



UNITED STATES COMMISSION ON
INTERNATIONAL RELIGIOUS FREEDOM

***Challenge to Civil Society: Russia's Amended Law on
Noncommercial Organizations***

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United States Commission on International Religious Freedom

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U.S. Commission on International Religious Freedom (USCIRF)
***Challenge to Civil Society: Russia’s Amended Law on Noncommercial
Organizations***

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U.S. Commission on International Religious Freedom

Challenge to Civil Society: Russia's Amended Law on Noncommercial Organizations

Introduction

Since Vladimir Putin became president of Russia in 2000, the Russian government has steadily retreated from democratic reform, imperiling significant, post-Soviet gains in human rights including freedom of religion or belief. Many developments indicate that progress toward democracy is being halted, if not reversed, including tighter restrictions on non-governmental organizations (NGOs) and religious communities, and harassment of human rights organizations.

In particular, the U.S. Commission on International Religious Freedom is concerned that a restrictive, recently amended law on non-commercial organizations including NGOs was approved in January 2006. We have focused on this law because from our discussions with activists, members of religious communities and Russian officials, we came to see that it could have a harmful effect on the protection of freedom of thought, conscience and religion or belief in Russia. Such restrictions on NGOs negatively affect the work of non-profit civil society groups, including foreign groups, operating in contemporary Russia, and could pave the way for amendments to the religious association law. Some of the NGO law's provisions directly limit the human rights of members of religious communities, including legitimate charitable activities, and have had a chilling—if not freezing—effect on the overall climate for human rights monitoring. The new law enables the Ministry of Justice's Federal Registration Service (FRS), which is charged with implementing the law, to interfere with the activities of NGOs and deny the registration of groups that do not meet certain requirements, including minor or trivial ones.

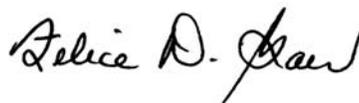
The Commission's analysis of the NGO law finds that the law is vague and open to arbitrary and discretionary interpretation and enforcement in the following areas: registration requirements for NGOs; reporting requirements for NGOs; state powers to interfere in NGO activities; liquidation of NGOs; and exclusion of NGOs from the official government registry. The law also sets out provisions that expand dramatically the scope of government powers and constrains the space within which NGOs are permitted to operate. Repeal of the law would alleviate most of the concerns raised by this report. At a minimum, the Russian government should amend or clarify problematic provisions and regulations, as noted in the report, in a manner that ensures the law's respect for international norms related to freedom of association, freedom of thought, conscience and religion or belief, and related human rights.

Since its inception in 1999, the Commission, a bipartisan independent federal agency, has reported on the human rights situation in Russia, including on issues of freedom of religion or belief, xenophobia and often violent acts of ethnic and religious intolerance. A delegation of the Commission traveled to Russia in June 2006, visiting Moscow, St. Petersburg, and Kazan, the capital of the Republic of Tatarstan. The Commission met with federal, regional and local government officials, representatives from a wide range of Russia's religious communities, academics, legal advocates, and representatives of human rights NGOs.

As outlined in a parallel publication, *Russia: Policy Focus*, the Commission finds that political authoritarianism—combined with rising nationalism and a sometimes arbitrary official response to domestic security concerns—is jeopardizing the human rights of Russia’s citizens, including members of the country’s religious and ethnic minorities. In many areas of civil life, including freedom of religious worship and practice, it is increasingly a particular group’s or community’s relationship to the state—rather than the rule of law—that defines the parameters of freedom to engage in public activities. In addition, the Russian government increasingly is challenging international human rights institutions through its persistent claims that foreign funding of Russian human rights organizations constitutes illegitimate interference in Russia’s internal affairs. The Commission also identified as an area of concern the rise in xenophobia and ethnic and religious intolerance and the government’s failure to address this serious problem adequately. The Commission concludes that the U.S. government can and should do more to urge the Russian government to take steps to deal effectively with these problems.

To help put the NGO law into the wider context of human rights in Russia, the Commission presented an advance version of this report in December 2006 at a discussion co-sponsored by the National Endowment for Democracy on “The Threat to Civic and Religious Freedom in Russia.” Vice Chair Michael Cromartie and I took part in that discussion, which also included Ludmilla Alexeeva, head of the Moscow Helsinki Group and president of the International Helsinki Federation for Human Rights. We wish to thank Carl Gershman, president of NED, for moderating that event.

The Commission also appreciates the assistance of many officials of the US and Russian governments, NGOs, and religious communities who have clarified the legal and practical implications of this problematic legislation to the members of the Commission and its staff. The Commission particularly thanks Robert Blitt, its former international law specialist and the principal researcher and drafter of this study, Tad Stahnke, deputy director for policy, and Catherine Cosman, senior policy analyst, for their invaluable contributions to this publication.



Felice D. Gaer
Chair
U.S. Commission on International Religious Freedom

Challenge to Civil Society: Russia's Amended Law on Noncommercial Organizations

I. Executive Summary

A. Commission Concerns

- Russia's amended Law on Noncommercial Organizations¹ (NGO law) is vague and open to arbitrary and discretionary interpretation and enforcement in the following areas:
 - Registration requirements for nongovernmental organizations (NGOs);
 - Reporting requirements for NGOs;
 - State powers to interfere in NGO activities; and
 - Liquidation of NGOs and exclusion of NGOs from the official government registry.

As a consequence, the law raises profound concerns for the continued viability of a diverse and representative civil society in Russia.

- The NGO law will increase significantly the involvement of Russian officials in the formation of civil society organizations—including NGOs, nonprofit organizations (NPOs), religious organizations, and others—and how these organizations raise money, plan and initiate programs and activities, whom they report to, and how they are monitored by the state.
- The broad administrative discretion and the myriad, complicated reporting requirements created by this law also may trigger a generalized chilling effect on the NGO sector by forcing these organizations to operate within a legal framework characterized by vague guidelines, and within which officials may declare any NGO to be operating in violation of the law. The catchall nature of the law may deter many organizations from undertaking otherwise legitimate activities for fear of being held in violation of its provisions.
- The NGO law creates distinctions between domestic and foreign NGOs by establishing different registration and reporting requirements and by furnishing the state with additional powers to scrutinize foreign NGO activities and, in some cases, to ban planned programs and/or the transfer of unspecified resources to “certain recipients.”
- Finally, the NGO law raises significant concerns with respect to the Russian government's protection of international human rights standards, including freedom of

¹ For the purpose of brevity, the Law on Noncommercial Organizations is referred to as the NGO law in this report and the terms noncommercial organizations (NCOs), nonprofit organizations (NPOs), and nongovernmental organizations (NGOs) are used interchangeably.

association, the right to privacy, and freedom of thought, conscience and religion or belief, as well as protection for rights enumerated in the Russian Federation's 1993 constitution. For example, the 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief specifies that freedom of religion or belief includes the rights to "establish and maintain appropriate charitable or humanitarian institutions" and to "establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels." The limitations set forth in the NGO law are so cumbersome that such essential elements of religious life and expression risk being impaired.

B. Commission Recommendations

The Commission recommends that the U.S. government should:

- Establish a program to monitor implementation of Russia's NGO law, including its impact on religious organizations.
 - Such a monitoring program will be crucial for determining the precise impact of this law and for providing clear and authoritative information to concerned parties, including the U.S. Congress and administration.
 - This monitoring program should be accessible to NGOs with questions or concerns related to the law, and also serve as a repository and clearinghouse for information on Federal Registration Service (FRS) actions and practices.

The Commission appreciated that Russian Ministry of Foreign Affairs officials expressed interest in our analysis and willingness to consider U.S. concerns. Therefore, USCIRF recommends that the Russian government withdraw or substantially amend the new NGO law. Failing that, the Russian government should:

- Develop and implement regulations that clarify and sharply limit the state's discretion to interfere with the activities of NGOs, including religious groups. These regulations should be developed in accordance with international standards and in conformance with international best practices, including recommendations made in the Council of Europe's Provisional Opinion on the NGO law.
- Establish an accountability mechanism for FRS personnel independent of the FRS to review and/or prevent arbitrary and excessive misuse of powers curtailing NGO activities, and ensure that this mechanism provides NGOs with the ability to lodge complaints to trigger an accountability process.
- Publish precise and transparent statistical data on a regular basis regarding FRS activities related to implementation and enforcement of the NGO law.
- Consult with civil society groups, Russia's Human Rights Ombudsman and the Council on the Institutions of Civil Society and Human Rights on their findings regarding implementation of the law and reassess, within a reasonable time period, necessary amendments and/or other changes to the law as required.

- Establish an independent NGO Legal Assistance Fund dedicated to paying for legal appeals brought by NGOs in response to state actions such as denial of registration, warning letters, or other acts designed to curtail and/or prevent legitimate NGO activities, including initiation of liquidation proceedings or removal from the registry.
- Ensure that all data related to the NGO law, including information available on official Russian web sites, is accurate and up to date. For example, the comparative study of NGO laws prepared by the Russian Ministry of Foreign Affairs' Department of Information and Press should be amended or removed because it is inaccurate in many instances.

II. Overview

A. The Commission's Visit to Russia

A delegation of the U.S. Commission on International Religious Freedom traveled to Russia in June 2006, visiting Moscow, St. Petersburg, and Kazan, the capital of the Republic of Tatarstan. Among other issues on the Commission's agenda, the delegation sought information from government officials concerning Russia's recently amended Law on Noncommercial Organizations. The delegation also discussed the potential impact of this law with religious groups, legal advocates and human rights NGOs.

B. NGO Operations in Russia

The deterioration of human rights conditions in Russia during the past few years appears to be a direct consequence of the increasingly authoritarian stance of the Russian government, as well as the growing influence of chauvinistic groups in Russian society, which seem to be tolerated by the government. Since 2000, the Russian government has steadily retreated from democratic reform, endangering significant gains in human rights made since the end of the Soviet era, including in freedom of religion or belief. Most notable among the developments indicating that democratic progress is being halted, if not reversed, is the placement of tighter restrictions on NGOs, religious communities and other groups such as human rights organizations. Authorities have harassed some NGOs that focus on politically sensitive issues, and other official actions and statements indicate a declining level of tolerance for unfettered NGO activity, particularly for those NGOs receiving foreign funding. Some NGOs have alleged that lengthy investigations of their finances or delay in the registration of their foreign-financed programs are methods used to restrict their activities.

Growing suspicion of "foreign influence" in Russia has been exacerbated by the repeated assertions by President Vladimir Putin and other Russian government officials that foreign funding of NGOs constitutes "meddling" in Russia's internal affairs. The official branding of Russian human rights organizations as "foreign" has increased the vulnerability of Russia's human rights advocates and those they defend. Moreover, although Russia is a state party to the major international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), government officials and other influential Russian figures have challenged international human rights institutions, as well as the validity of human rights advocacy in Russia, charging that both are being used for political purposes.

The Commission heard these and similar views about human rights and the foreign funding of Russian NGOs not only from Russian government officials, but also from Metropolitan Kirill, the metropolitan of Smolensk and Kaliningrad and external affairs spokesman of the Moscow Patriarchate of the Russian Orthodox Church. The metropolitan's position is a particular cause for concern, given the increasingly prominent role given the Russian Orthodox Church in Russian state and public affairs. According to Kirill, such groups advance the political agendas of those foreigners who fund their activities, while the average Russian views the "Western"

rights advocated by these groups as intrusive and alien. To address this situation, the Moscow Patriarchate has suggested that Russia reserves the right to deviate from international human rights norms to correct the “harmful emphasis” on “heightened individualism” which has infiltrated Russian society under the cover of Russian civil society organizations.²

C. The 2006 Amendments to the NGO Law

In January 2006, Putin ratified significant amendments to the 1996 Law on Noncommercial Organizations, which regulates the creation, reorganization, activity, and liquidation of NGOs in Russia.³ Particular issues of concern arising from the amended law include:

- An overarching legal framework and onerous reporting regime for NGO activities characterized by vague, undefined and potentially subjective provisions which may be applied arbitrarily to the extent that almost any organization may be found in violation of the law;
- A significant extension of state interference in the operation of NGOs, including the unqualified right to attend all NGO events and to ban certain planned or ongoing activities, as well as the transfer of unspecified “resources;”
- A significant increase in the administrative burden placed on NGOs, including the ability of state authorities to demand myriad types of documentation, including an NGO’s financial records and internal resolutions, and the requirement of quarterly reporting in some instances;
- Distinctions between local and foreign NGOs, and “affiliate” or “representative” offices and “branch” offices of foreign NGOs, including the requirement for foreign NGOs to register, subject to vague and ill-defined grounds for refusal of registration; different reporting requirements; and different grounds for exclusion from the NGO registry or liquidation; and
- The possible initiation of liquidation proceedings against religious organizations and other groups whose activities are deemed to fall outside of their respective charters or who otherwise fall short of stringent reporting requirements.

Putin has said that the new amendments to the NGO law are “aimed at preventing the intrusion of foreign states into Russia’s internal political life and at creating favorable and transparent conditions for the financing of nongovernmental organizations.”⁴ He has also been quoted as

² See Metropolitan Kirill’s statement on “Human Rights and Moral Responsibility” presented at the World Council of the Russian People, April 2006.

³ Law No. 18 “On Introducing Amendments to Certain Legislative Acts of the Russian Federation” (2006) amends Law No. 7 “On Noncommercial Organizations” (1996), and also includes a series of similar amendments for Law No. 82 “On Public Associations” (1995). Although the Law on Public Associations is equally relevant for determining the status and operation of NGOs broadly defined, it specifically excludes “religious organizations” from its purview. Since an analysis of Law No. 7 will highlight the most significant implications of the January 2006 amendments introduced under Law No. 18, only the provisions of that law are considered here. Analysis of the NGO law is based on English translations of the original Russian legislation prepared by a number of sources, including the Federal News Service. The Commission obtained additional linguistic clarifications and explanations about certain aspects of the law from consultations with other Russia experts.

⁴ Barry F. Lowenkron, Assistant Secretary for Democracy, Human Rights and Labor, “Human Rights, Civil Society, and Democratic Governance in Russia: Current Situation and Prospects for the Future,” Testimony at a Hearing of

saying that the law is needed to “combat terrorism and stop foreign spies using NGOs as cover.”⁵ One Russian official has posited that “many groups posing as NGOs are actually criminal or terrorist organizations.”⁶ While these rationales are not stated explicitly in the text of the amended NGO law, they suggest a more onerous intent.

Indeed, governments have an obligation both to protect citizens and combat international terrorism, as well as secure and respect human rights in accordance with international law. For example, UN Security Council Resolution 1624 stresses the need for governments to “ensure that any measures taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, *in particular international human rights law, refugee law and humanitarian law.*”⁷

D. The Federal Registration Service

In October 2004, a presidential decree created a consolidated Federal Registration Service (FRS) within the Ministry of Justice, and assigned that body responsibility to register all property, political parties, public associations, NGOs, and religious organizations operating in Russia. Under this decree, the FRS also was tasked with monitoring the compliance of all organizations with their respective charters.⁸ Putin appointed Sergei Movchan as director of the FRS, and the new bureaucracy became operational in January 2005. By June 2006, the FRS had a total staff estimated at 30,000 across Russia, with 2,000 employees working on NGO registration alone. The FRS requested that an additional 12,000 new staff positions be created for 2007-08, a 40 percent increase.⁹

During its June 2006 visit to Russia, the Commission met with Movchan and a number of senior FRS attorneys.¹⁰ This meeting marked the first time FRS leaders met with an official U.S. delegation, and provided first-hand information concerning the FRS’ plans to implement the amended NGO law, as well as an opportunity to seek clarification regarding interpretation of the law and related regulations. According to Movchan, the rationale for the amendments was to ensure conformity among all NGOs by requiring foreign organizations and new Russian organizations to undergo a registration process, thereby ensuring that all NGOs comply with FRS oversight. In response to concerns about the potential administrative burden created by the new amendments to the NGO law, Movchan claimed that NGOs would not require the assistance of professional lawyers, “since organizations already have filled out the forms.”¹¹ Yet, Movchan

the Commission on Security and Cooperation in Europe, Washington, DC (Feb. 8, 2006), <http://www.state.gov/g/drl/rls/rm2/2006/68669.htm>.

⁵ Elif Kaban, “Foreign Humanitarian Agencies Suspend Work in Russia,” Reuters, Oct. 19, 2006, available at <http://today.reuters.com/News/CrisesArticle.aspx?storyId=L19198883> (hereinafter Kaban).

⁶ Oksana Yablokova, “NGOs Face Paperwork Hurdle,” *Moscow Times*, Oct. 17, 2006 (hereinafter Yablokova).

⁷ Security Council Resolution 1624 (adopted Sept. 14, 2005), S/RES/1624 (2005).

⁸ Geraldine Fagan, “Russia: Will NGO Regulations Restrict Religious Communities?” Forum 18 News Service, Nov. 14, 2006.

⁹ Meeting between USCIRF and the FRS, Moscow (June 23, 2006).

¹⁰ The two senior FRS attorneys present at the meeting were Alexei Jafarov, director, Department of Registration for NGOs, Religious Organizations, and Political Parties, and Viktor Korlov, director, Department of Religious Organizations. Meeting between USCIRF and the FRS, Moscow (June 23, 2006).

¹¹ As this report demonstrates, the contrary is true; many NGOs navigating the registration process sought legal counsel from Russian and other sources to ensure compliance with the FRS’ new documents and procedures.

further stated that the FRS would not be “very strict” about enforcement initially, since the process was “all very new,” thus contradicting his earlier statement that NGOs have already completed similar forms and that the government has maintained for “some time already” powers similar to those set out in the amended NGO law.

According to the FRS, the widely quoted estimate of 450,000 to 500,000 NGOs operating in Russia is overstated, and many of these organizations have “essentially ceased to exist.” The FRS estimates the number of NGOs closer to 100,000 based on information from Russia’s Tax Authority. FRS officials stressed to the Commission delegation that the Council of Europe “approved” the NGO law following several amendments to the draft text. However, the Council has never taken such a step publicly, and many of the issues raised in its December 2005 Provisional Opinion remain unaddressed in the final text of the NGO law. These issues include the law’s *prima facie* failure to limit restrictions on the right of freedom of association to those strictly construed exceptions provided under the European Convention on Human Rights, to which Russia is a state party.¹² In a similar manner, Russian Foreign Ministry officials insisted to the Commission delegation that the amended NGO law was in line with international standards. However, a report prepared by an organization specializing in NGO law demonstrates that the Foreign Ministry’s comparative analysis of NGO laws in other countries is inaccurate in many instances and also selective with respect to the data presented.¹³

E. Impact of the 2006 Amendments to the NGO Law

Since the January 2006 amendments did not come into effect until April 2006, it is still early to point to specific ramifications or actions resulting from the legislative changes. However, information gathered on the Commission’s trip, as well as ongoing developments surrounding implementation of the law, confirm concerns that the law’s ambiguous nature may have a chilling effect on the free operation of Russian civil society, including the activities of religious organizations, charitable and educational entities set up by religious organizations, and human rights groups, and that aggressive or discretionary enforcement of the law may be used “to curtail individual liberty and establish a quasi-authoritarian hierarchy.”¹⁴ Continued and close monitoring of the situation will be essential to formulate a clearer understanding of the precise impact of the amended law.

¹² J. Tymen Van der Ploeg, *Provisional Opinion On Amendments to Federal Laws of the Russian Federation Regarding Non-Profit Organizations and Public Associations*, prepared in cooperation with the Secretariat General of the Council of Europe (DGI – DGII), Dec. 1, 2005 (Council of Europe Doc. No. 2005 PCRED/DGI/EXP (2005) 63) (hereinafter Van der Ploeg). Article 11(2) of the European Convention provides no restrictions on freedom of association “other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.”

¹³ The International Center for Non-profit Law (ICNL), *Analysis of the Chart Prepared by the Ministry of Foreign Affairs of the Russian Federation Comparing Several Countries’ Laws Regulating NGOs*, May 3, 2006. The original chart prepared by the Russian Foreign Ministry is still available for download at its website: http://www.mid.ru/brp_4.nsf/sps/92D694A466198D4AC325711E0045C8DB (last visited Dec. 4, 2006).

¹⁴ Oksana Chelysheva, “Civil Society Under Siege: The Case of the Russian-Chechen Friendship Society,” 7 *Chechnya Weekly* 21 (May 25, 2006), available at http://www.jamestown.org/publications_details.php?volume_id=416&issue_id=3740&article_id=2371124.

Despite Movchan's assurances that the law initially would not be enforced very strictly, at least three actions by FRS authorities indicate the contrary. First, the FRS directed the registration applications submitted by a number of U.S.-based NGOs to the Federal Security Service of the Russian Federation (FSB) for "evaluation and comment"—a step that is not provided for under the law or its implementing regulations. Second, rather than permit those organizations which had submitted registration applications prior to the October 18, 2006 deadline to continue operations until approval of their applications, the FRS instead elected to interpret the law strictly, forcing approximately 100 groups to "suspend their principal activity aimed at fulfilling their objectives and tasks." This ban on activities meant that on October 18, unregistered organizations were forced to cease any operations beyond skeletal administrative work until the FRS approved their registration.¹⁵ Third, a number of organizations have either been denied registration on tenuous grounds or have been pressed by the FRS to modify their activities. For example, according to information obtained by the Commission, the FRS branch in Novosibirsk recently alleged that a registered local Pentecostal church violated its charter when it conducted religious activities in military units, and unless the organization amends its charter and that amendment is accepted by the FRS, it may now be subject to court proceedings that could lead to its liquidation.¹⁶

At the time of writing, the FRS had registered 160 representative offices of foreign NGOs. Another 30 foreign NGOs were in the process of having their applications scrutinized, and three organizations had been denied registration.¹⁷

The following section presents and analyzes key provisions of the amended NGO law in light of concerns about discretionary FRS action, unjustified restraint on the activity of civil society and discriminatory treatment—particularly as related to the operation of foreign and domestic NGOs, as well as religious organizations in Russia. In addition to a legal analysis of the NGO law's provisions and related regulations, Russia's international obligations and international best practice with respect to the regulation of NGOs will also be considered. The next section discusses key provisions in Russia's registration regime, including the application to register, grounds for denial of registration, grounds for liquidation and FRS controls on NGO activities.

In addition, the NGO law introduces a complex, yet often artificial and inconsistent, distinction between the "affiliate" or "representative" offices of foreign NGOs, which are not considered Russian legal entities, and the branches of foreign NGOs, which are deemed Russian legal entities. This distinction generates differences in how these organizations operate and are treated under Russian law. For example, affiliate and representative offices of a foreign NGO are not required to register, since they have no status as Russian legal entities. Rather, they are required to undergo a "notification" process, which is similar in many ways to the registration procedure, but technically remains a different process. In contrast, branch offices of a foreign NGO are

¹⁵ Igor Romanov, "Victims of the Register: Justice Ministry Starts Pursuing NGOs Working Illicitly on the Side," *Nezavisimaya Gazeta*, October 19, 2006. See also Associated Press, "Amnesty, Human Rights Watch Allowed to Resume Work in Russia," *The International Herald Tribune*, Nov. 10, 2006, and Yuri Mamchur, "NGO Registration in Russia: Crackdown or Incompetence?" http://www.russiablog.org/2006/10/ngo_registration_in_russia_cra.html.

¹⁶ The case of the Stichting Russian Justice Initiative's denial of registration is discussed in greater detail in Part III (C)(2), below.

¹⁷ Associated Press, "Russia Eases Stance Toward Foreign NGOs," *The Wall Street Journal*, Nov. 13, 2006, p.A-6, and Interfax, "Russia: Around 131 Foreign NGOs Re-Registered," Oct. 28, 2006.

required to register according to the NGO law. Although the law makes a further distinction between removal from the register in the case of “affiliate” or “representative” offices, and liquidation in the case of “branch” offices of foreign NGOs (and all other domestic Russian NGOs), the end result for all organizations which run afoul of the law is principally the same. That is, the NGO is no longer able to operate legally on the territory of the Russian Federation, and must again go through the entire registration or notification procedure to re-qualify. Although a key feature of the NGO law, these distinctions are minimized in the following analysis to enable a sharper focus on the law’s overarching potential effects for Russian civil society as a whole.

III. Key Provisions of the Amended 1996 Law on Noncommercial Organizations

A. Applicability to Religious Organizations

Article 1(4) of the amended NGO law specifies that articles 13-19, 21-23, and 28-30 shall not be applicable to religious organizations. According to information obtained from the FRS, articles 13.1 and 13.2, introduced by the January 2006 amendments, also are not binding on religious organizations. Based on these exclusions, most of the law’s registration, organization and liquidation procedures effectively do not apply to religious organizations in Russia. That said, as will be seen below—and despite claims of many Russian officials to the contrary—some of the most onerous features of the amended NGO law do in fact apply to religious organizations. In particular, article 32, which establishes exhaustive reporting obligations for NGOs and extensive state powers to intervene in NGO activities, is applicable to religious organizations. Moreover, the law is silent on whether the provisions that do not apply directly to religious organizations also exempt the charitable and social organizations that may be established by religious communities or inter-religious groups. Finally, it remains clear that—regardless of which specific provisions of the NGO law apply to religious organizations—development of a democratic and pluralistic NGO sector is essential to strengthening a social, political and cultural climate that broadly accepts and supports all human rights, including freedom of religion or belief, and securing the broader objective of rule of law in Russia.

The provisions addressing the registration, organization and liquidation of religious organizations in Russia are set out in the 1997 Law on Freedom of Conscience. It is worthwhile to note that the Law on Freedom of Conscience, like the NGO law, also gives rise to many of the same concerns regarding registration regimes, administrative discretion, arbitrariness, and subjective application that are addressed in this report.

B. The Application to Register

Overview

Articles 13.1 and 13.2, introduced by the January 2006 amendments, set out the requirements for registering new domestic NGOs and affiliate or representative offices of a foreign NGO under Russian law. Under these provisions, all new domestic NGOs, as well as existing foreign NGOs operating in Russia, are required to register with the FRS. According to regulations promulgated by the Ministry of Justice, existing foreign NGOs operating in Russia were given until October 18, 2006 to register successfully with the FRS. Failure to register by this deadline automatically

suspended the organization's ability to operate legally until the FRS approved the registration application.

To begin the registration process, an organization must submit various application forms and supporting documents to the FRS, including:

- 1) Three copies of the nonprofit organization's constituent documents;
- 2) Two copies of the resolution establishing the NPO and indicating the composition of governing bodies;
- 3) Two copies of forms containing detailed information on the NPO's founder(s); and
- 4) An excerpt from the register of foreign legal entities from the respective country of origin and the equivalent legal document certifying the legal status of the founder (i.e. the foreign organization), where applicable.¹⁸

Establishing an affiliate or a representative office of a foreign NGO on the territory of the Russian Federation requires submitting various additional supporting materials, including:

- 1) Constituent documents of the foreign NGO;
- 2) Resolution from the foreign NGO's governing body regarding the establishment of a branch or representative office in Russia;
- 3) Statute of the affiliate or representative office;
- 4) Decision on appointing the head of an affiliate or representative office; and
- 5) A document specifying the goals and objectives of a foreign NPO's affiliate or representative office.¹⁹

It should be noted that any subsequent amendment to an NGO's constituent documents requires that the organization undergo the entire registration procedure again, with the requisite deadlines, timeframes, and fees.²⁰

Analysis

The practical aspects of the registration process as conducted to date, particularly with respect to foreign organizations operating in Russia, appear to run contrary to assurances given to the Commission by FRS director Sergei Movchan in June 2006. As noted, Movchan insisted that the new registration requirements would not require professional lawyers, "since organizations already have filled out the forms."²¹ In a follow-up meeting, Alexander Jafarov, a senior FRS attorney who also attended the Moscow meeting with the Commission, reasoned that the new registration regulations "will leave little discretion to officials."²² Yet, during the registration

¹⁸ Art. 13.1(5), Law No. 7 "On Noncommercial Organizations," adopted Dec. 8, 1995 and amended to Feb. 2, 2006 (hereinafter Law No. 7).

¹⁹ Art. 13.2(2), Law No. 7.

²⁰ Art. 23, Law No. 7.

²¹ Meeting between USCIRF and the FRS, Moscow (June 23, 2006).

²² Meeting between USCIRF and the FRS, Washington, DC (July 27, 2006). The ICNL has noted that well-drafted regulations underpinning the NGO Law "could have [limited] the potential harmfulness of the Law by setting [forth] the forms and accordant definitions and requirements for NGOs in a manner which responds to and ameliorates the concerns previously identified...however, the regulations have confirmed our initial concerns as to the restrictive

application process, many organizations found it necessary to seek legal counsel, in addition to translation and notary services. In the view of at least one NGO official, the registration process was “by no means an easy task,” requiring “a very meticulous effort,” the hiring of a local consultant, and many hours of legal counsel.²³ According to other observers, NGOs were given conflicting information by different FRS officials concerning what supporting documents were required and what should be written in the registration application itself, thus introducing a clear element of discretion in the FRS’ approach.²⁴

The typical NGO registration form is approximately 50 pages, with additional supporting documentation and other forms required on a case-by-case basis that may total hundreds of pages. In practice, FRS forms require organizations to collect and notarize information ranging from passport data to “home addresses for founding members,” and further require NGOs to amend their charters to authorize explicitly the opening of an office in Russia.²⁵ Other NGOs report having to submit copies of “all press coverage of their activities,” and notarized death certificates of founders dating back to 1919.²⁶

The registration process also mandates that foreign NGOs operating in Russia have all application materials “translated into Russian and duly certified.”²⁷ The FRS declined a number of registration applications on the basis of poor translations,²⁸ forcing organizations to pay for the re-translation of materials until FRS staff was duly satisfied. The fact that at least one FRS official claimed that many applications had been rejected because of “repulsive” translations further underscores the existence of subjective decision-making within the registration process, despite assurances from senior FRS staff to the contrary.²⁹ Disturbingly, Movchan himself publicly decried the “shoddy” documents that were being submitted by NGOs seeking to register, and insinuated that the alleged poor quality of documents submitted to the FRS testified to a lack of respect toward the Russian state on the part of NGOs.³⁰

As noted, Movchan stated that he did not expect the FRS to be “very strict” about enforcement at the beginning of the process, since it was “all very new.”³¹ Yet, in addition to rejecting applications based on poor translations, the FRS also sought to enforce the NGO law strictly by forbidding those organizations whose pending applications had not been processed by the registration deadline—including Doctors Without Borders, Amnesty International, the National

nature of the Law.” ICNL, “Analysis of the Decree No. 212 Approved By the Government of the Russian Federation ‘On Measures Aimed at Implementing Certain Provisions of the Federal Laws Regulating Activities of Non-commercial Organizations’,” May 8, 2006, p.2 (hereinafter ICNL Analysis of Decree No. 212).

²³ This NGO official also noted that the Moscow office of the U.S. Agency for International Development was of “limited value and assistance” in completing the registration process.

²⁴ For an example of how these mixed messages operate in practice to harm the interests of civil society, see the example of the Stichting Russian Justice Initiative, discussed in Part III (C)(2), below.

²⁵ Yablokova, “NGOs Face Paperwork Hurdle.”

²⁶ Kaban, “Foreign Humanitarian Agencies Suspend Work in Russia.”

²⁷ Art. 13.2(4), Law No. 7.

²⁸ Yablokova, “NGOs Face Paperwork Hurdle.”

²⁹ Yablokova, “NGOs Face Paperwork Hurdle,” quoting Anatoly Panchenko, deputy director of the FRS’ NGO department.

³⁰ Igor Romanov, “Victims of the Register: Justice Ministry Starts Pursuing NGOs Working Illicitly on the Side,” *Nezavisimaya Gazeta*, Oct. 19, 2006.

³¹ Meeting between USCIRF and the FRS, Moscow (June 23, 2006).

Democratic Institute for International Affairs, and the International Republican Institute—from operating legally.³² As one Russian Justice Ministry official stated, these “NGOs will not cease to exist after October 18...they will be simply unable to function.”³³

Furthermore, under the law, a decision to register an NGO “shall be rendered [by the FRS] *on the basis of the documents submitted* in compliance with article 13.1(5).³⁴ Yet, reports indicated that the FRS forwarded registration applications submitted by several prominent U.S. organizations operating branch offices in Russia to the FSB for comment.³⁵ The ability to take this additional step is not spelled out in the law, but again points to the extensive discretion afforded to the FRS.

C. Denial of Registration

Overview

The distinction between foreign and domestic NGOs established under the application process is carried over to other areas of regulation. Most notably, there are a number of grounds for rejecting registration that apply only to affiliate or representative offices of a foreign NGO. Of particular concern under article 13.2(7)(4), a foreign NGO may be denied entry into the register where the FRS deems its “goals...create a threat to the sovereignty, political independence, territorial integrity, national unity, unique character, cultural heritage and national interests of the Russian Federation.”³⁶

When the FRS denies a registration request, it is required under the law to notify the applicant “in writing not later than within one month of the day of the receipt of the submitted documentation,” and also provide “specific references...to the provisions of the Constitution of the Russian Federation and legislation of the Russian Federation” which serve to justify the denial.³⁷ However, in sharp contrast to this detailed notification provision, where the FRS invokes article 13.2(7)(4) as the basis for its denial of registration, the NGO law requires only that the applicant be “informed about the reason for the said denial,” without specifying any need for justification based in law or written notice.³⁸

Finally, the NGO law also provides a general clause for rejecting registration, applicable to all NGOs, which stipulates that the FRS may deny registration where:

³² As of this writing, a number of the organizations cited have been successfully entered into the register.

³³ Yablokova, “NGOs Face Paperwork Hurdle.” According to an FRS directive, “termination of activity” requires an unregistered NGO to cease: “implementation of purposes and goals of an organization directly, as well as through funding of activities of Russian organizations, and shall not apply to its obligations as an employer, and economic obligations.” FRS, “On Procedure of Establishing an Affiliate or a Representative Office of an International or Foreign Non-commercial Non-governmental Organization on the Territory of the Russian Federation” (ICNL translation).

³⁴ Art 13.1(6), Law No. 7.

³⁵ Based on comments made during a roundtable discussion with U.S. NGOs operating in Russia held at Freedom House, Oct. 3, 2006.

³⁶ Arts. 13.2(7)(4) and 23.1(2)(2), Law No. 7.

³⁷ Art. 13.2(8), Law No. 7.

³⁸ Arts. 13.2(8) and 23.1(4), Law No. 7.

“the documentation required...has not been submitted in full, or the said documents have not been executed in a procedurally valid manner, or have been submitted to the wrong body of the government.”³⁹

Analysis

1. Grounds for Denying Registration of a Foreign NGO

The criteria for denial of registration of a foreign NGO are vague, overly broad and can be invoked by the FRS with substantial discretion. According to high-level FRS officials, denials of NGO registration applications will be based on *what the FRS determines* amounts to goals which threaten “the sovereignty, political independence, territorial integrity, national unity, unique character, cultural heritage and national interests of the Russian Federation.” There are no objective legal definitions, additional explanatory notes or guidelines in the regulations accompanying the law which provide any guidance as to the precise scope or meaning of these criteria. For example, no regulations expand upon the legal meaning of a “threat” to Russia’s “cultural heritage” or “unique character,” or, for that matter, precisely what constitutes Russia’s heritage or character. Furthermore, Movchan confirmed to the Commission delegation that the FRS and the Ministry of Justice had no plans to draft regulations clarifying these terms.⁴⁰ In other words, this provision may serve as a catchall clause under which the goals and objectives of any foreign NGO may be scrutinized and deemed unfit for registration, if so desired by Russian government officials.

FRS officials have provided mixed messages concerning the enforceability of this clause. Jafarov stated that, “as a practitioner of law [he] would not know how to enforce this provision.” He further ventured that this clause would “only be used against well-known threats such as al-Qaeda,” and that the courts would have to sort out any overstepping on the part of the FRS.⁴¹ However, during another media interview, Jafarov reasoned that this provision in its entirety could and would be enforced “to deny an entry into the register to organizations whose activities foment ethnic strife or undermine the sovereignty of Russia.”⁴² In the event that the FRS elects to invoke this article in rejecting an application for registration, it remains free to do so without providing written reasons grounded in law, and without clarifying guidelines or regulations—again underscoring the substantial discretion that is woven into the enforcement provisions of this law. As noted above, it is particularly troubling that under article 13.2(8) of the legislation, the obligation to provide written reasons is *explicitly waived* in instances where the vaguest grounds for denial of registration may be invoked.

Given the operation of these two provisions together, the law raises serious due process concerns for foreign NGOs with respect to the application procedure. In light of these provisions, a situation may emerge whereby repeated attempts to register are rejected without any reference to Russian law, or alternatively registration applications are met with endless requests for additional information on the part of the FRS.⁴³ It should be stressed that although the NGO law does

³⁹ Art. 23.1(1)(4), Law No. 7.

⁴⁰ Meeting between USCIRF and the FRS, Moscow (June 23, 2006). The FRS intends to use any court rulings that arise based on NGO challenges to denial of registration as further guidance for refining its internal determinations.

⁴¹ Meeting between USCIRF and the FRS, Washington, DC (July 27, 2006).

⁴² “Press Conference with Alexei Jafarov, head of the FRS Directorate for Registration of Political Parties and Public, Religious and Other Organizations,” Interfax, Aug. 18, 2006 (hereinafter Jafarov Press Conference).

⁴³ This threat has been noted by other observers of the NGO law, including the ICNL.

extend the right of a court appeal to NGOs that have been denied registration, the NGO will be forbidden from operating legally in Russia during the interim period, and moreover, will be faced with the significant burden of costs associated with a court proceeding if it elects to appeal the FRS decision. Likewise, although the NGO law provides organizations that have been denied registration the right to re-submit an application, an FRS denial on the basis of article 13.2(8) means that an NGO's re-application may occur without any specific guidance on what changes may be required to satisfy the FRS. Therefore, this route appears no more attractive an option for securing registration and in fact may draw NGOs re-submitting a registration request into an endless loop of applications being denied without a clear basis grounded in law. Indeed, Ella Pamfilova, head of Putin's Council on the Institutions of Civil Society and Human Rights, has commented that "the [NGO] law creates so much red tape that many organizations can't cope."⁴⁴

It is useful to point out that the European Court of Human Rights (ECHR) recently discussed the deleterious effect of denial of registration in *Salvation Army v. Russia*. In its judgment, the ECHR found that the process of seeking re-registration "necessitated complex bureaucratic steps and a diversion of resources from [the organization's] activity," created "negative publicity which severely undermined... efforts at charitable fund-raising and generated distrust among landlords," and "made it impossible for 25 foreign employees and seven non-Moscow Russian employees to obtain residence registration."⁴⁵

2. Grounds for Denying Registration of Any NGO

FRS officials need not rely on the catchall clause of article 13.2(7)(4) alone to deny registration to a foreign NGO. The law also provides that *all* NGOs—domestic and foreign alike—can be denied registration where the FRS determines that "the documentation required for the state registration... has not been submitted in full or... [has] not been executed in a procedurally valid manner,"⁴⁶ or in cases where the FRS establishes that the constituent documents submitted by a foreign NGO "contain unreliable information."⁴⁷

The general and vague content of the provisions governing denial of registration—coupled with the FRS' free hand in interpreting and enforcing their meaning—may also facilitate the *post facto* denial of registration, even after an NGO is entered into the register successfully. According to Jafarov:

If [an NGO decides] to mislead [the FRS], perhaps they will prepare documents in such a way that we will not notice this during our analysis of that [registration] package... But they will have to bear in mind that they are laying a delayed action bomb, because if we find this out later, *this will certainly be grounds for expulsion from the register. And this will be an obstacle to reentry into the register for that organization.*⁴⁸

⁴⁴ "Pamfilova Calls for Changes to the NGO Law," *The Moscow Times*, Oct. 25, 2006, p.3.

⁴⁵ Paras. 30-33, *Moscow Branch of the Salvation Army v. Russia*, judgment of the European Court of Human Rights, Oct. 5, 2006 (72881/01) (hereinafter *Salvation Army v. Russia*).

⁴⁶ Art. 23.1(1)(4), Law No. 7.

⁴⁷ Art. 13.2(7)(2), Law No. 7.

⁴⁸ Jafarov press conference (emphasis added).

Case Study:
The Stichting Russian Justice Initiative—Rejection of Registration on Potentially Discretionary and Arbitrary Grounds?

The case of the Stichting Russian Justice Initiative (SRJI) is indicative of the arbitrary and discretionary nature of article 23.1(1)(4) of the NGO law, as well as the potential application of the law to stifle critics of Russian government policy. The SRJI, an NGO registered in the Netherlands “that since 2001 has provided legal assistance to victims of grave human rights abuse in the North Caucasus,” currently represents clients in more than one hundred cases before the European Court of Human Rights. Many of these cases deal with rights abuses in Chechnya and adjacent areas. In the past six months, the Court has issued four rulings in favor of applicants represented by SRJI, and the Russian government has agreed to pay compensation in at least some of these cases.

Despite having closely consulted with FRS officials over several months and preparing “all the documents in accordance with their instructions,” the SRJI received a denial of registration notice from the FRS in December 2006. The rejection letter cited the following grounds: first, SRJI’s application had not been properly signed; second, the organization’s executive director did not have proper authority to represent the organization; and finally, the registration application contained inconsistencies.⁴⁹

According to SRJI, during an October 2006 meeting with the FRS, officials “had indicated that submission of [a single signature] would be sufficient” to complete the application and that an additional document empowering the executive director to represent the organization “would be superfluous.” The inconsistency in SRJI’s application stemmed from a reference to its representative office “in the city of Moscow,” rather than what current guidelines require—that is, “in the Russian Federation.”⁵⁰ SRJI’s second application for registration was rejected by the FRS on January 19, 2007 on “technical grounds.” This rejection followed a January 18 judgment by the European Court of Human Rights in favor of two Chechen brothers who brought torture allegations against the Russian government, the first such judgment against Russian officials since the conflict began in 1994. The SRJI represented the complainants in that case. Disturbingly, the SRJI’s experience underscores the problem that denial of registration may be motivated by factors other than simple technical errors in an NGO’s application package.

In other words, the FRS reserves the right to conclude at any time that registration information provided by an NGO is either insufficient or is otherwise “unreliable,” and further, to determine whether that omission or error stems from an NGO’s desire to “mislead” the FRS, in which case the organization may be excluded from the register. It is conceivable that the FRS could base such an action on either article 23.1(1)(4) in the case of domestic NGOs, or article 13.2(7)(2) in the case of foreign NGOs. The ability of the FRS to strike organizations from the register is bolstered by the requirement that an NGO repeat the entire registration process in the event that there is any change to its constituent documents,⁵¹ and further, by the ability to exclude foreign NGOs from the register where the FRS concludes the organization’s activities are inconsistent

⁴⁹ SRJI press release, “Russian Government Rejects Registration of Russian Justice Initiative,” Nov. 24, 2006, <http://www.srji.org/en/news/2006/11/23/>.

⁵⁰ SRJI press release, “Russian Government Rejects Registration of Russian Justice Initiative.”

⁵¹ Art. 23(1), Law No. 7. See Part III (B), above.

with its declared goals.⁵² Alarming, Jafarov appears to insinuate here that such a “delayed-action bomb” may also be grounds for discriminating against an NGO that attempts to reapply after being deleted from the register by the FRS, a power that does not appear anywhere in the text of the NGO law.

3. Freedom of Association and Denial of Registration: International Standards and the Russian Constitution

The vague criteria and broad discretion for denying the registration of NGOs found in the NGO law may also conflict with Russia’s regional and international human rights obligations, as well as with the Russian constitution. Under the European Convention for the Protection of Human Rights and Fundamental Freedoms and the ICCPR, freedom of association can be restricted only where prescribed by law and deemed necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime (to maintain public order), for the protection of health or morals, or for the protection of the rights and freedoms of others.⁵³ The ECHR has held that this list of exceptions is exhaustive: “The exceptions to the rule of freedom of association are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom.”⁵⁴ In addition, the EHCR repeatedly has affirmed that:

[T]he right to form an association is an inherent part of the right set forth in Article 11 [of the European Convention]. That citizens should be able to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which that right would be deprived of any meaning. *The way in which national legislation enshrines this freedom and its practical application by the authorities reveal the state of democracy in the country concerned.*⁵⁵

Nothing in these key instruments would appear to envision restrictions to the fundamental human right to freedom of association based on such vague grounds as threats to a country’s “sovereignty,” “cultural heritage,” or “unique character,” or, for that matter, on arbitrary provisions that are subject to significant administrative discretion. In fact, the ECHR specifically has ruled that efforts to limit freedom of association on grounds related to cultural traditions and historical symbols do not constitute legitimate government actions under article 11 of the European Convention.⁵⁶

The human rights protections provided under the Russian Federation’s 1993 constitution likewise signal that the NGO law may conflict with what are intended to be supreme legal norms in the Russian Federation itself. Article 55 of the Russian constitution states, “Laws that deny or

⁵² Art. 32(10), Law No. 7.

⁵³ Art. 11(2), European Convention for the Protection of Human Rights and Fundamental Freedoms, and Article 22(2), International Covenant on Civil and Political Rights. Russia ratified the European Convention on May 5, 1998 and the ICCPR entered into force on Mar. 23, 1976.

⁵⁴ Para. 76, *Salvation Army v. Russia*.

⁵⁵ Para. 59, *Salvation Army v. Russia* (emphasis added). This cornerstone principle of the right to freedom of association was first expressed by the ECHR in *Sidiropoulos and Others v. Greece*, judgment of the European Court of Human Rights, July 10, 1998 (57/1997/841/1047) (hereinafter *Sidiropoulos v. Greece*).

⁵⁶ *Sidiropoulos v. Greece*.

derogate from rights and freedoms of man and citizen shall not be issued in the Russian Federation.” Furthermore, any restrictions on individual rights and freedoms are permitted “only to the extent needed for the purposes of protecting the foundations of [the] constitutional system, morals, health, rights and legitimate interests of other persons, and ensuring the defence of the nation and security of the state.”⁵⁷ The Russian constitution also provides that, “*Everyone* has the right to association...to protect their interests. The freedom of public association activities is guaranteed.”⁵⁸ It establishes that “Public associations are equal before the law,”⁵⁹ and “guarantees the equality of rights and freedoms without regard to gender, race, *nationality*, language, *origin*, property or employment condition, attitude toward religion, membership in public associations *or any other circumstances*.”⁶⁰

D. Founders of a Nonprofit Organization

Overview

The NGO law expressly forbids certain legal persons from becoming founders of an NGO, including:

- 1) A foreign national or a stateless person living in Russia and deemed as “undesirable” under the law;
- 2) A public association or a religious organization whose activities have been suspended in compliance with Law No. 114-FZ On Counteraction of Extremist Activities (2002), on the grounds that the organization exercised “extremist activity that involved the violation of the rights and freedoms of man and citizen, the infliction of damage to the personality and health of individuals, the environment, public order, public security, the property and the lawful economic interests of natural and/or juridical persons, the society and the State [or] that [it] poses a real threat of inflicting such damage.”⁶¹
- 3) A person whose actions were recognized as bearing signs of extremist activities by the decision of a court of law, which has come into effect.⁶²

Analysis

FRS officials in Moscow informed the Commission delegation that there is currently no legal definition for the term “undesirable” under Russian law and there are no plans to draft additional regulations to clarify this term in the NGO law. According to FRS officials, the NGO law will be enforced based on their interpretation of the various provisions, and any modifications to this interpretation will occur only in the event that an impugned NGO successfully challenges the FRS’ interpretation and/or related actions in court. Depending on how the term “undesirable” is interpreted, this provision also may run afoul of Russia’s regional and international treaty obligations regarding the right to freedom of association, as described in the previous section.

⁵⁷ Art. 55(2) and (3), Constitution of the Russian Federation, adopted Dec. 12, 1993.

⁵⁸ Art. 30(1), Constitution of the Russian Federation (emphasis added). It should be noted that this provision is drafted in a manner that makes it applicable to every individual, rather than only to citizens of the Russian Federation.

⁵⁹ Art. 13(4), Constitution of the Russian Federation.

⁶⁰ Art. 19(2), Constitution of the Russian Federation (emphasis added).

⁶¹ Art. 10, Law No. 114-FZ “On Counteraction of Extremist Activities”, July 25, 2002 (hereinafter Law No. 114).

⁶² Art. 15(1.2), Law No. 7.

According to the International Center for Non-profit Law (ICNL), certain Russian authorities retain “the right to determine that it is ‘undesirable’ for a foreign national to remain in the [Russian Federation], and these agencies have complete discretion to set their own rules for making that determination.”⁶³

A legal analysis of the NGO law undertaken on behalf of the Council of Europe concluded that the provisions concerning founders of an NGO “lend themselves to subjective determinations and are so broad that they may easily be abused,” and added that any “second-guessing or speculation about the true intentions of the founders of the organization” would run contrary to existing ECHR jurisprudence. As an alternative, the Council of Europe opinion recommended that the more appropriate route would be for the law “to judge an association by its actions, which, if unlawful, [could] give rise to legal steps to dissolve it.”⁶⁴

It is significant to note that the NGO law does not operate in a vacuum. Rather, it is part of an elaborate legislative web which has emerged in Russia to constrict the ability of civil society—and specifically those elements of civil society that are perceived as challenging the current government’s policies—to operate freely. For example, Stanislav Dmitrievsky, the director of the Russian-Chechen Friendship Society (RCFS) and editor-in-chief of the newspaper *Pravo-Zashchita* (Rights Protection), was charged and convicted under Russia’s law On the Counteraction of Extremist Activity for “inciting ethnic hatred” on the basis of publishing statements from Chechen separatist leaders in the NGO’s newspaper. These statements were in two articles by Chechen leaders published in 2004 in *Pravo-Zashchita*, one of them appealing to the European Parliament to hold Russia responsible for genocide in Chechnya. The author of this article was Aslan Maskhadov, elected president of Chechnya in 1997 following settlement of the first Chechen war. International human rights groups, including Amnesty International and Human Rights First, roundly condemned the charges against Dmitrievsky and his subsequent trial as proceeding on illegitimate grounds.⁶⁵ According to Human Rights First, the Dmitrievsky case confirmed the Putin government’s intent to apply “laws intended to control religious extremism against those who work daily to prevent it through their non-violent activities.”⁶⁶ Dmitrievsky was given a two-year suspended sentence in February 2006.

Based on the inter-operation of the NGO law and the Law on Counteraction of Extremist Activities, human rights activists such as Dmitrievsky not only now can find themselves under threat of government sanction, but also may have charges against them serve as the justification

⁶³ ICNL, “Analysis of Law No. 18-FZ on Introducing Amendments to Certain Legislative Acts of the Russian Federation,” Feb. 17, 2006, p.3 (hereinafter ICNL Analysis of Law No. 18-FZ).

⁶⁴ Para. 21, Van der Ploeg.

⁶⁵ Carl Gershman, “The Darkness Spreading Over Russia,” *The Washington Post*, Oct. 21, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/10/20/AR2006102001242.html>. See also Amnesty International, “Human Rights Defenders in Russia Facing Threats and Intimidation,” Nov. 16, 2005, <http://web.amnesty.org/pages/rus-161105-action-eng>, and Human Rights First, “Russian Rights Leader Faces Prosecution and Needs Your Help,” Aug. 24, 2005, http://www.humanrightsfirst.org/defenders/hrd_russia/alert082405_dmitrievsky.htm, and <http://www.ncsj.org/AuxPages/120605NGO.shtml>.

⁶⁶ Human Rights First, “Russia’s New Direction: An Update to the New Dissidents: Human Rights Defenders and Counterterrorism in Russia” (2006), <http://www.humanrightsfirst.info/pdf/06622-hrd-russia-update-web.pdf>.

for initiation of liquidation proceedings against any organizations with which they are affiliated. Under article 15 of the extremism law:

If the leader or a member of the governing body of a public or a religious association or any other organisation makes a public statement that calls for extremist activity without any reference to the fact that this reflects his personal opinion, and likewise in case of the entry into legal force of a court decision in respect to this person for an offence of an extremist character, the corresponding...organisation shall be obliged to state in public its disagreement with the pronouncements or actions of such person... If the corresponding... organisation fails to make such a public statement, this may be regarded as a fact testifying to the presence of extremism in their activity.⁶⁷

Indeed, the government ordered the closure of the RCFS in October 2006, and on January 23, 2007, the Russian Federal Supreme Court upheld this action on appeal.⁶⁸

The extremism law further provides that where an NGO fails to distance itself from “facts testifying to the presence of *signs* of extremism” in its activity, that organization “shall be liquidated.”⁶⁹ In tandem with this, the NGO law provides that an NGO “may be liquidated on the basis and under the procedure stipulated by the Civil Code of the Russian Federation, the present Federal Law and any other federal laws,”⁷⁰ and further stipulates that “a person whose actions were recognized as bearing signs of extremist activities by the decision of a court of law” cannot be a founder, participant, or member of a nonprofit organization.⁷¹ In other words, these laws impose a kind of vicarious liability on those NGOs that fail to condemn publicly words or deeds imputed to their leadership and/or membership that may be construed as falling under the broad definition of “extremist activity.”

By invoking this complex legal framework, in October 2006, prosecutors convinced a court in Nizhny Novgorod that Dmitrievsky’s prior conviction and his relationship with the RCFS were sufficient grounds to order the NGO closed.⁷² This incident may serve as an early indicator of how Russia’s amended NGO law—and specifically its vague and overbroad provisions and discretionary powers—can be manipulated to constrict the operation of Russian civil society. Disturbingly, therefore, in practice the NGO law not only can prohibit individuals whose actions bear “signs of extremist activity” from founding NGOs, but may also serve as a basis for liquidating any NGO with which that individual is associated.

⁶⁷ Art. 15, Law No. 114.

⁶⁸ Peter Finn, “Russian Court Backs Closing of Chechen Rights Group,” *The Washington Post*, January 24, 2007, A8.

⁶⁹ Art. 7, Law No. 114 (emphasis added).

⁷⁰ Art. 18(1), Law No. 7.

⁷¹ Art. 15(1.2), Law No. 7.

⁷² Tatyana Margolin, “Russia Court Shuts Down Chechen Rights NGO on Heels of Politkovskaya Murder,” *Jurist Paper Chase Newsburst*, Oct. 14, 2006. See <http://jurist.law.pitt.edu/paperchase/2006/10/russia-court-shuts-down-chechen-rights.php> and related story at <http://jurist.law.pitt.edu/paperchase/2006/02/russian-court-convicts-head-of-us.php>. It is expected that this case will be appealed to the European Court of Human Rights.

E. Grounds for Liquidation: Russian Law, Reporting Requirements, NGO Activities, and Failure to Comply with FRS Orders

Overview

As noted above, the amended NGO law provides that a nonprofit organization “may be liquidated on the basis and under the procedure stipulated by the Civil Code of the Russian Federation, the present Federal Law and any other federal laws.”⁷³ This general basis for liquidation is expanded upon under article 18(2.1), whereby a branch of a foreign NGO on the territory of the Russian Federation may be liquidated for several additional reasons, including:

- 1) Failure to submit required information, in certain instances on a quarterly basis, concerning:
 - the volume of financial and other resources obtained by said structural unit;
 - the proposed allocation of such resources;
 - the purposes for which said resources will be expended or used;
 - the actual expenditure of said resources;
 - the programs to be implemented on the territory of the Russian Federation; and
 - the use of cash assets and other property allocated to physical and juridical persons.⁷⁴

- 2) Undertaking activities that are deemed by the FRS to be inconsistent with declared statutory goals or with other reported information, as outlined above.⁷⁵

In addition to the liquidation guidelines set forth in article 18, the NGO law expands FRS powers considerably under article 32. According to article 32(9), the FRS may exclude from the register any branch or representative office of a foreign NGO when that organization fails “to submit in a timely manner” all of the reporting information required by the FRS under the NGO law. Further, under article 32(10), the FRS can exclude a foreign NGO from the register when it determines that the NGO has acted outside of its mandate or contrary to other information reported to the FRS. According to the legislation, both of these FRS actions can be taken without any court procedures. In a similar manner, article 32(11) provides that “a repeated failure” on the part of a domestic NGO to “submit in a timely way” required information to the FRS “shall provide grounds for a court claim...requesting liquidation” of the NGO in question. Finally, the NGO law also allows the FRS to exclude from the register any foreign NGO that fails to “terminate its activities in connection with the implementation” of a pending program which the FRS has banned by written order.⁷⁶ This provision further stipulates that such action may result in liquidation of the organization in question, but does not specify whether a court order would be required.

⁷³ Art. 18(1), Law No. 7.

⁷⁴ This information is specified under Art. 32(4), Law No. 7.

⁷⁵ Art. 18(2.1)(3), Law No. 7.

⁷⁶ Art. 32(13), Law No. 7. This provision is addressed in greater detail in Part III(G), below.

Analysis

1. Reporting Obligations for Domestic and Foreign NGOs

The NGO law delineates a number of specific reporting obligations for domestic and foreign NGOs, and also sets out the consequences for failure to meet these reporting criteria.

Expectations of timely reporting are more stringent for foreign NGOs than domestic ones, and the failure of foreign NGOs to meet deadlines leads to more severe consequences. In the case of a domestic NGO, the law requires a “*repeated failure*” to “submit in a timely way” required information to the FRS before any liquidation action can be taken against the organization.⁷⁷ In contrast, the law appears to suggest that a foreign NGO may be removed from the register after *only one* “failure to provide the information” required by the FRS.⁷⁸ The NGO law further enables the FRS to exclude a foreign NGO from the official Unified State Register of Legal Entities in the event that either:

- 1) the NGO in question, even in a single instance, fails “to submit in a timely manner all of the information” required by the FRS;⁷⁹ or
- 2) the FRS determines that an affiliate or representative office is carrying out activities inconsistent with its declared goals.⁸⁰

Nothing in the NGO law or its underlying regulations provides a definition for “timely manner.” More problematic, the law authorizes FRS to strike affiliates or representative offices of foreign NGOs from the register under article 32(9) and (10) *without requiring a court order*. Although there is a distinction between exclusion from the registry and liquidation, it is worthwhile to note here that exclusion from the register effectively removes an NGO’s ability to conduct activities legally, resulting in both penalties having essentially the same end result—an inability to continue operations legally in Russia. Even though an NGO would retain the right to appeal such an administrative decision through the courts, the FRS’ ability to remove the legal basis for an NGO’s operations without due process will not only interrupt NGO activities, but could also drain its financial resources.

Extensive required reports covering the “volume of financial resources and other assets acquired...prospective allocation of said resources, [and the] purposes for which said resources are spent or used,” must be submitted by foreign NGOs on a quarterly basis.⁸¹ This quarterly reporting to the FRS is in addition to mandatory annual reporting for structural subdivisions of foreign NGOs on “actual expenditure and utilization of financial resources.”⁸² In the case of domestic NGOs, the regulations require annual reporting containing:

a report regarding the [NGO’s] activities, information regarding the composition of its governing bodies, documentation containing information regarding financial

⁷⁷ Art. 32(11), Law No. 7. For background on information NGOs are required to provide the FRS see Part III(G), below.

⁷⁸ Art. 18(2.1)(2), Law No. 7.

⁷⁹ Art. 32(9), Law No. 7. The provisions of article 32 are addressed in greater detail at Part III(G), below.

⁸⁰ Art. 32(10), Law No. 7.

⁸¹ Art. 2, Decree No. 212 “On Measures Aimed at Implementing Certain Provisions of the Federal Laws Regulating Activities of Non-commercial Organizations,” Apr. 15, 2006 (ICNL translation) (hereinafter Decree No. 212).

⁸² Art. 2, Decree No. 212.

spending and use of other property, including assets acquired from international and foreign organizations, foreign nationals and stateless persons.⁸³

The requirement of quarterly reporting may give rise to a significant administrative burden, particularly for smaller NGOs. For example, reporting Form No. OH0003 requires information on the actual use of every asset costing above approximately US\$360.⁸⁴ Furthermore, the law is also unclear as to whether a minor oversight in financial reporting—for example, a misreported small donation made by an individual donor or an unreported minor expenditure—may be invoked by the FRS as a basis for removing a foreign NGO from the register on the grounds outlined in article 32(9).⁸⁵ Given these potentially high penalties, the need for foreign NGOs to reserve and expend substantial financial and human resources to ensure full compliance with the law’s provisions grows more apparent.

2. NGO Activities: Advance Reporting on Programs and Incompatibility with Charters

Regulations supplementing the NGO law require foreign NGOs to submit extensive annual reports to the FRS outlining programs that the organization “plans to implement on the territory of the Russian Federation” in the coming year.⁸⁶ According to FRS forms, required reporting on planned activities will need to include data on the names, phone numbers and passport numbers of participants at events such as conferences.⁸⁷ Although the regulations make some provision for exceptions,⁸⁸ it is unreasonable at best to expect all foreign NGOs operating in Russia to know precisely what their programmatic plans may be for the coming year and which individuals will be participating in them. Thus, the law empowers the FRS to use an unreported NGO program—perhaps designed at the last minute as an urgent response to a crisis—as justification for excluding that organization from the register or initiating liquidation proceedings.⁸⁹ FRS officials have sought to quell such concerns as “imagined fears,” reasoning that most NGOs have work plans that are developed far in advance.⁹⁰

Requiring foreign NGOs to report in advance on planned programs also creates an opportunity for significant state interference in its operations. For example, if the FRS concludes that a planned program is inconsistent with the NGO’s statutory goals or is otherwise contrary to provisions of the NGO law, it can order the program canceled or modified. One representative

⁸³ Art. 2(b), Decree No. 212.

⁸⁴ ICNL Analysis of Decree No. 212, p.2.

⁸⁵ “Organizations that rely on public fundraising, for example, may not know the citizenship of their many small donors, and may not be able as a practical matter to report on all funds received from foreign donors.” See ICNL Analysis of Law No. 18-FZ, p. 8. This scenario is particularly problematic for religious organizations that must report under article 32, given the common use of donation boxes and other anonymous sources of support. For additional background on this issue, see Part III(E)(3), below.

⁸⁶ Art. 2, Decree No. 212.

⁸⁷ It is worth noting that under FRS Form No. OH0001, which addresses NGO reporting on activities already undertaken, NGOs are required to provide the “number and profile of participants of *each event* conducted...and how these events were publicized.” ICNL Analysis of Decree No. 212, p.2.

⁸⁸ For example, where the NGO fails to provide information on a program one year in advance, the regulations allow NGOs to report on planned programs “not later than 1 month prior to commencement of the program.” The law makes no provision for undertaking programs without advance notice being submitted to the FRS. Art. 2, Decree No. 212.

⁸⁹ These actions conceivably could be grounded on either Art. 32(13) or Art. 18(2.1)(3).

⁹⁰ Meeting between USCIRF and the FRS, Washington, DC (July 27, 2006).

from a leading American NGO privately characterized this power as essentially giving the FRS a “line-item veto” on all foreign NGO activities. Interpreted broadly, the NGO law also may provide the FRS with the ability to initiate liquidation proceedings against a foreign NGO for the mere act of planning a program deemed to fall outside of its mandate.

The discretionary powers that underpin the new NGO law establish the FRS as the official arbiter of precisely which activities fall within or outside of an NGO’s mandate, which begs the question: Will the FRS elect to interpret NGO mandates narrowly? Broadly? Or as intended by the scrutinized NGO’s founders? Will NGOs need to amend their charters to account for the new function of having to report to the FRS on a quarterly and annual basis? Clearly, it is this power of interpretation which creates an expansive gray area in the law, which in turn affords substantial discretion to FRS officials and regional prosecutors, and upon which removal from the registry or the initiation of liquidation proceedings hinges.⁹¹

Indeed, while the NGO law requires that NGOs be notified in writing where the FRS determines that a given program is incompatible with an organization’s statutory goals, the law provides no guidance or objective grounds for enabling the FRS to reach such determinations.⁹² Rather, it leaves these findings to the discretion of the FRS, and moreover, places the onus for contesting such a warning on the NGO in question. This could have a chilling effect on the planning and execution of activities, particularly for foreign NGOs, since once a foreign NGO is found to be acting outside of its charter or the information furnished in previous reports, it is subject to exclusion from the registry without court order. Although the law provides NGOs with the ability to contest such warning letters through the courts, this process inevitably introduces impediments of its own, including the time and cost associated with litigation. NGOs faced with a warning letter might easily find themselves deciding to forgo the impugned program rather than incur the substantial expenditures of time, finances and personnel necessary to contest the FRS order. More troubling still, repeated unrestrained warnings from the FRS across a range of programmatic activities being planned or undertaken by an NGO or group of NGOs might put those or other organizations into a position where they cannot act, are fearful to act or simply preemptively suspend activities altogether.

3. Application to Religious Organizations

It is important to note here that, unlike many of the amendments to the NGO law, article 32 applies to religious organizations. The Commission has received reports that the FRS has already threatened at least one religious organization with removal from the Unified State Register of Legal Entities. According to these reports, the FRS concluded that religious activities undertaken by the Novosibirsk-based Word of Life Church within Russia’s military units are in violation of the Church’s charter. Consequently, the Church will be removed from the register unless it modifies its charter to the satisfaction of the FRS. It should be noted that the Word of

⁹¹ The ability of both local prosecutors and the centralized FRS office to initiate liquidation proceedings under the NGO Law gives rise to additional accountability concerns. For example, in the event that a regional prosecutor seeks the dissolution of a given NGO, the FRS can claim that the matter is outside of its jurisdiction, and that it is powerless to regulate the actions of local prosecutors. Accordingly, efforts to monitor enforcement of the NGO Law will require not only the scrutiny of FRS actions, but also those of regional prosecutors. Article 18(1.2) of the NGO law provides that a “court claim requesting liquidation of a nonprofit organization may be lodged by a prosecutor of the relevant jurisdiction of the Russian Federation,” or by the FRS.

⁹² Art. 32(6) and (7), Law No. 7.

Life Church has a long history of being harassed by Russian authorities.⁹³ This case also underscores how the law may be interpreted and/or enforced differently by either regional prosecutors or the FRS.

Leaders from a wide range of religious communities in Russia either have petitioned or plan to petition the government to cancel applicability of article 32's reporting requirements to religious organizations. Protestant, Russian Orthodox, Muslim, and Jewish leaders have criticized publicly the provisions which require religious organizations to report on the number of worshippers and amount of donations each group receives. According to Ksenia Chernega, a lawyer with the Russian Orthodox Church, the ROC "will experience great difficulties" with the new system of reporting, and religious organizations "cannot be put on the same footing as other NGOs." Further, Rabbi Zinovy Kogan, chairman of the Congress of Jewish Religious Communities and Organizations in Russia, observed that the "new rules are undoubtedly an encroachment on the inner life of the church," and Ravil Gainutdin, chairman of the Board of Muftis of Russia, commented that "such controlling measures are unacceptable in democratic conditions... The state has only one responsibility—that of registering a religious organization, not of counting up its worshippers and the money collected."⁹⁴ A letter sent to First Deputy Prime Minister Dmitry Medvedev by the Russian Church of Christians of Evangelical Faith on December 1, 2006, claims that the rules violate the right to freedom of conscience in Russia and that the paperwork required will make it nearly impossible for religious organizations to remain in compliance with the law.⁹⁵

In practice, the regulations supporting the NGO law reportedly mean that religious organizations are expected to submit reports detailing "every service and any other event, including the time and date it took place, how many people attended and the 'makeup' of the participants."⁹⁶ These reports are required to be submitted by April 15, 2007. As one religious official commented, "keeping a tally of every service promises to be a bureaucratic nightmare."⁹⁷ In the face of these onerous reporting obligations, leading human rights activists, such as Vladimir Ryakhovsky, an attorney with the Moscow-based Slavic Centre for Law and Justice, have concluded that religious organizations "will find the bureaucratic requirements of the new changes practically

⁹³ According to the U.S. Department of State *International Religious Freedom Report*, a regional construction committee refused to grant the Word of Life Pentecostal Church permission to identify its presence by the use of signage on the outside wall of its own premises. U.S. Department of State, *International Religious Freedom Report 2006*, <http://www.state.gov/g/drl/rls/irf/2006/71403.htm>. According to press reports, in 1998 a public prosecutor attempted to declare the church illegal under Russia's law on freedom of conscience on the basis of not having existed for at least 15 years. Police and security agents raided the church and the homes of its leaders, and tax officials backed by the local prosecutor came into the church and confiscated its funds and paperwork. Editors, "Russia Harasses, Threatens Christians," *Religion Today*, Jan. 14, 1999, available at <http://www.stetson.edu/~psteeves/relnews/9901b.html>.

⁹⁴ "Government to Try Out New Methods of Church Control," *Kommersant*, Dec. 8, 2006. Also republished in: Willy Fautré, ed., "Russia: Religious Organizations Appeal New Accountability," *Human Rights Without Frontiers Press Service*, Dec. 13, 2006.

⁹⁵ Carl Schreck, "Churches Must Report on Offerings, Services," *The St. Petersburg Times*, Dec. 12, 2006, Issue No. 1229 (95).

⁹⁶ Schreck, "Churches Must Report on Offerings, Services."

⁹⁷ Schreck, "Churches Must Report on Offerings, Services."

impossible to fulfill,”⁹⁸ enabling the government to target those organizations that it wants “to strangle out of existence” on the basis of their lack of compliance.⁹⁹

F. Governing Structures

Overview

The NGO law outlines specific guidelines for organizing an NGO’s governing structures, including enumerating the specific competencies of both a “supreme governing body” and an “executive body.”¹⁰⁰ Moreover, the law details requisite minimum attendance levels to validate general meetings, and even details specific requirements related to voting majorities and limits on the number of “workers of the nonprofit organization” permissible in the supreme governing body.¹⁰¹

Analysis

As currently worded, these provisions may place undue and cumbersome limitations on how the founders of a given NGO may choose to structure their organization. For example, a smaller, more loosely organized NGO reasonably may determine that, based on its needs, two governing bodies are cumbersome and that a supreme governing body is superfluous. More significantly, an NGO likewise may determine that certain specific responsibilities ascribed under the NGO law to the “supreme governing body” are better handled by the executive body or vice versa. These structures could reasonably be set out on a case-by-case basis by the NGO in its charter rather than delineated in detail by the legislation.

G. Control over the Activities of a Nonprofit Organization

Overview

In addition to its oversight of the registration process, article 32 of the NGO law grants the FRS extensive powers to monitor and investigate the activities of NGOs, and further to initiate liquidation proceedings for failure to comply with the law. As previously noted, based on Commission discussions with FRS leadership, article 32 of the NGO law “definitely applies to religious organizations,” in addition to other NGOs.¹⁰² Of particular interest, under the law, the FRS is entitled to:

- 1) Request documents containing resolutions by the NPO’s governing bodies;
- 2) Request and obtain information regarding the NPO’s financial and economic activities from state statistical and revenue agencies, and other agencies of state control and supervision, as well as from financial institutions;
- 3) Send its representatives to participate in events held by the NPO; and

⁹⁸ Geraldine Fagan, “Russia: Will NGO Regulations Restrict Religious Communities?,” Forum 18 News Service, Nov. 14, 2006.

⁹⁹ Schreck, “Churches Must Report on Offerings, Services.”

¹⁰⁰ Arts. 29 and 30, Law No. 7.

¹⁰¹ Art. 29(4) and (5), Law No. 7.

¹⁰² Meeting between USCIRF and the FRS, Moscow (June 23, 2006). According to the FRS, there are 22,500 registered religious organizations in Russia. Fifty-five percent of these are registered to the Russian Orthodox Church (ROC), 20 percent are Protestant, and another 20 percent are Muslim.

- 4) Review compliance of the NPO's activities, including its financial expenditures and property management, with its statutory goals up to once a year.

As noted above, article 32 grants the FRS further powers with respect to foreign NGOs. Under sub-section 13, the FRS, by way of a written decision, can ban a foreign NGO from implementing a pending program on the territory of the Russian Federation. Failure to comply with such a directive “may entail the exclusion of [the foreign NGO’s] branch or representative office from the register and liquidation of said structural unit.”¹⁰³ A similar provision in article 32(14) enables the FRS:

For the purposes of protecting the fundamentals of the constitutional system, morality, health, rights and lawful interests of other persons, and with the aim of defending the country and state security...to issue a substantiated written decision banning a transfer by a foreign nonprofit non-government organization’s structural unit of cash and other resources to certain recipients of such resources and other property.¹⁰⁴

Analysis

Although there may be circumstances under which some powers enumerated above may be necessary to advance legitimate state interests, absent clear and specific definitions of what constitutes an NGO “event,” and under which guidelines the FRS will interpret the statutory goals of an NGO or determine whether an NGO activity in fact complies with its stated goals, this provision gives the FRS significant discretion which may lead to arbitrary and discriminatory enforcement of the NGO law. The fact that NGOs are entitled to a warning and may petition the court to appeal FRS decisions ensuing from this provision does little to temper this broad discretion, and moreover, once again places the onus on NGOs rather than requiring the FRS to satisfy any measurable and objective test or other standard before being able to act against the legitimate privacy, policy and programmatic interests of an NGO. It should be noted that in contrast to the NGO law, contemporary practice within the international community “does not encourage governmental interference in NGO activity once the legal entity is created.”¹⁰⁵

1. FRS Access to NGO Documents

FRS officials have stressed that oversight of NGO documents would be limited to that which is necessary to determine whether NGO activities correspond to the organization’s charter. Although FRS officials acknowledged that no written guidelines exist to delineate precisely which type of documents could be requested from an NGO, or under what circumstances such requests could be made, they stressed that any requests which overstepped the informal boundary defined by the FRS leadership would “not be tolerated and would be punished” internally.¹⁰⁶ This informal, internal regulation of FRS operations would be enforced strictly, according to Movchan. Nevertheless, despite best assurances from the FRS, the failure to constrain this

¹⁰³ Art. 32(13), Law No. 7.

¹⁰⁴ Art. 32(14), Law No. 7.

¹⁰⁵ Richard Remias, “The Regulation of the NGO in Central Asia: Current Reforms and Ongoing Problems,” 3 *Asia Quarterly* 4 (Summer 2000), <http://www.asiaquarterly.com/content/view/75/40/>.

¹⁰⁶ USCIRF meeting with the FRS, Moscow (June 23, 2006).

oversight power by way of clear regulations leaves open the possibility of arbitrary governmental interference in NGO affairs. Without any possibility of lodging complaints against overzealous or arbitrary interpretation and application of the NGO law, this possibility becomes more likely. Indeed, it is reasonable to envision a scenario whereby virtually any document may be said to be related in some manner to an NGO's mandate, and therefore subject to FRS review.

2. FRS Participation in NGO Events

Based on information obtained during the Commission delegation meeting with FRS officials, the FRS is currently drafting regulations to implement the provisions contained in article 32. That said, FRS officials also claimed during this meeting that the right to attend public NGO events is unlimited. These officials further reasoned that the FRS' ability to attend "internal" NGO events would require, in certain circumstances, an invitation from the NGO since they could not reasonably attend events of which they were unaware.¹⁰⁷ Yet, given the fact that other implementing regulations mandate extensive *advance* reporting on all planned programs—and the term "programs" remains undefined—it is reasonable to assume that the FRS will be in a position to demand that all NGO "events" be reported in advance, and therefore, will have foreknowledge of all foreign NGO events, whether public or internal. Exercise of the FRS' power to attend any NGO event may have a chilling effect on NGO organizing and on participants' willingness to attend such events. It should also be noted that the Council of Europe's analysis of the NGO law's oversight provisions observes, *inter alia*, that the supervisory powers granted to the FRS "appear to be excessive and it is necessary to circumscribe them more precisely," that "unlimited power for state representatives to attend events interferes with the autonomy of NGOs," and finally, that any intervention "should be restricted to cases where there are reasonable grounds for suspicion that the legislation in force has been violated."¹⁰⁸

It should be noted that the FRS' ability to attend events or demand documents may also give rise to potential violations of Russia's constitution and its obligations under article 8 of the European Convention. The Russian Constitution guarantees every person's "right to privacy of correspondence, telephone conversations, post, telegraphic and other communications," and specifies that restrictions "on this right may be imposed only by a decision of the court."¹⁰⁹ Similarly, the European Convention provides that:

There shall be no interference by a public authority with the exercise of [an individual's right to privacy] right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.¹¹⁰

¹⁰⁷ USCIRF meeting with the FRS, Moscow (June 23, 2006).

¹⁰⁸ Paras. 26 and 29, Van der Ploeg.

¹⁰⁹ Art. 23(2), Constitution of the Russian Federation.

¹¹⁰ Art. 8(2), European Convention on Human Rights.

Although it may be argued that the privacy right enunciated in article 8 of the European Convention applies only to the private life of an individual, the ECHR concluded in *Niemetz v. Germany* that:

There appears...to be no reason of principle why...the notion of “private life” should be taken to exclude activities of a professional or business nature since it is, after all, in the course of their working lives that the majority of people have a significant, if not the greatest, opportunity of developing relationships with the outside world.... More generally, to interpret the words “private life” and “home” as including certain professional or business activities or premises would be consonant with the essential object and purpose of Article 8...namely to protect the individual against arbitrary interference by the public authorities.¹¹¹

3. FRS Ability to Ban NGO Programs and Financial Transfers

The FRS’ ability to ban a foreign NGO’s implementation of a *pending* program under article 32(13) is linked directly to the law’s requirement that such NGOs submit information on all planned work one year in advance, as discussed in Part III(E), above.¹¹² This provision allows the FRS, by way of “a written decision substantiating the ban,” essentially to compel an NGO to “terminate its activities in connection with the implementation of the said program.” Where an NGO fails to comply with the decision, the law provides for “the exclusion of the said foreign nonprofit non-government organization’s [affiliate] or representative office from the register *and liquidation of the [branch office] of the foreign nonprofit non-governmental organization.*”¹¹³ In other words, not only may the FRS exclude an organization from the register without court order (as is the case under article 32(10) and (11)), it also may be able—given the law’s silence on the latter power—to liquidate an NGO with the same lack of due process.

Given that the NGO law already requires foreign NGOs to divulge all information related to financial transfers and other monetary activities, the FRS is well-positioned to prevent those transfers “to certain recipients of such resources and other property” that it deems necessary for the purposes of “protecting the fundamentals of the constitutional system, morality, health, rights and lawful interests of other persons, and with the aim of defending the country and state security.”¹¹⁴ However, the NGO law makes no provision here regarding what, if any, penalties may apply for noncompliance with the FRS-ordered ban, nor does it specify the precise meaning of terms such as “other resources” or “certain recipients.”

IV. Conclusion

As this analysis has demonstrated, there are many apparent shortcomings with respect to Russia’s amended NGO law. Not only is the law drafted in a vague manner that creates significant administrative discretion for FRS officials, but it also sets out provisions that expand dramatically the scope of government powers and constrains the space within which NGOs are

¹¹¹ Arts. 29 and 31, *Niemetz v. Germany*, judgment of the European Court of Human Rights, Dec. 16, 1992 (13710/88).

¹¹² See Art. 2, Decree No. 212.

¹¹³ Art. 32(13), Law No. 7 (emphasis added).

¹¹⁴ Art. 32(14), Law No. 7.

permitted to operate. Repeal of the law would alleviate most of the concerns raised by this report. The alternative, at a minimum, is for the Russian government to take steps to amend or clarify problematic provisions and regulations in a manner that ensures the law's respect for international norms related to freedom of association, freedom of thought, conscience, and religion or belief, and related human rights. These amendments and clarifications should, *inter alia*, reflect international best practices, as well as recommendations contained here and in the Council of Europe's Provisional Opinion on the NGO law. In tandem with this, the international community, including the U.S. government, should take immediate steps to establish a comprehensive monitoring program to track the implementation and enforcement of this law. The first round of reports is due by April 15, 2007. How the FRS evaluates reports submitted at that time—and more generally how the FRS acts in the interim between now and then vis-a-vis NGO programs and other activities—will not only set the tone for future enforcement of the law, but also shed additional light on the law's true function and purpose. Accordingly, effective monitoring of the law will be central to any future analysis or assessment of its impact on the NGO sector in Russia.