



2014 OSCE Human Dimension Implementation Meeting, Working sessions 2 and 3, Tuesday 23 September 2014: Fundamental freedoms 1 (on issues of freedom of association, the role of civil society in the protection of human rights, and freedom of expression)

Stop muzzling human rights groups & advocates in Russia and Azerbaijan!

We, members of the Civic Solidarity Platform (CSP), a network of human rights NGOs in Europe, North America and the former Soviet Union, condemn the current, unprecedented crackdowns on independent human rights NGOs and their members now witnessed in Russia and Azerbaijan. These developments are chilling in their implications for freedom of association, freedom of expression and human rights defence in the two countries and set a dangerous precedent for other non-democratic and illiberal governments in the OSCE region. As already seen, rhetoric branding human rights groups and advocates as “foreign agents,” “spies” and “traitors” has increasingly been used also in other countries in this region (including in the EU member country Hungary) and draconian legislation impeding the operation and funding of NGOs enforced by the Russian and Azerbaijani governments are studied and used as inspiration elsewhere. This has given rise to fears of a growing backlash against civil society in other parts of the region.¹

We would like to use this opportunity to affirm our solidarity with colleagues who have been directly affected by the recent developments in Russia and Azerbaijan and to appeal to members of the OSCE community to loudly and clearly speak out about the repression taking place in these countries and to support its victims in all ways possible, including through urgent measures in individual cases. The new Guidelines on the Protection of Human Rights Defenders elaborated by the OSCE Office on Democratic Institutions and Human Rights provide important direction in this regard, in accordance with the fundamental principle that human dimension issues are matters of direct and legitimate concern to all participating States.

Overview of major concerns

Russia:

The civil society crackdown launched after Putin’s return as president in 2012 has continued to widen in the past year. In particular, the implementation of the notorious “foreign agents” law has had a far-reaching adverse impact on independent human rights, anti-corruption, environmental and other research and advocacy NGOs, threatening their very existence.

Following a series of mass inspections of NGOs in spring 2013, dozens of NGOs received warnings and faced legal cases under the “foreign agents” law. Trials have often been lengthy and protracted, taking away important time and resources from the ongoing work of the targeted NGOs, while their reputation has been badly damaged by the “spying” accusations levelled against them. Some groups have eventually won their cases in court, but many others have lost. In August 2013-May 2014, experts from the CSP monitored over 30 court “foreign agents” hearings against human rights NGOs.² In all the cases observed, the courts failed to duly scrutinize the charges against NGOs and instead chose to rubber-stamp them, thereby applying the broad definition of “political activities” set out in the 2012 law to core activities carried out by the targeted organizations.

At least six NGOs have already been forced to close down to avoid harsh penalties for refusing to adopt the stigmatizing “foreign agents” label after losing court cases. This number is expected to grow, especially since the “foreign agents” law was further toughened in June this year so as to allow the Ministry of Justice to register NGOs as “foreign agents” at its own initiative. These provisions, which did not provide any clear criteria for how such decisions should be made, demonstrated the government’s determination to enforce the “foreign agents” law despite its failure to force NGOs to register on their own. The new provisions were immediately put into force and, as of this writing, a total of 14 NGOs had been listed as “foreign agents,” including prominent human rights organizations such as **the Public Verdict Foundation** – a CSP member, **the Memorial Human Rights Centre, Agora, Jurix, Golos, the Women of the Don Union and the Soldiers Mothers’ of St. Petersburg**. Some groups have been listed with reference to court decisions in their cases, while others have been listed on the basis of the results of inspections that they have appealed and that are still under consideration by courts. This has created a high level of uncertainty as to which NGOs may be included on the controversial list by the Ministry of Justice and on what grounds. NGOs that have been listed as “foreign agents” against their will are also required to implement the obligations applicable to such organizations under the 2012 law, in particular by using this label in public communications.

Where possible, listed NGOs continue battling against the “foreign agents” label through court. However, the search for justice through domestic courts is impaired not only by the lack of independence of the judiciary but also the Constitutional Court decision from April 2014, which essentially deemed the “foreign agents” law consistent with the Constitution, even if it clarified certain aspects regarding its application.

In early September 2014, the Moscow City Court overturned earlier decisions that ordered election watchdog Golos and its leader to pay fines for failing to register as a “foreign agent,” concluding that available evidence did not show that the group had received foreign funding since the entry into force of the law.³ Nevertheless, in separate comments, the court stated that its decision did not entail any assessment per se as to whether Golos qualifies as being listed as a “foreign agent” and that this matter falls under the authority of the Ministry of Justice.⁴ At this time, the organization remains on the list.

National and international human rights bodies and NGOs have repeatedly criticized the “foreign agents” law for violating the right to freedom of association, freedom of expression and non-discrimination and for being open to arbitrary and selective application because of its vague wording. In an opinion issued this summer, the Venice Commission of the Council of Europe concluded that the “foreign agents” term tarnishes the reputation and seriously hampers the activities of NGOs to which it is applied and that the aim of ensuring transparency of foreign funding of NGOs cannot justify the registration regime set out in the

2012 law.⁵ Civil society is now placing its hope with the European Court of Human Rights, where a complaint about the law filed by a number of Russian NGOs is pending consideration.

Raising concerns about a possible further tightening of NGO legislation, media have reported that the government is currently considering amendments that would provide for a categorization of NGOs into “socially significant” and “political” ones and introduce new, discriminatory restrictions in relation to the latter category, on top of those established by the “foreign agents” law.⁶ Earlier this year, the grounds for unscheduled inspections of NGOs set out by law were broadened⁷, and a new campaign of inspections has been reported.

Other legislation recently adopted in the country has also had a detrimental impact on NGOs, including the controversial 2013 law banning propaganda of so-called non-traditional sexual relations. This law has contributed to a worsening climate for NGOs and activists promoting LGBT rights, who have reported facing increasing intimidation and harassment.

Azerbaijan:

Independent human rights NGOs and their representatives have been subjected to a growing wave of repression since the run-up to the October 2013 elections, when President Aliyev secured a third term in office. In the last few months, the situation has deteriorated to an unparalleled level, despite Azerbaijan’s current Chairmanship of the Committee of Ministers of the Council of Europe, a body founded on human rights principles.

New wide-ranging legal restrictions on NGOs have been introduced. These provisions have created additional obstacles for registered NGOs to operate and obtain funding and seriously worsened the situation of unregistered NGOs, a category that includes well-known human rights and pro-democracy groups that have failed to obtain registration despite repeated attempts. Legislation adopted last year, among others, prohibited NGOs from receiving cash donations of more than 200 EUR and made NGOs that obtain funding without concluding a formal grant agreement and their leaders liable to fines of up to 15,000 EUR. It also laid down stiff fines for failure to register grant agreements with the Ministry of Justice within the required period, as well as for failure to include required information about grants in financial reports to authorities. Another package of legislation that was signed into law this spring further tightened the screws on NGOs, among others, by requiring not only grants but also sub-grants to be registered with the government and by providing for harsh sanctions for undertaking banking and other operations in relation to unregistered grants. These rules made it impossible for NGOs that have been denied registration to access funding in the form of sub-grants through registered organizations, a practice that had previously been used.

Especially foreign-funded human rights NGOs have also been singled out for government smear campaigns and other harassment. In May this year, the Grave Crimes Investigation Department of the Prosecutor General’s Office launched an apparently politically motivated, high-profile investigation against some 20 human rights NGOs and think tanks, including both national NGOs and branches of foreign organizations. In the context of this investigation, offices of NGOs have been raided, their equipment and documents confiscated, the bank accounts of them and their leaders arbitrarily blocked or frozen, and their

representatives summoned for interrogation and subjected to travel bans. Among the organizations targeted by this investigation are two CSP members, **the Institute for Reporters' Freedom and Safety (IRFS) and the Center for National and International Studies.**

Moreover, in the last two months, several human rights defenders have been arrested on spurious tax evasion and other charges. These include **Leyla Yunus**, director of the Institute of Peace and Democracy, and her husband **Arif Yunus**; **Rasul Jafarov**⁸, an active CSP participant and one of the founders of the Human Rights Club that has had to de-facto stop its activities this year because of pressure against unregistered groups; and **Intigam Aliyev**, chair of the Legal Education Society. These defenders have been at the forefront of promoting human rights in Azerbaijan, including at the international level and their arrests have been widely condemned as retaliation for their human rights activities. Leyla Yunus and Rasul Jafarov had been leading a working group established to elaborate a comprehensive list of political prisoners in the country. This list, which was made public shortly after their arrest, features the names of close to 100 journalists, human rights defenders, and civil society, youth, political and religious activists.⁹ Intigam Aliyev has been actively working on litigation before the European Court of Human Rights and has won numerous cases. During a search of the office of his organization in August, police confiscated the files in dozens of cases pending submission to this court, thereby also jeopardizing the access to justice of the victims in these cases.

There are imminent fears that additional human rights activists may be arrested. In particular, there are such concerns with regard to IRFS Chairman and prominent human rights defender and media freedom advocate **Emin Huseynov**, who on 5 August 2014 was prevented from traveling to Istanbul to receive urgent medical care. He was stopped at the airport by border police and informed that the Prosecutor General's office had imposed a travel ban on him. Shortly after this, the IRFS office was searched and sealed by police. Acting IRFS Chair **Gunay Ismayilova** was also prevented from leaving the country when on her way to a workshop organized by the Swiss OSCE Chairmanship in Tbilisi on 3-4 September.¹⁰

Adding to the concerns regarding the recent arrests of defenders, at least Leyla and Arif Yunus have reportedly been denied access to adequate healthcare and medicines for their medical conditions while in detention. It was also recently reported that Leyla Yunus had been attacked by a cellmate, while authorities of the detention facility where she is held failed to take appropriate measures to protect her.

Among the human rights defenders who are currently serving prison sentences in Azerbaijan are **Anar Mammadli** and **Bashir Sulemainly**, who were sentenced to 5.5. and 3.5 years in prison, respectively, in May this year on charges similar to those brought against the defenders now in custody. The both represent the Election Monitoring and Democracy Studies Center, which came under attack after exposing violations during the October 2013 presidential elections.

The recent actions of the Azerbaijani authorities have been denounced, among others, by international human rights bodies such as the Council of Europe's Human Rights Commissioner¹¹ and UN special rapporteurs, who have called on the government of the country to "reverse the trend of repression, criminalization and prosecution of human rights work" and immediately free those "unjustifiably detained for defending rights."¹² In a resolution adopted last week, the European Parliament stated that closer EU-Azerbaijan relations should depend on human rights progress by the latter, including the cessation of harassment of NGOs and the release of human rights defenders.¹³

Recommendations

To the Russian authorities:

- Repeal the “foreign agents” law as contradictory to international standards protecting freedom of association, freedom of expression and the right to non-discrimination; abolish the list of NGOs designated as “foreign agents”; and terminate all legal actions aimed at forcing NGOs to adopt this stigmatizing label and comply with specific requirements applied to it, or at penalizing them for refusing to do so.
- Refrain from elaborating and adopting new legislation that imposes excessive, unreasonable and discriminatory restrictions on the exercise of freedom of association and expression by NGOs and revise provisions in force of that nature, in accordance with recommendations made by national and international human rights experts.
- Stop using rhetoric and enforcing policies that discredit and fuel mistrust and hostility toward NGOs engaged in legitimate efforts to promote respect for human rights and other universal values through monitoring, research and advocacy activities; condemn acts of intimidation and harassment targeting NGOs and activists; and ensure that such acts are thoroughly and impartially investigated.

To the Azerbaijani authorities:

- Put an end to the current pattern of raids, arbitrary assets-freezing, interrogations, arrests, travel bans and smear campaigns targeting human rights NGOs and activists; and ensure that any measures taken to investigate alleged violations of the law by NGOs and their representatives have a lawful and credible basis and are carried out strictly in compliance with principles of due process and rule of law.
- Immediately and unconditionally release human rights defenders Leyla and Arif Yunus, Rasul Jafarov, Intigam Aliyev, Anar Mammadli, Bashir Suleymanli and others held on trumped-up charges; and ensure that no defender is arrested or imprisoned in retaliation for his or her human rights activities.
- Stop criminal proceedings against the CSP members, the IRFS and the Center for National and International Studies and other NGOs unjustly targeted; drop charges against IRFS Chairman Emin Huseynov; and repeal the arbitrary travel bans imposed on IRFS leaders.
- Abolish the requirement of compulsory registration of NGOs; bring legislation regulating the registration, oversight and access to funding of NGOs into compliance with international human rights standards, in accordance with recommendations made by international human rights bodies; and enable human rights NGOs and defenders to carry out their important work without intimidation and hindrance.

To other OSCE participating States and OSCE institutions:

In accordance with the new ODIHR Guidelines on the Protection of Human Rights Defenders and other relevant instruments:

- Prominently and consistently raise concerns about the ongoing civil society crackdowns in Russia and Azerbaijan with the governments of these countries; publicly and unequivocally communicate solidarity to the victims of this repression; and use all available channels to provide support to them and their families, e.g. through trial monitoring, direct interventions on their behalf and rapid responses in emergency situations.

This statement has been signed by the following CSP members:

Albanian Helsinki Committee
Armenian Helsinki Committee
Article 19 (The United Kingdom)
Association of Ukrainian Human Rights Monitors on Law Enforcement
Bulgarian Helsinki Committee
Center for Civil Liberties (Ukraine)
Center for National and International Studies (Azerbaijan)
Center for the Development of Democracy and Human Rights (Russia)
Freedom Files (Russia)
Helsinki Citizens Assembly -- Vanadzor (Armenia)
Helsinki Committee for Human Rights in Serbia
Helsinki Committee for Human Rights of the Republic of Macedonia
Helsinki Foundation for Human Rights (Poland)
Human Rights Center of Azerbaijan
Human Rights Movement "Bir Duino-Kyrgyzstan"
Index on Censorship (The United Kingdom)
Institute for Reporters' Freedom and Safety (Azerbaijan)
International Partnership for Human Rights (Belgium)
Kazakhstan International Bureau for Human Rights and Rule of Law
Lawyers' Committee for Human Rights – YUCOM (Serbia)
Moscow Helsinki Group (Russia)
Netherlands Helsinki Committee
Promo Lex Association (Moldova)
Public Verdict Foundation (Russia)
UNITED for Intercultural Action (The Netherlands)

¹ For information about current threats against human rights NGOs and defenders in the five Central Asian countries, see a separate statement on this topic submitted to working sessions 2 and 3 by Kazakhstan International Bureau for Human Rights and Rule of Law, Nota Bene, the Turkmen Initiative for Human Rights, the Human Rights Movement Bir Duino – Kyrgyzstan, the International Human Rights Association Fiery Hearts Club and International Partnership for Human Rights.

² See project report at:

http://www.iphronline.org/uploads/9/0/2/7/9027585/the_judicial_dimension_of_the_ngo_crackdown_june_2014.pdf

³ The court decision is available at: <http://www.golosinfo.org/ru/articles/949>

⁴ The comments are available at: <http://www.mos-gorsud.ru/news/?id=767>

⁵ The opinion is available at: <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282014%29025-e>

⁶ See media report from 30 July 2014, at: <http://izvestia.ru/news/574548#ixzz3CEvJ0mlo>

⁷ See <http://www.kremlin.ru/acts/20313>

⁸ See CSP statement on the arrest of Rasul Jafarov from 3 August 2014 at: <http://civicsolidarity.org/article/995/azerbaijan-freedom-rasul-jafarov>

⁹ The list is available at: <http://www.nhc.no/filestore/Dokumenter/Land/Azerbaijan/THelistENGLISHFINAL.pdf>. For more information about the issue of political prisoners in Azerbaijan and other OSCE countries, see also separate statement on this topic submitted by CSP members to working session 5.

¹⁰ For more information see news releases at the IRFS website at: <http://www.irfs.org/>

¹¹ See, for example, statement from 7 August 2014, at: http://www.coe.int/en/web/commissioner/-/concerns-over-the-situation-of-human-rights-defenders-in-azerbaijan?redirect=http%3A%2F%2Fwww.coe.int%2Fen%2Fweb%2Fcommissioner%2Fnews%3Fp_id%3D101_INSTANCE_easZQ4kHrFrE%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_count%3D1#easZQ4kHrFrE

¹² See press release by the UN Special Rapporteurs on freedom of assembly and association, freedom of expression and human rights defenders from 19 August 2014, at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14952&LangID=E>

¹³ European Parliament resolution of 18 September 2014 on the persecution of human rights defenders in Azerbaijan, at

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2014-0022+0+DOC+XML+V0//EN&language=EN>