

Russian Legislation and NGOs in Russia

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Abstract

In November 2012 a new law on NGOs comes into force, which requires NGOs in Russia with foreign funding and that are engaged in “political activities” to register as “foreign agents”. This article traces the development of Russian legislation on NGOs over the last two decades, and assesses the likely impact of this new law. It is argued that at present most NGOs are still trying to clarify the exact meaning of the vague concepts within the new law, but it seems clear that it is aimed at those NGOs deemed to be a political threat to the Putin regime.

Two of the most senior Russian human rights protection non-governmental organisations (NGOs) are now under threat of prosecution and even closure, as the result of a new Federal Law.

These NGOs are the *Moscow Helsinki Group*, founded in 1976 by a group including the physicists Yuriy Orlov and Andrei Sakharov, and its current Chair, Lyudmila Alekseeva, now aged 85, to monitor the USSR’s compliance with the Helsinki Final Act of 1975; and *Memorial*, founded in January 1989 as a “historical educational society”, with Andrei Sakharov as its first Chair. Sakharov’s close colleague Sergey Kovalyov, who served a hard labour sentence for anti-Soviet activity—setting up a branch of Amnesty International in the USSR—and became Russia’s first Human Rights Ombudsman under President Yeltsin, is a member of its Board.

I declare an interest with regard to *Memorial*. In 2003 I founded, with a grant of €1 million from the European Commission, the *European Human Rights Advocacy Centre* (EHRAC) in partnership with *Memorial’s* Human Rights Centre, to assist Russians in taking cases against Russia to the European Court of Human Rights. The project, directed by Professor Philip Leach, is still going strong, and a team of dedicated young lawyers work in *Memorial’s* headquarters in Moscow, with colleagues in Chechnya, Ingushetia and St Petersburg. *Memorial* has a network all over Russia. In 2005 EHRAC clients won the first six Chechen cases against Russia, and the first environmental case against Russia. There are now several hundred EHRAC cases.

What is this new law? I apologise for giving its full title, but it is relevant. On Wednesday 21 November 2012 the new Federal Law of 20 July 2012, No. 121-FZ “On enacting amendments to certain legislative acts of the Russian Federation regarding the regulation of activities of non-commercial organizations performing the function of foreign agents”, published on 23 July 2012 in the Russian Gazette, comes into force. In the vote on this law in the State Duma, 374 deputies voted in favour, 3 against, one abstained, and 72 did not vote at all. The amendments were based on proposals by President Putin.

On Friday 16 November 2012 an opponent of human rights activism in Russia was already licking her lips. She is a leading member of President Putin’s *United Russia* party. “Sabotage of the law on foreign agents by individual NGOs may lead to their suspension” said Olga Batalina, State Duma deputy and Assistant Secretary of the *United Russia* General Council, according to the *United Russia* press service. She continued “... a number of non-commercial organizations virtually engaged in politics and financed from abroad, such as the *Moscow Helsinki Group* or *Memorial*, have openly announced that they will sabotage this law.”

Indeed, these NGOs and many others have declared that they will not register as “foreign agents”, and will not pay any fines. Lyudmila Alekseeva told Interfax: “We have said that we are not foreign agents. We cannot brand ourselves that way. Let *United Russia* prove that *Moscow Helsinki Group* is a foreign agent. I do not regard myself as a foreign agent. I am not going to tell lies”.

There are reckoned to be at least 250,000 NGOs in the Russian Federation, though significant human rights NGOs probably number less than 50. Probably the largest number of NGOs are involved in social welfare and environmental protection. One major problem facing all human rights NGOs and many others is that of finance. The present Russian tax laws strongly discourage private philanthropy—the last of the oligarchs to spend significant sums on charitable activity, Mikhail Khodorkovsky, is still in prison. There are no significant Russian philanthropic trusts. A system of “social contracting” means that social welfare NGOs can compete for the provision of services on behalf of local and central government, and the III Congress of Non-Commercial Organisations, sponsored by the government, recently took place in Moscow, with more than 900 delegates from all of Russia’s 83 regions. But human rights protection does not benefit from government money.

It should be no surprise that all the NGOs with which I am familiar are wholly dependent on grants from the West: UK’s DFID (until 2003) and Foreign Office, the European Commission, the Open Society Founda-

tion (George Soros), USAID (until earlier in 2012 when its operations in Russia were wound up), NED, the German Friedrich Ebert and Heinrich Böll Stiftung, Dutch, Swedish and Swiss governments, and various Western charitable foundations. That is, foreign funding.

However, there is a key difference between British (or American) NGOs and those in Russia. In Britain any group of persons can found an NGO. In law this is termed an “unincorporated association”—a group of individuals who enter into an agreement as volunteers to form a body (or organization) to accomplish a purpose. The English courts have defined an unincorporated association as the situation “...where two or more persons are bound together for one or more common purposes by mutual undertakings, each having mutual duties and obligations, in an organization which has rules identifying in whom control of the organization and its funds are vested, and which can be joined or left at will”. In Britain, as in most countries, there are no formalities other than the body’s own rules or constitution, written or unwritten, and no requirement to register. Only if such a body seeks charitable status, with the tax and other privileges associated with such status, is a complex legal process of formation and regular oversight required.

It is quite different in Russia. Indeed, in the USSR there were no associations of citizens lawfully independent of the state. The *advokatura*, the Russian bar, had an unusually high degree of independence and self-management, but always subject to ultimate state control.

Moreover, in Russia there is an extraordinary degree of complexity associated with creating an NGO. First of all, there are two forms from which the founders must choose. First, there is the “public association”, according to the Federal Law “On public associations” of 19 May 1995 No.82-FZ. Second, there is the “non-commercial organisation”, according to the Federal Law “On non-commercial organisations” of 12 January 1996 No.7-FZ. I have asked experts in Russia why there are two laws covering essentially the same subject-matter. The answer is that the two laws were drafted simultaneously in two separate committees of the State Duma, and both were enacted.

Article 7 of the 1995 Law “On public associations” provides that the following may be created under the law:

- public organisation
- public movement
- public foundation
- public institution
- organ of public self-activity
- political party

All such NGOs are subject to compulsory registration with the Ministry of Justice, and to oversight (*nadzor*)

by the *prokuratura*, the Office of the General Prosecutor. The older NGOs thrived, up until 2006, and thousands more sprang up. However, there was always the possibility of state intervention.

In July 2005 I was in Nizhny Novgorod when the Russian–Chechen Friendship Society and its founder Stas Dmitrievsky, were subjected to a three-fold attack. The Ministry of Justice cancelled the Society’s registration. The Ministry of Finance determined that grants received by the Society from the European Commission and the US National Endowment for Democracy (NED) were taxable as pure profit in the hands of the Society, even though all the money had been spent on the projects for which it was donated, and subjected to strict audit. I was present when a huge tax bill including a large fine was presented to Mr Dmitrievsky. Finally, Mr Dmitrievsky was charged and convicted of “incitement to racial hatred” (his activities sought peace and friendship between Russians and Chechens). He was not imprisoned, but the result of his conviction was that under Russian law he could not be a member of an NGO.

However, the law was dramatically tightened in January 2006, when, under President Putin, Russia enacted the Federal Law “On introducing amendments to certain legislative acts of the Russian Federation”. These amendments introduced burdensome reporting requirements for NGOs, accompanied by severe penalties for non-compliance; new and similarly burdensome registration procedures for Russian and foreign NGOs operating in Russia; and new broad powers of the registration bodies to audit the activities of NGOs. The new law raised special concerns because it allowed for broad and restrictive interpretation. All human rights NGOs, including *Moscow Helsinki Group* and *Memorial* have been subjected to almost daily interference from the authorities, particularly the tax police. And the most minor errors in an application for compulsory renewal of registration can result in long delay or outright refusal.

When Medvedev was elected President in 2008, he sought to mitigate Putin’s 2006 amendments, and on 12 January 2009 a further amending law was enacted. However, any relief was short-lived.

So what does the new law entail? It introduces a new concept of the meaning of “foreign agent”. It will apply to those NGOs which “take part in political activities” and receive funding from abroad. An NGO will be considered such an organisation if it participates in “organising political acts in order to exert an influence on the taking of decisions by state organisations concerning changes in state policy exercised by them” and influences public opinion “in those aims”. Such NGOs will be entered in a special register. Religious organisations, state corporations and companies, and NGOs set

up by them, are exempt. The following areas of activity are excluded from the concept of “NGOs’ political activity”: science, culture, art, healthcare, preventative and protective work in health, social support and protection, care of mothers and children, support for people with special needs, information on healthy living, physical culture and sport, protection of flora and fauna, and charitable activity, including involvement in charity work and volunteering.

Pavel Chikov, Director of the Kazan-based NGO *AGORA*, conducted seminars on the new law in Moscow, Nizhny Novgorod, Novosibirsk, Perm, St Petersburg, Voronezh and the North Caucasus. Representatives from about 300 different NGOs took part, not all of them human rights organisations. On 5 October 2012 he was interviewed by the independent (and human rights oriented) weekly *Novaya Gazeta*.

The lawyers of *AGORA* were, he said, urgently seeking clarification of “flexible” legal terms, like “the formation of public opinion”, or “influencing decisions by government agencies”. These obscure concepts have become the characteristics of “political” NGOs. If such NGOs receive any foreign funding, they will be obliged to register as foreign agents. *AGORA*’s lawyers are convinced that these characteristics are more or less inherent in all NGOs. Moreover, most NGO leaders are not doing anything about it, even though they are threatened with severe fines and criminal prosecution for not meeting the demands of the law.

Penalties can include suspension of activity, but also fines amounting to millions of roubles for an organisa-

tion, and up to 50,000 roubles for its director. According to a newly inserted article of the Criminal Code, “Malicious evasion of the obligations of a foreign agent”, this could lead to the criminal prosecution of the NGO’s director, and imprisonment for up to four years.

Furthermore, another new Federal Law has further amended the provisions of the Criminal Code on state treason and espionage. There is a new crime: “aiming to pass on information”. This includes the gathering of any kind of information threatening the security of Russia, and passing this information to an international organisation. Even an application to the European Court for Human Rights could be punishable as state treason, if the information contained in the application threatens Russia’s security.

However, a generalised clamp-down on NGOs is not anticipated. The Putin regime specialises in what Gordon Hahn called “stealth authoritarianism”. These extraordinary measures are likely to be directed at NGOs perceived to be a political threat. According to Chikov, a number of NGOs have been told by regional offices of the Ministry of Justice “What are you getting upset about? You don’t fall under this law; you don’t hold demonstrations, and you’re not involved in elections”. However, the officials immediately went on to state that this was only their personal opinion, and they themselves were waiting for clarification from Moscow.

Moscow Helsinki Group and *Memorial* will in any event defy the new law, as will all the best known and most respected human rights NGOs. How far will Putin go in imposing his will, in this new political freeze?

About the Author

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