



Statement on the ruling of the Constitutional Court of the Russian Federation related to the “Foreign Agents Law” and St. Petersburg City Court decision on the case of ADC Memorial

8 April 2014

The Constitutional Court of the Russian Federation has rejected arguments from Russian civil society actors and human rights defenders that provisions of the 2012 “Foreign Agents Law” are unconstitutional.

Constitutional Court Ruling

On 8 April 2014, the Constitutional Court of the Russian Federation, Judge Valery Zorkin presiding with Judge-Rapporteur Sergei Dmitrievich, [reached a decision](#) in a case testing the constitutionality of certain provisions of the Law on Public Associations and Non-Profit Organizations, as well as the Administrative Code of the Russian Federation. The case was brought by the Ombudsman of the Russian Federation, the Kostroma Center for Public Initiatives and individuals S.M. Smirenskovo, V.P. Yukecheva and L.G. Kuzmina on the grounds that the 2012 “Foreign Agents” amendments to the above laws violate the Constitution and do not satisfy the requirements of legal certainty and consistency, discriminate against NGO participants, violate the presumption of innocence, impinge upon personal dignity and oblige a witness to testify against himself. They also argued that the provisions limit their fundamental right to the freedom of speech and freedom of association and the right to participate in the administration of public affairs.

The Foreign Agents Law, which entered into force in November 2012, requires any NGO receiving foreign funding and engaging in ill-defined "political activities" to register as a “foreign agent” - a synonym for “spy” in Russian. If found guilty of violating the law, NGOs may face large fines of over 10,000 EUR, suspension of their operations, and even prison terms of up to two years for their leaders. The law has been [widely criticized](#) for violating international standards protecting freedom of expression and freedom of association.

A central criticism of the so-called “Foreign Agents Law” is the stigmatization it causes by invoking the Soviet-era term “Foreign Agent”, which engenders mistrust in the labeled institution. The Court has rejected this claim stating that, “any attempts to detect a negative context in the phrase ‘foreign agent’, relying on stereotypes of the Soviet era, are devoid of a constitutional and legal basis. Accordingly, the contested provisions are not intended to be a negative assessment of an organization on the part of the State, and are not intended to discredit its work.”

Human rights experts and the international community also condemn the “Foreign Agents” provisions for the loose definition of “political activity”. The law has been interpreted inconsistently to designate [a wide spectrum of activity](#) as “political”, thus obliging foreign-funded organizations to register as “foreign agents”. The Court offered little clarity in declaring that political activities of an NGO are those “intended to impact public policy or the formation of relevant public opinion.” However, it went on to say that, “in the absence of such intentions, even if the organization is engaged in criticism of the authorities or causes a spirit of opposition in the community, it cannot be considered as fulfilling the function of a foreign agent.” The Court also stated that classification of “political purposes” should be applied to the activities of an organization as a whole and not to its individual members “acting in their personal capacity and on their own initiative.”

In their central finding, the Court declared that by engaging in political activity, NGOs “affect the rights and freedoms of all citizens” and that the reception of funds and property from foreign sources “does not exclude the possibility of its use in the interest of sponsors.” The Court therefore considers the classification of such NGOs to be “consistent with the constitutional provision of significant public interest and the protection of state sovereignty.”

In its reasoning, the Court found that the “Foreign Agents” provisions do not contradict the Constitution for the following reasons: a) it does not require the interference of the State in the definition of an NGO or its priorities and does not oversee the appropriateness of the content or forms of political activity; b) it merely establishes a “foreign agents” registry and does not hinder the reception of funds from Russian or foreign sources; c) it does not undermine the “presumption of legitimacy and integrity of the activities of NGOs and does not deprive them of their right to judicial protection.”

Challenges to the Administrative Code were rejected in part, because they are not retroactive and provide for prosecution only if an NGO fails to register as a ‘foreign agent’. However, the Court did order the amendment of the Administrative Code to abolish a mandatory minimum fine for individuals and legal entities found to be in violation of the relevant provisions.

Although marginal concessions were made for the protection of the rights of the individual, the Court’s decision fails to hold Russian authorities responsible for their obligations to uphold basic constitutional

principles and international human rights standards which ensure the protection of fundamental freedoms. The ruling further solidifies the impunity and license of law makers to target, repress and vilify any person or institution that challenges the absolute authority of the State.

Rejection of the Appeal by ADC Memorial

An illustrative case is that of Anti-Discrimination Centre Memorial, a leading human rights organization based in St. Petersburg, which was [ordered to register](#) as a “Foreign Agent” in an unprecedented civil case brought against the organization earlier in 2013. Prosecutors filed a civil motion after failing to prove that the organization’s actions constituted “political activity” through administrative proceedings. The detrimental effects of the law’s vague definitions are evident, as prosecutors claimed that ADC Memorial’s submission of an alternative report to the UN Committee Against Torture constitutes “political activity”. Refusing to bear the stigma of “foreign agent”, the organization began liquidation proceedings while [lodging an appeal](#) of the court’s decision. On 8 April 2014, the St. Petersburg City Court, Judge Gavrilova presiding, rejected the appeal, stating that the failure of ADC Memorial to register itself in the ‘foreign agent’s’ registry violates Russian law.

International Call to Action

International Partnership for Human Rights (IPHR) has been monitoring the trials and prosecutions of those charged under the “Foreign Agents” provisions since July 2013, in a project devised within the framework of the Civic Solidarity Platform – a network of NGOs committed to improving the human rights situation in Europe, Eurasia and the United States.

IPHR condemns both the rejection of ADC Memorial’s appeal and the decision of the Constitutional Court of the Russian Federation. IPHR calls for the Foreign Agents Law to be repealed or substantially revised, in line with Russia’s international human rights obligations.

Strong, substantive and continuous support for Russia’s NGOs from international actors is vital at this time. We appeal to the European Union, Council of Europe, OSCE and United Nations to insist that the Russian authorities stop persecuting NGOs and repeal the Foreign Agents Law.