

**IN THE COMMITTEE ON THE
ELIMINATION OF
RACIAL DISCRIMINATION**

109th Session

**SUBMISSIONS
OF THE NET FREEDOMS PROJECT
for the consideration of the 25th and
26th Periodic Reports of the Russian
Federation under the International
Convention on the Elimination of All
Forms of Racial Discrimination**



**Net Freedoms
Project**

<https://t.me/NetFreedomsProject>

A. Introduction

1. These submissions are made by Net Freedoms Project, a group of lawyers taking court cases domestically and internationally on matters related to privacy and freedom of expression on the Internet. It is a part of the Agora International Human Rights Group.
2. These submissions will deal with the application of the anti-extremist legislation to the organisations advocating for the rights of ethnic groups and indigenous peoples. The submissions thus relate to paras. 61-88 of the Combined 25th and 26th Periodic Reports of the Russian Federation (CERD/C/RUS/25-26, 3 July 2020) and para. 8 of Committee's List of themes (CERD/C/RUS/Q/25-26, 3 March 2023). Net Freedoms Project has extensive experience in litigating cases under the Russian anti-extremist legislation which includes representing defendants in criminal and administrative offence cases, as well as representing the groups faced with prosecutorial actions seeking to declare them extremist.
3. In the Concluding observations on the 23rd and 24th periodic reports of the Russian Federation (CERD/C/RUS/CO/23-24, 20 September 2017) the Committee was concerned that the definition of extremist activity remained vague and broad, which was further exacerbated by the Criminal Code provisions with similar contents, that no clear and precise criteria on how materials may be classified as extremist were provided in the law and that such broad definitions could be used arbitrarily to silence individuals, in particular those belonging to groups vulnerable to discrimination, such as ethnic minorities, indigenous peoples or non-citizens (para. 11). The Committee was further concerned with the legislation on "foreign agents" and "undesirable organisations". It recommended different amendments to those pieces of legislation (para. 12).
4. The Combined Periodic Reports of the Russian Federation provide an outline of the anti-extremist legislation and the general statistics on its enforcement without providing information on the specific instances of its application. These submissions

will focus on the cases where organisations advocating for the rights of indigenous peoples and ethnic groups were declared extremist and the consequences that such declarations entail.

B. Cases on the application of anti-extremist legislation to the groups of ethnic activists

5. Russian anti-extremist legislation allows Russian courts to declare groups whether existing as legal entities or not as extremist on the applications of prosecutors, if such groups call for, *inter alia*, “inter-ethnic hatred”. The CERD Committee has discussed and denounced such a ruling in the 2016 case concerning the Mejlis of Crimean Tatars (2017 Concluding observations, para. 19).
6. Since the 2017 Concluding observations the Russian authorities continued and expanded the application of the anti-extremist legislation to the civil society organisations representing ethnic groups and indigenous peoples.
7. On 27 March 2020 the Supreme Court of the Republic of the Republic of Ingushetia (case no. 3a-3/2020)¹ declared extremist the Council of the Ingush Teips (*Совет тейпов ингушского народа*).² The Council’s extremist activities, qualified as “inter-ethnic hatred”, were its criticism of the agreement on the Chechen-Ingush administrative boundary and the absence of permanent solution to the 1992 Ossetian-Ingush conflict; in both cases the Council’s positions clearly concerned the territorial issues.
8. On 22 May 2020 the Supreme Court of the Republic of Bashkortostan (case no. 3ga-374/2020)³ declared extremist the Bashkir public association “Bashkort”. The association promoted the Bashkir language, political participation of the Bashkir, advocated the Bashkir participation in regional politics and was vocal on land issues. These actions, insofar as they were the advocacy in favour of the Bashkir, were deemed by the court to have been “hatred towards ethnic Russians”. Bashkort’s criticism of the then Governor of the Republic of Bashkortostan was seen as “political hatred”.
9. On 10 June 2022 the Supreme Court of the Republic of Tatarstan (case no. 3a-1/2022)⁴ declared extremist the All-Tatar Public Centre (*Всетатарский общественный*

¹ First instance judgment not available, the appeal judgment of the 3rd Court of Appeal of 29 July 2020, case no. 66a-776/2020 is available at: http://3ap.sudrf.ru/modules.php?name=sud_delo&srv_num=1&name_op=doc&number=885049&delo_id=42&new=0&text_number=1

² Teips are tribal organisations or clans self-identified through descent from a common ancestor or geographic location.

³ First instance judgment available at: https://vs--bkr.sudrf.ru/modules.php?name=sud_delo&srv_num=1&name_op=doc&number=21826054&delo_id=41&new=0&text_number=1

⁴ First instance judgment available at: https://vs--tat.sudrf.ru/modules.php?name=sud_delo&srv_num=1&name_op=doc&number=3262499&delo_id=41&new=0&text_number=1

центр). The court found that the exclusive use of Tatar in the Centre's daily work and the calls to make Tatar the only official language in Tatarstan were "hatred towards ethnic Russians". The court also found that such hatred was provoked by the Centre-organised discussions on decolonisation.

10. Most recently, on 9 March 2023 the Nalchik Town Court (case no. 2a-1465/23)⁵ dissolved the Council of Balkar Elders (*Совет старейшин балкарского народа Кабардино-Балкарской Республики*) *inter alia* on the basis of the anti-extremist legislation. This time the court found extremist the statements of the Council advocating the creation of a separate Balkar constituent entity within the Russian Federation.
11. Where appeals were filed, the superior courts, including the Russian Supreme Court in the cases of Bashkort and the Council of the Ingush Teips, upheld the above-mentioned judgments.
12. Since the 2017 Concluding observations a number of civil society organisations advocating for the rights of ethnic groups and indigenous peoples have also been designated as "foreign agents" by the Russian Ministry of Justice or as "undesirable" by the Office of the Prosecutor-General.

C. Consequences of the judicial and administrative decisions

13. While the statements attributed to the organisations in the above-mentioned cases constitute legitimate exercise of freedom of expression, the declaration of the organisations as extremist entails immediate dissolution.
14. With regard to the individual involved in the operation of the organisations declared extremist, their leaders, if they continue their activity, may face charges under article 282.2(1) of the Criminal Code which punishes 'organisation of activities of an extremist organisation' with penalties which include deprivation of liberty for 6 to 10 years. Ordinary members may be prosecuted under article 282.2(2) and may face up to 6 years in prison. Whereas the potential prosecutions of members of the Mejlis of Crimean Tatars are precluded by the interim measures adopted by the International Court of Justice,⁶ no such protection exist for the members of the organisations mentioned above.
15. The consequences of the designation as a "foreign agent" or as "undesirable" organisations were set out in the Concluding observations of the Human Rights Committee on the 7th and the 8th Periodic reports of the Russian Federation (CCPR/C/

⁵ First instance judgment available at: https://nalchiksky--kbr.sudrf.ru/modules.php?name=sud_delo&srv_num=2&name_op=doc&number=41929372&delo_id=41&new=0&text_number=1

⁶ ICJ, *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Provisional Measures, Order of 19 April 2017, ICJ Reports 2017, p. 140.

RUS/CO/7, 28 April 2015, and CCPR/C/RUS/CO/8, 1 December 2022, paras. 34-35, respectively) and were found to have been contrary to the International Covenant on Civil and Political Rights.

D. Conclusion

16. For the above reasons the Russian authorities' practices are contrary to Articles 4 and 5 of the CERD. The Committee's question as to the "measures taken to ensure that the national legal framework for monitoring and combating racist speech, in particular the Criminal Code, the Federal Law on Combating Extremist Activity and federal laws on non-commercial organizations, is not used in a manner that leads to unnecessary or disproportionate interference with freedom of expression or freedom of peaceful assembly and association in relation to the activities of civil society organizations, human rights defenders and journalists, in particular for those working on the rights of ethnic groups and Indigenous peoples" (para. 8 of the list of themes) leads to an answer that civil society activities have only been made much more complicated, even impossible.
17. We urge the Committee to put questions to the Russian delegation concerning the criminalisation of the activities of the civil society organisations advocating the rights of ethnic groups and indigenous peoples, to find that the Russian laws and practices described above violate the provisions of CERD and to call on the Russian authorities to revise the anti-extremist legislation so that it is in conformity with applicable international human rights law and to erase all the consequences of judicial and administrative decisions mentioned above.

Respectfully submitted,

This 20th of March 2023