultimate purpose of political activities was to influence the decision-making process of State bodies and State policy, in practice the authorities had dispensed with the requirement to show that the opinions expressed had potentially had an impact on their decisions.

Foreseeability of "foreign funding" provisions

Regarding the term "foreign funding" , the Court considered that the fact that the Foreign Agents Act did not contain any rules regarding the purpose of the funding or any requirement to establish a link between the funding and political activity had led to patently absurd consequences: the Civil Education Centre had been found to have been "financed" by a "foreign source" after it had received a refund from a hotel in Oslo for overpayment for conference facilities; the authorities in some cases had not made a distinction between funds received by staff of an organisation and the organisation itself, such as the Southern Human Rights Centre being tarred partially for its head having received airline tickets to Moscow to visit the Goethe-Institut, where he had taken part in an event in a personal capacity.

The sources themselves had also not been "foreign" in any strict sense either, sometimes including Russian entities that had themselves received funding from abroad but had not necessarily been classified as a "foreign agent". This had obviously created huge uncertainty for organisations.

The Court held that the applicant organisations could not have reasonably foreseen that such implausible and arbitrary connections would be established, leading to negative consequences.

Overall, the Court found that the deficiencies with the Foreign Agents Act and the lack of protection afforded by the courts would be sufficient alone to find a violation of the Convention. However, as the issues relate directly to "necessity in a democratic society", the Court elected to examine the case from that standpoint.

"Necessary in a democratic society"

The Court accepted in principle that greater transparency in funding of civil society could serve the legitimate aim of protection of public order.

As regards the term "foreign agent", the Court noted that the term "agent", in its generally accepted meaning, designates someone who carries out certain work on the orders or instructions of another individual or entity (the "principal") in return for remuneration. Adding the adjective "foreign" implied that the principal is a foreign entity on behalf of which the agent is acting. By contrast, Russia's Foreign Agents Act introduced a concept of agency in which the control of the donor over the recipient of funds was effectively presumed rather than established on a case-by-case basis, even in a situation where the recipient organisation retained full managerial and operational

independence in terms of defining its programmes, policies and priorities. This presumption was moreover unrebuttable because any evidence of operational independence of the grantee from the donor was legally irrelevant for designation of the targeted organisation as a "foreign agent", the mere fact of receiving any amount of money from "foreign sources" sufficed.

The Court accordingly considered that attaching the label of a "foreign agent" to any applicant organisations which had received any funds from foreign entities had been unjustified and prejudicial and also liable to have had a strong deterrent and stigmatising effect on their operations. That label had coloured them as being under foreign control in disregard of the fact that they saw themselves as members of national civil society working to uphold respect for human rights, the rule of law, and human development for the benefit of Russian society and the democratic system. The Court noted, furthermore, that restrictions on the activities of "foreign-agent" organisations had been extended far beyond politics, such as stopping the nomination of candidates to public monitoring bodies, or denying them the right to expose the potential for graft in draft legislation, thus undercutting oversight of the State in other areas.

Concerning additional **auditing and reporting requirements**, the Court held that the Government had likewise failed to put forward sufficient reasons for the new impositions. There did not seem to be any benefits to public transparency commensurate with the heavy burden placed on the applicant organisations.

Although States might have legitimate reasons to monitor financial operations with a view to preventing money laundering and financing of terrorism and extremism, the ability of an association to solicit, receive and use **funding** in order to be able to promote and defend its cause constituted an integral part of the right to freedom of association. The Court emphasised that having to choose between accepting foreign funding and soliciting domestic State funding represented a false alternative. Indeed, diversity of funding sources could enhance the independence of such organisations, which could benefit democracy. It noted that organisations closely aligned to the State had been most likely to receive State grants; it was not at all clear that the applicant organisations could have accessed those grants.

Without proper financing, the applicant organisations had been unable to carry out their core activities.

Concerning the **fines** in the case, the Court noted that the fines had been set at 100,000 Russian roubles (RUB) to RUB 500,000 under the law. As a comparison, the minimum monthly salary in the period 2013-19 had been RUB 5,205-11,280 – the fines had thus amounted to three years subsistence income. Among other examples the Court cited the RUB 600,000 in fines for failure to label banners and several Internet publications imposed on the Committee against Torture. It dissolved itself soon afterwards.

The Court held that the fines provided for by the Foreign Agents Act had not been proportionate to the legitimate aim pursued.

The Court found that there had been a **violation** of Article 11 of the Convention interpreted in the light of Article 10 both for the fact that the interference with the applicant organisations' rights had been neither prescribed by law nor "necessary in a democratic society".

Other articles

The Court held that given its findings made already, it did not need to rule on the complaints under Articles 14 and 18 taken in conjunction with Articles 10 and 11 of the Convention.

The Court held that there had been a violation of Article 34 (right of individual petition) for failure to comply with the interim measure previously indicated by the Court in respect of International Memorial under Rule 39 of the rules of Court.

Just satisfaction (Article 41)

The Court held that Russia was to pay the applicants individually the various amounts set out in the judgment, totalling 292,090 euros (EUR) in respect of pecuniary damage, EUR 730,000 in respect of non-pecuniary damage and EUR 118,854 in respect of costs and expenses.

The judgment is available only in English.

Press contacts
echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

We would encourage journalists to send their enquiries via email.

Neil Connolly (tel.: + 33 3 90 21 48 05)
Tracey Turner-Tretz (tel.: + 33 3 88 41 35 30)
Denis Lambert (tel.: + 33 3 90 21 41 09)
Inci Ertekin (tel.: + 33 3 90 21 55 30)
Jane Swift (tel.: + 33 3 88 41 29 04)