



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

ENG - 2016/1

Application Form

About this application form

This form is a formal legal document and may affect your rights and obligations. Please follow the instructions given in the "Notes for filling in the application form". Make sure you fill in all the fields applicable to your situation and provide all relevant documents.

Warning: If your application is incomplete, it will not be accepted (see Rule 47 of the Rules of Court). Please note in particular that Rule 47 § 2 (a) requires that a concise statement of facts, complaints and information about compliance with the admissibility criteria MUST be on the relevant parts of the application form itself. The completed form should enable the Court to determine the nature and scope of the application without recourse to any other submissions.

Barcode label

If you have already received a sheet of barcode labels from the European Court of Human Rights, please place one barcode label in the box below.

Reference number

If you already have a reference number from the Court in relation to these complaints, please indicate it in the box below.

A. The applicant

A.1. Individual

This section refers to applicants who are individual persons only. If the applicant is an organisation, please go to section A.2.

1. Surname

2. First name(s)

3. Date of birth

e.g. 31/12/1960

D D M M Y Y Y Y

4. Place of birth

5. Nationality

6. Address

7. Telephone (including international dialling code)

8. Email (if any)

9. Sex male female

A.2. Organisation

This section should only be filled in where the applicant is a company, NGO, association or other legal entity. In this case, please also fill in section D.1.

10. Name

Sverdlovsk Regional non-governmental organization
Sutyajnik

11. Identification number (if any)

12. Date of registration or incorporation (if any)

2 9 0 8 1 9 9 4

e.g. 27/09/2012

D D M M Y Y Y Y

13. Activity

litigation

14. Registered address

620075, Russia, Yekaterinburg, Turgenev Street, 11 - 1

15. Telephone (including international dialling code)

+73433553651

16. Email

beliaev@sutyajnik.ru

B. State(s) against which the application is directed

17. Tick the name(s) of the State(s) against which the application is directed

- | | |
|---|--|
| <input type="checkbox"/> ALB - Albania | <input type="checkbox"/> ITA - Italy |
| <input type="checkbox"/> AND - Andorra | <input type="checkbox"/> LIE - Liechtenstein |
| <input type="checkbox"/> ARM - Armenia | <input type="checkbox"/> LTU - Lithuania |
| <input type="checkbox"/> AUT - Austria | <input type="checkbox"/> LUX - Luxembourg |
| <input type="checkbox"/> AZE - Azerbaijan | <input type="checkbox"/> LVA - Latvia |
| <input type="checkbox"/> BEL - Belgium | <input type="checkbox"/> MCO - Monaco |
| <input type="checkbox"/> BGR - Bulgaria | <input type="checkbox"/> MDA - Republic of Moldova |
| <input type="checkbox"/> BIH - Bosnia and Herzegovina | <input type="checkbox"/> MKD - "The former Yugoslav Republic of Macedonia" |
| <input type="checkbox"/> CHE - Switzerland | <input type="checkbox"/> MLT - Malta |
| <input type="checkbox"/> CYP - Cyprus | <input type="checkbox"/> MNE - Montenegro |
| <input type="checkbox"/> CZE - Czech Republic | <input type="checkbox"/> NLD - Netherlands |
| <input type="checkbox"/> DEU - Germany | <input type="checkbox"/> NOR - Norway |
| <input type="checkbox"/> DNK - Denmark | <input type="checkbox"/> POL - Poland |
| <input type="checkbox"/> ESP - Spain | <input type="checkbox"/> PRT - Portugal |
| <input type="checkbox"/> EST - Estonia | <input type="checkbox"/> ROU - Romania |
| <input type="checkbox"/> FIN - Finland | <input checked="" type="checkbox"/> RUS - Russian Federation |
| <input type="checkbox"/> FRA - France | <input type="checkbox"/> SMR - San Marino |
| <input type="checkbox"/> GBR - United Kingdom | <input type="checkbox"/> SRB - Serbia |
| <input type="checkbox"/> GEO - Georgia | <input type="checkbox"/> SVK - Slovak Republic |
| <input type="checkbox"/> GRC - Greece | <input type="checkbox"/> SVN - Slovenia |
| <input type="checkbox"/> HRV - Croatia | <input type="checkbox"/> SWE - Sweden |
| <input type="checkbox"/> HUN - Hungary | <input type="checkbox"/> TUR - Turkey |
| <input type="checkbox"/> IRL - Ireland | <input type="checkbox"/> UKR - Ukraine |
| <input type="checkbox"/> ISL - Iceland | |

Subject matter of the application

All the information concerning the facts, complaints and compliance with the requirements of exhaustion of domestic remedies and the six-month time-limit laid down in Article 35 § 1 of the Convention must be set out in this part of the application form (sections E, F and G). It is not acceptable to leave these sections blank or simply to refer to attached sheets. See Rule 47 § 2 and the Practice Direction on the Institution of proceedings as well as the “Notes for filling in the application form”.

E. Statement of the facts

56.
Sverdlovsk Regional non-governmental organization Sutyajnik is a non-governmental organization (NGO) and association that was founded in 1994 in Yekaterinburg, Russia (documents 2-5). At different times it is constituted of approximately from 19 to 3 lawyers and senior law students as well as the volunteers dedicated to protect the traditional areas of human rights. Sutyajnik’s lawyers help Russian citizens and organizations enforce their rights guaranteed by the Constitution of the Russian Federation and international treaties and by litigating public interest cases. Sutyajnik defends human rights by working to bring domestic legislation and practice into conformity with international and constitutional standards. Sutyajnik’s work primarily focuses on challenging the conformity of normative acts issued by the Russian government with The European Convention of Human Rights [hereinafter the Convention or ECHR].

As a non-governmental organization (NGO) and association dedicated to protecting human rights, Sutyajnik seeks to promote the views of its members, lawyers and law students, and share their common opinion on human rights issues.

As an NGO and an association, Sutyajnik is entitled to the protection of the rights guaranteed by the Convention, including the rights and freedom of its members to associate together, the rights to freedom of expression and the rights to a fair trial.

Dr Anton Burkov is a Russian jurist and doctor in law. He holds a Bachelor degree from the Ural State Law Academy, a degree of candidate of legal science from the Tumen State University, an LLM degree in International Human Rights Law from the University of Essex and a Ph.D. from the University of Cambridge.

In 1998, Dr Anton Burkov started working for Sutyajnik as an intern. Since then, he has been working with the Sutyajnik as staff attorney, program coordinator and deputy director. He represented Sutyajnik’s interests in the proceedings more fully described below.

The Federal Law No. 7-FZ of January 12, 1996 on Non-Commercial Organizations (up-to-date with amendments and additions [LNCO]) defines NGOs, determines their civil-legal status and regulates their registration (art 1).

On July 20th 2012, the State Duma adopted the Law on Foreign Agents (Bill no. 121-FZ on Making Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-commercial Organizations Performing the Function of Foreign Agents [Law on Foreign Agents]). It came into force on November 21st 2012.

The Law on Foreign Agents modified the LNCO by creating a new category of NGOs and a related registration process. This new legislation required any non-governmental organizations receiving foreign funding and engaging in any political activity (LNCO, art 2(6)) to register with the State to be included “in the registry of non-commercial organisations exercising the functions of foreign agent” (LNCO, art 13.1(5) al. 9, (10)).

According to Law on Foreign Agents, NGOs registered as “foreign agents” shall report foreign funding and their use to authorities (Law on Foreign Agents, art 1(2) a), art 29(8) al.1) and accompany published and/or distributed materials by notes stating that they are “foreign agents” (LNCO, art 24(1) al. 5). Moreover, such NGOs’ annual bookkeeping shall be subject to mandatory auditing (LNCO, art 32(1)) and scheduled State audits shall be made at least once a year and unscheduled State audits might happen for diverse reasons (LNCO, art 32(4.5)), including upon instructions from the President, the government or the Prosecutor of the Russian Federation (LNCO, art 32(4.2) al.4).

On June 4th 2014, the State Duma amended the Law on Foreign Agents (Bill no. N. 147-FZ on Amendments to Article 32 of the Federal Law “on Non-Commercial Organizations”) to empower the appropriate authorities or authorized body, in this case the Ministry of Justice of the Russian Federation, to register all NGOs engaged in political activity and receiving foreign funding as a “foreign agent” without any consent or previous notice (LNCO, art 32(7) al.3).

Statement of the facts (continued)

57.
The Code of Administrative Offences of the Russian Federation provides that an NGO performing the functions of a “foreign agent”, which is not included in the registry, is subject to an administrative fine in the amount of 300,000 roubles (Code of Administrative Offences of the Russian Federation No. 195-Fz of December 30, 2001 (with amendments and additions), art 19.34(1) [CAO]).

According to the law, an NGO registered as “foreign agent” is prevented from participating in electoral and referendum campaigns (Federal Law No. 67-FZ of June 12, 2002 on Basic Guarantees of the Electoral Rights of the Russian Citizens and the Right to Participate in Referendum, art 3(6) [Law on Electoral Rights]) and prevented to contract with political parties (Federal Law No. 95-FZ of July 11, 2001 on Political Parties, art 31(4.1) [Law on Political Parties]).

Research shows that a vast majority of Russian natives associate the term “foreign agent” with a pejorative political connotation. In the USSR, this term had been mainly used against opponents of the regime. It is now often linked to the concept of “spy” or other pejorative concepts (The 2012 Russian Foreign Agent Law, Faculty of Law, University of Oslo, p. 41) (document 24).

By mid-2015, 20 Russian NGOs had ceased their activities in full or in part, mainly because of the Law on Foreign Agents (Opinion of the Commissioner for Human Rights, Legislation and Practice in the Russian Federation on Non-Commercial Organizations in Light of Council of Europe Standards: An Update, Strasbourg, July 9, 2015 [CommDH(2015)17], p. 5).

On May 15th 2015, the Ministry of Justice of the Russian Federation registered Sutyajnik as a “foreign agent” (document 6) without any consent according to the LNCO (art 32(7) al.3).

The Ministry of Justice of the Russian Federation brought judicial proceedings based on the May 18 2015 protocol of administrative offence (document 8) to the peace justice of the judicial area No. 5 of the Kirovsky judicial region of Yekaterinburg in order to fine Sutyajnik in the amount of 300,000 roubles (CAO, art 19.34). This decision is based on the April 9 2015 document of inspection of sutyajnik.ru web-site and the Spravka of monitoring of Sutyajnik (no date mentioned on the document) (document 7). The peace justice of the judicial area No. 5 of the Kirovsky judicial region of Yekaterinburg ruled to put the fine upon Sutyajnik on July 1st 2015 (document 9). On July 10th 2015, Sutyajnik appealed the decision (document 10). The appeal was dismissed on August 31st 2015 (document 11). Sutyajnik filed cassation to the Sverdlovsk regional court which was dismissed on November 20th, 2015 (documents 12, 13).

Sutyajnik’s budget is based on a “project budget” and is limited to the direct cost of its activities. Sutyajnik cannot afford a fine of 300,000 roubles and does not hold sufficient funds so that such a fine makes it insolvent, therefore leading it to fold and cease its activities.

On August 5th 2015, Sutyajnik introduced judicial proceedings at the Zamoskvoretskiy District Court of Moscow (document 14) [hereinafter “the case”] to challenge and cancel Sutyajnik’s forced registration as a “foreign agent”.

More than one month after introducing the proceedings Sutyajnik had received no information on the case, no notice of a hearing on the merits and no notice of a preparatory hearing, which is provided by law (article 132 of the Russian Code of Administrative Judicial Proceedings) The information available on the court website only confirmed that the application initiating proceedings had been received by court. No information was provided as to what the next procedure would be, or as to when it would take place.

On or about September 18th 2015, Dr Burkov went in person to the Court to inquire about Sutyajnik’s case. He was then given a written notice (document 15) indicating that a representative of Sutyajnik’s presence was required in court on the 29th of September 2015. The notice did not provide any more information on the substance of the meeting.

Since the law (article 132 of the Russian Code of Administrative Judicial Proceedings) provides for an obligatory preparation meeting, and since Sutyajnik was not ready for the hearing on the merits as documents requested from the defendant through the court were not yet received by the applicant, Dr Burkov expected this preparatory hearing to take place on 29 September 2015. Although Dr. Burkov objected, the trial judge presiding the hearing decided to move on to the hearing on the merits of the case. Consequently, Dr Burkov asked for an adjournment so that a preparation hearing would take place. The trial judge dismissed the request.

Statement of the facts (continued)

58.
On that same day of 29 September 2015 evidence disclosure took place at the beginning of the hearing on the merits. The documents communicated to Dr Burkov amounted to a total of 60 pages. As the law provides for evidence disclosure to take place in the preparatory stage of the judicial proceedings (Article 133-135 of the Russian Code of Administrative Judicial Proceedings), Dr Burkov objected and requested a weeklong adjournment to review the documentation and prepare for the hearing on the merits based on the information contained in the documentation. The trial judge dismissed the request and granted Dr Burkov 10 minutes to review the documentation, the equivalent of 10 seconds of reading time per page.

Under those circumstances, Dr Burkov could not duly represent and defend the interests of Sutyajnik and had no other choice but to leave the hearing.

Sutyajnik does not complain at the fact Mr. Burkov left the hearing since its rights to the guarantees of a fair trial were clearly violated and that he could in no way make Sutyajnik's case on that day.

On September 29th 2015, a judgement confirmed the decision of the Ministry of Justice of the Russian Federation to unilaterally include Sutyajnik in the registry of non-commercial organisations exercising the functions of "foreign agent" (document 16).

On September 30th 2015, Dr Burkov requested in written that the judge to provide access to the case files, particularly to the minutes of the hearing and to the decision of the judge on dismissal of Dr Burkov's challenge of the judge (отвод судьё) made at the September 29 hearing (document 17). On the same date Dr Burkov filed a complaint with the Qualification Commission of Judges in Moscow due to the described behaviour of the judge (document 18). On October 8 2015 Dr Burkov filed a motion with the judge to amend minutes of the hearing (document 19). This motion has never been addressed. On October 19 2015 the complaint to the Qualification Commission of Judges in Moscow was dismissed (document 20).

On December 18th 2015, the Moscow City Court dismissed the appeal (documents 21) of the judgement (documents 22).

A May 16 2016 cassation request to the Presidium of the Moscow City Court (documents 23) was also dismissed on June 16th 2016 (documents 24).

On August 12th 2016, Sutyajnik submitted its casation (documents 25) to the Supreme Court of the Russian Federation. It was dismissed on November 14th 2016 (documents 26).

Therefore, the September 29th 2015 judgement and its procedural flaws were upheld throughout all appellate and cassation recourses.

F. Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments

59. Article invoked	Explanation
Article 6 § 1 and 13	<p>1. Article 6 § 1 of the Convention is applicable to the applicant's case. The forced registration of a Russian NGO as a "foreign agent" is a contentious and bilateral procedure (a contrario <i>Alaverdyan v. Armenia</i> (dec.), no. 4523/04, § 35, 24 August 2010), as the LNCO provides for an appeal (art 32(7) al.4). Furthermore, the result of the proceedings, namely the registration of the applicant as a "foreign agent" is directly decisive on the right of applicant, as an NGO, to function and exist (<i>Ulyanov v. Ukraine</i> (dec.), no. 16472/04, 5 October 2010), to accomplish its objects and purpose and to freely enter into contracts which are all civil rights protected by Russian legislation (Article 3 of LNCO).</p> <p>2. The Russian Federation violated the applicant's right to a fair trial when the Zamoskoretskiy District Court of Moscow, on September 29 2015, prevented it "to argue its case with the requisite effectiveness" (<i>H. v. Belgium</i>, no. 8950/80, § 53, 30 November 1987). In particular, Dr Burkov, Sutyajnik's legal representative, did not have "the benefit of adversarial proceedings" (<i>García Ruiz v. Spain [GC]</i>, no. 30544/96, § 29, 21 January 1999) nor of equality of arms as provided by Article 6 of the Convention while Russian legislation provides that all trials shall be open and conducted on an adversarial and equal basis (Constitution of the Russian Federation, art 123(3)). He was unable to acquaint himself with the evidence adduced by the other party; did not have the opportunity to challenge effectively their arguments; and could not submit the arguments he considered relevant to the case (<i>García Ruiz v. Spain [GC]</i>, cited above). Furthermore, the trial judge's conduct was partial (<i>Micallef v. Malta</i>, no. 17056/06, § 93, 15 October 2009).</p> <p>3. The fact that Dr Burkov was not properly notified of the hearing date (<i>Fretté v. France</i>, 36515/97, §§ 49-51, 26 February 2002; <i>Beer v. Austria</i>, no. 30428/96, 6 February 2001) and was not granted the obligatory preparation meeting provided for by the Russian legislation created an imbalance between the parties and therefore violated the principle of equality of arms enshrined in Article 6 of the Convention (<i>Korolev v. Russia</i> (No.2), no. 5447/03, § 37, 1 April 2010). This imbalance was aggravated by the fact that Dr Burkov, contrary to his opponent, did not have access to all the relevant information pertaining to the case (<i>Yvon v. France</i>, no. 44962/98, § 37, 24 April 2003). Although the law provides for evidence disclosure to take place in the preparatory stage of the judicial proceedings it was not done until the beginning of the hearing on the merits.</p> <p>4. In addition, due to the trial judge's decision to summarily dismiss both Sutyajnik's adjournment requests, the applicant was not given a reasonable opportunity to present its case. Therefore, the applicant was placed at a substantial disadvantage vis-à-vis its opponent (<i>Ankerl v. Switzerland</i>, 17748/91, § 38, 23 October 1996; <i>Dombo Beheer BV v. Netherlands</i>, no. 14448/88, § 33, 27 October 1993), as it could not efficiently make its case "to [the] court with... the knowledge of the other [party's arguments] and on which [he had] .. [the] opportunity to comment." (<i>APEH Üldözötteinek Szövetsége and Others v. Hungary</i>, no. 32367/96, § 42, 5 October 2000) and Dr Burkov had no other choice but to leave the premises (<i>Fretté v. France</i>, cited above).</p> <p>5. The applicant's right to a fair trial was also violated because the trial judge's decisions deprived it from the opportunity to know and comment on its opponent's submissions and evidence (<i>Werner v. Austria</i>, no. 21835/93, § 65, 24 November 1997; <i>Ruiz-Mateos v. Spain</i>, no. 12952/87, § 63, 23 June 1993), and therefore violated the fundamental right to adversarial proceedings (<i>Werner v. Austria</i>, cited above, § 63).</p> <p>6. Finally, the applicant was prejudiced by the trial judge's behavior and did not have the benefit of being tried by an impartial tribunal (<i>Micallef v. Malta</i>, cited above). The trial judge's dismissive responses to Dr Burkov's reasonable adjournment requests not only violated the fundamental principles of equality of arms and adversarial proceedings, but also disclosed the trial judge's personal bias (Code of Judicial Ethics, art 9 and 10, adopted on VIII All-Russia Meeting of Judges on 19 December 2012). The judge's conduct is "sufficient to ground legitimate and objectively justified apprehensions" of partiality (<i>Kyprianou v. Cyprus</i>, no. 73797/01, § 121, 15 December 2005). In the present case, the clear and apparent unfairness of the proceedings</p>

Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments (continued)	
60. Article invoked	<p>Explanation</p> <p>were in direct contradiction with the necessity for tribunals in a democratic society to inspire trust amongst litigants and citizens (Donadze c. Georgie, no. 74644/01, § 39, 7 mars 2006; Beer v. Austria, cited above, § 18).</p> <p>7. Finally, no remedy was brought by Appellate courts (De Haan v. the Netherlands, no. 22839/93, §§ 52-55, 26 August 1997).</p>
Article 11	<p>8. The Law on Foreign Agents and its application to the applicant interferes with Article 11 § 1 in at least three different ways. First, a strong stigma is related to the notion of “foreign agent” in contemporary Russia. Sutyajnik shall face difficulties in order to assume a proper financing based on its projects and activities. Citizens and supporters will be reluctant to give support to an NGO tagged as a “foreign agent”. Sutyajnik is likely to refrain from welcoming foreign funding in view of the consequences and impact of being registered as a “foreign agent”. It has been established that NGOs should receive proper financing (Ramazanova and Others v. Azerbaijan, no. 44363/02, § 59, 1 February 2007 [hereinafter Ramazanova and Others]) from a wide range of sources, including foreign sources (Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe, § 50 [hereinafter Recommendation (2007)14]).</p> <p>9. Second, a heavy administrative burden is placed upon Sutyajnik and concerned NGOs as the law provides for scheduled and unscheduled State audits and reports that require resources, financial or others, which fall outside of the scope, budget and purpose of the organization. Moreover, the law does not contain provisions which would give the NGO precisions and criteria on which the State will rely to establish the date, nature and extent of such audits. Therefore an additional burden is put on Sutyajnik as it cannot even plan the resources it would need to face such audits and, thus, comply with the State requirements. Therefore, the Law on Foreign Agents not comply with Hasan and Chaush v. Bulgaria’s standards regarding the protection from State’s arbitrariness (no. 30985/96, § 84, 26 October 2000 [hereinafter Hasan and Chaush]) and does not constitute an environment that is conducive to human rights defenders (Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities (Committee of Ministers, 6 February 2008), § 2(i) [hereinafter Declaration of the Committee]). The result is that Sutyajnik, as an NGO, is at best crippled by arbitrary administrative requirements and at worst lead to a shutdown because it does not have the ability to raise the funds required to face arbitrary audit and reporting requirements. Therefore, Sutyajnik cannot accomplish its mission as an associative organization. Citizens who chose to associate and promote common values or opinions can choose the legal vehicle allowed by law and participate in a common effort to accomplish its object and purpose.</p> <p>10. Third, the 300,000 rouble fine imposed to Sutyajnik as a direct result from its involuntary registration by the State is a major threat to the organization’s very existence, which has not the financial means in order to pay it. The dissolution of an NGO is the “most drastic sanction possible” and should only happen under “exceptional circumstances of very serious misconduct” (Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan, no. 37083/03, § 63, 8 October 2009 [hereinafter Tebieti Mühafize Cemiyeti and Israfilov]). The interference with Article 11 § 1 does not meet Article 11 § 2 requirements (see Annex - Document 1).</p>
Article 10	<p>11. The Foreign Agents stigma is sure to lead to self-censorship. To avoid a threat to their mere existence as a legal organization NGO’s such as Sutyajnik are lead to refrain from ca-called “political” activities, which has not definition in Russian law, and proper funding which would normally fall within their scope and purposes and, in turn, which shall prevent them from accomplishing their work in an effective manner. Part of Sutyajnik’s objective and associative purpose is to publish facts of public interest and comment on them by bringing to the attention of judicial bodies (Vides Aizsardzibas Klubs v. Latvia, no. 57829/00, § 42, 27 May 2004 [hereinafter Vides Aizsardzibas Klubs]).</p>

G. Compliance with admissibility criteria laid down in Article 35 § 1 of the Convention

For each complaint, please confirm that you have used the available effective remedies in the country concerned, including appeals, and also indicate the date when the final decision at domestic level was delivered and received, to show that you have complied with the six-month time-limit.

61. Complaint Violations of Article 6 § 1 and 13, 11 and 10,	<p>Information about remedies used and the date of the final decision</p> <p>1. On November 14th 2016, the Supreme Court of the Russian Federation dismissed the cassation submitted by Sutyajnik on August 12th 2016 (case file number: 33a-46658) - document 26;</p> <p>2. On June 16th 2016, the Presidium of the Moscow City Court dismissed the cassation in cassation submitted by Sutyajnik on May 16th 2016 (case file number: 33a-46658) - document 24;</p> <p>3. On December 18th 2015, the Moscow City Court dismissed the appeal submitted by Sutyajnik on October 26th 2015 (case file number: 33a-46658) - document 22;</p> <p>4. On September 29th 2015, the Zamoskvoretskiy District Court of Moscow confirmed the decision of the Ministry of Justice of the Russian Federation to register Sutyajnik as a foreign agent (case file number: N 2-7107/2015) - document 16;</p> <p>5. On November 20 2015, the Sverdlovsk regional court dismissed Sutyajnik's appeal of the July 1st 2015 peace court decision which imposed on Sutyajnik the 300,000 roubles fine (case file number: N 12-368/2015) - document 13;</p> <p>6. On August 31st 2015, the Kirovsky District Court of Yekaterinburg dismissed Sutyajnik's appeal of the July 1st 2015 peace court decision which imposed on Sutyajnik the 300,000 roubles fine (case file number: N 12-368/2015) - document 11;</p> <p>7. On July 1st 2015, the Kirovsky District Court of Yekaterinburg confirmed the 300,000 roubles fine imposed on Sutyajnik by peace judge (case file number: N 5-368/2015) - document 9.</p> <p>The date of the final decision is November 14th 2016 - the date the Supreme Court of the Russian Federation dismissed the cassation submitted by Sutyajnik on August</p>
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I. List of accompanying documents

You should enclose full and legible copies of all documents. No documents will be returned to you. It is thus in your interests to submit copies, not originals. You MUST:

- arrange the documents in order by date and by procedure;
- number the pages consecutively; and
- NOT staple, bind or tape the documents.

68. In the box below, please list the documents in chronological order with a concise description. Indicate the page number at which each document may be found.

- | | |
|---|----|
| 1. Annex ("Additional 20 pages") | p. |
| 2. certificate of registration No. 942, 29 August 1994; | p. |
| 3. certificate of registration issued by Tax Ministry, 19 August 2002; | p. |
| 4. certificate of reregistration No. 942, 11 May 2005 | p. |
| 5. certificate of registration issued by Tax Ministry, 5 May 2005 | p. |
| 6. Ministry of Justice decision on forced inclusion of Sutyajnik to the foreign agent registry, 15 May 2015 | p. |
| 7. Document of inspection of sutyajnik.ru web-site and Spravka of monitoring of Sutyajnik | p. |
| 8. May 18 2015 protocol of administrative offence | p. |
| 9. July 1st 2015 peace judge decision on the 300,000 rouble fine upon Sutyajnik | p. |
| 10. July 10th 2015 Sutyajnik's appeal on the fine and two supplement explanations | p. |
| 11. August 31st 2015 decision of the Kirovsky District Court of Yekaterinburg [dismissal of the appeal on the fine] | p. |
| 12. September 9th 2015 appeal to the Sverdlovsk regional court | p. |
| 13. November 20th 2015 decision of the Sverdlovsk regional court | p. |
| 14. August 5th 2015 Sutyajnik's appeal the 15 May 2015 decision on foreign agent registration | p. |
| 15. Judicial notice (povestka) for the 29 September 2015 hearing. | p. |
| 16. September 29th 2015 decision of the Zamoskvoretskiy District Court of Moscow | p. |
| 17. September 30th 2015 request that the judge to provide access to the case files | p. |
| 18. September 30th 2015 complaint with the Qualification Commission of Judge in Moscow | p. |
| 19. October 8th 2015 motion with the judge to amend minutes of the hearing | p. |
| 20. October 19th 2015 reply by the Qualification Commission of Judge in Moscow | p. |
| 21. October 26th 2015 Sutyajnik's appeal of the 29 September 2015 decision | p. |
| 22. December 18th 2015 decision of the Moscow City Court [dismissal of the appeal] | p. |
| 23. May 16th 2016 Sutyajnik's cassation | p. |
| 24. June 16th 2016 decision the Presidium of the Moscow City Court [dismissal of the appeal in cassation] | p. |
| 25. August 12th 2016 Sutyajnik's cassation to the Supreme Court | p. |

Annex (“Additional 20 pages”)**F. Statement of alleged violations of the convention and/or protocols and relevant arguments**Article 6 § 1*Applicability of Article 6 § 1*

1. Sutyajnik’s case meets the general requirements for the applicability of Article 6 § 1 of the Convention, as it is a “dispute” related to “civil rights and obligations” (*James and Others v. the United Kingdom*, no. 8793/79, § 81, 21 February 1986).
2. The involuntary forced registration of Sutyajnik as a “foreign agent” is a contentious and bilateral procedure. The law provides for an appeal of the decision of the Russian Ministry of Justice to unilaterally include the NGO on the “foreign agent” registry (*LNCO*, art 32(7) al.4). This dispute is far from being frivolous (*Sporrong and Lonnroth v. Sweden*, no. 7152/75, § 81, 23 September 1982). As argued in this petition, it directly impacts the applicant’s right to function and exist as an NGO (*Ulyanov v. Ukraine* (dec.) no. 16472/04, 5 October 2010; *Boulois v. Luxembourg* [GC], no. 37575/04, § 90, 3 April 2012; *Bentham v. the Netherlands*, no. 8848/80, § 32, 23 October 1985), a right protected by the Russian legislation.
3. This Court’s principles in ascertaining the applicability of Article 6 § 1 of the Convention stipulate that:
 - a. [w]hether or not a right is to be regarded as civil within the meaning of

this expression in the Convention must be determined by reference to the substantive content and effects of the right - and not its legal classification - under the domestic law of the State concerned. (*König v. Germany*, no. 6232/73, § 89, 28 June 1978; see also *Kök c. Turkey*, no. 1855/02, § 34, 19 octobre 2006)

4. The consequences of the forced registration of the applicant as a “foreign agent” by the Russian State deeply affect its civil rights to exist and enter into contracts and thus the case falls within the scope of Article 6 § 1 of the Convention. This Court’s case-law has identified various types of proceedings “whose result is [regarded as] decisive for private rights and obligations”¹, many of which apply to Sutyajnik’s case.
5. The effects and sanction of the *LNCO* interfere directly with the applicant’s right to function, accomplish its objects and purposes and, ultimately, to exist as an NGO (*De Geouffre de la Pradelle v. France*, no. 12964/87, § 34, 16 December 1992). Indeed, an NGO included on the registry faces many administrative obstacles that in turn impose financial burden, such as arbitrary reporting and scheduled and unscheduled State audits. Furthermore, since the applicant was forcefully included in the registry, it was to pay a fine of 300,000 roubles [August 31st 2015 judgement]) that threatens its very legal existence.
6. Article 6 § 1 of the Convention was also found to apply to the right to a reputation (*Pocius v. Lithuania*, no. 35601/04, §§ 38-46, 6 July 2010; *Uzukauskas v. Lithuania*, no. 16965/04, §§ 32-40, 6 July 2010), which merits

¹ European Court of Human Rights, *Guide on Article 6 of the European Convention on Human Rights Right to a Fair Trial (civil limb)*, Council of Europe, 2013, para 19 (document #).

protection under Russian law (*Russian Constitution*, art 23(1)). The term “foreign agent” has a clear pejorative political connotation, which stigmatizes an NGO identified as such. There can be little doubt that such stigma has an impact on an NGO’s reputation (*mutatis mutandis Pocius v. Lithuania*, cited above, § 41; *Uzukauskas v. Lithuania*, cited above, § 35).

7. Finally, this Court has determined that proceedings consisting of two stages, where the civil right is “determined” at the second stage, fall under the scope of Article 6 § 1 (*mutatis mutandis Torri v. Italy*, no. 26433/95, § 19, 1 July 1997). The *LNCO* provides for proceedings consisting of two stages: the first where the Ministry of Justice of the Russian Federation forcefully register an NGO as a “foreign agent”, and the second when the court confirms the fine imposed (*LNCO* art 32(7) al.3, 33; *CAO*, art 19.34(1)). Since the fine detrimentally impacts on the NGO’s right to function or exist, the confirmation of the fine therefore determines a civil right. Indeed, “[t]he determination of a right entails deciding not only on the existence of that right but also on its scope or the manner in which it may be exercised [...], which obviously includes the assessment [of the fine]” (*Torri v. Italy*, cited above).

Article 11

Interference with Article 11 § 1

8. The stigma related to the notion of “foreign agent” in Russia might make it difficult for organizations to raise funding on an effective manner, as citizens do not wish to be associated with “foreign agents” and as NGOs themselves, in order to avoid being categorized as “foreign agents”, might be reluctant to

solicit foreign funding. However, access to proper financing is indeed part of the right to freedom of association and a limitation to financing constitutes an interference with it, as stated in *Ramazanova and Others* (cited above, § 59). Citizens might be reluctant to collaborate with NGOs qualified as “foreign agents”, which has possibly occurred at least in one occasion (Opinion of the Commissioner for Human Rights, Legislation and Practice in the Russian Federation on Non-Commercial Organizations in Light of Council of Europe Standards, Strasbourg, July 15, 2013 [CommDH(2013)15], p. 16) (document #). The *Law on Foreign Agents* therefore does not meet the requirement and standard expressed in the *Declaration of the Committee* (§ 2(i)), of creating a conducive environment for human rights defenders.

9. Since concerned NGOs have to report foreign funding and their use to authorities and are subject to several State audits (including unscheduled State audits without notification), the *Law on Foreign Agents* allows search and seizures that are not based on objective grounds, contrary to the *Recommendation (2007)14*, and gives to State bodies a legal discretion in terms of unfettered power that is not regulated with sufficient clarity. The law does not provide any information about why the Russian government or President could decide to plan an unscheduled audit (*LNCO*, art 32(4.2)), despite the principles formulated in *Hasan and Chaush* (cited above, § 84). Moreover, the heavy administrative burden created by the *Law on Foreign Agents* does not contribute to a conducive environment for human rights defenders, contrary to the *Declaration of the Committee’s* above-mentioned principle.
10. The amount of the fine (300,000 roubles) is a serious threat to the very

existence of Sutyajnik. Sutyajnik does not have the financial means to assume the fine: the NGO's budget does not provide any supply for fines and starting a fundraising campaign would totally distract the organization from its objects and purpose. Therefore, the fine could lead to the dissolution of Sutyajnik. The Constitutional Court of Russia found that, being excessively high, the fines provided by CAO art 19.32 are unconstitutional (Judgment of the Constitutional Court of the Russian Federation, no. 10-P of 8 April 2014). As recognized in *Recommendation (2007)14*, NGOs may conduct political activities and receive foreign funding (§ 11-15 and 50). Moreover, in *Zhechev v. Bulgaria*, this Court stated that NGOs “may campaign for a change in the legal and constitutional structures of the State”, which is without any doubt political (no. 57045/00, § 47, 21 June 2007 [hereinafter *Zhechev*]). Therefore, Sutyajnik's fail to register as a “foreign agent” can hardly be understood as a serious mistake that should lead to the organization's activities termination, which is the “most drastic sanction possible” for NGOs and should happen only under “exceptional circumstances of very serious misconduct” (*Tebieti Mühafize Cemiyeti and Israfilov*, cited above, § 63). In *Vides Aizsardzības Klubs*, this Court acknowledged that NGOs play an important role in democratic societies (cited above, § 42). Therefore they should be entitled to a legal protection as wide as possible, in respect with *Vona v. Hungaria's* principles (no. 35943/10, § 57, 9 July 2013).

Analysis of the interference with regards to Article 11 § 2

11. The *Law on Foreign Agents* is not formulated with sufficient clarity. First, the lack of clarity of the notion of “political activities”, recognized by this Court in *Zhechev* (cited above, § 55) and the lack of clarity of the law in general,

make it difficult for NGOs to know whether or not they shall register and whether or not the Ministry of Justice might decide to register them. However, according to this Court:

- a. [i]n matters affecting fundamental rights it would be contrary to the rule of law [...] for a legal discretion granted to the executive to be expressed in terms of unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion conferred on the competent authorities and the manner of its exercise. (*Hasan and Chaush*, cited above, § 84)

12. Therefore, NGOs cannot foresee whether or not they perform “political activities” and whether or not the Ministry of Justice might register them as a “foreign agent”. However, a law such as the *Law on Foreign Agent* shall be “formulated with sufficient precision to enable [litigants] to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail”, as stated by this Court in *Maestri v. Italy* (no. 39748/98, § 30, 17 February 2014).
13. According to the *ECHR*, the legitimate aims that interference to Article 11 may pursue are: national security or public safety, prevention of disorder or crime, protection of health or morals, protection of the rights and freedoms of others.
14. As an NGO dedicated in promoting human rights, it is impossible to conclude that Sutyajnik is a threat for the enjoyment of rights and freedoms by others. It is the opposite: Sutyajnik helps others enjoy their rights by enforcing rights guaranteed by the *Constitution of the Russian Federation* and international treaties and by litigating public interest cases that promote human rights. The

termination of its associative activities cannot be considered as pursuing the aim of protecting “the rights and freedoms of others”. There is no evidence that Sutyajnik poses a threat to health or moral. Lastly, there is no reasonable perspective in order to assess that Sutyajnik is a threat to national security or public safety, nor that it is a source of disorder or that it is perpetrating crimes. Moreover, neither the Ministry of Justice nor the Russian Courts have alleged that the inscription of Sutyajnik on the “foreign agents” list and the possible termination of its activities due to stigma, financial burden and fines are based on the “legitimate aims” provided by the Convention.

15. According to this Court: “[a]ny interference [to the right to freedom of association] must correspond to a “pressing social need”” (*Gorzelik and Others v. Poland*, no. 44158/98 § 95, 17 February 2004). In analysing whether or not an interference with article 11 § 1 responds to a “pressing social need”, the Court must determine if the measure is “proportionate to the legitimate aim pursued” and if “the reason adduced by the national authorities to justify [the measure] were “relevant and sufficient.”(*Ibid*, § 96)
16. The authorities have produced no documents in order to prove that Sutyajnik is a threat to one of the legitimate aims enumerated by article 11 § 2. Therefore, it is impossible to determine that the reasons adduced are “relevant and sufficient”. Considering that this Court stated that the termination of an association’s activities is the “most drastic sanction possible” (*Tebieti Mühafize Cemiyeti and Israfilov*, cited above, § 63), it is clear that the burden related to stigma, arbitrary reporting and audits and a fine of such proportion, threatens Sutyajnik’s existence and is not proportionate.

Article 10

17. In *Vides Aizsardzibas Klubs v. Latvia*, this Court stated that, in order to fulfill its role in a democratic society, an NGO should be able to publish facts of public interest and to comment on them (cited above, § 42).

18. Since there is a stigma related to the notion of “foreign agent” in Russia, NGOs, in order to avoid performing political activities and therefore being registered, can refrain themselves from publishing facts of public interest and commenting on them. This self-censorship is a direct consequence of the *Law on Foreign Agents* and would not exist without this law. Therefore, the *Law on Foreign Agents* violates NGOs right to freedom of expression by creating a situation of self-censorship and prevents them from fulfilling their tasks in an effective manner.