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News

This is the 30th edition of the EHRAC Legal Bulletin, marking 15 years since its first publication. Throughout this time, we have aimed to provide timely, in-depth and engaging analysis of the latest legal developments in the former Soviet space, and from the European Court of Human Rights and Council of Europe. As a renewed commitment to this ambition, we are refreshing the Bulletin to a new online format, which we will distribute quarterly via our email mailing list. To receive the new-look Bulletin, please contact us, follow us on Facebook and Twitter, or visit: **http://ehrac.org.uk/news-listing/sign-up-to-our-newsletter/**

Welcome to the Winter 2018 Bulletin!

In recent years, the scandal of so-called 'caviar diplomacy' has rocked the Council of Europe (CoE), especially with regards to Azerbaijan using cash and gifts to curry favour in the Parliamentary Assembly. However, this issue is not limited to the CoE: Transparency International UK's Steve Goodrich explores how corrupt and repressive regimes in Russia, Azerbaijan and Bahrain seek influence and legitimacy amongst UK politicians. This calls into question the legitimacy of decisions made by parliamentarians, which is particularly concerning at a time of allegations of covert foreign influence in western elections and collusion at the highest echelons of the political class.

Female genital mutilation (FGM) is not an issue often associated with the region in which we work, yet as a study by the Stichting Justice Initiative (SJI) has found, the practice is rife in Dagestan (Russia), particularly in the high mountain districts. In her summary of SJI's 2018 report, Vanessa Kogan looks at the attitudes of men in areas where FGM is practised, and challenges the assumption that everyone in the local community supports FGM. We also hear from Olena Shevchenko, the Chair of Insight, a Ukrainian NGO providing holistic support to LGBTQI+ people. She explains the difficulties she has faced in the last year as one of the most high-profile activists on issues of sexual orientation and gender identity or expression in Ukraine, particularly following the International Women's Day march in Kyiv on 8 March.

In August 2018, Human Rights Watch (HRW) published a report on Georgia's zero-tolerance approach to drug consumption or possession, which has resulted in harsh punishments, with prison sentences for drug-related offences often significantly exceeding those for serious crimes. As Giorgi Gogia (HRW) explains, it is important to take note of the human costs of these policies, and consider that it is time for the authorities to decriminalise personal use and possession of drugs.

It is with great sadness that we share news that Tatiana Hansbury, our colleague, supporter and friend, passed away on 18 September 2018 after a short period of illness. Tatiana had translated every issue of our Legal Bulletin until this one: she was a gifted translator and linguist, and as an organisation, we were extremely privileged to have had her share her experience and skills with us from the very early days. Our thoughts are with her family.

Joanne Sawyer
Lawyer, EHRAC

Sabrina Vashisht
PR and Development Officer, EHRAC

Cover image: Protesters march through Kyiv on International Women's Day 2018. Credit: Valentin Ogirenko

Harsh punishment

The severe toll of abusive drug laws in Georgia

Giorgi Gogia, Associate Director, Europe and Central Asia Division, Human Rights Watch

Overly punitive drug laws in Georgia and their aggressive enforcement is causing severe and unjustifiable harm. Drug prosecutions for consumption and possession often lead to disproportionately long prison sentences and prohibitive fines against people who have not harmed others, but who acquired small amounts of drugs for personal, recreational use. Furthermore, arbitrary additional punishments, such as stripping people convicted on drug-related crimes of their driver's licences or prohibiting them from working in an array of professions interferes with their ability to earn livelihoods and contributes to their further marginalisation in society.

Although the Georgian Government has partially liberalised its drug policies since 2012, they remain harsh. The criminal justice system continues to treat most drug consumption or possession for personal use as a criminal felony, with severe consequences. The report released by Human Rights Watch in August 2018, *Harsh Punishment: The Human Toll of Georgia's Abusive Drug Policies*, documented the human costs of these policies, and called on the authorities to decriminalise personal use and possession of drugs, which means removing all criminal sanctions for use and possession of drugs for personal use.[1]

Overview of drug laws

In Georgia, first-time illegal drug consumption or possession of a small quantity of drugs for personal use is a misdemeanour offence. A repeated offence within a year of the first results in criminal liability. However, for approximately three-quarters of substances classified as illicit drugs, including substances commonly used in Georgia, such as amphetamine, methamphetamine, and desomorphine, Georgian law does not establish a threshold for small quantities, which means that possession of even particles of those substances, including the residue of such substances in paraphernalia, automatically qualifies as a large amount, triggering criminal liability and a mandatory minimum five-year prison sentence. Possession of more than one gram of those same substances is considered a "particularly large amount" and could result in life imprisonment.

In some circumstances, drug possession for personal consumption can carry a longer prison sentence than murder (from seven to 15 years) or rape (six to eight years).

Sanctions for Drug Offences vs. Violent Crimes[2]

Drug Related Offences	Violent Crimes
Possessing Heroin above 1 gram 8 to 20 years or life sentence	**Murder** 7 to 15 years in prison
Possessing Desomorphine above 1 gram 8 to 20 years or life sentence	**Intentionally severe health injury** 3 to 6 years in prison
Possessing, without appropriate authorisation, Buprenorphine (a.k.a. Subutex) above 0.12 grams 8 to 20 years or life sentence	**Rape** 6 to 8 years in prison
Possessing Methadone above 1 gram 8 to 20 years or life sentence	**Trafficking** 7 to 12 years in prison
Possessing Cannabis Resin above 0.5 grams 5 to 8 years in prison	**Taking hostage, also torturing** 7 to 10 years in prison
	Aggravated robbery 5 to 7 years in prison
	Membership of a terrorist organisation 10 to 12 years in prison

Every year, police randomly detain thousands of people for coerced drug testing. Police have broad powers to stop individuals in the streets and compel them to undergo drug testing if there are "sufficient grounds", including police intelligence, for assuming they are under the influence of drugs.[3] If the person refuses to undergo the test, police can detain them for up to 12 hours in a forensics lab.[4] Georgian law does not provide people held for testing with the same rights as detainees, such as the right to make a phone call, even though they are in police detention. This leaves them vulnerable to ill-treatment by the police. People whose drug use is problematic and former drug offenders are especially vulnerable to serial, coerced drug testing.

According to the Ministry of Interior, from 2012 to 2016, police tested 193,918 individuals for drug consumption, and less than a third of those detained for testing proved positive for drug intoxication.

Georgian law imposes long, mandatory minimum sentences for drug-related offences, and there is a nearly 100% conviction rate for these offences. As a result, a person charged with a drug-related offence often feels there is no other choice than to agree to a plea deal to avoid long prison terms. Plea bargaining in drug-related offences often leads not only to prison sentences but also to prohibitive fines, which can financially devastate the accused and his or her family.

Drug felony convictions also lead to deprivation of the right to operate motor vehicles and to work in certain professions for periods ranging from three to 20 years after release from prison.[5] Such restrictions deprive many people of their livelihoods and contribute to further stigmatisation and isolation of people who use drugs in Georgia.

From 'zero tolerance' to partial liberalisation

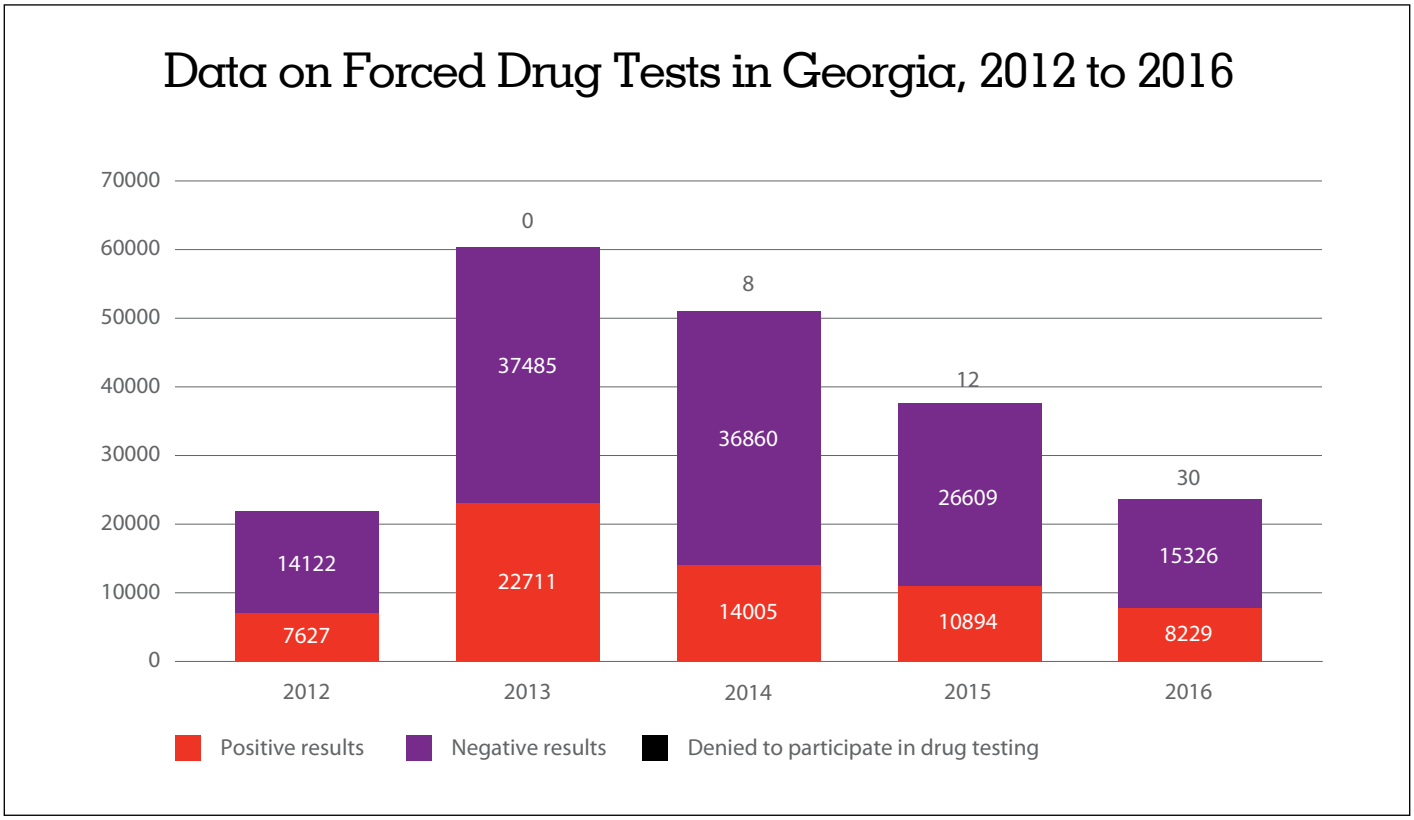
Some of the harsher features of Georgia's current drug policies and practices were adopted in 2006, when then-President Mikheil Saakashvili announced a 'zero tolerance policy' towards all crime, including drug-related offences.[6]

This 'tough on crime' approach towards drug users may have led to a reduction in the availability of certain illicit drugs, such as heroin, but did not lead to a decrease in drug use. On the contrary, according to some estimates, the number of people dependent on drugs and at high risk of harm due to drug use grew from 40,000 in 2009 to 52,500 in 2017.[7]

After the change of government in October 2012, Georgia's new leadership recognised the need to liberalise criminal justice policy, including drug policies. Legislative amendments reduced criminal penalties for drug possession and consumption. The Government adopted a National Strategy and Action Plan to fight drug addiction, which emphasised the importance of public health, prevention of drug use, harm reduction programmes, and overcoming stigma and discrimination against drug users.[8] However, while the strategy and its action plan envisage many significant steps, little of it has been implemented.

Since 2015, there have been further, significant changes in law enforcement policy and practices towards liberalisation. Most were prompted by lawsuits filed with the Constitutional Court. In response to a 2015 Constitutional Court decision declaring imprisonment for marijuana possession unconstitutional, Parliament amended legislation in July 2017 to remove imprisonment as a penalty for up to 70 grams of cannabis possession. The amended law retained criminal liability for possession of over five grams of cannabis.[9] All people convicted for cannabis possession would still have a criminal record and be deprived of the right to operate a motor vehicle and work in a wide range of jobs.

The 2015 decision prompted other constitutional complaints that challenged current criminal drug policies, particularly regarding recreational drug use. A November 2017 Constitutional Court decision argued that it is within an individual's right to choose how to relax, including through marijuana consumption.[10] According to the Court, unless this action creates any relevant risk



or danger to another person, it should not be considered a crime. Building on this decision, in July 2018, the Constitutional Court issued another ruling, abolishing all administrative sanctions for marijuana consumption, but it did not deliberate on the issues of purchase or possession of marijuana, which are regulated under the Criminal Code.[11]

In response to the July 2018 Court decision, the authorities introduced a bill on cannabis, legalising consumption at home, while imposing penalties for public use. It also criminalises consuming marijuana in presence of a child and while driving. Marijuana purchase or possession remains a crime. The bill is still pending in the Parliament.[12]

A more comprehensive draft law introduced in June 2017 is also pending. The bill is grounded in a health-oriented approach that explicitly states that people with problematic drug use need support, not incarceration and stigmatisation.

The human rights case: a call for decriminalisation

Laws criminalising drug use are inconsistent with respect for human autonomy and the right to privacy, and contravene the human rights principle of proportionality in punishment. In practice, criminalising drug use interferes with the right to health of those who use drugs. The harms experienced by people who use drugs, and by their families and broader communities as a result of the enforcement of these laws, may constitute additional, separate human rights violations.

Criminalisation is a counterproductive public health strategy. In fact, as shown above, rates of drug use have been increasing in Georgia despite overly punitive drug laws. For people who struggle with drug dependence, criminalisation often means cycling in and out of prison, with little to no access to voluntary treatment. Criminalisation undermines the right to health, as fear of law enforcement can drive people who use drugs underground, deterring them from accessing health services and emergency medicine, and leading to illness and sometimes fatal overdose.

> This 'tough on crime' approach towards drug users may have led to a reduction in the availability of certain illicit drugs, but did not lead to a decrease in drug use.

It is time for Georgia to rethink the criminalisation paradigm. Although the amount cannot be quantified, the enormous resources spent in order to identify, arrest, prosecute, sentence, incarcerate, and supervise people whose only offence has been possession of drugs is hardly money well spent, and has caused more harm than good.

Ending criminalisation of simple drug possession does not mean turning a blind eye to the harm that drug dependence can cause in the lives of those who use, and of their families. On the contrary, it requires a more direct focus on effective measures to prevent problematic drug use, reduce the harms associated with it, and support those who struggle with dependence. Ultimately, the criminal law does not achieve these important ends, and causes additional harm and loss instead. It is time for Georgia to rethink its approach to drug use.

Notes

1. https://bit.ly/2qokeY5
2. Criminal Code of Georgia, Arts. 108, 117, 137, 179, 1431, 144, 260, and 327.
3. Other grounds include if a policeman has witnessed the crime of consumption or possession of narcotic drugs or psychotropic substances, or if a person is trying to abscond or avoid fulfilling a legal order of a policeman, and there are reasonable grounds to believe that the person might be under the influence of drugs. Order No. 725, dated 30 September 2015, of the Ministry of Internal Affairs, "Instructions on Presenting Person for the Examination of Consumption of Narcotic Drugs, or Psychotropic Substances," paragraph 3. https://bit.ly/2JYpx9o
4. Order No. 725, dated 30 September 2015, of the Ministry of Internal Affairs, "Instructions on Presenting a Person for the Examination of Consumption of Narcotic Drugs, or Psychotropic Substances," Art. 4, https://bit.ly/2JYpx9o
5. Law of Georgia on Combatting Drug-Related Crimes, https://bit.ly/2PmfTmQ [in Georgian]
6. https://bit.ly/2JomU0n
7. Alavidze S. et al., The Drug Situation in Georgia, Annual Report 2015 (Javakhishvili J., Ed.) Tbilisi, 2016. Curatio International Foundation and Public Union Bemoni (2017), Population Size Estimation of People who Inject Drugs in Georgia 2016, p. 8, https://bit.ly/2yGGRvd
8. "The State Strategy on Fight against Drug Addiction," adopted December 4, 2013, https://bit.ly/1JWF8IU [Georgian only]
9. First instance of possession of marijuana, as noted below, in amounts of five grams or smaller is an administrative offence; a repeated offence within one year would incur criminal liability but not imprisonment.
10. *Citizen of Georgia Givi Shanidze v. the Parliament of Georgia* [Constitutional Court of Georgia], November 30 2017, https://bit.ly/2Swg7WL
11. *Zurab Japaridze and Vakhtang Megrelishvili v the Parliament of Georgia* [Constitutional Court of Georgia], 30 July 2018, https://bit.ly/2T59V8d
12. https://bit.ly/2z9190u

New resources

In 2018, we launched our series of legal resources for litigators, which you can find here:

http://ehrac.org.uk/resources/training-packages-human-rights-defenders/

For each of the topics on the right, you can now download a short guide to best practice and case-law, and audio and video recordings of a webinar presentation.

Visit our website, or contact us (s.vashisht@mdx.ac.uk), for more information.

- Using the UN CEDAW Committee and Special Rapporteur on Violence against Women in cases of gender-based violence;
- Requests for interim measures before the European Court of Human Rights;
- Friendly settlements and unilateral declarations before the European Court of Human Rights.

Standing up in the face of discrimination and hate crime

Views from a Ukrainian activist

Olena Shevchenko, Chair, Insight (Ukraine)

International Women's Day 2018

8th March is a very significant day for us as women and members of the LGBTQI+ community. Every year we organise rallies to support women's rights, and 2018 was no exception. This year we decided to bring together women from different social backgrounds. The organising committee of the women's march included Insight (which provides support at all levels to LGBTQI+ people), the CHIRICLI Fund for Roma Women, Fight for Right (for women with disabilities), and Legalife (which represents sex-workers as well as HIV-positive women). This year's rally – about which we had notified the authorities two weeks in advance, and had discussed with them beforehand – was the largest, uniting nearly 2000 women, marching through Kyiv's centre. However, from the very beginning of the rally, we encountered far-right groups, who were trying to stop us. Members of groups such as C14, Right Sector (*Правий сектор/Правый сектор*), the National Corps *(Національні дружини/Национальные дружины)* and Tradition and Order *(Традиція і порядок/Традиция и порядок)* attacked us several times. The police were fully aware of our rally, and yet they did not take steps to protect us and to ensure that we could walk, or maintain a cordon between us and the counter-protesters. No one was arrested for these attacks. The far-right groups took our banners away and ripped them apart, as well as firing tear gas at us.

The main incident happened during the final protest in front of the City State Administration: a group of men wearing Nazi symbols took banners from female participants. Rather than stopping them, the police made us move the place of our gathering to an area where there was no escape route, except through a metro station, which allowed the counter-protesters space to physically attack us.

A couple of minutes later, several police officers approached me and asked me to go with them to a police station, where my lawyer and I spent about three hours. The police had drawn up a report which stated that I had committed an administrative violation of the order of conduct of public demonstrations (which does not exist), with regards to a banner that I had brought to the march, which they claimed insulted the Ukrainian coat of arms. The banner (pictured) depicts a woman suffering various forms of violence: economic (signified by a coin), physical (rope), religious (cross), and far-right oppression (the symbol of National Corps, which resembles the Ukrainian crest). I was threatened with a criminal conviction for insulting the national symbols of Ukraine, which carries a penalty of three to five years in prison.

The aftermath

A hearing into my case was scheduled within three days. What happened next is hard for me to describe, as I still do not comprehend how it could happen in a democratic country. The hearing was attended by 30 to 35 people in masks and with Nazi insignia, holding sticks and gas canisters. My lawyer and I were blocked inside the courthouse, and right-wing protesters filled the courtroom during the hearing. We had to call a private security company and leave through the emergency exit. How did these people manage to get into the courthouse so easily? Why did the police not help us? This remains a mystery to me. The protesters openly threatened and insulted me because I am a visible LGBTQI+ activist, and tried to physically

attack me. Sadly, the court's security did not react, and we were left without any protection or help.

Before my second hearing I wrote a couple of posts on Facebook, asking for help and inviting people to support me at the hearing. Many people replied, and around 50 people fearlessly joined me, blocking entry to the building and filling the court's corridors. Though the hearing went smoothly, one of the prosecution's witnesses was a police officer, who repeated the far-right's claim that I had insulted the national symbols. In the court's corridors we saw the far-right members shaking hands with the policemen. It became clear that they knew each other quite well.

When the judge had left to make his decision, we saw 50 to 60 far-right supporters through the courtroom window, running towards the court building holding sticks and gas canisters. A few minutes later they blocked the courthouse entrance and corridors, and tried to break into our courtroom. They were proudly taking photographs of themselves by the court's entrance which they later posted on social media. When the judge announced my acquittal, we realised that we had to evacuate again. I received constant threats to my address during and after the trial. A couple of days later, some members of the far-right blocked access to a building where a discussion on far-right movements in Ukraine was due to take place. They broke into the building, tore down all the posters and waited for me, as I was one of the speakers. I believe that the far-right movement is trying to paint me to be a traitor, separatist and *"vatnik"*.[1]

A systemic issue

My own experience is far from unique but reflects a complex situation which has developed in Ukraine, where many LGBTQI+ and feminist events are disrupted by the far-right movement, and minority groups are not protected. In practice, it is not possible to organise such public or private events. The police fail to act, and no one is arrested. During June and July 2018, members of the far-right movement attacked Roma people, vandalised their settlements and beat them up. Only after they had killed a Roma person in Lviv was an investigation initiated.

Attacks on LGBTQI+ people are either not investigated at all, or categorised as hooliganism, rather than hate crime, and there is no provision in the anti-discrimination legislation which specifically covers bias on the basis of sexual orientation and/or gender identity. Since the start of 2018, the far-right movement has not allowed even a single event concerning LGBTQI+ or feminist issues to take place without disruption before or during the planned event. Not only do they block and disrupt events, but also come after activists, beat them up, spraying gas at them. Far-right supporters are not held accountable. Insight has about ten criminal cases pending with various courts, but they are constantly dropped on the grounds of *"lack of evidence of a crime"*. Before Pride in June, one of the far-right supporters posted on Facebook a description of a 'safari' to hunt LGBTQI+ activists, including a points system for beating up each activist. This list included me and four more people.

> How did these people manage to get into the courthouse so easily? Why did the police not help us?

We complained to the police, counting on the fact that the perpetrator was named and widely known, but we were informed that the case had been dropped. The same happened in a case of disruption of the Equality Festival in Chernivtsy in May. A group of 50 people occupied the building where we were trying to hold the festival. The police did not arrest them, but on the contrary allowed them to enter the venue and spray gas. We later received a message that the building had been mined, and the police started evacuating the Festival's organisers. We submitted a report to the police, carefully describing the circumstances of the disruption, but received a refusal to initiate a criminal investigation a month later. The police's reply stated that our submission was based on a subjective perspective, as we were the Festival's organisers. With no access to redress in Ukraine, we are now planning to bring this claim before the European Court of Human Rights.

The authorities' response

At every international meeting, Ukraine states that human rights violations are occurring due to the war with Russia, and does nothing to fight radicalism. Every time activists speak out about attacks on them and the LGBTQI+ community by the far right, Ukrainian officials say that such issues do not exist in Ukraine. In my opinion, the reason for this might be a conservative agenda, brought by the far right, which, as the Government believes, is supported by the majority of Ukrainian voters. Sadly, many Ukrainian people see the far right as fighters for the country's independence and against Russian aggression. I believe that the Ukrainian officials are afraid to support vulnerable social groups, because, ahead of the 2019 elections, they are afraid to lose the support of their voters. From my perspective, such an upsurge of right-wing populism and the State's tacit support of it will fuel social unrest even more, as well as increased violence against the LGBTQI+ community, Roma, national minorities and women who do not conform to a normative conservative model. The far right has created a political movement ("National Front") and a paramilitary movement ("National Corps"), which are violent and trying to take control. They patrol cities, pick fights with Roma and the homeless, and "clean the streets" from people who look different.

Ukraine actively pretends that there is no problem with the far right, and that in fact they are Ukrainian patriots, fighting for their nation and against Russian aggression. However, the far right stand for "purity of the nation", which is the same "traditional values" that the Russian regime supports. The only difference is that it is framed as Ukraine's special path, a return to traditions and the nation's origins. In essence, this is everyday fascism that has nothing in common with patriotism: to love your country, you do not need to hate everyone else.

Notes

1. A derogative term used to disparage someone as blindly patriotic towards Russia. This has particularly negative connotations when used in Ukraine, given the context of the conflict in eastern Ukraine and the annexation of Crimea.

In whose interest?

How corrupt and repressive regimes seek influence and legitimacy

Stephen Goodrich, Research Manager, Transparency International UK (TI-UK)

At TI-UK, we regularly meet many brave and interesting people from across the world. Their backgrounds and stories vary enormously, but they are united by a common purpose: the eradication of corruption, which we define as the abuse of entrusted power for private gain. Although this might sound a bit abstract, it's a daily reality for many of those we meet – the police officer asking them for a bribe, the official embezzling public funds intended for the frontline services their families use, and the collusion between powerful interests at the highest level of government, turning their democracies into kleptocratic states.

Whilst we share this common purpose, I am acutely aware of how different our challenges are in pursuing this mission. We're focussed on making our voice heard in policy circles; our peers abroad more concerned with avoiding arrest, or worse, when speaking truth to power. In some cases, the work of colleagues abroad – be they members of Transparency International, other NGOs or investigative journalists – is literally a matter of life and death.

Considering we operate in such different contexts, it's perhaps counterintuitive that so many people come to the UK to learn how our democratic experience can help to end endemic corruption back in their home country. Many see the UK – despite its quirks and anachronistic idiosyncrasies – as a beacon for justice, democracy and the rule of law. And to a certain extent this is true.

The UK regularly performs well in Transparency International's global Corruption Perceptions Index (CPI), which aggregates numerous expert surveys on the level of perceived public sector corruption.[1] And, according to Freedom House, it is one of the freest countries in the world with a 'stable democracy' and a 'vibrant' free press.[2] This is not to say the UK has no problems of its own. TI-UK's work regularly exposes how corruption takes a distinct form over here.[3] While the manifestations of corruption in the UK– cronyism, nepotism, influence peddling – are seen across the globe, they are qualitatively different from what is experienced much further down the CPI league table, in countries more traditionally perceived as corrupt.

Many in the UK Parliament recognise the relatively privileged position they hold – criticism of the Government will not lead to their arrest on trumped-up charges – by helping others move towards a freer, more democratic future elsewhere in the world. Yet there are others engaging in activities that – whether through ignorance, accident or willing complicity – help legitimise the actions of corrupt regimes who trample on the freedoms they so readily enjoy here. In TI-UK's recent publication, *In Whose Interest?*, we have sought to highlight what amounts to 'reputation laundering' in the UK through three country case studies: Azerbaijan, Russia and Bahrain.[4]

Corruption Perceptions Index Scores:

United Kingdom: 82

Azerbaijan: 31

Russia: 29

Bahrain: 36

(Scale: 0 = highly corrupt, 100 = very clean)

We chose these jurisdictions because they illustrate vividly the current types of questionable engagement by some UK parliamentarians. All three also have a key commonality: they perform woefully when it comes to internationally recognised measures of corruption and human rights abuse, an image they are keen to shift.

Although the report covers a wide range of activities, these can be summarised into three main categories: entertainment, employment and engagement.

Azerbaijan: The Entertainer

As part of a global, ham-fisted attempt at wooing supporters – dubbed 'caviar diplomacy' by its critics, in honour of the gift often lavished on visitors to Baku – the South Caucasian petro-state is estimated to have spent at least £333,000 ferrying 71 UK parliamentarians and their staff on 111 all-expenses paid visits over a ten year period. The overwhelming majority of these (84%) were paid for directly by the Government of Azerbaijan or organisations closely connected to the regime.

Many of these trips are labelled as 'fact-finding' missions or meetings with political figures, which appear innocent to the outside observer. However, what goes on during these visits is unknown to all but a few who participate in them. A quarter of the 71 visits were for unspecified purposes or for 'guests' of the regime. At least two have involved UK parliamentarians being sponsored to observe controversial polls in the country, paid for by the Azerbaijan Embassy and Parliament, which is dominated by the ruling party. In another, two parliamentarians were paid £15,000 each to provide advice to an Azerbaijani news agency on UK parliamentary and current affairs.

What is known is that the presence of British parliamentarians provides the local, state-controlled media ample opportunity to present themselves as a respectable part of the international community. Those given this hospitality have not helped the perception that they are just there to help promote the ruling elite in a positive light. This suspicion is compounded by their silence

when it comes to the country's record on corruption and human rights issues.

Russia: The Employer

In recent years, there have been concerns that Russia has sought to win over UK parliamentarians through security services engagement with them. From publicly available sources, this direct approach appears to have only targeted a handful of UK Members of Parliament (MPs). Many more, however, have been willing to appear on the international, English-language offshoot of its lead state media outlet, Russia Today (now known as RT). At first, this might seem harmless. Politicians from various nationalities appear on the BBC, so why should this be any different? Yet it has become increasingly clear that its content goes far beyond independent journalism, with RT receiving numerous sanctions from Ofcom – the UK media regulator – for breaches of the broadcaster's code over its reporting on the conflicts in Ukraine and Syria.

In response, many of those who had originally appeared on its talk shows and news programmes have since refused to do so, with some senior UK politicians now calling for a complete boycott. Others, though, have continued to provide it with implicit credibility by appearing on and even presenting its shows.

Bahrain: The Engager

Once a year Bahrain plays host to an international security conference – the Manama Dialogues – that positions the country as a respectable and stable global player in an otherwise turbulent region. The event is nominally hosted by the International Institute for Strategic Studies, a UK think tank, but leaked documents unearthed that it was actually secretly being paid for by the Bahrain Government. The regime – which represses peaceful protestors and is accused of stealing vast amounts of the country's energy wealth – has regularly flown UK politicians out to help participate in the dialogue. By our estimates, they have spent in excess of £100,000 for 19 different parliamentarians to attend, with another £135,000 outlaid on MPs and Lords attending 'fact finding missions' and the Bahrain Grand Prix. The Bahraini Government and its proxies funded over 90% of these trips. But the engagement doesn't stop there. We found that at least two British members of the House of Lords have been providing advisory services directly to the King of Bahrain, including during the period in which the regime cracked down on protestors in the Arab Spring.

> Azerbaijan is estimated to have spent at least £333,000 ferrying 71 UK parliamentarians and their staff on 111 all-expenses paid visits over a ten year period.

Conclusion and recommendations

On their own, each of the above could be explained away as isolated incidents involving innocent mistakes or bad judgement. Yet when these activities are considered together, they are more readily identifiable as a collective problem. Those looking to improve how they're viewed on an international stage are exploiting the legitimacy brought by UK politicians, some of whom oblige all too willingly to the detriment of our democracy's standing. This British form of corruption needs greater scrutiny, because it is this kind of behaviour that facilitates impunity for those who have stolen from and subjugated their people for their own private gain.

In response to the issues identified above, TI-UK has identified five solutions that, if implemented, should help reduce the risk of UK parliamentarians bringing British democracy into disrepute:

1. Undertake a parliamentary inquiry: some of the activities which we have observed raised serious questions about the effectiveness and enforcement of the UK Parliament's code of conduct, which should be reviewed by the bodies responsible for ensuring compliance, including the Parliament's Commissioners for Standards.

2. Protect parliamentarians' independence: we recognise there are legitimate reasons for UK politicians to travel abroad, but allowing them to be entertained by foreign governments and state institutions threatens the independence of these missions, so we have called for a prohibition on trips worth over £500 that are not paid for by a list of prescribed and trusted institutions.

3. Ban conflicts of interest: providing paid or voluntary advisory services to foreign governments and state institutions represents a direct conflict between our politicians' private and public interests, which should not be allowed for those entrusted with a position of public office.

4. Better due diligence: there appears to be a need within Parliament for better advice and guidance on how to engage with controversial stakeholders and what may be appropriate or inappropriate conduct. The parliamentary authorities should do more to prevent accidental 'reputational laundering' by our politicians.

5. Shine a brighter light on Parliament: key to deterring inappropriate behaviour is providing transparency over the financial interests and activities of our politicians. Although this information is published, it's hidden away in an obscure part of Parliament's website, which is difficult for the public to access and analyse. This information should be front and centre so there is no hiding place for malign activities.

Notes

1. https://bit.ly/2BJaDBF
2. https://bit.ly/2ReQAj6
3. See, for examples, TI-UK's recent press releases: https://bit.ly/2PqYwI2
4. 'In whose interest?', Transparency International UK, July 2018: https://bit.ly/2xmIvl0

The practice of female genital mutilation in Dagestan

Strategies for its elimination

Vanessa Kogan, Director, Stichting Justice Initiative (SJI)

In 2016, SJI published the first contemporary investigation into the practice of female genital mutilation (FGM) in Russia.[1] The report was based on a field study conducted in nine of Dagestan's high mountain districts, in which circumcision is mostly performed on girls before the age of three, at home with the use of regular household implements such as knives or shears. The report provided an analysis of interviews conducted with 25 survivors and 17 religious, medical and legal experts, as well as legal analysis under national and international law. This year, on the basis of further research and interviews, SJI published *"The practice of female genital mutilation in Dagestan: strategies for its elimination"*,[2] noting that in the two years since publication of the first report, little had been done to address this form of violence against women in the region. One of the motivations for pursuing study of the issue was to rebut claims by sceptics that the practice affects only a small number of women. Not only is this claim incorrect — we estimate that at least 1240 girls a year are affected by FGM in Dagestan — but we also reject the idea that the scale of the problem should somehow influence the obligation to eliminate a practice that has been recognised as a form of torture.[3]

Findings of the 2016 report

While many of the respondents cited religion as the basis for the practice, it is more likely rooted in pre-Islamic customary law *(adat)*. Currently, however, certain influential local Islamic leaders support the practice with reference to religious doctrine in the Shaf'i school of Sunni Islam. Social and ethnic traditions in practising villages—which are by nature extremely remote and closed to outsiders—also play a strong role in perpetuating a practice that reaffirms one's belonging to a particular community, in which women bear responsibility for preserving family honour and reputation.[4]

> Some of the most successful approaches worldwide for tackling FGM include educational campaigns on health risks, community-led programmes and public statements by influential members of the community.

As for the type of FGM encountered in Dagestan, practices vary depending on the village and ethnic group. One expert gynaecologist interviewed for the report stated: "*Each group has their own variation on circumcision. Some simply pierce a hole, some remove parts, others make an incision*". The most common types appear to be incision and bloodletting, and partial removal of the clitoris. Regardless of the type, the aim of the procedure is to control women's sexuality and behaviour both before and after marriage. (See full classification below.)

Our first report created an uproar on the Russian internet and among local and federal state officials, largely due to the inflammatory comments made about the practice of FGM by a high-ranking religious official, Ismail Berdiyev, who defended the practice as a way to *"tamp down women's sexuality"*.[5] The report also generated constructive responses from religious and local leaders and officials, who acknowledged the harm caused by the practice and the need to address it. A draft bill was introduced in the Duma introducing criminal punishment,[6] and petitions were sponsored on Change.org that garnered thousands of signatures.

The situation today

However, no actions to address the practice followed, despite the initial flurry of discussion. In 2017 SJI undertook further field research to investigate the attitudes of men in practising villages towards abolishing FGM, and also to present an overview of successful strategies employed in other countries to reduce or eliminate the practice. The second report (2018) estimated the approximate minimum number of potential victims of FGM in Dagestan at 1240 per year, based on statistics received on births in the practising districts, disaggregated by gender. The actual figure is likely to be higher, as anecdotal and expert accounts indicate that FGM is also practised in other districts in the south of Dagestan, where no studies have been conducted to date.

Similar to the answers received from female respondents, the second study showed that men support the practice of FGM due to a variety of religious, customary and social traditions, underpinned by the aim of upholding morality and order through the control of women's sexual behaviour. The men interviewed in the study stressed that while they uphold the practice in principle, they have no say in whether or not it is carried out, because the practice is passed down and carried out exclusively by women. 40 out of 50 imams surveyed could not identify any particular religious dictum pertaining to the practice of female circumcision, and the majority of religious leaders said the practice was not compulsory or had ceased to be compulsory in their districts. The second study allowed for the preliminary conclusion that there is a slow-moving tendency to abandon FGM, particularly in certain districts with a higher standard of living and level of education, and where the practice had been questioned as lacking a basis in religious law or tradition.

The practice in Dagestan exhibits characteristics consistent with the practice of FGM in other communities worldwide, including the

mixture of ethnic and religious justifications, the dominant role of women in perpetrating the practice, and the conviction that the practice is highly moral. The report suggests that it would be possible to overcome the practice of FGM via a variety of programmes that have been implemented in African countries, which more closely resemble the context in Dagestan than, for example, Europe, where FGM has a strong extra-territorial element (i.e. girls tend to be taken abroad for FGM to be performed on them). Some of the most successful approaches worldwide for tackling FGM include educational campaigns on health risks, community-led programmes and public statements by influential members of the community.

Conclusions and next steps

The release of the two reports has already taken the crucial step of provoking public discussion on the issue, which helps to challenge assumptions in practising regions — i.e. the assumption that everyone else in the community supports FGM. Dialogue on the issue opens the possibility of seeing that not everyone is uniform in their support. Now that the topic has become more normalised and less taboo, there is hope that it can be addressed via further research and potential prevention programmes. In the longer-term, legislation criminalising the practice could be a part of prevention, but only in combination with locally-led efforts—as criminalisation alone will likely only drive the practice further underground.

While SJI has already started consulting on the design of potential community-based interventions with grassroots activists in Dagestan and other stakeholders, it will take time to win the trust and respect of these extremely isolated and vulnerable communities, whose everyday troubles include low literacy, high unemployment, extreme material poverty, and lack of reproductive care. Preliminarily, SJI hopes to shape an approach based on a combination of education on women's health with harnessing the voices of those communities that have rejected FGM in the region.

Notes

1. 'Female genital mutilation carried out on girls: Report based on the results of a qualitative study', SJI, 2016, https://www.srji.org/fgm2016eng
2. 'The practice of female genital mutilation in Dagestan: strategies for its elimination', SJI, 2018, https://www.srji.org/fgm2018eng
3. https://bit.ly/2thqJO3
4. SJI 2016 Report, pp. 24-27
5. https://bit.ly/2S6XLeq
6. https://bit.ly/2TcNnCC

The World Health Organisation classification of FGM

Type I — Partial or total removal of the clitoris and/or the prepuce (clitoridectomy)

Type II — Partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora (excision)

Type III — Narrowing of the vaginal orifice with creation of a covering seal by cutting and appositioning the labia minora and/or the labia majora, with or without excision of the clitoris (infibulation)

Type IV — All other harmful procedures to the female genitalia for non-medical purposes, for example: pricking, piercing, incising, scraping and cauterisation

The full classification and typology is available at: https://bit.ly/1LZ94QN

Mammadli v Azerbaijan

ECHR: Judgment
Right to liberty and security; Lawfulness of detention; Limitation on use of restrictions on rights

(No. 47145/14), 19.04.2018

Facts

The applicant, Anar Mammadli, is a civil society activist and human rights defender who founded the NGO Election Monitoring and Democracy Studies Centre. He has reported on the human rights situation in Azerbaijan before the Council of Europe and in cooperation with UN institutions. On 29 October 2013, criminal proceedings were initiated against the NGO due to alleged irregularities in its financial activities. On 16 December 2013, the applicant was arrested and charged with illegal entrepreneurship, tax evasion and abuse of power, based on his receipt of grant funds from the National Democratic Institute (USA) and failure to register the organisation as a legal entity. He was placed in pre-trial detention for three months, on grounds that he would re-offend and given the gravity of the charges, with no regard for his social or personal situation or the applicant's numerous arguments as to lack of reasonable suspicion of having committed the alleged crimes. The courts dismissed his requests to be released on bail or placed under house arrest. In March, his pre-trial detention was extended until June 2014. On 26 May 2014 the Baku Court of Serious Crimes convicted Mr Mammadli and sentenced him to five and a half years' imprisonment. He was released following a presidential pardon in 2016.

Before the ECtHR, the applicant argued that he had been deprived of his liberty, in breach of Arts. 5(1), (3) and (4) of the Convention. At the Court's request, he also made specific submissions under Art. 18 (restriction of his Convention rights for purposes other than those prescribed in the Convention) in conjunction with Art. 5.

Judgment

The Court concluded that all of the applicant's charges originally stemmed from the fact that the NGO received grants, and that the domestic authorities failed to refer to any legislation under which such actions would constitute a criminal offence. Accordingly, the applicant was deprived of his liberty during pre-trial detention in the absence

of a *"reasonable suspicion"* of his having committed a criminal offence, as required under Art. 5(1) ECHR. Furthermore, the domestic courts consistently failed to verify the reasonableness of the suspicion underpinning the applicant's arrest, merely limiting themselves to copying the prosecution's written submissions and providing vague and stereotyped reasons for rejecting the applicant's complaints. Thus, the Court held that the applicant was not afforded proper judicial review of the lawfulness of his detention in breach of Art. 5(4).

The Government argued that Mr Mammadli had not complained of a breach of Art. 18 in his application or his reply to the Government's observations (he had done so at the Court's request after submission of the reply), and that he had failed to exhaust domestic remedies. However, the Court noted that the applicant had referred to political pressure on him because of his electoral monitoring activities in his application; and that he had argued that his arrest was politically motivated in his reply. In view of the repressive environment for civil society in Azerbaijan, and the fact that criminal proceedings were instituted just a few days after the applicant's NGO published its report on the presidential elections, the Court concluded that there were reasons to believe that the applicant was detained to *"silence and punish"* him as a civil society activist for his electoral monitoring activities, in breach of Art. 18.

Comment

The present case is one of a number of applications brought to the Court by human rights defenders in Azerbaijan who have been detained and prosecuted by the Government, seemingly on spurious charges, for their activities. The background and context were important factors taken into account by the Court when deciding the present case, and on which a number of NGOs submitted third-party interventions. Politically-motivated reprisals against activists and those who raise the situation on human rights are a widespread phenomenon in Azerbaijan. As established by the Court in the case of *Rasul Jafarov v Azerbaijan* (No.69981/14, 17.03.2016) (http://ehrac.org.uk/JfGKE), human rights activists are often referred to by the state authorities as spies or a 'fifth column' for foreign interests. The applicant's arrest was met with a public backlash, with the OSCE, Council of Europe and UN Special Rapporteur on the rights to freedom of peaceful assembly and of association all expressing concern as to possible ulterior purposes of the state authorities' actions (paras. 34-37 of the judgment). Having established that the domestic courts in the present case essentially limited their role to one of mere automatic endorsement of the prosecution's arguments, and taking note of the underlying situation of NGOs in Azerbaijan, the Court concluded that the facts of this case supported the applicant's claim that his arrest and detention *"were part of a larger campaign to crack down on human rights defenders in Azerbaijan"*.

During the two years since the *Jafarov* judgment, the Court's case law on Art. 18 has grown significantly, culminating in the Grand Chamber's judgment in *Merabishvili v Georgia* (No. 72508/13, 28.11.2017), in which it established a 'predominant purpose' test in assessing allegations of political-motivations behind sanctions. The test sets a high evidential standard for applicants: that – to date – nearly half of all Art. 18 judgments relate to the crackdown on human rights defenders in Azerbaijan since 2013, remains a serious cause for concern.

Hajibeyli and Aliyev v Azerbaijan

ECHR: Judgment
Freedom of expression; Admission to the Bar Association

(Nos. 6477/08 and 10414/08), 19.04.2018

Facts

The applicants, Annagi Hajibeyli and Intigam Aliyev, are both prominent lawyers and civil society activists in Azerbaijan, who have made statements and published articles in the media criticising the legal profession in the country. Following reforms to the legal profession in 1999, only members of the Azerbaijani Bar Association (ABA) could work as legal counsel. Lawyers holding a special permit to practise were provided with a right to become members of the ABA, subject to their compliance with admission requirements. However, in 2004, Annagi Hajibeyli and Intigam Aliyev, who both held such a special permit, were not invited to participate in the ABA constituent assembly and their right to be founders of the ABA was not recognised. In 2005, they applied to the ABA in order to be able to practise, but their applications were dismissed, following hearings in which they were questioned only on their views of the ABA.

On 12 January 2008, the applicants applied to the ECtHR. They argued that their right to freedom of expression (Art. 10) had been breached as they claimed they were not permitted to join the ABA because of their critical stance towards it and their statements about the poor state of the legal profession in the country. In addition, they complained of a violation of their rights to a fair trial (Art. 6) and to individual petition (Art. 34). The International Commission of Jurists (ICJ) intervened as a third party, expressing its concern about the lack of independence and impartiality of the ABA, based on the results of its mission regarding the compliance of the governance of the legal profession in Azerbaijan. (See: https://bit.ly/2yaL0VA, also EHRAC and ICJ urgent appeal on the disbarment of Yalchin Imanov: http://ehrac.org.uk/kZHx0.)

Judgment

The Court considered that the refusal of the ABA to admit the applicants constituted an interference with the applicants' right to freedom of expression (Art. 10), as it was prompted by their publicly expressed views and criticisms in their professional capacity as lawyers holding a special permit. The Court observed that the applicants had not failed to comply with any requirements for admission to practise as legal counsel and noted the failure of domestic courts to provide any reasons for refusal. The Court particularly stressed the importance of the freedom of exercise of the profession of lawyer, highlighting that lawyers' right to freedom of expression is integral to protecting the independence of the profession. Reaching the conclusion that such an interference was unjustified and not prescribed by law, the Court concluded that it constituted a breach of Art. 10.

Additionally, the Court addressed a complaint, introduced in September 2014, following the seizure by the Azerbaijani authorities of all documents regarding Mr Aliyev's pending cases before the ECtHR, including the present case. The Court recalled its position in *Annagi Hajibeyli v Azerbaijan* (No. 2204/11, 20.10.2015), another case in which this specific event was first examined, finding a violation of the

individual right of petition (Art. 34) in the instant case. Both applicants were awarded €7000 in non-pecuniary damages.

Comment

In recent years, the legal profession in Azerbaijan has become the target of repressive measures by the State, which seem aimed at restricting lawyers' ability to take on 'sensitive' cases, especially those concerning human rights violations (see: http://ehrac.org.uk/7OrIL and http://ehrac.org.uk/rlLuD). In autumn 2017, the Azerbaijani parliament approved a package of amendments to legislation governing the legal profession, essentially prohibiting those who are not members of the ABA from representing clients domestically. In the context of Azerbaijan, where the Bar Association is a highly-politicised body under state influence, this has all but decimated the ability of human rights lawyers to take cases.

In assessing this case, the ECtHR addressed *Annagi Hajibeyli*, another of the many complaints lodged by Mr Aliyev on behalf of his clients. This case highlights the ongoing persecution against civil activists expressing dissent towards the Azerbaijani authorities. The seizure of documents related to case files was soon followed by Mr Aliyev's arrest, a worrying issue which is the subject of another recently-decided case before the ECtHR (see: http://ehrac.org.uk/Ibxq1).

Rashad Hasanov and others v Azerbaijan

ECHR: Judgment
Right to liberty, politically-motivated detention

(Nos. 48653/13 et al.), 07.06.2018

Facts

The four applicants were members of NIDA, a civic movement that seeks liberty, justice, truth and change in Azerbaijan through peaceful means. In March and April 2013, they were arrested and charged for allegedly obtaining 22 Molotov cocktails and supplying them to two other NIDA members, who had been arrested earlier in March. Despite the different dates of the applicants' arrests, the wording of the charges was identical. An expert report, prepared as part of the investigation, concluded that only two devices were explosive, yet the prosecution did not alter the charges. The applicants denied all the charges, claiming that their arrests were politically motivated and that there was no evidence against them. The applicants' pre-trial detention was extended on different occasions. On 6 May 2014, the Baku Court of Serious Crimes found the applicants guilty on all counts and sentenced them to prison terms of between 7 and 8 years. The applicants were released by presidential decree on 29 December 2014 (second and third applicants) and 17 March 2016 (first and fourth applicants).

Judgment

Firstly, the Court held that the *"various inconsistencies and lacks of clarity"* in the State's case against the applicants showed that the prosecution did not demonstrate reasonable suspicion that the applicants had committed a criminal offence: it failed to provide evidence that the applicants had any connection with the Molotov cocktails in question, that they had obtained them or arranged their storage. Further, the Court held that it had not been demonstrated that any evidence in support of their requests that the applicants be remanded in custody was ever presented by the prosecution to the domestic courts. In the absence of a demonstrated reasonable suspicion for their arrest and continued detention, the Court therefore found a breach of Art. 5(1).

Secondly, the Court emphasised that it was not necessary for the applicants to bring a *"particularly inculpatory piece of evidence which clearly reveals"* ulterior purposes not allowed by Article 18 ECHR but considered, in this case, a series of "contextual factors" juxtaposed with the lack of suspicion. In particular, the Court noted that the law enforcement authorities targeted NIDA in public statements, proceedings were instituted against the applicants following NIDA's participation in anti-Government protests and the applicants' case was given special attention by the authorities. Taken together with the reports of international human rights organisations on the crackdown on civil society, the Court concluded that the applicants' arrests were aimed at silencing and punishing them for their activism, in breach of Art. 18 with Art. 5.

The applicants were awarded €20,000 each in non-pecuniary damages.

Comment

To date, the ECtHR has only found a violation of Art. 18 in twelve cases. In the case of *Aliyev v Azerbaijan* (Nos. 68762/14 and 71200/14, 20.09.18), decided three months later, the ECtHR noted that *"the events under examination in all five of these cases [against Azerbaijan] cannot be considered as isolated incidents...these judgments reflect a troubling pattern of arbitrary arrest and detention of government critics, civil society activists and human-rights defenders through retaliatory prosecutions and misuse of criminal law in defiance of the rule of law... the necessary general measures to be taken by the respondent State must focus, as a matter of priority, on the protection of critics of the Government, civil society activists and human-rights defenders against arbitrary arrest and detention. The measures to be taken must ensure the eradication of retaliatory prosecutions and misuse of criminal law against this group of individuals and the non repetition of similar practices in the future".* However, as Konstantin Dzehtsiarou writes, *"It is highly unlikely that the Azerbaijani authorities genuinely believed that they were acting in compliance with the Convention... the Court asks the Government that used criminal law to hide its real motives to reform its criminal law in order to ensure that this does not happen in future"* (see: https://bit.ly/2CGDzea). It therefore remains to be seen whether this recent body of case law will lead to any dismantling of the authorities' repression of critical voices in Azerbaijan.

Alpeyeva and Dzhalagoniya v Russia

ECHR: Judgment
Right to respect for private life

(Nos. 7549/09 and 33330/11), 12.06.2018

Facts

The applicants are former citizens of the Soviet Union who moved to the Russian Federation from Kyrgyzstan and Georgia (both former Soviet countries). They received Russian passports in 2001 and 2002 respectively. When they applied to renew them, the first applicant's passport was seized, and the second applicant was

denied issue of a new passport, on the grounds that their previous documents had been issued "in error".

In their ECtHR applications lodged in 2008 and 2011, the applicants argued that the State's actions interfered with their rights under Art. 8 ECHR to find employment, and receive medical care, pensions or social benefits. In 2010 and 2013 both applicants made successful new applications for Russian citizenship and were issued with passports.

The Government complained that the applicants had failed to inform the Court that they had subsequently been granted Russian citizenship. It argued that the first applicant's Art. 8 rights had been interfered with, but that this had been lawful and necessary in a democratic society. In relation to the second applicant, it argued that there had been no breach of Article 8, as his passport had not been seized, and he had failed to show how the refusal to exchange it had affected his rights and freedoms, except hypothetically.

Judgment

The ECtHR held that there had been an Art. 8 violation in respect of both applicants. The Court reiterated that the notion of 'private life' is broad, and stated that it might encompass a revocation of citizenship where that revocation was arbitrary, and depending on the consequences it had for the applicant.

The Court found that, while the eventual granting of Russian citizenship to the applicants was relevant, omitting this fact from the applicants' submission to the Court did not affect the substance of their complaints under the Convention, and there was no evidence that they had intended to mislead the Court. Furthermore, the Court held that the favourable decision to grant the applicants' Russian citizenship was not sufficient to deprive them of their victim status, as in itself this decision did not constitute appropriate redress for several years of statelessness.

The decisions to seize/refuse to exchange the applicants' passports were held by the Court to be arbitrary. While they were made in accordance with the law, subject to the procedural safeguards required by Art. 8, the authorities mishandled the procedures relating to the granting of citizenship, affecting the applicants' private lives so severely that it constituted an arbitrary interference. In particular, the Court criticised the State's delay in dealing with the issue between 2007, when it was brought to their attention by the Ombudsman's Special Report on the subject, and 2013, when citizenship was finally granted. On this basis the Court held that the State authorities had not acted diligently.

The consequences for the applicants were serious: they were effectively rendered stateless without legal status in Russia. In addition, the deprivation of any valid identity documents constituted a continuing interference with their private lives, as Russian citizens are required to prove their identity unusually often in daily life, such as when buying train tickets.

Each applicant was awarded €5,000 in respect of non-pecuniary damage.

> The applicants were effectively rendered stateless without legal status in Russia.

Comment

This case illustrates the ongoing difficulties regarding Russian citizenship for citizens of former Soviet states, 27 years after its dissolution. In the immediate aftermath of the USSR's collapse, any citizen of the USSR permanently residing in Russia was able to gain Russian citizenship under the 1991 Citizenship Act. Since then, however, changing requirements for documentation and negligence by State bodies responsible for issuing passports have rendered an estimated 80,000 Russian passports 'invalid' (Ombudsman's Annual Report 2012, https://bit.ly/2EdFfxp). This judgment may assist those who remain without valid passports in challenging the revocation of their citizenship.

Mariya Alekhina and others v Russia

ECHR: Judgment
Inhuman/degrading treatment in detention, fair trial, freedom of expression

(No. 38004/12), 17.07.2018

Facts

The applicants – Mariya Alekhina, Nadezhda Tolokonnikova and Yekaterina Samutsevich – are members of Pussy Riot, a Russian feminist punk band critical of the Kremlin and its connections with the Orthodox church. On 21 February 2012, five members of the band attempted to perform a protest song called 'Punk Prayer - Virgin Mary, Drive Putin Away' in Moscow's Christ the Saviour Cathedral. The applicants were arrested and charged with hooliganism motivated by religious hatred after cathedral staff members and guards complained. The District Court in Moscow concluded that the performance was motivated by religious intolerance, rather than discontent with the political climate in Russia, sentencing the applicants to two years in prison. Additionally, online access to a recording of the performance was restricted on the grounds of it being "extremist". Ms. Samutsevich's sentence was replaced with probation, and the other two applicants were released on 23 December 2013 under a general amnesty on the twentieth anniversary of the Russian Constitution.

Judgment

On 19 June 2012 the applicants applied to the ECtHR, arguing that Arts. 3, 5, 6 and 10 ECHR had been breached during their criminal prosecution in Russia. The Court analysed a number of issues, such as the treatment of the detainees during their hearings, the duration of their pre-trial detention, accessibility of secure communication with the applicants' lawyers, and the tension between freedom of expression and Orthodox believers' freedom of assembly. Previous applications brought against Russia with regards to the local system

of justice were taken into account, and implementation of domestic criminal law and arguments, submitted by the Russian Government, were examined.

The Court found that conditions before and during the hearings violated Arts. 3 and 6 (e.g. the applicants' cramped transportation to/from trial constituted inhuman and degrading treatment; the applicants' appearances in court in glass docks (surrounded by police officers and dogs) amounted to degrading treatment and the applicants' right to participate effectively in the trial court proceedings and to receive practical and effective legal assistance were unjustifiably restricted). Further, the extension of their pre-trial detention without sufficient grounds was found to be unjustified, in breach of Art. 5. Finally, the ECtHR established that banning online access to the recording, as well as the applicants' criminal conviction and imprisonment, had violated Art. 10. While Pussy Riot's performance in Moscow's Christ the Saviour Cathedral could be considered to have *"violated the accepted rules of conduct in a place of worship..., [and] the imposition of certain sanctions might in principle be justified by the demands of protecting the rights of others"*, and that an interference could be seen as pursuing a legitimate aim, the ECtHR found that *"the punishment imposed on the applicants was very severe in relation to [their] actions"*, noting that they did not disrupt any religious services, cause injury or damage to church property. The Court held that declaring their online video materials to be extremist and banning access to them was disproportionate and not necessary. The Court took particular account of the fact that the applicants were unable to participate in the proceedings during which their activity and materials were declared to be extremist.

The applicants were awarded €37,000 in total in respect of non-pecuniary damage.

Comment

The ECtHR's judgment in this case represents an unequivocal assessment that the Law on Extremism in Russia is not justified in a democratic society. In 2012, the Venice Commission expressed concerns with the Federal Law on Combating Extremist Activity, which was lacking precision in its very definition of "extremist activity": there is no requirement for activity to have an element of violence to be considered extremist, which opens the law up to arbitrariness and misuse in its interpretation. Since the performance, charges of extremism in Russia have increased fourfold, from 149 individuals imprisoned in 2011 to more than 600 individuals in 2017 (see: https://bit.ly/2JaB9om). Overall, the Court condemned the application of the Extremism Law in Russia and its "exceptionally severe" outcomes.

Angela González Carreño v Spanish Ministry of Justice

Spanish Supreme Court: Judgment
Enforcement of UN CEDAW Committee decision

(Case No. 1263/2018), 17.07.2018

Facts

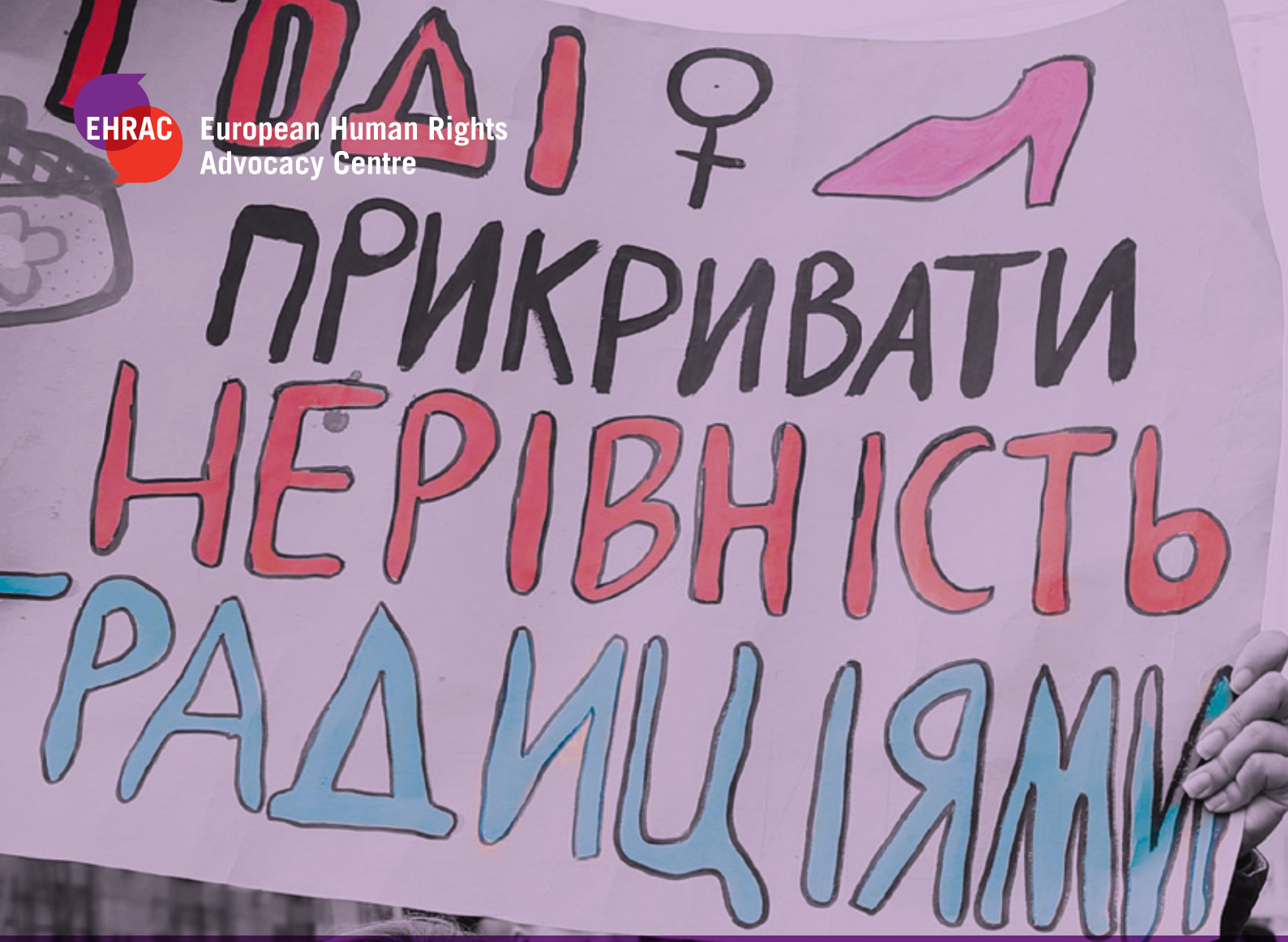
The applicant, Angela González, is a survivor of domestic violence by her former husband. In 1999, she fled the family home with her daughter Andrea, then aged three. Between 1999 and 2001, Angela lodged no fewer than 30 complaints against her husband to the police for threatening and physically abusing her. On 24 April 2003, following a court hearing on the matter, Angela's husband *"approached her and told her that he was going [to] take away what mattered most to her"*, according to Committee on the Elimination of Discrimination against Women (CEDAW) documents on the case. During a court-ordered but unsupervised visitation of Andrea by her father later that day, he murdered her and then committed suicide. Angela challenged the lack of adequate protection for her daughter and her before the Spanish courts, but her case was dismissed. She took her case to CEDAW, which in 2014 found that the actions of the Spanish State amounted to gender-based discrimination and a violation of Angela's human rights (CEDAW Communication No. 47/2012, https://bit.ly/2OOOTaF). Among other recommendations, CEDAW recommended that Spain pay Angela compensation. For over four years following the CEDAW decision, Spain refused to comply with the Committee's findings, citing the absence of domestic mechanisms which would enable the application of international decisions domestically.

Judgment

On 17 July 2018, the Spanish Supreme Court ruled that Spain must comply with the CEDAW Committee's decision in view of its obligations under the UN Convention on the Elimination of all Forms of Discrimination (the 'Convention'), ratified by Spain. The Supreme Court observed that although the Convention and its Optional Protocol do not provide for direct enforceability of the rulings of the CEDAW Committee, Art. 24 of the Convention requires State Parties to *"adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized"*. Art. 7(4) of the Optional Protocol provides that States Parties *"shall give due consideration to the views of the [CEDAW] Committee"*. Art. 96 of the Spanish Constitution affirms that international treaties *"form part of the domestic legal order"*, and that the Bill of Rights must be interpreted in conformity with the Universal Declaration of Human Rights, treaties and international agreements on the same issues. Finally, the Supreme Court considered that compliance with Treaty Body decisions is a question of the rule of law. It concluded that the *"inexistence of a specific procedure to execute the views of the CEDAW Committee ... constitutes a breach of a legal and constitutional mandate by Spain"*. The Supreme Court ordered the Spanish Administration to pay €600,000 in moral damages to Angela for the authorities' responsibility for her daughter's death.

Comment

In this case, the domestic court found that the CEDAW Committee's recommendations are effectively legally binding on national authorities, including decisions requiring payment of (unspecified amounts of) financial compensation. Similarly, following the 2015 adoption of views by the CEDAW Committee, compensation was awarded by the domestic courts to the applicants in *X and Y v Georgia* (Communication No. 24/2009, http://ehrac.org.uk/LXkUm), and new legislation enacted to enable domestic claims for compensation pursuant to Treaty Body recommendations. These domestic court decisions therefore reinforce the legal status of UN Treaty Body decisions in individual complaints, and develop the capacity of these mechanisms to award justice to victims of human rights violations, including gender-based discrimination.



EHRAC European Human Rights Advocacy Centre

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EHRAC aims to secure justice for victims of human rights violations and their families, and bring about lasting systemic change in the region. We set new international legal precedents which improve human rights standards, and advocate to ensure that state authorities fulfil their human rights obligations. We are a team of expert lawyers and NGO-management professionals, specialising in international human rights law, primarily the European Convention on Human Rights. We challenge serious human rights abuses in Russia, Georgia, Azerbaijan, Armenia and Ukraine, in partnership with committed local lawyers.

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