



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Communicated on 7 September 2018

THIRD SECTION

Application no. 7995/18
Andrey Vladimirovich RUDOMAKHA and NORTH CAUCASUS
ENVIRONMENTAL WATCH
against Russia
lodged on 17 January 2018

STATEMENT OF FACTS

The first applicant, Mr Andrey Vladimirovich Rudomakha is a Russian national, who was born in 1964 and lives in Maykop, Adygeya Republic. Mr Rudomakha is the co-ordinator (director) of the second applicant, North Caucasus Environmental Watch, a non-governmental organisation. They are represented before the Court by Mr N. Olenichev, a lawyer practising in St Petersburg.

A. The circumstances of the case

The facts of the case, as submitted by the applicants, may be summarised as follows.

On 13 September 2016 the Ministry of Justice listed the North Caucasus Environmental Watch as a “foreign agent”.

On 11 January 2017 Mr Rudomakha published on the applicant organisation’s web-site an obituary of a prominent member of the Russian environmental movement, setting out a description of his achievements and his relations with the authorities.

On 15 February 2017 the Russian telecoms regulator Roscomnadzor initiated administrative proceedings against Mr Rudomakha for the failure to indicate that the obituary had been published by a “foreign-agent” organisation, as required by the Foreign Agents Act.

On 19 April 2017 the Sovetskiy District Court in Krasnodar fined Mr Rudomakha 100,000 Russian roubles (1,671 euros) for failure to label his

publication as originating from a foreign agent. On the same day Mr Rudomakha received a copy of the judgment.

On 2 May 2017 Mr Rudomakha mailed his grounds of appeal against the decision of 19 April 2017.

On 13 June 2017 Mr Rudomakha received back his statement of appeal. An inquiry was initiated, further to Mr Rudomakha's complaint. It established that a postal employee had not delivered the letter to the court and returned it to the sender upon expiry of the storage period.

On 16 June 2017 Mr Rudomakha asked the Krasnodar Regional Court to set a new time-limit for appeal, referring to the findings of the postal inquiry.

On 17 July 2017 the Regional Court refused the request, holding that Mr Rudomakha had not acted with due diligence in the defence of his interests. Mr Rudomakha lodged an appeal against the decision of 17 July 2017.

On 12 September 2017 a deputy President of the Regional Court rejected the appeal repeating the reasoning in the decision of 17 July 2017.

B. Relevant domestic law and practice

For domestic law and practice concerning foreign agents, see *Ecodefence and Others v. Russia*, nos. 9988/13 and 48 others.

According to Article 30.3 §§ 1 and 2 of the Code of Administrative Offences, an appeal against a decision in an administrative case may be lodged within ten days after delivery or receipt of a copy of that decision. In case of failure to meet this deadline, the appeal period may be restored by the judge or other competent official at the appellant's request.

COMPLAINTS

The applicants complain under Article 10 and 11 of the Convention about the quality of the Foreign Agents Act, in particular the labelling requirement.

Mr Rudomakha also complains under Article 6 of the Convention about an arbitrary restriction on his right of access to a court.

QUESTIONS TO THE PARTIES

1. In respect of both applicants, was there a violation of Articles 10 and 11 of the Convention? In particular:

(a) Do the provisions of the Foreign Agents Act meet the "quality of law" requirements contained in Article 10 § 2 and Article 11 § 2 of the Convention? In particular:

- (i) Is the definition of the term “foreign agent” sufficiently clear and foreseeable?
 - (ii) Are the provisions on foreign financing foreseeable? Does Russian law establish any specific amount, period or form of foreign financing in order for an entity to be recognised a foreign agent?
 - (iii) Is the definition of “political activity” sufficiently clear and foreseeable in its application?
 - (iv) Are the labelling requirements formulated with sufficient clarity? Does the national law prescribe with sufficient clarity what material requires labelling or from where the material should originate? Do the domestic courts draw a distinction between publications on behalf of an organisation and those made by a private individual?
 - (v) Is the amount of the fine for violation of the Foreign Agents Act sufficiently foreseeable?
- (b) Was the interference “necessary in a democratic society”? Were the reasons for the interference “relevant” and “sufficient”? In particular:
- (i) Were the negative connotations of the term “foreign agents” considered when choosing a name for organisations receiving foreign funding? Was such branding “necessary in a democratic society”?
 - (ii) Was the restriction of applicant organisation’s access to foreign funding “necessary in a democratic society”? What were the consequences of such restriction in terms of the availability of alternative funding? The Government are requested to illustrate their response with specific examples.
 - (iii) Did registration as a foreign agent have an impact on the applicant organisation’s ability to freely express its ideas and carry out political activity? Was the suppression of the applicant organisations’ free debate and political activities necessary in a democratic society?
 - (iv) Are the additional reporting requirements applicable to the applicants – such as labelling publications, keeping separate records of income or expenses obtained from foreign sources, submitting reports on activities and the composition of their management bodies, and auditing – proportionate to the aim pursued, and do they impose an excessive burden on the applicants?
 - (v) Are the sanctions for violation of the Foreign Agents Act proportionate to the gravity of the imputed offences? Did the domestic courts weigh the amount of a fine against the financial standing of Mr Rudomakha and the potential impact of the fine on his sustainability?

2. In respect of Mr Rudomakha, was his right of access to a court under Article 6 § 1 of the Convention undermined as a consequence of his appeal having been rejected as belated through no fault of his own?