

The Council of Europe: Access to justice for civil society and the approach of the European Court of Human Rights

Prof. Philip Leach
Director, European Human Rights
Advocacy Centre (EHRAC)
Middlesex University



Committee of Ministers' Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities (6 February 2008)

- calls on MS 'to ensure the effective access of human rights defenders to the European Court of Human Rights, the European Committee of Social Rights and other human rights protection mechanisms in accordance with applicable procedures.'

Committee of Ministers' Interim Resolution CM/ResDH(2014)183 (25 September 2014)

- 'the present situation raises serious concerns, in particular on account of the reported recent use of different criminal laws - similar to the ones used in the present group of cases (accusations of illegal activities, abuse of authority, treason, hooliganism or other crimes which can have close links to the legitimate exercise of the freedom of expression) - against journalists, bloggers, lawyers and members of NGOs'.

Russia – the ‘foreign agents’ law



Russia – the ‘foreign agents’ law

Introduced 2012 – foreign funding – political activity

- 148 NGOs designated as foreign agents
- More than 20 NGOs shut down

[Source: HRW, 7 November 2016]

Russia – the ‘foreign agents’ law

Pending ECtHR litigation challenging the ‘foreign agents’ law’ includes:

Ecodefence and Others v Russia

(Ecodefence, Golos, Citizens Watch, Civic Assistance Committee, the Committee against Torture, Mashr, International Memorial, Moscow Helsinki Group, Public Verdict, Memorial Human Rights Group and the Movement for Human Rights)

Law on 'undesirable organisations'

- National Endowment for Democracy (NED), Open Society Foundations, MacArthur Foundation, Charles Stewart Mott Foundation
- Ludmilla Alexeeva, *In Russia, human rights groups need Western aid more than ever*, Washington Post, 24.2.16

Rights Activist Leyla Yunus Freed From Jail In Azerbaijan (9 December 2015)



Venice Commission, 2014 opinion on NGO laws in Azerbaijan

‘Globally, the cumulative effect of those stringent requirements, in addition to the wide discretion given to the executive authorities regarding the registration, operation and funding of NGOs, is likely to have a chilling effect on civil society, especially on those associations that are devoted to key issues such as human rights, democracy and the rule of law’.

Interventions by Commissioner for Human Rights

- *Khadija Ismayilova v Azerbaijan* (TPI - 2016)
- *Rasul Jafarov v Azerbaijan* (TPI - 2015)
- *Leyla and Arif Yunus v Azerbaijan* (TPI - 2015)
- *Anar Mammadli v Azerbaijan* (TPI - 2015)
- *Intigam Aliyev v Azerbaijan* (TPI - 2015)
- *Hilal Mammadov v Azerbaijan* (TPI - 2015)

Interventions by Commissioner for Human Rights

‘There is a clear pattern of repression in Azerbaijan against those expressing dissent or criticism of the authorities. This concerns particularly human rights defenders, but also journalists, bloggers and other activists, who may face a variety of criminal charges which defy credibility. Such charges are largely seen as an attempt to silence the persons concerned and are closely linked to the legitimate exercise by them of their right to freedom of expression’.

Estemirova v Russia



Third party intervention by Commissioner for Human Rights

- States have a responsibility to create an enabling and favourable environment for the activities of human rights defenders.
- the murder of Natalia Estemirova should not be viewed in isolation but as part of a broader pattern of killings and intimidation of human rights defenders in the North Caucasus
- The spiral of violence against human rights defenders and the stigmatisation of their work have had a serious chilling effect on independent human rights work

Third party intervention by Commissioner for Human Rights

- adoption of a specific legal framework, of a comprehensive public policy and a national action plan aimed at protecting human rights defenders at risk and at promoting an enabling environment for their work.
- Such measures may also include the creation of a special body or empowering existing national human rights institutions with a view to installing, in cooperation with federal law enforcement bodies, a fully-functional rapid response mechanism or a protection programme for human rights defenders.

- Vital ‘watchdog’ role of NGOs in democratic societies - *Vides Aizsardzibas Klubs v Latvia* (2004), *Steel and Morris v UK* (2005)
- Protection against dissolution of NGOs - *Tebieti Mühafize Cemiyeti and Israfilov v Azerbaijan* (2009)
- Refusal to provide information to NGOs - *Társaság a Szabadságjogokért v Hungary* (2009), *Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung eines wirtschaftlich gesunden land- und forstwirtschaftlichen Grundbesitzes v Austria* (2013), *Youth Initiative for Human Rights v Serbia* (2013), *Magyar Helsinki Bizottság v Hungary* (2016)

Systemic issues

- Freedom of peaceful assembly – *Gafgaz Mammadov v Azerbaijan* (2015)
‘the Court has serious concerns about the foreseeability and precision of the legislation governing public assemblies, and about the possibility of public assemblies being abusively banned or dispersed.’ (55)

Positive obligations

- *Identoba and others v Georgia* (2015)

European Court of Human Rights: Article 18 ECHR ('political prosecutions')

Article 18 ECHR:

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

Ilgar Mammadov v Azerbaijan (2014)

'...the actual purpose of the impugned measures was to silence or punish the applicant for criticising the Government and attempting to disseminate what he believed was the true information that the Government were trying to hide' (143).

- Article 52 Inquiry (December 2015)

European Court of Human Rights: Article 18 ECHR ('political prosecutions')



Rasul Jafarov v Azerbaijan (2016)

- ‘...the actual purpose of the impugned measures was to silence and punish the applicant for his activities in the area of human rights’ (162)

European Court of Human Rights: procedural issues

- Victim status
 - *Centre for Legal Resources on behalf of Valentin Câmpeanu v Romania* (2014)
 - *Roman Zakharov v Russia* (2015) – mere existence of secret surveillance legislation
- Interim measures - *R. R. and Others v Hungary* (2012) - guarantee applicants' personal security
- Prioritisation
- Systemic violations and Article 46