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"Memorial spent 30 years fighting impunity for [Russia's] war crimes, crimes against humanity. That's why we are getting shut down now."

Alexander Cherkasov, Chairman of the Board of the Memorial HRC, 5 April 2022

Chronicle of a Death Foretold: the Liquidation of Legendary Human Rights Organizations in Russia

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1. Introduction and Methodology

Following the announcement in November 2021 of two administrative complaints brought by the Russian authorities against two of Russia's most widely known human rights organisations - International Memorial and Memorial Human Rights Center – seeking their liquidation for alleged violations of the notorious “Foreign Agent Law”, the International Federation of Human Rights (FIDH) has closely monitored and reported on these cases.

Initially, FIDH mandated Ms Ainura Osmonalieva, a lawyer from FIDH member organization in Kyrgyzstan, Adilet, to monitor the initial hearings that took place on 23 November 2021 in Moscow City Court, for Memorial Human Rights Center, and on 25 November 2021 in the Supreme Court of the Russian Federation, for International Memorial. Subsequently, FIDH's Eastern Europe and Central Asia Desk has monitored and reported on the liquidation trials for both organisations for the most part remotely. FIDH consultant Natalia Morozova, a former lawyer of Memorial Human Rights Center, FIDH member organization, has also participated in the proceedings and contributed to the writing of this report.

The report provides background to the liquidation proceedings, describes the trials and appeals that resulted in the liquidation of the two organizations, and analyzes the legality of these proceedings, as well as that of the “Foreign Agent” legislation, from the standpoint of international human rights law, as well as the impact of these proceedings on Russian civil society more broadly.

2. Background

The International Historical Educational, Charitable and Human Rights Society «Memorial» (hereinafter, International Memorial) is a non-governmental organization that investigates political repression in the former Soviet Republics and promotes the psychological and legal rehabilitation of persons subjected to political repression. It was founded in 1991 in Moscow. The academic and Nobel Prize laureate, Andrey Sakharov, was one of its founders.

International Memorial strives to support civil society, democracy and the rule of law to prevent a return to totalitarianism, popularize democratic values in society and strengthen human rights in public and political life.

Soon after the registration of the organisation it became clear that in order to prevent a repetition of repressions, it was necessary not only to protect the rights of the victims of Soviet-era repressions, but also to protect human rights here and now. Thus, in 1993, several members of International Memorial founded Memorial Human Rights Center.

The Interregional Public Organization Human Rights Center «Memorial» (hereinafter Human Rights Center Memorial, Memorial HRC) became one of the first human rights non-profit organizations in modern-day Russia. Memorial HRC compiles and maintains a list of political prisoners based on the definition endorsed by PACE resolution 1900. It collects information on, monitors, supports, organizes campaigns around, and legally and financially assists victims of politically motivated criminal prosecution and their families. Memorial HRC works in areas of mass conflicts that may or have already escalated into armed conflict, as well as in post-conflict situations, investigating whether human rights and international humanitarian law are being respected, for instance, in the North Caucasus. Memorial HRC has filed 437 applications with the European Court of Human Rights (hereinafter, European Court, ECtHR), 149 of which were successful. 131 of these cases were from the North Caucasus, and 83 of these had a successful outcome. Memorial HRC's priorities are violations committed by security services, including unlawful use of force and torture, protection of freedom of speech and assembly, violence against women, discrimination, protection of procedural rights, and protection of the interests of non-profit organizations. Examples of landmark cases include: *Tagayeva and Others v. Russia*, No. 26562/07 concerning the Beslan School siege; *Isayeva v. Russia*, No. 57950/00 concerning the bombing of Katyr-Yurt; *Roman Zakharov v. Russia*, No. 47143/06, concerning secret surveillance of telephone communications and *Frumkin v. Russia*, No. 74568/12, concerning the peaceful Bolotnaya protests in downtown Moscow.

On 8 November 2021, the Prosecutor General of the Russian Federation filed an administrative lawsuit with the Supreme Court of the Russian Federation seeking liquidation of International Memorial for systematic violations of the «foreign agents» legislation (the case concerned non-labeling of the organization's materials).¹ On 28 December 2021, the Supreme Court of the Russian Federation ruled in favor of the lawsuit from the Prosecutor General's Office to liquidate the International Memorial.² On 28 February 2022, the Presidium of the Supreme Court of the Russian Federation dismissed International Memorial's appeal, and the decision of the Supreme Court of the Russian Federation to liquidate International Memorial became final.

On the same day, 8 November 2021, the Moscow City Prosecutor's Office filed an administrative lawsuit to the Moscow City Court to liquidate Memorial HRC.³ The grounds for the administrative lawsuit were, according to the prosecutor's office, systematic violations of the «foreign agents» legislation (this part repeated almost verbatim the charges brought against International Memorial). The Prosecutor's Office also pointed out that some of the publications on the organization's website "were aimed at forming an idea among the general public that terrorist and extremist activity is acceptable". On 29 December 2021, the Moscow City Court upheld the claim of the Moscow City Prosecutor's Office.⁴ On 5 April 2022, the First Appellate Court of Moscow dismissed Memorial HRC's appeal and the decision to liquidate Memorial HRC became final.



Elena Zhemkova, Executive Director of International Memorial, and Alexander Cherkasov, Chairman of the Board of the Memorial Human Rights Center during the press conference on 18 November 2021. © Andrey Rushailo-Arno for Memorial HRC

1. Explanatory note about the Federal bill «On Amending Certain Legislative Acts of the Russian Federation and Recognizing Invalid Certain Legislative Acts (Provisions of Legislative Acts) of the Russian Federation in order to Exclude Provisions on Persons Performing the Functions of a Foreign Agent,» <https://inoteka.io/ino/poyasnitelnaya-zapiska-i-zakonoproekt#1>
2. CAT/C/EN/CO/5.
3. CCPR/C/EN/CO/7.
4. CEDAW/C/EN/CO/8, CERD/C/EN/CO/23-24, CRC/C/EN/CO/4-5.

2.1 Legislation on Foreign Agents in Russia

On 13 July 2012, the Federal Law on Non-Profit Organizations⁵ was amended to require NGOs receiving foreign funding and engaged in political activities to register as «foreign agents» with a special register.

Such NGOs are required to submit more frequent financial reports, conduct annual mandatory audits, and any information published or disseminated by such organizations has to contain a reference to it being published or disseminated by an NGO performing the functions of a foreign agent. In addition, numerous formal and informal restrictions were imposed on such organizations, such as a ban on nominating candidates for elections at all levels or to individual monitoring and advisory bodies, and on any cooperation with schools and other state institutions.

Another set of amendments, adopted on 4 July 2014 gave the Ministry of Justice discretionary powers to include NGOs in the above-mentioned register.⁶

The term «foreign agent» has a negative connotation in contemporary Russian. Given the historical context, namely the repression of the Soviet regime, the collocation instantly calls to mind associations with the term «spy» and/or «traitor» and thus carries connotations of ostracism or stigma.

Since the amendment of the Law on Non-Governmental Organizations, human rights defenders have pointed to problems with the boundaries of the concepts of «political activity» and «foreign funding.» Among the organizations added to the foreign-agent registers, «political activities» included conducting sociological research, participating in international conferences, observing elections and giving media interviews. The amount of «foreign funding» required for inclusion in the register has no minimum. It does not take into account whether or not the funds in question were specifically used for activities recognized as «political». Even transfers between accounts of the same individual have been grounds for recognizing «foreign funding».

In 2017, another law introduced the concept of a media performing the functions of a foreign agent.⁷ Starting in December 2020, the Ministry of Justice has also been including individual persons in the register of media performing the functions of a foreign agent.

In 2020, a new bill introduced the concepts of an «unregistered public association performing the functions of a foreign agent» and «individual person performing the functions of a foreign agent.»⁸ There are currently four registers of so-called «foreign agents» in the Russian Federation. The number of natural and legal persons included in them is constantly rising. In April 2022, a new bill concerning «foreign agents» was submitted to the State Duma proposing to merge all four registers into one and toughening the rules for «foreign agents.»

According to the Judicial Department of the Supreme Court, in only four years from early 2017 to mid-2021, trial courts issued fines of more than 30 million rubles to Russian NGOs and their executives in cases involving violations of the labeling requirement or failure to register (Article 19.34 of the Code of Administrative Violations (CAV)); the average fine went from 190 thousand rubles in 2017 to 350 thousand rubles in the first half of 2021. Trial courts heard a total of 229 cases under Article 19.34 of the CAV during this period, with 158 cases (69%) resulting in convictions and 25 cases (11%) dismissed. Since 2013, the legal entities of 100 organizations recognized as foreign agents have been liquidated, and the list keeps getting longer.⁹

2.2 Fines and Prosecutorial Investigations

On 21 July 2014, the Ministry of Justice added Memorial HRC to the register of foreign agents, and on 4 October 2016, the International Memorial was added to this register. Both organizations appealed the ruling in courts, but the courts dismissed their appeals.

Since then, all materials published or disseminated by International Memorial and Memorial HRC had to contain a statement that the NGO's material was that of a foreign agent. At first, the

5. N.F. c. Italie, №37119/97, 2 August 2001, §§ 26, 29, *Rekvényi v. Hungary* [GC], № 25390/94, 20 May 1999, § 34.

6. *Vides Aizsardzības Klubs v. Latvia*, № 57829/00, 27 May 2004, § 42.

7. *Republican party of Russia v. Russia*, № 12976/07, 12 April 2011, § 79–80.

8. *Basque Nationalist Party and Ipparalde – Regional Organisation v. France* № 71251/01, 7 June 2007., §§ 37-38.

9. *Grande Oriente d'Italia di Palazzo Giustiniani v. Italy*, № 35972/97, 2 August 2001, § 13 и 15.

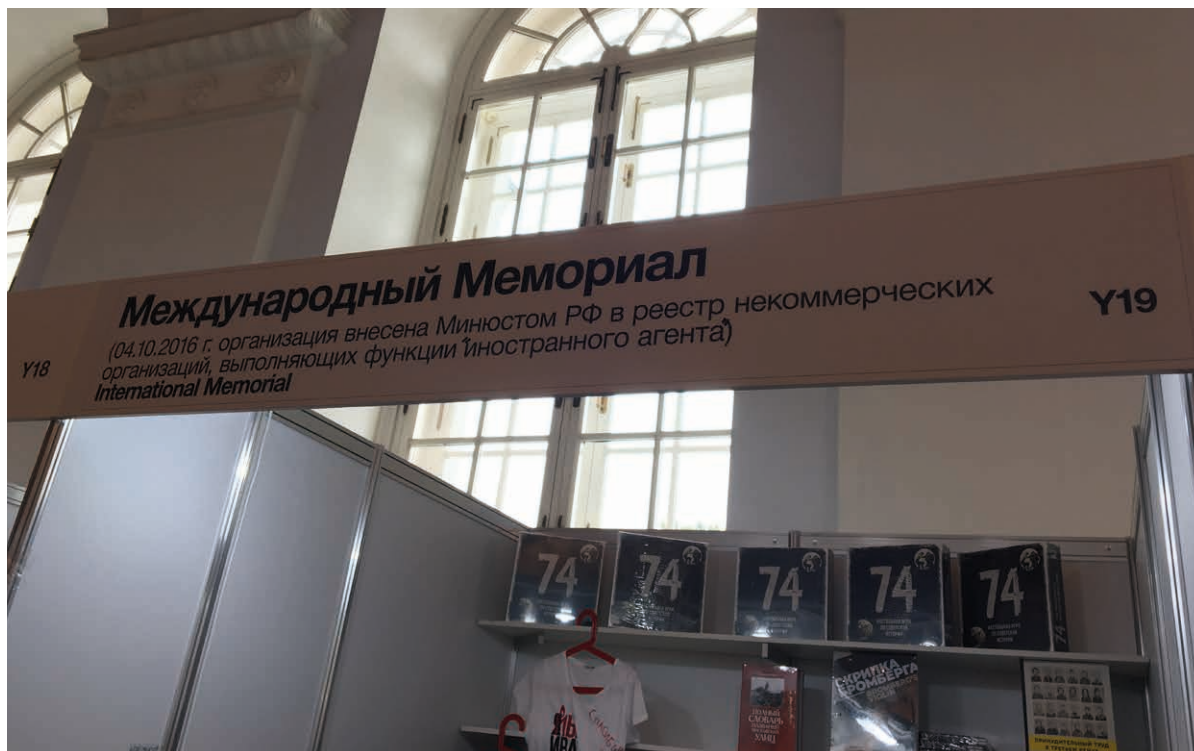
organizations refused to do so, considering that such labeling, first of all, is not in accordance with the Constitution of the Russian Federation or international law in the field of freedom of association; secondly, it is not applicable to such organizations given that they are not «agents» of any principals, but are working exclusively for the good of Russian citizens; and thirdly, this is comparable to the stigma «enemy of the people» during Stalinist repression.

However, after several fines and warnings from state bodies, Memorial HRC published on its official Website in November 2016: «On 21 June 2014, the Ministry of Justice of the Russian Federation included the International Public Organization Memorial Human Rights Center in the register of non-profit organizations performing the functions of a foreign agent.» Memorial HRC is a self-governed public organization that is not an «agent» of any external «principal.» We consider the Law on NGOs deemed «foreign agents» to be contrary to the Constitution of the Russian Federation and in violation of our right to freedom of association and we will therefore appeal the ruling on the inclusion of our organization in the given register before the European Court of Human Rights.» In August 2017, after the ruling of the court to recognize the organization as a foreign agent, International Memorial posted the following on its official Website: «On 4 October 2016, the Minister of Justice of the Russian Federation included International Memorial in its register of «non-profit organizations performing the functions of a foreign agent.» We will appeal the ruling in court.»

Initially, state bodies demanded detailed labels only on printed material and official websites.

However, in September-December 2019, the Federal Service for Supervision of Communications, Information Technology and Mass Media (hereinafter, Roskomnadzor) drew up 26 reports on International Memorial, the Human Rights Center Memorial and its leaders, Yan Rachinsky and Alexander Cherkasov, concerning administrative violations due to a lack of the «foreign agent» labeling on the organizations' pages on social networks Facebook, YouTube, Twitter, Instagram, VKontakte and on several sites administered by the organizations. Moreover, Roskomnadzor drew up two reports for each «violation,» one on the organization and the other on one of its leaders.

The Tverskoy District Court of the city of Moscow has examined all the cases of administrative violations, found the organizations and its leaders guilty and fined them from 100 000 to 400 000 rubles. The judgments were appealed at the Moscow Municipal Court, but they remained in effect. In total, the organizations and its leaders paid 5 300 000 rubles, which were collected with the assistance of crowdfunding.¹⁰



International Memorial's stand at the 33rd Moscow International Book Fair. © Natalia Baryshnikova for International Memorial

10. Moscow branch of the Salvation Army v. Russia, № 72881/01, 5 October 2006, § 73.

On 4 September 2020, representatives of the Prosecutor's Office in Moscow approached International Memorial's stand at the 33rd Moscow International Book Fair and confiscated several books, booklets and a board game that were being given away at the stand. The confiscated material did not have the requisite label either because it had been published prior to International Memorial being included in the register of foreign agents or because International Memorial had not included the stamp on the publications. The requisite stamp was put on the material before it was handed over to people visiting the stand. For that «violation,» International Memorial paid a 500 000-rouble fine and its leader, Yan Rachinsky, paid a 300 000-rouble fine.

3 December 2020 marked the beginning of an extraordinary inspection of Memorial HRC initiated by the Prosecutor's Office of the city of Moscow to ascertain that it was in compliance with the Law on NGOs. Over the course of a month, employees from the Office of the Prosecutor confiscated and examined the organization's documents; yet, no conclusions were reached, nor did the organization receive any document concerning the end of the inspection.

Despite the fact that both organisations paid all court-ordered fines on time, corrected the «violations,» that is, stamped all pages on social networks and websites with the foreign-agent label, and notwithstanding the fact that the Prosecutor's Office of the city of Moscow inspection did not reveal any new violations, a year later, the authorities filed lawsuits for liquidation of both organisations based on the same protocols for violating «foreign agents» legislation, in effect ignoring the *non bis in idem* principle.

3. Court Hearings

3.1. International Memorial

On 8 November 2021, the Office of the Prosecutor General of the Russian Federation filed an administrative lawsuit with the Supreme Court of the Russian Federation for liquidation of International Memorial, referring to these violations as systematic non-compliance by the organization with legislation on «foreign agents.»

The lawsuit contained absurd assertions that International Memorial's action violates the Convention for the Protection of Human Rights and Fundamental Freedoms, the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights. In the opinion of the Office of the Prosecutor General, the lack of indication of the organization's foreign funding has a negative influence on the moral and spiritual development of children and violates the right of citizens to freedom to receive information.

On 22 November 2021, International Memorial submitted its objections, asserting that the Universal Declaration of Human Rights is not an international treaty and does not impose any obligations on entities of international public law. All other remaining international documents impose obligations only on States parties. International Memorial is not a State and cannot violate said international treaties. Furthermore, Memorial stated that the alleged violations could not be considered flagrant given that they do not pose a threat nor cause serious harm to public interests and rights of citizens. The liquidation of International Memorial would violate the ban on double jeopardy given that the organization has already paid the fines for all the violations stated in the claim. The organization always acted conscientiously and in a law-abiding manner despite the fact that it did not agree with the Law on «foreign agents,» and yet it could not anticipate changes in law enforcement practices. Moreover, liquidation constitutes a disproportionate reaction to the violations committed by International Memorial.

On 25 November 2021, Justice Alla Nazarova of the Supreme Court of the Russian Federation began examining the administrative lawsuit from the Office of the Prosecutor General against International Memorial. The respondent was represented by the Chairman of the Board, Yan Rachinsky, Executive Director Elena Zhemkova, attorneys Henri Reznik, Mikhail Biryukov, Maria Eismont, lawyers Grigory Vaypan, Anastassia Garina, Tatiana Glushkova, Tamilla Imanova, Natalya Morozova and Natalia Sekretaryeva. Besides the three representatives of the Office of the Prosecutor, there were representatives of the Ministry of Justice and Roskomnadzor as relevant parties.

The trial was monitored by accredited journalists, diplomats and auditors. Ainura Osmonalieva, a representative of the International Federation for Human Rights (FIDH) also observed the court hearing on 25 November 2021.



Attorneys and lawyers of International Memorial in front of the Russian Supreme Court. Foreground: Maria Eismont, Grigory Vaipan, Henry Reznik.
© International Memorial

During the hearing, representatives of International Memorial asked representatives of the Office of the Prosecutor General: «Is a public organization subject to violations of the Convention on Human Rights and Fundamental Freedoms?» Following a lengthy pause, Justice Nazarova came to the rescue of the representatives of the Prosecution. «Are you finding it difficult to respond?» The representatives of Memorial said that they were willing to wait. The Prosecutor then came up with the following, «Subject to, no, but you were disseminating material without a label.» The next question to the Prosecutors: «From what information that interferes with the spiritual and moral development of children do you plan to protect them, by liquidating International Memorial?» Prosecutor: «From all information that the organization disseminated without labeling it.» Memorial lawyers: «Information that negatively affects children is determined by law.» Pause. Memorial lawyers: «If there is no answer, that's OK. Just say so.» Justice Nazarova: «Of course, that's OK. Simply, there is no answer [no specific legal text] before their eyes.»

During the hearing, International Memorial's lawyers emphasized the importance of the organization's work for Russian society. Specifically, they attempted to submit as evidence 700 personal expressions of support from citizens and a petition on the website change.org that had gathered over 100 000 signatures by the time of the court hearing, but the court denied the motion. The lawyers also petitioned to have witnesses called to testify to the importance of the work of the organization (among them - former ombudsman of the Russian Federation Vladimir Lukin, Academician of the Russian Academy of Sciences Vladimir Vassiliev, Corresponding Member of the Russian Academy of Sciences Elizaveta Bontch-Osmolovskaya, Sergei Buntman, deputy editors-in-chief of Echo of Moscow, Alexei Uminsky, Protopriest of the Russian Orthodox Church). Justice Nazarova denied the petition and adjourned the hearing until 14 December 2021.

On 1 December 2021, Memorial's lawyers sent detailed requests to the Ministry of Justice, Roskomnadzor and the Prosecutor's Office about how and what materials, in the opinion of the state agencies, must be labeled as foreign agents. However, the response from these agencies came only after the Supreme Court ruling.

On 14 December 2022 at the Supreme Court of the Russian Federation, the hearing concerning the Prosecutor General's Office lawsuit for liquidation of International Memorial resumed. On the eve of the court hearing, FIDH sent an Amicus Curiae to the Supreme Court, requesting that the administrative lawsuit be dismissed as inconsistent with international law, Russian legislation, and law enforcement practice, due to the fact that the demand to liquidate Memorial is disproportionate to the violation, with which it is charged. In addition, FIDH stressed that the provisions of the law on foreign agents do not comply with the Russian Constitution and the Russian Federation's international human rights obligations. First of all, international law guarantees NGOs access to resources as an integral part of their right to freedom of association, and secondly, limiting «foreign influence» on the activities of Russian civil society, or in other words, protecting national sovereignty, is not a legitimate objective from the perspective of international law.

Justice Nazarova examined the materials of the cases of administrative violations against International Memorial and Yan Rachinsky (section 2.2). In each case, explanations of the person involved were accompanied by screenshots of the corresponding website with markings, which had been put up before the ruling on the administrative case was issued. In this way, Memorial's attorneys argued that all the sites were labeled immediately after Roskomnadzor had pointed out the violations.

Next, the judge examined the report on the inspection of the organization drawn up by the Ministry of Justice in 2016. It was on the basis of that report that International Memorial was included in the register of NGOs/foreign agents on 4 October 2016. Every time she spoke about the sums received from foreign organizations, the judge singled them out using a specific intonation and shook her head with displeasure.

Memorial's lawyers presented screenshots of 34 websites and 22 social-network pages to show that the percentage of unlabeled pages was much smaller than the ones for which fines had been issued (there were only 9).

During the hearing, Memorial representatives demonstrated the awards received by the organization at different times. Also as evidence of the importance of Memorial's work, the lawyers presented anonymous statements of money transfers from 2827 citizens that contributed to paying the fines for non-labeling in 2019-2020. Yet, Judge Nazarova was only interested in the fact that some of the donations had come from abroad. The hearing was adjourned until 28 December 2021.

On 28 December 2021, the Supreme Court of the Russian Federation heard the closing arguments of the parties. Particularly memorable was the speech by the Prosecutor Alexei Zhafyarov, who stopped trying to justify the claim from a legal standpoint and listed the real reasons for the liquidation of International Memorial: «Despite all attempts to present itself as an organization that exists exclusively in the public interest, at present the activities of Memorial are in fact primarily aimed at falsifying our country's history, at gradually reformatting the mass consciousness of the population from the memory of victors into one with a need to repent for the Soviet past. <...> It is obvious that Memorial, by speculating on the theme of political repression in the 20th century, is creating a false image of the Soviet Union as a terrorist state, whitewashing and rehabilitating Nazi criminals, who had the blood of Soviet citizens on their hands. <...> Why should we, descendants of the victors, now be forced to sit back and watch rehabilitation of traitors to their Motherland and Nazi collaborators happening with impunity? Why, instead of pride in our country, which won the terrible war and liberated the world from fascism, are we being encouraged to be ashamed and to repent, as it turns out, for our tenebrous past?»

Grigory Vaypan, a lawyer at International Memorial, responded, «The requirements for labeling of non-profit organizations' material are the only grounds for liquidation claimed by the administrative claimant. Yet, most of the invectives we heard in the pleading are irrelevant to the subject matter of the administrative lawsuit at issue. All the claims about falsification of history, about the political unreliability of the opinions and positions honestly expressed by International Memorial are irrelevant to the case at hand today. In the opinion of the administrative claimant, only labeling requirements are relevant to International Memorial's formal violations. The violation of the legislation on foreign agents imputed to Memorial in the administrative lawsuit cannot be grounds for its liquidation, because the legislation on foreign agents itself and the requirements stipulated by it, including labeling requirements, contradict the international legal obligations of the Russian Federation.»

Memorial attorney Maria Eismont added: «It is unacceptable to narrow the process of judicial and substantive proceedings down to the number of administrative reports on the absence of the 'foreign agent' label, since no number of formal, easily correctable and remediable, inconsequential violations of a poorly drafted law can be sufficient to even raise the question of the possibility of liquidating International Memorial. It is even more unacceptable to accuse International Memorial of rehabilitating Nazism and supporting extremism during the pleading of the parties, and to do so unexpectedly and without presenting

any evidence. The Prosecution claims that Memorial demonstrates a consistent disregard for the law, does not make its activities publicly known, impedes proper public monitoring of those activities, and thereby grossly violates the rights of citizens, including the right to truthful information about its activities. It also violates the right of the general public to freedom of information, as well as disseminating information that negatively affects the moral and spiritual development of children. I want to point out that we live in a terrible time where many words are losing their meaning due to their repeated and incorrect use and we are creeping into an Orwellian dystopia. International Memorial, which has been fighting for decades to open archives and publish the names of the repressed, as it turns out, does not make its work publicly known and violates the rights of the general public to receive information. As it happens, International Memorial, which collects information on crimes against children, children of “enemies of the people”, street children, children of entire peoples that were deported, has a negative impact on the moral and spiritual development of children. ‘War is peace, freedom is slavery, ignorance is strength.’ The question of proportionality in this matter is key. It is absurd and Orwellian to accuse Memorial of preventing people from accessing information. It helps people access information about the history of their country.»

Representatives of the Ministry of Justice and Roskomnadzor supported the lawsuit of the Prosecutor General’s Office to liquidate International Memorial.

On 28 December 2021, the Supreme Court ruled to liquidate International Memorial. The court justified its decision by stating that the organization had repeatedly violated the requirements for labeling materials created and (or) distributed by a non-commercial organization on the register of non-commercial organizations performing the functions of a foreign agent.¹¹

On 28 January 2022, representatives of International Memorial appealed the decision of the Supreme Court of the Russian Federation. As the Supreme Court fully endorsed the position of the Prosecutor General’s Office in its decision, Memorial International set forth the same position in its appeal that it had maintained throughout the trial: namely, that the alleged violations could not be considered grave, since they did not pose a threat or cause serious harm to the public interest or the rights of citizens; that the liquidation of Memorial International would violate the prohibition on double jeopardy; that the organization had acted in good faith and had complied with the law, but that it could not anticipate changes in law enforcement practices; that liquidation is a disproportionate measure in response to the violations.

On 28 February 2022, the Presidium of the Supreme Court held hearings on International Memorial’s appeal. The organization was represented by Elena Zhemkova and Yan Rachinsky, attorneys Henry Reznik and Maria Eismont, lawyers Anastassia Garina, Tatiana Glushkova, Tamilla Imanova, Natalia Morozova and Natalia Sekretariova.

Maria Eismont, a lawyer, summed up the outcome of the trial in her final statement: «If we consider the ruling in the trial phase, we learn little about International Memorial aside from its prosecution for not labeling resources. Also the trial court found that label did appear, though not as it should have. On proportionality, the trial court put it succinctly: the repeated use of administrative pressure did not lead to restraint... with a view to protecting constitutional order... [liquidation] is reasonable and proportionate. Twice the word “consequences” is used, but never are the consequences specified with respect to citizens, society, or the country. Numerous payments were made from the Urals to the Far East. We have also looked at them. People donated to help pay the fine, which means: people were aware of the foreign-agent status, and being aware, they decided to donate their own funds, significant funds for a number of these cities. They were personally involved in ensuring that Memorial was able to pay the fine, comply with the ruling of the court and continue to exist. First, you close the archives and access to truthful information. And then comes the rewriting of history, from which painful chunks are cut out and false complimentary ones inserted. Then, honest organizations and people are called foreign agents - in what sounds like stigma. And then human lives are sacrificed for the sake of State ideologies. Memorial has always been against this. And it is needed to make sure that this doesn’t happen again. Memorial must live on!»

The Presidium of the Supreme Court dismissed International Memorial’s appeal and the ruling of the Supreme Court remains unchanged.

11. Belgian Linguistic case, №№ 1474/62 1677/62 1691/62 1994/63 2126/64, 23 July 1968.

On 28 May 2021, representatives of International Memorial filed a supervisory appeal against the court decision to liquidate the organization to the Presidium of the Supreme Court. It states, inter alia: "Russian citizens have a full right to the truth about the past, which the government is trying to erase from the history of the state together with Memorial. This right is established in the Constitution of the Russian Federation, the Law on Rehabilitation and other normative acts. A society that has not learned the lessons of the past has no future. Therefore the liquidation of International Memorial violates the right of citizens to truth and causes irreparable harm to the Russian Federation".

3.2 Hearings on the Claim against the Memorial Human Rights Center

At the same time 23 November 2021, the Moscow City Court held a preliminary hearing on the administrative lawsuit of the Moscow City Prosecutor regarding the liquidation of the Human Rights Center «Memorial». Judge Kazakov examined the case. The prosecutor's office filed the lawsuit to liquidate Memorial because it systematically violated the law on «foreign agents,» and also because of several publications on the organization's website, which, according to the prosecutor's office, were «aimed at forming an idea among the general public that terrorist and extremist activity is acceptable.» This thesis was confirmed by the prosecutor's office with a «Certificate of a Study» of nine texts from the Memorial website and two texts from some other websites. The study was called psycho-linguistic, and was conducted by mathematics teacher N.N. Kryukova and translator and English and German teacher A.E. Tarasov (it was not specified who acted as the psychologist and who acted as the linguist).

The respondent was represented by Alexander Cherkasov, Chairman of the Board of the Memorial Human Rights Center, attorneys Ilya Novikov, Mikhail Biryukov, Maria Eismont, lawyers Grigory Vaypan, Anastasia Garina, Tatiana Glushkova, Tamilla Imanova, Natalia Morozova, Natalia Secretarova. Two prosecutors' offices in Moscow represented the administrative claimant, and representatives of the Main Administration of the Ministry of Justice in Moscow were involved as interested parties. No representatives of Roskomnadzor participated in the hearings. Ainura Osmonalieva, a representative of the International Federation for Human Rights (FIDH) also observed the court session on 23 November 2021.

On 23 November 2021, the court refused to bring in «Memorial» founders Oleg Orlov and Svetlana Gannushkina as interested parties. The court also refused to disclose the materials of the December 2020 prosecutor's investigation, which served as the basis for the so-called certificate by Kryukova and Tarasov. The next preliminary hearing was scheduled for 29 November 2021.



Attorneys and lawyers of Memorial HRC front of the Moscow City Court. Foreground: Ilya Novikov, Mikhail Biryukov. © Memorial HRC

On 29 November 2021, Memorial's lawyers presented their objections to the lawsuit to the court. As regards the labeling, they repeated similar objections to the lawsuit against International Memorial. As regards accusations of forming the general public's opinion about the admissibility of terrorist and extremist activity, the lawyers presented five reports on the quality of the certificate made by linguists, one report written by a psychologist, and three reports issued by various scientific associations and organizations, all confirming that the «experts» N.N. Kryukova and A.E. Tarasov are unknown to the scientific community. The lawyers also attached reports of inspections of popular websites, used by students to plagiarize their term papers, to demonstrate that most of the contents of the disputed certificate was also copied from there. Memorial's lawyers petitioned to summon N.N. Kryukova and A.E. Tarasov to the court session, but even though the prosecutor's office representatives supported that petition, the court refused to summon the witnesses. A continuation of the preliminary hearing was scheduled for 16 December 2021.

On 16 December 2021, during a third preliminary hearing and upon a motion from the prosecutor's office, the court added another case of administrative violation (on lack of labeling), which had come into effect the previous day, 15 December 2021, and another similar case against Memorial, whose decision had not yet taken effect. Lawyers from Memorial HRC submitted as evidence a comprehensive psychological and linguistic study of the disputed texts, confirming that they do not contain calls or justification for extremism or terrorism. The next hearing was scheduled for 23 December 2021.

On 23 December 2021, the examination of the administrative lawsuit filed by the Moscow City Prosecutor's Office against the Memorial Human Rights Center began on the merits. Representatives of the prosecutor's office petitioned to have the authors of the certificate questioned as witnesses, but despite the support of the respondent, the court denied the petition. The judge read out the administrative lawsuit and granted the parties the right to ask questions.

Attorney Maria Eismont asked the representative of the prosecutor's office: «In the lawsuit, you list the requirements that, in your view, have been violated due to the lack of labeling, including the protection of health and the general welfare. Can you please tell me how the lack of labeling, in your view, violates the requirement to protect the health and the general welfare of citizens?» Representative of the Prosecutor's Office: «I believe that such health, in fact, and mental health, yes, could also fall under, and, so, creating a negative society, a negative image, including of the State, in particular, and the lack of labeling, when citizens can not take a critical approach to this article, it creates threats, in theory, to their health, and can also cause a depressed state among citizens.»

Judge Kazakov studied the material of the case, in particular, Kryukova and Tarasov's «certificate of expertise» and the numerous reviews of thereof by linguists and psychologists. The material of the administrative cases from the Tverskoy District Court against Memorial HRC and Alexander Cherkasov were also studied, confirming that the labels required by law were added every time immediately after the report was drawn up and before the court decision, and that all fines in these cases were paid on time.

The court denied the motion of the respondent's representatives to question the witnesses who could confirm the social significance of Memorial, describing what role the organization played in their lives.

For instance, the respondents petitioned to summon Murtazali Gasangusenov - his sons had been killed in Dagestan by the authorities. Thanks to the HRC's assistance, the ECtHR found the Russian authorities responsible for the killing of the Gasangusenov brothers by Russian forces and for the failure to effectively investigate the crime.¹² In order to tell his story in the Moscow City Court, the father of the murdered teenagers, Murtazali Gasangusenov, came from Dagestan and waited outside the court building for several hours in -20C cold, but the court did not consider it necessary to hear his story.

The court attached the extra-procedural appeals submitted directly to the court, in particular the Amicus Curiae from the FIDH, but refused to attach the appeals from citizens brought to the court by Memorial lawyers.

On 29 December 2021, the closing arguments of the parties took place. The prosecutor acknowledged in his speech that the labeling was only a pretext for an administrative claim: «The organization actively engages various international platforms for pretentious materials on human rights issues, which are used to attempt to destabilize the political structure of the Russian Federation and are a pretext for imposing sanctions. In 2014, Memorial's report, 'The Failed Referendum' about the

12. Sidabras and Dziautas v. Lithuania, Nos. 55480/00 59330/00, 27 July 2004, § 51.

human rights situation in the DPR and the justification of the illegality of the holding of a referendum on independence, served as one of the justifications for the introduction of anti-Russian economic and political restrictions by foreign states.»

Attorney Ilya Novikov, representative of Memorial: «This case is not a case arising from a violation of the law. It never has been. The law on foreign agents and the labeling rule is not a norm that exists to protect the rights of citizens, to protect the right to information, and it never has been. As was said at the very beginning by Memorial's representative Cherkasov: it is about liquidating the organization for political reasons to prevent Memorial from continuing to do what it has been doing and saying what it has been saying. Saying things that should be said and protecting people who should be protected. <...> The reasons for destroying Memorial are political. The State doesn't like what Memorial is saying, the State isn't happy with the way Memorial is behaving, and the subject of labeling is brought in purely as a pretext, barely disguising these very objectives, if at all.»

On 29 December 2021, Judge Kazakov issued a ruling to liquidate the Memorial Human Rights Center. The judge justified his decision saying that the organization had grossly violated the legislation on foreign agents several times, namely by failing to put the appropriate labels on its pages on social networks. The court did not take into account the arguments of the prosecutor's office about «the formation of the general public's perception of the admissibility of terrorist and extremist activities».

On 11 February 2022, Memorial attorneys appealed the ruling of the Moscow City Court. The appeal repeated the arguments that the organization had been defending throughout the entire trial, namely: the liquidation of Memorial for violating the foreign agents legislation runs counter to Russia's international obligations; the imputed violations do not amount to a gross and repeated violation of the law; the liquidation of Memorial violates the prohibition on double jeopardy and is a disproportionate measure in light of the impugned offenses.

On 5 April 2022 the First Court of Appeal of Moscow held a hearing on Memorial's appeal. The organization was represented by the Chairman of the Council, Alexander Cherkasov, attorneys Maria Eismont and Mikhail Biryukov, and lawyers Grigory Vaypan and Tamilla Imanova.

Grigory Vaypan, Memorial's lawyer, reminded the court of several Memorial investigations, including a «mop-up» of the village of Novye Aldy and the killing of 56 civilians in 2000 during the Second Chechen War, for which no individual perpetrator was ever prosecuted: «What we're seeing - this trial, these legal efforts on the part of the administrative claimant - is degrading even for the State. And for its representatives, for the law enforcement agencies, for their officials. You see, instead of actually fighting crime, instead of protecting victims, instead of restoring justice, our state representatives are busy looking for some labels on Twitter. Where they're put, how they're put - and whether they're put on all pages. It's just humiliating. It's a disgrace.

Fighting an organization that investigates egregious violations of human rights instead of fighting those violations inevitably leads to recurrence of such violations. Unfortunately, we are all witnesses to this now."

Alexander Cherkasov noted that in light of the war in Ukraine, this is a time when Memorial's activities are needed more than ever to investigate war crimes and fight impunity. «That's why we get shut down... we often take on hopeless cases. But, at least we tried. You're going to shut us down now. But the protection of human rights will not disappear.»

As might be have been expected, Moscow's First Appellate Court dismissed Memorial's appeal and the Moscow City Court's ruling remained unchanged.

4. European Court of Human Rights

The Russian Federation ratified the European Convention on Human Rights in May 1998. Since then, Russian citizens have been able to bring their case to the European Court of Human Rights after all domestic remedies have been exhausted. The first judgment against Russia came in 2002. In the last decade Russia remains one of two countries against which the largest number of applications is lodged.

On 6 February 2013, International Memorial, Memorial HRC and nine other Russian human rights NGOs filed an application with the European Court of Human Rights, which was assigned number 9988/13. The applicants stated that the adoption of the «foreign agents law» made them potential victims of violations of the rights guaranteed under Articles 10, 11, 14, and 18 of the Convention. Subsequently, the Russian Ministry of Justice included 10 of the 11 applicants, including both Memorials, in the register of NGOs performing the functions of a foreign agent. The eighth complainant, the Moscow Helsinki Group, avoided this by refusing to receive funding from foreign sources after the law on foreign agents came into effect.

On 22 March 2017, the application was communicated to Russian authorities.¹³

In 2020, International Memorial and Memorial HRC filed applications concerning the fines (see Section 2.2), to which the European Court of Justice assigned numbers 49654/20 and 53756/20. On February 3, 2022, these applications, to which the European Court gave priority status, were communicated to the authorities of the Russian Federation and, accordingly, they must submit a memorandum to the Court by 21 June 2022.

On 18 November 2021, under application Nos. 9988/13, *Ecodefense and Others v. Russia*; 49654/20, *Rachinsky and International Memorial v. Russia*; and 53756/20, *Human Rights Center Memorial and Cherkasov v. Russia*, lawyers of International Memorial and Memorial filed a petition with the European Court for interim measures pursuant to Rule 39 of the European Court Rules.

On December 29, 2021, the ECtHR issued a decision on interim measures for the liquidation of both Memorials. In its decision, the European Court ordered the Russian Federation authorities to suspend the execution of the decisions to liquidate the applicant organizations for the period that the Court would need to consider application No. 9988/13.¹⁴

On 2 February 2022, International Memorial filed with the Supreme Court an application to suspend the liquidation proceedings with reference to the ECtHR judgment pursuant to Rule 39. On 28 February, during the appeal hearing of International Memorial, the Presidium of the Supreme Court dismissed the application, referring to the fact that the liquidation decision had not yet taken legal effect. That same day, as soon as the court ruling on liquidation had taken legal effect, International Memorial filed an application with the Supreme Court to stay the execution of the court's decision in connection with the ECtHR taking interim measures in complaint No. 9988/13. On March 22, 2022 the Supreme Court held a hearing to consider this application. Justice Alla Nazarova, referring to the cryptic case of the European Court of Justice «Lodged against Turkey» (as the Supreme Court judge read the phrase into the record), denied the application. On 5 April 2022, International Memorial filed a procedural appeal against the Supreme Court ruling. It was denied on 12 May 2022.

On 31 March 2022, the Human Rights Center Memorial filed an application with the Moscow City Court to suspend the liquidation proceedings with reference to the ECtHR judgment pursuant to Rule 39. On April 5, 2022, during the hearing of Memorial's appeal, the First Moscow City Appellate Court denied the application. That same day, as soon as the court's decision on liquidation had come into legal force, Memorial applied to the Moscow City Court for a stay of execution due to the ECtHR interim measures on application No. 9988/13. It was denied on 2 June 2022.

The long-awaited judgment of the ECtHR in the case of «Ecodefence and others v. Russia» (no. 9988/13 and 60 others), issued on 14 June 2022, while condemning the «Foreign Agent» law, did not change the outcome of domestic proceedings. ECtHR ruled that Russia had breached the rights of 73 Russian NGOs after their activities were restricted on the basis of the legislation. The Court held that the

13. The Russian Federation Ministry of Internal Affairs Operation in the village of Samashki: April 7-8, 1995, <http://old.memo.ru/hr/hotpoints/chechen/samashki/engl/>
«Mop-up of the Novye Aldy Village.» <http://old.memo.ru/hr/hotpoints/n-caucas/aldy2000/>.

14. Federal Law No. 121-FZ of 20.07.2012 «On Introducing Amendments to Certain Legislative Acts of the Russian Federation Concerning Regulation of Activities of Non-Governmental Organisations that Perform Functions of a Foreign Agent.

law was not foreseeable and that, moreover, the restrictions on non-governmental organizations were not “necessary in a democratic society” (§ 186). Specifically, it found that attaching the label of ‘foreign agent’ to NGOs had been ‘unjustified and prejudicial’, with the possibility to have a ‘strong deterrent and stigmatising effect on their operations’ (§ 136). Disappointingly, the Court failed to rule on whether this violation was discriminatory or politically motivated (§189). However, the ECtHR did find that Russia violated the ECHR in its failure to comply with its request to suspend liquidation proceedings against International Memorial (§§ 190-195).

The decision set an important international precedent, laying the groundwork for civil society actors across the world to challenge current and proposed draconian legislation which could restrict their work, from Egypt to El Salvador. However, this long-awaited judgment came too late for Russian NGOs and human rights defenders. The Russian Federation has already passed a law on the non-enforcement of ECtHR judgments issued after 15 March 2022.¹⁵ This judgment has mainly symbolic significance within Russia, and belongs more to history than to the world of law.

5. Subsequent events

The Russian authorities seemed to find the decisions to dissolve both organisations insufficient, so they continued to put pressure on them in a variety of other ways.

5.1 Searches at the offices of the Memorial Human Rights Center

On 4 March 2022, investigators from the FSB administration carried out searches of both Memorial Human Rights Center offices in connection with the criminal case opened against Bakhrom Khamroev, a member of the Center, on 21 February 2022. Khamroev stands accused of publicly justifying terrorism. Khamroev was not an employee of the organization or a member of the governing bodies of the organization, nor did he have any connection with its activities or its premises. Neither representatives of the organization nor its lawyers were allowed access to the premises during the search; representatives of the organization were not asked, before the search, to voluntarily hand over the items subject to confiscation; safes, which the management was ready to open voluntarily, were damaged during the search, and representatives of the organization were not given copies of the search warrant.

During the search, the investigators seized hard drives from the system units and video recorders, notebooks, other media (flash drives, SSD drives, optical disks), SIM-cards, as well as internal documentation of the organization, including bank orders, payment orders, and a number of documents from the Memorial Human Rights Center and International Memorial. During the search, law enforcement officers drew the letters «Z» and «V» on various surfaces, which are associated with support for the current «military operation» in Ukraine, and wrote, «Z. Memorial - that's it.» on a flip chart.



Detention of an activist protesting against the liquidation of the Memorial by the Supreme Court of Russia © Memorial HRC

15. European Court of Human Rights, no. 9988/13, *Ecodefence v. Russia and 48 other applications*, 22.03.2017. URL: <http://hudoc.echr.coe.int/eng?i=001-173049>

5.2 Seizure of International Memorial's Accounts

The day after the entry into force of the Supreme Court's ruling to liquidate International Memorial, the organization established a liquidation commission in accordance with the law, and notified the Ministry of Justice accordingly. On 1 April 2022, the organization also filed a petition with the Ministry of Justice on the commencement of liquidation and the election of the liquidation commission's chair. On the basis of these documents, the Ministry of Justice should have made an entry in the Unified State Register of Legal Entities (hereafter - USRLE) about the liquidation of International Memorial. However, contrary to the law, on 28 March 2022 the Ministry of Justice issued an order to exclude International Memorial from USRLE. The organization did not receive a copy of the order. International Memorial only learned of this on 5 April 2022, when the Federal Tax Service of Russia removed International Memorial from the Unified State Register of Legal Entities, and so the bank immediately blocked its accounts.

On 7 April 2022, International Memorial appealed to the Ministry of Justice demanding that the order be cancelled, but on 15 April, the Ministry of Justice refused the demand.

As a result, the organization cannot pay taxes, pay salaries to dismissed employees, or meet its obligations to other creditors.

6. Violations of International Law

Various international bodies have repeatedly pointed out to the Russian Federation that the foreign agents legislation violates international treaties which Russia has ratified and have urged the country to bring its legislation in line with international norms.

6.1 Legislation on Foreign Agents Flouts International Treaties, to which the Russian Federation is a State Party

The key argument in favor of liquidation of International Memorial and Memorial HRC set forth in the ruling of the Courts of the Russian Federation is the violation of the Law on Non-Profit Organizations, which regulates the activity of non-governmental organizations, included in the register of non-governmental organizations performing the functions of a foreign agent. At the same time, such violations cannot constitute grounds for the liquidation of either International Memorial or Memorial HRC, since the law itself is in contradiction with the international legal obligations of the Russian Federation, namely the international treaties to which the Russian Federation is a State-party.

This legislation was met with considerable concern of the international community, expressed among others in the reports of the Commissioner for Human Rights of the Council of Europe¹⁶ and the European Commission for Democracy through Law (Venice Commission)¹⁷, a statement the OSCE Representative on Freedom of the Media, who urged the Russian Parliament to withdraw the draft law which extends the status of a "media outlet - foreign agent" to individuals¹⁸, as well as a European Parliament resolution¹⁹.

The criticism mainly concerned the severe restrictions on the right of NGOs to access foreign funding, introduced by the Foreign Agents legal regime. International law guarantees access to resources for NGOs as an inherent part of their right to freedom of association and does not draw

16. Federal Law No. 327 of 25.11.2017 "On amendments to articles 10.4 and 15.3 of Federal Law "On Information, Information Technology and Protection of Information.

17. Federal Law No. 147-FZ of 04.06.2014 "On Introducing Amendments to an Article 32 of the Federal Law "On Non-Profit Organisations"

18. Federal Law No. 481-FZ of 30.12.2020 "On amendments to certain legislative acts of the Russian Federation to establish additional measures to counter threats to National Security".

19. Opinion of the Commissioner for Human Rights on the Legislation of the Russian Federation on Non-Profit Organisations in the Light of the Council of Europe Standards, 17.07.2013. URL: <https://rm.coe.int/opinion-of-the-commissioner-for-human-rights-on-the-legislation-of-the/16806da5b2>; *Opinion of the Commissioner for Human Rights on the Legislation and Practice in the Russian Federation Regarding Non-Profit Organisations in the Light of the Council of Europe Standards: Update*, 9.07.2015. URL: <https://rm.coe.int/opinion-of-the-commissioner-for-human-rights-on-the-legislation-and-pr/16806da772>

any distinction between funding received from foreign, domestic, or international donors.²⁰ Secondly, while the purported objective of the “Foreign Agents” law is to limit “foreign influence” in Russia by way of activities of Russian civil society, or, in other words, to protect national sovereignty, this is not a legitimate aim under international law.²¹

Five UN committees have already pointed out that this legislation violates their relevant international treaty, to which the Russian Federation is a State-party.

For example, the UN Committee against Torture in its Concluding Observations on the Fifth Periodic Report of the Russian Federation pointed out that:

The Committee is seriously concerned about the approach taken by the State party toward the work of individuals and organizations that monitor and report on human rights. This includes a 2012 requirement that organizations receiving financial support from sources outside the State party register and identify themselves publicly as “foreign agents,” a term that has a negative connotation and is threatening to human rights defenders, including organizations that receive funding from the United Nations Voluntary Fund for Victims of Torture.²²

The UN Human Rights Committee has also indicated that:

The Committee is concerned about the amendments introduced in 2012 to Federal Law No. 121-FZ on Non-Commercial Organizations, upheld by the Constitutional Court in April 2014, requiring non-commercial organizations receiving foreign funding and engaging in “political activities” to register as “foreign agents”, and about their adverse impact on the freedom of expression, assembly and association. The Committee notes with concern that the definition of “political activity” in the law is very broadly construed thereby permitting authorities to register as “foreign agents”, without their consent or a court decision, non-governmental organizations (NGOs) conducting diverse activities related to public life, including NGOs working on human rights and environmental issues. The Committee is also concerned about the complex procedure of removal from the “foreign agent” register and regrets that the amendments led to restrictions on the operations of NGO activities and to suspension or voluntary closure of some NGOs.²³

The UN Committee on the Elimination of All Forms of Discrimination against Women, the UN Committee on the Elimination of Racial Discrimination and the UN Committee on the Rights of the Child made similar statements.²⁴

6.2 Liquidation of the Memorials Violates Articles of the European Convention

6.2.1 Articles 10 and 11 of the European Convention

The decision to liquidate the Memorials violates Articles 10 and 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which guarantee everyone freedom of expression and freedom of association, respectively.

According to the European Convention, State interference with the right to freedom of expression and freedom of association is possible only if it is i) prescribed by law, ii) pursues a legitimate aim and iii) is necessary in a democratic society.

According to the jurisprudence of the European Court, the words «prescribed by law» not only require that the measure at issue have some basis in domestic law, but also relate to the quality

20. European Commission for Democracy through Law (Venice Commission), *Opinion on Federal law N. 121-FZ On non-commercial organisations (“law on foreign agents”), On Federal Laws N. 18-FZ and N. 147-FZ and on Federal Law N. 190-FZ On making amendments to the Criminal Code (“Law on treason”) of the Russian Federation*, 99th plenary session, 13-14.06.2014. URL: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad\(2014\)025-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad(2014)025-e).

21. Organisation for Security and Co-operation in Europe, *OSCE Representative on Freedom of the Media Désir urges Russian authorities to refrain from broadening “foreign agents” status to individuals*, 20.11.2019. URL: <https://www.osce.org/representative-on-freedom-of-media/439658>.

22. European Parliament, *Resolution on the Russian «Foreign Agents» Law*, 2019/2982(RSP). URL: https://www.europarl.europa.eu/doceo/document/B-9-2019-0262_EN.html

23. Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, 24.04.2013, UN Doc. A/HRC/23/39, para. 16, 17.

24. *Idem*.

of the law in question, requiring that it be accessible to the person concerned and have foreseeable consequences.²⁵

As the representatives of the Memorials pointed out, the national legislation was not clear in terms of how an NGO listed as a foreign agent was to fulfill the obligations imposed on it by Paragraph 5, Part 1, Article 24 of the Federal Law of January 12, 1996 No. 7-FZ «On Non-Governmental Organizations.» In particular, the legislation does not define what constitutes «material published by a non-commercial organization performing the functions of a foreign agent and (or) disseminated by it», while the law enforcement practice has been constantly changing.

Thus, the law, which was not formulated with sufficient clarity, did not allow organizations to anticipate what exactly is meant by «materials» to be labeled. Therefore, the interference with their rights to freedom of expression and freedom of association was not based on law.

As to the necessity of such an interference with the right to freedom of expression in a democratic society, the European Court considers that the monitoring role of NGOs includes the dissemination of information and ideas on all matters of public interest and is considered similar to that of the press.²⁶

The European Court of Human Rights qualifies as interference with the right to freedom of association and, consequently, as a restriction of this right, the adoption of laws that significantly complicate the activities or functioning of associations, whether by increasing their registration requirements,²⁷ limiting their ability to obtain financial resources,²⁸ obliging them declaratively and publicly, for example to create a negative image²⁹ or putting them at risk of sanctions, such as liquidation.³⁰ In this context, the recognition of NGOs as «foreign agents» may act as a deterrent to participation of donors residing in other countries in funding civil society organizations subject to the transparency law and, thus, hinder the activities of these organizations and the achievement of the goals they pursue. In addition, they can create an atmosphere of general distrust of the associations and foundations concerned in the country and stigmatize them.

The liquidation of Memorials constitutes an interference with their rights to freedom of expression and to freedom of association that was not necessary in a democratic society nor was it justified by the seriousness of the violations that the organizations committed. The violations imputed to the organization were purely formal and did not relate to the essence of the activities of either organization. On the other hand, the authorities did not proffer any legitimate aim for liquidation, nor did they consider any alternative means that would have restricted the relevant fundamental freedoms in a less serious way (such as an official warning, suspension of the organization, or an administrative fine). The national courts focused their deeply flawed analysis solely on the legality of the challenged measure without duly assessing its proportionality. The reasons cited were insufficient to justify the liquidation of organizations that have been acting for the benefit of Russian society for some 30 years.

6.2.2 Article 14 of the European Convention

International Memorial and Memorial HRC were in a comparable position to other public associations, but the obligation imposed on them to mark all their materials with the label «foreign agent», which has clearly negative connotations in Russian society, and to provide additional reporting to the Ministry of Justice, the risk of administrative and criminal liability for officials, restrictions on participation in elections and other restrictions (see Section 2.1) demonstrate a different attitude to the organizations that the state has placed on the register of NCO-foreign agents compared to non-profit organizations funded exclusively by Russia or not working in field of politics as that term is understood by the Russian State.

25. <https://ovd.news/story/presledovanie-mezhdunarodnogo-memoriala-i-pc-memorial-po-zakonu-ob-inoagentah>

26. Gasangusenov v. Russia, no. [78019/17](https://memohrc.org/ru/news_old/gasangusenov-i-drugie-protiv-rossii-obzor-resheniy-espch-po-zhalobam-s-severnogo-kavkaza), 30 June 2021. https://memohrc.org/ru/news_old/gasangusenov-i-drugie-protiv-rossii-obzor-resheniy-espch-po-zhalobam-s-severnogo-kavkaza

27. <https://www.memo.ru/media/uploads/2022/01/13/reshenie-verkhovnogo-suda.pdf>

28. https://memohrc.org/ru/news_old/espch-trebuetsya-priostanovit-likvidatsiyu-mezhdunarodnogo-memoriala-i-pravozashchitnogo-centra
https://memohrc.org/sites/all/themes/memo/templates/pdf.php?pdf=/sites/default/files/echr_29.12.2021.pdf

29. General Prosecutor's Office of the Russian Federation, *Administrative Lawsuit on the liquidation of an international public organisation*, 08.11.2021. URL: https://memohrc.org/sites/all/themes/memo/templates/pdf.php?pdf=/sites/default/files/iskovoe-zayavlenie_0.pdf

30. Supreme Court of the Russian Federation, *Decision in the name of the Russian Federation in the case No AKPI21-969, Moscow*, 28.12.2021. URL: https://www.vsrfr.ru/stor_pdf.php?id=2075644

Article 14 of the Convention prohibits discrimination on any basis, including «political or other opinion» or «any other ground.» A person, including a legal person, is considered to have been discriminated against if: he/she/it has been treated differently from others in a similar situation; there is no reasonable and objective justification for the difference in treatment,³¹ i.e. the treatment does not pursue a «legitimate aim» or there is no connection and no proportionality between the methods used and the aim pursued.³²

In this case, International Memorial and HRC «Memorial» were subjected to liquidation, i.e. the «ultimate punishment» that can be applied to non-profit organizations, while other organizations are excluded from the scope of this legislation.

6.2.3 Article 18 of the European Convention

Interference with the right to freedom of expression and association in the case of International Memorial and Memorial HRC had the ulterior aim of punishing organizations whose activities are contrary to the State policy on the history of mass repression and the protection of human rights. Such a purpose cannot be considered «legitimate» under Articles 10 and 11 of the Convention.

The goal was to silence two of Russia's oldest human rights organizations. One of them, Memorial HRC, was the first organization in the former Soviet Union to document crimes committed by the military against civilians during «special military operations.»³³ And the second, International Memorial, has worked to prevent the state from creating a false version of the country's repressive Soviet history. Certainly, these organizations had to be liquidated before the unprecedented attack of the Russian Federation on Ukraine on February 24, 2022.

7. Conclusions

For ten years, starting from 2012, various international organizations expressed their concern about the content of the legislation on foreign agents and recommended to the Russian Federation that it abandon the norms that violate human rights and freedoms (see Section 7.1). However, instead of aligning its legislation with the requirements of the international treaties that it has signed, the Russian Federation's authorities have only toughened it and added more and more restrictions. At the moment, a bill has been submitted to the State Duma for consideration, according to which practically any person or organization (including a commercial one) not to the authorities' liking can be put on the register of «foreign agents.»

After the court rulings to liquidate International Memorial and Memorial HRC, it became quite clear that the legislation on foreign agents, which does not meet the «quality of law» requirement as understood by the Venice Commission of the Council of Europe, has worked exactly as it was conceived in 2012, namely as a tool to shut down any organization for formal violations of this unclear law.

On March 15, 2022, the Russian authorities announced that the country was withdrawing from the Council of Europe. On 26 April, the Office of the Prosecutor General of the Russian Federation officially announced that it was terminating its cooperation with the European Court of Human Rights. On May 16, 2022, draft laws proposing the non-enforcement of ECtHR judgments issued after March 16, 2022 were submitted to the State Duma of the Russian Federation. Thus, there is no indication of any possible dialogue with the authorities of the Russian Federation at this point.

It is also worth noting that Russia's renewed attack on Ukraine on 24 February 2022 has eclipsed the human rights situation and the situation of human rights defenders in the Russian Federation.

However, we should bear in mind that human rights defenders and human rights organizations recognized as «foreign agents» will become the first obvious victims of the ongoing armed conflict, the first internal enemy for the authorities of the Russian Federation if/when the new «Iron Curtain» entrenches for good. Public opinion has already been sufficiently consolidated with appropriate rhetoric about «foreign agents» (fifth column, enemies of the people). The «foreign agents» registers have

31. Moscow Public Prosecutor's Office, *Administrative claim for liquidation of interregional public organisation*, 8.11.2021. URL: https://memohrc.org/sites/all/themes/memo/templates/pdf.php?pdf=/sites/default/files/isk_prokuratury.pdf

32. Moscow City Court, Decision in the name of the Russian Federation, 29.12.2021, Moscow. URL: https://memohrc.org/sites/all/themes/memo/templates/pdf.php?pdf=/sites/default/files/mgs_11.01.22.pdf

33. <http://duma.gov.ru/news/54515/>.

been updated much more actively than in the past. Moreover, many of the members of human rights organizations remaining in Russia go out on one-person pickets against the war in Ukraine. For example, police detained Oleg Orlov, a member of the Board of the Memorial Human Rights Center, five times in two months after February 24.

At the same time, international sanctions have also hit human rights organizations, which received most of their funding from foreign foundations. Because of the banking sanctions, the human rights defenders remaining in Russia have been deprived of funding.



A solo protest to support the Memorial. © Memorial HRC

8. Recommendations

8.1 To the Russian Federation

1. Immediately repeal the decisions to dissolve International Memorial and Memorial HRC in line with the ECtHR judgment and put an end to all acts of harassment, including at the judicial level, against International Memorial and Memorial HRC and their members, as well as against all human rights organisations and defenders in Russia, and ensure in all circumstances that they are able to carry out their legitimate activities without any hindrance and fear of reprisals;
2. Abolish the so called 'foreign agents' legislation, and provide that independent NGOs are free to receive funding from any domestic, foreign, or international sources, subject only to the laws generally applicable to customs, foreign exchange and money laundering, and those concerning the funding of elections and political parties;
3. Ensure that independent NGOs are not subjected to arbitrary inspections, penalties, or other forms of administrative pressure;
4. Guarantee, in all circumstances, the rights to freedom of expression, assembly and association, as enshrined in international human right law, and particularly in Articles 10 and 11 of European Convention of Human Rights.

8.2 To the Grand Chamber of the European Court of Human Rights

5. Accept the request of the applicants in "Ecodefence and others v. Russia" (no. 9988/13 and 60 others) and refer the case to the Grand Chamber. Examine this claim in the light of Articles 14 and 18 of the Convention.

8.3 To Committee of Ministers of the Council of Europe

6. Supervise of execution of judgments of the European Court of Human Rights in the Russian Federation, especially the Judgment of the application No 9988/13.

8.4 To the United Nations Treaty Bodies and Mechanisms

7. Adopt a resolution at the Human Rights Council to:
 - a. Condemn Russia's brutal crackdown on peaceful anti-war demonstrators, human rights defenders, and civil society organisations, including Memorial HRC and International Memorial, that followed Russia's full-scale invasion of Ukraine;
 - b. Establish a Special Rapporteur mandate on the situation of human rights in the Russian Federation to ensure close scrutiny of the human rights situation in Russia and its compliance with the Russian Federation's international obligations under international human rights law;
8. In the absence of a resolution at the UN Human Rights Council, ensure regular and public monitoring of the evolving human rights situation in the country through press releases and public statements;
9. Ensure that Treaty Monitoring Bodies and Special Procedure mechanisms are provided with the necessary resources to process the expected large number of complaints by Russian citizens, given the lack of other means from individuals to seek justice at the international level following Russia's withdrawal from the Council of Europe.

8.5 To the EU and its member states

10. Continue to provide Russian civil society with flexible and active support by keeping the human rights situation under international scrutiny, providing funding opportunities for independent NGOs and human rights activists, including by enabling them to explore new ways of operating individually and collectively under the new civic space restrictions;
11. Continue to denounce publicly the attacks, including by issuing resolutions to condemn the attacks against independent NGOs and human rights defenders;
12. Adopt flexible procedures to support human rights defenders who choose to pursue their work outside the Russian Federation in their administrative efforts to obtain residence permits or asylum;
13. Designing sanctions in a way to minimize their adverse impact on Russian civil society.

Keep your eyes open

fidh

Establishing the facts - Investigative and trial observation missions

Supporting civil society - Training and exchange

Mobilizing the international community - Advocacy before intergovernmental bodies

Informing and reporting - Mobilizing public opinion

For FIDH, transforming societies relies on the work of local actors.

The Worldwide Movement for Human Rights acts at national, regional and international levels in support of its member and partner organisations to address human rights abuses and consolidate democratic processes. Its work is directed at States and those in power, such as armed opposition groups and multinational corporations.

Its primary beneficiaries are national human rights organisations who are members of the Movement, and through them, the victims of human rights violations. FIDH also cooperates with other local partner organisations and actors of change.

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FIDH is an
**international human rights
NGO**
federating **192** organisations
from **117** countries

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ABOUT FIDH

FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

A broad mandate

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

A universal movement

FIDH was established in 1922, and today unites 192 member organizations in 117 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

An independent organization

Like its member organizations, FIDH is not linked to any party or religion and is independent of all governments.