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Committee on Legal Affairs and Human Rights

Declassified Minutes of the hearing on “How to prevent inappropriate restrictions on NGO activities in Europe”

of the meeting held in Madrid, Spain
on 30 October 2014

How to prevent inappropriate restrictions on NGO activities in Europe

Rapporteur: Mr Yves Cruchten, Luxembourg, SOC

[AS/Jur (2014) 18 Rev]

Hearing with the participation of:

Mr Jeremy McBride, Barrister and Human Rights Law expert, London

Mr Cyril Ritchie, President of the Expert Council on NGO Law of the INGO Conference of the Council of Europe, Strasbourg

Mr Kirill Koroteev, Senior Lawyer at the International Association « Memorial », Moscow

Ms Gulnara Akhundova, Programme Manager, International Media Support (IMS), Copenhagen

The **Rapporteur** welcomed the experts and stressed, *inter alia*, that despite a recent presidential pardon granted to Azerbaijani NGO leader Hasan Huseynli, the situation in the country remained worrying, with the arrest of Rasul Jafarov having been extended and Leyla Yunus reportedly being denied adequate medical care and facing harassment in detention. He informed the Committee that he had sent a letter to the Azerbaijani delegation requesting information on the charges brought against Mr Jafarov, Ms Yunus and other prominent human rights defenders. He recalled that the Commissioner for Human Rights had visited Azerbaijan one week earlier and hoped that concerns on the situation of NGOs and their leaders would be addressed by Mr Agramunt (see item 9). Regarding the situation in Russia, he recalled that the Ministry of Justice had launched proceedings to close down a regional branch of the leading human rights NGO “Memorial”.

Mr McBride recalled that the Committee of Ministers had recognised the essential contribution made by NGOs to the development and realisation of democracy and human rights. Article 11 of the Convention as well as Recommendation CM/Rec(2007)14 of the Committee of Ministers clarified that any restrictions on NGOs must be prescribed by law, have a legitimate aim and be necessary and proportionate. While a NGO's objective must not be unlawful, any restriction needed itself to be consistent with international human rights law standards. It was legitimate for an NGO to pursue a change in the law, as long as this was done by lawful means and the outcome was not inconsistent with democracy. The Court's case law showed that the objectives of NGOs were too readily interpreted as unlawful or undemocratic. A matter of particular concern were restrictions imposed on NGOs dealing with minority rights issues. By reference to the Court's case law, Mr McBride emphasised that the decision whether to apply for legal personality should be a matter of choice. Problematically, the criteria and procedures for obtaining legal status were often unclear. Mr McBride also said that significant steps were undertaken to restrict NGOs' efforts to secure foreign funding. While there existed legitimate concerns, e.g. about money laundering and the financing of terrorism, these should not be used as a justification for stigmatising NGOs. The functioning of NGOs was also often impeded by excessive regulations and intrusive controls. Sanctions were imposed on NGOs where less draconian methods could

be used, and NGOs were suspended or dissolved – sanctions which, according to the Strasbourg Court's case law, should never be imposed for technical irregularities. He concluded that, although the international standards were clear, restrictions imposed on NGOs were, in practice, far too wide.

Mr Ritchie said that democratic pluralism and the legal status of NGOs were under threat, sparked notably by the Russian “Foreign Agents” law which was being copied by other states. He stressed the importance of promoting the compatibility of national legislation and its implementation with relevant recommendations by the Committee of Ministers, and referred to several judgments by the Strasbourg Court clarifying the scope of the freedoms set out in Articles 10 and 11 of the Convention. The Russian law was flawed, since it considered “political” activities of NGOs as reprehensible and contrary to the interest of the state instead of embracing citizens' efforts to influence decision-making and shape public opinion. He deplored that the law was applied in cases where NGOs had provided information on the country's human rights record to the media or a UN Committee, advocated on environmental issues, raised awareness on corruption, engaged in election monitoring, advocating for improvements in law or provided legal advice to persons detained following demonstrations – all activities falling within the definition of NGOs contained in the Committee of Ministers' Recommendation Rec(2007)14 on the legal status of NGOs, which represented a consensus among Council of Europe member states. Mr Ritchie concluded by saying that the Council of Europe should underline the rightful political role played by NGOs and civil society in upholding and advancing the Organisation's core values.

Mr Koroteev focused on the situation in Russia. He explained that any recipient of foreign funding engaging in “political activity” could be labelled a “foreign agent”. Numerous court decisions confirmed that every public statement on the media or internet qualified as “political activity” under the Russian law, including the publication of annual reports that NGOs were legally required to submit to the Ministry of Justice (for example, in case of the NGO “Women of Don”). Providing reports to the UN bodies was also considered as political activity and that was why the organisation Public Verdict was now being prosecuted. Mr Koroteev noted that more and more reporting requirements were being imposed on NGOs, and that the Ministry of Justice could order unannounced inspections and request extensive documentation. He mentioned the example of the NGO “Civic Control”, which was investigated because it had been involved in the submission of a case pending before the Grand Chamber of the Strasbourg Court. Moreover, even donors providing funding to NGOs had to comply with increasingly strict reporting requirements. The effect of these developments was that NGOs preferred to be liquidated rather than to be labelled a “foreign agent” (for example ADC Memorial, Kostroma Centre and entities of Golos). He informed the Committee that the law had recently been amended, allowing the Minister of Justice to declare NGOs as “foreign agents” by administrative decision. In practice, this occurred without providing any reasons. Under this new legislation, the NGO “Soldiers' Mothers of Saint Petersburg” was added to the “foreign agents” register immediately after it published some information about Russian soldiers who died in the war in Eastern Ukraine. Referring to the case of one regional entity of the NGO “Memorial”, he illustrated that the Government had various means at its disposal to exert pressure, by not accepting the horizontal structure of that organisation. But the Memorial Human Rights Centre was in much bigger trouble, as it had been included in the “foreign agents” list. Mr Koroteev concluded that, contrary to the law's purported objective, it was not about making Russian NGOs more transparent, for they were already far more transparent than the state and commercial organisations.

Ms Akhundova commented on the restrictions imposed on the activities of NGOs in Azerbaijan. She stated that, coinciding with the country's chairmanship of the Committee of Ministers, one could currently witness a dramatic crackdown on civil society, including an unprecedented increase in the number of arrests and detentions of human rights defenders, smear campaigns against NGOs and their leaders, and criminal prosecutions on questionable charges (sometimes lacking any basis in national law) such as “abuse of power”, “illegal entrepreneurship”, which was not defined by law, and “tax evasion”. She mentioned that recent amendments to the laws on “Non-governmental organisations” and on “Grants” essentially meant that international donors were to seek the approval of the Ministry of Justice. She feared that this would contribute to the elimination of the remaining independent human rights NGOs in the country, and explained that the offices of NGOs had been raided and their members' personal bank accounts (including her own) frozen. These amendments to the laws relating to NGO activities – adopted despite the fact that the Venice Commission had found that even the existing NGO law did not meet international standards – infringed the rights to freedom of expression and association enshrined in Articles 10 and 11 of the European Convention of Human Rights. Recently, the Secretary General of the Council of Europe asked the Venice Commission to provide another opinion on further amendments to the legislation on NGOs. Noting that the people of Azerbaijan were deeply disappointed by the silence of the Council of Europe in the face of the recent crackdown on civil society, Ms Akhundova expressed hope that the three rapporteurs, Mr Agramunt, Mr Cruchten and Ms Reys, would undertake a joint fact-finding mission to Azerbaijan and that the Assembly's Bureau would propose a debate on Azerbaijan during the January 2015 part-session.

A discussion ensued with the participation of **Messrs Gulvás** (who stressed that Hungary did not have restrictions on NGO activities comparable to those in Azerbaijan and Russia and stated that the information contained in the rapporteur's memorandum was not accurate), **Conde** (who considered that requiring NGOs to register, like in Spain, and be audited did not constitute an undue restriction of their work and complained about the existence of double standards), **Le Borgn'** (who reckoned that if Azerbaijan and Russia were trying to accede to the Council of Europe today, their requests would have to be refused), **Díaz Tejera** (who wondered where was the thin line between permissible restrictions on NGO activities and the infringement of fundamental freedoms), **Lord Tomlinson** (who considered that not all NGOs deserved to the same status, in particular when it came to NGOs claiming to be representing minority groups), and **Suleymanov** (who said that the information given about Azerbaijan was inaccurate and biased, and referred to his written explanations regarding the Rapporteur's introductory memorandum).

In response to these questions, **Mr Ritchie** said that he regarded the situation in Hungary as an attempt by Hungarian authorities to imitate what was happening in the Russian Federation and that the information contained in the memorandum was correct. He recalled that Recommendation Rec(2007)14 of the Committee of Ministers contained 13 provisions dealing with accountability. Thus, the problem was not a lack of standards, but their implementation. **Mr McBride** stressed that the European Court of Human Rights, in its case law, as well as the Committee of Ministers, in its recommendations, had laid down minimum standards regarding the rights of NGOs. The latter made it clear that NGOs should have the option of becoming a legal entity or not, which did not exist in all countries. He stressed that the real problem of transparency concerned governments, rather than NGOs and that there should be a differentiation between small and large NGOs. He reiterated that the guiding principle of any regulation or control of NGOs should be proportionality. **Ms Akhundova** insisted that legislation contradicting the Convention had to be changed without delay. She also stressed that the NGOs that were targeted the most were already the most transparent ones. Concerning Mr Suleymanov's intervention, she added that hundreds of requests concerning the spending of the President Aliyev Foundation had not been answered.