

Analysis

Russia's NGO Legislation: New (and Old) Developments

Diana Schmidt, Bremen

Summary

In April 2006, the Russian government issued the first executive order to implement the new non-governmental organization (NGO) legislation. This act was the first concrete step in realizing the new regulations on registration and accountability procedures for Russian non-governmental organizations and their foreign donors. After the first draft of the law had received harsh criticism from the international community and from Russian civil society, the text was amended in some respects. Nevertheless, the new regulatory framework tightens state control over Russian and foreign organizations. The measures are highly ambivalent, not least because official rhetoric is inconsistent with actual measures and bureaucratic practice. The government sought to justify the new law by referring to the fight against terrorism and money laundering. Yet the recent legislative and institutional measures have actually provided new ground for obstructing the activities of any NGO working in Russia. Eventually, the debate on the "NGO Law" needs to be seen in a broader context—there is more at stake than a mere law reform, and NGOs are not the only ones who will be affected.

The New NGO Legislation

On 15 April 2006, the Russian government issued Decree No. 212 on measures aimed at implementing certain provisions of the Federal laws regulating activities of non-commercial organizations.¹ This is the first concrete step towards implementing the highly controversial so-called "NGO Law" and towards enforcing the new regulations on registration and accountability obligations of non-profit organizations (henceforth: NGOs) in Russia. There was an international outcry when the State Duma accepted the bill at its first reading on 23 November 2005, with 370 votes for and 18 against. It was obvious that the bill was aimed at subjecting Russian and foreign non-governmental organizations to tighter state control and at obstructing their work. Critics insisted that the bill was at odds with both the Russian Constitution¹ and international standards regarding the freedom of assembly and the freedom of opinion. Harsh criticism was expressed by the United States, and also by the Council of Europe and the European Union, while the official German position remained somewhat cautious in the context of yet to be developed relations between Chancellor Merkel and President Putin. International organizations appealed to the Duma leader,

¹ This argument was frequently made by most critics, although usually without further detail. Certainly, the first draft law (adopted in Nov. 2005) was at odds with the Russian Constitution's Article 30 ("Everyone has the right to association ... the freedom of activity of public associations is guaranteed"), Article 13 (the equality of public associations), and Article 18 (the rights and freedom of the individual and citizen).

to the Russian government, and to the other G8 states, referring to Russia's pending presidency of the G8 and of the Council of Europe. The English language media, in particular, picked up on the issue. Even the Russian media became involved in the debate, after being unable or unwilling for many years to show an interest in civil society issues.

Reactions to Internal and External Criticism

Numerous Russian NGOs responded to the planned reforms with protests and active information gathering and dissemination. Yet the debate was not merely a reaction to the first reading of the bill. Already when the first draft was proposed to the Duma, the leaders of more than 80 human rights organizations drew up a joint statement (see Internet links p. 6), others issued individual petitions, sought legal advice, and gathered information about the legal frameworks regarding NGO work in other countries. Russian NGOs and the EU Delegation to Moscow approached the Russian Foreign Ministry concerning discrepancies between the Russian proposal and international standards. The ministry stalled this conversation by presenting its own survey (see internet links, p. 6) and pointed to restrictions and accountability obligations of NGOs to be found in other countries. Such obligations do, in fact, exist elsewhere. However, critics believe that all negative aspects observed elsewhere are crystallized in Russia's single "draconian" bill. In reaction to mounting criticism, the president sent Justice Minister Yuri Chaika to Strasbourg to

consult with European colleagues. Putin also suggested amending the bill according to recommendations made by the Council of Europe. Some requirements that directly contradicted international law and the Russian Constitution were indeed removed from the bill. In particular, foreign organizations are now not obliged to re-register as local organizations but will continue to be treated as foreign representations. When the framework law entered into force in April 2006, Alexei Zhafyarov, the Federal Registration Service (FRS) official responsible for the affairs of political parties and civic organizations, emphasized that most foreign organizations would have no difficulty in implementing their programs in Russia. Yet he also pointed out that some foreign grant-making organizations divert 60% of the funds to paying “the generous work of foreign experts, thus granting them a higher (by Russian standards) level of comfort when visiting our country”. While the issue of discrepancies between foreign and Russian salaries is certainly a relevant one in Russia today, it is questionable whether this debate should be opened up with a focus on the third sector and whether it makes an adequate case for these legislative measures.

The State’s Fear of Foreign Influence

President Putin has repeatedly stressed that he opposes the foreign funding of “political activities”

of NGOs in Russia and has also referred to the fight against terrorism and money laundering in justifying the need for stricter controls over financial flows to Russian NGOs. The “color revolutions” provided another discursive frame for underlining the need to prevent revolutions funded by the West. The NGO Law now ensures the state’s desired control over all financial transfers in which NGOs are involved. Paradoxically, however, the legal documents propose merely technical changes, while the president—and thus also the media—had based the argumentation on political and security aspects. Non-permissible “political activities” are not defined in the revised version of the law. And none of the existing laws (with the exception of the law on party finance) prohibits non-commercial organizations from using foreign funds to participate in political activities.

NGOs’ Fear of Bureaucratic Intervention

NGOs fear the tighter—legal—opportunities that the law gives the state to control them, and in particular the serious consequences for organizations that rely on foreign support. The legal framework will facilitate the suppression of civil society activities, may lead to the closure of many NGOs, to the withdrawal of foreign foundations from Russia, and to the termination of funds for projects that are of high relevance to Russian society. NGO representatives have also ex-

Implementation of the “NGO Law”

What is commonly called “the NGO law” is part of the broader bill “On introducing amendments to certain legislative acts of the Russian Federation,” which is aimed at revising the Civil Code, the law on closed administrative territorial formations, the law on public associations, and the law on non-profit organizations. All of them are relevant to regulating the work of NGOs, but so far only the changes to the latter have been discussed. The entire reform package was accepted by the State Duma at its third reading on 23 December, was confirmed by the Federal Council on 27 December, and was published on 10 January as “Federal Law No. 18-FZ of 10 January 2006 on introducing amendments to certain legislative acts of the Russian Federation.” The implementation of NGO-related measures has now begun, with Decree No. 212, which came into effect together with Law No. 18-FZ in April. This decree comes with six Annexes containing the forms that should be handed in by organizations in Russia for registration and reporting: Almost 190 pages altogether, to be filled in and submitted by Russian organizations until 15 April (after the financial year), and by foreign organizations until 31 October (before the planned implementation of the programs outlined). They are now required to inform the state authorities in detail about their activities and their management, the funds they receive (including donations), their assets, and the planned and current use of funds for all programs in Russia. The Russian tax authorities and the Federal Registration Service (FRS, “Rosregistratsia”), the latter having existed since 2004, are to administer this process. It is already clear that the new measures will cost the affected organizations dearly in additional staff and time, may overstretch the staff resources of many Russian groups, and may clash with the existing program schedules and organizational styles of many foreign foundations. As a further step, on 3 May 2006 President Putin signed an order introducing amendments to Decree No. 1315 on issues relating to the FRS. According to this decree, the FRS is to be expanded to 14 administrative units (from the current 12), with a maximum staff of 375 (excluding security and building maintenance staff) and a budget of over \$900,000 alone in its Federal unit (staff numbers for other federal services are: 267 for financial markets, 176 for sport, and 360 for environmental, technical, and nuclear oversight).

pressed criticism that NGOs are discriminated against in comparison to commercial enterprises, which enjoy faster registration procedures and whose registration can be rejected only on the basis of formal criteria. By contrast, the authorities can reject the registration of an NGO at their own discretion on the basis of the contents of their documents. Further, it seems unjustified that the battle against extremist activities and money laundering is fought in the NGO sector only, all the more since separate laws to combat extremism and money laundering are already in place.

In any case, the current law reforms, and the ensuing increase in bureaucratic work will paralyze civil society activities. Growing regulation by the authorities could also mean more and new forms of corruption within the system of financial assistance. As the current wording of the law is open to broad interpretation, the new regulations allow for selective and arbitrary enforcement of these new legal means of pressure. Further, the law has given considerable authority to a new governmental agency (FRS), and the Public Chamber expressed concerns that the bureaucratic apparatus will find ever-new reasons for suspending NGO activities in order to justify its own existence. Conversely, it will be a long time before objective criteria and precedents for assessing NGO activities are established in such a way that they disallow unjustified charges against organizations and their members.

The law reforms are formally aimed at all non-governmental organizations. However, experience has shown that organizations working on issues such as Chechnya and human rights are particular targets, as are individuals critical of the government who work for or with such organizations. This became apparent when the Moscow public prosecutor's office issued a warning against the executive director of Memorial, Yelena Shemkova, regarding the "inadmissibility of breaches of the law." Western human rights organizations and experts are also affected by the government's measures, as illustrated by the state's refusal to grant Bill Bowring entry into Russia where he was supposed to observe a trial against a journalist last November or by its prohibiting the German humanitarian organization Help—Hilfe zur Selbsthilfe e.V. (Help Towards Self-Help) from working in Ingushetia in the North Caucasus.

The NGO Law is Not the Only Issue

The amendment to the NGO legislation is not the only issue at stake. The activities of Russian non-governmental organizations are subject to a whole series of further regulations, including the Civil Code, taxation law, and laws on local self-government, charitable activities and foundations, state secrets, ad-

vertising, and others. For example, the—also widely debated—amendments to article 251 of the Russian Federation's Tax Code (2004) significantly affected the grant-making system as well. These amendments, which on the one hand were hailed as an initial success in the taxation of NGOs, brought about new bureaucratic restrictions for the providers and recipients of funds, on the other. The Ministry for Economic Development and the Ministry of Finance are currently working on amendments to the law on endowments. If we are talking about civil society in a broader sense, other legal frameworks have to be considered, which are also in a permanent state of reformation and amendment, including those on political parties, unions, religious associations, and business. Moreover, also foreign grant programs are being revised quite frequently, as part of both internal changes and changing bilateral agreements with Russia that include financial and technical assistance components. That Russian NGOs had to cope with an additional range of reforms over the last years, may partly explain why the latest reform has provoked less protest than probably expected by some foreign observers. Many Russian organizations that devoted their work to various social problems were certainly not prepared to engage in a battle against the state and have never seen themselves in an oppositional role.

The reforms of the NGO legislation in Russia need to be understood as part of a broader topical and temporal context. Recent events are not a surprise attack by the Russian state against Russian civil society, and regarding them as a matter of "the Kremlin vs. NGOs" would be equally simplistic. Rather, it is important to see the work (and working conditions) of civil society groups within the context of overall transformations in post-Soviet Russia, including changes in policy fields that are the center of much NGO work (environment, human rights, health etc.), and of pertinent events at home and abroad. Even before the St Petersburg Dialogue (2001), German political foundations were accused of supporting dubious institutions in Russia, the difficulties surrounding the Moscow office of the Soros Foundation (2002) implied the charge that it represented "US interests," and the presence of the British Council in Russia was questioned with reference to their financial records (2004). Even if the latest law reforms were not explicitly announced in advance, President Putin, Foreign Minister Lavrov, and FSB spokespersons had repeatedly criticized NGOs of pursuing the interests of foreign donors.

NGOs are Not the Only Issue

While the new legislation will compromise the daily work of NGOs, it will also affect fundamental

relationships between the state, Russian civil society, and foreign foundations. Foreign and Russian donor organizations have been restructuring their programs and shifting the emphasis of their work in recent years, and one significant trend can be seen in a general depoliticization of civil society activities while both donors and local organizations have become more careful not to interfere with governmental agendas.

In the future, if the implementation of the new laws force Western foundations out of Russia, another financial source of civic projects will be axed. The case against Khodorkovsky—and his foundation “Open Russia” as a side-effect—had already cut potential support from the Russian corporate sector. But an end to grant-based NGO activities will not only affect the providers and recipients of funds. So far, several thousands grants of varying sizes have been distributed in Russia every year. According to a recent study, Russian households have received services from NGOs worth 143.2 billion rubles a year (1.2% of gross domestic product), and public and religious organizations alone provide 500,000 jobs (2002 data). Nevertheless, the NGO sector cannot count on widespread support from the Russian public. Surveys continue to show a low awareness of the activities of NGOs and charitable organizations and minimal rejection of the tightened control of their finances (see surveys, p. 7).

However, NGOs are only one part of Russia’s active civil society. While many foreign donors are about to leave in disappointment, essential civil society activities in Russia are still in their beginnings, both formal and informal ones. Many formal organizations are well networked internationally and are run by experienced experts. In addition, there is also a new activism, made up of young people of a genera-

tion whose formative experiences were dominated by perestroika and who work at many different locations without fixed offices but with strong social and political commitment. Most are not formally organized and are often not in a position to cultivate expensive foreign contacts; their outreach is often “confined” to the organization of local-level seminars, to building networks within Russia, and to publishing in Internet portals, small Russian magazines or booklets that could be regarded as modern samizdat. Unfortunately, several large foundations have removed youth support from their programs, not least because activities in this area can lead to friction with state activities and ideologies.

Since all the excitement at the turn of the year, things have calmed down with regard to the Russian NGO legislation. This could be disastrous, since the actual implementation phase is only just beginning. The extent of the anticipated negative consequences remains to be seen. The EU Delegation to Moscow and the Public Chamber have announced that they will monitor future developments. The Foreign Ministry has also confirmed that the implementation of the law will be observed by the international and Russian NGO community and by the leading European structures, including the EU, the OSCE, and the Council of Europe. Nevertheless, Russian organizations perhaps rightly fear that the Western public will lose interest in the issue. For those most directly affected—Russian non-governmental organizations, foreign donor organizations, and international organizations—it is now essential to stay informed, at the very least (see Internet links p. 6).

Translation from the German: Michelle Norgate

The author

Diana Schmidt is a research associate at the Research Centre for East European Studies [Forschungsstelle Osteuropa] at the University of Bremen.

Further reading

- Forum Donorov: Donor and nonprofit organizations: What do we know about them. Forum Donorov <http://www.donorsforum.ru/images/stories/Resultsresearch.pdf> (Russian); http://www.donorsforum.ru/images/stories/research_eng.doc (English)
- Hinterhuber, Eva Maria / Rindt, Susanne 2004. Community Foundations in Russia: Philanthropy between Tradition and Rebirth, Working papers of the Maecenata Institute for Philanthropy and Civil Society, No. 14, Berlin: MAECENATA, 2004
- The Institute for Urban Economics: Role of Non-Profit Sector in Economic Development of Russia, Report undertaken as part of the project “Integration of Civil Society for Non-Profit Taxation Reforming”, Moscow 2004, http://www.urbanecomomics.ru/eng/download.php?dl_id=79

Internet links: Russian NGO legislation

Legal Texts (all in Russian):

First draft of the NGO law:

- “On introducing amendments to certain legislative acts of the Russian Federation”
<http://www.grani.ru/Society/p.98512.html>

The version that was passed:

- “Federal Law No. 18-FZ of 10 January 2006 on introducing amendments to certain legislative acts of the Russian Federation.” <http://www.rg.ru/2006/01/17/nko-poryadok-dok.html>

The first implementation order:

- Decree from 15 April 2006 No. 212 “On measures aimed at implementing certain provisions of the Federal laws regulating activities of non-profit organizations.”
http://www.government.ru/data/news_text.html?he_id=103&news_id=21081

Information update and ongoing debates:

Russian Government

- Official daily announcements of all legal measures: http://www.government.ru/data/news_list.html?he_id=103
- Russian Foreign Ministry, database on NGO legislation: <http://www.mid.ru/ns-npo.nsf/npdocs>
- Federal Registration Service (FRS - Rosregistratsia), official site: <http://www.rosregistr.ru/>

Civil Society Portals

- ASI (Agentstvo Sotsialnoi Informatsii), in Russian: <http://www.asi.org.ru/>
- Forum Donorov, in Russian: <http://www.donorsforum.ru/>
- HRO (Prava cheloveka v Rossii), in Russian: <http://hro.org/>
- ICNL (The International Center for Non-Profit Law), in English: <http://www.icnl.org/>

Various positions:

- Petition submitted by Russian organizations, online signature campaign, 10.11.2005 “Net – uzhestosh-eniiu kontrolia nad grazhdanskim obshchestvom” (“No – to stiffening the control on civil society!”)
<http://www.hro.org/ngo/about/2005/11/10-2.php> (in Russian)
- TI-Resolution, Berlin, 18.11.2005 “Grazhdanskoe obshchestvo dolzhno byt svobodno ot ograniche-nii, zaiavliaet Transperensi Interneshonal” (“Civil society must be free from restrictions, declares TI”)
http://ww1.transparency.org/pressreleases_archive/2005/dnld/Russia_resolution_14_11_05_rus.pdf
- President Putin on the first draft of the bill, 5.12.2005 (in English):
http://www.kremlin.ru/eng/speeches/2005/12/05/2202_type82912_98481.shtml
- Foreign Ministry: “Comparative Table of the Legislation of Certain States Governing NGO Activities” (in English): [http://www.mid.ru/ns-npo.nsf/9c261e4093d91a4bc325710700371000/84ec21b5ced0d064c3257177002af45a/\\$FILE/Eng.doc](http://www.mid.ru/ns-npo.nsf/9c261e4093d91a4bc325710700371000/84ec21b5ced0d064c3257177002af45a/$FILE/Eng.doc)