

**On the lawsuits to shut down  
the International Memorial Society  
and the Memorial Human Rights Centre**

On 11 November 2021 something happened that we have been talking about for nine years now, since 2012 when the first of the ‘foreign agent’ laws was introduced into the State Duma. The authorities made plain their intention to shut down the International Memorial Society and the Memorial Human Rights Centre, two of the first civil society organizations in the post-Soviet space.

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The International Memorial Society will be shut down for violating this very law. An administrative lawsuit to this effect was filed by the Prosecutor General's Office with the Supreme Court of the Russian Federation on 9 November 2021. The court hearing is scheduled for 25 November 2021.

The grounds for closure are that International Memorial has been held administratively liable for failing to label ‘the materials it publishes or distributes.’ That's right, nothing more - not even the most embarrassing mistake in the accounts or the minutes of a board meeting. Two dozen charges for offences under Article 19.34, Part 2, of the Code of Administrative Offences (two for each unmarked publication: one for the organization itself and one for its chair) were declared to be ‘persistent disregard of the law.’

The sanction requested by the Prosecutor General's Office is totally disproportionate to these ‘offences.’ It is like putting a person in prison for 20 years for crossing a completely empty road in the wrong place.

Even leaving aside the essence of the ‘foreign agent’ legislation in general and the question as to whether International Memorial is a ‘foreign agent,’ the attempt to close the organization down for these ‘offences’ is absurd on a number of grounds, even under current Russian law.

**First of all**, virtually all the administrative offences referred to in the lawsuit occurred in the autumn of 2019. In fact, International Memorial and its chair were issued multiple charges for not marking various Internet resources all in a very short period of time. Only one charge - for the fact that Memorial's stand at the 33rd Moscow International Book Fair contained unlabelled books - was drawn up later in 2020. It is obvious that we are not talking here about any ‘systematic violation of the law.’ It never happened that the organization was prosecuted for not labelling a social network, paid the fine, and then continued to run the social network without labelling.

The Russian Justice Ministry designated the International Memorial and the Memorial Human Rights Centre as “organisations acting in the capacity of a foreign agent”. Both organisations have challenged the Ministry's decision in courts.

**Secondly**, in this case we are talking about non-compliance with the requirements of a law which, from the start, were formulated extremely vaguely and whose application has expanded over the years. Until 2019 neither the Ministry of Justice nor the Federal Agency for Oversight of Communications, Information Technology and Mass Media [Roskomnadzor] required non-profit organizations included in the registry of foreign agents to label their social networks, but in 2019 they suddenly did. Is it possible to shut down an organization for failing to comply with requirements that were not imposed on it?

**Thirdly**, there are no victims in these cases. There are no people or organizations to whom any harm whatsoever has been caused or could have been caused by the fact that International Memorial did not label its social networks. Of course, the prosecutor's office would argue that harm was caused to 'legally protected public relations.' But the destruction of an organization that has been in operation for more than 30 years and has provided tangible benefits to society cannot be considered proportionate in relation to an abstract harm that cannot even be expressed.

**Fourthly**, all international documents concerning the situation of non-profit organizations - numerous recommendations by PACE and UN committees - say that closing down a non-profit should be done only as a 'last resort' when violations committed by the organization are so serious that they cannot be otherwise corrected. Moreover, the Supreme Court of the Russian Federation adheres to this position. A 2016 decision of the Supreme Court's Plenum states:

*'A gross violation by an association of citizens of the Constitution of the Russian Federation, federal constitutional laws, federal laws or other normative legal acts may be considered to be: an act intended to deny fundamental democratic principles, rights or freedoms recognized by the Constitution of the Russian Federation, generally recognized principles and norms of international law, international treaties of the Russian Federation or federal laws and other normative legal acts, propaganda of war or incitement of national, racial or religious hatred, incitement of discrimination, enmity or violence.*

*A gross violation is also a violation which creates a real threat of, or in fact causes, harm to the life and health of citizens, the environment, public order and safety, property, the legitimate economic interests of individuals and (or) legal entities, society and the State.*

*A gross violation is also one which cannot be eliminated by lawful means. For example, where it is impossible to make a decision in accordance with the founding documents of the organization.'*

It is obvious that the International Memorial Society has never done any of these things in the 30 years of its existence. Clearly, not labelling a few pages on the Internet or a number of books cannot be considered a 'gross' violation of the The Russian Justice Ministry designated the International Memorial and the Memorial Human Rights Centre as "organisations acting in the capacity of a foreign agent". Both organisations have challenged the Ministry's decision in courts.

law. Nevertheless, the Prosecutor General's Office believes otherwise and, alas, in current circumstances we cannot help but fear that the Supreme Court will agree.

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The administrative lawsuit from the Moscow City Prosecutor's Office against the Memorial Human Rights Centre, filed at Moscow City Court, contains not only allegations about labelling and reporting, but also a very significant addition.

The Moscow City Prosecutor's Office states that in violation of the federal law 'On the Judicial System of the Russian Federation,' we 'reject facts established by rulings of the Supreme Court of the Russian Federation which have entered into legal force, supporting the view that the rulings are unlawful and not binding.' Furthermore, our publications contain indications that they justify the activities of participants in terrorist and extremist organizations and that our publications 'tend to persuade their recipients that participation in the activities of extremist and terrorist organizations is permissible.'

We categorically reject these accusations.

In every reference we make to the cases of those we consider political prisoners, in every report on the recognition of an individual as a political prisoner, we always indicate that ***recognition of an individual as a political prisoner does not imply Memorial Human Rights Centre agrees with, or approves of, their views, statements, or actions.***

According to Article 6 of the Federal Law 'On the Judicial System of the Russian Federation,' court rulings that have come into force are binding on everyone and are subject to strict execution throughout the Russian Federation.

We have strictly implemented all court decisions that imposed any kind of obligation on Memorial Human Rights Centre, regardless of whether we agree with them or not. Contrary to assertions made in the administrative lawsuit, ***our publications contain no assertions that court decisions are not binding.***

However, ***the obligation to agree with court decisions that have entered into force is not (and cannot be!) established*** by the law 'On the Judiciary,' violation of Article 6 of which the Moscow Prosecutor's Office accuses us, nor by ***any other law.***

***This requirement directly contradicts Article 29 of the Russian Constitution,*** which guarantees everyone freedom of thought and speech and establishes a ban on coercion to renounce opinions and beliefs.

The Constitution prohibits propaganda or agitation that incites social, racial, national or religious hatred or enmity or propaganda of social, racial, national, religious or linguistic superiority. There is nothing of the sort in our publications

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mentioned by the Public Prosecutor's Office in its lawsuit, or in any other materials published by Memorial, and the Public Prosecutor's Office itself has not even dared to make such accusations.

The right to disagree with judicial decisions that have entered into legal force is clearly affirmed by the right to cassational and supervisory appeal, as well as by the constitutional right to appeal to inter-state bodies that deal with human rights and freedoms where available domestic legal remedies have been exhausted.

***Publicly criticizing court decisions and expressing disagreement with them is a fundamental right of any person and association.***

Allegations in the lawsuit that our publications contain ‘indications that they justify the activities of participants in terrorist and extremist organizations’ do not correspond to reality either. Not a single one of our publications contains statements implying that the ideology and practice of terrorism and extremism is correct and should be supported or imitated.

Equally absurd is the assertion that our publications ‘tend to persuade their recipients that participation in the activities of extremist and terrorist organizations is permissible.’ All of our publications with regard to which such claims have been made describe instances of criminal prosecution and imprisonment of people who have been participants in organizations recognized as terrorist or extremist, or who have been declared to be participants in such. How can it be said that we are persuading people that such participation is permissible, if we report that for such participation, real or even alleged, one has to pay with years or even decades of imprisonment?

We do indeed express the view that it is permissible for people to exercise their constitutional rights to freedom of conscience, freedom of expression and freedom of assembly and association, in a peaceful manner and without using language that incites violence. However, such a view is perfectly legitimate and cannot be prohibited.

At the same time, indeed we do not agree with a number of designations of organizations as terrorist or extremist, nor do we agree with the verdicts in the cases of those individuals we recognize as political prisoners. We consider these decisions to be unfounded and not in accordance with the law and we put forward arguments to criticize these judicial acts, thereby exercising our constitutional right to express our opinion.

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