

**Implications of implementing the legislation regulating the activities of  
“non-commercial organizations performing the functions of a foreign agent” in Russia**

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The amendments to the Russian NGO legislation introduced in July 2012, which require NGOs accepting foreign funding and engaging in “political activities” to register as “foreign agents” and to label their publications accordingly (popularly known as the “foreign agents” law), currently constitute the highest threat to the freedom of association in the country.

This brief review is an attempt to assess the effect of these amendments on the state of the NGO sector in Russia. The review is based on data collected as a result of the monitoring conducted since March 2013 by the “Closed Society” Initiative for Information and Analysis<sup>1</sup>.

The amendments came into force more than 2 years ago, on 21 November 2014, but during the first 3 months after entering into force, they were not in fact implemented. NGOs themselves, apart from individual exceptions<sup>2</sup>, refused to apply for inclusion in the “foreign agents” register voluntarily, as they considered it illegitimate and not applicable, and the Ministry of Justice (the state agency mandated to exercise control of NGO activities) took a waiting attitude, which was accompanied by public statements of its leadership that they do not understand in what way they could apply this law.

At the end of February – beginning of March 2013 the prosecutor’s office launched a massive wave of inspections at NGOs receiving foreign funding in order to reveal potential “foreign agents” and force them to register as such. Hundreds of NGOs throughout the country were subjected to these inspections. According to an official report by the prosecutor’s office, only within the first half of 2013 it conducted about **1000** inspections<sup>3</sup>. The “Closed Society” initiative was able to document more than **300** NGO inspections during the same period, which in about one thirds of cases resulted in sanctions applied by the prosecutor’s office or other agencies, and in one quarter of cases these sanctions directly related to the “foreign agents” law.

The inspections themselves and the sanctions resulting from them led to NGOs having to take part in dozens of trials and hundreds of court hearings, in which NGOs had to defend themselves<sup>4</sup>. This led to a significant distraction of human and other resources of these NGOs from their normal activity and, in some cases, it was entirely paralyzed.

As a result of the inspections, the prosecutor’s office and the Ministry of Justice brought administrative charges for not registering as “foreign agents” against at least **37** NGOs and **7** of their leaders personally, out of which **24** groups and **5** leaders were found guilty by the courts (later **6** of these judgments were overturned by the appellation courts), while **4** cases are currently pending. The total sum of the fines due to be paid by these NGOs up to the moment is more than **6.000.000 RUB** (about 100.000 EUR).

After losing some of the administrative cases in courts, the prosecutor’s office started to use a new tactic of persecution – bringing civil law suits against NGOs “in defense of the rights and interests of an indefinite circle of persons and / or the interests of the Russian Federation” in order to compel them to

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<sup>1</sup> Website of the Initiative: <http://closedociety.org>

<sup>2</sup> In total three NGOs are known to apply to be included in the register voluntarily: “Shield and Sword” (Chuvash Republic), Foundation named after Alexander II (Moscow), and “Promotion of competition development in the CIS countries” (Moscow). In the first two cases the Ministry of Justice refused to include those organizations in the register due to the absence of legal grounds for that.

<sup>3</sup> Report by the General Prosecutor to the Federation Council, available at: [http://genproc.gov.ru/smi/interview\\_and\\_appearances/appearances/83568/](http://genproc.gov.ru/smi/interview_and_appearances/appearances/83568/)

<sup>4</sup> The “Closed Society” initiative has documented more than 100 court trials related to NGO inspections and implementation of the “foreign agents” law.

register as “foreign agents”. Such lawsuits were brought against **6** groups, and the prosecutor’s office won all of them (all these decisions have already entered into force).

Besides, at least **29** groups received notices of violations from the prosecutor’s office ordering them to register as “foreign agents” within one month of their respective dates of issue, **17** of these notices were challenged in courts and only **5** were found unlawful.

Finally, several dozens of NGOs were officially warned by the prosecutor’s office as allegedly having some characteristics of “political activity” and, thus, as potential “foreign agents”. At least **13** such warnings were challenged in courts (only **5** of these were found unlawful), and **2** were revoked by the prosecutor’s office itself. Such warnings, although formally being a “prophylactic measure” not leading to any legal consequences, due to a wide media coverage led to reputational loss for those NGOs that received them.

As despite all these sanctions the “foreign agents” register still remained empty, in June 2014 the law was further restricted by giving the Ministry of Justice powers to forcibly (involuntarily) include NGOs in the register of “foreign agents” by its own decision, as well as widening the list of grounds for conducting irregular (unscheduled) NGO inspections.

Since then, the Ministry of Justice included **53** NGOs in the register, **50** of them forcibly and **3** – voluntarily. Among those forcibly included are the most prominent, active and outspoken NGOs. Their activities, which were considered as “political”, often relate to promoting better observance of Russia’s commitments in the second and third dimensions of the OSCE (such as election monitoring, combatting torture and discrimination, defending media freedom, fighting corruption, as well as protection of the environment).

A number of groups tried to challenge in courts the decisions to include them into the register or the refusals by the Ministry of Justice to exclude them from it, and at least **5** of them have already lost their cases. Other appeals are still pending.

NGOs included in the registry are obliged to label any published material, speech, presentation, event, or consultation as originating from a “foreign agent.” Aside from that, they are subject to additional reporting and audits. Failing to follow these requirements may lead to suspension of the group’s activities without a court decision, huge fines leading to bankruptcy, and, finally, criminal charges against its leaders that may result in up to two years in prison. Up to the moment, at least two NGOs already faced administrative charges for alleged failure to comply with the reporting requirements set for “foreign agents”. In order to avoid the risk of further persecution, at least **15** groups decided to start the process of voluntary dissolution.

In general the practice of implementing the legal provisions regulating the activity of NGOs “performing the functions of a foreign agent” shows that these norms do not meet the criteria of predictability and principle of equality of all the associations before law, and they substantially weaken the guarantees of protecting NGOs from arbitrary interference of state authorities in their activities.

These provisions may be interpreted so broadly that it is impossible for an NGO to understand whether it is breaking them or not. This creates a fertile ground for selective and arbitrary application of the law based on political bias rather than legal grounds. For instance, in a number of cases, one and the same activities of an NGO have been found not to be “political” by one state agency (e.g., the Ministry of Justice), while another (e.g., the prosecutor’s office) considered them as “political”. In other cases, even the same agency could change its assessment of the same activities while repeatedly inspecting an NGO.

Statements of the Russian authorities that the “foreign agents” law only serves the purpose of ensuring transparency of foreign funding and is not discriminatory in nature are not valid, as in 2014 the authorities started to introduce measures discriminating “foreign agent” NGOs in both law and practice.

Thus, in September 2014, on the eve of the “single voting day”, the Central Electoral Commission of Russia disseminated a press release stating that the presence of observers from “foreign agent” groups at the polling stations will lead to “discrediting the institution of observers”<sup>5</sup>. As a result, in four regions independent observers from the “Golos” movement were denied access to polling stations.

In November 2014, amendments to the electoral legislation were adopted, which directly prohibited any involvement of “foreign agent” groups in electoral process, including election monitoring. Besides, amendments to the law on political parties, also signed into law in November 2014, introduced a

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<sup>5</sup> Press release available at: <http://cikrf.ru/news/cec/2014/09/12/06.html>

prohibition for parties to receive donations from “foreign agent” NGOs, as well as to make any deals with them.

Other legislative proposals put forward by the Ministry of Justice include prohibition for any state and municipal officials “to participate in the establishment and activities of NGOs performing the functions of a foreign agent, including membership in their governing bodies, public boards and other bodies” and prohibition for these NGOs to nominate members to the Public Oversight Commissions (POCs), which were created to monitor penitentiary institutions.

The authorities’ claims that the “foreign agents” provisions and their implementation are in full compliance with Russia’s international obligations are also inconsistent. Serious concerns about negative effects of this piece of legislation on the observance of freedom of association and expression, and, as a result, protection of other rights, were raised by many international human rights bodies and mechanisms, including the UN treaty bodies<sup>6</sup> and special procedures<sup>7</sup>. Detailed analysis and assessment conducted by the Council of Europe Commissioner for Human Rights<sup>8</sup> and the European Commission for Democracy through Law (Venice Commission)<sup>9</sup> clearly established that this law constitutes a gross interference with the exercise of fundamental rights, which violates relevant international standards. Most recently, the UN Human Rights Committee in April 2015 stated that the Russian authorities “should repeal or revise the legislation requiring non-commercial organizations that receive foreign funding to register as “foreign agents” with a view to bringing it in line with the State party’s obligations under the Covenant”<sup>10</sup>.

Appeals filed by a number of Russian NGOs on alleged violation of their rights by the provisions of this law are currently pending before the European Court for Human Rights.

Despite of a strong criticism of the law by nearly all the international human rights mechanisms, the authorities took no steps to repeal or amend it in order to bring it in line with existing international standards.

The decision passed by the Constitutional Court on 8 April 2014, which found these legal provisions compliant with the Russian Constitution, but at the same time gave some valuable clarifications on the way they should be implemented, unfortunately, did not help much to change the situation to better. Thus, despite of the fact that the Court directly pointed out that actions or statements of the leader or members of an NGO made in their individual capacity may not be cited as examples of “political activities” carried out by the group, the enforcement agencies widely used such arguments in later cases. Also despite the Constitutional Court’s position that the minimum level of fines for not complying with the “foreign agents” provisions should be removed from the law and advised the courts to order penalties below this minimum in administrative cases against NGOs, only in three cases did the courts rule to impose a lower fine.

Recent amendments adopted in February 2015, which introduced a procedure of removing NGOs from the register, can hardly become a remedy, as for being removed an NGO is to undergo a special

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<sup>6</sup> Please, see the UN CAT Concluding observations on the 5th periodic report of the Russian Federation at: <http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.RUS.CO.5-.doc>, UN CERD Concluding observations on the 20-22nd periodic reports of the Russian Federation at: [http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD-C-RUS-CO-20-22\\_en.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD-C-RUS-CO-20-22_en.pdf), and UN CRC Concluding observations on the 4th and 5th periodic reports of the Russian Federation at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/RUS/CO/4-5&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/RUS/CO/4-5&Lang=En)

<sup>7</sup> Please, see the statements by the Special Rapporteurs on freedom of association, human rights defenders and freedom of expression of 12 July 2012 at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12344&LangID=E> and of 14 May 2013 at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13323&LangID=E>, as well as the report of the mission by the Special Rapporteur on the independence of judges and lawyers to the Russian Federation in April 2013 at: [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A\\_HRC\\_26\\_32\\_Add.1\\_ENG.DOC](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_32_Add.1_ENG.DOC)

<sup>8</sup> Please, see the opinion of the Council of Europe Commissioner for Human Rights at: <https://wcd.coe.int/ViewDoc.jsp?id=2086667&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864>

<sup>9</sup> Please, see the opinion of the Venice Commission at: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)025-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)025-e)

<sup>10</sup> Please, see the UN HRC Concluding observations on the 7th periodic report of the Russian Federation at: [http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/RUS/CCPR\\_C\\_RUS\\_CO\\_7\\_19979\\_E.doc](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/RUS/CCPR_C_RUS_CO_7_19979_E.doc)

inspection by the Ministry of Justice, even in case its inclusion into the register was already found illegal by a court. Thus, the Ministry is freed from responsibility for the mistakes it made, and while NGOs are usually included in the register in a quick manner (within 1 day) and without their consent, an attempt to get removed from it will take them at least 3 months and additional efforts. Besides, in order to meet the criteria for removal an NGO will either have to abandon its advocacy activities that were considered as “political” or totally refuse to receive foreign funding for at least 1 year, and in case of the organization’s repeated inclusion into the register this period is extended to 3 years. It is known that at least **2** NGOs have already applied for this procedure, but their applications are yet to be reviewed, so the efficiency of the procedure it not yet clear.