

Russian Federation: Prosecutor's Office must drop its efforts to close down the leading human rights group Memorial

The International Commission of Jurists (ICJ) condemns the administrative suit by the Prosecutor's Office to shut down International Memorial and the Memorial Human Rights Centre, which are among the oldest and most reputable human rights groups in the Russian Federation.

The statement of claim against Memorial appears to be unsubstantiated, arbitrary and unjustifiably encroaches on the exercise of freedom of association and expression, and the right to defend human rights. As such it should be immediately withdrawn.

Memorial has been one of the most credible and reputable human rights organisations in the Russian Federation, a bold and effective voice for human rights, defending individuals, including, political activists, journalists and human rights defenders and many others against violations of their human rights.

The attempt to shut down Memorial under the provisions of the NGO law on "foreign agents" is a further demonstration that these provisions of the law lead to arbitrary interference with human rights and are contrary to Russia's international law obligations.

The ICJ calls on the Russian authorities to amend the NGO law to abolish the register of "foreign agents" and bring the NGO laws into line with international human rights law.

On 8 November 2021, the Russian Prosecutor General's Office appealed to the Supreme Court seeking liquidation of International Memorial and the Moscow Prosecutor's Office filed a lawsuit with the Moscow City Court, demanding the liquidation of the Memorial Human Rights Centre. Under the NGO law, both organizations have been branded by the Russian authorities as "foreign agents". Hearings in the cases of the Memorial Human Rights Centre and International Memorial are scheduled for 23 and 25 November respectively.

Through its statements of claim against Memorial, the Prosecutor General's office alleges consistent disregard of the NGO law by Memorial, providing a list of instances where the organizations had been fined. Most of these cases refer to same date in November 2019 and therefore would not be indicative of consistent practice by Memorial

The prosecution alleges breach of the Law on the Court System (Article 6) on the grounds that Memorial disagreed with facts established by a court. Article 6 provides that effective judgements of the Russian courts "as well as their lawful orders, demands, instructions, subpoenas and other addresses are binding for all ... public associations, officials, other natural and legal persons without exception." However, conflation of the contestation of judicial findings with a failure to respect binding court judgements in this manner makes the fair and proper administration of justice impossible. Furthermore, the allegation appears to be irrelevant to this case and does not disclose violation of the national law. Disagreement with the interpretation of law or statement of fact by a court is inherent for any appeals within domestic and international legal systems. It is inherent in the court system that such appeals containing disagreement are often lodged by the parties to proceedings, including by the Prosecutors Office itself. Voicing disagreement with the decision of a court is also an exercise of freedom of expression, protected by international human rights law, and necessary to democratic debate on matters of public interest.

The Prosecutor General's Office allegation that Memorial justified participation in "international terrorist" and "extremist" organizations is equally arbitrary and unjustified. The texts which are provided as justifications for those allegations mostly contain statement of facts about criminal cases, investigations or trials of individuals as well as descriptions of alleged human rights violations. It is the very function of a human rights defenders and their associations to provide such analysis including in cases where individuals are accused of participation in terrorist and extremist organizations.

The statement of claim alleges violation of international treaties by Memorial, an argument which does not withstand any scrutiny. Civil society organizations are non-State actors which are not bound by international treaties. They may be violated only where the State party, which has ratified them, fails to implement them.

The statements of claim against International Memorial and Memorial Human Rights Centre are alike and constitute a synchronized move against the human rights NGOs. This points to a lack of objective reasons and a coordinated decision taken against the organisations for an ulterior purpose unrelated to the legitimate regulation of NGOs. This is consistent with a pattern of the [abusive application of the NGO laws](#) against organizations and individuals working to defend human rights, including the [recent designation as foreign agent](#) of [lawyer Ivan Pavlov](#).

The statement of claim therefore suggests an arbitrary attack on freedom of expression and association of Memorial and its representatives, that cannot be justified as necessary or proportionate to a legitimate aim, as required under international human rights law including the International Covenant on Civil and Political Rights and the European Convention on Human Rights. The Russian Federation is a party to both treaties.

In seeking to close down Memorial, the prosecutor's office is targeting a leading voice for the protection of human rights in Russia. International human rights law protects the right to defend human rights. The UN Declaration on Human Rights Defenders, adopted with the support of all States including the Russian Federation, as well as the jurisprudence of the European Court of Human Rights, affirm that civil society organizations, including NGOs, play an essential role in fostering debate on matters of public importance in a democratic society, including on matters of public policy. It is the obligation of States to facilitate and protect, not undermine, their operation.

[In its legal opinion of 2014](#) concerning the provisions of NGO law on "foreign agents" the ICJ stated among other things that

"[...] the broad terms in which the law is formulated leave room for inconsistent or arbitrary application of the law by courts. The only conclusion to be drawn is that the law as it is presently formulated is contrary to the general principle of legality and to the Russian Federation's international legal obligations to ensure that any contemplated restrictions with or interferences to the right to freedom of association or freedom of expression meet the requirements of prescription by law."

The legal opinion concluded that the NGO Law imposes multiple, significant restrictions on the rights to freedom of association and of expression, is insufficiently precise to satisfy the principle of legality, while its practical application, the wide scope and severity of the measures which may be imposed unnecessarily and disproportionately interfere with the rights to freedom of association and expression.

Background information

[International Memorial](#) is a non-commercial organisation studying political repressions in the USSR and in present-day Russia and promoting moral and legal rehabilitation of persons subjected to political repressions.

[The Human Rights Centre "Memorial"](#) is part of International Memorial, which carries out human rights monitoring, raising awareness about human rights violations, including in conflict zones, legal representation, human rights legal research, reform of the penitentiary system and other human rights work.