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Russia stepping up its onslaught on freedom of association

In recent weeks, the Russian authorities have stepped up their ongoing onslaught on the right to freedom of association in the country. In a two-pronged attack, they have continued targeting independent Russian NGOs through the so-called “foreign agents law” and begun applying the law on “undesirable foreign organisations” which effectively cuts the foreign funding lifeline that enabled them to operate independently.

The growing list of “foreign agents” and new NGO closures

The “Foreign Agents Law”, enacted in November 2012, compels Russian NGOs to register as “organisations performing the functions of foreign agents” if they receive foreign funding and engage in vaguely defined “political activities”. The law was amended in May 2014 to give the Ministry of Justice the authority to include NGOs in the register on its own initiative. Since then, hundreds of Russian NGOs have faced intrusive unannounced “inspections” by teams of prosecution, tax and other state officials (sometimes accompanied by TV crews that resulted in reputation tarring reports on national television).

Since then, dozens of NGOs have been embroiled in protracted legal battles – an estimated total of nearly 200 separate court cases – with a stifling effect on their work. Failure to comply with the law, which requires NGOs branded as “foreign agents” to mark all of their off- and on-line documents as such, results in hefty fines for the NGOs themselves as well as, separately, for their leaders, and could potentially lead to criminal prosecution. Consistent failure to comply with this requirement is punishable by imprisonment of up to six years. Several NGOs and NGO leaders have been fined for failing to voluntarily register.

Although the Ministry of Justice no longer discloses which NGOs voluntarily added their names to the register, it is known that these represent only a small minority (just one before this year and four in the first half of 2015 when this information was removed). The vast majority have been included by the Ministry of Justice since the amendment of the law in May 2014.

The register currently includes the most prominent national and many local human rights NGOs, as well as organisations working in other areas, including environmental preservation, the protection of journalists, civil society support, education and election monitoring.

Apart from the handful of NGOs that apparently voluntarily sought inclusion in the register, Russian NGOs have vehemently opposed any suggestion that they “perform the functions of foreign agents” and insisted that their work is in the interest of the people of Russia, and protested their inclusion in the register. They also denied that their activities were “political”, and disputed the loose use of the term “political activities” as set in the law only as seeking to influence public opinion or change government policies. Several NGOs on the register were not even in receipt of foreign funding at the time of their inclusion in the list.

The law has attracted widespread criticism from within Russia and abroad, and even Russian President Vladimir Putin, who has otherwise supported the law, recognized it has “certain

flaws". In April 2014, the Constitutional Court ruled that the law was in line with the Russian Constitution and did not violate the right to freedom of association.¹ The Court took the view that the law neither prevented NGOs from receiving foreign funding nor impeded their work. However, the latter is contradicted by recent events as NGOs included in the "foreign agents" list are encountering various obstacles to continue with their work, ranging from the loss of the already limited non-foreign funding to restrictions on activities involving government officials and eviction from state-owned premises they used to rent.

The Constitutional Court also ruled that the term "foreign agent" is neutral and not derogatory. This ignores the fact that the expression has an immediate intuitive connotation in Russian with spying and inimical foreign activities. The protests by those branded or threatened with being labelled as "foreign agents" were brushed off by the Court, and the Russian authorities refused to consider any proposed alternatives, such as the use of factual language (for instance, "organisation receiving foreign funding").

In 2015, the authorities stepped up their efforts to fill the Ministry of Justice's register of organisations "performing the functions of a foreign agent" with independent NGOs. At the time of writing, it contained 82 entries – 51 of them added since the beginning of the year. The latest addition on the list, made on 29 July, was the environmental NGO Zelionyi Mir (Green World).² Four other NGOs are listed on the register as disestablished, since the organizations decided to close after their inclusion in the list. Only three NGOs on the list have the note "Ended the performance of the functions of a foreign agent" (in practice, stopped receiving foreign funding) against their names which nonetheless still appear on the list.

With dozens of NGOs branded as "foreign agents" and bearing the stigma of this term, many now face hefty fines, sometimes imposed for failing to put their name on the register voluntarily before the Ministry of Justice did so, under the amended law. Several organizations have chosen to close down rather than have their name on the list. The latest NGO to take the decision to close down after it was branded as "foreign agent" was the Interregional Committee against Torture.

Interregional Committee against Torture

The Interregional Committee against Torture was one of Russia's most prominent and authoritative human rights organizations. It has been in existence for over 15 years.. Following its inclusion in the "foreign agents" register and the loss of its court appeal against this decision, the organisation announced its decision to close down on 28 July 2015.

The Committee was included in the "foreign agents" register on 16 January 2015, and challenged this decision in court, unsuccessfully. At a further hearing held on 8 July, Nizhnii Novgorod's Regional Court upheld an earlier decision by the lower court which had agreed with the Prosecutor's Office conclusion that the publications produced by the Committee against Torture and the street actions organised by its members constituted "political activities". This, according to the court, in combination with the NGO's foreign funding merited its inclusion in the "foreign agents" register.

As evidence of the NGO's "political activities", the Prosecutor's Office had referred to the Committee's criticism of the failure by the Investigation Committee of the Russian Federation to fully investigate allegations of torture: this "political activity" supposedly aimed at changing government policies (one of the attributes of "political activities under the "Foreign Agents Law"). During the hearing at the Nizhnii Novgorod Regional Court, the Committee's Chair Igor

¹ Decision of the Constitutional Court of the Russian Federation from 8 April 2014, N 10-P "On the Constitutionality of point 6 Article 2 and point 7 Article 32 of the Federal Law on non-commercial organizations", available at <http://www.rg.ru/2014/04/18/ks-dok.html>.

² According to its director Irina Fufayeva, the NGO's correspondence with the local authorities responsible for cultural heritage was interpreted as "political activity" leading to its branding a "foreign agent". The NGOs intends to appeal this decision, and will close down if it fails.

Kalyapin argued that torture is a serious crime under Russian law and therefore the Committee's work against it is in line with, not contrary to, existing state policy. A representative of the Prosecutor's Office rebuffed it with a claim that any influence on state policy, including "positive influence", was a political activity in the meaning of the law, and Igor Kalyapin's argument was dismissed by the court.

The Prosecutor's Office presented a picket the Committee organised in Nizhnii Novgorod on 26 June 2015 (the International Day in Support of Victims of Torture) as further evidence of the Committee's "political activity". During the picket, the Committee's members distributed small leaflets which contained nothing other than the text of the official oath which prosecutors in Russia take on their appointment. The oath commits them to strictly uphold Russia's Constitution, laws and international legal obligations.

The official media regulator Roskomnadzor (the Federal Service for the Supervision of Communication, Information Technology and Mass Media) claimed that these leaflets should have stated in print that they had been produced by an "organisation performing the functions of a foreign agent", the failure to do which constituted an administrative offence under the law. Following a report by Roskomnadzor, the Committee faces a fine of up to RUB 500,00 (about US\$ 8,000) for failing to follow the law.

The Committee against Torture decided to close down on account of its refusal to accept a label it viewed as pejorative and fundamentally untrue. At a press conference held in Moscow on 28 July 2015, when this decision was announced, Igor Kalyapin explained: "During the 15 years of our existence, we have never acted on the orders of any foreign masters. Under Russian law not even a convicted criminal can be forced to call himself a criminal whilst we are forced to call ourselves 'foreign agents' which we are plainly not."

The law on "undesirable" foreign organisations and its first victims

Whilst the "foreign agents law" has had a visible stifling effect on the Russian civil society, in a move to sever their links with, and support from, international partners a new law on "undesirable" foreign organizations was adopted in May 2015. According to it, the Office of the Prosecutor General can take a decision that a certain foreign organisation poses a threat to the country's "constitutional order, defence potential or state security", and effectively outlaw any activities by, or any cooperation with, such an organisation in Russia. Once the decision is made public and the name of the organisation is included in yet another register by the Ministry of Justice, any work with, or assistance to, the organisation becomes unlawful and punishable by hefty fines. If this "offense" is repeated, criminal sanctions may be imposed, including imprisonment.

Soon after the law was adopted, repeated suggestions on who should be on the list of "undesirable" foreign organisations (also commonly known as "the patriotic stop-list") have been made by individuals in positions of influence, including members of parliament.

The most "official" call to brand specific organisations as "undesirable" came on 8 July 2015 from the Council of the Federation, the upper chamber of the Russian parliament, which has no formal role in the implementation of this law. It contained a list of 12 organisations, most of them international donors that had provided substantial funding to independent Russian NGOs, including many of those on the "foreign agents" list. Among the twelve was one human rights NGO, Freedom House, as well as the Crimean Field Mission on Human Rights which is a joint initiative by Russian and Ukrainian human rights defenders intended to provide monitoring in Crimea where no human rights NGOs were left after its annexation by Russia in 2014.

At least two organisations from those listed by the Council of the Federation, the Charles Stewart Mott Foundation and the MacArthur Foundation, have promptly announced their

decision to close down their philanthropic work in Russia to avoid the prospect of being targeted by the authorities.

One other grant-giving organisation from the list, the US-based charity National Endowment for Democracy (NED), became the first to be officially blacklisted by the Russian authorities, on 28 July 2015, under the new law on “undesirable” foreign organizations. The relevant decision by the Office of the Prosecutor General of the Russian Federation was announced on its website in which it claimed that NED’s activities “pose a threat to constitutional order of the Russian Federation, defence potential and security of the state”. Among NED’s alleged infractions were its donations to commercial and non-profit organizations that independently monitor elections, as well as for undefined “political activities” and “discrediting service in the [Russian] armed forces”.

Over the years, NED's funding has supported frontline human rights and other civil society activities in Russia. Over two dozen NGOs listed on the “foreign agents” register – including several known for their authoritative and principled human rights work – have benefited from NED’s funding in recent years.

The right to freedom of association is guaranteed under numerous international and regional treaties binding on Russia, including the International Covenant on Civil and Political Rights and the European Convention on Human Rights (European Convention). The right to freedom of association includes the right to form NGOs and other civil society organizations, which are widely recognized for their essential contribution to the protection of human rights and the rule of law. The UN Declaration on Human Rights Defenders, adopted by consensus by the United Nations (UN) General Assembly in 1998, also recognizes the right of everyone, individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms.

Amnesty International calls on the Russian authorities to respect the right to freedom of association, in line with their obligations under international human rights law and standards. The laws on “foreign agents” and “undesirable organisations” should be immediately repealed. Moreover, harassment of independent Russian and international human rights defenders and NGOs must end, and the administrative prosecution of their leaders stop.