European Court of Human Rights: Kobaliya and Others v. Russia

IRIS 2025-1:1/21

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The European Court of Human Rights (ECtHR) found once more gross and systemic violations by the Russian state of the right to freedom of expression and freedom of association as protected by Articles 10 and 11 of the European Convention on Human Rights (ECHR). 107 applicants, including human rights organisations, media outlets and journalists, had complained about measures and sanctions in the application of the Foreign Agents Act of 2012, as amended in 2017, 2019 and 2020 and the Federal Law No. 255-FZ of 14 July 2022 that repealed and replaced all previous "foreign agent" legislation. The ECtHR found the restrictions imposed by the Russian authorities on the applicants because of their status as "foreign agents" a breach of their freedom of expression and association, and it labelled the legal provisions and their application as bearing "the hallmarks of a totalitarian regime".

The ECtHR build on its earlier case law in Ecodefence and others v. Russia (IRIS 2022-8:1/29), now also taking into consideration the broadening of the concept of "foreign agent" in the more recent version of the law, the expansion of the consequences of being labelled as "foreign agent" and the punitive measures and sanctions for non-compliance with the legal provisions of the Foreign Agent Act. In addition to the finding of a violation of Articles 10 and 11 ECHR, the ECtHR also found that the Russian authorities have violated the applicant's right to privacy under Article 8 ECHR.

The applicants complained that the restrictions imposed by the "foreign agent" legislation and the fines for alleged non-compliance, violated their rights to freedom of expression, association and assembly as guaranteed under Articles 10 and 11 ECHR. The facts constituting the interference with the applicant's Convention rights, including their designation as "foreign agents" or their conviction of "foreign agent" offences, occurred prior to 16 September 2022, when the Russian Federation ceased to be a party to the ECHR. The ECtHR, therefore, had jurisdiction to examine these complaints.

The applicants, in particular, emphasized the severe and disproportionate nature of the penalties imposed for non-compliance. They cited examples of substantial fines, such as those imposed on the International Memorial and Memorial Human Rights Centre, which ultimately led to their forced dissolution. The media outlet

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Novyye Vremena was fined an amount equivalent to 99.7% of its annual income for a purely formal violation. In the applicants' view, these actions were part of a systematic campaign against human rights and media organisations critical of the authorities, which had a chilling effect on Russian civil society as a whole and discouraged participation in public debate and human rights advocacy.

The ECtHR agreed that the applicants were affected by the designation as a "foreign agent", which is a stigmatising label and triggered additional accounting, auditing and reporting requirements, along with a wide range of restrictions on certain activities, including participation in electoral processes and the organisation of public events, as well as the obligation to label all their publications as originating from a "foreign agent". Also, the sanctions and penalties ranging from administrative fines to forced dissolution imposed on them for alleged non-compliance with the "foreign agent" legislation were considered individually or cumulatively, as measures having a significant impediment to the applicants' activities, restricting their capacity for expressive conduct.

The ECtHR concentrated its analysis on whether these interferences could be justified under Article 10 § 2 ECHR in terms that they were "necessary in a democratic society". It found that the stigmatising effect of the "foreign agent" label, already identified in Ecodefence and Others v. Russia has been further reinforced. New restrictions on "foreign agents", progressively excluding them from various aspects of public life and civil activities – such as holding public office, participating in election commissions, supporting political campaigns, educating minors and producing content for children – have reinforced the perception that "foreign agent" organisations and individuals pose a threat to society and should be viewed with suspicion and kept away from sensitive areas. The stigma associated with the designation has been further strengthened by the requirement for "foreign agents" to label all their communications with a notice of their status. The ECtHR also observed that it provided the authorities with unlimited discretion to apply the "foreign agent" designation. This fundamental flaw has created a distorted perception of dependence and foreign interference where none had been shown to exist, thereby undermining, rather than enhancing, transparency. It also referred to a series of examples in which NGO's were fined, without providing any evidence showing that the applicants were actually under foreign control or direction or that they were acting in the interests of a foreign entity. It was observed that by forcing the applicants to attach the "foreign agent" label to all their public communications, the authorities compelling them to express a message with which they disagreed. In addition, the applicants were effectively prevented from making meaningful use of social media platforms where the character limit was almost equal to the size of the notice itself. Over and above, non-compliance was punished with allegedly excessive fines.

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The ECtHR found that the requirement to use the stigmatising and misleading "foreign agent" label in public communications is unrelated to the stated purpose of transparency and creates an environment of forced self-stigmatisation instead while severely restricting the ability of the applicant media organisations and individual journalists to participate in public discourse and carry out their professional activities. This chilling effect on public discourse and civic engagement does not correspond to a "pressing social need" and is fundamentally at odds with the notion of a democratic society, as the ECtHR has already noted in Ecodefence and Others v Russia. The ECtHR emphasized that the "legislation examined in this case goes even further and bears the hallmarks of a totalitarian regime". The ECtHR also found that the severity and scope of the sanctions applying the Foreign Agent legislation were manifestly disproportionate to the declared aim of ensuring transparency. They imposed a punitive regime on "foreign agents" that far exceeded what could be deemed necessary in a democratic society, creating a significant chilling effect on civil society and public debate. The ECtHR concluded that the "foreign agent" legislative framework and its application to the applicants was arbitrary and was not "necessary in a democratic society". Moreover, such legislation has contributed to shrinking democratic space by creating an environment of suspicion and mistrust towards civil society actors and independent voices, thereby undermining the very foundations of a democracy. Accordingly, there has been a violation of Articles 10 and 11 of the Convention. In addition, the ECtHR also found that these unjustified restrictions and sanctions had serious consequences for the applicants' social and professional lives and reputations and constituted interferences that violated the applicants' right to respect for private life protected by Article 8 ECHR.

The ECtHR awarded substantial amounts to some of the applicant NGOs and persons concerning pecuniary damage, costs, and expenses, while most applicants were awarded EUR 10 000 for non-pecuniary damages.

Judgment by the European Court of Human Rights, Third Section, in the case of Kobaliya and others v. Russia, Applications nos. 39446/16 and 106 others, 22 October 2024

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