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Contents

Welcome to the Winter 2013 EHRAC Bulletin

In this edition, Nigel Warner (ILGA-Europe) writes about the very worrying developments in Russia threatening advocacy for LGBTI rights, including the adoption of the 'Federal Propaganda Law'. Nigel also discusses the impact on Russian LGBTI organisations of the 'foreign agents law', which is itself the subject of an article by Anna Sevortian (formerly of Human Rights Watch). Anna considers how the repressive 'foreign agents law' has affected Russian NGOs, and how they have responded to date. One strategy is to bring proceedings at the European Court of Human Rights in order to challenge the law and its implementation – a case in which EHRAC and Memorial are acting for the NGO applicants.

Lusine Minasyan from the Women's Resource Center Armenia discusses women's rights in Armenia, highlighting the absence of a law addressing domestic violence and the various problems associated with the ways in which the law enforcement agencies handle women's rights. Rebecca Vincent (Human Rights Club, Baku) analyses the restrictions which have been imposed on the rights to freedom of expression, assembly and association, leading up to the presidential elections in Azerbaijan in October 2013, and an article by Kateryna Halenko, of the Hebrew Immigrant Aid Society (HIAS) in Kiev, considers the impediments caused by the issue of statelessness in Ukraine.

Philip Leach, Director, EHRAC

Thanks to Valentine Egorshin for the front cover image, which was taken at Gay Pride in St Petersburg, June 2013.

Developments in Russia point to serious threat to advocacy for LGBTI rights

Two developments raise concerns that advocacy for the rights of lesbian, gay, bisexual, transgender and intersex people in Russia may soon be suppressed completely: the adoption by the Russian Duma in June 2013 of a law prohibiting so-called 'propaganda of non-traditional relations among minors' (the 'Federal Propaganda Law'), and the use of the Foreign Agent Law to target LGBTI organisations.

The Federal Propaganda Law

The Federal Propaganda Law was preceded by the adoption of similar laws in ten of Russia's 83 regions, mostly in 2012.[1] These laws were justified as necessary to protect children from exposure to homosexuality (thus scapegoating LGBTI people as a danger to children), were characterised by extreme vagueness, and provided for fines for organisations and individuals. They have been used on a number of occasions to justify prohibiting gay pride demonstrations and for prosecuting demonstrators. Challenges to five of them before the Constitutional or Supreme Court have been dismissed.[2] On the other hand, the UN Human Rights Committee has held punishment under such laws to be a violation of the freedom of expression and non-discrimination provisions of the International Covenant on Civil and Political Rights (ICCPR).[3]

The draft Federal Propaganda Law was tabled in the Russian Duma in March 2012. It stated simply that "Propaganda of homosexuality among minors warrants an administrative fine", and specified varying levels of fine.[4]

Concern at the Council of Europe at this, and similar developments in Moldova, Ukraine and Lithuania, led to a reference to its expert body on constitutional law, the Venice Commission. Its Opinion, published in June 2013, concluded that not only were such laws contrary to Articles 10, 11 and 14 of the European Convention on Human Rights (ECHR), but that their aim was *"not so much to advance and promote traditional values and attitudes towards family and sexuality but rather to curtail non-traditional ones by punishing their expression and promotion."* As such, they appeared to be incompatible with *"the underlying values of the ECHR"*.[5] This was a quotation of the language of the European Court of Human Rights (ECtHR) when using Article 17 of the Convention to deny its use to protect activities aimed "at the destruction of any of the [Convention's] rights and freedoms".[6]

In January 2013 the draft Federal Propaganda Law was supported overwhelmingly at first reading (388:1). Following a committee review a revised draft was published on 6 June.[7] In just over three weeks it was to clear all further parliamentary stages unopposed and be signed into force by President Putin on 30 June 2013.

The revisions to the text addressed criticisms over its vagueness, while sharpening its effectiveness. Thus, the term 'propaganda of homosexuality' was replaced with 'propaganda of non-traditional sexual relations', addressing a concern as to whether 'homosexuality' referred to a person's sexual identity or activity or both. Information qualifying as 'propaganda' was now spelled out as:

"information that is aimed at the formation among minors of non-traditional sexual attitudes, attractiveness of non- traditional sexual relations, misperceptions of the social equivalence of traditional and non-traditional sexual relations, or enforcing information about non-traditional sexual relations that evokes interest to such relations".

The severity of penalties was greatly increased. A combination of substantial fines for organisations (doubled, up to €23,000) or suspension of activities (up to 90 days), heavy fines for individuals using the media or Internet (up to €2300), and fines, expulsion, or "administrative detention" (up to 15 days) for foreigners, now provide the authorities with the tools to suppress completely whatever they deem to be 'propaganda'.

Much therefore depends on how the law is interpreted. As a minimum, it would prohibit the provision of information directly to LGBTI minors, for example, in the classroom, denying them information about their sexuality, in violation of the UN Rights of the Child.[8] However, given the arbitrary way in which the law is often applied in Russia, it may be interpreted much more widely, covering any such information accessible to minors in any context.

It seems clear that the law will have a chilling effect on advocacy for LGBTI rights and any commentary thereon in the media. But perhaps its most serious consequence will be through giving carte blanche to further discrimination and violence, whether by private individuals or state agents. By late 2012 LGBTI organisations were already reporting that the regional 'propaganda' laws were leading to increased violence by extremist groups, who openly claimed to be "defending the law".[9] Police took no action when protests at the time of the parliamentary debates (in Voronezh and Moscow in January, Moscow in June) were met with significant violence. On 29 June, police again looked on as participants in the 4th St Petersburg pride event were attacked, before arresting them en masse, despite the event being lawful. In another disturbing development, hundreds of videos have been published online by homophobic vigilante groups showing individuals – including teenagers – being subjected to intense humiliation, often sexual in nature, and even to torture.[10]

The Foreign Agent Law

The Foreign Agent Law requires all NGOs that receive foreign funding and engage in "political activity" to register as 'foreign agents', stigmatising them, and subjecting them to burdensome reporting requirements. Given the developments described above, it represents a particularly serious threat to LGBTI organisations. Indeed, two of the organisations so far successfully prosecuted by first instance courts for failing to register are LGBTI, the Side by Side LGBT Film Festival, and a St Petersburg activist organisation, Coming Out. The magistrates repeatedly ignored basic principles of the rule of law, such was their determination to find them guilty, and both were fined the maximum. During the trial of the Coming Out Director, extremists blocked the court's entrance, preventing access by supporters. Neither police nor court authorities opposed this mob rule. In October 2013, the conviction of both organisations was overturned on appeal. However, the grounds were procedural, and in the case of "Coming Out", the court explicitly confirmed its status as a 'foreign agent'.[11]

Being found to have failed to register under the Foreign Agent Law leads more or less inevitably

to closure of an organisation, since a continued failure to register leads to further prosecution, and suspension of activities. The alternative – registration – is not considered an option, given the stigma of being labelled a foreign agent (in Russian, equivalent to being a spy) and the administrative burdens associated with it. So the law provides the authorities with another all-too-potent instrument for closing down the organised LGBTI movement in Russia.

Concluding remarks

Oppressing the LGBTI community has particular attractions for President Putin. It plays to the nationalist constituency, enabling him to portray himself as the Russian strongman standing up to Western attacks, and to the homophobia which is widespread in Russian society. It is popular with the Russian Orthodox Church, whose support is important to him. These factors mean that international pressure - which has already been widely applied, to little effect - is unlikely to achieve much. The situation is gravely worrying for the Russian LGBT community, but also for the example which it sets to other states. Similar legislation is currently before the Ukrainian parliament.

Notes

1. ILGA-Europe Rule 9.2 submission to the Committee of Ministers of the Council of Europe - Alekseyev v Russia, p3, 15.02.13 http://goo.gl/Xu8WgW
2. Committee on Equality and Non-Discrimination of the Parliamentary Assembly of the Council of Europe - Tackling discrimination on the grounds of sexual orientation and gender identity, paras 42/43, 7.06.13 http://goo.gl/TqU1Sp
3. Fedotova v Russia, Communication no. 1932/2010, para 11. http://goo.gl/B5szHp
4. Venice Commission – Opinion on the issue of the prohibition of so-called "propaganda of homosexuality" – para 6, 18.06.13, http://goo.gl/LWEchv
5. Ibid., para 80.
6. Weber, A., 2009. Manual on hate speech - Council of Europe Publishing, p.22/23.
7. Unofficial translation by the Russian LGBT Network – http://goo.gl/HUYdSL
8. Concluding observations of the Committee on the Rights of the Child re. the United Kingdom, 9.10.02, document CRC/C/15/Add. 188. http://goo.gl/1BfLda
9. Russian LGBT Network and Coming Out – Alternative Report – Implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Russian Federation in Relation to Sexual Orientation and Gender Identity, p.63 http://goo.gl/rt4JZs
10. http://goo.gl/Af47fA
11. http://goo.gl/eRnzGR

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Statelessness: Legal challenges in Ukraine

The current international legal regime provides for the distribution of responsibility between sovereign states for human beings through the notions of citizenship and nationality. Although international human rights law aims to prevent situations where an individual is deprived of the 'right to have rights',[1] approximately twelve million persons[2] are not recognised as nationals by any state (stateless persons) and serve as a potent reminder that this crucial goal of the international human rights system remains unaccomplished. Statelessness has devastating consequences on individual lives and remains an acute problem for both developed and developing countries.

According to the 2001 population census, over 82,000 persons in Ukraine considered themselves to be stateless.[3] As of 2013, according to UN High Commissioner for Refugees (UNHCR) estimates, at least 35,000 people residing in Ukraine remained stateless.

The majority of stateless persons lack identity documents, thus depriving them of their basic rights: marriage, private property, parenthood, healthcare, and freedom of movement and employment.

However, according to the State Migration Service of Ukraine, only 5,875 among them were documented as such.[4] The decrease in numbers from 2001 to 2013 is most likely due firstly to a governmental integration programme dating from 2002 which facilitated the return of previously expatriated Crimean Tatars to Ukraine, and secondly to the new Law of Ukraine on Citizenship of 2001, which stipulated more a favourable procedure of obtaining citizenship for most of the categories of stateless persons than that in place under the previous Law.[5]

Though inaccurate documentation complicates efforts to grasp the true extent of statelessness, it is, however, fair to assume that at least twenty thousand former USSR citizens and their children remain trapped in Ukraine without proper identity documents in a situation of *de facto* statelessness. This may be due to legal, administrative and financial obstacles associated with acquiring citizenship in Ukraine (or in another successor state) for those who were outside their home country or country of habitual residence on the date of the dissolution of the USSR. The problem is further exacerbated by the lack of a formal statelessness determination procedure which all stateless persons should have access to, regardless of their legal status or possession of valid documentation.[6] With the accession of Ukraine to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness,[7] it was hoped that improvements would be made to the legislative framework. Unfortunately, there has been no progress to date towards introducing real and non-proclamatory welfare for stateless persons. As the situation calls for immediate action, taking into account the legislative gaps and discriminative provisions, in many cases the only legal route to turn to is the international standards and case-law of the European Court of Human Rights (ECtHR) on statelessness.

The consequence of the situation in Ukraine is that the majority of stateless persons lack identity documents, thus depriving them of their basic rights: marriage, private property, parenthood, healthcare, and freedom of movement and employment. This makes them particularly vulnerable to forced labour, exploitation, harassment and repeated detention for the purposes of deportation. Thus, the absence of documents puts them in the same, if not worse, position as irregular migrants, with no mechanism to regularise their stay in Ukraine.

The current legislation prevents the majority of stateless persons from being documented. The legacy of the USSR concept of registration at a person's place of residence and maintaining close control of their whereabouts has influenced modern Ukrainian legislation as any appeal to an official (including an application for identity documents) may only be made by a person who is legally residing in Ukraine. For a stateless person this constitutes an absolute obstacle, and they find themselves in a 'Bermuda triangle' where they are denied a starting point from which to resolve their problem. This is in breach of article 25 of the 1954 Convention relating to the Status of Stateless persons, and UNHCR Guidelines on Statelessness No. 2, namely section II (b) on access to stateless determination procedures.[8]

Relevant ECHR provisions to address the position of the stateless person

Moreover, Articles 3, 8 and 14 ECHR, taken in conjunction with Articles 6 and 8, can be invoked to address violations by States with respect to rights of the stateless inhabitants.

ECtHR case-law on Article 3 could be useful in supporting a case which seeks to demonstrate the physical hardships endured as a result of the lack of State assistance, which may constitute inhuman and degrading treatment. For example, the lack of any means of subsistence, the impossibility of regularising their legal situation or of obtaining any welfare support from the State for housing, and crippling uncertainty as to the future caused by the absence of a determination procedure for stateless persons could be argued to be in breach of Article 3. The threshold for treatment to be recognised as inhuman and degrading under Article 3 is always determined individually but decided cases can provide guidance on the standard required. In *M.S.S. v Belgium and Greece* (No. 30696/09) 21.01.11, the ECtHR found a breach of Article 3 in a situation where the applicant, a foreigner and asylum seeker in a particularly vulnerable situation and dependent on State support, was met with indifferent treatment from the State bodies and had no prospects for improving his situation.

Another relevant case is *Smirnova v Russia* (No. 46133/99 and 48183/99) 24.07.03, in which the ECtHR established that the lack of identity documents constituted an interference with the right to respect for private life, because of the importance of the documents in carrying out even mundane daily activities. Such interference is unusual in that it allegedly flows not from an instantaneous act, but from a number of everyday inconveniences taken in their entirety. In *Kuric and Others v Slovenia* (No. 26828/06) 13.07.10, the ECtHR held that the State's failure to adopt legislation with the purpose of regularising the situation of the stateless applicants constituted interference with their right to respect for private life. This demonstrates the potential for arguing a violation of Article 8 in conjunction with Article 13 ECHR.

Non-documentation also contributes to a lack of access to the court system, thus violating Article 13 of the 1954 Convention. *Anakomba Yula v Belgium* (No.45413/07) 10.03.09 is illustrative in this regard, following a finding of a violation of Article 14 read in conjunction with Article 6. The applicant had successfully argued that the fact his stay was not regularised prevented him from enjoying his fundamental rights, including, for example, parental rights and the right to access the courts.

Aside from the abovementioned issues, it should also be noted that, in violation of most international provisions on detention and stateless persons, it is common practice in Ukraine to detain such people for up to one year with a view to deport them to their country of origin, even if no ties remain with that country and the deportation cannot be carried out. In some cases, stateless persons have been detained for not possessing identity documents. This opens up the possibility of arguing that there have been violations of Article 5(1)f, 5(4) and 5(5) ECHR on the grounds of the unlawfulness and arbitrariness of such detentions, along with the lack of review and potential compensation.

Notes

1. Arendt, H, "Decline of the nation-state and the end of the rights of man" from The Origins of Totalitarianism, Harcourt Brace Jovanovich, 1973
2. UNHCR estimate for 2011 http://goo.gl/D7Qpwx
3. http://goo.gl/AUTcA4
4. See http://goo.gl/TGLz2n and http://goo.gl/qEJqqg
5. Decrees of the Cabinet of Ministers #29 of 10.01.2002 and #637 of 11.05.2006: http://goo.gl/5IMuTB; the Law of Ukraine On Citizenship of 18.01.2001: http://goo.gl/7sxDPi
6. Article 25 of the 1954 Convention relating to the status of Stateless Persons; paragraph 17 of the UNHCR Guidelines on Statelessness #2 (http://goo.gl/rOfS5s)
7. http://goo.gl/X0I2HF
8. http://goo.gl/FvSps5

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HIAS is an associated member of the European Network on Statelessness

The Russian 'Foreign Agent' law

Impact to date

The Russian NGO community has been in limbo since the so-called 'foreign agents' law was enacted on 21 November 2012. From February 2013 an unprecedented wave of inspections hit thousands of NGOs across the country; the consequences of which are now being appealed in various courts. However, the most important challenge presented by this law is the general sense of alienation and of the undermining of human rights groups at a time of concerted attack on fundamental freedoms in Russia.

What is a 'foreign agent'?

The introduction of the 'foreign agent' amendments to the Russian NGO law brings back the loaded and hateful rhetoric of the Soviet era. To a native speaker of Russian the term 'foreign agent' needs no clarification: an 'agent' is a 'spy'.

Yet according to the Bill of July 2012, any NGO that receives foreign funding and engages in 'political activity' must accept this label. To remain lawful, such NGOs need to register as 'foreign agents' within six months, or face potential suspension without a court order, at the Ministry of Justice's discretion. This law opened up a campaign to marginalise and demonise Russian NGOs and activism per se.

Since Vladimir Putin's return to the Kremlin in May 2012, a stream of repressive laws have been passed, and the authorities have acquired very broad powers to restrict core freedoms. To mention a few, Russia's definition of treason was amended and now allows the penalising of international human rights advocacy. Huge fines have been introduced for participation in 'unsanctioned' rallies. The law forbidding the 'propaganda of homosexuality' widely discriminates against LGBTI people. NGO directors are potentially criminally liable if they fail to observe the NGO law. Accordingly, civil society in Russia is, in fact, facing an existential dilemma: should they comply with largely illegitimate laws for their own survival or should they refuse to compromise and risk being closed down? For the alleged 'agents', the choice has so far been the latter.

The implementation of the 'foreign agent' law's provisions in 2013 started with a nation-wide

campaign of inspections of NGOs, often performed in an overtly intimidating manner. Officials confirmed that 528 NGOs from 49 regions were inspected, though unofficially the count was much higher. For the majority of NGOs these checks were not a single occurrence. The work of many was disrupted by inspectors, usually showing up as a team representing the prosecutor's office, registration authorities, migration or tax authorities, police, fire service and even a TV crew.

When later commenting on concerns voiced by domestic and international observers, Putin acknowledged that the application of the law so far has been imperfect. There has been over-reaction and 'extremes' (peregiby), said Putin. Not surprisingly, the Russian word peregiby he used is exactly one of these loaded words, providing an important linguistic link to the Soviet past. It was made famous by Joseph Stalin's 1930 article "Dizzy from Success" on the effects of collectivisation.

Living in limbo

Over 60 human rights and civil society groups – many of them prominent – have been charged with 'administrative offences' and have appealed the charges and fines resulting from inspections. Appeals are currently awaiting judgment, but the chances are slim that courts will find "over-reactions" in every case and reverse them.

Immediately after Putin's remarks on possible amendments to the 'foreign agent' legislation, several NGOs won cases against the prosecutor's office.

"Is this a coincidence?" asks Furkat Tishaev, lawyer at the Human Rights Center (HRC) 'Memorial'. Simultaneously, some courts started postponing the hearings. Currently 8 out of 15 court cases on 'foreign agents' are pending.

However, it is too soon to celebrate the success of common sense arguments. Natalia Taubina, director of the Public verdict foundation, believes this "putting the system on hold" is temporary, in the absence of clear signals on further actions which in turn may come from the courtrooms.

According to Taubina, an important case to watch is the appeal of the Anti-Discrimination Center 'Memorial' (Saint Petersburg) which has persistently been ordered to register as a foreign agent by the prosecutors. If this requirement is reinforced by the court's judgment and the NGO keeps refusing to register, technically they can be closed down for non-compliance. This would create a dangerous precedent of switching from pause to action.

Pavel Chikov, head of the Agora Association, says that so far the direct victims of the foreign agent legislation are few.

The Moscow-based NGO Golos, the most outspoken election monitoring group, has been suspended. Unfortunately, this was not surprising given the authorities' discontent with the level of citizen activism around electoral legitimacy concerns. Two other NGOs facing registration or suspension are the LGBT film festival 'Bok-o-bok' (Side by Side) from Saint-Petersburg and the Centre for the Support of Public Initiatives from Kostroma City (the Kostroma Centre).

The latter along with Agora have lodged an appeal with the Russian Constitutional Court to challenge the 'foreign agent' law's consistency with the Russian Constitution (so far 6 NGOs have initiated similar appeals at the Constitutional Court). The preliminary admissibility review of the Kostroma Centre's case is due by 21 October 2013. Experts say the Constitutional Court is quite likely to comment on the law's contradictory nature and call for clarifications, but this might have little impact on everyday reality for Russian NGOs.

> Reaching out to Strasbourg is a significant step in seeking justice for Russian civil society.

Another courtroom where a debate on the 'foreign agents' will happen is the European Court Of Human Rights (ECtHR) in Strasbourg.

In February 2013 HRC 'Memorial' and the European Human Rights Advocacy Centre (EHRAC) lodged an appeal against the Law on behalf of 11 NGOs.[1] The applicants believe that the law and its application violate the right to freedom of association and expression.

Reaching out to Strasbourg is a significant step in seeking justice for Russian civil society. Timing is the only drawback: a judgment from the ECtHR might come when the situation on the ground has dramatically changed – for better or worse.

Recent developments

There has been no substantive public discussion about revoking or amending the 'foreign agent' law in Russia. Sadly, there is also no way of knowing what amendments, if any, were submitted to parliament following Putin's call. The news that recently came from the State Duma, Russia's lower house of parliament, was rather discouraging.

In June 2013 another draft law started circulating within the Duma, which broadens the list of grounds for random inspections of NGOs without prior notice. For instance, if the bill passes, the Ministry of Justice would acquire new powers to perform 'impromptu' inspections based on information originating from the prosecutor's office, government or simply an anonymous report.

The draft was fiercely criticised by civil society for imposing a 'presumption of guilt' on NGOs. Ironically, this term feels almost accurate as some MPs voiced yet another idea how to 'fix' NGOs: tracking down the activities of unregistered associations. Another novelty amendment has already passed the first hearing at the Duma, which would extends the powers to institute proceedings on administrative offences under Art 19.34 of the Code of Administrative Offences to the police.[2]

Disturbingly, the 'foreign agent' law in Russia set the wrong tone for the development of civil society in the wider region and talking about 'agents' becomes contagious. In September 2013 a similar initiative was introduced to the parliament of Kyrgyzstan, arguably one of the more democratic Central Asian states. Others may easily follow.

Is there a good strategy for the NGO community in a situation like this, full of uncertainty and insecurity?

Experts would traditionally advise diversifying funding sources, eliminating references to advocacy and policy-work in official documents, and avoiding sensitive topics or broadening one's international presence. Some would suggest developing alternative plans. All these solutions are helpful and legitimate and could be described as methods of 'survival'. In reality, it means that Russian NGOs are no longer in a predictable and free environment and will need to exercise self-censorship. Sometimes this is no less harmful than censorship itself.

Notes

1. 3 further NGOs joined the application in July 2013

2. Article 19.34 outlines the criteria that make an NGO guilty of administrative offences and the penalty each individual is liable to pay

Anna Sevortian, Mid-Career Mason Fellow, Harvard Kennedy School of Government

Women's rights in Armenia

Domestic violence

The concept of domestic violence, which is officially recognised in international law, in particular in the Council of Europe (CoE) Convention on preventing and combating violence against women and domestic violence (Istanbul Convention 2011), is still fairly unheard of in Armenia. It is a common misconception that domestic violence concerns only physical violence, whereas psychological, economic and even sexual abuse are not yet recognised. According to the view prevailing in Armenian society, sexual violence within the family does not amount to an offence. For example, it is believed that a husband cannot be guilty of raping his wife as this is seen as lawful sexual intercourse between spouses, regardless of the wife's lack of consent. However, the Criminal Code of Armenia does not entirely exclude a victim's husband from those who can be found guilty of rape as Article 138 of the Criminal Code describes the violent act between man and woman regardless of their civil relationship.[1] There is currently no legal instrument in Armenia which defines the concept of domestic violence.

Since the 1990s, women's rights NGOs have been expressing their concerns about this and have urged the Armenian government to adopt a law on domestic violence. One of these NGOs drafted a bill which has been under review by the relevant government bodies since 2008. However, the lack of progress is continually put down to deficiencies in the draft which "needed amending". Later on, a government agency within the Ministry of Labour and Social Issues began work on a new bill. In 2012, the same government agency submitted the bill for public consultation, after which, it was announced, it would be presented to the Government, who may present it to the National Assembly (Parliament) for debate. To the great surprise of many organisations and experts working in the field of women's rights, the Government decided not to introduce the bill to Parliament, on the grounds that the Armenian legal system does not require a special law on domestic violence. It was said that acts of domestic violence can be dealt with by other laws, specifically, by the criminal procedure codes. A law on domestic violence, it was claimed, would only make the legal system overly complicated.

Law enforcement agencies and women's rights

Women's rights NGOs often encounter a range of problems regarding women's interactions with law enforcement agencies. Firstly, police stations do their best to dissuade women from filing official complaints, despite the fact that Armenian law instructs the police to accept all complaints without exception and decide whether they are justified or not within 10 days of them being filed. Secondly, the alleged perpetrator of the crime and/or other interested parties, including relatives, often persuade women to withdraw their statements. For instance, victims may be told by police officers that the problem is of a private nature and as such the police have no right to act. Other problems arise at the stage when the statement has been taken but the ensuing investigation is ineffective, or when prosecutors do not properly exercise their overseeing functions.

In the absence of a law on domestic violence and, consequently, a legal definition of this category of violence, only violent acts that leave visible marks on the victim (wounds or bruises) are treated with any seriousness, if at all. Criminal prosecution into these acts can only be initiated and discontinued by the victim. In other words, as these crimes are not considered to pose a risk to the wider public, their status is reduced to that of a private prosecution.[2] Furthermore, law enforcement agencies are reluctant to spend time on cases where they feel the victim may eventually withdraw their statement.

The lack of professional training for law enforcement officers, specifically about the protection of women's rights, means that the police do very little or nothing at all in cases involving even the most abhorrent violence against women. Police officers and investigators regularly give women incorrect and incomplete information about their legal rights, or refuse to release information or documents, not classified under the rules of criminal procedure and which the law states should be made available to the women concerned. The following examples are based on an analysis of the Women's Resources Centre Armenia's cases over the last month. In one case the woman was not allowed to take notes of the forensic medical examination report. In another case, the law enforcement agencies made a prejudiced assumption that the photographs showing injuries were faked and consequently refused to accept them as evidence in the case. Underage victims were interrogated in the absence of a legal guardian, a psychologist or a teacher. Psychological pressure on the victims (including minors) is also common – for example, women are often told that they provoked their assailants. Many women and girls only find out after receiving legal advice that the police gave them false information regarding their rights and police duties. These examples represent only a fraction of the issues women encounter in their contacts with law enforcement agencies.

The only way to enforce the law and effectively protect women is to ensure appropriate representation before law enforcement bodies. In the absence of a lawyer or a representative with knowledge of the law, female victims are likely to remain without adequate protection. This statement, of course, is not absolute. There are professional and conscientious officers, but they are few and far between.

Women under arrest

There are also significant obstacles to providing appropriate conditions for women in detention. A Public Group was established in 2006 to monitor places of police detention. In the course of its monitoring activities, the group uncovered three major issues. First was the absence of hot water in women's cells. Although there is hot water in bathrooms, international standards require that hot water should be available in the cells where women or children are detained. The second and third problems are directly linked to the shortage of female staff in detention centres.

Cultural factors behind the reluctance of women to work in detention facilities as officers result in a lack of female personnel in detention facilities, meaning that male officers supervise female detainees, including in situations where measures should have been taken by female officers to ensure respect to privacy and dignity (observation of the toilets and bathrooms, conducting body searches of female detainees, etc).

In summary, the problems surrounding women's rights in Armenia to a large extent can be put down to due to poor training, resulting in poor enforcement of the law, as well as the absence of a specific law addressing domestic violence. As a result of this poor practice, a lack of understanding has arisen in society as regards the legal standing of women and their role in general. The only possible way out of this vicious circle would be a specialised, comprehensive effort by the State to defend women's rights, which in itself would enable the creation of a reasonable case law and thus gradually change society's erroneous approach to women's rights.

Notes

1. Article 138 of the Criminal Code of the Republic of Armenia
2. Article 183 of the Criminal Code of the Republic of Armenia

Lusine Minasyan, lawyer, Women's Resource Centre Armenia

After fraudulent election, Azerbaijani authorities step up crackdown on critical voices

The human rights situation in Azerbaijan has been a matter of serious concern for many years, as authorities have committed widespread and systematic human rights violations, backsliding from Azerbaijan's stated commitment to democratisation, and failing across the board to fulfil the country's international human rights obligations. But this year has been worse than most, as authorities have engaged in an unprecedented crackdown to silence critical voices in the country, both in the run-up to, and now in the aftermath of, the presidential election on 9 October 2013.

Pre-election situation

In the run-up to October's presidential election, the Azerbaijani authorities restricted in particular the fundamental rights to freedom of expression, assembly, and association. Journalists, bloggers, human rights defenders, civic and political activists, religious followers, and ordinary citizens faced harassment, intimidation, threats, blackmail, arrest, imprisonment and violence in connection with expressing opinions of criticism or dissent. According to a list released the week before the election by the Baku-based Human Rights Club, the number of political prisoners in the country had spiked to 142.[1]

The underlying climate ahead of the election did not allow for a fair competition, rendering a democratic election impossible regardless of what actually happened the day of the election. But the election itself was also rife with violations, such as ballot-box stuffing and carousel voting. The incumbent president Ilham Aliyev was declared the victor, with the Central Election Commission claiming he won a staggering 84.55 per cent of the vote.[2]

The observation mission of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) issued a Statement of Preliminary Findings and Conclusions, pointing to widespread violations in the campaign period and on election day, and concluded that the election fell far short of meeting international standards.[3] A statement by the Election Monitoring and Democracy Studies Center, Azerbaijan's largest and most experienced domestic monitoring organisation, drew similar conclusions.[4]

> The Azerbaijani authorities seem intent on punishing those who spoke out ahead of the election, and silencing their critical voices once and for all.

Post-election crackdown

If the situation was dire earlier this year, now, in the post-election climate, it is even worse. Over the past month, election monitors have been pressured, the continued operations of critical newspapers have been jeopardised, and several government critics have been convicted on politically motivated charges and have received lengthy prison sentences, among other worrisome moves. The Azerbaijani authorities seem intent on punishing those who spoke out ahead of the election, and silencing their critical voices once and for all.

Less than three weeks after the election, authorities began pressuring employees of the Election Monitoring and Democracy Studies Center (EMDC), which had issued a critical statement on the conduct of the election. On 28 and 30 October, two EMDC employees were called in for questioning by the Prosecutor General's Office. On 31 October, officials conducted a search of EMDC's office, and seized documents and two computers. The Prosecutor General's Office claims to be investigating the organisation's foreign sources of funding.[5]

Press freedom is also under attack. The opposition newspaper *Azadliq*, which has one of the highest circulations in the country, has come under particularly serious pressure in the post-election period. On 24 October, *Azadliq's* bank account was frozen by a court order stemming from the newspaper's inability to pay a steep fine of 32,000 AZN (€30,000) from a defamation lawsuit. On 29 October, the court slapped an additional fine of 3,000 AZN (€2,800) on the newspaper for its continued inability to pay the original fine.[6] Then, on 12 November, the Azerbaijan Publishing House stopped printing *Azadliq*, due to the newspaper's inability to pay its debt of more than 24,000 AZN (€22,500) for printing and utility costs.[7]

Azadliq is one of the few remaining critical newspapers in the country. The paper and its staff have been under pressure for many years, including violent attacks against and politically motivated imprisonment of its editors and reporters, and excessive defamation lawsuits, many filed by public officials and their supporters. But the newspaper's current situation is more precarious than ever before, and its continued operations are in serious jeopardy.

Yeni Musavat newspaper, another popular Azerbaijani opposition newspaper, is also struggling to survive, in part due to steep fines from defamation lawsuits, and also the inability of its distributors to pay their debts to the newspaper – a situation that is also affecting *Azadliq*. After temporarily suspending publication, *Yeni Musavat* resumed printing on 12 November, but remains in an uncertain position.[8] Given the state's complete control over Azerbaijan's broadcast media, the few remaining critical publications such as *Azadliq* and *Yeni Musavat*, provide the only alternative narrative among the country's traditional media.

Since the election, there has also been sudden movement in a number of cases of political prisoners. On 29 October, Elnur Seyidov, the brother-in-law of opposition Popular Front Party Chairman Ali Kerimli, was convicted on politically motivated charges related to economic crimes, and sentenced to 7.5 years in prison.[9] Also on 29 October, two religious activists were convicted on politically

motivated charges of intentional destruction of property and each sentenced to 4.5 years in prison.[10] On 1 November, moderate Islamic theologian Taleh Baghirov was convicted on politically motivated charges of drug possession and sentenced to two years in prison.[11]

On 13 November, blogger Rashad Ramazanov was convicted on politically motivated charges of drug possession, and sentenced to nine years in prison.[12] Also on 13 November, *Nota Bene* newspaper editor-in-chief Sardar Alibeyli was convicted on politically motivated charges of hooliganism, and sentenced to four years in prison.[13] Ramazanov and Alibeyli have been acknowledged by Amnesty International as prisoners of conscience.[14]

Along with these convictions, there are a number of on-going trials in other cases of political prisoners, including opposition Republican Alternative movement leader Ilgar Mammadov, journalist Tofig Yagublu, and eight youth activists affiliated with the N!DA civic movement and the Free Youth organisation.[15] These moves indicate that the authorities intend to continue imprisoning government critics in the post-election period, and that they are confident that they will not be held accountable for these actions.

Indeed, the current human rights situation in Azerbaijan is alarming, and seems likely to continue to worsen as the ruling regime consolidates power following Aliyev's fraudulent election for a third term in office. There is an urgent need for increased action by the international community to hold the government accountable for its international human rights obligations. Now, more than ever, Azerbaijan's few remaining critical voices need serious support to survive.

Notes

1. http://goo.gl/2ukapg
2. http://goo.gl/MTwRzR
3. http://goo.gl/AqEu4S
4. http://goo.gl/Zc3PoV
5. http://goo.gl/i7yacr
6. http://goo.gl/PY29DL
7. http://goo.gl/iEmLpI
8. http://goo.gl/S1QMX7
9. http://goo.gl/wznO7G
10. http://goo.gl/DDCKVJ
11. http://goo.gl/KjVFLn
12. http://goo.gl/kdr9m9
13. http://goo.gl/S1HJ8S
14. http://goo.gl/edd3lZ
15. http://goo.gl/pwHMqz

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Russia's civil society crackdown and its indigenous peoples

Graham Donnelly, PhD Researcher, Department of Central and East European Studies, University of Glasgow

In the summer edition of the EHRAC Bulletin, Dr Jérémie Gilbert suggested that the closure and subsequent reopening of the Russian Association of Indigenous Peoples of the North (RAIPON) could be considered as an indication that Russia's indigenous organisations have not been left untouched by the recent crackdown on the activities of Russian civil society.

Two events of note have followed Dr Gilbert's commentary on the RAIPON case. In the first instance, RAIPON have elected a new president. Whilst hardly a sinister event in and of itself, the election process and final result, however, has served to confirm the suspicions of those, such as Dr Gilbert, who feared that the closure of the organisation on the grounds of administrative defects was, indeed, merely a cover for a political clamp down on this hitherto vocal exponent of indigenous rights.

In April this year, the Barents Observer published an article on the election of RAIPON's new president.[1] According to the report, Pavel Sulyandziga, an "outspoken" indigenous rights advocate since the 1980's and member of the UN Working Group on the issue of human rights and transnational corporations and other business enterprises, won the first round of a two-round ballot for the presidency at the 7th Congress of Indigenous Peoples of the North, Siberia and Far East. In the second round Sulyandziga won 200 of the 353 votes cast. However, in an odd next move, Sulyandziga then withdrew his candidature (following 'closed doors' discussions), leaving State Duma Deputy Gregory Ledkov the default winner. Whilst Sulyandziga secured the Vice-Presidency, the 'closed-doors' discussion and his subsequent withdrawal have been read by some as proof of political pressure having been applied on him, and a sign that the organisation has buckled under pressure exerted from Moscow. The Barents Observer quotes RAIPON's former President, Sergey Kharyuchi, who said that despite such claims, "to lead the association we need a person living and working at the heart of downtown (Moscow). It is desirable that he should have the mandate to go in the right doors."

Mandate duly secured, there followed yet another attempt to dull opposition among the indigenous peoples of the north, with the attempted extradition (on as yet unknown grounds) of the former Vice President of RAIPON and indigenous activist Dmitri Berezhkov.

Berezhkov had been the Vice president of RAIPON, and now lives in Tromso in northern Norway, close to the Russian border. In June 2013, Berezhkov was arrested in Tromso and spent two nights in prison awaiting the outcome of a request from the Russian Federation calling for his extradition. Berezhkov was released following a finding of a lack of conditions for his extradition. A subsequent appeal by the Tromso police was also rejected by the court and, according to the Barents Observer's report, the court directly linked the extradition request to the perceived power struggle during the RAIPON presidential election and the growing political pressure being brought to bear on Russian indigenous organisations.

The closure of RAIPON, in 2012, may well have been the opening shot of the Russian state's assault on the independence of one of Russia's principal exponents of indigenous rights. In apparently placing its candidate at the top of the RAIPON hierarchy, and in pursuing its former leadership across international boundaries, it is clear that Moscow is no longer content with simply inconveniencing such independent voices. Whether or not these latest salvos have, indeed, succeeded in undermining the credibility of this organisation as an independent advocate, or in silencing its remaining critics among the disparate communities of the Russian North, Siberia and the Far East, remains to be seen.

Notes

1. http://goo.gl/9kWbfH

Askhabova v Russia

Right to life

(No. 54765/09) 18.04.13 (ECHR: Judgment)

Facts

The applicant, Tamara Askhabova, had five sons, two of whom had died during security operations for their alleged involvement in illegal activities. In 2009 her three remaining sons were told to report to the police every month. On 5 August 2009, armed men in military uniforms arrived at their house and took away her son Abdul-Yazit Ashkhabov. He was never seen again. The applicant and her relatives complained to the authorities and waited outside the police station for three days before being dispersed. They went to see the Envoy for Human Rights and Freedoms in Chechnya who had a telephone conversation which led the applicant to believe that her son was being detained and the Envoy was requesting his release. Two weeks later, armed men in military uniforms came to the house and asked to see the bathroom, which had been a hideout for one of her deceased sons known only to the applicant and her detained son.

No law enforcement agency claimed to have arrested or detained the applicant's son. The applicant alerted the authorities to her son's disappearance on the day it occurred and a criminal case was opened two weeks later. After questioning some witnesses and visiting the scene, the case was transferred to a different investigative department in October 2009. The witnesses were re-examined, and some new information was sought. The applicant's requests to take certain investigative measures were unsuccessful due to the lack of cooperation between the investigators and other law-enforcement agencies. The investigation, despite its length, did not find those responsible for the disappearance.

Judgment

The ECtHR agreed with the applicant's assessment of the facts: that the abduction had been carried out by State agents, that the abductors had been able to pass through military check points and that no steps had been taken to find alternative perpetrators. The ECtHR also decided that Abdul-Yazit should be presumed dead because of his absence for four years after his detention by unidentified officers in a life-threatening situation.

There was a violation of Article 2 in two aspects. Firstly, because Abdul-Yazit was presumed dead, there was a violation of the substantive aspect of the right to life. Secondly, the investigation was ineffective. The police were poorly questioned one month after the incident, and then re-questioned six months later. The hindrance caused by police failing to cooperate showed the lack of the practical independence of investigators. Although the investigation was suspended several times due to a lack of results, there were important steps it could have taken, and had been advised to do so. The Russian government's claim that the applicant had not exhausted all the domestic remedies, such as a judicial review, was dismissed, as examination by a court was unlikely to have sped up the investigation, and all measures should have been taken at the authorities' own initiative, without relying on the actions of victims.

A violation of Article 3 was also found in respect of the applicant for the suffering she endured for never receiving a plausible explanation for her son's disappearance. The safeguards of Article 5 were completely denied as the applicant's son's detention was unacknowledged and no measures were taken to safeguard the detainee, giving rise to a grave violation of Article 5. The ECtHR also found that the ineffectiveness of the criminal investigation, which consequently undermined the effectiveness of any other remedies, was a violation on Article 13 in conjunction with Articles 2 and 3. The applicant was awarded non-pecuniary damages of €60,000.

Ageyevy v Russia

Respect for private and family life

(No. 7075/10) 18/04/13 (ECHR: Judgment)

Facts

The applicants were a husband and wife, both Russian nationals, who lived in a village in the Moscow Region. Having lost their biological son to a severe illness in 2000, the couple adopted two small children (a boy and a girl) in March 2008. On March 20 the following year, the boy was badly burnt and taken to hospital, where the staff suspected child abuse at the hands of the parents, from whom the children were then removed just over a week later. The couple's adoption of the children was subsequently revoked. In November 2010, Ms Ageyeva was convicted of charges relating to the child abuse and sentenced to twenty months of correctional work.

The applicants claimed that the sudden removal of their adopted children, the revocation of the adoption and the continued lack of access to the children following their removal was unlawful, disproportionate and arbitrary. They also claimed a breach of privacy; alleging that during the boy's stay in hospital in March 2009 journalists and the authorities were allowed to interview and take pictures of the boy that resulted in negative aspersions being cast by the nation-wide media. They relied on Articles 3, 6, 8, 13 and 14 of the ECHR.

Judgment

The ECtHR held that there had been five violations of Article 8 (right to respect for family and private life). The first regarded the decision to revoke the adoption of the applicant's children, where it was observed that the Russian court had only made superficial assessments of the allegations that the applicants had failed to properly look after the children. The result of the adoption revocation was that the applicants initially did not have access to their children, which the ECtHR held to constitute a second violation of Article 8.

The third violation regarded the actions of the hospital staff, in passing on photographs and information to an assistant of a member of the Duma and informing the media of the boy's identity. The fourth violation regarded the State's failure to investigate the unauthorised disclosure of confidential information on the son's adopted status. The fifth violation regarded the failure of the State to protect Ms Ageyeva's right to reputation in proceedings against a publishing house that had allegedly defamed her.

The ECtHR held that Russia was to pay Mr Ageyev €25,000 and Ms Ageyeva €30,000 in non-pecuniary damages.

Comment

Whilst five violations of Article 8 were found, the ECtHR held that there was no violation of Article 8 regarding the initial removal of the children from their parents. The interference was found to have been in accordance with the law, namely the relevant provisions of the Russian Family Code, and to have pursued a legitimate aim in protecting the children's 'health and morals' for the purpose of Article 8. Given that the boy had been injured in his parents' house, and that criminal proceedings had been brought against them, the ECtHR accepted that the authorities had reasonably considered the children's welfare by temporarily placing them in State care.

Return to torture

Extradition, forcible returns and removals to Central Asia

Amnesty International's 2013 report, Return to torture: Extradition, forcible returns and removals to Central Asia,[1] is the outcome of ten years of research and fact finding visits to the countries in the region. It documents the widespread occurrence of extradition and various forms of forcible return to torture and other ill-treatment in Central Asia, focusing on the risks faced by the returnees in five post-Soviet states: Kazakhstan; Kyrgyzstan; Tajikistan; Turkmenistan and Uzbekistan, and the failings in the refugee determination process in the returning countries of Russia, Ukraine and Kazakhstan.

The threat of torture and other ill-treatment in Central Asian States

The report details manifold cases exemplifying the frequent use of torture and other ill-treatment of detainees by state actors in all five Central Asian states. The detentions in the described cases were more often than not of a questionable nature, whether arbitrary or politically motivated. In a considerable number of cases, confessions extracted under torture were relied on as evidence in court. As the report further states, detentions in most cases were not open to appeal, demonstrating the defective nature of the criminal justice systems and law enforcement bodies in all five states. The European Court of Human Right's (ECtHR) rulings from the last few years reflect these concerns and unequivocally prohibit such returns. However, as the report illustrates, these were either blatantly not complied with or circumvented by bringing additional charges of questionable validity by the authorities.

Cooperation between the police and security services...enables informal and extrajudicial transfers, arbitrary detentions, not open to public scrutiny, and as the report states, often contrary to the ECtHR's rulings.

Regional security agreements vs. human rights obligations

The report analyses the connection between regional security agreements, namely the Minsk Convention on Legal Assistance in Civil, Family and Criminal matters of 1993 and the Shanghai Convention on Combating Terrorism, Separatism and Extremism of 2001, and the occurrence of extraditions and forcible returns. The report expresses concern that the states in question invoke national security to pursue cooperation in returning people regardless of the high likelihood that they may face torture or denigrating treatment upon being returned. This practice is contradictory to the norms of international human rights law, which include the absolute prohibition of torture and the principle of non-refoulement. All countries hold the membership of the Commonwealth of Independent States (the CIS) and share strong political and institutional ties, which increases the frequency and the ease of transfers of wanted individuals. The close cooperation between the police and security services of the aforementioned states enables informal and extrajudicial transfers, arbitrary detentions, not open to public scrutiny, and as the report states, often contrary to the ECtHR's rulings.

Far-reaching repercussions for the international human rights standards

The report documents how the CIS countries, despite being signatories to international human rights agreements, collude with one another to ensure the prompt return of individuals when it is in their interest, making inadequate attempts to assess the risk of torture and with no regard for judicial process. Numerous cases are described where individuals are subject to such practices, on the grounds of their identity, religion or membership of political group, with their charges being based on fabricated evidence or the assurance of their safety granted solely by undependable diplomatic assurances. Such practices are contradictory to the rule of law and international human rights mechanisms, such as the 1951 UN Convention relating to the Status of Refugees or the European Convention on Human Rights and Fundamental Freedoms, and greatly undermine their credibility and solidify the climate of impunity within the region.

Recommendations

The report concludes with proposed measures for the scrutinised countries, the United Nations Human Rights Council (UNHRC) and the Council of Europe states. Firstly, it reiterates that the regional security agreements ought to be brought in line with international human rights standards, as opposed to contradicting and challenging them. It calls for transparent, formal procedures open to scrutiny and appeal as well as non-reliance on diplomatic assurances in terms of the practice of torture. Secondly, it emphasises the importance of the Council of Europe and the UNHCR taking a stronger stance on the continuation of practices in Central Asia which constitute human rights violations. The absolute ban on torture and other cruel, inhuman or degrading treatment under international law applies to all states irrespective of their specific treaty obligations. The responsibility to promote and enforce its observation lies therefore in all the actors within the international community.

Daria Jarczewska, (former) EHRAC Intern

Turluyeva v Russia

Right to life

(No. 63638/09) 20.06.13 (ECHR: Judgment)

Facts

In October 2009 the applicant's son disappeared after being taken to the police station in Grozny, where he was last seen with signs of having been beaten, witnessed by his uncle. The applicant lodged a complaint about it two months after the disappearance of her son. The Government did not argue that the applicant's son was taken to the police station, however it denied responsibility, since, as the Government submitted, he had been released from the police station. The applicant also submitted that her brother-in-law was threatened by the police after she lodged her complaint.

Judgment

The ECtHR found violations of Article 2 in three aspects. Firstly, it decided that the applicant's son must be presumed dead. He had entered a place under the authorities' control and had not been seen since, with no plausible explanation given. The length of time that had passed was such as to presume him dead. Secondly, the authorities had failed to take measures to protect applicant's son. They knew about his disappearance no later than the beginning of December 2009, and yet took no urgent measures despite the gravity of the threat. Thirdly, the investigation was inadequate. Long delays, aggravated by the transferral of the investigation, resulted in the loss of perishable evidence (which alone would constitute a violation of Article 2) and increased the risk of collusion between perpetrators. There were also problems with the investigation's independence because of its institutional connection to the alleged perpetrators with one investigator terminating work shortly after reporting lack of police cooperation. Russia's objection that the applicant had not exhausted all domestic remedies was dismissed because these were shown to be ineffective.

> The undocumented and unacknowledged detention of the applicant's son was a complete negation of Article 5 guarantees and a particularly grave violation of this right.

The ECtHR also found violations of Articles 3 and 5. The authorities' reaction to the 'disappearance' meant that the applicant had suffered as a result of the lack of information on her son's fate and the way her complaints had been dealt with. The undocumented and unacknowledged detention of the applicant's son was a complete negation of Article 5 guarantees and a particularly grave violation of this right. The ineffective criminal investigation and the subsequent undermining of any other remedy suggested also constituted a violation of Article 13 in connection with Article 2.

The applicant was awarded €60,000 in non-pecuniary damages.

RECENT NON-EHRAC HUMAN RIGHTS CASES

I v Sweden

Prohibition against torture

(No. 61204/09) 05.09.13 ECHR: Judgment

Facts

The applicants were an unnamed Chechen family seeking to avoid deportation from Sweden. Mr I contended that shortly after the second Chechen War began in 1999, he had documented alleged atrocities for NGOs and journalists including the late Anna Politkovskaya. Both he and his wife were allegedly detained and physically abused by the Russian Security Services. Although both managed to escape their respective captors, they had later been threatened by insurgent groups because of his apparent cooperation with the authorities. The family fled to Sweden in December 2007 and sought asylum. The Swedish Migration Board rejected their application because they could not rely on the general situation in the North Caucasus and, assessed individually, their narrative lacked proof and was inconsistent. The decision was upheld on appeal and the applicants brought the case before the ECtHR alleging their return to Russia would violate their rights under Article 3 ECHR.

Judgment

The ECtHR had made an interim order under Rule 39 to stay the applicants' deportation until its ruling becomes final and admitted an exception to the Article 36 rule that the relevant government (Russia) should be notified as the applicants' treatment by that state was in question. Although being aware of the reported interrogation of returnees and of harassment and possible detention and ill-treatment by the Federal Security Service (FSB) or local law-enforcement officials and also by criminal organisations, the ECtHR found that, while poor, the situation in Chechnya did not itself substantiate a risk. However, medical evidence of the applicant's ill treatment, and the war record that such injuries might indicate, did make future violations more likely. The ECtHR held by a majority of 5-2 that when considered cumulatively, the circumstances of the case created a real risk that Article 3 violations would occur if deportation went ahead.

> The ECtHR held by a majority of 5-2 that when considered cumulatively, the circumstances of the case created a real risk that Article 3 violations would occur if deportation went ahead.

Comment

In its dissenting opinion, the minority took issue with the relative burden of proof and stated that the ECtHR's case law was clear that it was for the applicant to adduce evidence of a real risk that violations would occur. It was only then for the State in question to rebut that evidence. It was the minority's view that the applicants had not satisfied that burden of proof and that basing a judgment on the interpretation of bodily injuries was too far-reaching. It was noteworthy that the minority used the case of *NA v United Kingdom* (No.25904/07) 17.07.08 as authority that the burden of proof lay with the applicant. This was the same case that the majority relied on in its ruling that, even though no one factor had substantiated a ruling that convention rights were at risk, the ECtHR is able to consider their cumulative effect.

International Human Rights Law impacts on the Russian Constitutional Court (RCC) in two rulings in 2012-13

In the two rulings below, the RCC gave a broad interpretation of the applicable constitutional and legislative provisions in the light of a UN Human Rights Committee (UNHRC) decision and provisions of the European Convention on Human Rights (ECHR). However, it is yet to be seen whether these rulings will have any practical effect on the individuals' rights.

In deciding on the admissibility of the application of Mr Andrey Khoroshenko,[1] the RCC was faced with the legal implication of the UNHRC's final views. In Khoroshenko v Russian Federation[2] the UNHRC found that the applicant had been denied a public trial in his case which had resulted in his being sentenced to death and included violations of a number of other basic rights under the International Covenant on Civil and Political Rights (ICCPR). The Russian Supreme Court then denied the reopening of his case, having ruled that articles 403 and 413 of the Russian Code of Criminal Procedure (CCrP) allowed for the reopening of a case only after a judgment by the RCC or the European Court of Human Rights (ECtHR), but not after the publication of the UNHRC Views. The RCC took a significantly different approach to the status of UNHRC views, but nonetheless declared the applicant's application inadmissible, having reiterated that the list of grounds for reopening in the CCrP should be understood as inexhaustive, therefore not unconstitutional, and, as such, beyond the remit of the RCC jurisdiction.

The RCC held that Russia had voluntarily consented to the ICCPR and the HRC jurisdiction, so that it was bound to comply with both under the Vienna Convention on the Law of Treaties.

The RCC recalled that the 1993 Russian Constitution, the ECHR, the ICCPR and the Russian federal law allows for the reopening of criminal cases which ended by a final judgment under certain conditions. It then reiterated its constant, albeit questionable, case-law that the limitation of the grounds for reopening final criminal judgments was contrary to Article 46 of the Constitution (judicial protection of human rights), ECHR and ICCPR. The RCC then noted that despite the absence of provisions in the ICCPR or its First Optional Protocol on the binding nature of the UNHRC Views, the practice of the UNHRC[3] indicated that the Committee monitors the States' follow-up to UNHRC Views. The RCC held that Russia had voluntarily consented to the ICCPR and the HRC jurisdiction, so that it was bound to comply with both under the Vienna Convention on the Law of Treaties. The RCC concluded that the articles 403 and 413 of the CCrP, which allowed prosecutors to request the reopening of criminal cases on an inexhaustive list of new circumstances, could reasonably be construed as allowing the reopening of the applicant's case. Consequently, those provisions of the CCrP were not struck down, and as a result the RCC ruling did not provide for the reopening of the applicant's case because it can only grant reopening in judgments on the merits where it strikes down statutory provisions as unconstitutional.

More recently, in the Popova case[4] the RCC reaffirmed the right of victims in criminal proceedings to compensation for unreasonable length of proceedings. The Russian Compensation for Unreasonable Length of Proceedings Act allowed for compensation not only for defendants in criminal proceedings to whose cases Article 6 ECHR clearly applies, but also for the victims in criminal proceedings of an unreasonable length. This is only applicable, however, in cases which end with a final judicial decision. In the applicant's case it was the investigator who had terminated the proceedings on the basis of the expiry of statutory limitations, even though the defendant had not been identified. The RCC considered that the right to fair trial within reasonable time under Article 6 ECHR was extended to victims in criminal proceedings where the proceedings were terminated by the decisions of the federal law-enforcement bodies. The RCC then noted that it was possible to apply for compensation even before the end of proceedings, if and only if there was 'manifest departure' from the requirement of reasonableness of length. In the RCC's view, the victims could have a genuine interest in judicial protection, and the non-identification of the defendant by the investigation could not deprive them of their right guaranteed by Article 46 of the Constitution. The RCC, however, allowed that different criteria for the award of compensation may be set for different parties in criminal proceedings. It thus only struck down the impugned legislation insofar as it deprived the victims of compensation for unreasonable length of proceedings in cases where the victim could demonstrate that the investigator and/or prosecutor had failed to act properly in order to identify the defendant.

As has not infrequently happened in other cases, the RCC has included the general principles of the ECtHR – and now the UNHRC – case-law, and even goes beyond the remit of ECHR provisions (e.g. Article 6 in Popova above), but unfortunately this does not necessarily result in the provision of remedies to individual applicants.

Notes

1. RCC, decision of 28 June 2012, no. 1248-O.
2. CCPR/C/101/D/1304/2004, 29 April 2011, http://goo.gl/EuPsjM
3. General Comment no. 33 and Rule 101 of the Rules of Procedure.
4. RCC, judgment, judgment of 25 June 2013, no. 14-P.

Kirill Koroteev, Senior Lawer, Memorial HRC

Tymoshenko's pre-trial detention arbitrary and unlawful

On 11 October 2011 a Kiev district court found former Ukrainian Prime Minister Yulia Tymoshenko guilty of exceeding her authority and abusing her position, sentencing her to seven years' imprisonment, to be followed by a three-year ban from office. She was later indicted on charges of misappropriating funds and fraud.

In her application to the ECtHR, Tymoshenko alleged several government breaches of her rights under the ECHR; specifically that her detention on these charges was politically motivated, was not subject to judicial review and was inhuman and degrading. She also alleged that the constant surveillance she was under breached her right to privacy (Article 8).

> The ECtHR held that the actual purpose of the applicant's detention was to punish her for a lack of respect towards the court.

In its 30 April 2013 judgment, the ECtHR deemed inadmissible allegations regarding the conditions of her pre-trial detention and later surveillance. It went on to decide, by a majority, that there had been no breach of the Article 3 prohibition against inhuman or degrading treatment during her transfer to hospital following conviction.

However, the ECtHR held unanimously that there had been several violations of the right to liberty (Article 5), judicial review and compensation for unlawful detention. It also held that Tymoshenko's pre-trial detention was unlawful and arbitrary in that it was founded on her alleged demonstrations of contempt for the Ukrainian court's authority rather than legitimate reasons. The judgment also held that later denied appeals did not amount to a review of the lawfulness of her detention and that compensation for deprivation of liberty is insufficiently provided for under Ukrainian law.

Furthermore, assessing both the factual context and the reasoning advanced by the authorities, the ECtHR held that the actual purpose of the applicant's detention was to punish her for a lack of respect towards the court which, it had claimed, she had manifested by her behaviour during the proceedings. It found that the limitation of the applicant's liberty permitted under Article 5 § 1 (c) was applied not for the purpose of bringing her before a competent legal authority on reasonable suspicion of having committed an offence, but for other reasons, thereby giving rise to the violation of Article 18 taken in conjunction with Article 5 ECHR.

Eremia v the Republic of Moldova

Domestic violence

(No. 3564/11) 28.05.2013 (ECHR: Judgment)

Facts

X, a police officer, had abused his former spouse (the first applicant) in the presence of their teenage daughters (the second and third applicants) by beating and insulting her, causing her and her daughters stress and psychological suffering. Despite a judge imposing a protection order against X, requiring him to vacate the family home and banning him from contacting the applicants, he continued to physically abuse the first applicant and verbally and psychologically abuse their daughters. A criminal investigation into X's acts was suspended by the local prosecutor on the basis that X had committed a *"less serious offence"*, did not abuse drugs or alcohol, had three minors to support, was well respected at work and in the community and *"did not represent a danger to society"*.

Judgment

The ECtHR found a violation of Article 3 (prohibition of torture) in conjunction with Article 14 (prohibition against discrimination) in respect of the first applicant. She had been ill-treated by X and suffered anxiety amounting to inhuman treatment. The authorities had failed to fulfil its obligations under Article 3 to take effective measures against X, and to ensure his punishment under the law, despite their knowledge of the danger of further domestic violence. Further, their actions *"amounted to repeatedly condoning such violence and reflected a discriminatory attitude towards the first applicant as a woman"*. More generally, the ECtHR observed that it seemed that the authorities did *"not fully appreciate the seriousness and extent of the problem of domestic violence in Moldova and its discriminatory effect on women."* Similarly, the authorities' failure to act constituted violations of the daughters' right to respect for family and private life under Article 8.

Youth Initiative for Human Rights v Serbia

Freedom of Information

(No. 48135/06) 25.06.2013 (ECHR: Judgment)

Facts

The applicant is an NGO based in Belgrade which monitors the implementation of transitional laws and their compliance with human rights. In 2005, it made a request under the Freedom of Information Act 2004 for the Serbian Intelligence Agency (IA) to disclose the number of people subjected to electronic surveillance by that agency throughout the year. Relying on a caveat in the 2004 Act, the IA refused the request on the basis that the information *"could seriously undermine a legitimate interest which has priority over freedom of information."* However, the Information Commissioner (the body set up under the 2004 Act to resolve disputes) decided that the IA's refusal was in breach of the law and ordered disclosure of the information within 3 days. Almost 3 years later, the IA notified the applicant that it did not hold the information requested.

Judgment

The ECtHR found Serbia in breach of Article 10 (freedom of expression) of the ECHR, and ordered the IA to disclose the information within 3 months of the judgment becoming final. It considered that the "obstinate reluctance" of the IA to comply with the order of the Information Commissioner breached domestic law and was therefore an arbitrary breach of the NGO's right to freedom of expression. The NGO was *"obviously involved in the legitimate gathering of information of public interest with the intention of imparting that information to the public and thereby contributing to the public debate"*. The IA's response that it did not hold the information was "unpersuasive" in light of the nature of the information sought and the IA's initial response.

Implementation update on Volkov v Ukraine

On 9 January 2013, the European Court of Human Rights (ECtHR) delivered its judgment in the case of Oleksandr Volkov v Ukraine (No. 21722/11). Mr Volkov, a Supreme Court judge dismissed for an alleged 'breach of oath', was represented in his application to the ECtHR by EHRAC. The judgment was highly significant both for the nature of the violations found and the measures imposed on Ukraine. Thus the ECtHR unanimously found several violations of Article 6(1) of the European Convention on Human Rights (ECHR) regarding the principle of an independent and impartial tribunal, a violation of Article 8, and referred to "serious systemic problems as regards the functioning of the Ukrainian judiciary",[1] namely the insufficient separation of the judiciary from the other branches of State power.

The Government lost the appeal against the original judgment and on 27 May 2013 the judgment became final. Although the ECtHR ordered that Ukraine "secure the applicant's reinstatement in the post of judge of the Supreme Court at the earliest possible date",[2] which was unprecedented for Ukraine and the ECtHR itself, until now there has been no evidence that the Government has taken any real actions to reinstate Mr Volkov.

The former Minister of Justice of Ukraine was quoted as saying that a judgment from the ECtHR can be implemented "in the degree the Constitution of Ukraine and its laws permit".[3] There were also references made by Judge Yudkivska, later repeated by other State officials, that there were no vacancies for judges in the Supreme Court at present. This was later refuted in the press statements made by the Head of High Council of Justice, S. Kivalov,[4] and the letter from the Supreme Court addressed to Mr Volkov confirming that there have been two vacancies for the position of Supreme Court judge in Ukraine since April 2013.

One of the proposed ways to have Mr Volkov reinstated would be to annul the section of the Decision of 17 June 2010 (No. 2352-VI) relating to his dismissal. However, this mechanism requires a level of political will that is simply not present. In January 2013 a draft proposal prescribing exactly this mechanism of reinstatement was submitted by MP Katerynchuk to the Parliamentary Committee on Justice headed by S. Kivalov. However, it has only recently been considered, and the Parliamentary Committee made the decision not to submit it for review by the Ukrainian Parliament.

Hence, in its submission to the Department for the Execution of Judgments of the ECtHR at the Council of Europe in July and in a briefing to the Committee of Ministers (CoM) in September 2013, EHRAC urged the Deputy Ministers to consider all means available to them, including infringement proceedings, in order to seek to ensure that Ukraine complies with its obligations under the ECHR. The progress of implementation of the judgment was examined during the CoM meeting, held 24-26 September 2013 and in the Decision adopted the CoM urged Ukraine to fulfil the obligation to secure Mr Volkov's reinstatement without delay and called for a revised action plan "setting out progress achieved and the additional measures envisaged in response to the outstanding questions, accompanied with a provisional timetable for their adoption and implementation, by the end of October 2013 at the latest".[5]

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The implementation of the judgment in Volkov is not only limited to his reinstatement, but also involves general measures stipulated by the judgment. Therefore it has become an important factor in the push by the Council of Europe and the European Union for amendments to the Constitution of Ukraine aimed at addressing the serious inadequacies in the Ukrainian judicial system, which resulted in the drafting of the new Law of Ukraine 'On the amendments to the Constitution on strengthening guarantees of independence of judges'. However, the expert conclusions of the Venice Commission have raised concerns that not all of its recommendations have been addressed in the draft law. For example, it notes that the Draft Law, while improving the composition of the High Council of Justice (HCJ), fails to specify procedures by which its independence will be guaranteed. The draft law has now been passed by the President to the Ukrainian Parliament and is due to be considered during the next round of parliamentary sessions, which will begin in February 2014. Subject to receiving at least 300 MP votes it may be adopted. Concerns as to whether such amendments to the Constitution will resolve the structural issues of the Ukrainian judicial system, or whether they will lead to the preservation of political influence over the judiciary on a Constitutional level, remain to be seen.

Notes

1. Judgment available at http://goo.gl/qOIXLW
2. See judgment
3. http://goo.gl/KCaQP8
4. http://goo.gl/F6XHMU
5. Official Decision of CoM DH-DD(2013)836, 1179th meeting, 26 September 2013 available at: http://goo.gl/O1kKph

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EHRAC European Human Rights Advocacy Centre

About EHRAC

EHRAC is an independent apolitical organisation that stands alongside victims of human rights abuse in order to secure justice. Working in support of civil society organisations, we bring strategic cases to the European Court to challenge impunity for human rights violations. We raise awareness of violations and means of redress for victims. Each judgment we secure contributes to an objective account of human rights abuse that cannot be refuted.

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EHRAC works in partnership with many NGOs, lawyers and individuals in Russia and the South Caucasus. Our work focuses on mentoring joint project lawyers to develop their professional skills and independence as litigators. To find out more about the organisations we work with, and how we work in partnership, visit www.mdx.ac.uk/ehrac.

Call for new partners

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