



Russia's Foreign Agent law: Violating human rights and attacking civil society

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The so-called Foreign Agents Law has dire consequences for the Russian civil society. It stigmatizes and places heavy burdens on organizations that receive foreign funding and conduct activities deemed political by the authorities. The law has already hit hundreds of non-governmental organizations unwilling to register, and its chilling effect is no longer a prediction but a reality. Beginning on June 4, 2014, the Ministry of Justice may register organizations as “foreign agents” without their consent. Russia’s Constitutional Court has found the law to be fundamentally in compliance with the Constitution. However, had the court taken Russia’s international human rights obligations seriously, it would have found the law to be in clear breach.

President Vladimir Putin signed the law on July 20, 2012, and it went into force on November 21 the same year.¹ The law requires non-governmental organizations receiving funds from abroad and engaging in “political activities” to register with the Ministry of Justice as “foreign agents”. This is a loaded term with close associations to “espionage” and “treason”.² According to the law, “foreign agents” are subject to a strict control regime, including extensive annual audits, quarterly financial reporting and voluminous reporting on all activities every half year. They must mark all publications, letters, and other material, whether in paper or electronic form, as belonging to a foreign agent.

The law considers an organization to be carrying out political activity if it organizes actions aimed at influencing decision-making by state bodies or influencing public opinion. Merely financing such actions is also a way of carrying out political activities, according to the law.³

The law’s sanction regime is extensive. Non-governmental organizations that fail to register as “foreign agents” risk suspension for up to six months, by a simple decision of the authorities without a court order. Leaders that fail to comply with the law face up to four years in prison and fines up to 300,000 RUR (Euro

7,500). Organizations face fines up to 1 million RUR (Euro 25,000).

Legal battles

Ever since civil society organizations learned about the draft law, they have expressed concerns about its consequences. A prevailing view is that the law is a tool to stifle dissent, rather than a way of ensuring transparency around civil society financing. In an open letter to the members of the State Duma of July 6, 2012, seven international organizations appealed for rejection of the draft. They argued that the law would violate Russia's international human rights obligations, in particular freedom of association and expression.⁴

The letter expressed three main concerns:

- The law's concept of a foreign agent is solely linked to the source of funding, without merit or acknowledgment of the nature of the activities carried out by the organization;
- The law includes an unclear and overbroad definition of political activities, allowing for arbitrary and selective use of the law. It does not distinguish between advocacy and partisan political activity;
- The law establishes excessively strict control over activities of "foreign agents", with additional audit and reporting requirements. If a registered organization fails to comply, its executive manager can be subjected to a 300.000 RUR (7.500 EUR) fine or up to three years in prison.

A group of eleven Russian organizations applied on February 6, 2012 to the European Court of Human Rights (ECtHR), claiming that the law is in breach of the European Convention on Human Rights, Articles 10, 11, and Articles 14 and 18 taken together with Articles 10 and 11. The application claims that the legislation amounts to a structural problem that will affect more than 1000 organizations. It is currently under review.⁵

Both Russia's ombudsman and several non-governmental groups filed an appeal with the country's Constitutional Court. On April 8, 2014, the court decided that the law did not infringe on the Constitutional right to association (Article 30), and that the foreign agent designation was in the public interest. The decision did not distinguish between advocacy and partisan political activity.⁶

However, the greater part of the legal battles takes place in lower level courts across Russia, where a large number of organizations have to defend their decision not to register as "foreign agents". Much is at stake in these cases. The leaders of the organizations risk prison sentences if they fail to comply with court orders to register, while both the organizations and their leaders risk heavy fines. The organizations may face liquidation or they may decide that shutting down is a better option than endless battles in courts, absorbing the larger parts of their resources.

In several cases, organizations have won. However, organizations that have won in an administrative case may experience that prosecutors bring an almost identical case against them as a civil law suit. The Anti-Discrimination Centre "Memorial" in St. Petersburg experienced this. It won in an administrative case, only to experience that prosecutors used similar arguments as those that failed to convince the judge in the administrative case in a civil case against it. After losing this case on December 12, 2013, the court stating that it had to register as a foreign agent, the Centre appealed the verdict on January 17, 2014. At the same time, it announced that it was going to shut down. On April 8, the St. Petersburg City Court dismissed the appeal, and on April 11, the Ministry of Justice sanctioned the group's liquidation.

The LGBT organisation "Coming Out" in St. Petersburg had similar experiences of prosecutors re-using in civil law suits arguments that had been rejected in administrative cases.

According to an overview presented by Human Rights Watch, as of July 21, 2014 there have been civil law suits against five organizations, suspension of activities of two organizations, administrative court cases against nine organizations, official notices of violations by the prosecutor's office to 18 organizations, and warnings not to violate the law to 55 organizations.⁷

Confirming the validity of claims that the law lacks clear definitions, reports indicate that Russian courts differ in their application of the law. Some courts deem publishing reports online, issuing recommendations to state authorities or arranging public discussions as political activities, while others recognize these as normal civil society activities. However, all courts have so far failed to examine whether the restrictions imposed by the law are necessary and proportionate to a legitimate aim in a democratic society. In other words, the courts have failed to ensure that they honour human rights standards when applying the law in specific cases.⁸

On June 4, 2014, President Vladimir Putin signed amendments to the law, which gives the Ministry of Justice power to register organizations as "foreign agents" without their consent. Up to date, the Ministry has registered 10 organizations:

- Association "Golos" (Moscow) – June 9, 2014
- Regional "Golos" (Moscow) – June 9, 2014
- Centre for Social Policy and Gender Studies (Saratov) – June 9, 2014
- "Women of Don" (Novocherkassk) – June 9, 2014
- Kostroma Centre for Support of Public Initiatives (Kostroma) – June 9, 2014
- Interregional Human Rights Association "Agora" (Kazan) – July 21, 2014
- Regional public organization "Ecozaschita! – Women's Council" (Kaliningrad) – July 21, 2014
- "Public Verdict" Foundation (Moscow) – July 21, 2014
- Human Rights Centre "Memorial" (Moscow) – July 21, 2014
- "Lawyers for Constitutional Rights and Freedoms" / JURIX (Moscow) – July 21, 2014

This shifts the burden, forcing organizations to go to court in order to prove that they are not "foreign agents" instead of prosecutors having to prove that they are. The registered organizations will have to comply with the extra reporting requirements for "foreign agents" until an eventual victory in a court leads to de-registration. The law, however, lacks rules for de-registration, and it remains an open question whether an organization could get out of the register.

Adding to already heavy burdens

Russian authorities argue that the law is necessary in order to ensure transparency. The public has a right to know who funds activities of the civil society, they argue. In order to ensure full transparency the state has to conduct strict and regular control of foreign funded organizations to find out if they use the funds as they have declared. This is in particular important if an organization conducts political activities, making efforts to change state policies. According to President Putin, "when people are doing some political work inside the country and receive money from abroad, the society has the right to know what kind of organization this is, and where they get the funds to sponsor their existence".⁹

According to the April 8, 2014 Constitutional Court decision, organizations that engage in political activity affect the rights and freedoms of all citizens. If such organizations receive foreign funding "it cannot be excluded that they would use [the funds] in the interest of the sponsor."

Russian authorities have made a point that registers of foreign funded lobbying is common in many countries, including the US.¹⁰ However, what they fail to mention is that such registers only include

professional lobbyists for foreign states and business interests, not organizations that conduct normal civil society organization activities such as monitoring, publishing of reports, advocacy and arranging public discussions and campaigns. The US registration of “foreign agents” does not prevent US non-governmental organizations from receiving financial support from foreign organizations and countries and the register does not include such organizations.

The law and its application by Russia’s prosecutorial services and courts is part of a wider picture of introducing restrictive legislation and practices since Vladimir Putin started his third term as Russia’s President on May 6, 2012.¹¹ The law comes in addition to existing legislation that already provide a challenging work environment for non-governmental organizations, including the 2006 amendments to the law on non-commercial organizations.¹²

In early March 2013, the Russian government started a nationwide campaign of inspections to identify organizations that should register as “foreign agents” as well as to detect violations of other laws and regulations. Enormous amounts of state resources have been used to inspect thousands of organizations, leading to a large number of court cases and warnings. The inspections and the cases brought to court compels the organizations to use large part of their time and resources on fulfilling administrative requirements and defending themselves in courts instead of conducting planned activities.

In February 2014, the state Duma approved amendments to the law on non-commercial organizations, which gives further grounds for unannounced inspections of non-governmental organizations.¹³ The Duma currently discusses additional amendments that will divide the organizations into those running “essential public activities” and those conducting “political activities”. The amendment’s definition of political activities include “organizing election observation, agitation for or against a party”, or “attempting to influence the legislative processes of the state organs”.¹⁴

Why the law violates human rights

Even though the law does not prohibit any organization to exist or function, as long as it accepts to register as a foreign agent and fulfil requirements, the law may still place such burdens on civil society organizations that it amounts to violations of freedom of association, freedom of assembly and freedom of expression. It could also affect other human rights, in particular the prohibition against discrimination. One may argue that organizations that eventually choose to register as “foreign agents” are put under a more burdensome reporting regime than other organizations, and they will therefore be subject to discrimination. The right to a fair trial, the right to an effective remedy, and protection of property are other human rights that may be violated.

Russian authorities have targeted different types of organizations with the law; however, the large majority of them deals with controversial human rights, rule of law, democracy or environmental issues. The first organization brought to court by the Ministry of Justice for failure to register as a foreign agent was *Golos*, an organization that has mobilized and educated thousands of people to take part in election observations. The rights of human rights defenders, as recognized by the UN and other international organizations, is therefore also of relevance in many of the cases.

The European Convention on Human Rights, Articles 10 and 11, guarantees freedom of expression, assembly and association. Russia acceded to this Convention in 1998. The International Covenant on Civil and Political Rights, which the Soviet Union ratified in 1973, and which is binding on Russia as a successor state, includes similar provisions in Articles 19, 21 and 22.¹⁵

The 1998 UN Declaration on Human Rights Defenders is the main document guaranteeing the rights of human rights defenders to promote human rights. According to the Declaration, organizations and individuals defending human rights may seek and receive funding in order to be able to perform their work.¹⁶ Although not a legally binding document, the Declaration contains principles and rights that are based on human rights standards enshrined in other international instruments that are legally binding. The UN General Assembly adopted it by consensus.

Another important document is the October 10, 2007 Recommendation of the Council of Europe Committee of Ministers on the legal status of non-governmental organizations in Europe.¹⁷ The Committee of Ministers is the decision-making body of the Council where Ministers of Foreign Affairs of its member states meet. The Recommendation is specific on the rights of non-governmental organizations “to solicit and receive funding – cash or in-kind donations – not only from public bodies in their own state but also from institutional or individual donors, another state or multilateral agencies, subject only to the laws generally applicable to customs, foreign exchange and money laundering and those on the funding of elections and political parties” (paragraph 50).

The UN Special Rapporteur on the rights to freedom of assembly and association, Maina Kiai, has clarified the rights of civil society organizations to funding. He underlines that authorities use a variety of restrictions, both in law and in practice, ranging from failing to facilitate easy access to funding for organizations to making the process very burdensome to outright prohibition of funding. Harassment, intimidation, stigmatization and/or de-legitimization of foreign funded civil society organizations are becoming a much-used strategy. Justifications used for the use of these measures include counter-terrorism efforts, the need to preserve sovereignty or the need to ensure accountability and transparency of associations.

Confronted with these developments, Special Rapporteur Kiai underlines that freedom of association is not only a right for organizations to exist, but also a right for them to receive and use funding:

The core principle I seek to establish ... in relation to funding is that the ability to seek, receive and use funding, including foreign funding, is an integral part of the right to freedom of association. All restrictions, including those carried out for the reasons mentioned above, that do not meet the test of necessity in a democratic society or proportionality constitute a violation of the right to freedom of association.¹⁸

The UN Human Rights Council has made similar clear statements, urging states to ensure that legislation affecting the activities of human rights defenders and civil society in general comply with international human rights law. A particular important resolution adopted on March 21, 2013, specifically states the rights of human rights defenders to seek funding, including from foreign sources: “[N]o law should criminalize or delegitimize activities in defense of human rights on account of the geographic origin of funding thereto”.¹⁹

International human rights law permits states to restrict freedom of association and expression on certain conditions. Several judgments by the European Court of Human Rights have clarified the applicable principles to evaluate if such restrictions are legitimate. They should serve to balance the rights of individuals and the broader interests of a democratic society, where these interests may be in conflict. States’ interference with freedoms of assembly, association and expression must be *prescribed by law*, and designed to *serve a legitimate aim*, and *must be necessary in a democratic society*. They must be formulated with precision to enable citizens to regulate their conduct accordingly and to avoid arbitrary interference by state organs.²⁰

A state may establish a system for registration and regulation of non-governmental organizations. However, the state should design the system in a way that is compatible with its obligations under the Convention and subject to review by the Convention institutions.

According to international law, restrictions on freedom of association and expression may be imposed only in the interest of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals and for the protection of the rights and freedoms of others.²¹ In other words, restrictions can apply only if they are necessary in a democratic society. Compliance with this standard implies that the aim of imposing restrictions to the rights must be legitimate and that the means of restricting these rights must be proportionate with the aim pursued.

In summing up the human rights issues related to the “foreign agents” law, these are among the most important:

- The law is not sufficiently clear as to enable organizations that receive foreign funding to know how to comply. For instance, authorities and even courts interpret the term “political activities” differently. Some courts have accepted that normal civil society organization activities (monitoring, reporting, advocacy) is not to be categorized as “political activities”, while others do not;
- So far, authorities have mainly used the law to target organizations that deal with controversial human rights and environmental issues. Because of its lack of clarity, the law seems to serve as a perfect tool to stifle criticism by weakening the capacity of organizations that challenge state policies and practices, hampering their freedom of expression;
- The law is not sufficiently clear in procedural terms, “it does not provide the necessary legal certainty and falls short of international standards”.²² For instance, the law does not determine which authority may decide that an organization should be liquidated, or how an organization may be de-registered;
- The term “foreign agent” de-legitimizes organizations in the view of the public. The authorities could reach its stated, and legitimate, aim of transparency of funding and activities of civil society organizations without introducing the “foreign agent” concept and register. The use of the term is resulting in suspicion and distrust of the public towards certain organizations. Due to the reporting procedures that existed prior to the “foreign agents” law, authorities already knew the sources of funding, the amount of funding, and the activities of the organizations;
- Freedom of association in conjunction with freedom of expression means that an organization should be allowed to function peacefully in pursuit of its interests, free from arbitrary State intervention. In particular, the June 4, 2014 amendments, which empower the authorities to register organizations as “foreign agents” without their consent, fails to respect this right. According to human rights, States have a positive obligation to secure genuine respect for freedom of association. Registering organizations as “foreign agents” without their consent amounts to depriving them of the right to form an association in a free manner;²³
- “Foreign agents” have to comply with heavier reporting requirements than other organizations, and the law is therefore discriminatory;
- The sanctions for violating the law are very severe, and are not proportional to the wrongdoing. In particular, the authorization given to authorities to liquidate organizations that fail to comply with the law is in clear breach with freedom of association.

The law attacks the Achilles heel of the human rights movement

The international character of the human rights movement is among its primary strengths. Civil society organizations co-operate across state borders and thereby strengthen their operations. Networking, engaging in joint projects and building coalitions of specialized human rights organizations are important

features of 21-Century developments of a globalized civil society. In the same way as states may profit from each other's competencies and capacities, so do civil society organizations.

By introducing legislation like the "foreign agents" law, Russia and other states with similar restrictive laws, in effect attack the Achilles heel of the international human rights movement. Cross-border co-operation made the movement strong and influential.

The law represents interference in fundamental freedoms and rights of Russian civil society organizations that are not justified. Russian authorities can publish overviews of funding of civil society organizations without de-legitimizing them.

The law represents interference also in the rights of non-Russian civil society organizations. The Norwegian Helsinki Committee, as many other international organizations, is subject to barriers against its co-operation with Russian organizations, which is in breach of its human rights. In addition to issues linked to the "foreign agents" law, several staff members of the Norwegian Helsinki Committee, including its Secretary General, have for years been denied entry into the Russian Federation.

The law is part of a wider picture of restrictions, both for Russian civil society organizations and for foreign organizations with activities in the Russian Federation. While the "foreign agents" law raise barriers on international co-operation on funding, another law could have disastrous consequences for organizations providing information to international organizations or other states. Federal Law No. 190-FZ on making amendments to the Criminal E.Code ("Law on Treason") introduces an overbroad definition of treason "that could criminalize activities of human rights defenders and activists that are normal practice, routine working meetings (round tables) and discussions with foreign counterparts, for example providing them with information on the situation of human rights".²⁴

Attempts are also being made to "export" the law to other CIS member states where civil society organizations currently operate more freely than in the Russian Federation. The wording of a draft law on "foreign agents" presented to the Parliament of Kyrgyzstan had clearly been copied from the law already passed in Russia. The Parliament of the Kyrgyz Republic will consider the draft in September 2014.

The government of Kazakhstan is currently working on amending legislation on civil society organizations. The amendments may introduce requirements both for local and international organizations to report on their activities to the authorities in a similar manner as in Russia. A working group has already been set up within the Ministry of Culture to prepare the amendments. The idea was originally brought forward by Parliamentarians.

Echoes of the "foreign agents" law can even be heard in an EU member country. Hungary's Prime Minister, Viktor Orbán, declared on July 26, 2014 that activists paid by foreigners and definite circles of political interest represent civil society in Hungary. He informed that a Parliamentary Committee has been established to continuously monitor, register and denounce the "foreign attempts" to pursue political interests in the country.²⁵

While Russia has become a part of global systems of trade, finance, tourism, etc., it seems that Russian authorities want to insulate Russian civil society from international co-operation. Experiences show that such efforts fail in a modern world. However, the negative effect of restrictive laws such as the "foreign agents" law in terms of limiting the capacity of civil society organizations, wasting public resources on unnecessary control, and in the end undermining positive developments of state and society, is substantial.

The law should be repealed.

The Norwegian Helsinki Committee was established in 1977 as an independent human rights organization which promotes respect for human rights in Norway and internationally. The organization has a particular focus on OSCE participating States. Its main methods of working are monitoring and reporting, project cooperation and support to domestic civil society organizations and human rights education.

¹ The full name of the law is Bill no. 121-FZ, *Federal Law on Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-Commercial Organizations Performing the Function of Foreign Agents*. An unofficial translation of the law into English is available at:

<http://www.citwatch.org/upload/wysiwyg/files/ICNL%20Unofficial%20Translation%20Russian%20Enacted%20Law.pdf>

² An opinion poll carried out by the Levada Centre in September 2012 found that 62% of the respondents perceived the term negatively. Venice Commission: *Opinion on Federal law N. 121-FZ on non-commercial organisations ("Law on foreign agents"), on Federal Laws N. 18-FZ and N. 147-FZ and on Federal Law N. 190-FZ on making amendments to the criminal code ("Law on treason") of the Russian Federation*. Page 12.

[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)025-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)025-e)

³ NGO Law Monitor: Russia, <http://www.icnl.org/research/monitor/russia.html>

⁴ The letter, signed by Article 19, Civil Rights Defenders, Frontline Defenders, Human Rights House Foundation, Norwegian Helsinki Committee and the Observatory for the Protection of Human Rights Defenders, a joint program of the International Federation for Human Rights Defenders and the World Organization Against Torture, can be downloaded here:

http://www.nhc.no/no/nyheter/2012/Draft+law+on+foreign+funded+civil+society+raises+concern.b7C_wlbM4d.ips

⁵ Ecodefence, Golos and Other NGOs v. Russia. Application available at:

<https://www.yumpu.com/en/document/view/9448663/2013-02-04-application-foreign20agents-pl-ft-pl-ft-final/5>

⁶ For a critical comment, see Human Rights Watch: "Russia: Constitutional Court Upholds 'Foreign Agents' Law", available at: <http://www.hrw.org/news/2014/04/08/russia-constitutional-court-upholds-foreign-agents-law>

⁷ <http://www.hrw.org/news/2014/07/21/russia-foreign-agents-law-hits-hundreds-ngos-updated-july-21-2014>

⁸ The International Partnership for Human Rights published a report in June 2014 on the Russian court's application of the law based on observation of more than 30 court hearings affecting some of Russia's leading human rights organizations: *The Judicial Dimension of the NGO Crackdown: Application of the Foreign Agents Act by Russian Courts*. Available at:

http://www.iphronline.org/uploads/9/0/2/7/9027585/the_judicial_dimension_of_the_ngo_crackdown_june_2014.pdf

⁹ Russia Today, "Foreign agents law is here to stay – Putin". <http://rt.com/politics/putin-foreign-agents-ngo-667/>

¹⁰ The 1938 US Foreign Agents Registration Act (FARA) requires that agents representing the interests of foreign powers in a "political or quasi-political capacity" disclose their relationship with the foreign government and information about related activities and finances. The purpose is to facilitate "evaluation by the government and the American people of the statements and activities of such persons." The Ministry of Justice administers the law, and hundreds of lobbyists before Congress, the White House and the federal government from more than 100 countries are registered. http://en.wikipedia.org/wiki/Foreign_Agents_Registration_Act

¹¹ For an overview of restrictive legislation until April 2013, see Amnesty International: *Freedom under threat: Calmpdown on freedom of expression, association and assembly in Russia*, available at:

<http://www.amnesty.org/en/library/asset/EUR46/011/2013/en/d9fb0335-c588-4ff9-b719-5ee1e75e8ff5/eur460112013en.pdf>

¹² The Russian Federation Law on Introducing Amendments to Certain Legislative Acts of the Russian Federation.

¹³ The document is available <http://www.rg.ru/2014/02/25/nekom-dok.html>

¹⁴ RBK Daily, 30 July 2014: «For the NGOs engaged in politics there will be introduced taxes and new limitations», <http://www.rbcdaily.ru/politics/562949992010486>

¹⁵ For an overview of Russia’s ratification of UN treaties and co-operation with UN human rights mechanism, see the following webpage: <http://www.ohchr.org/EN/countries/ENACARegion/Pages/RUIndex.aspx>

¹⁶ Presentation of the Declaration and its text is available at:

<http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx> Article 13 of the Declaration reads:

“Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration”.

¹⁷ The document is available at: <https://wcd.coe.int/ViewDoc.jsp?id=1194609>

¹⁸ <http://www.ishr.ch/news/access-funding-vital-part-right-freedom-association>

¹⁹ UN Human Rights Council, Protecting human rights defenders, A/HRC/22/L.13, 15 March 2013, paragraph 9.

<http://daccess-dds-ny.un.org/doc/RESOLUTION/LTD/G13/120/26/PDF/G1312026.pdf?OpenElement>

²⁰ Cf. International Commission of Jurists: *Opinion on the Russian Federation Amendments to the NGO Law on Foreign Agents*, <http://ici.wpengine.netdna-cdn.com/wp-content/uploads/2014/01/Russian-NGO-law-final-formatted-ENG1.pdf>

²¹ European Convention of Human Rights, Article 11 (2).

²² Venice Commission opinion, para. 53.

²³ Venice Commission opinion, para. 62-63.

²⁴ Venice Commission opinion, para. 122.

²⁵ Viktor Orbán’s speech is available at: <http://budapestbeacon.com/public-policy/full-text-of-viktor-orbans-speech-at-baile-tusnad-tusnadfurdo-of-26-july-2014/>