

THE OBSERVATORY

for the Protection of Human Rights Defenders

L'OBSERVATOIRE

pour la Protection des Défenseurs des Droits de
l'Homme

EL OBSERVATORIO

para la Protección
de los Defensores de Derechos Humanos

Russian Federation: Amendments to Federal Laws regulating the activity of civil society

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The Observatory for the Protection of Human Rights Defenders, a joint programme of the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), expresses its grave concern regarding the law entitled "Amendments to some federal laws of the Russian Federation", adopted at a third reading by the lower House of Parliament (Douma), on December 23, 2005, and signed by President Putin on January 17, 2006. This Law will come into force on April 10, 2006.

This law amends three laws: Federal Law No.7 of January 12, 1996, on non-profit making organisations (Law on NKO – *O Nekommercheskaia Organizakii*), Federal Law No. 82 of May 19, 1995 on public associations, and the Law of July 14, 1992 on closed territorial administrative entities. It addresses all non-profit making organisations (social, local sports club voluntary charities), including those working on the protection and defence of human rights.

Even though several restrictive provisions were withdrawn following the adoption of the draft law at its first reading on November 23, 2005, due to the mobilisation of the Russian civil society and international pressure, this law remains in blatant violation of international human rights norms, in particular the right of freedom of association¹.

Registration of NGOs

Amendment No.1 to the Law on closed territorial administrative entities² prohibits NGOs whose founder members are foreigners, stateless persons, foreign organisations or NGOs, including those who represent foreign branches of NGOs operating in Russia, from establishing or operating in these territories.

Amendment 3§5 to article 15 of the Federal Law on NKO and amendment 2§3 to article 19 of the Federal Law on public associations stipulate that foreign nationals or stateless persons who do not hold permanent resident status cannot found or belong to an organisation, including any foreign national or stateless person whose presence is considered "undesirable", in accordance with a decision taken by the authorities.

Furthermore, any person who is subjected to the provisions of the Federal Law on the "fight against laundering of money received by criminal means, and the fight against terrorism", or any individual who is sentenced for carrying out extremist acts, is also forbidden to be a founder or an ordinary member of an organisation. Similarly, any association whose activity is suspended in the context of the fight against extremist activity may not be a founder or an ordinary member of another organisation. The Observatory notes in this respect that no clear definition of

1 Among these provisions, two were directly aiming at restraining the possibility to form an association : Amendment 2§3 added to article 19 of the Law on public associations that representative offices of foreign NGOs can only be set up as organisations affiliated to national NGOs, and have to be registered. This means that henceforth foreign NGOs will be prohibited from opening chapters in the Russian Federation and that all those already operating will become illegal, unless they re-register with a different legal status ; amendment 13.1§6 of the Law on NKO stipulated that the registration of non-profit making organisations shall be subject to the payment of a fee, of an unspecified amount to the State. This sum might have been too high, in order to deter the registration of new charities, or could have been set in a discretionary and arbitrary manner.

2 These closed administrative entities are towns or regions, access to which is subject to an authorisation from the Security Services (FSB).

“extremism” appears in Russian legislation and fears that, as a result, these reasons may be used arbitrarily by the authorities. Finally, at the end of the provisions relating to public associations, it is stated that an individual who is placed in detention as a result of a court decision is subjected to the same interdictions.

Furthermore, amendment §4 to article 21 of the Law on public associations says that “the decision to register a representative office of a foreign NGO can only be taken by the State registration body”. Such a decision will be based on other documents related to the NGO in question, in particular, its statutes and many other documents, supplied in the original language and supported by a process server approved translation. This requirement makes registration particularly difficult, because of the long and tedious procedure involved.

Amendment 6 to article 23 of the Law on Public Associations broadens the reasons for refusal of registration³. From now on, a request for registration of an organisation may be rejected⁴ “if the status of the organisation violates the Constitution or the legislation of the Russian Federation”, “if the person who is presented as a founding member of the organisation may not be a founding member according to article 19 of the Law” or “if the name of the organisation is an offence to morality or to the national and religious feelings of citizens”.

Amendment 3§9 to article 23.1 of the Law on NKO repeats these provisions and also provides reasons for refusal that are specific to chapters of foreign NGOs, in particular “if the aims of creating the chapter create a threat to the sovereignty, political independence, territorial inviolability, national unity and uniqueness, to the cultural heritage and national interests of the Russian Federation”, or “if an NGO chapter has previously been registered in the territory [...] and disbanded because of clear violation of the Constitution or of Russian legislation”.

Although amendment 6§4 specifically stipulates that organisations that already exist do not need to re-register, article 6§5 states that representative bodies or chapters of foreign NGOs must, for information purposes, notify the authorities of their existence within six months of the Law coming into force. Beyond this period, associations that have not carried out this procedure must cease their activities.

Monitoring of NGO activity

Amendment 2§8 to article 38.2-4 of the Law on NKO, stipulates that the “State registration body in charge of vetting registration applications from organisations shall also monitor their activities and funding, and shall have access to all the organisations’ financial papers”. Hitherto, access to such papers required a request from the *Prokuratura*⁵, the police or the Tax Inspectorate. Furthermore, the representatives of the State registration body may take part in all the activities of the organisations, be they internal or public, and shall conduct, at least once a year, an audit to check activities against the aims as set forth in the statutes (this audit was restricted to once a year at most, in the version sent for a second reading). Should the statutes not be in compliance, the registration body shall serve a justified warning in writing, and the organisations shall have at least one month to comply with their statutes. An appeal can be made against this written warning. This amendment also stipulates that the health, epidemiological and fire services or any other State service may verify the charities’ compliance with rules and standards.

Amendment 3§10 to article 32 of the Law on NKO stipulates that the organisation shall transmit, by a report on the activities, the implementation of tasks and the use of funding in keeping with the statutes as filed, as well as the names of the director members to a federal justice body. The federal body with this responsibility has not been yet designated. If the NGO chapter or representative does not transmit this information, the registration body may decide to disband it without a court procedure.

3 The first version of the Law presented to Parliament gave only three reasons for refusing to register the NKO: if the name of the organisation constitutes an offence to the ethics or the ethnic or religious sensitivities of citizens; if, with respect to a foreign national or stateless person, a founder member or ordinary member of an organisation, a decision is taken on the grounds that his or her presence on the territory of the Russian Federation is undesirable; or if the aims, function and the form of the activity of the founder member of the organisation is contrary to the Constitution of the Russian Federation, current federal law or other federal laws.

4 Other reasons for refusal relate to formality issues such as: “if the full set of documents required for registration is not presented, or is presented according to an incorrect procedure, or presented to the wrong body”; “if an organisation already registered with the same name is active in the same territory”; “if it is established that the documents supplied by the founders contain false information”.

5 The *Prokuratura* includes investigating officers and prosecutors under the supervision of the Public Prosecutor.

Disbanding of NGOs

Amendment 2§7 to article 23-1§5 of the Law on the NKO stipulates that repeated failure to supply the financial and budgetary documents within the allotted time may constitute grounds for an application from the State registration body (as yet not designated) to the court to order the cessation of the activities, the disbanding or striking off the legal entity register of the organisation. These documents relate to, among other subjects, the amount of resources and other goods received by the association from international or foreign organisations, foreign or stateless persons, and the purpose for which they are intended to be spent or used.

Amendment 2§9 adds a new paragraph to article 44.1 of the Law on NKO, which indicates that failure from the association to correct the infringements found within the deadlines may constitute grounds for a procedure whereby the Public Prosecutor of the Russian Federation or the State registration body requires dissolution.

Amendment to article 33 to the Law on NKO lists grounds for dissolution or cessation of activities of an organisation through a court procedure, namely: if the organisation undertakes extremist activities (no definition of such activities is provided), if it provides assistance in legalising illegally acquired funds, if it violates the rights and freedoms of citizens, if it commits repeated and serious violations of the Constitution, of federal laws or any other norms, or if the activities do not comply with the aims set forth in the statutes. The particularly vague wording of these provisions makes the Observatory fear an arbitrary interpretation.

The Observatory considers that this law constitutes a blatant violation of the regional and international instruments on human rights which safeguard freedom of association (the International Covenant of Civil and Political rights, European Convention on Human Rights, the Document of the Copenhagen Conference on Human Dimension of the Commission on Security and Cooperation in Europe (CSCE) and the Declaration of the Declaration on Human Rights Defenders, adopted by the General Assembly of the United Nations on December 9, 1998.

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fidh

International Federation For Human Rights
17, Passage de la Main d'Or
75 011 Paris, France

OMCT

World Organisation Against Torture
Case postale 21 - 8 rue du Vieux-Billard
1211 Genève 8, Switzerland