



EU-RUSSIA CIVIL SOCIETY FORUM ГРАЖДАНСКИЙ ФОРУМ ЕС-РОССИЯ

Increasing Pressure on Civil Society in Russia: Analysis and Recommendations to the International Community

Policy brief June 2015

This policy brief has been produced by the Steering Committee of the EU-Russia Civil Society Forum and contains an overview of the recent developments in the Russian government's campaign of crackdown against independent NGOs and recommendations to the international community, including institutions and member states of the European Union. The EU-Russia Civil Society Forum has issued in the past several statements and policy papers on the situation of civil society in Russia¹.

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

¹ For the statements and policy papers of the EU-Russia Civil Society Forum on the situation of civil society in Russia see, in particular: *The Law on "Undesirable Organisations" Threatens to Cut Cooperation of Russian Civil Society with Its International Partners*, June 2015, <http://eu-russia-csf.org/fileadmin/Statements/StatementUndesirables05.06.2015.pdf>; *Russian Government Should Repeal the "Foreign Agents" Law and Restart a Dialogue with Independent Russian NGOs*, January 2015, <http://eu-russia-csf.org/fileadmin/Statements/StatementForeignAgents20.01.2015.pdf>; *Appeal to the European Commission on policies relating to civil society in Russia and in the European Union*, October 2014, <http://eu-russia-csf.org/fileadmin/Statements/AppealEC28.10.2014.pdf>; *New Moves of the Russian Ministry of Justice to Include Leading NGOs into the List of "Foreign Agents" Endanger Development of the EU-Russia Relations*, July 2014, <http://eu-russia-csf.org/fileadmin/Statements/StatementForeignAgents22.07.2014.pdf>; *Amendments to the Russian Law on "Foreign Agents" Signify a New Level of Threat to Civil Society in Russia*, June 2014, http://eu-russia-csf.org/fileadmin/Statements/StatementForeignAgents10.06.2014_01.pdf; *EU-Russia Civil Society Forum: Connecting Cooperation with Solidarity*, October 2013, http://eu-russia-csf.org/fileadmin/Policy_Papers/Policy_Papers_Hague/Connecting_Cooperation_with_Solidarity_EN-1.pdf; *On the persecution of independent civic organisations in Russia in the framework of the legislation on "foreign agents"*, June 2013, http://eu-russia-csf.org/fileadmin/Statements/NGO_persecution_statement_EN.pdf; *European Solidarity for Russia's Civil Society*, June 2013, http://eu-russia-csf.org/fileadmin/Policy_Papers/Others/EuropeanSolidarityforRussiasCivilSociety26-1-1.06.pdf; *Russian Civil Society Under Threat – How to Respond?*, June 2013, http://eu-russia-csf.org/fileadmin/Policy_Papers/Others/Policy_brief_Four_final4.6.13.pdf; *Serious Concerns about Massive Inspections of Non-Profit Organisations Currently Conducted in Russia*, March 2013, http://eu-russia-csf.org/fileadmin/Statements/21.03.2013_EU-Russia_CSF_SC_Statement_On_the_NGO_inspections_eng.pdf; *To Abolish the Law on "Foreign Agents" in Russia*, October 2012, http://eu-russia-csf.org/fileadmin/Statements/CSF_Statement_on_the_law_on_foreign_agents_in_Russia1_ENG.pdf; *They are friends, not agents: Call on Russia to stop new anti-NGO law*, July 2012, <http://eu-russia-csf.org/newsdetail/news-csf-single/article/325.html>.

Please, note that fragments of these statements have been used when producing this brief.

Translation from Russian done by Irina Savelieva, quotes translated by Anastasia Ovsyannikova.

freedom of association—in particular, by introducing concepts such as 'non-profit organisations performing the functions of a foreign agent' and 'undesirable international and foreign non-governmental organisations'. Being branded a 'foreign agent' or an 'undesirable organisation' leads to substantial restrictions or, in certain cases, a total ban on activities, heavy fines and criminal charges.

The continuing steps of the Russian government to suppress and stigmatise civil society activities, which it sees as critical towards its policies, are clearly in breach of international and European standards. These steps have hit hard a large number of Russian NGOs, including member organisations of EU-Russia Civil Society Forum, through paralysing inspections, long and time-consuming court cases, and government actions to put a derogatory label of “foreign agents” on them. Several of our member organisations have closed down to avoid being convicted in court. The scope of activities of many organisations has diminished. Along with freedom of association, a range of other fundamental rights and freedoms has been under assault in Russia lately, including freedom of peaceful assembly and freedom of expression.

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 organisations in the ‘foreign agents’ registry on the Ministry's sole discretion without any request from the NGO in question, and the Ministry has been actively using its new powers since then. This triggered a new wave of inspections by the Ministry of Justice and public prosecutors, sometimes also engaging experts from other government agencies. Most such inspections have resulted in administrative charges against NGOs for failing to register as ‘foreign agents’, followed shortly by the Ministry of Justice forcibly entering the organisation in the registry of ‘NGOs performing the functions of foreign agents’.

As of June 23, 2015, a total of 74 non-governmental organisations were listed in the “foreign agents” registry. Four of them applied for the “foreign agent” status voluntarily, and the other 70 have been 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, and another 59 organizations were added between November 2014 and June 23, 2015, including two in November 2014, 13 in December 2014, six in January 2015, six in February 2015, eight in March 2015, eight in April 2015, ten in May 2015, and six in June 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 not only assistance from foreign donors but even funds by Russian benefactors sent from their foreign accounts (as in the case of the Dynasty Foundation, where the sole donor is its founder and President, Russian philanthropist Dmitry Zimin).

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."*²

Legal provisions exempting certain types of activities³ have not been observed, and NGOs listed in the registry include charitable, social and environmental organisations, among others.

*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."*⁴

As a new aspect of the more recent inspections performed since November 2014, NGOs subjected to such inspections have almost simultaneously faced both administrative proceedings for failure to voluntarily register as 'foreign agents' and involuntary entry in the registry by the Ministry of Justice. Administrative proceedings usually result in fines of 300,000 to 500,000 roubles for the organisation and 100,000 to 300,000 roubles 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 five cases against NGOs where fines ranged between 50,000 and 200,000 roubles, and of just three cases where administrative proceedings against NGOs for failing to register as 'foreign agents' were dropped. In all other cases, administrative fines reached 300,000 roubles and more.

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 stigmatising and misleading label of 'foreign agent' imposed on them. The vast majority of organisations entered in the registry against their will have challenged or are planning to

² 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>

³ "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.

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

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 work and keep its founding principles. If they drain our budget with the fines for not labelling ourselves 'foreign agent,' we will have to liquidate our legal entity. But the team will continue its work."*⁵

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. Organisations 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 inspection to verify that the NGO in question does not receive foreign funding and/or does not engage in political activity and decide within three month whether the organization may be removed from the registry. As of June 25, 2015, four NGOs have been deleted from the registry following their dissolution, and two more have been removed following MoJ's ad-hoc inspections confirming that they were not receiving foreign funding anymore. 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.

*Svetlana Makovetskaya, Director of the GRANI Centre in Perm on the NGO's discharge from the registry of 'foreign agents': "It is very important for us not to spend any extra 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."*⁶

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

⁶ 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>

The 'foreign agents' law and its enforcement have had a stifling effect on Russia's civil society. In addition to reputational damage, forced dissolutions, onerous additional reporting, financial burden, infrastructural damage and a self-censorship effect of the law, NGOs branded as 'foreign agents' have been legally prohibited from monitoring elections. Debates are ongoing in the government on whether they should be banned from yet more types of activities, such as serving on Public Oversight Commissions engaged in civilian monitoring of places of detention, or collecting and analysing data on law enforcement practices. Moreover, legislative amendments are being discussed to prohibit public servants to have any contacts with 'foreign agents'.

*Anton Pominov, Director of 'Transparency International – Russia' commented on the challenges his organisation faces after it was ordered to submit additional quarterly records as a 'foreign agent' NGO: "Our accountant came to me and said she was not able to cope with all the new tasks. We needed to find new means to hire additional staff. It costs dozens of thousands rubles per month."*⁷

In addition to that, NGOs forcibly entered in the 'foreign agents' registry face increasing problems in dealing with various authorities and institutions wary of making contact with such organisations. 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 stigmatise NGOs branded as 'foreign agents', and the impact on reputation of independent NGOs in the eyes of the Russian public has been quite dramatic.

*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."*⁸

The Law on Undesirable Foreign and International NGOs

On June 3, 2015, a new federal law came into force amending a number of existing legal acts⁹ and introducing the concept of 'undesirable organisations'.

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

⁷ *People with a stigma: How it is to be a 'foreign agent'* (in Russian), 07.06.2015, MK, <http://www.mk.ru/politics/2015/06/07/lyudi-s-kleymom-kakovo-byt-inostrannym-agentom.html>

⁸ *Ibid*

⁹ FZ-129 of May 23, 2015

By the same law, the decision to declare an organisation 'undesirable' lies with the Russian Prosecutor General or his 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, nor any provisions for judicial review at the stages of finding and listing an organisation as 'undesirable'. The decision is effective immediately. Therefore, the rights of individuals and entities concerned will not be defended by the Court, as required by the European Convention on Human Rights, to which Russia is a party. Instead, any organisation declared 'undesirable' can then challenge the decision in court.

The law also provides for administrative and criminal liability imposed on organisations declared 'undesirable', their directors and anyone who continues to 'participate' in activities of such organisations. The latter term is a matter of particular concern, as it is not clear at all from the law what exactly does 'participation' mean. Many experts and activists worry that participation in an event in another country where an 'undesirable' organisation also participated, storing its publications in one's computer, sharing them in Facebook, or even having a skype conversation with its member may be interpreted as 'participation'. Thus, continuing operation of an organisation declared 'undesirable' (i.e. either running such an organisation in Russia or 'participating' in its activities) may result in an administrative fine, and following two such fines within one year, running such an organisation or continued 'involvement' in its activities will be treated as a criminal offense punishable by up to six years of imprisonment.¹⁰ Hence, the biggest threat is posed not even for the foreign organisations' operation but for the Russian citizens.

And finally, the law stipulates that a foreign national or stateless person involved in activities of an 'undesirable' organisation may be denied entry into 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 Russian civil society and to the dismantling of all legal and transparent mechanisms of supporting civic initiatives in Russia.

While the law on 'foreign agents' was intended at stigmatising NGOs by imposing on them a false and derogatory label of an 'agent' (which is synonymous to a "spy" in Russian), the main purpose of the law on 'undesirable organisations' is to cut off Russian activists from their international partners and colleagues, suspend their joint activities, and break the bonds of solidarity.

Since the law was adopted, the Prosecutor General's Office has received a series of requests to declare 'undesirable' internationally recognised human rights organisations 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. According to the media reports, the Committee on Foreign Affairs of the Council of Federation, the upper chamber of the Russian Parliament, is currently working on recommendations to the Prosecutor General's Office on the list of such organisations. The Chair of the Committee Konstantin Kosachev said that "Russia needs to create its own list of foreign NGOs who interfere in our domestic affairs, a kind of a patriotic stop-list".¹¹

¹⁰ Anyone who voluntarily stops any involvement in the activities of an 'undesirable' organisation shall be free from criminal liability (Article 1).

¹¹ A list of candidates for the list of 'undesirable organisations' has been prepared in the Council of Federation (in Russian), 24 June 2015, Meduza, <https://meduza.io/news/2015/06/24/v-sovete-federatsii-podgotovili-spisok-kandidatov-v-nezheletelnye-organizatsii>

On June 24, 2015, addressing a meeting of the Council for Science and Education in the 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 organisations have 'rummaged' through schools in the Russian Federation for many years under the guise of supporting talented young people. In 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."¹²

Since experts associate the onset of escalating pressure on the civil society with the President's speech at the Federal Security Service Board meeting in February 2013, this new statement may trigger a campaign to stop international support to Russia's civil society via the law on 'undesirable' organisations.

Recommendations

1. More than ever Russian civil society needs strong international solidarity and support. Civil society is an irreplaceable partner in the times of the severe crisis in the EU-Russia relations. It is of great importance that the international community raises strong objection not only to the Russian government's actions on Ukraine and security issues, but focuses on the rule of law, fundamental freedoms, and the state of civil society in Russia. International war and peace issues are intrinsically linked to further evolution of repressive policies in the domestic affairs in Russia.
2. We urge the international community, including the European Union, to continue pushing for full implementation of international obligations and standards by the Russian Federation.
3. Leaders of the European Union and the EU member states should put the crackdown on civil society in Russia high on the agenda in all their interactions with the Russian government. They should make clear to Russian officials that this crackdown goes contrary to the very essence of international human rights norms and principles and that it undermines the EU relations with Russia. Leaders of the European Union and the EU member states should also express their strong disagreement with unprecedented harassment of NGOs in Russia in public.
4. They should also counter false statements by Russian officials to the effect that the Russian law on foreign agents is modelled after Western laws, is compatible with international human rights norms, or is not of a punitive nature. Similarly, they should dispute Russian officials' claims that the law on "foreign agents" and its repressive implementation are an "internal matter". According to the universal human rights principles, including the Helsinki Final Act, human rights are a matter of legitimate concern to other states and international organisations.
5. During dialogues with Russian officials, they should insist that Russia repeals the 'foreign agents' law, removes any legal ban on activities of NGOs ever branded as 'foreign agents', and eliminates the 'foreign agents' registry.
6. Likewise, they should demand that the law on 'undesirable' organisations' 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.

¹² Putin: More attention should be paid to the work of foreign NGOs in schools (in Russian), 24 June 2015, RIA Novosti, <http://ria.ru/society/20150624/1084949791.html#ixzz3dzQHHTxJ>

7. EU countries should be prepared to provide effective and non-bureaucratic protection to Russian civic activists when they face severe harassment and persecution (e.g. through fellowships, temporary shelter and, in the most dangerous instances, political asylum, according to the EU Guidelines on Human Rights Defenders and the OSCE Guidelines on Security of Human Rights Defenders). They should also increase international visibility for civic activists, including meeting them regularly, giving them the floor at sessions of EU institutions and national parliaments.
8. Given the increasing importance of civil society's role in promotion of rule of law and international values and the departure of many international donors from Russia, the current level of EU funding for Russian civil society is not adequate to the needs. Therefore, EU funding for Russian NGOs must be increased significantly.
9. Given new legal and political restrictions on foreign funding of NGOs in Russia, EU should apply flexible and innovative tools of support to them, including support through partner organisations in Europe, or commercial organisations, if they are initiated by not-for-profit organisations, etc.
10. Security in communications with NGO partners in Russia should be made a priority. Lessons from the EU experience of provision of support to NGOs in other countries experiencing crisis in human rights and a high degree of pressure on civil society, should be applied.
11. Contacts between citizens from the EU and Russia should not suffer from the deteriorated official relations. On the contrary, intensification of people-to-people exchanges would contribute to moving the Russian society closer to European values and overcoming propaganda. The European Commission should stimulate the easing and facilitation of visa procedures for Russian citizens taking part in academic, cultural, or other exchanges with the EU countries, including by unilateral steps from the EU side.

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The EU-Russia Civil Society Forum was established in 2011 by non-governmental organisations as a permanent common platform. At the moment 147 NGOs from Russia and the European Union are members of the Forum. The Forum aims at development of cooperation of civil society organisations from Russia and EU and greater participation of NGOs in the EU-Russia dialogue. The Forum has been actively involved in the questions of human rights, protection of the environment, development of civic participation, dealing with history, and civic education.

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