



Illustration: kvskii for OVD-Info

06.02.2024

## **Submission on the implementation of individual and general measures in the case of *Ecodefence and others v. Russia***

[Русская версия](#)

### **INTRODUCTION**

This submission is prepared in accordance with Rule 9.2. of the Rules of the Committee of Ministers by the NGOs Memorial Human Rights Defence Centre, OVD-Info, SOVA Research Centre, Citizens' Watch, Public Verdict Foundation (see Appendix 2). The submission addresses the implementation of individual and general measures in the case of *Ecodefence and others v. Russia*. The submission identifies the main individual and general measures necessary for the implementation of this case, examines the current situation with the implementation of the case and provides recommendations concerning the implementation of this judgement.

# **I. MAIN FINDINGS OF THE ECTHR IN THE ECODEFENCE CASE**

The Court found that the application of the Russian legislation on foreign agents (hereinafter — Foreign Agents Act) to non-governmental organisations and their directors was neither prescribed by law nor necessary in a democratic society in violation of Article 11 (freedom of association) of the Convention.

The Foreign Agents Act is a series of laws that designated NGOs, media, and individuals that received foreign funding and undertook «political activities». The «political activities» were understood broadly, including all attempts to influence the authorities as well as on the issues of protection of civil and political rights. Moreover, the authorities acted indiscriminately without differentiating between the organisations' activities and their directors or members acting in their personal capacity.

The Foreign Agents Act contained no rules regarding the purpose of «foreign funding» and did not require the authorities to establish any link between such funding and the alleged «political activities» of the organisation. The absence of clear and foreseeable criteria gave the authorities unfettered discretion to assert that the applicant organisations had received «foreign funding».

The Court held that attaching the label of a «foreign agent» to applicant organisations was unjustified and prejudicial and also resulted in a strong deterrent and stigmatising effect on their activities. That label portrayed them as being under foreign control, disregarding that they considered themselves members of national civil society working to uphold human rights, the rule of law, and human development for the benefit of Russian society and democracy.

The applicant organisations and their directors were targeted by a combination of inspections, new registration

requirements, sanctions, restrictions on funding sources, and the nature of the activities, which the Foreign Agents Act imposed. The authorities failed to put forward «relevant and sufficient» reasons for imposing such additional requirements on the applicant organisations solely on account of their inclusion in the register of «foreign agents».

The applicants had to significantly alter their conduct to reduce the risk of facing penalties under the Foreign Agents Act. For example, the applicants had been confronted with a choice between either refusing all «foreign funding» in the broadest possible interpretation of the term or incurring additional expenses and abiding by the other requirements. By imposing this choice on applicant organisations, the Foreign Agents Act made them opt for exclusively domestic or foreign funding, thereby effectively restricting the available funding options. The specified measures resulted in the dissolution of many applicant organisations (see Appendix 1).

The authorities also introduced very high fines and criminal liability for the violations of the Foreign Agents Act, which was not proportionate to the aim pursued.

The cumulative effect of the specified restrictions placed a significant «chilling effect» on the choice to seek or accept any amount of foreign funding, however insignificant, in a context where opportunities for domestic funding were rather limited, especially concerning politically or socially sensitive topics or domestically unpopular causes. The measures accordingly could not be considered «necessary in a democratic society».

The Court also found a violation of Article 34 of the Convention (relating to the right of individual petition) due to the enforcement of a dissolution order against International Memorial (a sister organisation of Memorial Human Rights Centre), ignoring an interim measure from the Court requiring authorities to suspend the dissolution.

## II. THE CURRENT SITUATION WITH THE IMPLEMENTATION OF THE CASE

### a. Individual measures

The Russian Federation failed to pay just satisfaction to the applicant organisations. The authorities did not revoke the designation of the applicants as «foreign agents» — at least on substantive grounds. Some organisations were excluded from the register due to their liquidation. The additional restrictions imposed on the applicants due to their status were not lifted but only expanded.

The ECtHR put particular focus on the liquidation of the International Memorial and of the Memorial Human Rights Centre, finding a violation of Article 34 of the Convention. For this reason, this section will further focus on the direct and indirect consequences of the designation and liquidation of these organisations.

Following the adoption of the *Ecodefence case*, Russian authorities failed to reverse the dissolution of the International Memorial and the Memorial Human Rights Centre on the ground of alleged violation of the law on «foreign agents». On the contrary, they continued to persecute these organisations and their members.

On 28 June 2022, a judge of the Supreme Court refused to transfer the supervisory appeal of the International Memorial for consideration by the Presidium of the Supreme Court and thus upheld the organisation's liquidation. On 9 November 2022, the Second Court of Cassation of General Jurisdiction approved the liquidation of the Memorial Human Rights Centre. On 22 March 2023, a Supreme Court judge upheld this decision. In addition, on 14 June 2023, the Moscow City Court rejected the appeal of the Memorial Human Rights Centre to review the liquidation case based on the ruling of the ECtHR on the *Ecodefence case*. The court

referred, *inter alia*, to the fact that this judgement was adopted after 15 March 2022 and therefore is not enforceable based on the Russian authorities' interpretation of the consequences of its removal as a member of the Council of Europe. Both organisations applied to the ECtHR challenging their dissolution (*Memorial Human Rights Centre and Cherkasov*, no. 27354/23, and International Memorial, a separate application lodged on 28 October 2022; the app. number is unavailable yet).

On 5 April 2022, the International Memorial was removed from the State Register of Legal Entities. Furthermore, on 6 May 2022, the Memorial Human Rights Centre was also removed from the register. Both organisations were struck out from the register in circumvention of the official legal entities dissolution procedure, which prohibits the removal of a legal entity from the register before it has paid off all creditors, including employees, and distributed the remaining property. They immediately lost, among other issues, access to all their bank accounts and other assets or the ability to submit or receive documents or information from the Government. Thus, the authorities' actions prevented the organisations from paying salaries to employees or settling payments to creditors.

In addition, on 4 March 2022, the authorities conducted searches in the Memorial buildings in connection with the criminal prosecution of former Memorial Human Rights Centre member and human rights defender Bakhrom Khamroev. The security forces did not allow lawyers and employees to enter the buildings and seized the organisations' documentation, printing press, several hard drives, posters, and business cards. Moreover, in the office on Karetny Ryad, security forces left pro-war symbols — the letter Z — in several places. Subsequently, Bakhrom Khamroev was sentenced to 13 years and nine months under the charges of participating in the activities of terrorist

organisations and public justification and propaganda of terrorism.

On 7 October 2022, the day the Memorials received the Nobel Peace Prize, the Tverskoy District Court of Moscow ruled to seize the building previously owned by the International Memorial in favour of the state. The Court concluded that the transfer of the ownership rights from the International Memorial to another Memorial organisation was fraudulent as, at the time of the transfer, the first instance court had already ordered the International Memorial's liquidation (the judgement had not yet entered into force), and the organisation had allegedly attempted to prevent transferring the building to the State. It should be stressed that Russian legislation does not provide for the nationalisation of assets of dissolved organisations. The authorities also confiscated 11 million rubles transferred from the International Memorial to another Memorial organisation by the same court decision. On 8 February 2023, the Moscow City Court upheld this decision.

In the spring of 2023, Russian authorities conducted searches in the buildings of Memorials, as well as homes of former International Memorial employees, in connection with the initiation of a criminal case under the article on the rehabilitation of Nazism (Article 354.1 of the Criminal Code). The investigation was connected to the contents of the «Database of Victims of Political Terror of the USSR» maintained by the International Memorial. Subsequently, Oleg Orlov, a prominent human rights defender and a former chair of the Memorial Human Rights Center, was prosecuted for his anti-war article in the magazine under Article 208.3 of the Criminal Code for discrediting the use of Russian armed forces. In October 2023, Oleg Orlov was found guilty and fined 150 000 rubles (about 1 528 euro). However, the appeal court overturned the verdict and returned the case to the prosecutor for revision.

On 2 February 2024, 4 individuals associated with Memorial, including Oleg Orlov, were recognized as «foreign agents». One of the reasons for including Oleg Orlov in the register, as indicated by the Ministry of Justice, was his association with Memorial. Therefore, Russian authorities continue to target Memorials and their former members even after their forcible liquidation.

## **b. General measures**

### **i. New amendments to the legislation on «foreign agents»**

The latest development in the Russian legislation on «foreign agents» shows that the Government is not only failing to execute the judgment of the ECtHR but also continues to expand the law, making it broader, more vague and repressive.

From 2012 until 2022, several laws in Russia regulated the activities of «foreign agents»:

- The Federal Law No. 121 of 20 July 2012 introduced the status of a «foreign agent» into Russian legislation for NGOs;
- The Federal Law No. 327 of 25 November 2017 extended the status to the media;
- The Federal Law No. 481 of 30 December 2020 extended the status to individuals and organisations operating without legal entity. Thus, four registers of «foreign agents» were in force in Russia — for NGOs, media, individuals and organisations operating without legal entities.

On 14 July 2022, the Federal Law No. 255 «On control over the activities of persons under the foreign influence» was adopted. This legislation replaced previous laws on «foreign agents», introduced a single, unified register of «foreign

agents» and unified restrictions on their activities, requirements and corresponding prohibitions.

On 1 December 2022, this law came into force. Since the adoption of this law, it is no longer necessary to receive foreign funding to be recognized as a «foreign agent». All types of help, cooperation, or influences from foreign entities can lead to this status. Thus, the grounds for the recognition as a foreign agent became broader and more uncertain. At the same time, the definition of «political activity» remains extensive and is not necessarily related to the fight for power. It still includes the issues of protection of law and human rights as well as the attempts to influence the State's laws and decisions.

According to the current legislation, all organisations and individuals recognized as «foreign agents» face many restrictions related to their activities. It is prohibited for them to:

- participate in State's expert bodies and independent commissions monitoring the human rights conditions in prisons;
- participate or monitor electoral activities;
- organise or finance public assemblies;
- present to the State's bodies an expert opinion that examines the compliance of the State's laws with the anti-corruption standards;
- participate in the State's civil or ecological expertise;
- work in the State's educational bodies;
- produce information for minors;
- receive financial help from the State's bodies;
- work under the benefit taxes regime.

The designated organisations and individuals continue to be subjected to severe sanctions, including criminal ones, for the non-implementation of the legislation on «foreign agents». They also remain under strict obligations concerning labelling, reporting, and auditing.

The new law also introduced the notion of individuals affiliated with «foreign agents» and the necessity of making the register of such individuals. This norm concerns the members of the organisations recognized as «foreign agents» and those who are receiving financial help from «foreign agents». Although these individuals currently do not face restrictions, such a register can negatively affect their rights in the future and their desire to cooperate with «foreign agents». According to the report of the Ministry of Justice, as of 31 December 2022, the register of individuals affiliated with «foreign agents» contains 861 individuals. This register is closed to the public.

The current legislation on «foreign agents» itself creates a highly undemocratic and repressive atmosphere for individuals and organisations in Russia. The situation is aggravated by other repressive legislation, including laws prohibiting the discrediting or spreading «fakes» (false information) about the use of Russian armed forces, anti-extremism legislation, the restrictions on the public assemblies, the law on the non-execution of the ECtHR's judgments, and the prohibition of the «International LGBT Movement». This legislation is producing a significant «chilling effect» on the execution of the rights to freedom of assembly, association and expression in Russia.

## **ii. Application of the legislation on «foreign agents» and its impact on civil society**

### **Consequences for legal entities**

In Russia, the situation with the «foreign agents» law has not improved since the *Ecodefense* judgement was issued. The

amendments made to the law on «foreign agents» have worsened its application, expanding the scope of the law to new actors and making it more unpredictable, creating new risks and restrictions. Liquidations of «foreign agents» continue (see Appendix 1), fines are increasing in number and prosecutions are emerging. The public perception of «foreign agents» only worsens, preventing them from carrying out their work or leading to their closure. This situation will not change until improvements are made to the law and practice.

As of 6 February 2024, there are 763 records of legal entities, individuals, and associations operating without legal entity status included in the «foreign agent»'s registry. At least 147 legal entities designated as „foreign agents“ status were liquidated or are currently in the process of liquidation. According to OVD-Info's data provided in Appendix 1 hereto, **at least** 94 entities were liquidated specifically due to their „foreign agent“ status. These organisations include 24 entities that were forcibly liquidated by a court decision, while others were forced to liquidate themselves due to the burdensome nature of the „foreign agent“ status. For some organisations, the status proved to be a discrediting label they were unwilling to accept. In addition, some public associations operated without a legal entity and the media ceased operations due to their status. These include the Ecological Movement „42“, „Advocate Street Journalism“ Project, „Mothers and Wives Council“, „Kedr.media“ and the Russian business internet media „VTimes“.

Another significant consequence of the «foreign agent» legislation is the imposition of substantial fines. For instance, the International Memorial and the Memorial Human Rights Centre paid approximately 6.5 million rubles (about 66 191 euros) in fines for non-compliance with the «foreign agent» law. In December 2022, a Russian court found the Sakharov Center guilty of similar violations and imposed a fine of 5 million rubles (about 50 916 euros). The fines imposed

on Radio Liberty since 2021 for lacking the «foreign agent» label amount to 988.5 million rubles (about 10 066 191 euros), with over a thousand administrative offence protocols drawn up against the organisation. It is also known that bankruptcy proceedings have been initiated against Radio Liberty at the tax authority's request. According to the Ministry of Justice report, in 2022 alone, the Federal Service for Supervision of Communications, Information Technology and Mass Media (hereinafter — Roskomnadzor) initiated 156 cases against «foreign agents», both individuals and legal entities, and courts imposed fines totaling 228.6 million rubles (about 2 327 902 euros).

In addition to the penalties and prohibitions, the «foreign agent» status itself presents challenges due to the increasingly negative public perception associated with it. Surveys show that the Russian population has a more negative attitude towards «foreign agents», which has grown over time. For instance, a survey conducted by the All-Russian Public Opinion Research Center in 2023 reveals the following associations with the term «foreign agent»: unpleasant associations (20%, 5 p.p. compared to 2022), betrayer of the nation (18%, 11 p.p. compared to 2022), spy (9%, -5 p.p. compared to 2022), a public enemy (5%), the one who acts against Russia (5%), in the interest of another state (3%). According to another survey conducted by the Levada Analytical Center in December 2022, the majority of respondents (45%, 9 p.p. compared to 2021) believe that the purpose of foreign agent law is to limit the negative influence of the West on the country. About a third of those surveyed (30%) believe that this law is a tool for the authorities to exert pressure on independent public organisations.

Compared to 2021, in 2023 there has been a decrease in public support (including financial support) for «foreign agent» organisations and trust in them, according to a study by the «Need Help» Foundation and Tiburon Research.

«Foreign agents» face a decrease in crowdfunding contributions and the refusal by some individuals to collaborate with or even mention «foreign agents» (particularly private companies and influencers), leading to a decrease in fundraising and partner link clicks.

The «foreign agent» status impedes the dissemination of information and the expansion of audiences because other individuals are sometimes afraid to quote or publish content from «foreign agents» due to the risk of also being included in the registry. Efforts by «foreign agents» in the public interest are often perceived negatively due to the connotations of the term «foreign agent» as a «spy» and hostile actor. This adversely affects the effectiveness of human rights activities and the promotion of human rights values by «foreign agents» and their interaction with government authorities.

### **Some consequences for individuals**

Four defendants are known to be charged in criminal cases of evasion of duties of «foreign agents». The first case was initiated against Valentina Cherevatenko back in June 2016. According to the investigation, Cherevatenko registered «Women of Don» Foundation to avoid fulfilment of the law on «foreign agents» and «deliberately» did not submit an application for inclusion in the register. However, in 2017, the case was dismissed due to lack of *corpus delicti*. Since 2023, after the toughening of the legislation on «foreign agents», information about cases against Golos activists Artem Vazhenkov and Vladimir Zhilinsky under part 2 of Article 330.1 of the Criminal Code (a repeated violation of the procedure for the activities of a «foreign agent») has emerged.

Another case under part 3 of Article 330.1 of the Criminal Code was brought against the editor of the Tatar-Bashkir service of Radio Liberty. She is accused of collecting information about teachers of a Tatarstan university

mobilised into the Russian army, which foreign sources could use against the security of the Russian Federation, as well as of failing to submit documents to the Ministry of Justice for inclusion in the register of «foreign agent». Furthermore, a total of 57 «foreign agents» are one step away from criminal prosecution, according to independent media outlet «Mediazona».

In addition, Russia's bad practice continues to spread to other countries, including European states, where new laws are being introduced to restrict foreign funding. In its judgement in the *Ecodefence case*, the ECtHR referred to such laws in force in the USA and Israel, as well as to a Hungarian law that was subsequently repealed. However, in March 2023, another attempt was made to pass a law on «foreign agents» in a member state of the Council of Europe. In Georgia, a bill on «foreign agents» was introduced, which was worded similarly to the Russian law and was portrayed as such by the public. Even though the Georgian law was rejected due to the widespread resistance of the public, it represents a worrying trend of toxic practices introduced by Russia spreading across Europe.

### **III. CONCLUSION AND RECOMMENDATIONS**

Consequently, the Russian Federation has not implemented either individual nor general measures under *Ecodefence and others v. Russia*. Those applicant organisations still listed as «foreign agents» are subject to extensive restrictions and social stigmatisation, which negatively impacts their ability to continue to operate. Liquidated applicant organisations, including due to their «foreign agent» status, are prohibited from conducting their activities. In addition, the law on «foreign agents» continues to expand and the number of «foreign agents» continues to grow, which increases the existing chilling effect and crackdown on civil society.

As regards individual measures, we recommend the Committee of Ministers indicate to the Russian Government:

- to pay just satisfaction to all the applicant organisations as specified in the judgement;
- to revoke the liquidation of the International Memorial and the Memorial Human Rights Centre based on violation of the legislation on «foreign agents» and afford restitution for the negative consequences arising from the liquidation, including the return of property seized by authorities;
- to exclude all the applicant organisations from the registry of «foreign agents» that are still included in it and abolish all fines and other penalties imposed on the applicant organisations in connection with their status.

As regards general measures, we kindly ask the Committee of Ministers to continue annual consideration of this case under the enhanced procedure and to indicate to the Russian Government the necessity:

- to repeal all laws that constitute the current Russian legislation on «foreign agents»;
- to abolish the status of a „foreign agent“;
- refrain from discrimination in law and practice against, *inter alia*, organisations and individuals receiving foreign funds or cooperating with foreign entities;
- to reconsider and abolish all decisions on dissolution or other penalties against organisations and individuals adopted under the „foreign agent”’s legislation;
- to eliminate discrimination and repressions towards organisations and individuals advocating for the protection of civil and political rights or other issues sensitive for the Government;

Finally, we also ask the Committee of Ministers:

- to transfer the information on this case to the UN Human Rights Committee, the UN Special Rapporteur on human rights in Russia, the UN Special Rapporteur on human rights defenders, the UN Special Rapporteur on the freedom of assembly and to other relevant UN human rights bodies and to cooperate with them on the execution of this judgement.
- to condemn the spreading of the ideas of «foreign agents» law to other Member States and take necessary steps to prevent its further expansion.

## **APPENDIX 1 — CLOSED FOREIGN AGENTS DATABASE**

**See the database on the liquidated NGOs [here](#)**

### **Methodology**

The database contains information on legal entities that have been registered as «foreign agents» and subsequently dissolved. The information on unregistered associations is not included in this database.

### **Data source**

The data was gathered from official sources, such as the register of «foreign agents» maintained by the Russian Ministry of Justice or the Unified State Register of Legal Entities. Additionally, the table incorporates information from public sources, including media outlets and the organisations' own media resources. Empty fields in the table indicate that the information is not available from public sources.

### **Definition of Terms**

#### **What do we define as «closed»?**

The term «closed» pertains to the formal dissolution of a legal entity. Some organisations may continue to operate without

a legal entity even after dissolution, often due to external circumstances. To prevent confusion, we also classify such organisations as «closed.»

### **What do we define as «closed by reason of ‘foreign agent’ status»?**

We identify various cases as closures resulting from «foreign agent» status. The primary criterion is the presence of statements in public sources made by the organisations themselves or their representatives, indicating that the reason for closure was their foreign agent status. This determination is also based on independent media reports citing such a reason. Links to public sources supporting the reasons for dissolution can be found in the «proof of reasons for dissolution» column.

Additionally, cases where the time gap between recognition as a «foreign agent» and a voluntary decision on liquidation was less than six months are included. These are legal entities: «Dauria» Ecological Center, «EGIDA Petersburg», Altai eco-organisation «Arkhar», the Information Office of Schleswig-Holstein in Kaliningrad, Samara «American Alumni Club», «Nelegalov.Net», «Youth Human Rights Group», Center «Deystviye» («Action»), «Institute of Social Changes», «Laboratory of Social Sciences», Autonomous Non-Commercial Organization for Publishing the «Troitsky Variant — Science» Newspaper, Friends of Baltica, LGBT Sports Community. If liquidation was «forced», we consider «foreign agent» status to be the reason only if it was explicitly stated in the court or state authority’s decision and accompanying documents.

### **What do we define as «nature of liquidation»?**

All identified cases of liquidation fall into two categories based on their nature: «forced liquidation» and «voluntary liquidation or reorganisation.» Forced liquidation occurs when a decision on liquidation is made by the court or executive

authority. However, if the court process was initiated by a liquidation claim from a representative of the organisation, we categorise such cases as voluntary liquidation. Cases where liquidation has occurred by the decision of a legal entity are classified under the second category — voluntary liquidation. However, it is worth noting that even «voluntary liquidations» in some cases are in fact caused by the restrictions associated with a «foreign agent» status.

## **APPENDIX 2 — DESCRIPTION OF THE NGOS SUBMITTING THIS APPLICATION**

**Memorial Human Rights Defence Centre** is a non-governmental organisation founded in June 2022 by supporters of Memorial Human Rights Centre (dissolved on 29 December 2021 by authorities as a result of the application of the Russian law on «foreign agents») to continue the work of the latter NGO. Memorial Human Rights Centre was founded in 1993 in Moscow and became one of modern Russia's first human rights NGOs. It worked with grave human rights violations in (post-)conflict areas, civil and political rights and vulnerable groups. It represented hundreds of victims domestically and before the European Court of Human Rights.

**OVD-Info** is an independent human rights media project aimed at monitoring cases of political persecution in Russia and providing legal assistance to victims of such persecution. Today, OVD-Info operates a 24-hour federal hotline and a Telegram bot to collect information on all types of political persecution and coordinate legal assistance to its victims, provides legal education to activists, researches different kinds of political persecution in Russia, conducts advocacy campaigns and strategic litigation. In 2021, OVD-Info was recognized as a foreign agent.

**Citizens' Watch** (CW) is a human rights NGO founded in 1992 by Russian human rights activists, lawyers, and journalists. The primary objective of Citizens' Watch is to contribute to the establishment of parliamentary and civic oversight over the police, security services, and armed forces, with the aim of preventing constitutional rights violations by these governmental entities. The foremost focus of CW lies in advocating for the right to a fair trial. Since 1992, CW has actively monitored court hearings related to human rights and, starting from 2016, has actively involved civil activists in this undertaking. In 2014, CW was recognized as a foreign agent. CW is an injured party in the *Ecodefence* case.

**SOVA Research Centre** is a group of researchers whose interests include the problems of nationalism and xenophobia, the relationship between religion and society, and the formation and implementation of anti-extremist policy in Russia.

**The Public Verdict Foundation** founded in 2004. Its mission is to nurture zero-tolerance to any forms of illegal violence and introduce civil oversight as the key instrument to achieve that goal. To manifest this role, PVF provides legal assistance to victims of power abuse and civil activists, offers them psychological rehabilitation to reintegrate into society, considers information support to cases as part of the defence strategy, has a professional research and analytical division, which puts the foundation into a unique position qualified to draw proposals for systemic changes. The PVF is one of the leading human rights organisations in Russia with rich and successful experience to work against the arbitrariness of law enforcement agencies, member of several international coalitions. The PVF was included in the list of foreign agents in July 2014. During the last ten years the organisation has been providing legal assistance under Foreign Agents Act to dozens of NGOs and their leaders.

## More to read



### **The strangling of Crimea**

Denis Shedov and Dan Storyev explain how the repression in occupied Crimea was structured and how it evolved



## **Repressions Report. April 2024**

The death of a volunteer who helped Ukrainian refugees, new criminal cases against «foreign agents» and a ban on a non-existent movement. OVD-Info talks about