

# Crackdown on civil society in Russia

A report by the Public Verdict Foundation  
with support of the EU-Russia Civil Society Forum and  
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In the past few years, the Russian Federation has adopted a number of laws significantly restricting fundamental rights and freedoms. Some of these new laws undermine the guarantees of the right to freedom of association—in particular, by introducing concepts such as 'non-profit organizations performing the functions of a foreign agent' and 'undesirable international and foreign non-governmental organizations'. Being branded a 'foreign agent' or 'undesirable organization' leads to substantial restrictions or, in certain cases, a total ban on activities, heavy fines and potential criminal charges.

## The Foreign Agents Law

Since mid-2014, a pressure campaign against Russian NGOs has been growing, primarily through the enforcement of the Foreign Agents Law. Amendments of June 4, 2014, to the legislation regulating NGOs empowered the Ministry of Justice (MoJ) to enter organizations in the foreign agents registry on the Ministry's sole discretion without any request from the NGO in question, and the Ministry has been using its new powers quite often. This triggered a new wave of checks by the Ministry of Justice and public prosecutors, sometimes also engaging experts from other government agencies. Most such checks have resulted in administrative charges against NGOs for failing to register as foreign agents, followed shortly by the Ministry of Justice forcibly entering the organization in the registry of NGOs performing the functions of foreign agents.

***As of September 11, 2015, a total of 92 organizations were listed in the foreign agents registry—five had applied for the foreign agent status voluntarily, and the other 87 were forcibly entered in the registry by the Ministry of Justice. The first five NGOs were entered in the registry in June 2014; by end-October, 2014, the registry listed 15 NGOs, another 15 organizations were added between November and December 2014 including two in November 2014, 13 in December 2014. During 2015 (as of September 11, 2015) the foreign agents registry increased by 62 NGOs including six in January 2015, six in February 2015, eight in March 2015, eight in April 2015, ten in May 2015, eight in June 2015, seven in July 2015, five in August 2015, and four in September 2015.***

A review of reasons why NGOs have been entered in the foreign agents registry reveals that foreign funding is the main criterion, broadly understood as to include funds contributed by Russian benefactors but stored in foreign accounts (as in the case of the Dynasty Foundation, where the sole donor is Russian philanthropist Dmitry Zimin).

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The second criterion of 'engaging in political activity with the purpose of influencing decision-making by public authorities aimed at changing public policies' is also interpreted broadly to potentially include any civic activity, such as a bike ride or donating books to municipal libraries, by arbitrarily branding it as political activity in the form of either political action or an attempt to influence public opinion.

*Igor Kalyapin, Chair of the 'Committee against Torture', commented on ineptitude of the 'political activity' interpretation in the law of 'foreign agents': "To label us as a 'foreign agent' NGO, the prosecutor's office accuses us in telling the public and the government authorities about torture in the hands of police and ineffective investigations by the Russian Investigation Committee. The prosecutor's office also refers to our annual picket on the International Day in Support of Victims of Torture and related publications as 'political activity' and an intention to change the Russian government policy. Therefore, according to the argument of the prosecutor's office, the Russian government policy consists of torture in the police and its concealment by the investigation authorities. As far as torture and ineffective investigation do not constitute the government policy in our country, our work cannot be considered as an intention to change it."*<sup>2</sup>

Legal provisions exempting certain types of activities<sup>3</sup> have not been observed, and NGOs listed in the registry include charitable, social and environmental organizations.

*Anna Kireeva, PR specialist of 'Bellona-Murmansk' describes the challenge her environmental NGO faces: "This year the Russian Ministry of Justice conducted an unscheduled inspection in our office following unknown denunciation. As a result, 'Bellona-Murmansk' founding documents and its 20-year long working materials were referred to as 'political activity.' The most surprising fact was that a year ago the Murmansk Ministry of Justice did not find any 'political activity' in our work. Moreover, two years ago the Murmansk Prosecutor's Office inspection did not find any signs of political activity either. We have not changed anything in our work – we publish reports on environmental issues, organise round table discussions, seminars and conferences... 'Bellona-Murmansk' decided not to litigate the allegations of the Ministry of Justice. We think there is no chance to win the case. Today, 'Bellona-Murmansk' has to terminate its work as a Russian environmental organisation."*<sup>4</sup>

As a new aspect of the more recent checks performed since November 2014, NGOs subjected to such inspections have almost simultaneously faced both administrative proceedings for failure to register as foreign agents and involuntary entry in the registry. Administrative proceedings usually result in fines of 300,000 to 500,000 rubles for the organization and 100,000 to 300,000 rubles for its director. Despite the Constitutional Court's ruling of April 8, 2014, judges rarely keep administrative fines below the lower limit—we know of only seven cases against NGOs where fines ranged between 50,000 and 200,000 rubles, and of just seven cases where administrative proceedings against NGOs for failing to register as foreign agents were dropped after the Constitutional Court's ruling. Only in three cases against NGOs, Russian courts refused to find administrative violations. In September 2015, a supervisory court

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<sup>2</sup> Foreign agents have been discovered in Mari El (in Russian), 25.01.2015, Vash Novy Den', <http://www.vnd12.ru/news/obschestvo/4083-v-mariy-el-poyavilis-inostrannye-agenty.html>

<sup>3</sup>"Political activity shall not include activity in fields such as research, culture, art, health care, public health and disease prevention, social support and social protection, motherhood and childhood protection, social support of people with disabilities, health promotion, physical culture and sports, plant and wildlife protection, charitable work, and support of philanthropy and volunteerism," article 2, para 6, of the Federal Law of 12 January 1996 № 7-FZ on Nonprofit Organizations.

<sup>4</sup> Branded 'agents' for assistance to refugees? (in Russian), 21.04.2015, Radio Liberty/Radio Free Europe, <http://www.svoboda.org/content/transcript/26970192.html>

overturned a prior finding of administrative violation against the Golos Association handed down in April 2013 and followed in April 2014 by the Russian Constitutional Court's decision that it should be reversed; thus, it took the authorities more than two years to finally issue a lawful and well-founded decision. In another two cases, a first-instance court refused to rule against the Kaliningrad Human Rights Center in January 2015 and the Press Development Institute - Siberia (Novosibirsk) in April 2015. In the remaining four cases, the administrative charges were dropped due to procedural irregularities, such as expiration of the statute of limitations. In all other cases (several dozens cases), administrative fines reached 300,000 rubles and more. In total, the amount of penalties imposed on NGOs for refusing to register voluntarily as foreign agents has already exceeded 10 million rubles.

In no known instance of being forcibly included by MoJ in the foreign agents registry have NGOs accepted the Ministry's actions as legitimate. Instead, NGOs have declared being prepared to dissolve rather than accept the stigmatizing and misleading label of 'foreign agent' imposed on them. The vast majority of organizations entered in the registry against their will have challenged or are planning to challenge this decision in court. However, in no known case to date has a Russian court overturned the Ministry's decision to forcibly enter an NGO in the foreign agents registry.

*Natalia Taubina, Director of the 'Public Verdict' Foundation, described the organisation's position regarding the 'foreign agents' law: "The Russian Ministry of Justice forcefully enlisted us in the registry [of 'foreign agents'] on the grounds of the Prosecutor's order, which we were litigating in the court at the very same time. We do not accept this label and try to contest it in the court, while submitting all necessary reports. We state that the Public Verdict's independence and objectivity is based on a variety of its funding sources – institutional and private, Russian and international. Today's budget of 'Public Verdict' is mainly formed from the federal budget, foreign charitable foundations, intergovernmental charitable foundations and private donations. I think that today's option that gives an NGO a chance to leave the registry is detrimental: you can be discharged from the list only when you renounce your foreign funding. While the law gives two main grounds for enlistment: foreign funding and engagement into 'political activity', it provides only one way out of the registry (unless you do not want to shut your NGO down) – to give up foreign funding. This means that the 'political activity' charge can still be applied to the rest of NGOs. 'Public Verdict' will continue its original work and keep its founding principles. If they drain our budget with the fines for not labeling ourselves as 'foreign agent,' we will have to liquidate our legal entity. But the team will continue its work."*<sup>5</sup>

In late June and early July 2015, the Russian Ministry of Justice sent out warnings to several Russian NGOs, previously entered involuntarily in the foreign agents registry, demanding that the said NGOs label all their materials with an indication that the organization is listed in the foreign agents registry, otherwise they would be in violation of the Code of Administrative Offences.<sup>6</sup> Following the Ministry of Justice's warnings, Roskomnadzor filed reports of administrative violations against at least four NGOs for failing to indicate the foreign agent status on their materials. Just as many experts feared would

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<sup>5</sup> Natalia Taubina on the Registry of 'foreign agents' (in Russian), 22.06.2015, Human Rights in Russia, <http://hro.org/node/22553>

<sup>6</sup> "Publication and/or dissemination of materials, including through mass media and/or the internet, by a non-profit organization acting as a foreign agent without specifying what such materials are published and/or disseminated by a non-profit organization acting as a foreign agent is punishable by an administrative fine of 100,000 to 300,000 rubles for officials and 300,000 to 500,000 for legal entities," article 19.34, part 2, of the Russian Code of Administrative Offences.

happen, the vague wording of the law has led to abuse, such as the authorities trying to punish NGOs for not placing the 'foreign agent' label on reprinted or reposted materials produced by other organizations; also, Roskomnadzor would file separate reports of violations for each published material, so that NGOs consistently posting materials on their website can face as many reports as their publications. As of September 4, 2015, Russian courts have considered reports filed against two organizations; in the case of the Interregional Committee Against Torture, the court imposed a fine of 300,000 rubles on the NGO for not placing a 'foreign agent' label on a leaflet with quotations from the Russian Constitution distributed on the International Day in Support of Victims of Torture on June 26. In the case of the 'Memorial' Human Rights Center, two reports of administrative violations were filed, both concerning the same material posted by the 'Memorial' HR Center on the internet, but produced by a different organization—the 'Memorial' International Society. The court found violations in both cases and fined the 'Memorial' Human Rights Center 600,000 rubles for failing to put the 'foreign agent' label on materials produced by another legal entity. Both the Committee Against Torture and the 'Memorial' Human Rights Center have appealed the decisions. In yet another two cases—the Sakharov Center and Transparency International Russia—court hearings on reports of administrative violations are scheduled for September 2015.

In March 2015, new amendments to the legislation regulating NGOs came into force; they established a procedure for taking NGOs off the foreign agents registry. Organizations which have not received foreign funding and/or have not engaged in political activity for at least a year can ask MoJ to take them off the registry; the Ministry of Justice will then conduct an ad-hoc check to verify that the NGO in question does not receive foreign funding and/or does not engage in political activity and decide within three months whether the organization may be removed from the registry. As of September 11, 2015, six NGOs have been deleted from the registry following their dissolution, and three more have been removed following MoJ's ad-hoc checks confirming that they were not receiving any foreign funding.

It should be noted, however, that the foreign agents registry on MoJ's website still displays the entries of all NGOs ever included in the registry even after they have been officially removed.

*Said Svetlana Makovetskaya, Director of the GRANI Centre in Perm on the NGO's discharge from the registry of 'foreign agents' NGOs: "It is very important for us not to spend any more minute in the registry of 'foreign agents' NGOs. We have never worked according to someone's order and we consider the phrase 'foreign agent functions' inappropriate. After being discharged from the registry, GRANI Centre reiterates its position: we do not engage in political activity and our enlistment in the registry was erroneous. We will maintain this stance in the court hearings in July. Our main goal is still the same: we help people to participate in the decision-making process. Neither character, nor scale of our usual work has been changed after the enlistment. Today, we are satisfied with the gained results and can admit that it is better for us to be out of the registry. We remember, though, that there are still many good NGOs enlisted in the registry."*<sup>7</sup>

The foreign agents law and its enforcement have had a stifling impact on Russia's civil society. Dozens of organizations have decided to dissolve. As a result, Russia has lost an NGO defending the rights of Roma and offering multiple support programs for vulnerable citizens (the 'Memorial' Anti-Discrimination Center was dissolved in 2014), the unique 'Perm-36' Museum, and a number of research and

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<sup>7</sup> Svetlana Makovetskaya: *I refuse to get used to the 'foreign agent' title* (in Russian), 23.06.2015, Human Rights in Russia, <http://hro.org/node/22578>

educational centers. Organizations are forced to reconsider their programs and close some of them either because the 'foreign agent' label makes running them impossible or for lack of support. A few organizations have decided not to accept foreign funding; however, none of the NGOs entered in the foreign agents registry has been awarded any of the so-called 'presidential grants' in Russia in 2015. In addition to forced dissolutions, NGOs branded as 'foreign agents' have been legally prohibited from monitoring elections, while debates are ongoing in the government on whether they should be banned from yet more types of activities, such as serving on Public Observation Commissions engaged in civilian monitoring of places of detention, or collecting and analyzing data on law enforcement practices.

*"Pressure against the museum began in the summer of 2012, when the authorities, under the pretext of sequestering the regional budget, refused to host the annual Pilorama [Sawmill] Civil Society Forum at the former political prison [i.e. the 'Perm-36' Museum]. Later, the regional Ministry of Culture established the 'Perm-36' State Autonomous Institution of Culture and transferred the museum's collections and land to the new entity, while the archives and property of the 'Perm-36' NGO were sealed off"<sup>8</sup> (the 'Perm-36' Memorial Museum is the only existing museum of the GULAG; the NGO is currently in the process of dissolution initiated following their forced entry in the foreign agents registry; in the summer of 2015, the NGO and its director Tatiana Kursina were fined 300,000 and 100,000 rubles, respectively, for refusing to voluntarily register as 'foreign agents')*

*"Like other NGOs, this organization never engaged in political activity in the true sense of the word; it did not seek political power and did not participate in elections. The only thing that the enthusiasts who created the museum were doing was to restore, bit by bit, the little-known and unpleasant pages of this country's history. Entering this museum in the 'foreign agents' list is nothing but trying to suppress our memory and our history" (Irina Kizilova, director of the human rights advocacy service run by the Perm branch of the 'Memorial' Society that first initiated the 'Perm-36' Museum, now the 'Perm-36' Memorial Center of the History of Political Repression.)<sup>9</sup>*

In addition to that, NGOs forcibly entered in the foreign agents registry face increasing problems in dealing with various authorities wary of making contact with such organizations. Lawyers and attorneys taking human rights cases to courts have been faced with attempts to remove them from proceedings solely for their collaboration with 'foreign agents'. Pro-government mass media have continuously engaged in campaigns to stigmatize NGOs branded as foreign agents.

*Svetlana Gannushkina, Chair of the 'Civic Assistance Committee for Refugees and Asylum Seekers' referred to reluctance of the government agencies' to cooperate with the 'foreign agent' NGOs: "The law ruined our reputation. Russian society has been persuaded that, as Vladimir Putin likes to argue, 'he who pays the piper calls the tune.' At some point I had to circulate invitations [to our legal seminars] not on our behalf but from on behalf of the human rights ombudsman. Only representatives of the Russian federal migration agency accepted invitations. This is very frustrating because we are eager to cooperate with the government agencies. No civic organization can solve the problems of migrants alone."<sup>10</sup>*

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<sup>8</sup> <http://newsland.com/news/detail/id/1538978/>

<sup>9</sup> <http://newsland.com/news/detail/id/1538978/>

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## **The Law on Undesirable Foreign and International NGOs**

On June 3, 2015, a federal law came into force amending a number of existing legal acts<sup>11</sup> and introducing the concept of 'undesirable organizations'.

By this law, any foreign or international non-governmental organization can be declared 'undesirable' in Russia if its activity is found to threaten the foundations of Russia's constitutional system, defense or national security. Such 'undesirable' organizations are not allowed to have any structural subdivisions in Russia, implement any programs (projects), produce, store and distribute informational materials, conduct mass actions and public events, and use bank accounts and deposits, except for settlement of the organization's obligations. In essence, being declared 'undesirable' means a total ban on working in Russia.

By the same law, the decision to declare an organization 'undesirable' lies with the Russian Prosecutor General or their deputy who makes it in consultations with the Foreign Ministry. The Ministry of Justice is responsible for maintaining a list of 'undesirable' organizations. There is no requirement in the law for the officials to substantiate their decision, no any provisions for judicial review at the stages of finding and listing an organization as 'undesirable'. Instead, any organization declared 'undesirable' can then challenge the decision in court.

The law also provides for administrative and criminal liability imposed on organizations declared 'undesirable', their directors and anyone who continues to collaborate with such organizations. Thus, continuing operation of an organization declared 'undesirable' (i.e. either running such an organization or being involved in its activities) in Russia may result in an administrative fine, and following two such fines within one year, running such an organization or continued involvement in its activities will be treated as a criminal offense punishable by up to six years of imprisonment.<sup>12</sup>

And finally, the law stipulates that a foreign national or stateless person involved in activities of an 'undesirable' organization may be banned from entering Russia.

Experts have expressed concerns that the law's vague wording, lack of judicial review at the decision-making stage and no requirement to substantiate the decision open the door for arbitrary enforcement and may lead to further isolation of civil society and to the dismantling of all legal and transparent mechanisms of supporting civic initiatives in Russia.

Since the law was adopted, the Prosecutor General's Office has received a series of requests to declare 'undesirable' internationally recognized human rights organizations such as Amnesty International and Human Rights Watch and international donors such as the Open Society Foundations, the MacArthur Foundation, the National Endowment for Democracy, and others.

On June 24, 2015, addressing a meeting of the Council for Science and Education in Kremlin, Russian President Vladimir Putin said, "We all know—or maybe someone does not know—that the so-called foreign foundations work in schools; a network of such organizations have 'rummaged' through schools in the Russian Federation for many years under the guise of supporting talented young people. In

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<sup>11</sup> FZ-129 of May 23, 2015

<sup>12</sup> Anyone who voluntarily stops any involvement in the activities of an 'undesirable' organization shall be free from criminal liability (Article 1).

reality, they simply hoover everything up like a vacuum. They find [potential students] at schools and get them hooked on grants, and then take them away. Therefore, we need to pay attention to them, too."<sup>13</sup>

Considering that many experts associate the onset of the escalating pressure on the civil society with the President's speech at the FSB Board meeting in February 2013, this statement may trigger a campaign to stop all foreign support of Russia's civil society by using the law on undesirable organizations.

In early July 2015, Russia's Federation Council came up with a 'patriotic stop list' and made a related appeal to the Prosecutor General, the Minister of Foreign Affairs and the Minister of Justice of the Russian Federation. The stop list included: the Open Society Institute (Soros Foundation), the National Endowment for Democracy, the International Republican Institute, the National Democratic Institute for International Affairs, the MacArthur Foundation, Freedom House, the Charles Stewart Mott Foundation, the Education for Democracy Foundation, the East European Democracy Center, the World Congress of Ukrainians, the Ukrainian World Coordinating Council, and the Crimean Field Mission on Human Rights.

Presenting the appeal, Chairman of the Federation Council Committee on International Affairs Konstantin Kosachev said that "the patriotic stop list serves primarily a warning function sending a signal to our [domestic] civil society institutions that contacts with certain foreign entities can bring big problems to them in the future."<sup>14</sup>

As a result, on July 27, 2015, the Ministry of Justice entered the National Endowment for Democracy in its Registry of foreign and international non-governmental organizations whose activities are considered undesirable in the Russian Federation. In addition to that, a campaign of stigma and blame against international donors has led to decision by the MacArthur Foundation and the Charles Stewart Mott Foundation to announce termination of their programs in Russia.

*"The recent passage and implementation of several laws in Russia make it all but impossible for international foundations to operate effectively and support worthy civil society organizations in that country. These measures include a law requiring Russian non-governmental organizations to register as foreign agents if they receive foreign funding and engage in "political activities." The most recent such measure is a law allowing authorities to declare the activities of international organizations "undesirable" if they present "a threat to the foundations of the constitutional order of the Russian Federation, the defense capability of the country or the security of the state."... Contrary to the premise underlying the Federation Council's vote, our activities in Russia, at all times, have been to further charitable purposes and benefit Russian citizens and society. We are entirely independent of the United States government and receive no funding from it. We have never supported political activities or other actions that could reasonably be construed as meeting the definition of "undesirable."<sup>15</sup>*

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<sup>13</sup> RIA Novosti <http://ria.ru/society/20150624/1084949791.html#ixzz3dzQHHTxJ>

<sup>14</sup> Official site of the Federal Council of the Russian Federation PФ <http://www.council.gov.ru/press-center/news/57334/>

<sup>15</sup> From the official Statement of MacArthur President Julia Stasch <https://www.macfound.org/press/press-releases/statement-macarthur-president-julia-stasch-foundations-russia-office/#sthash.ZHE7h3Di.dpuf>

## Recommendations

1. We urge the international community including OSCE and its member states to continue pushing for full implementation of international standards by the Russian Federation. During negotiations with Russian officials at different levels, it should be insisted that Russia should perform its international obligations.
2. Crackdown on civil society in Russia should be put high on the agenda in all levels of interactions with the Russian government. It should be made clear to Russian official that this crackdown goes contrary to the very essence of international human rights norms and principles.
3. International community should also continue to publicly express its strong disagreement with unprecedented harassment of NGOs in Russia and to call and demand guarantees of unhindered and free activity of Russian civil society organizations.
4. International community should also continue to counter false statements by Russian officials that the Russian law on foreign agents is modeled after Western laws, is compatible with international human rights standards, and is not of a punitive nature. The same concerns the claims of the Russian official that the law on “foreign agents” and its repressive implementation are an ‘internal matter.’ It should be made clear to Russian official that according to universal human rights principles, including Helsinki Final Act, human rights are a matter of legitimate concern to other states and international organizations and these principles should be respected by the Russian Federation.
5. We urge international community to call for a repeal of the 'foreign agents' law and for elimination of the 'foreign agents' registry as well as for removing any legal ban on certain types of activities for organizations branded as 'foreign agents'.
6. To demand that the law on 'undesirable organizations' be repealed or revised to conform with the international standards of clarity; ensure its legal certainty, justification and transparency of decisions, and provide for judicial review at the decision-making stage.