

Urgent appeal by Russian human rights organisations to the representatives of the Council of Europe concerning the adoption of new repressive laws in the Russian Federation and the introduction of draft laws aimed at further restriction of civil society space and fundamental rights and freedoms

Ms. Marija Pejčinović Burić, Secretary General

Ambassador Rolf Mafael, Permanent Representative of Germany to the Council of Europe,

Mr. Michael Roth, Minister of State for Europe, Special Representative of the Federal Government for the German Presidency of the Committee of Ministers of the Council of Europe

Dr. Lorenz Barth, Head, Council of Europe Unit, Federal Foreign Office

Ms. Dunja Mijatovic, Commissioner for Human Rights

Mr. Rik Daems, President of the Parliamentary Assembly

Mr. Boriss Cilevičs, Chairperson, Committee on Legal Affairs and Human Rights

Mr. Michael Aastrup Jensen, Chairperson, Monitoring Committee

Ms. Ria Oomen-Ruijten, Co-rapporteur on the Russian Federation, Monitoring Committee

Mr. Axel Schäfer, Co-rapporteur on the Russian Federation, Monitoring Committee

Mr. Aleksander Pocij, Chairperson, Group of the European People's Party

Mr. Frank Schwabe, Chairperson, Socialists, Democrats and Greens Group

Mr. Ian Liddell-Grainger, Chairperson, European Conservatives Group and Democratic Alliance

Mr. Jacques Maire, Chairperson, Alliance of Liberals and Democrats for Europe

Mr. Tiny Kox, Chairperson, Group of the United European Left

Subject: request for an urgent critical reaction within the Council of Europe to the adoption of new repressive laws in the Russian Federation that further restrict the activities of civil society and fundamental rights and freedoms

24 January 2021

Dear colleagues in the Council of Europe,

We are writing to you on behalf of a group of several dozen Russian human rights organisations and civil society activists regarding new serious threats to Russian civil society and fundamental rights and freedoms in our country. These threats have emerged as a result of the adoption of a whole package of new repressive laws at the end of December and the preparation for the adoption of a number of other repressive bills in the near future. The annex to this letter briefly describes the main threats arising from this new legislation.

The laws adopted at the end of December and the draft laws proposed for adoption, when they come to force, will lead to a significant increase in total government control over Russian society and a growth in persecution for dissent. Open discussion in Russia on public interest issues, already marginalised by previously adopted restrictive laws and repressive practices, will be reduced to minimum under the threat of serious administrative and criminal penalties. A legal basis is being created for the prohibition by the authorities of any initiative that critically assesses government policies or even deviates from them. As a result, the activities of NGOs, civic initiatives, mass media and active citizens will be strongly restricted even further. In addition, many people living in Russia will be deprived of qualified assistance in protecting their civil, political, social and economic rights and the right to a healthy environment, in receiving services in the field of education, health care and other areas of work of civil society organisations.

Этот материал выпущен МОО ПЦ "Мемориал", который внесен в реестр, предусмотренный ст. 13.1.10 ФЗ "Об НКО".
Мы обжалуем это решение.

It is clear that these legal instruments are aimed at further suppressing civil society in Russia and restricting fundamental freedoms, including freedom of association, freedom of peaceful assembly, freedom of expression, and freedom to disseminate and receive information. The difficult situation of Russian civil society and Russian citizens, who have been subjected to ever increasing pressure over the past decade, will deteriorate further as a result of the application of these norms. We are convinced that these laws and bills unlawfully restrict constitutional rights and freedoms and contradict Russia's international obligations within the framework of the Council of Europe, the UN and the OSCE.

We appreciate a request for opinion on these draft laws sent to the Venice Commission in December by the PACE Committee on Legal Affairs and Human Rights. However, the first four laws have already been enforced since then, and six others have passed the first reading in the State Duma. It is important to act more decisively now, before the Commission's opinion is adopted; otherwise, the negative impact of the new laws will make a devastating blow to civil society and fundamental rights in Russia.

Therefore, we request your immediate reaction to these new serious threats to human rights, rule of law and democracy in Russia. We expect a clear, firm and public reaction from you, within the framework of your authority in the Council of Europe, which would include condemnation of the adoption of these laws and a demand of their repeal and withdrawal from consideration of the proposed draft laws. In particular, we suggest the following actions:

- issuance of a public statement by the Secretary General of the Council of Europe and initiation of a dialogue between Secretary General and the Russian authorities on this issue, offering assistance by the CoE experts in bringing Russian legislation in line with Russia's obligations within the Council of Europe framework;
- issuance of a public statement by the German Presidency of the Council of Europe and initiation of a dialogue between the German Presidency and the Russian authorities on this issue;
- issuance of a public statement by the President of the Parliamentary Assembly and initiation of a dialogue between the President of the Assembly and the Russian authorities on this issue;
- issuance of a new public statement by the Commissioner for Human Rights, addressing all the adopted new laws and draft laws in more detail, and initiation of a dialogue between the Commissioner and the Russian authorities on this issue;
- issuance of a public statement by the co-rapporteurs on Russia of the PACE Monitoring Committee;
- holding a critical discussion of this issue at the January part-session of the PACE and inclusion of a reaction to this issue in the text of PACE resolution on restrictions on NGO activities in Council of Europe member states, scheduled for the adoption at the January part-session, and in the text of PACE resolution on the progress of the Assembly's monitoring procedure, also scheduled for the adoption at the January part-session;
- preparing a written declaration by PACE members on this issue at the January part-session;
- submitting a written question on this issue by PACE members to the Committee of Ministers during the January part-session;

- inclusion of a reaction to this issue in the text of the upcoming report of the PACE Monitoring Committee on honouring of obligations and commitments by the Russian Federation's and the corresponding draft resolution;
- should the situation not improve before April, considering holding an urgent debate at the PACE April part-session and preparing a PACE resolution on this issue;
- holding a discussion of this issue at a meeting of the Committee of Ministers;
- other possible steps.

The growing pressure on civil society and fundamental rights and freedoms in Russia should be a subject of priority attention in the Council of Europe and in bilateral relations between the Council of Europe member states and the Russian Federation. Compromise decisions adopted by the Committee of Ministers and the Parliamentary Assembly in the spring and summer of 2019 regarding lifting the restrictive measures in respect of the Russian delegation to the PACE and continuation of the Russian Federation's participation in the Council of Europe were aimed at intensifying a dialogue with the Russian authorities in order to achieve tangible progress in the implementation of Russia's obligations as a member of the Council of Europe. Unfortunately, over the past year and a half, we have seen the opposite result – further deterioration of the situation with human rights, rule of law and democracy. The adoption of new repressive laws further aggravates the situation in Russia and contradicts the goals proclaimed in the Council of Europe at the time.

We are ready to provide a more detailed analysis of these laws and draft laws and discuss possible actions in response to these significant threats with you.

Sincerely yours,

Natalya Taubina
Director, "Public Verdict" Foundation

Yuri Dzhibladze
President, Centre for the Development of Democracy and Human Rights

Oleg Orlov
Member of the Council, Human Rights Centre "Memorial"; member of the Board, International Society "Memorial"

Svetlana Gannushkina
Chairperson, "Civic Assistance" Committee

Svetlana Astrakhantseva
Executive Director, Moscow Helsinki Group

Appendix: Brief overview of the laws adopted in the Russian Federation in late 2020 and draft laws prepared for adoption in early 2021, aimed at further restriction of civil society space and fundamental rights and freedoms

In November-December 2020, a package of more than ten draft laws was submitted to the State Duma of the Russian Federation, amending the legislation regulating the activities of non-governmental non-profit organisations, mass media, the organisation and conduct of public events, measures to protect state secrets and counter security threats, and introducing administrative and criminal liability for non-compliance with these new norms.

On 30 December 2020, the Russian President signed four new laws:

Federal Law No. 481-FZ of 30.12.2020 “On Amendments to Certain Legislative Acts of the Russian Federation Regarding the Establishment of Additional Measures to Counter Threats to National Security” (<http://publication.pravo.gov.ru/Document/View/0001202012300001>) **significantly expands the range of potential “foreign agents”**. First, **the concept of “foreign agents” – unregistered public associations that conduct political activities and receive foreign funding – was introduced**. A separate register of such associations was created and their obligation to report on their activities in this capacity to the Ministry of Justice was introduced. Secondly, **the institute of “foreign agents”–physical persons was expanded**. Such persons, regardless of their citizenship, will now include those who receive foreign support and conduct political activities on the territory of Russia in the interests of a foreign source (broad definition of political activity in this law is identical to that given in the legislation on NGOs) or carries out intentional collection of information in the field of military and military-technical activities of the Russian Federation, which a foreign source can use “against the security of the Russian Federation”, in the absence of signs of crimes under Article 275 of the Criminal Code (high treason) and art. 276 of the Criminal Code (espionage). Such persons will not be able to hold positions in the state and municipal service, cannot be admitted to state secrets, will be required to label any materials distributed by them with the label “foreign agent” and regularly send reports to state bodies on their activities “related to the performance of the functions of a foreign agent, including information on the purpose of spending money and using other property received from foreign sources, and on their actual spending and use”. In addition, according to this law, **all founders, members, participants and employees of NGOs and unregistered public associations included in the registers of “foreign agents” are required to mark their affiliation to the organisation–“foreign agent” in any materials they publish. The mass media is prohibited from publishing any information about such NGOs and unregistered public associations without indicating that they are included in the registers of “foreign agents”**.

Federal Law No. 541-FZ of 30.12.2020 “On Amendments to the Federal Law “On Assemblies, Rallies, Demonstrations, Marches and Pickets” (<http://publication.pravo.gov.ru/Document/View/0001202012300051>) **significantly complicates the organisation of rallies, demonstrations, marches and pickets in the Russian Federation**, introducing new strict requirements for the procedure for their approval, as well as the collection and expenditure of funds intended for holding public events. It explicitly prohibits the financing of such public events by NGOs “performing the functions of a foreign agent”. As far as we can understand from the law, one of the possible consequences of such an innovation will be, for example, that the International Society “Memorial” will no longer be able to collect funds from citizens for the annual “Return of the Names” event at the Solovetsky Stone in Moscow, where thousands of people come on the day of Remembrance of the victims of political repression.

Federal Law No. 538-FZ of 30.12.2020 “On Amendments to Article 128-1 of the Criminal Code of the Russian Federation” (<http://publication.pravo.gov.ru/Document/View/0001202012300058>) **introduces a penalty for libel in the form of imprisonment of up to five years.** Libel was criminalized in Russia earlier, in 2012, but before the adoption of this law, the actual term of imprisonment as a punishment was not provided.

Federal Law No. 525-FZ of 30.12.2020 “On Amendments to Article 330-1 of the Criminal Code of the Russian Federation” (<http://publication.pravo.gov.ru/Document/View/0001202012300043>) **introduces criminal liability for malicious violation of the duties of a “foreign agent” with a penalty of up to five years in prison.**

Six more bills have passed the first reading in the State Duma and their further consideration may continue at the end of January:

Draft law (<https://sozd.duma.gov.ru/bill/1052523-7>) proposes to oblige NGOs included in the “register of foreign agents” to submit to the Ministry of Justice their programs and “other documents” on planned activities and after they take place, submit reports on their implementation (or information that they have not been carried out). At the same time, **the Ministry of Justice is vested with the power to prohibit such organisations from implementing their programs, while the list of grounds for such a ban is not specified. In case of non-compliance with the ban, the Ministry of Justice may immediately file a claim to the court for the liquidation of the organisation.** Thus, the authorities will be able to put the NGO–“foreign agents” before the choice of either terminating their activities by implementing the Ministry's ban on holding events or liquidating the organisation. Any of the options means the actual destruction of the NGO.

Draft law (<https://sozd.duma.gov.ru/bill/1057895-7>) proposes amendments to the Federal Law “On Education in the Russian Federation”, which **introduce control and regulation by the government of any public awareness raising activities and sharply restrict the freedom of educational organisations in the field of international cooperation.** The definition of “public awareness raising activity”, formulated in this draft law, includes all forms and types of dissemination of information and is not limited to the system of educational organisations and even educational discourse. These amendments to the law "On Education" include issues that go far beyond the educational sphere, thus **opening up wide opportunities for the authorities to arbitrarily and unlawfully infringe on the right to freedom of receiving and disseminating information.**

Four more bills **introduce various penalties for non-compliance with the restrictions and norms described above, imposed on individuals, executives of organisations, and legal entities.**