Civil society action to counter discrimination and misuse of anti-extremism legislation in Russia: current trends and challenges

Anti-Discrimination Center Memorial
SOVA Center for Information and Analysis
International Partnership for Human Rights (IPHR)

DECEMBER 2012
Introduction

The current human rights situation in Russia has been the subject of growing civil society concern, especially after March 2012, when Vladimir Putin took office as president for the third time. This was followed by the adoption of a series of laws and regulations seriously limiting the activity of human rights defenders and non-governmental organisations on the territory of the Russian Federation. The implementation of these laws may pose great challenges to the right to freedom of expression, opinion, religion, conscience, and the right to non-discrimination, which is particularly important for vulnerable groups such as migrants, Roma population, women and national minorities. These rights are enshrined in the European Convention on Human Rights (ECHR), to which Russia is party, and under which it bears an international obligation to respect and protect its citizens from violations of the rights mentioned.

In today's Russia, the wide variety of groups that are subjected to discrimination, as well as xenophobia and racism, including in violent manifestations, enjoy little protection. Statistics gathered through the efforts of local Russian NGOs show that the number of violent acts and even killings perpetrated against such groups is disturbingly high. Although there has been an increase in the prosecution of hate crimes, serious problems remain, and vulnerable groups such as migrant workers from Central Asia, national minorities, Roma people, sexual minorities and stateless persons suffer great discrimination and inability to exercise even their most basic human rights. Violence against such groups is even perpetrated by law enforcement officers, acting under the cover of the law while using it to unfairly persecute such groups. Activists who work for the protection of vulnerable groups have been increasingly harassed.

The laws adopted in the summer and fall of this year, 2012, have made it even harder for human rights defenders and civil society in general to address the grave violations of human rights suffered by the vulnerable groups mentioned above. As analysed in the first part of this report, the new drafts and amendments to the laws are directly or indirectly limiting the activity of organisations, whose mandate and activities aim to attract international and national attention to Russia's disregard of its obligations under international human rights instruments to which it is bound.

The paper starts with an overview of the recently introduced legislative novelties that are aimed to either directly or indirectly limit the work of the grass-root human rights organisations. Moreover, it summarises the status of human rights situation in Russian Federation, focusing particularly on themes ADC Memorial and SOVA Centre are covering as part of their mandate.
Recent Developments and Implications

The so-called law on "foreign agents", which entered into force on 21 November, has been the subject of focus of the international community since its adoption by the Parliament of the Russian Federation in July 2012. However, other legislative amendments introduced since Putin's comeback as president are equally threatening for the functioning of civil society organisations in Russia. Some of those initiatives include amendments to the Criminal Code adopted in October 2012 with the purpose of broadening the definition of treason; reintroduction of criminal penalties in the form of excessive fines for libel; and limitations on freedom of expression on the internet.

On 23 October 2012, a new law on treason was adopted in an expedited process by the Russian Parliament. The law, amending the criminal code, was introduced by the Federal Security Bureau (FSB, the KGB's successor). Under the new law, the definition of treason includes “providing financial, technical, advisory or other assistance to a foreign state or international organization ... directed at harming Russia's security”. This overly broad and vague definition may result in that people become afraid of getting involved in international human rights advocacy as it may be applied in any situation where authorities think Russia's security is harmed, even where such harm is non-existent. The Russian Presidential Council has emphasised that the law could apply to information shared with intergovernmental organisations of which Russia is a member, such as the United Nations and the Council of Europe, which gives rise to concern that the law may limit cooperation between such organisations and local defenders, the latter risking becoming accused of treason and being harshly punished. The law could be used by law enforcement and security services to justify close surveillance of NGOs and activists in the name of a treason investigation or to open a criminal case on alleged treason as a way of paralysing a critic or political adversary. We therefore consider it important for the Council of Europe to analyse the new Russian law on treason without delay and to identify various incompatibilities with Russia's obligations under the ECHR.

Also in July, 2012, the Russian authorities adopted another restrictive law regarding NGOs. The law states that Russian NGOs that receive financial support from abroad and conduct ‘political activities’ will be publicly labelled as “foreign agents”. Such political activities are said to include vague activities such as “influencing public opinion with the purpose of changing state policy”, which can mean any type of advocacy. The new law will not apply to religious organisations, NGOs created with the participation of state agencies, charity groups, scientific, cultural, and health associations. It is evident that advocacy groups, including human rights organisations, are the primary target of this draconian legislation, which will require them to register as “foreign agents”. This label has a negative connotation in the Russian society, and being designated “foreign spies” with foreign interests, will make it difficult for NGOs to conduct effective human rights advocacy and gain trust among the local population, which is a crucial element in their work.

Furthermore, non-compliance with the provisions of the law may result in harsh financial penalties, temporary termination of the activities of NGOs or even permanent closure and criminal prosecution of the organisation’s leadership. With this law due to enter into force on 21 November, urgent attention should be paid to it.
On 13 July 2012, libel was re-introduced in Russian criminal law, after having been decriminalized only six months earlier. While the new libel provisions do not provide for prison sentences, a guilty verdict may result in enormous financial penalties. Libellous public statements or remarks reproduced by media outlets may be punished by a fine of up to 2 million rubles (just over 50,000 euros). Libel that involves falsely accusing someone of a grave crime may result in a fine of up to 5 million rubles (just over 130,000 euros). This law represents a serious blow to the right to freedom of expression, promotes self-censorship and may potentially suffocate small media outlets. In accordance with international human rights law, public officials must tolerate a higher degree of criticism than private individuals; however, the new Russian provisions could restrict legitimate criticism of public officials to an extent not permitted under international standards.

Another law which could prove detrimental to the right to freedom of expression in Russia is a new law that limits freedom of expression on the Internet, also passed in July. Under this law, which entered into force on 1 November, websites that are considered to contain content harmful to children or “extremist” content may be blacklisted and forced offline by authorities without any court decision. The law will be enforced using three methods – blocking a certain webpage through URL, blocking the entire sub-domain (the logical address of the website) and by blocking the IP (the physical address of the website). These three methods are already put in practice by the authorities. The interconnected nature of the Internet means that a well-intended but narrow effort to address issues such as child protection and extremism prevention will have serious unintended consequences on the integrity of the Internet and the rights of its users.

Taken in conjunction, these initiatives have dramatically worsened the legislative framework in which human rights groups are operating in Russia. The effects of the ‘foreign agents’ law’ are still to be seen as it enters into force at the end of November. A large part of Russia’s civil society organisations have decided to boycott the law and not to register themselves as “foreign agents”, thereby risking severe penalties. A major donor of Russian NGOs, USAID was forced to cease its activities and leave the country in September. Against this background, active support of Russian civil society by international organisations such as the Council of Europe and the European Union remain crucial.
Our organisations’ activities

Racism, xenophobia and discrimination

Racism and discrimination constitute serious problems in today's Russia. Such terms as ‘racism’ and ‘discrimination’ are unpopular in the Russian discourse. The anti-discriminatory legislation has been weak and ineffective. The Russian authorities have received recommendations both from local civil society and international actors regarding the prevention of discrimination, in particular, to strengthen the legislative basis in the area of non-discrimination by paying particular attention to gender equality, ethnic minorities, indigenous people and migrants outside their status of minority. Recommendations have also been made for an effective application of existing legislation on the fight against racism, and the adoption of new structural measures designed to fight discrimination. Based on an analysis of recent developments in relation to the protection against discrimination, it can be said that there have been no noticeable improvements in this area.

The Russian authorities have repeatedly rejected recommendations to adopt comprehensive anti-discriminatory legislation, with reference to existing anti-discrimination norms that are scattered over a number of different laws. However, experience shows that these norms have a largely declarative character and that it is often impossible to enforce them in courts for the purpose of ensuring protection of groups that are subject to discrimination. This is also witnessed by the virtual absence of court reviews of discrimination cases regarding women, national minorities, migrants, stateless persons and LGBT.

Discrimination against LGBT

The absence of comprehensive anti-discrimination legislation at the federal level has made possible the adoption of directly or indirectly discriminatory regulations at the regional level. In 2011-2012 a series of regional laws detrimental to the rights of sexual minorities have been adopted in the regions of Ryazan, Kostroma, Arkhangelsk and Novosibirsk and in Saint Petersburg. For example, Saint Petersburg's law on administrative offences has been amended so as to provide for administrative responsibility for public acts directed at 'propaganda of sodomy, lesbianism, bisexuality, transgender amongst minors'. This law provision contradicts the prohibition of discrimination and the right to freedom of expression and opinion set out in the Constitution of the Russian Federation, as well as international norms to which the Russian Federation is bound, particularly, Article 8, 10 and 14 of the ECHR (right to respect for private and family life, freedom of expression and opinion and prohibition of discrimination).

Discrimination against women

In recent years a series of legal initiatives aimed at counteracting discrimination against women have been made. The most significant of these is a draft law 'On state guarantees regarding equal right and liberties for men and women, and equal opportunities for their realisation'. To date, this law has not been adopted by the State Duma, even if Russia is seriously lagging behind other European countries with respect to ensuring equal opportunities for women in public life. This reinforces the perception of unwillingness by the Russian government
to properly address issues of discrimination. An example of direct discrimination of women in the area of labour rights is the existence of a list of professions, confirmed by the government, in which the participation of women is possible only through the creation of special conditions by the employers. This practically excludes the possibility of women’s employment in the listed professions. The absence of legislation prohibiting discrimination against women is an important factor contributing to continuous disrespect of women’s rights in violation of the prohibition of discrimination set out by the ECHR.

Human rights defenders who work on issues of discrimination against women are concerned about the absence of a special law on domestic violence, as well as attempts to limit women’s right to abortion. Such attempts were made at the end of 2011 by the adoption of amendments to the Law ‘On the Basic Healthcare of RF Citizens’, which introduced a mandatory waiting period for women who request an abortion (2 or 7 days, depending on the pregnancy term), and granted doctors the right to refuse to carry out abortions based on personal convictions. In line with similar new introductions is the amendment adopted in the summer of 2011 in the ‘Law on commercials’, prohibiting private clinics from declaring the abortion procedure harmless, and a series of other amendments.

**Discrimination against national minorities and migrant workers**

Discrimination exists in the Russian Federation also in regard to numerous national minorities, which include, among others, minorities in the Northern Caucasus, the few Arctic indigenous peoples, people originating from other former Soviet republics and Roma people. All these groups, whose members can easily be discerned from members of the majority population because of their physical appearance, also suffer from violence, both at the hands of private individuals and representatives of law enforcement bodies. Their rights to social welfare and government support are grossly violated as well. For instance, the **constant threat of demolition of Roma establishments, and rejections of applications for residential registration** worsen the situation of Roma people and contribute to violations of other social-economic rights in their case. In Russian administrative practice, the lack of registration impedes the realisation of social-economic rights such as the right to health, including access to medical assistance and social security, labour rights, as well as

**In 2012 a court in Samara refused to satisfy the complaint of a woman who was not allowed to complete practical training in the profession of helmsman, although this was a requirement for obtaining her diploma. Earlier in a similar case, a court rejected the complaint of a woman who was prohibited from working as metro driver. This decision was upheld by the Constitutional Court of the Russian Federation.**

**In the framework of operations targeted at "illegal Migrants", systematic raids are carried out to check the documents of migrants, which involve corruption and rights violations. The Roma are subjected to blatant ethnic profiling during special operations such as Operation 'Tabor' (a tabor is a Roma encampment).**
children’s right to education.

The exercise of the right to education by Roma children remains a particular problem, with few examples of effective affirmative action by authorities. At federal level there is no concrete programme for the integration of children of national minorities, and at local level the situation is often worsened by the inactivity of authorities and displays of indirect discrimination. Most Roma children in Russia do not complete their education. A significant number of children do not even receive mandatory elementary education, and even if they officially complete a few years of school, the acquired knowledge almost never corresponds to government education standards.

Violations of the rights of migrants and stateless persons also remain a serious problem. Plans for interdepartmental cooperation against illegal migration adopted at the federal and regional level oblige medical institutions to notify local authorities about migrants who receive education or medical assistance. Similarly schools are obligated to submit lists of migrant-students to the Federal Migratory Service. This is a strategy used to track down ‘illegal’ migrants and subsequently deport them, usually without due process.

Not only are migrant workers subjected to violent attacks by racist and neo-Nazi groups, but their economic and social rights are also violated. While Russia has ratified the International Covenant on Economic, Social and Cultural Rights, its authorities are not doing enough to guarantee these rights in regard to immigrants. Migrants who come to Russia to work are frequent victims of labour law violations by employers, intermediary firms, and other parties in employment relations. Moreover, in order to be able to work legally in Russia, foreign nationals are required to go through complicated and bureaucratic administrative processes, which creates numerous difficulties for them and put them at risk of abuse by officials.

For instance, the process of acquiring of a work permit is hampered by the use of a quota system for migrant workers in the labour market. This system was created for the stated purpose of protecting the rights of Russian nationals in the labour market, but experts have concluded that it does not work in practice. Annual quotas are typically exhausted already after the first quarter, as a result of which migrant workers who arrive to Russia later during the year have no opportunity to legalize their status. Thus, this system encourages irregular migration. Another factor that contributes to violations of migrant workers’ rights is the lack of support from their own countries. Often the embassies of these countries have not appointed any particular representatives to whom migrants could turn for advice. Therefore, migrants often fall prey to fraud by so-called legal counsel firms that take advantage of their lack of knowledge. Migrant workers who have lost their legal status as a result of the actions of intermediary firms and lack the means to return to their country of origin must nevertheless earn a living. Since they cannot work legally, they often become the victims of crime: illegal confinement (usually by employers who confiscate and retain their passports), forced labour, and abusive treatment, all of which
damage their health. Such treatment is in contradiction with Russian labour legislation as well as UN and ILO standards on labour rights.

Other types of discrimination

Some minority groups living in the Russian Federation are victims of double or triple forms of discriminations. These include Roma migrants, women migrants, and children migrants. The cumulative forms of discrimination reinforce the poverty and deprivation of rights of the discriminated groups.

The problematic situation of stateless Roma persons was illustrated by the case ‘Lakatosh and others against Russia’, which was declared admissible by the European Court of Human Rights in 2011. It was proved that in the centre for temporary detention of persons awaiting deportation, these Roma migrants, who were not recognised as citizens by either Russia or Ukraine, were detained in inhuman conditions and were submitted to humiliating treatment without having committed any crime. Their only “crime” was that they were persons without citizenship proof. Although Russia recognised the violations and paid the claimants compensation, this did not lead to any real changes in legislation and practice regarding stateless persons. There is still no mechanism of judicial control of detention in administrative cases of non-citizens and stateless persons, although the period of detention can be up to two years. This fact is aggravated by the absence of legal aid to those accused of administrative offences.

To improve the situation, the Russian authorities need to pay attention to all the issues discussed above and take effective measures to prevent discrimination and assist victims.

---

1 See admissibility decision of June 7 2011 on the case of Anna Lakatosh and Others against Russia
In 2005, 56 persons were prosecuted for violent hate crimes, in 2010 297 and in 2011 189. This led to a decrease in the number of such crimes, especially killings. According to the data of the SOVA Centre, in the worst year, 2008, there were 615 victims including 116 victims of killings. In 2011 these numbers decreased to 216 and 24 respectively. Unfortunately, in 2012 the downward trend stopped.

Beginning in 2006-2007, there was an increase in efforts to prosecute hate crimes and hate speech. Criminal prosecution for hate speech increased from 15 prosecutions in 2005 to 76 in 2011. However, these verdicts were issued for insignificant statements and publications, thus the level of hate speech in the country did not decrease.

The Russian authorities have responded in various ways to expressions of nationalism and increasing public opinion of ethnic issues as problematic. In the past two decades period the official discourse has had two major components. The first one is focused on counteracting extremism. This discourse is based on defending the authorities from discordant views and suppressing opposition of any kind, while being closely connected to corresponding legislation and its highly problematic practical implications. The second component inherited from the Soviet era is called ‘interethnic conflict resolution’. The very notion of such a conflict implies that its antagonists are organized along ethnic lines. Thus, the situation where ten ideologically-motivated racists attack one or two passers-by is instantly elevated to a higher status, implying the need for negotiation between their respective ‘ethnic parties’. This discourse is counter-productive because of the polarisation it stimulates in society and requires a much needed discussion of issues such as discrimination, integration, legal equality etc.

Extremism and misuse of anti-extremism legislation

The Russian authorities have responded in various ways to expressions of nationalism and increasing public opinion of ethnic issues as problematic. In the past two decades period the official discourse has had two major components. The first one is focused on counteracting extremism. This discourse is based on defending the authorities from discordant views and suppressing opposition of any kind, while being closely connected to corresponding legislation and its highly problematic practical implications. The second component inherited from the Soviet era is called ‘interethnic conflict resolution’. The very notion of such a conflict implies that its antagonists are organized along ethnic lines. Thus, the situation where ten ideologically-motivated racists attack one or two passers-by is instantly elevated to a higher status, implying the need for negotiation between their respective ‘ethnic parties’. This discourse is counter-productive because of the polarisation it stimulates in society and requires a much needed discussion of issues such as discrimination, integration, legal equality etc.

Beginning in 2006-2007, there was an increase in efforts to prosecute hate crimes and hate speech. Criminal prosecution for hate speech increased from 15 prosecutions in 2005 to 76 in 2011. However, these verdicts were issued for insignificant statements and publications, thus the level of hate speech in the country did not decrease.

The quality of law enforcement related to hate speech is brought down even further by the poor quality of the corresponding legislation, which is based on the law ‘On Counteracting Extremist Activity’. Its most serious weakness is its vagueness and the excessively broad scope of its definition of extremist activity. This definition gives no indication of general characteristics, but instead describes extremism through certain acts. The list of such acts may be changed at will and has in fact been changed twice already. The current definition of extremism includes very dangerous acts, such as attempts to overthrow the constitutional government, and ‘terrorist activities’, and also hate crimes. But the definition of extremism also includes acts described so vaguely that acts that fall below it do not necessarily cause serious public danger. This is true, for example, of such an important element of the definition as ‘inciting social, racial, ethnic or religious discord’ – not ‘hatred’ or ‘hostility’.

Furthermore, the persecution of individual political and civic activists under this legislation is widely known. Mass media faces numerous problems relating to current anti-extremist legislation. There also exists a list of prohibited books, leaflets, films, websites, etc., which already contains more than a thousand items. Subsequently, even libraries, stocking these books, face problems. Overall, this legislation has become a repressive instrument misused to silence opposing views.

The fact that the definition of extremism includes terrorism and hate crimes, i.e. crimes of great societal and governmental concern, generates a great deal of pressure on law enforcement agencies, requiring them to demonstrate ever more vigorous opposition to extremism. At the
same time, since the definition of extremism can be stretched to include various activities of little or no danger to society (which also tend to be much easier to investigate than actual hate crimes), law enforcement agencies often choose to prosecute these low-risk activities in order to improve their reporting statistics.

Besides violating human rights, abuses that occur in the course of anti-extremist measures undermine law enforcement reputation in this area. This applies also to cases, where law enforcement actions are appropriate and legally sound.

The largest group of victims of inappropriate use of anti-extremist legislation are members of various religious groups, which have fallen out of favour with authorities for various reasons. Thus, improper enforcement of anti-extremist legislation also results in religious discrimination. A definition of extremism that includes such notions as 'religious discord' and 'asserting religious superiority' is ideal for persecuting almost any religious leader as well as any critic of religion.

The scale of the inappropriate use of this law increases every year. Only in 2011 illegitimate criminal verdicts were issued in regard to 16 people for public expression or membership in prohibited religious organisations, although in our view these organisations were prohibited on inappropriate grounds. Among others, members of organisations such as Nurdjular, Tablighi Jamaat and Hizb ut-Tahrir were prosecuted. In line with these actions, was the sentence issued against the members of the punk-group Pussy Riot, who were prosecuted in 2012 to 2 year of imprisonment, being accused, without any proof, of disorderly conduct on the motive of religious hatred.

Apart from criminal prosecutions, the inappropriate use of the anti-extremism legislation results in administrative limitations and various forms of pressure, primarily with respect to civic and religious activists and journalists.

The concerns about the current fight against extremism in Russia are relevant not only for human rights organisations, but also for many Russian citizens. Efforts to stop arbitrary implementation of the anti-extremism legislation need to be continued. However, we are convinced that this goal is impossible to achieve until the legislation itself is revised and improved. It would be fairly easy to change the legal definition of extremism, in order to keep it focused strictly on actions related to violent crimes. As a result of such a change, the misuse of this law would decrease considerably. In addition, law enforcement resources could be freed to address truly dangerous manifestations of neo-Nazism and other radical political movements.
**Recommendations to the International Community**

Recommendations to the international community:

- Scrutinize the recently adopted Russian laws that limit the work of civil society organisations, and identify inconsistencies with the obligations of the Russian Federation under international human rights instruments to which it is party;
- Support our organisations in encouraging the Russian authorities to take effective measures to address the concerns with respect to intolerance and discrimination, as well as counter-terrorism efforts described in this report and urge the Russian authorities to take the measures listed below:

**With respect to intolerance and discrimination:**

- develop comprehensive anti-discrimination legislation at the federal level, taking into consideration the recommendations of experienced human rights defenders and organisations;
- guarantee protection of the Roma community from police abuse, including ethnic profiling operations;
- take immediate measures to put an end to unlawful and discriminatory practices towards employees (in particular vulnerable groups such as migrant workers), e.g. the confiscation of the identity documents of employees; recruitment without any written contract, withholding wages, physical and psychological harassment, etc.;
- ratify the International Convention on the Protection of all Migrant Workers and Members of their Families, adopted in 1990;
- align Russia with the UN Declaration on Sexual Orientation and Gender Identity, and condemn human rights violations based on sexual orientation or gender identity, in particular the practice of torture and other cruel, inhuman and degrading treatment or punishment;
- repeal regional laws prohibiting ‘gay propaganda’, which infringe on the rights of LGBT individuals, and ensure the safety of LGBT activists, including during public demonstrations and after arrest.

**With respect to counter-extremism measures:**

- revise the definition of extremism in the Law ‘On counteracting extremist activity’ so as to limit it to actual violent activities, as well as public incitement, participation in and organisational activity promoting such activities;
- review the articles of the Penal Code of the RF, which provide for accountability for public incitement (Articles 280 and 282), and bringing them in line with the new definition of extremism. Insignificant intolerant statements should be prosecuted under administrative rather than criminal law;
- renounce the current mechanism for banning extremist materials, since it is one of the most unproductive elements of the anti-extremism legislation.
Anti-Discrimination Centre MEMORIAL

The NGO, Anti-Discrimination Centre MEMORIAL, was registered in 2007 and continued work on a number of human rights and anti-discrimination projects previously coordinated by the Charitable Educational Human Rights NGO “MEMORIAL” of St. Petersburg. ADC Memorial’s mission is to defend the rights of individuals subject to or at risk of discrimination by providing a proactive response to human rights violations, including legal assistance, human rights education, research, and publications. ADC Memorial’s strategic goals are the total eradication of discrimination at state level; the adoption of anti-discrimination legislation in Russia; overcoming all forms of racism and nationalism; Human Rights education; and building tolerance among the Russian people. ADC Memorial’s vision is the recognition of non-discrimination as a precondition for the realisation of all the rights of each person.

Tel: +7 (812) 317-89-30
E-mail: memorial@memorial.spb.ru

SOVA Center for Information and Analysis

SOVA Center for Information and Analysis is a Moscow-based Russian non-profit organisation founded in October 2002. SOVA Center conducts research and informational work on nationalism and racism, relations between the churches and secular society, and political radicalism. It also focuses on human rights issues, especially government misuse of counter-extremism measures.

Tel: +7 (495) 517-9230
E-mail: mail@sova-center.ru

International Partnership for Human Rights (IPHR)

International Partnership for Human Rights (IPHR) is a Brussels-based non-governmental organisation committed to promoting human rights worldwide. It aims at empowering local civil society groups and assisting them in making their concerns heard at the international level. IPHR contributes to the international advocacy work of the two above-mentioned organisations for the purpose of increasing international attention on racism, xenophobia and intolerance in Russia and to garner support from inter-governmental organisations for actions to counter such trends.

Tel. +32 2 227 6145,
Email: IPHR@IPHRonline.org