

New Russian NGO legislation: main problems and recommendations on amendments

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Upon adoption of the new Russian legislation on non-governmental organizations (NGOs) in the beginning of 2006 and its coming into force on April 18, 2006, the situation of NGOs in Russia has continued to deteriorate. Freedom of association is becoming increasingly restricted.

The NGO law, as well as the biased way of its implementation, violate basic international Standards on freedom of assembly, as well as the principles of legal equality, of the rule of law and of the legal certainty. It also contradicts the main requirement of the European Convention on Human Rights (ECHR) which proclaims, that in a democratic society any restriction or limitation of a right (or rights) must require an absolute and obvious necessity, in order to be justified. Finally, the NGO Law creates discriminatory conditions for functioning of non-for profit organizations in Russia.

The first year of implementation of the new law revealed the following problems:

- The procedure for registering an NGO has become more complicated and requires participation of a lawyer specializing in the NGO-related legislation in order to get the package of documentation properly prepared. The state provided NGOs with insufficient and inadequate information in regard to new reporting rules. There are no clear guidelines regarding filling in new report forms. Federal and regional registration authorities themselves interpret the Law differently;
- A procedure of denial to register an NGO is being simplified. Now it is up to the Registration authority (which is a part of the Executive) and not to a court to issue such a denial;
- The Federal Registration Service and its agencies may, according to the new Law, request not only resolutions of an NGO's governing bodies, and their financial documentation, but also other documents, related to the NGO's activities, which may result in an inspection and subsequent closing of an organization. In fact the new Law allows total screening of the NGOs activities;
- The Federal Registration Service substitutes in its functions tax authorities or sometimes labor inspections, requesting tax and other documentation of the NGOs. Meanwhile it has no right to perform tax checks. This happens because of the unclear notions of the Law. The list of the documents, which may be requested from an NGO, according to the Law, is extremely vague;
- Sanctions for repeated failure to submit the required information within the set time frame may include initiation of court proceedings seeking liquidation of the NGO and its subsequent exclusion from the Unified State Register of Legal Entities (Section 10, Article 32 of the Law on NGOs, and also Parts 3-5 of Article 29 of the Law on Public Associations). This seems to be a very harsh sanction and differs drastically from the relevant standards, existing in other democratic countries. Moreover, in the context of the Russian judicial branch performance, which is often far from being independent from the executive, such a procedure becomes an instrument for the executive authorities to eliminate NGOs for political reasons;
- It is the Federal Registration Service, not the court, who decides if the activities of the organization correspond to the proclaimed goals or whether one of the founders

participates in extremist activities or not. It shall be mentioned, that the counter-extremist legislation also lacks of certainty. The notion of “extremism” itself is extremely vague. Nevertheless the decision of the Registration Service – the decision, which is not transparent and may be based on political considerations, that the activities of an NGO do not correspond with the proclaimed goals or that this NGO is participating in extremist activities, may lead to its liquidation. This gives the Registration Service a powerful instrument to impact the NGOs directly, on the one hand, and make indirect decisions on their preservation or liquidation, on the other hand;

- It is especially difficult for the small NGOs to respect all the rules of the new law, especially is they do not have an internet-connection or if there are no consulting offices in the Russian regions, which can advise the NGOs on technical and administrative aspects of how to fulfill all the new requirements;

This list shows, that restrictive and selective application of the new NGO legislation is combined with the use of other problematic from the human rights viewpoint pieces of legislation, such as the counter-extremism legislation, legislation on meetings, rallies, and demonstrations, as well as such legal tools, as tax laws.

For instance, liquidation of a group or mass media is the main sanction for extremism, according to the Russian law on Combating Extremist Activity, such liquidation may be preceded by one or more warnings against extremist conduct. The warnings, as it was stipulated above, are issued by the Federal Registration Service. However, if the Registration Service finds an extremist activity of an NGO particularly dangerous, the organization or media will face liquidation without warning.

The problem here is, as already mentioned, that there are no precise criteria for extremist activity, and labeling this or that activity of an NGO as “extremist” can become a biased instrument to liquidate this or that organization due to political reasons. The current definition of extremism in the law on Combating Extremist Activity, which exceeds the bounds of the Criminal Code, does not give any indication of general characteristics of extremism, but instead provides a broad list of activities which are claimed extremist. The notion of extremism itself violates the principle of legal certainty and may lead to selective application of the two mentioned laws.

An individual convicted for extremist activity is not allowed to participate in an NGO activity. The law treats “participation” as any involvement in any activity carried out by the organization - it is broader than just membership and potentially imposes an extremely strong limitation. For instance, if an individual convicted of extremist activity comes to a rally or demonstration, organized by a given NGO, the sanction for this, according to the Law on NGOs and the Law on Extremism, might be liquidation of this NGO itself.

Conclusions

- The level of interference of the state into internal affairs of NGOs, provided by the Russian legislation, by far exceeds the limited authorities of the state to regulate the right of association stipulated by Article 11 of the European Convention on Human Rights and Fundamental Freedoms;
- In a democratic society the state interference in the civil society life shall be proportional and, if it takes place, justified by the transparent reasons of absolute necessity;
- The situation of the NGOs and of the civil society in Russia is complicated by the fact, that the notions of the new laws are far to be clear;

- The new legislation creates links between different laws (NGO law is f.ex. linked with the law on Combating Extremist Activity), which provisions are far from being clear and gives chances for the authorities to implement these provisions selectively.

Recommendations

- The new laws on NGOs and on Combating Extremist Activity should be amended in accordance with the requirements of the European Court on Human Rights (ECtHR) and attain the maximum level of certainty;
- The competences of the Federal Registration Service must be defined clearly in order to evade situations, when the Federal Registration Service has possibility to request an undefined number of documents;
- The Federal Registration Service shall be denied the possibility to perform tax and other not related to its competence checks;
- It is essential that NGOs and their members should be able to challenge acts or omissions affecting them in an independent court and in course of an effective and prompt judicial procedure. Without this latter possibility there is likely to be a violation of the right to an effective remedy under Article 13 of the European Convention;
- The state shall work out detailed guidelines for implementation of the new NGO law.
- The work of Federal and regional Registration Service institutions shall be coordinated and based on these guidelines in order to avoid possible selective application of the Law;

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